

Ethical Issues: Drugs, Sex and Money
Hon. Michael G. Gotsch
Local Practice Seminar:
November 14, 2013

In the Matter of John L. Stewart
August 8th 2012

In January 1998, Stewart pled guilty to a class C misdemeanor of operating a vehicle with 0.1 BAC. In November 2007, Stewart pled guilty to the same misdemeanor of operating a vehicle while intoxicated. Stewart did not report either incident to the Disciplinary Commission. In March of 2011, Stewart was convicted by a jury of operating while intoxicated with a prior conviction, a class D felony.

The parties cited the following facts in mitigation. (1) Stewart had no prior disciplinary history. (2) Stewart was working with JLAP to address his addiction and has been sober for over a year. (3) Stewart was suffering personal and emotional difficulties in 2011, due to the death of his girlfriend. (4) Stewart failed to report the first two convictions due to his misunderstanding of the reporting requirements. And (5) his disclosure of the arrest in the March 2011 incident prior to conviction demonstrated his acceptance of responsibility and cooperation with the Commission.

Stewart was suspended from practice for 180 days from July 2012, with 90 days already served, and the remainder stayed subject to completion of at least two days probation.

In the Matter of Christopher T. Smith
October 1st 2012

In April 2012, Smith pled guilty to operating a vehicle while intoxicated with a minor passenger. He was driving drunk with his three minor children in the car.

The parties cited the following facts in mitigation. (1) Smith had no prior disciplinary history; (2) He immediately contacted the Commission and the Indiana Judges and Lawyers Assistance Program ("JLAP") after his arrest; (3) Smith was cooperative with the Commission; (4) Smith's misconduct was not due to a dishonest or selfish motive; (5) Smith has executed a monitoring agreement with JLAP and is fully compliant with it; (6) He has successfully completed an intensive out-patient program at Fairbanks Hospital and continues participation in aftercare and Alcoholics Anonymous; (7) according to JLAP, his prognosis is good due to his commitment to recovery and his remorse. Respondent's JLAP clinical case manager believes that Smith's clinical needs would be best served by continuing to practice law and continuing to be monitored by JLAP

Smith was suspended for 90 days from October 1st 2012. The sentence was stayed subject to completion of at least two years probation.

In the Matter of Anna E. Fulkerson

October 18th 2012

Fulkerson violated the terms of her JLAP monitoring agreement. She did not provide a urine screen in July of 2012. She did not participate in her monthly therapy sessions for the last two months. She failed to obtain a psychiatric reevaluation which was requested by JLAP. She did not sign the release needed for JLAP to obtain a medical report from her pain management specialist.

Fulkerson responded that she had lost her minimum wage job, and was cooperating with JLAP for all of the terms of her probation which did not involve a financial obligation.

The court found that her failure to sign the release for her medical records was a violation of her probation which did not involve any financial burden to her, and that this violation alone was sufficient grounds to revoke her probation.

The Court revoked Fulkerson's probationary reinstatement to the practice of law, and re-imposed her suspension without automatic reinstatement.

In the Matter of Jacob P. Dunnuck

December 7th 2012

In 2010 and 2011, Dunnuck kept both client funds and personal funds in his trust account because the Internal Revenue Service had imposed a levy on his personal checking account. On February 20, 2011, he wrote a check on his trust account to the Commission for Continuing Legal Education, which notified the Disciplinary Commission of the improper use of the trust account. On April 21, 2011, Dunnuck withdrew \$3200 from the trust account, apparently believing this amount to be personal funds. This resulted in an overdraft of \$22.48, which he covered the day after he was notified of it.

The parties cited the following fact in aggravation: Dunnuck's actions resulted in delay of the government's collection of taxes. The

The parties cited the following facts in mitigation: (1) Dunnuck had no prior disciplinary history; (2) Dunnuck was cooperative with the Commission and hired a CPA to help him with his trust account; and (3) he has served his community by volunteering to represent fellow veterans in criminal cases.

