NATIONAL CONFERENCE FOR LAWYER ASSISTANCE PROGRAMS

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2012 CASE LAW REVIEW

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1. Alcohol Cases – Mitigation

**Iowa Supreme Court Atty. Disciplinary Bd. v. Axt,** 791 N.W.2d 98 (Iowa 2010)

Attorney Axt was suspended for two years for violating the Iowa Rules of Professional Conduct prohibiting conduct that reflects adversely on a person’s fitness to practice law. The suspension was based on his conviction for domestic abuse and violations of a no contact order that. As mitigating factors the court listed Axt’s history with alcoholism and depression, his rehabilitative efforts in actively attempting to control his addiction, and his full cooperation with the disciplinary board. As a condition to his reinstatement Axt will be required to establish treatment of his chemical dependency and depression.

**In re Johns,** 291 Kan. 638 (Kansas 2010)

Attorney Johns was suspended for two years for violating the Kansas Rules of Professional Conduct prohibiting the commission of criminal acts that reflect adversely on the lawyer’s fitness after his conviction of felony drunk driving. The Kansas Supreme Court found mitigating factors in Johns’ sobriety, his active participation in both Bar and AA support groups, and his cooperation with the disciplinary administrator. However, the court refused to find as a mitigating factor Johns’ alcohol dependency. The court found no evidence that his behavior was impacted by his dependency. Based on his multiple years of sobriety prior to his final disciplinary hearing, the court concluded that the two year suspension should be retroactive from the date of his original suspension in 2009. Further, the court required that Johns present a professional evaluation regarding the treatment of his chemical dependency prior to his reinstatement.

**In re Neisner,** 2010 VT 102 (Vermont 2010)

Attorney Neisner was suspended for two years for violating the Vermont Rules of Professional Conduct prohibiting criminal conduct. Neisner was convicted of giving false information to a police officer and impeding a public officer after leaving the scene of a car accident. The Vermont Supreme Court identified Neisner’s alcoholism as a mitigating factor, although the court found it unclear whether his alcoholism was the primary cause of the misconduct. The court noted that although Neisner sought treatment for his alcoholism the day after the accident he let a month pass before confessing his misrepresentations to the authorities. Given the circumstances, the court accepted Neisner’s alcoholism as a mitigating factor but gave it equal weight with any other mitigating factors.

**In re Springer,** 952 N.E.2d 753 (Indiana 2011)

Attorney John Springer was sanctioned with a public reprimand for violating Indiana’s Professional Conduct Rule 8.4(d) for his conviction of operating while intoxicated, conduct that is prejudicial to the administration of justice. Though the discipline board recommended a 30 day suspension for this behavior, the court
considered Springer’s addiction to alcohol and voluntary admission into an alcohol treatment as a mitigating factor.

**In re Seshul,** 289 Ga. 910 (Georgia 2011)

Attorney Michael Seshul was suspended for four years for his felony conviction of aggravated battery, a violation that could have led to his disbarment. Seshul, who was also suffering from emotional and family problems, voluntarily enrolled in alcohol treatment, counseling, and other programs prior to his disciplinary hearing. The court considered Seshul’s candor with the court by pleading guilty to the criminal charge, and his voluntary enrollment in alcohol treatment, and accepted his alcoholism as a mitigating factor, even though he was convicted of a felony.


Attorney Anton Antomattei received a sanction of public censure on the condition that he participate in a Lawyer Assistance Program for one year to help him with his alcohol addiction. Antomattei was convicted of two separate counts of driving while intoxicated, in violation of the Rules of Professional Conduct 8.4(b) which adversely affected his fitness as a lawyer. Antomattei was honest about his criminal conduct and alcohol addiction. Though a member of the panel recommended that Antomattei be suspended for one year for his misconduct, the Committee did not believe that suspension was warranted. The Committee recommended, and the court accepted alcoholism as a mitigating factor, and ordered that Antomattei get treatment through the LAP.


Attorney Royer was suspended for 30 days for his violation of the D.C. Rules of Professional Conduct. Royer failed to pay his $19 cab fare one evening after consuming alcohol. Though the Committee recommended a larger term of suspension because Royer did not claim that he was addicted to alcohol, the court stated Royer’s alcohol consumption was a mitigating factor. The court said that Royer’s crime was not one of “moral turpitude” and was connected to his consumption of alcohol; therefore, a short suspension was warranted.

**In the Matter of Huggins,** 2012 WL 1592076 (Georgia 2012)

Attorney Scott Huggins was suspended for six months for his violation of rules 1.3, 1.4, 1.15(I-II), 1.16, and 9.3 of the Georgia Rules of Professional Conduct. Huggins admitted to his failure to respond to his clients’ grievances and for failure to respond to the Investigative Panel when a complaint against him had been filed. The maximum sanction for a violation of these rules is disbarment. Because Huggins filed this petition for voluntary discipline, and admitted to having an alcohol addiction which led him to drink large amounts of alcohol which impaired his judgment and effectiveness, the court accepted alcohol as a mitigating factor and only ordered a six month suspension as long
as Huggins receive alcohol treatment including attending Alcoholics Anonymous meetings.

