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1. Alcohol Cases - Mitigation

**In re Amalfitano,** 2007 De. Lexis 246 (Delaware 2007)

18-month suspension. The attorney had misdemeanor criminal charges brought against him related to an auto accident in which he was involved. The state Supreme Court transferred him to disability inactive status. A public reprimand was recommended. While the case was pending Amalfitano was arrested for driving under the influence of alcohol. On a third occasion he was arrested and charged with driving under the influence and driving with a revoked driver’s license. At his discipline hearing he testified that he had not had anything to drink since September or October 2003 and was an active member of Alcoholics Anonymous. In imposing the 18 month suspension the court noted that Amalfitano demonstrated a meaningful and sustained period of successful rehabilitation from alcoholism, and that his recovery arrested the misconduct.

**In re Petersen,** 725 N.W. 2d 845 (Nebraska 2007)

Indefinite suspension with no possibility of reinstatement for one year. The court found that Petersen’s efforts to rehabilitate himself appeared to be sincere and successful to a degree. Petersen was charged with multiple counts of neglect to which he filed an answer admitting the allegations. He admitted that he was addicted to alcohol and drugs and was using them during the period of his representation of the clients at issue. In recommending the sanction, the referee noted that he appeared to be sincere and remorseful for his past behavior and that he had voluntarily and successfully completed an inpatient treatment program. The record reflected that Petersen had continued his involvement in support groups dealing with his addiction and that he had entered into an NLAP monitoring contract.
2. **Alcohol Cases – No Mitigation**

*In re Laskowski*, 147 P. 3d 135 (Kansas 2006)

Indefinite suspension from the practice of law in Kansas. Laskowski pled guilty to a third charge of driving while intoxicated. The court noted that he was convicted of a felony offense; although not a breach of a professional duty to a client, it violated his primary duty to the court and bar and it eroded public confidence in the judicial system. Of note, Laskowski did not claim to be an alcoholic.

*In re Spradling*, 953 So. 2d 642 (Louisiana 2007)

The attorney was disbarred and permanently prohibited from being readmitted to the practice of law in Louisiana. The credibility factor was particularly important in the hearing committee’s determination that Spradling was solely responsible for improper transfers from the firm’s client trust account and that he attempted to mislead the panel and the Supreme Court of Louisiana. The Court found that the most egregious conduct was his conversion of client funds and his submission of false evidence in the disciplinary proceeding. The hearing committee was not convinced that alcohol abuse was a major contributor to his misconduct. The disciplinary board accepted that finding, noting that Spradling had engaged in misconduct even after he stopped drinking.
3. **Drug Cases – Mitigation**

*Florida Bar v. Del Pino*, 955 So. 2d 556 (Florida 2007)

The court disapproved the recommendation of disbarment and suspended the attorney for three years. Del Pino pled guilty to signing a fraudulent application for an extension of time to file her U.S. income tax return and to mail fraud. The court rejected her claim that the referee erred in finding as an aggravating factor a dishonest or selfish motive. However, because of the emotionally and physically abusive relationship between her and her husband, that aggravating factor was not entitled to substantial weight. She did not act for her own financial gain, but to help her husband. She became dependent on prescription drugs as a result of illness, depression, and attempts to escape an abysmal personal life (as opposed to recreational drug use).

*Toledo Bar Association v. Shouser*, 861 N.E. 2d 536 (Ohio 2007)

The attorney was suspended for two years, with 18 months stayed. Most of the misconduct charged involved accepting retainers and then failing to perform promised legal services or to refund unearned fees. The Board found that Shouser’s battle first with alcohol and later with prescription pain medication was of considerable mitigating effect. The Board also found that he had taken complete responsibility for his misconduct. In 1999 Shouser became addicted to pain medication after having three surgeries in a short period of time. He twice entered inpatient treatment facilities and participated in a half-dozen other recovery programs for his addiction prior to 2004, but was unable to stop abusing his painkilling drugs. Finally, in August 2004, he entered an inpatient program in Florida and has remained clean and sober since then. He was ordered to continue compliance with his OLAP recovery contract.
4. **Drug Cases – No Mitigation**

*Disciplinary Counsel v. Scacchetti*,
867 N.E. 2d 830 (Ohio 2007)