The court suspended Dunnuck from practice for six months with 60 days served, and the remainder stayed subject to completion of at least one year of probation.

In the Matter of Jon A. Criss

January 10th 2013

Criss was convicted of possession of methamphetamine and maintaining a common nuisance. He had already been suspended from practice for failing to keep up with his CLE requirements.

The Disciplinary Commission asked the Supreme Court to suspend Criss's license pending final resolution of the disciplinary action.

The Court suspended Criss from practice *pendente lite*.

In the Matter of William E. Dittrich
January 10th 2013

Dittrich admitted that he failed to represent his clients adequately, failed to inform clients of the status of their cases and failed to respond to their requests for information. Dittrich also admitted that he had failed to protect client assets by placing them in a trust account.

The Parties cited the following facts in mitigation: (1) Dittrich had no prior disciplinary history; (2) He was cooperative with the Commission; (3) at the time of his misconduct, Dittrich was under emotional stress and depression, caused in part by the illness of his young daughter, for which he voluntarily sought the assistance of JLAP; (4) after the verified complaint was filed, Dittrich made full refunds of unearned fees to all clients affected by his misconduct.

The court suspended Dittrich from practice for 90 days with automatic reinstatement.

In the Matter of Marla E. Muse
January 11th 2013

Muse pled guilty to possession of Marijuana, a class D felony. The state agreed to sentence as a misdemeanor. Muse was sentenced to 1 year, with 4 days served and the balance suspended.

The parties cited the following facts in mitigation: (1) Muse had no prior disciplinary history; (2) She was cooperative with the Commission; and (3) she executed a voluntary monitoring agreement with JLAP.

The court suspended Muse's license for 180 days, with 30 served and the remainder stayed subject to two years of probation.

In the Matter of John W. Nelson
January 28th 2013

In August of 2002, Nelson pled guilty to operating while intoxicated. In 2006, he pled guilty to Domestic Battery. In 2010, Nelson pled guilty to operating while intoxicated. He did not report any of these convictions to the Disciplinary Commission, despite an order to do so in the sentencing for the 2010 conviction.

The parties cited the following facts in mitigation: (1) Nelson had no prior disciplinary history; and (2) he executed a monitoring agreement with the JLAP, completed an intensive outpatient program approved by JLAP, continues to receive outpatient therapy, has submitted to random drug screens, which have all been negative, and continues to attend Alcoholics Anonymous meetings.

The Court suspended Nelson's license for 180 days, with 30 days served and the balance stayed pending at least 36 months of probation.

In the Matter of Kathryn R. Janeway

January 28th 2013

In February 2012, Janeway was arrested for driving while intoxicated. She pled guilty, and was terminated from her position as assistant prosecutor for Hendricks County.

The parties cited the following facts in mitigation: (1) Janeway had no prior disciplinary history; (2) She self-reported her arrest and conviction to the Commission; (3) Janeway contacted IU Health at Methodist Hospital after her arrest and is in full compliance with its recommended treatment program; and (4) She had no prior OWI arrests or convictions.

The court imposed a public reprimand on Janeway for her misconduct.

In the Matter of Edgardo J. Martinez Suarez

April 2nd 2013

In 2006, Suarez's bank notified the Disciplinary Commission of an overdraft on his trust account. The Commission began an investigation, and Suarez insisted that the overdraft was a 'mistake.' After three years of communication with the Disciplinary Commission, Suarez was still unable to adequately explain the overdraft. The Commission insisted that Suarez hire a CPA to perform an audit. The CPA was unable to complete the audit due to lack of documentation. The Commission then began their own audit, which revealed at least six instances of paying personal and business expenses from the trust account, 55 instances of disbursing funds in excess of the amount held in trust for each corresponding client, and making 14 cash withdrawals. However, because Respondent kept more than a nominal amount of personal funds in the trust account, the disbursements did not cause Respondent to invade client funds.

