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IN RE DRISCOLL: ILLINOIS' NEW APPROACH IN THE DISCIPLINE OF ALCOHOLIC ATTORNEY MISCONDUCT

The Illinois Supreme Court's fundamental objective in attorney disciplinary decisions is to ensure that persons authorized to practice law within its jurisdiction are competent to act as officers of the court.¹ Traditionally, the supreme court has held that specific acts demonstrating unfitness, such as conversion of clients' funds² or neglect of legal matters,³ were grounds for prohibiting an attorney's practice of law through suspension,⁴ disbarment,⁵ or

1. See, e.g., *In re Andros*, 64 Ill. 2d 419, 423, 356 N.E.2d 513, 514 (1976) (proper inquiry in disciplinary action is whether attorney's conduct demonstrates unfitness to practice law). Because attorneys are officers of the court and the Illinois Supreme Court is responsible for supervision of the activities of courts within its jurisdiction, the Illinois Supreme Court has the sole authority to discipline attorney misconduct. See *In re Wyatt*, 53 Ill. 2d 44, 45, 289 N.E.2d 630, 630-31 (1972) (ultimate responsibility for disciplining Illinois attorneys rests with Illinois Supreme Court); *People v. People's Stock Yards State Bank*, 344 Ill. 462, 470, 176 N.E. 901, 905 (1931) (Illinois Supreme Court has inherent power to regulate practice of law); *In re Day*, 181 Ill. 73, 96-97, 54 N.E. 646, 653 (1899) (Illinois Constitution grants supreme court jurisdiction to regulate practice of law).

2. See, e.g., *In re Smith*, 75 Ill. 2d 134, 387 N.E.2d 316 (1979) (attorney disbarred for forging clients' signatures on settlement check, depositing proceeds in attorney's own bank account, and spending proceeds for his own purposes).

3. See, e.g., *In re Levinson*, 71 Ill. 2d 486, 376 N.E.2d 998 (1978) (attorney suspended for six months and until further court order for failure to advise client of status of case and failure to do more than file petition for adoption on behalf of client). Generally, conduct which violates a provision of the Illinois Supreme Court's Code of Professional Responsibility is grounds for discipline. ILL. REV. STAT. ch. 110A, § 771 (Smith-Hurd Supp. 1981). Misconduct that involves behavior not expressly enumerated in the Illinois Code can still be grounds for discipline on the basis that the attorney misconduct tends to defeat the administration of justice or brings the legal profession and the judicial system into disrepute. *Id.* See, e.g., *In re Andros*, 64 Ill. 2d 419, 356 N.E.2d 513 (1976) (conviction of willful failure to file income tax grounds for discipline); *In re Sherre*, 63 Ill. 2d 398, 356 N.E.2d 62 (1976) (conviction of mail fraud grounds for discipline).

4. See ILL. REV. STAT. ch. 110A, § 771 (c)-(e) (Smith-Hurd Supp. 1981). An attorney may be suspended for a specified period of time, or until further order of the court, or for a specific period of time and until further order of the court. *Id.* An attorney suspended for a specified period of time is automatically reinstated when the period expires. An attorney suspended until further order of the court must petition the court for reinstatement. An attorney suspended for a period of time and until further order may not petition for reinstatement until the specified period of time has elapsed. *Id.* § 767. Further order of the court then affords the court the ultimate discretion as to when the attorney may return to active practice.

