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Supreme Court of Minnesota.
In the Matter of the Petition for Disciplinary Action Against Ronald J. JOHNSON, a Minnesota Lawyer.
No. 81-628.
Aug. 6, 1982.

In disciplinary proceeding, the Supreme Court held that misappropriation of client funds and failure to maintain proper trust account records, while suffering from alcoholism, warrants public censure and suspension from practice of law, with suspension stayed subject to specified conditions.
Recommendation of referee adopted with modification.

West Headnotes

[1] Attorney and Client ⚖46

Alcoholism in and of itself is not a defense to professional misconduct; criteria that should be considered when attorney violates disciplinary rules and then claims to be suffering from alcoholism are: (1) that accused attorney is affected by alcoholism; (2) that the alcoholism caused misconduct; (3) that the accused attorney is recovering from alcoholism and from any other disorders which caused or contributed to the misconduct; (4) that the recovery has arrested the misconduct and the misconduct is not apt to reoccur; and (5) that the accused attorney must establish these criteria by clear and convincing evidence.

[2] Attorney and Client ⚖58

Misappropriation of client funds and failure to maintain proper trust account records, while suffering from alcoholism, warrants public censure and suspension from the practice of law, with stay of suspension ordered for period of some two years subject to supervision and regular attendance at meetings of organization aiding lawyers with alcoholism problems.
***616** Michael J. Hoover, Director Lawyers Professional Responsibility Bd., and Richard J. Harden, Atty., St. Paul, for appellant.
Fred Allen, Minneapolis, for respondent.

PER CURIAM.
Ronald J. Johnson was admitted to practice law in Minnesota in 1972. In March of 1977 he misappropriated funds of a client. Johnson claims the misappropriation was caused by the effects of acute alcoholism. Johnson also failed to maintain proper trust account records. The referee recommended that Johnson be placed on probation for at least two years under supervised practice

EXHIBIT C

together with compliance with the terms of a stipulation entered into between Johnson and the director of the Board of Professional Responsibility. We accept these recommendations with some modifications.

In March of 1977 Johnson was engaged in the practice of law as a sole practitioner in Minneapolis, Minnesota. For several years prior he had become addicted to the use of alcohol with the usual effects on his family, friends and business. Johnson was representing a client in a personal injury claim which he settled for $3300.00. Under the fee arrangement Johnson was entitled to receive $1100.00 plus costs. Johnson forged his client's name on the draft and release *617 and used the entire amount to prevent the foreclosure of a mortgage on his house. During the ensuing years Johnson would hear occasionally from his client who he would tell that the case had not yet been settled. In October of 1980 the client filed a complaint with the Board which was referred to the Hennepin County ethics committee for investigation.

Upon being notified of the investigation, Johnson, using fees from another settlement, prepared a check for $2200.00 payable to his client. The client accepted the check and signed a release document which had been prepared by Johnson. Johnson then advised the investigator that the claim had been settled.

Subsequent investigation disclosed the fraud and also disclosed that Johnson had not properly maintained his trust account records. Furthermore, Johnson was using his trust account to shield himself from personal creditors including federal and state income tax liens.

On March 16, 1981 a group of Johnson's friends involved the Lawyer's Concerned for Lawyers (LCL) committee with Johnson. Since that date he has not had any alcoholic beverage, has faithfully attended AA and LCL meetings, and has conducted his practice of law, under supervision, in an ethical and proper manner.

All of the above facts are undisputed by the parties. Based on these facts the referee concluded that Johnson's conduct violated numerous Disciplinary Rules. The referee then read the following recommendation:

> It is the opinion of the Referee that the conduct of the Respondent which constituted violations of the Code of Professional Responsibility was not the result of any basic lack of integrity or honesty, but rather was a temporary deterioration of an otherwise stable character due to the excessive use of alcoholic beverages. The Referee is of the opinion that so long as the Respondent abstains from the use of alcohol, thereby being free from such influence, he will revert to the high standard of conduct he exemplified up to the time that abuse of alcohol occurred.
>
> There was no evidence whatsoever that the Respondent had been involved in any misconduct prior to his involvement with alcohol, rather the evidence was to the contrary. The Respondent had been a respected member of the legal profession, being considered as such not only by clients but by other members of the legal profession with whom he came in contact.
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> It has also been established to the satisfaction of the Referee that for the period of time in which the Respondent has been continuing his practice since completing in-patient treatment for alcoholism, he has demonstrated that he possessed the motivation and resolve to maintain abstinence from alcohol. The Referee recognizes that the period of abstinence so far maintained by the