The parties cited the following fact in aggravation: Suarez's acts are a pattern of trust account mismanagement that continued through October 2012. The parties cite the following facts in mitigation: (1) Suarez had no prior disciplinary history; (2) His acts were not a product of a dishonest or selfish motive; and (3) there is no evidence that any client suffered pecuniary loss.

The Court suspended Suarez from practice for 60 days, all stayed subject to completion of at least two years of probation.

In the Matter of Marisa Aguilar

April 2nd 2013

In 2010, the Commission learned that a check drawn on Aguilar's trust account failed to clear. The Commission thereafter audited her trust account. The audit showed that on about 14 occasions during the two months of March and April 2010, Aguilar made deposits into and disbursements from her trust account without creating or retaining adequate documentation. During this time period, she made approximately 21 disbursements from her trust account by electronic withdrawal or on-line transfer that were not based upon written withdrawal authorizations.

The parties cited the following facts in mitigation: (1) Aguilar has no disciplinary history; and (2) at the time of the initial overdraft, she was inexperienced in the practice of law.

The court suspended Aguilar from practice for a period of 30 days, all stayed subject to completion of at least two years of probation

In the Matter of David E. Schalk

April 15th 2013

Schalk, a criminal defense attorney was convinced that the prosecution's confidential informant was himself a drug dealer. He gave his client and several accomplices 200 dollars, a tape recorder and told them to purchase marijuana from the informant. He told them that this was legal. The Client and his friends purchased 50 dollars of weed and smoked it. They returned to Schalk's law offices and asked him to take a 'package' off their hands. The package didn't contain any marijuana, but was just a wrapped newspaper. Schalk did not take the package and tried to get law enforcement to take it and arrest the informant for selling to his clients.

Schalk was convicted of conspiracy to possess marijuana and attempt to possess.

The Court considered the following facts in aggravation: (1) Schalk solicited others to commit a criminal act, which put them at risk of arrest or physical danger; (2) Schalk has no appreciation for the wrongfulness of his conduct; (3) He made false statements or statements with reckless disregard for their truth regarding the integrity of the judges of the trial court and Court of Appeals; (4) Schalk's assertions that his criminal prosecution was based upon vindictiveness by law enforcement authorities is frivolous; and (5) Schalk improperly interfered with the discovery process in the disciplinary proceeding.

The Court suspended Schalk from practice for nine months, without automatic reinstatement.

In the Matter of Mark E. Watson

April 19th 2013

Watson admitted that he had engaged in criminal conversion of client fees paid to his law firm and of money orders paid by clients for their trustee in bankruptcy, and he made unauthorized personal charges on the firm's credit card.

The parties cited the following facts in mitigation: (1) Watson had no prior disciplinary history; (2) He made complete restitution to his firm and to the bankruptcy trustee before the Commission filed its verified complaint; and (3) Watson is in therapy for impulse control, substance abuse and behavior associated with his misconduct.

The Court suspended Watson from practice for 18 months, without automatic reinstatement.

In the Matter of Arthur J. Usher

May 17th 2013

Usher met Jane Doe in the summer of 2006, when she worked as a summer associate for his law firm. They developed a social relationship. Usher wanted more, and sought a sexual relationship with Doe.

Despite his repeated attempts, Doe consistently declined his advances. Usher became upset that he was being turned down by a 3rd year law student, and got in touch with a movie producer who had worked with Jane Doe when she worked as a movie star. He acquired a clip from a horror movie which Doe acted in which appeared to depict her naked. (Jane Doe used a body double for this shot, and was not actually naked in the movie.) He then prepared an email for dissemination which consisted of an elaborate fictitious email conversation between in-house counsel at major companies, and attorney's at the large law firms in Indiana. He conspired with his paralegal to send this email from a false email account which appeared to be a managing partner at one of the firms in Indianapolis. He was hoping that the firm which hired Jane Doe would fire her based on her apparent nudity during her acting career.

The Court suspended Usher for a period of at least three years, without automatic reinstatement.