5. *Id.* § 771(a), (b). An attorney may be disbarred by order of the court or on the voluntary consent of the attorney. *Id.* An attorney disbarred by court order may not petition for reinstatement to practice law until five years after the date of the order of disbarment. *Id.* § 767. An attorney disbarred on consent may not petition for reinstatement until three years after the date of the court order permitting disbarment on consent. *Id.* The traditional response for unfitness demonstrated by drug or alcohol addiction or mental illness, absent specific acts of misconduct, has been to transfer the attorney to inactive status. This may be

censure.⁶ By imposing discipline, the Illinois Supreme Court has attempted to protect the public and to safeguard the bar from reproach.⁷ In determining the appropriate sanction the court has also considered the severe hardship that can result from disbarment or suspension and has attempted to prescribe a moderate sanction that was fundamentally fair to the attorney.⁸

In those cases where misconduct may have been caused by the attorney's alcoholism, the Illinois Supreme Court has consistently prescribed the traditional forms of discipline.⁹ Recently, however, the Illinois Supreme Court in *In re Driscoll*¹⁰ recognized that it may be more beneficial to encourage the rehabilitation of alcoholic attorneys rather than to prohibit their practice of law. The *Driscoll* court fashioned a new form of discipline, supervised probation, to promote Driscoll's continued recovery from alcoholism.¹¹ In addition, the court unanimously concluded that Driscoll's misconduct warranted a less severe degree of discipline than that normally prescribed for the same wrongful acts.¹²

done either voluntarily by the attorney or by court order. ILL. REV. STAT. ch. 110A, §§ 757, 758, 770 (1979). Once the attorney has been reinstated to active status, any disciplinary action against the attorney may be resumed. *Id.* § 759.

6. *Id.* § 771(f). Censure involves public notification of an attorney's wrong doing. It is often imposed for minor instances of attorney misconduct. *See, e.g., In re Kutner*, 78 Ill. 2d 157, 399 N.E.2d 963 (1980) (charging excessive fee warranted censure).

7. *See, e.g., In re Leonard*, 64 Ill. 2d 398, 406, 356 N.E.2d 62, 66 (1976) (purpose of discipline is to protect public and maintain integrity of bench and bar).

8. *See, e.g., In re Damisch*, 38 Ill. 2d 195, 208-09, 230 N.E.2d 254, 261-62 (1967) (judiciary must impose discipline that protects public while at the same time ensuring fundamental justice for attorney); *In re Fisher*, 15 Ill. 2d 139, 154-55, 153 N.E.2d 832, 840-41 (1958) (disbarment and suspension cause severe hardship and should be prescribed only where such punishment is fully warranted). The supreme court has taken into consideration mitigating and aggravating factors to determine the appropriate discipline for wrongdoing. Mitigating factors reduce the degree of discipline imposed and include circumstances such as restitution to the client, personal or family difficulties, or absence of prior misconduct. *See, e.g., In re Chapman*, 69 Ill. 2d 494, 372 N.E.2d 675 (1978) (personal and family problems); *In re Costigan*, 63 Ill. 2d 230, 347 N.E.2d 129 (1976) (restitution); *In re Sherman*, 60 Ill. 2d 590, 328 N.E.2d 553 (1975) (lack of prior misconduct). Aggravating factors, such as false testimony at a disciplinary proceeding or failure to respond to a complaint, increase the degree of discipline imposed. *See, e.g., In re Stillo*, 68 Ill. 2d 49, 368 N.E.2d 897 (1977) (false testimony); *In re Simpson*, 47 Ill. 2d 562, 268 N.E.2d 20 (1971) (failure to respond to client's calls and letters).

9. *See In re Maley*, 363 Ill. 149, 1 N.E.2d 495 (1936) (attorney's neglect of legal matters caused by inebriation in court warranted six-month suspension); *People v. Tracey*, 314 Ill. 434, 145 N.E. 665 (1924) (attorney's conversion of clients' funds during active alcoholism warranted disbarment).

10. 85 Ill. 2d 312, 423 N.E.2d 873 (1981).

11. *Id.* at 317, 423 N.E.2d at 875.

12. The supreme court held that Driscoll's conversion of clients' funds, during a period when his behavior was impaired by alcoholism, warranted only a six-month suspension from the practice of law. *Id.* at 312, 423 N.E.2d at 875. Conversion is viewed as an act of moral turpitude which, absent mitigating factors, warrants disbarment. *See, In re Smith*, 63 Ill. 2d 250, 347 N.E.2d 133 (1976).