2. Alcohol Cases – No Mitigation

_In re Frahm_, 291 Kan. 520 (Kansas 2010)

Attorney Frahm was suspended for three years for his violation of the Kansas Rules of Professional Conduct prohibiting behavior that reflects negatively on a lawyer’s fitness to practice law. Frahm was convicted of driving under the influence and aggravated battery. The disciplinary board identified as mitigating factors his absence of a prior disciplinary record, previous good character, and personal problems in coming to their recommendation of an eighteen month suspension. Upon review however, the Kansas Supreme Court focused on the aggravating factors including the high level of intoxication involved, the multiple transgressions involved, and the personal and property damage that Frahm caused. Given these facts, the court increased the attorney’s sanction from the disciplinary board’s recommendation of an eighteen months suspension to a suspension of three years.

_Ky. Bar Ass’n v. Christian_, 320 S.W.3d 687 (Kentucky 2010)

Attorney Christian was disbarred for violations of the Kentucky Supreme Court Rules by failing to act with reasonable diligence in representing his clients and engaging in conduct that was dishonest after taking $19,000 from a client’s account without having earned the money. On the Kentucky Supreme Court’s review of the case, Christian argued that the disciplinary board failed to take into account his depression and alcoholism as mitigating factors in his case. The court denied his claim saying there was no medical evidence admitted that supported his contention that the alleged disability or dependency caused his misconduct. Further, Christian’s failure to regularly attend AA meetings and failure to participate in any Kentucky Lawyers Assistance Programs factored against a determination of alcohol dependency as a mitigating factor.

_In re Dixon_, 55 So.3d 758 (Louisiana 2011)

Attorney Dixon was suspended for three years for violations of the Louisiana Rules of Professional Conduct based upon his mishandling of client accounts, misdemeanor summons for prostitution, and failure to follow court orders. Although Dixon had previously been an alcoholic – and over a twenty year period had undergone rehabilitation and relapse numerous times – chemical dependency was not granted as a mitigating factor. The court found no causal connection between his dependency and the misconduct. Rather the court followed with the disciplinary board’s decision that the only mitigating factor was Dixon’s personal and emotional problems and this factor deserved little weight. Although the disciplinary board recommended disbarment, the Supreme Court determined a three year suspension appropriate based upon an established range of sanctions.
In re Stewart, 2011 Mo. LEXIS 197 (Missouri 2011)

Attorney Stewart was suspended for six months for violating the Missouri Rules of Professional Conduct prohibiting criminal conduct based on his fourth DWI conviction. The Missouri Supreme Court determined that Stewart’s ongoing struggle with the disease of alcoholism and his commitment to sobriety, shown through his participation in extensive treatment programs and participation in AA, constituted mitigating factors in his case. However, the court noted that they could not ignore the negative effect of his conduct on the legal profession. Stewart’s four DWI convictions were therefore aggravating factors in the courts decision to impose a six month suspension rather than the disciplinary board’s recommendation of a three year stayed sentence.


Attorney Conrad was suspended for an indefinite period based upon her failure to respond to the disciplinary committee’s requests and her alcohol dependence. Conrad conceded that alcohol was responsible for her failed response to the disciplinary committee resulting in the committee’s order for a psychiatric evaluation. The evaluation determined Conrad’s prognosis for rehabilitation was good though it did not assert that she was currently fit to practice. At her hearing Conrad requested immediate reinstatement based upon her claim of a year of sobriety. The court determined that her own self assessment was insufficient to prove her fitness to practice law. The court therefore conditioned her reinstatement on an expert’s evaluation acknowledging her fitness to practice law.

Iowa Sup. Ct. Attorney Discipline Board v. Weaver, 812 N.W.2d 4 (Iowa 2012)

Attorney James Weaver was suspended for two years based upon his violation of Iowa’s Rule of Professional Conduct 32:8.4(b) being convicted of his third driving while intoxicated offense. Weaver entered inpatient-alcohol treatment numerous times voluntarily, but had continuing problems with relapsing. During Weaver’s third arrest, he had an additional charge of harassment, and served some time in prison. He was released on parole, violated the conditions of his parole, and was sent back to prison. Because Weaver showed a pattern of violating the law, and other rules as assigned, the court refused to consider Weaver’s alcohol addiction as a mitigating factor. In addition to his tow-year suspension, Weaver must provide the Board with medical proof that he is maintaining his sobriety.

Attorney Grievance Commission of Maryland v. Keiner, 421 Md. 492 (Maryland 2012)

Attorney Gregory Keiner was disbarred for his violation of Maryland’s Rules of Professional Conduct 1.4 and 8.4. Keiner altered client documents, and fraudulently closed client’s files with a law firm he was working for, because he was planning to open his own firm, and intended to take these clients with him. While the Court found that
alcohol abuse and depression have adversely impacted Keiner, the Court is not convinced that such difficulties resulted in Keiner being unable to conform his conduct in accordance with the law and with the Maryland Lawyers' Rules of Professional Conduct. The court rejected the use of Keiner’s diagnosed dependence on alcohol as a mitigating factor.

3. Drug Cases – Mitigation

_In re Thomas_, 943 N.E.2d 810 (Indiana 2011)

Attorney Thomas was suspended for 180 days and placed on probation for 18 months for violating the Indiana Professional Conduct Rules based upon his felony conviction of knowingly acquiring possession of a controlled substance (pain medication) by misrepresentation. The court found mitigating circumstances in Thomas’ treatment for addiction, his year of abstinence from pain medication, his lack of previous disciplinary history, and his cooperation with disciplinary commission. Included in his conditions for probation was continued abstinence from any controlled substances unless prescribed by a physician.