Scacchetti was suspended for two years, with the final 18 months stayed on conditions. The respondent and disciplinary counsel stipulated to facts and misconduct alleged in the complaint. He had been indicted for possession of cocaine, a felony of the fourth degree. He was given a sentence of treatment in lieu of conviction. The criminal court ordered Scacchetti to complete a three-year period of rehabilitation, inpatient treatment and aftercare. During his period of recovery he had a short relapse and served a week in jail as a result. At the time of his disciplinary hearing he was living in transitional housing. There were no aggravating circumstances. The court did not stay the entire suspension because of the recent relapse and its view that he was not ready to return to the practice of law.


In this case the court rejected the recommendation of suspension and ordered disbarment. Martinez-Genova had a daily cocaine habit. She had been arrested three times for possession of cocaine and been ordered to complete inpatient treatment which she did. However, the court found that she willfully ignored her responsibilities as an attorney during the period in which she misappropriated funds from third-parties, kept no bank account records and intentionally withdrew funds that were intended to be held in trust and failed to make restitution. The mitigating factors did nothing to help her cause based on her intentional misconduct.
5. Depression Cases – Mitigation

Iowa Supreme Court Disciplinary Board V. Hall,
728 N.W. 2d 383 (Iowa 2007)

Indefinite suspension with no possibility of reinstatement for twelve months from the filing of the opinion. Hall, a solo practitioner, suffered from depression and bipolar disorder. He had no guidance on how to run a law office or how to train and supervise staff. He signed clients’ names to bankruptcy petitions, neglected client matters, commingled funds in a trust account and failed to respond to complaints filed against him. A suspension was recommended and the court determined that it was an appropriate sanction. The court generally suspended attorneys for these types of violations for one to three years. In this case, the facts did not disclose an unethical lawyer, but one that was over his head.

In re Hasenbank, 151 P. 3d 1 (Kansas 2007)

Four-year supervised probation. There were multiple incidents of neglect when Hasenbank failed to settle a lien, file suit of behalf of another client and prosecute two other clients’ appeals. In mitigation the court found that Hasenback has had serious mental health issues. He suffers from depression and bipolar disorder. At times his depression was so severe that he was unable to get out of bed. The hearing panel found that the depression caused the misconduct and that his recovery from the depression had been demonstrated by a meaningful and successful period of successful rehabilitation.
6. **Depression Cases – No Mitigation**

*Iowa Supreme Court Disciplinary Board v. Thompson*, 732 N.W. 865 (Iowa 2007)

License suspended indefinitely with no possibility of reinstatement for a period of nine months from the filing of the opinion. While serving as an assistant county attorney Thompson forged the name of a district court judge, filed the documents with the court clerk and arranged to have the copies served on the parties. The Supreme Court identified only one mitigating factor, Thompson’s depression. However, there was no evidence to establish a relationship between the depression and the unethical conduct or that the depression was otherwise a mitigating factor.

7. **Other Mental Health Cases**

*Cuyahoga County Bar Association v. Maybaum*, 858 N.E. 2d 359 (Ohio 2006)

Indefinite suspension with no petition for reinstatement for two years. The bar association charged Maybaum with additional professional misconduct after he received a stayed suspension for commingling funds. The court found that psychiatric testimony was not mitigating. Another doctor found that his bipolar disorder did not cause his misconduct; that he had no sustained treatment and could not practice without risk to clients was properly relied on. He had prior discipline and was motivated by dishonesty and self-interest. The court also accepted the opinion of a mental health professional that Maybaum suffers from a personality disorder, an even more serious condition that can be less amenable to treatment. Finally, the court ordered that if he petitions for reinstatement he must submit a report from a qualified mental-health professional establishing that he has successfully completed a treatment program and he is continuing treatment and that he can,
to a reasonable degree of medical certainty, return to the competent, ethical, and professional practice of law.

8. **Gambling Cases**

*In re Coffman*, 183 S.W. 3d 176 (Kentucky 2006)

Coffman filed a motion for consensual discipline, which was accepted. He received a public reprimand and a 61-day suspension. Coffman pled guilty in federal court to one count of willfully failing to pay taxes. At sentencing, a psychologist testified that Coffman had been a pathological gambler and that he had a secondary disorder of alcohol abuse that was common in those suffering from pathological gambling. Coffman seriously and aggressively addressed his gambling addiction, his alcohol abuse, and his major depression issues. He had not engaged in gambling activities since 1999 and had been sober since 2002. He is a voluntary counselor with KYLAP.

