

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

R. Walter Bachman, Jr., Administrative Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (October 1977)

THE CHEMICALLY DEPENDENT LAWYER

Almost half of the lawyers in this country against whom serious disciplinary proceedings are brought are *known* to have problems with the use of alcohol. In the face of this stark statistic, the relationship between professional discipline and the alcoholic lawyer throughout the country is undergoing historic evolutionary changes.

Minnesota, through the pioneering efforts of former Administrative Director on Professional Conduct, Richey Reavill, was among the first states to recognize the condition of alcoholism as perhaps the most relevant consideration in placing a lawyer on probation for unethical conduct. The basic approach developed by Mr. Reavill was to place the admitted alcoholic lawyer whose unethical conduct was related to drinking under a tightly-supervised probationary order. One of the terms of that order required the lawyer to abstain from the use of alcohol and to continue with regular Alcoholics Anonymous meetings or other consultation or treatment.

The success of "alcoholic probation" cases in Minnesota has, quite frankly, been mixed. In the majority of such cases, the lawyers have been successful in avoiding both alcohol and complaints of unprofessional conduct. In other instances, however, lawyers have continued to act unethically while remaining sober. This mixed record underscores the obvious fact that while there may be a relationship between excessive drinking and unethical conduct, the relationship is not necessarily direct or causal.

The creation of the separate organization known as Lawyers Concerned for Lawyers may have a substantial effect in the long run upon the volume of complaints and disciplinary actions against chemically dependent Minnesota lawyers. The members of this organization, all of whom are Minnesota judges and lawyers, are in a position to persuade fellow members of the bar to seek treatment for chemical dependency *before* serious problems of unethical conduct arise. While the Lawyers Professional Responsibility Board and Lawyers Concerned for Lawyers maintain a cordial and cooperative working relationship, each of us wishes to stress our independent spheres of operation to the bar. The fact that a lawyer may have a

drinking problem is no, *ipso facto*, violative of any provision of the Code of Professional Responsibility. Thus, our Board does not wish to convey the impression to the profession or to the public that lawyers are disciplined for being alcoholics. On the other hand, Lawyers Concerned for Lawyers, quite rightly, does not wish to become an arm of professional discipline, although it does desire to maintain a high level of ethical conduct among Minnesota lawyers, whether they be alcoholics or not.

The Supreme Court of South Dakota recently came down with a decision which, in effect, placed a South Dakota lawyer on probation for five years, on the condition that he would refrain entirely from the use of alcoholic beverages. In support of this conclusion, which essentially parallels the alcoholic probationary orders in use in Minnesota for some time now, the Court said:

“(I)t should be made clear to all that our disposition in this case does not signal the advent of a new defense in disciplinary proceedings. We do not hold that alcoholism as a causation factor in misconduct will shield the perpetrator from the consequences of his actions. The respondent did not receive the consideration that we have given him because he is an admitted alcoholic but rather because he is, in our view, a bona fide recovered or arrested alcoholic who has for the past two and one-half years demonstrated his fitness to continue in the private practice of law.” *In re Walker*, _____ So. Dak. ____, 254 N.W. 2d 452, 457 (1977).

The Court reached its conclusion from the general rule, “That the purpose of disciplinary proceedings is not to punish but to remove from the profession those attorneys whose misconduct has proved them unfit to be entrusted with duties and responsibilities belonging to the office of an attorney so that the public may be protected from further wrongdoing.”

The general principles for the potential relevance of alcoholism to a disciplinary proceeding are now relatively well established. However, it should be emphasized that circumstances will vary on a case-by-case basis. The condition of alcoholism may be a substantial mitigating circumstance – but not a defense to – disciplinary proceedings.