_People v. Jensen_, 2011 Colo. Discipl. LEXIS 8 (Colorado 2011)

Attorney Jensen was suspended from practice for 6 months based upon a deferred felony conviction of possession of psilocybin mushrooms, a controlled substance. The Colorado Supreme Court determined a lenient sanction was warranted given the presence of several mitigating factors including cooperation with the commission, lack of prior disciplinary record, the existence of emotional problems (depression and anxiety), and good character as identified through a significant amount of community volunteer work. Further, the court identified that Jensen’s single instance of misconduct and the fact that she was not a practicing attorney – and therefore did not put any clients at risk – weighed into their decision for a lenient sentence.

_In re Williams_, 52 so.3d 864 (Louisiana 2011)

Attorney Williams was suspended for three years with an eighteen month deferment for violations of the Louisiana Rules of Professional Conduct based upon his conviction for possession of cocaine, his failure to refund unearned fees to clients, and his inducement of an improper investment in his law practice. The court found mitigating factors in his absence of a prior disciplinary record, his personal and emotional problems, his remorse, and his mental disability or chemical dependency. In determining the sanction to be imposed the court focused on the fact that Williams’ drug addictions contributed to his misconduct, he had sought treatment for the problem, and he had been drug free for five years.

Attorney Silberman was suspended nunc pro tunc for a period of “time served” and reinstated immediately to practice. In 2004 Silberman pleaded guilty to a felony for his participation in drug sales at his restaurant. Silberman was given the opportunity to participate in the Alternative Sentencing Pre-Indictment Rehabilitation Effort program in order to reduce his conviction to a misdemeanor. After his 2004 felony conviction, Silberman was automatically disbarred. In 2007 he petitioned the court to vacate his disbarment based upon his conviction reduction. The court agreed to vacate the disbarment but suspended him prior to a disciplinary hearing. Upon review the court determined that Silberman’s completion of an intensive drug rehabilitation program, his assistance to recovering drug addicts, and his five six years away from the practice of law were a few mitigating factors that warranted Silberman’s immediate reinstatement.


Attorney Garbarini was censured for misrepresentations in his employment applications, two drug convictions, and for failing to disclose his arrest record to the Bar. All in violation of the New York Code of Professional Responsibility’s rules governing honesty and fitness to practice law. The court examined the extent to which Garbarini’s substance abuse problems and previously undiagnosed psychiatric disorders warranted mitigation of the sanction to be imposed. The court found as mitigating factors Garbarini’s serious substance abuse problem, his completion of a residential treatment program, his three years of sobriety, his continued attendance at AA meetings, his continued random drug testing, and his continued monitoring by the New York Lawyers Assistance program. Based on these factors the court agreed that censure with continued treatment and monitoring was the appropriate sanction.

*Counsel v. Hoppel,* 2011 Ohio 2672 (Ohio 2011)

Attorney Hoppel was suspended for two years with eighteen months stayed for multiple violations of the Ohio Rules of Professional Conduct based on his collection of excessive fees from clients and his failure to properly perform work for clients. In determining the proper sanction the court reviewed Hoppel’s cocaine addiction and gave mitigating value to his completion of a 90-day inpatient treatment program, his compliance with all the terms of his Ohio Lawyers Assistance Program contract, his regular attendance at AA meetings, his compliance with random drug screenings, and his willingness to extend his Lawyers Assistance Program contract for the rest of his career. The court also took into account Hoppel’s year and a half of sobriety and the restitution he paid to his clients in coming to the appropriate sanction. As a condition of his suspension Hoppel was required to extend his Lawyers Assistance Program contract for two years and maintain full compliance with that contract.

*Disciplinary Counsel v. Rathburn,* 126 Ohio St. 3d 502 (Ohio 2010)

Attorney Rathburn was given a stayed suspension of one year based upon two felony prescription drug convictions in violation of the Ohio Rules of Professional Conduct prohibiting attorneys from acting dishonestly or in a manner adverse to their
fitness to practice law. Rathburn, who suffered from long-term chronic back pain, altered his prescription resulting in his felony convictions. The court identified mitigating factors in Rathburn’s diagnosis of a chemical dependency that contributed to his misconduct, his successful completion of a treatment program, and the prognosis that he was fit to practice law. As conditions to his stayed suspension Rathburn was required to remain in treatment, attend weekly AA meetings, and comply with a two-year contract with the Ohio Lawyers Assistance Program.


Attorney Smith was given a one year stayed suspension for violations of the Oklahoma Rules of Professional Conduct based upon her conviction for attempting to obtain controlled dangerous substances with a forged prescription. The Oklahoma Supreme Court recognized that Smith’s problems were a result of her addiction to highly addictive pain medications. The court took into account Smith’s attempts to address her drug problem and facilitate her recovery in making their determination. This included her impatient treatment, enrollment in an outpatient relapse program, continued individual counseling, attendance at AA meetings, and random drug testing. The court also noted that Smith had abstained from drug use for the ten months prior to her hearing. Smith’s stayed suspension was conditioned on her continued treatment and continued random drug testing.

*In re Cooper*, 397 S.C. 339 (South Carolina 2012)

Attorney Kenneth Cooper was suspended for six months for his violations of South Carolina’s Rules of Professional Conduct 1.3, 1.6(a), and 8.4(a, b, e) for neglecting his clients, disclosing client information to others, and for multiple arrests and convictions. The discipline panel and the court found that Cooper’s addiction to drugs (and alcohol) were causative factors in Cooper’s misconduct, and therefore gave him less of a sanction so long as he agreed to undergo drug and alcohol treatment.

