

Disbarment – Not Necessarily Forever in Minnesota

by

Betty M. Shaw, Senior Assistant Director

Minnesota Office of Lawyers Professional Responsibility

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Reinstatement to the practice of law after disbarment is a rare. Attorneys seeking reinstatement must prove by clear and convincing evidence that they have undergone a moral change such that clients can have complete confidence in their competence and morality. *In re Anderley*, No. C5-91-801 (Minn., May 26, 2005).

In some jurisdictions, such as New Jersey, Ohio, Oregon and Indiana, disbarred attorneys are permanently stricken from the roll of attorneys with no right to apply for reinstatement.

While reinstatement following a disbarment in Minnesota is rare, no petition for reinstatement has ever been denied *solely* because of the nature or seriousness of the disbarment misconduct. The Minnesota Supreme Court has held for decades that “while a court should be slow to disbar . . . it should be even more cautious in readmitting an attorney to a position of trust.” *In re Smith*, 19 N.W.2d 324, 326 (1945).

The petitioning attorney must provide stronger proof of good character and trustworthiness than is required in an original application for admission to practice. *In re Porter*, 472 N.W.2d 654, 655-56 (Minn. 1991). The court weighs the evidence of moral change and present fitness against the seriousness of the misconduct committed.

In declining to reinstate a disbarred attorney, Carl Sigurd Swanson, the high court stated, “In light of his prior offenses, petitioner’s burden would, in any case, be especially high. His testimony reveals an inability to come to terms with his past in such a way that his adherence to high moral standards in the future cannot be assumed.” *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987).

In its recent order reinstating attorney David Anderley, the Minnesota Supreme Court said that while reinstatement after disbarment is the rare exception and not the rule,

[W]e conclude that Anderley is the exception and the rare individual who has met the heavy burden of demonstrating his rehabilitation and who qualifies for reinstatement. He has acknowledged and taken responsibility for his misconduct and worked diligently and successfully to make amends for his wrongdoing and to reform himself. Over 13 years have passed since Anderley was disbarred. He has truly undergone a characterological change since being disbarred in 1992. He has undergone treatment of his alcoholism and regularly attends Alcoholics Anonymous, providing leadership and support to those like afflicted. Two

psychiatrists attest to the fact that he has undergone moral and characterological change, and has developed coping skills to deal effectively with his psychological propensities toward anxiety and paranoia. Attorneys for whom he worked as a paralegal since his disbarment attest to his honesty, diligence, and proficiency. . . . Notwithstanding the seriousness of the misconduct which led to his disbarment, the other factors we consider weigh greatly in his favor.

In re Anderley, C5-91-801, slip. op. at 10-11 (May 26, 2005).

Anderley was disbarred for creating a sham settlement by means of which he misappropriated \$48,500 from his insurance company client. He fabricated or altered dozens of documents, including third-party documents, discovery depositions and answers to interrogatories. He changed names and dates and made deletions from an old case file that served as a script for his fictitious lawsuit. For four to five weeks he engaged in a charade negotiating a settlement of his fictitious lawsuit. When he received the settlement papers in draft from his client, he forged the needed signatures and misappropriated the funds.

Based upon those facts, Anderley pled guilty to one felony count of mail fraud and was sentenced to six months community confinement with work-release and three years probation. He made complete restitution to his insurance company client and worked as a paralegal during his work release program.

Shortly after his fraud was discovered Anderley sought treatment for alcoholism and joined Alcoholics Anonymous in 1991. He has been actively involved since that time and is a frequent speaker for organizations promoting sobriety and recovery. Shortly after his disbarment, Anderley was treated by psychiatrists for major depression and anxiety disorders. A forensic psychologist who testified at his reinstatement hearing concluded that he had made significant change and was an excellent candidate for readmission.

Other attorneys who have been reinstated after disbarment include: James Wegner, who involved his clients in a conspiracy to import 16 tons of marijuana, *In re Wegner*, 417 N.W.2d 97 (Minn. 1987); and David Trygstad and Robert Reutter, who were also disbarred for felony drug convictions, *In re Trygstad*, 472 N.W.2d 137 (Minn. 1991); *In re Reutter*, 474 N.W.2d 343 (Minn. 1991).

Earlier disbarment reinstatement cases involved disbarment orders that explicitly contemplated reinstatement after relatively brief periods. See e.g., *In re McDonald*, 282 N.W. 677 (1938), *reinstated* 294 N.W. 461 (1940); *In re Jennow*, 289 N.W. 887 (1939), *reinstated* 299 N.W. 683 (1941); and *In re Priebe*, 290 N.W. 552 (1940), *reinstated* 5 N.W.2d 396 (1942).