A brief survey of alcoholism and its relationship to Illinois attorney disciplinary law is necessary to fully comprehend the *Driscoll* decision. Subsequent analysis of the court's decision reveals that supervised probation is likely to accomplish the supreme court's competing goals of protecting the public from unfit attorneys and safeguarding the bar's reputation without imposing an excessive degree of discipline. One aspect of the *Driscoll* court's reasoning, however, which indicates that in some cases alcoholism may serve as a complete defense to attorney misconduct, may lead to disciplinary decisions that will fail to protect the public and the integrity of the legal profession. To remedy this defect in the court's analysis, it is suggested that a comprehensive framework for the discipline of alcoholic attorney misconduct be developed.

ALCOHOLISM AND ATTORNEY DISCIPLINE

A well-reasoned approach to the discipline of alcoholic attorney misconduct must be grounded on a firm understanding of alcoholism itself. Alcoholism is generally defined as an intermittent or continual ingestion of alcohol that has led to dependency or harm.¹³ Although it is well recognized that alcoholism can be controlled, it cannot be "cured."¹⁴ It is accepted, however, that a recovering alcoholic¹⁵ can return to a useful, productive position within society.¹⁶

13. Davies, *Is Alcoholism Really a Disease?*, 3 CONT. DRUG PROB. 197, 207 (1974). Alcoholism is currently one of the leading public health problems. U.S. DEPT OF HEALTH AND HUMAN SERVICES, ALCOHOL AND HEALTH at v (1981). Approximately 10% of the American population are alcoholics. U.S. DEPT OF HEALTH, EDUC. & WELFARE, THE ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH NATIONAL DATA BOOK 15 (1980). It has been estimated that this percentage is probably closer to 15% for the legal profession. Lavine, *Liquor & Lawyers*, 1981 N.Y. ST. B.J. 289, 290 [hereinafter cited as Lavine]. A consultant to the State of California Committee on Alcohol Abuse has estimated that 50-60% of disciplinary problems are alcohol related. *Id.* The chairman of the New York State Bar Association's Special Committee on Alcoholism and Drug Abuse has estimated that approximately 80% of disciplinary problems are related to alcohol abuse. *Id.*

14. D. ARMOR, J. POLICH & H. STAMBUL, ALCOHOLISM AND TREATMENT 35 (1978) [hereinafter cited as ALCOHOLISM AND TREATMENT].

15. Because alcoholism cannot be cured, the alcoholic maintains that title regardless of whether he or she is successfully recovering from alcoholism. This Note therefore uses the term "recovering" alcoholic to designate someone who is successfully controlling the addiction and the term "active" alcoholic to designate someone who is not.

16. A.M.A., MANUAL ON ALCOHOLISM 7-8 (3d ed. 1977). Many now classify alcoholism as an illness. In fact, the American Medical Association officially recognized it as a disease in 1956. See A.M.A., *Proceedings of the House of Delegates, Report of Reference Comm. on Med. Educ. & Hospitals*, 163 J.A.M.A. 33 (1957). By 1967, it had been recognized as a disease by the World Health Organization, the American Hospital Association, and the American Psychiatric Association. See S. REP. NO. 93-208, 93d Cong., 2d Sess. 4, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 3039, 3042.

In addition, members of the legal profession have begun to take an active part in the rehabilitation of alcoholic attorneys by establishing treatment programs. Many of these programs are privately organized by state or local bar associations. In Illinois, for example, the

Recovery is usually accomplished in three stages. The initial step is the individual's recognition that he or she is an alcoholic and a desire by that individual to overcome the condition.¹⁷ Next, the individual must obtain whatever medical treatment is required to eliminate physical addiction to alcohol.¹⁸ Finally, it is vital for the individual to participate in group programs with other recovering alcoholics to aid in the recovery from his or her psychological dependence on alcohol use.¹⁹