*In re Jordan*, 397 S.C. 1 (South Carolina 2012)

Attorney William Jordan was suspended for eighteen months, retroactive to an earlier suspension for his misconduct in misappropriating client funds, failing to keep financial records, and failure to supervise an assistance that was taking money out of client’s trust account. Though the court recognized that this type of misconduct normally carries with it disbarment as a sanction, the disciplinary panel and the court recognized that Jordan’s drug addiction was a significant causative factor in his unethical conduct. Jordan was also ordered to go through drug treatment and to maintain sobriety before he will be considered for readmission to the South Carolina Bar.


Attorney James Clouette received a reprimand and was placed on probation for a twenty-four month period for his criminal drug conviction that was also a violation of the
Arkansas Professional Rules of Conduct. The director the disciplinary board, Ligon, appealed this decision stating that a suspension was a more appropriate sanction. The court accepted Clouette’s drug addiction and the fact that he has enrolled voluntarily in drug treatment, and had tested negative for drugs during the course of these proceedings as mitigating factors, and upheld the sanction which did not include a suspension of Clouette’s license to practice law.

4. Drug Cases – No Mitigation

*Florida Bar v. Irish*, 48 So.3d 737 (Florida 2010)

Attorney Irish was disbarred based upon six felony drug-related convictions and failing to properly represent six clients when he abandoned their cases – violations of the Rules Regulating the Florida Bar. The Florida Supreme Court acknowledged that although drug addiction could be a mitigating circumstance in disciplinary cases, Irish could only show his addiction to two of the four drugs making up his felony convictions. Therefore drug addiction could not be found as a mitigating factor in his case. Further, the court denied Irish’s argument that interim rehabilitation was a mitigating factor. There was no medical proof of rehabilitation and his father’s testimony regarding his behavior was based upon his conduct in prison where access to drugs was greatly limited.

*Florida Bar v. Liberman*, 43 So.3d 36 (Florida 2010)

Attorney Liberman was disbarred nunc pro trunc based upon a felony conviction of trafficking ecstasy in violation of the Rules Regulating the Florida Bar. The disciplinary referee recommended three year suspension based upon the presence of multiple mitigating factors including drug addiction, participation in rehabilitation program, and otherwise good character. However, the Florida Supreme Court concluded that the presence of mitigating factors not sufficient to overcome presumption of disbarment for a felony conviction. The court determined that disbarment was in the best interest of the public and served to encourage Liberman’s rehabilitation. Further, the court found that only disbarment measured up to the gravity of the conviction and was a sufficient deterrent for other attorneys.

5. Depression Cases – Mitigation


Attorney Walker was suspended for 3 years for violating Colorado Rules of Professional Conduct when he converted $22,000 from 12 clients he abandoned. Although disbarment was typically warranted in cases where a lawyer knowingly converted client funds, the Colorado Supreme Court determined that Walker’s severe major depression disorder and post-traumatic stress disorder – as identified by three separate mental health specialists – were the principle cause of attorney’s actions. As such, the court found his depression as a sufficient mitigating factor to warrant imposition of a lesser sanction.
**In re Ricks, 289 Ga. 136 (Georgia 2011)**

Attorney Ricks was suspended for no less than one year based upon his failure to communicate with his clients and failure to return fees paid to him in violation of the Georgia Rules of Professional Conduct. Ricks presented mitigating factors to the Georgia Supreme Court including his diagnosis of severe depression and bi-polar disorder, his ongoing mental health treatment, his cooperation with the State Bars Lawyer’s Assistance Program, and the absence of any disciplinary history. Upon review, the court agreed that a suspension of no less than one year, with conditions, was an appropriate sanction given the mitigating factors.

**In re Gilley, 287 Ga. 584 (Georgia 2010)**

Attorney Gilley was suspended indefinitely based upon his failure to file lawsuits for two clients within the applicable statute of limitation and to communicate with his clients thereafter, both violations of the Georgia Rules of Professional Conduct. The maximum sanction for these violations was disbarment. The Georgia Supreme Court found mitigating factors in Gilley’s severe depression that was exacerbated by the suicide of his law partner, his continuing treatment for his mental illness, and the absence of any prior disciplinary record. The court determined that an indefinite suspension with reinstatement conditioned on continued treatment and mental health review was the appropriate sanction in this case.

**Iowa Supreme Courty Atty. Disciplinary Bd. v. Lickiss, 786 N.W.2d 860 (Iowa 2010)**

Attorney Lickiss was suspended for three months for violating the Iowa Rules of Professional Conduct when he neglected probate matters, failed to respond to clients’ inquiries, and abandoned clients. As an aggravating factor the Iowa Supreme Court identified Lickiss’ prior reprimands for similar conduct involving neglect. The court identified as mitigating circumstances his depression and also his voluntary self-limitations in his practice. Taking into account all factors, the court determined a three month suspension was adequate and also required that, prior to reinstatement, Lickiss be examined by a health care professional to determine his mental fitness to practice law.