Respondent has been relatively short. However, with a program of supervision for a continued period of time, an opportunity will be afforded the Respondent to evidence that he is able to abstain from alcoholic beverages. If the Respondent successfully completes a reasonable period of probation and supervision, the Referee is of the opinion that the Respondent will then merit a termination of such probation and supervision.

Since the establishment of the organization known as Lawyers Concerned for Lawyers there is ample evidence that numerous members of the legal profession whose conduct due to alcoholism had seriously affected their ability to maintain the standards of the profession, by maintaining abstinence, revert to valuable and honorable members of their profession, and have contributed immeasurably to legal services provided the public. There is no reasonable basis to conclude that the Respondent will not join the many other members of the profession who have in the past, and will in the future, continue to represent the legal profession admirably.

The Code of Professional Responsibility and general ethical standards which apply to members of the legal profession are not designed to be applied as moral ***618** absolutes, but rather have as their objective to insure that the members of the public who seek legal services will be assured of a quality of integrity and responsibility to best serve their needs. Disbarment as a disciplinary measure, should only result when there exists a need to preserve that objective. It should not be involved merely as a punishment for the offender. In arriving at the recommendation being made, the Referee is satisfied disbarment would not be justified.

It is the recommendation of the Referee that the Respondent should be permitted to continue the practice of law under supervision for a period of not less than two years, and upon successful completion of such probationary period be restored to unsupervised practice. The terms of the probation should be similar to those previously established by the "Stipulation and Consent" entered into under date of June 19, 1981. The attorney appointed to supervise the Respondent and his professional practices should be requested to submit periodic reports in writing, no less than quarterly, to the Director of the Lawyers Professional Responsibility Board as to whether or not the Respondent is complying with the probationary terms. In the event it should be reported that the Respondent has violated any of the terms of probation, immediate suspension of Respondent's license to practice should occur, and, subject only to a summary hearing to determine the fact of such violation, the Respondent should then be disbarred.

By the recommendation being presented, the Referee is not advocating that where misconduct is grounded in alcoholism, the misconduct should be considered any less severe. Clearly, as in the case of this Respondent, alcoholism may be the cause of the misconduct, but it is never an excuse. Although alcoholism is not an excuse, nevertheless, action to be taken by reason of such misconduct should be determined by all of the facts and circumstances of the particular case. After a consideration of all the facts and circumstances considered pertinent as to the appropriate action to be taken by reason of Respondent's misconduct, as specified hereinabove, it is the recommendation of the Referee that the Respondent be placed on probation, being permitted to practice law subject to

Supreme Court of Illinois.
In re James Francis DRISCOLL, Attorney, Respondent.
No. 53785.
June 26, 1981.

Attorney disciplinary action was brought. The Supreme Court, Simon, J., held that where attorney converts to own use proceeds of clients' settlement, repays clients out of another client's funds which attorney improperly deposits in his own account and repays money only after charges are filed with Attorney Registration and Disciplinary Commission, but where attorney's judgment and will are undermined by alcoholism, attorney thereafter successfully abstains from alcohol for two and one-half years and leads otherwise exemplary life, suspension from practice for six months, conditioned on continuing reports by attorney of his rehabilitation, is warranted.
Respondent suspended.

West Headnotes

Attorney and Client ⚿58

Where attorney converts to own use proceeds of clients' settlement, repays clients out of another client's funds which attorney improperly deposits in his own account and repays money only after charges are filed with Attorney Registration and Disciplinary Commission, but where attorney's judgment and will are undermined by alcoholism, attorney thereafter successfully abstains from alcohol for two and one-half years and leads otherwise exemplary life, suspension from practice for six months, conditioned on continuing reports by attorney of his rehabilitation, is warranted. Supreme Court Rules, Rule 755, S.H.A. ch. 110A, § 755.
***313 **873 ***204** Carl H. Rolewick, Chicago, of the Attorney Registration and Disciplinary Commission, for appellant.
Raymond P. Carroll, Chicago, for respondent.