9. **Sexual Behavior Cases**

*Kentucky Bar Association v. Martin*, 205 S.W. 3d 210 (Kentucky 2006)

Two-year suspension. Martin had been convicted of sexual assault in two different cases after he attacked one of his employees and a former client. Although the court recognized that the conduct was related in part to Martin’s mental health issues, for which he was receiving treatment, the court determined that the victimization of a law office and employee and a client through criminal behavior warranted a more severe sanction than had been recommended. One of the mitigating factors was Martin’s participation in psychotherapy as well as in inpatient treatment at a program that specializes in treating professionals with sexually related mental disorders.
**In re Gackle,** 154 P. 3d 493 (Kansas 2007)

Indefinite suspension. His employee opened a storage trunk and found child pornography. Some was also found on his computer. He ultimately entered into a diversion agreement for possessing child pornography which was a felony. While Gackle acknowledged his misconduct in the disciplinary proceedings, he minimized his conduct by first blaming a friend that introduced him to pornography, second, by blaming his vindictive employee, and third, by blaming his attorney. The Hearing Panel concluded that Gackle failed to accept full responsibility for his actions.

**In re Raquet,** 2007 Ind. Lexis 615 (Indiana 2007)

30-day suspension. For a period of about three months in 2001, Raquet viewed child pornography on the internet, printed some of the photographs and paid some unknown on-line provider for the material. He was eventually charged in state court with possession of child pornography, a class A misdemeanor. He entered into a pretrial diversion agreement. The court found that Raquet’s conduct furthered the sexual exploitation of children. It did not accept the recommendation of a reprimand. In mitigation, the encounter with child pornography was brief and it occurred six years prior. Raquet took responsibility for his actions by seeking professional help, cooperated with all investigations of his actions, and admitted his misconduct. He was remorseful.
10. Admission

*In re Mark Stephen Bennett*, 959 So. 2d 234
(Florida 2007)

Conditional admission approved. This was a petition for admission addressed to the Florida Board of Bar Examiners. Barnett had been a member of the Bar but had resigned in the face of multiple disciplinary charges. The charges included the misappropriation and mishandling of client funds and the failure to file federal income tax returns in multiple years. Many of Barnett’s problems stemmed from his heroin addiction. In reapplying, he submitted evidence of his rehabilitation. Barnett had made restitution, had resolved his tax problems and had established a solid recovery program that had kept him clean and sober for almost ten years. The conditional admission was for three years ensuring that any problems that might arise could be quickly identified and addressed so that the profession and the public were protected.

*In re M.B.S.*, 955 So. 2d 504 (Florida 2007)

Admission denied. The applicant was convicted of unauthorized use of a driver’s license, possession of marijuana and drug paraphernalia, attempting to sell prescription drugs and a number of other crimes. He submitted false information on his law school application and in his application for admission to the Bar. The Court disagreed with the Board’s finding that that the applicant had proven his rehabilitation by clear and convincing evidence. The applicant had a thirteen year history of lying; abusing alcohol and the Court held him to a heavy burden to establish his rehabilitation which he failed to meet. He claimed to have turned his life around only a few months before investigative and formal hearings began. He did not accept responsibility for his actions but tried to transform some of the blame to his alcoholism.
LaQuey v. People, 180 P.3d 1031 (Colo. O.P.D.J. 2008)

This case involves an attorney who was disbarred for two reasons. One was because he bought 10 pounds of marijuana from an undercover cop. The second was because he was illegally in possession of a loaded gun. He was disbarred in 1993. The court explained that readmission after disbarment would require a clear and convincing showing of fitness to practice and rehabilitation. The court noted that there is no crime that would not allow for the consideration of re-admittance. The court also noted that in order to apply for re-admittance, the attorney must wait eight years. The lawyer showed remorse through his actions, statement, and the testimony of others. He has attended weekly therapy sessions, complied with all the rules arising from disbarment, daily AA meetings, Lawyers helping Lawyers meetings, and paid a large portion of his penalty fees. The court found he should be re-admitted under the condition that he continues rehabilitation, to make sure he doesn’t fall back into trouble, and checks in.