**In re Sharif, 459 Mass. 558 (Massachusetts 2011)**

Attorney Sharif was suspended for three years, with the third year stayed, for violations of the Massachusetts Rules of Professional Conduct stemming from her misuse of client funds and misrepresentations to her client and the disciplinary counsel. Upon review, the Supreme Court agreed with the disciplinary review board that Sharif’s depression, which was exacerbated by the death of three close friends and family members, was a mitigating factor in the violations involving her client. Additionally, the court agreed with the review board that her depression was not a mitigating factor in her intentional misrepresentations to the disciplinary counsel. The court conditioned her third year stayed suspension on continued treatment of her depression.
Disciplinary Counsel v. Brueggeman, 128 Ohio St. 3d 206 (Ohio 2010)

Attorney Brueggeman was given a one year stayed suspension for violations of the Ohio Rules of Professional Conduct stemming from his failure to communicate with and manage cases for several clients and to cooperate with the disciplinary investigations. The Ohio Supreme Court found that Brueggeman suffered from dysthymia, a low level depression, and that this disability contributed to his misconduct. The court identified that Brueggeman had signed a four-year contract with the Ohio Lawyers Assistance Program, had complied with the terms of that agreement, and had consulted with a psychologist for treatment thereby meeting necessary requirements to be considered a mitigating factor in his case. His suspension was therefore stayed, conditioned on Brueggeman’s continued counseling and compliance with the OLAP contract.

In re Disciplinary Action Against Summers, 2012 N.D. 116 (North Dakota 2012)

Attorney Anne Summers was sanctioned with a six month and one day suspension that is stayed, as long as she complied with the conditions of her one year administrative probation. Attorney Summers violated North Dakota’s Rule of Professional Conduct 1.3 by not acting with due diligence and promptness with her client. Attorney Summers failed to return a client’s phone calls or emails for several months without any explanation. Attorney Summers also failed to keep her client reasonably informed about the progress of his case, violating Rule 1.4(a)(3,4). Though the hearing panel recommended that Summers be suspended from practicing law for six months because she failed to show—with expert testimony or documentation—that she suffered from a depression disorder, the court considered her depression, and proof by a medical doctor of its diagnosis, as a mitigating factor in her case. Summers was then required to seek professional counseling as a condition of her stayed sanction and probation.

In re Disciplinary Action Against Melin, 812 N.W.2d 83 (Minnesota 2012)

Attorney Chanel Melin was suspended indefinitely with no right to petition for reinstatement for two years for misappropriating a client’s funds. Though this violation usually carries with it a sanction of disbarment, the court found that Melin’s diagnosis of suffering from major depression to be a mitigating factor in her case.

6. Depression Cases - No Mitigation

In re Transki, 2011 Ind. LEXIS 563 (Indiana 2010)

Attorney Transki was suspended for six months without automatic reinstatement for failing to act diligently in representing her clients, failing to communicate with her clients, and failing to reasonably explain matters to her clients in violation of the Indiana Professional Conduct Rules. Further, Transki violated the rules when she made false statements to the tribunal regarding her client’s complaints against her. The court took into account as mitigating factors her diagnosis of untreated, major depression and
anxiety and her voluntary monitoring agreement with the Judges and Lawyers Assistance Program. However, the court denied automatic reinstatement on the grounds that mental disability cannot excuse deliberate, deceitful behavior such as her false representations to the disciplinary tribunal and therefore required her to reapply for reinstatement.

**Iowa Supreme Court Atty. Disciplinary Bd. V. Dolezal, 796 N.W.2d 910 (Iowa 2011)**

Attorney Dolezal was suspended for thirty days for neglecting three client matters in violation of the Iowa Code of Professional Responsibility for Lawyers. The court examined Dolezal’s depression stemming from his combat service in the Vietnam War and his recent back surgery as possible mitigating factors. The court noted that Dolezal acknowledged his depression and sought treatment for it and would be taken into account when fashioning a sanction. However, the court determined that the mitigating factors were limited given Dolezal’s testimony that he made the decisions leading to his client’s neglect while in full command of his faculties.

**Iowa Supreme Court Atty. Disciplinary Bd. v. Bowles, 794 N.W.2d 1 (Iowa 2011)**

Attorney Bowles was suspended for eighteen months for violating the Iowa Code of Professional Responsibility when he had sexual relations with a client recently released from a mental institution. Bowles urged the court to take into account his anxiety, depression, and attention deficit disorder as mitigating factors. However, the court was not persuaded that a sufficient connection existed between his misconduct and his mental health difficulties and therefore concluded it was not a mitigating factor.

**Stae ex rel. Counsel for Discipline v. Switzer, 280 Neb. 815 (Nebraska 2010)**

Attorney Switzer was disbarred for violations of the Nebraska Rules of Professional Conduct based upon his continued representation of clients after having been formally suspended. The Nebraska Supreme Court stated that although depression can be a mitigating factor in disciplinary hearings leading to a lesser sanction being imposed, the mitigating factors must be weighed against the aggravating factors in determining proper sanctions. The fact that an individual has depression therefore does not guarantee a lesser sanction. In Switzer’s case the fact that he had continued to practice while suspended and had a previous disciplinary history was sufficient to warrant disbarment as the only means to deter such future conduct.

**Akron Bar Ass’n v. Dismuke, 128 Ohio St. 3d 408 (Ohio 2011)**

Attorney Dismuke was suspended for two years with one year stayed for violating the Ohio Rules of Professional Conduct when he neglected two client matters and failed to timely register with the court. The Ohio Supreme Court denied Dismuke’s claims of depression as a mitigating factor stating that he failed to submit a diagnosis by a qualified health care professional and failed to show that the depression contributed to the misconduct. Although the court rejected his depression claim, because Dismuke argued
that he had depression the court imposed as a condition to his reinstatement proof that he was mentally fit to practice law.