In the Matter of Randy C. Eyster

May 30th 2013

In 2011, Eyster pled guilty to operating a motor vehicle while intoxicated a class C misdemeanor. In 2013, Eyster pled guilty to operating a motor vehicle while intoxicated and endangering a person; and operating a motor vehicle while intoxicated with a previous DUI conviction within five years.

The parties cited the following facts in mitigation: (1) Respondent has no disciplinary

history; (2) Respondent was cooperative with the Commission; (3) Respondent self-reported his conviction to the Commission in a timely manner; and (4) Respondent voluntarily engaged himself in alcohol treatment an monitoring through the JLAP and is in compliance with his monitoring agreement

In the Matter of Julia N. Compton
May 30th 2013

In April 2012, Compton admitted guilt to a charge of public intoxication and entered a diversion program in Marion County. In May 2012, she pled guilty to resisting law enforcement and public intoxication in Hancock County. She was charged with several alcohol related offenses in Johnson County in May and June, and pled guilty in October to operating a vehicle while intoxicated.

The parties cited the fact that she had four alcohol related arrests in three and a half facts as an aggravating factor. They cites the fact that Compton had no prior disciplinary history, was cooperative with the Commission and is the JLAP program as mitigating factors.

The court suspended Compton for 180 days, which were stayed pending the completion of two years probation.

In the Matter of David E. Corbitt
June 20th 2013

Corbitt pled guilty to resisting law enforcement and operating a vehicle while intoxicated, endangering a person.

Corbitt cited the following facts as mitigating factors: He had no prior disciplinary history (2) he was cooperative with the Commission; (3) he is remorseful; (4) he made timely and good faith effort to make restitution for the property damage he caused; (5) he has demonstrated positive character and reputation in his career and by serving on the board of Fairbanks Addiction and Treatment Center; and (6) he voluntarily engaged himself for assessment by the Indiana Judges and Lawyers Assistance Program.

The Court found that Corbitt had violated the Indiana Rules of Professional Conduct and issued a Public Reprimand.

In the Matter of Noah Holcomb
June 28th 2013

Holcomb's office operating account was levied by the IRS in November of 2007. From then until March 2008, Holcomb used his trust account as both a trust account and office operating account. During this period, he made 21 disbursements not related to a client, but for his own personal benefit, he made five disbursements without creating any records as to which client the disbursement was for, he withheld a portion of five lump-sum payments he received on behalf of clients only depositing a portion of the money

received, and he disbursed funds from the account in excess of the funds held for each corresponding client on five occasions.

The parties cited the following facts as aggravating factors: Holcomb's misconduct was due to a selfish motive; He committed multiple offenses and is an experienced lawyer;

In the Matter of Joseph Stork Smith

July 17th 2013

Smith entered into a sexual relationship with Dee Dee Benkie in 1990. Shortly thereafter, he became her lawyer for the next 11 years. Although they continued to have sex, and he continued to represent her, surprisingly she fell behind in paying for her legal services. After they broke up, Smith tried to get payment from Benkie for the services he had rendered during their sexual relationship. Smith wrote a book in 2010, based almost entirely on the confidential privileged communications he had learned during his professional (although he was not acting very professional at all) relationship with Benkie. Smith claimed that the purpose of the book was to recoup the legal fees which Benkie owed him. He also claimed that he had received permission to publish a tell-all book based on his client's confidences because at one point Benkie told him, in response to his suggestion that he would write a book about her, "That is a great idea! Write a book and make me famous!"

The Court found that Smith had violated the rules of professional ethics by engaging a client he was having sex with, and by disclosing his client's confidences.

Smith was disbarred by the Indiana Supreme Court in July of 2013.

In the Matter of Douglass S. Followell

August 15th 2013

In 2009, Followell was suspended for 180 days stayed for the duration of a probation of at least 36 months. He was suspended for three alcohol related offenses.

In 2012, Followell was arrested and charged with driving under the influence in Florida. He entered a *nolo contendere* plea, and was convicted.

The court revoked Followell's probation and suspended him from practice for 150 days without automatic reinstatement.