SIMON, Justice:
Forging his co-counsel's name, the respondent, James Driscoll, converted to his own use the proceeds of a settlement which, by court order, he was to deposit to the account of two children, his clients. After several months of repeated demands for the money, Driscoll's wife, with his knowledge and consent, repaid the clients out of another client's funds, which Driscoll had improperly deposited to his own account thus accomplishing a second conversion. This money was repaid about a year later, after the client had filed charges with the Attorney Registration and Disciplinary Commission. These misdeeds were committed in late 1977.

Driscoll admitted the charges and cooperated fully with the disciplinary process. In mitigation, he offered evidence that at the time of his offenses he was an alcoholic. ***314** It appears, from the testimony of the respondent, his wife, and the doctor who headed the alcoholism-treatment program at Lutheran General Hospital, that respondent began drinking heavily in 1973, and his habit and condition worsened progressively until 1978. When the conversions occurred, the respondent had undergone a change in personality. His personal appearance disintegrated, his weight dropped, he ate little, and his nails were falling out; he could not remember where he had been or what he had done; he stayed out every night and had no family or social life; he did not return clients' calls and took no new clients. Nothing mattered to him except a drink. He was, however, competent enough, at least at intervals, to earn some money from his legal practice; in particular, he handled adequately the cases that generated the money he converted.

In August 1978 respondent voluntarily entered Lutheran General Hospital for treatment. He spent three weeks being "detoxified" and getting psychiatric counseling, and was introduced to Alcoholics Anonymous, in which he remains active. He has now successfully abstained from ****874 ***205** alcohol for about 2 1/2 years and is "perfectly fit" medically. There is always a risk that an alcoholic may relapse into drink; but the risk decreases with time, and the odds are heavily in respondent's favor.

The Hearing Board rejected the idea of alcoholism as a defense, and recommended that Driscoll be disbarred. The Review Board recommended that he be suspended for 30 months and thereafter until further order. A minority of the Review Board proposed suspension for one year, on condition that the respondent continue in an appropriate program of rehabilitation. Before the Review Board, the respondent accepted the idea of a one-year suspension; but in this court he argues that no suspension is necessary, and that the proper discipline would be simply a probation arrangement, during which he would be required to ***315** continue with his rehabilitation.

The legal profession and the courts have begun to acknowledge the problem presented by alcoholic, or, as they are sometimes referred to, "impaired," attorneys. We must find ways to help them and induce them to rehabilitate themselves. That problem, however, is no longer presented in this case, because respondent has already largely rehabilitated himself. And because respondent, on his own initiative, has overcome his active alcoholism and restored himself to a stable, more or less normal, condition, there is no need to keep him from practicing law during a period of temporary disability due to alcoholism. If he were now unfit to practice law, he would presumably remain so indefinitely, and the proper response to protect the public from further injury would be to disbar him or suspend him until further order.

We are not convinced, however, that he is unfit.

His professional misconduct was so serious that if it accurately reflected his continuing character and proclivities, if his alcoholism were only the occasion of his dishonesty and not a strong contributing cause, we would not hesitate to disbar him. Attorneys have been disbarred for misconduct even during a time of insanity or alcoholism where the attorney's behavior after his restoration to sanity confirmed that he was not an honest man (In re Patlak (1938), 368 Ill.

547, 15 N.E.2d 309), or where there was no detailed evidence to show the attorney's drinking was crucial to his misconduct (In re Smith (1976), 63 Ill.2d 250, 347 N.E.2d 133).

Here, however, the circumstances support a charitable interpretation. Respondent's judgment and will were undermined by alcoholism; he cared only for drink, and neglected all other concerns, at great cost to himself. His self-destructive behavior was typical of alcoholism; it was not typical of respondent, who was sensible enough until he succumbed to drink, and who is sensible enough again now that he has recovered from his disability. When someone *316 who has apparently led an otherwise blameless life is guilty of professional misconduct while crippled by a chemical addiction, we are willing to assume that the misconduct, like his other shortcomings, was dependent on his craving and will not be repeated once that craving is subdued.