**Disciplinary Counsel v. Blair,** 128 Ohio St. 3d 384 (Ohio 2011)

Attorney Blair was suspended for two years with eighteen months stayed for violations of the Ohio Rules of Professional Conduct for mishandling and misappropriating funds belonging to a client and failing to properly supervise her employees. Mitigating factors in the case included a psychiatrist’s opinion that Blair suffered from alcohol dependence and recurrent major depressive disorder, had been sober for two years, had continued to actively participate in AA and the Ohio Lawyers Assistance Program, and had sustained treatment for her depression – all factors constituting interim rehabilitation. However the court also agreed with the disciplinary board that there was a lack of expert opinion linking her misconduct to her chemical dependency or depression. Given all the facts, the court determined that, due to the gravity of misappropriating client funds, there was a need for a greater sanction than the year suspension with six months stayed in the stipulated agreement between Blair and the Disciplinary Counsel. The court therefore sentenced Blair to the two year suspension with eighteen months stayed and conditioned the stayed suspension on continued treatment and continued compliance with her Lawyers Assistance Program contract.

**Columbus Bar Ass’n v. Van Sickle,** 128 Ohio St. 3d 376 (Ohio 2011)

Attorney Van Sickle was suspended indefinitely for violations of the Ohio Rules of Professional Conduct for practicing law while his under suspension, neglecting legal matters to the detriment of his clients, and failing to cooperate with disciplinary investigations. Van Sickle presented his major depression as a mitigating factor. The court determined that although he suffered from depression, his lack of treatment or control of the depression supported the decision to impose an indefinite suspension rather than a two year suspension as recommended by the disciplinary board. The court imposed conditions on Van Sickle’s reinstatement including treatment for the depression and participation in the Ohio Lawyers Assistance Program.

**In re Greenberg,** 94 A.D.3d 152 (New York 2012)

Attorney Michael Greenberg was suspended for nine months for sexual misconduct involving the groping of a client’s breast. Though the disciplinary hearing committee recommended a three-month suspension considering Greenberg’s depression as a mitigating factor, the court disagreed. The court said that Greenberg failed to establish that his depression disorder caused his sexually-abusive misconduct.

**Mahoning Cty. Bar Association v. Kish,** 131 Ohio St.3d 105 (Ohio 2012)

Attorney Brian Kish was indefinitely suspended from the practice of law for his violations of Professional Conduct Rules 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client), 1.4, 1.5(a) (requiring a lawyer not to
charge an illegal or clearly excessive fee), 1.15(d) (requiring a lawyer promptly to deliver client funds and provide a full accounting of such funds), and 1.16(e) (requiring a lawyer to promptly return unearned fees) for his misconduct in failing to file timely documents for clients, failure to return client telephone calls, accepting client retainers without performing any legal work for the clients, and failure to keep clients reasonably informed about the status of their cases. Despite the fact that Kish suffered from a deep depressive disorder following his brother’s serious injury and coma, the death of his father, and his wife’s attempted suicide, the court would not recognize his depression as a mitigating factor, because Kish had not yet sought treatment and could not guarantee the court about his fitness to practice law.

7. Other Mental Health Cases

_In re LeDoux_, 288 Ga. 777 (Georgia 2010)

Attorney LeDoux was suspended for no less than one year based upon her actions in representation of a client in violation of the Georgia Rules of Professional Conduct where she failed to act diligently, communicate with her client, and keep her client’s property safe. In mitigation, the Georgia Supreme Court found that the conduct occurred while LeDoux suffered from an acute mental health condition that twice resulted in her hospitalization, that she had taken aggressive steps to address her mental health issues, that she had not practiced law for the previous five years, and that she had no prior disciplinary history. Given the circumstances, the court granted her petition for voluntary discipline of no less than a one year suspension with conditions.

_Ky. Bar Ass’n v. Isenberg_, 329 S.W.3d 327 (Kentucky 2011)

Attorney Isenberg was suspended for five years based upon his failure to communicate with a client, to promptly deliver settlement funds, and misrepresentations to his client in violation of the Kentucky Supreme Court Rules. The Kentucky Supreme Court found as a mitigating factor Isenberg’s diagnosis of manic-depressive disorder, stating that there was a sufficient connection between his illness and his misconduct. The Kentucky Bar Association requested disbarment in the disciplinary action, though the court determined that a five year suspension with continued monitoring by the Kentucky Lawyers’ Assistance Program was an appropriate sanction given the circumstances.


Attorney Salo was suspended for one year for violating the New York Code of Professional Responsibility by misappropriating third-party funds and converting those funds for personal use. Psychiatric evaluations by Salo’s and the disciplinary committee’s psychiatrists found that, during the period he misappropriated funds, Salo suffered from PTSD and depression stemming from childhood abuse and the 9/11 attacks. Further, the court found that given his mental health problems Salo did not have a willful and knowing intent to misappropriate the funds. Given this fact, the court
denied the disciplinary committees recommendation of a three year suspension and sanctioned Salo to a one year suspension from the practice of law.

**In re Disciplinary Action Against Fairbairn**, 802 N.W.2d 734 (Minnesota 2012)

Attorney Jo Fairbairn was suspended for eighteen months for misappropriating $80,000 of clients’ funds. Though this ethical rule violation normally leads to disbarment, Fairbairn repaid the money right away, her clients suffered no damages, and Fairbairn was honest and forthright about her misconduct. The court rejected Fairbairn’s argument for mitigation based on severe psychological disorders that she claimed to be suffering from. The court said that a respondent must show, by clear and convincing evidence: (1) the lawyer suffered from a severe psychological disorder; (2) the psychological disorder caused the misconduct; (3) the lawyer is undergoing treatment and is making progress toward recovery; (4) the recovery has arrested the misconduct; and (5) the misconduct is not likely to recur.