11. Reinstatement

In re Hofer, 148 P. 3d 487 (Colorado 2007)

Petition for reinstatement granted. The only issue before the hearing board was whether Hofer proved by clear and convincing evidence that he had been rehabilitated. The hearing board found that the petitioner experienced a sustained change in his character since the time of his original suspension. He addressed his alcoholism and the character issues that led to his last suspension. Most of the ethics violations had to do with neglect of client matters, 2 DUIs and a relapse following the second DUI. Hofer sought counseling with a psychologist and shortly thereafter, began participating in the Rational Recovery and Smart Recovery programs.
**In re Stanback, 913 A. 2d 1270 (D.C. 2006)**

Petition for reinstatement after disbarment granted. Stanback has been disbarred for multiple ethical violations involving misappropriation and mishandling of client funds. The Board found that Stanback had proven by clear and convincing evidence that he had the moral qualifications, competency, and learning in law to be readmitted. The background of his ethical violations involved addiction to cocaine, alcohol and prescription drugs and severe depression. Since disbarment he sought out former clients, apologized for his actions and sought forgiveness. He made restitution to former clients and performed public service work. He was actively and vigorously involved in his recovery program and in helping others.

**Doering v. People, 180 P.3d 466 (Colo. 2008)**

The attorney here held his license for twenty-four years before it was suspended. Following a defeat in running for Auditor of the City and County of Denver, the inability to find employment, the foreclosure of his home, and his father’s sudden death, he fell into a deep depression. He then decided not to practice law anymore and neglected three clients. His license was suspended for one year and one day. He did not follow any disciplinary proceedings. He showed remorse, that he was a hard worker, and, through a psychiatrist’s evaluation, that he no longer suffered from depression. While he waited so long, five years, to reinstate his license and get his life back in order, the court argues that it just took some soul searching. The court decided that he has shown clear and convincing evidence of his rehabilitation and decided to reinstate his license.
Patterson v. People, 180 P.3d 1039 (Colo. O.P.D.J. 2008)

The attorney here suffered from a severe depression after the rape of his first wife, a divorce, and a heart attack. He buried himself in his work. He became increasingly depressed and neglected five of his clients. His license was suspended. He showed remorse, paid his dues, and took responsibility without arguing. He went back to school and worked as a successful mortgage broker. He remarried and learned that a balanced life is best. He no longer buries himself in his work. His sister died, but he did not fall into depression. Instead, he looked to family and friends for support. A doctor conducted a series of forensic evaluations and testified that he had a good balance and had a substantial support group. He had also worked for a lawyer and his testimony suggested he would be a great lawyer. The petitioner asked for his license to be reinstated, not to practice law, but to fill the gap the suspension created. The court defined rehabilitation in two ways. The first was “the reestablishment of the reputation of a person by his or her restoration to a useful and constructive place and society.” The second was “regeneration,” shown through “overwhelming change in the applicant’s state of mind.” The court decided he showed signs of the second definition of rehabilitation and reinstated his license.

In re R.M.W., 486 F.Supp.2d 518 (D.Md. 2007)

This case involved a 57 year old man who was an addict of drugs and alcohol. He demonstrated that he had been going to AA meetings, had stayed clean for 7 years, and interviewed with two judges who thought very highly of him. He also went to continuing education seminars over the years. The court found him remorseful and a clean rehabilitated person. The court reinstated his license.

The petitioner, attorney, here was charged of domestic violence less than a year after being admitted into the bar. She was then charged with felony burglary of her ex-husbands home just over a year later. Her license was then suspended. She was indicted of the felony burglary and was found guilty of misdemeanor destruction of property and misdemeanor trespassing. Since she was remorseful, successfully fulfilled home confinement, and her license had been suspended for three years, her license was reinstated with conditions placed on it. The decision was reviewed by the Supreme Court of Appeals of West Virginia in this case. The court found that, based on a de novo review, her license should remain reinstated with conditions placed on it, because her current behavior was evidence of her rehabilitation.