The respondent is not now a thief and a menace to his clients; but he did commit two thefts, of the most aggravated sort. Betraying clients by converting their money is conduct not acceptable to the bar under any circumstances. We cannot assent to respondent's suggestion that no punishment is appropriate.

Perhaps in rare cases alcoholism might so change the character of the misconduct or so distort the attorney's state of mind as to provide a complete excuse. Usually, however, alcoholism is at most an extenuating circumstance, a mitigating fact, not an excuse. The attorney's impaired judgment diminishes the responsibility he must bear, but does not eliminate it. Not all alcoholics appropriate the money of their clients; the slide from drink to dishonor may be smooth, but it is neither automatic nor uncontrollable. We can understand it; we cannot excuse it or overlook misconduct as serious as respondent's. Alcoholics need not be treated just like other people; our duty to uphold the standards and reputation of the **875 ***206 profession is not incompatible with sympathy and leniency for victims of alcoholism. But their tragedy cannot be used as a license to exploit clients by taking their money.

The respondent was impaired, but not paralyzed. He continued to function to some extent. He occasionally tried cases and negotiated settlements, including those he got into trouble over. At least at times, he must have been rational enough to appreciate his duty to his clients, and to be reminded that even if he did not care, others would. We cannot regard him as entirely an innocent victim of forces beyond his control. To some degree he was culpable. And *317 perhaps there are many like him; misbehaving attorneys suffer from alcoholism or comparable difficulties remarkably often in our stressful profession. If suspending the respondent will keep any of them from dishonesty or reassure the public that even hard-drinking attorneys must play fair, respondent has no legitimate complaint.

While uniformity in attorney discipline is desirable, every case must be considered on its own merits. (In re Andros (1976), 64 Ill.2d 419, 1 Ill.Dec. 325, 356 N.E.2d 513.) In this case, we are impressed by Driscoll's sincere, strenuous, and, so far, successful effort to overcome his alcoholism. An exemplary life before and after the incident charged may properly be considered in mitigation. (In re Bourgeois (1962), 25 Ill.2d 47, 52, 182 N.E.2d 651.) We also recognize that the financial hardship, social embarrassment, and perhaps despair that a long suspension would create would not be conducive to sobriety; respondent might actually be fitter after a short suspension than a long one.

Respondent is suspended for six months. In addition, as an experiment in dealing with impaired attorneys, we shall require that he continue, and report at such intervals as the Attorney Registration and Disciplinary Commission shall specify, and until further order, his personal program of rehabilitation, including active participation in Alcoholics Anonymous, the Lawyers' Assistance Program established by the Chicago Bar Association and the Illinois State Bar Association, or some similar program acceptable to the Commission. The Commission may recommend to this court any further conditions it thinks desirable. In addition, the Commission may perhaps call upon other attorneys for help under Rule 755 (73 Ill.2d R. 755). We, of course, reserve the right to take further action if respondent, either during the period of his suspension or thereafter, succumbs to alcohol or has other problems that reflect upon his fitness to serve clients. Similar approaches have been adopted in California (Tenner v. State Bar ***318** (1980), 28 Cal.3d 202, 617 P.2d 486, 168 Cal.Rptr. 333), Minnesota (In re Johnson (Minn.1980), 298 N.W.2d 462), Massachusetts (In re Flannery (Mass. Nov. 5, 1980), No. 80-20 BD), South Dakota (In re Walker (S.D.1977), 254 N.W.2d 452), and Oregon (In re Lewelling (1966), 244 Or. 282, 417 P.2d 1019). After further experience we may revise our rules, which do not now provide for probation or supervision of impaired attorneys. Meanwhile, this court has inherent authority to use such methods of discipline. See In re Walker (S.D.1977), 254 N.W.2d 452.

We would like to see respondent restored to an active practice and a position of esteem in his profession. We must also protect the integrity and reputation of that profession, and protect the public. Pending further experience with alcoholic attorneys, we are trying our best to manage both.

Respondent suspended.

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