Fairbairn did not meet this standard, and due to the gravity of her misconduct, was suspended.

8. Physical Health

**In re Maffia**, 95 A.D.3d 215 (New York 2012)

Attorney Christopher Maffia was suspended from the practice of law for six months for mishandling client funds ($5,743). Maffia’s legal secretary placed money that was due to one of Maffia’s clients into his file drawer. The money went missing. Maffia claimed that his physical health should be considered as a mitigating factor, because during the time that the money went missing, he suffered from two heart attacks and was hospitalized. The court refused to accept this information as a mitigating factor, stating that Maffia had a heightened obligation, as an attorney, to ensure that the money entrusted in him made its way to the client.

9. Gambling Cases

No new cases found.

10. Sexual Behavior Cases

**Florida Bar v. Roberto**, 59 So.3d 1101 (Florida 2011)

Attorney Roberto was suspended for 1 year for violating the Rules Regulating the Florida Bar when he engaged in sexual relationships and gave prohibited financial assistance to two clients. The disciplinary referee recommended a sentence of one year probation for giving prohibited financial assistance to the client but failed to find any violations based on the sexual relationships. On review, the Florida Supreme Court
found Roberto created a conflict of interest that violated the rules when he entered into a sexual relationship with his clients. Further, the court determined that the referee failed to identify as an aggravating factor a pattern of misconduct based on Roberto’s sexual relationship with multiple clients and the additional unethical conduct that arose out of those relationships. The court ruled that a one year rehabilitative suspension was the appropriate disciplinary action given the facts.

**In re Levin, 2011 Fulton County D. Rep. 1336 (Georgia 2011)**

Attorney Levin was suspended for two years for violating the Georgia Rules of Professional Conduct against engaging in conduct that reflected adversely on his fitness to practice law. This was based on his guilty pleas to misdemeanor distributing obscene material and criminal attempt to commit interference with custody. In review of the case, the Georgia Supreme Court found that the special master of the disciplinary hearing should not have taken into account either the faultless delay in the disciplinary proceedings or Levin’s cessation of legal practice for six months as mitigating factors. Further, the court concluded that the special master erred in taking Levin’s criminal penalty as a mitigating factor in the disciplinary action. Based on these errors the court determined Levin committed acts of moral turpitude and that the aggravating factors, including the illegal conduct and age of victim, outweighed the mitigating factors. The court denied the six month suspension recommendation of the special master and ordered a two year suspension with conditions for reinstatement.

**In re Depew, 290 Kan. 1057 (Kansas 2010)**

Attorney Depew was suspended for one year for violating the Kansas Rules of Professional Conduct regarding professional misconduct stemming from complaints of sexual harassment by five court Administrative Assistants. The disciplinary board identified as mitigating factors Depew’s previous good character, his remorse for his conduct, and his major depression. As aggravating factors the disciplinary board identified a pattern of misconduct, the vulnerability of the victims, and the illegal nature of some of his conduct. Given these factors the disciplinary board recommended a two year suspension stayed for a sentence of two years probation. On review, the Kansas Supreme Court focused on the facts that Depew knowingly engaged in misconduct on multiple occasions and suffered from major depression. The court issued a one year suspension in order that Depew could focus on treatment so that the misconduct would not repeat itself in the future.

**In re Disciplinary Action Against Jacobs, 2012 WL 20127499 (Minnesota 2012)**

Attorney William Jacobs was disbarred from the practice of law for his conviction of three counts of 2nd degree sexual assault and possession of child pornography, in violation of Rule 19 of the Rules on Lawyers’ Professional Responsibility. Jacobs immediately admitted to this misconduct. The court accepted the disciplinary board’s recommendation of permanent disbarment.
Attorneys Butler and Addison were suspended for 30 days for misconduct involving the sexual assault of a female on the hood of Butler’s car in Green Lake County, Wisconsin. Their charges were pled down to reckless endangerment. Illinois suspended both attorneys for 30 days based on this misconduct. The court stated that the rules of attorney discipline are reciprocal, and though this court felt that Butler and Addison should be suspended for a longer period of time in Wisconsin, the same length of suspension should apply to this case under the rules of reciprocity.

11. Admission

*In re Ranshi*, 57 So.3d 1019 (Louisiana 2011)

Ranshi was granted conditional admission to the Louisiana Bar after hearings on his character and fitness to practice law. The Louisiana Committee on Bar Admission opposed Ranshi’s application to sit for the Bar Examination based upon his conviction of DWI’s in 2005 and 2008 and his lack of candor in failing to disclose his 2005 arrest on his law school application. The Louisiana Supreme Court granted Ranshi permission to sit for the examination with the provision that he undergo a character hearing after passing the bar. After passing the bar, Ranshi underwent the character hearing and was subsequently granted conditional admission to the Bar based upon his successful completion of an outpatient substance abuse program and his compliance with the terms and conditions of his recovery agreement with the Lawyers Assistance Program (LAP). The conditions of his admission included continued compliance with his LAP agreement.

*In re Donnelly*, 55 So.3d 787 (Louisiana 2011)

Donnelly was granted conditional admission to the Louisiana Bar after hearings on his character and fitness to practice law. Donnelly applied to the bar in 2007 and withdrew his application prior to an investigation of his character that was based upon his history of substance abuse and failure to disclose his prior arrests in his law school application. In 2010 Donnelly reapplied for the Bar and the matter was remanded to the Committee on Bar Admissions Panel on Character and Fitness. The committee determined that Donnelly’s completion of an intensive outpatient treatment program for substance abuse and one-year aftercare program, along with his compliance with his Lawyers Assistance Program conditions, were sufficient to warrant conditional admission to the Bar. The Louisiana Supreme Court agreed with the findings and granted him admission on the condition he maintained compliance with his LAP agreement.

12. Reinstatement

Attorney Meiklejohn was reinstated to practice law after he was disbarred by the Colorado Supreme Court in 2002 for multiple counts of converting client funds. The court identified that Meiklejohn suffered from an addiction to alcohol when he was disbarred. Therefore, he needed to show that this personal deficit had been alleviated in order to be granted reinstatement. The court determined that a number of factors were present to show Meiklejohn had been successfully rehabilitated. First, he took full responsibility for his alcohol addiction, completed a treatment program, and stayed abstinent since 2004. Further, Meiklejohn actively volunteered in the community including helping rehabilitate others with alcohol addictions. Finally, he established an outstanding professional reputation since his disbarment that included handling large sums of money. Given these circumstances, the court determined there was clear and convincing evidence that similar misconduct would not occur and he was fit to be reinstated.

**Burns v. Ky. Bar Ass’n, 318 S.W.3d 591 (Kentucky 2010)**

Attorney Burns was disbarred in 1986 based upon his conviction of mail fraud and transporting stolen money across state lines. In 2010 Burns applied for reinstatement to the bar. The Character and Fitness Committee and the Kentucky Bar Association Board both denied Burns application for readmission. Upon review, the Kentucky Supreme Court also denied readmission. In making the determination, the court agreed with the committee findings that Burns failed to demonstrate exemplary behavior since disbarment. In particular the court agreed that he failed to refrain from acting in the capacity of an attorney, failed to act with candor in his representations to the committee regarding his alcohol abuse, and failed to take responsibility for his conduct. Given the circumstances, the court determined Burn had failed to fulfill the heavy burden necessary to achieve readmission.

**In re Malone, 18 Pa. D. & C.5th 80 (Pennsylvania 2010)**

Attorney Malone was granted reinstatement to the bar after he was suspended for five years based upon his conviction for criminal attempt to commit involuntary deviate sexual intercourse. After completing his criminal sentence and probation, and after his five year suspension ended, Malone applied for reinstatement to the Bar. The Pennsylvania Supreme Court identified as relevant factors to his readmission his extensive treatment to address his sexual addiction including in-patient treatment, his closely monitored conduct while on probation, and his continued therapy. The court also relied upon testimony from Smith’s psychiatrist that as long as Smith stayed in group therapy he would not return to his misconduct of the past. Those factors, along with Smith’s commitment to recovery, remorse, and evidence pertaining to his excellent legal skills supported the conclusion that he met the requirements for reinstatement.

**In re Glynn, 2011 WI 9 (Wisconsin 2011)**

Attorney Glynn was reinstated to the practice of law after he was suspended in 2000 for failing to act with reasonable diligence and promptness in representing three
clients and failing to explain matters sufficiently to two clients – violations of the Wisconsin Rules of Professional Conduct for Attorneys. In making the decision to reinstate, the Wisconsin Supreme Court recognized the role that alcohol played in Glynn’s original suspension. The court acknowledged Glynn’s treatment for alcoholism and his ten years of sobriety as factors supporting their decision to reinstate. Overall, the court determined that Glynn had sufficiently changed his life during his suspension period warranting reinstatement.

**In re Reinstatement of Dobbs**, 256P.3d 52 (Oklahoma 2011)

Attorney James Dobbs was reinstated to the practice of law after his two-year suspension for misconduct involving dishonesty and perjury. Dobbs presented clear and convincing evidence that he had made the changes in his life that he needed to be able to competently practice law, and complied with the rules set forth by the court during his period of suspension. Even so, the state bar denied his reinstatement. The court found that Dobb’s met the requirements for reinstatement as set forth in Kamins: 1) the present moral fitness of the applicant; 2) the applicant's demonstrated consciousness of wrongful conduct and the disrepute that such conduct brought to the profession; 3) the extent of the applicant's rehabilitation; 4) the seriousness of the original misconduct; 5) the applicant's conduct after the resignation; 6) the time that has elapsed since the resignation or discipline; 7) applicant's character, maturity and experience at the time of discipline or resignation; 8) applicant's present competence in legal skills, and was therefore granted reinstatement.

**In re Reinstatement of Whitworth**, 261 P.3d 1163 (Oklahoma 2011)

Attorney Whitworth was reinstated to the practice of law following his two-year suspension for non-compliance with the continuing education requirement for licensed attorneys. Whitworth also suffered from drug and alcohol addiction which led to his misconduct. Whitworth was able to demonstrate the factors set forth above in Kamins and was reinstated, despite the board’s recommendation against it. The board stated that Whitworth did not meet the standard for reinstatement, saying that an attorney applying for reinstatement is subject to a stronger showing of proof of competency than when an attorney is newly admitted to the bar. The court said that because Whitworth sought treatment, caught up on his legal education requirements, and made the changes that were required of him during his suspension, he qualified for reinstatement.