At one time, society made no effort to promote rehabilitation from alcoholism because the condition was considered sinful and a sign of moral weakness.²⁰ Alcoholic attorneys were looked down upon by society and were viewed as an insult to the legal profession.²¹ Although Illinois case law in this area is limited, it appears that the Illinois Supreme Court had taken a position analogous to the "sinful" view of alcoholism.²² Prior to *Driscoll*, the court had refused to allow alcoholism to mitigate the degree of attorney discipline imposed.²³ The supreme court usually imposed the same sanction for misconduct caused by alcoholism as it did for misconduct unrelated to alcoholism.²⁴ Because the court's analysis had consistently placed heavier

Chicago Bar Association and the Illinois State Bar Association jointly established the Lawyers' Assistance Program, Inc. (LAP). The purpose of this organization is to intervene before the attorney's alcoholism leads to disciplinary problems. LAP maintains a policy of confidentiality and is not affiliated with the state disciplinary commission. Lavine, *supra* note 13, at 311-12.

17. J. ROYCE, ALCOHOL PROBLEMS AND ALCOHOLISM 99 (1981) [hereinafter cited as ROYCE]. The individual must recognize the difficulties that alcohol addiction has caused, including marital and family discord, and occupational troubles. *Id.* This realization leads the active alcoholic to conclude that the benefits and costs of sobriety are greater than those of inebriation. See generally Reed, *The Price of Sobriety*, 2 J. DRUG ISSUES 313 (1973).

18. Ottenberg, *Detoxification in a Comprehensive Alcoholism Treatment Program*, reprinted in U.S. DEP'T OF HEALTH, EDUC. & WELFARE, PROCEEDINGS: SEMINAR ON ALCOHOLIC EMERGENCY CARE SERVICES, PUBLIC HEALTH SERVICES PUB. NO. 73-9024 (1972).

19. ROYCE, *supra* note 17, at 247-49. These meetings also aid the recovering alcoholic in overcoming feelings of self-pity, guilt, helplessness, and confusion. *Id.* Many organizations for recovering alcoholics including Alcoholics Anonymous, maintain that the recovering alcoholic must completely abstain from the consumption of alcohol to maintain rehabilitation from alcoholism. ALCOHOLISM AND TREATMENT, *supra* note 14, at 35.

20. See Hall, *Intoxication and Criminal Responsibility*, 57 HARV. L. REV. 1045, 1054-61 (1944) (alcoholism once viewed as a wilful and culpable condition caused by moral weakness or dissolute immorality).

21. See Lavine, *supra* note 13, at 290-91 (problem of attorney alcoholism long ignored, because alcoholism was viewed as something immoral); Middleton, *Help, Hope for the Alcoholic Lawyer*, 1981 BAR LEADER 29, 30 [hereinafter cited as Middleton] (alcoholic attorneys once considered outcasts from profession).

22. See *In re Maley*, 363 Ill. 149, 1 N.E.2d 495 (1936) (alcoholic attorney's neglect warranted six-month suspension); *People v. Tracey*, 314 Ill. 434, 145 N.E. 665 (1924) (alcoholic attorney's conversion warranted disbarment).

23. See *People v. Tracey*, 314 Ill. 434, 145 N.E. 665 (1924) (alcoholism no mitigation for conversion of clients' funds). In one case, habitual drunkenness alone was sufficient grounds for a six-month suspension because such conduct caused inadequate representation of a client at trial and "interfered with the orderly progress of litigation." *In re Maley*, 363 Ill. 149, 152, 1 N.E.2d 495, 497 (1936).

24. Compare *In re Maley*, 363 Ill. 149, 1 N.E.2d 495 (1936) (alcoholic attorney's neglect warranted six-month suspension) and *People v. Tracey*, 314 Ill. 434, 145 N.E. 665 (1924) (alcoholic attorney's conversion warranted disbarment) with *In re Smith*, 75 Ill. 2d 134, 387

emphasis on sheltering the public from the unfit attorney, rather than on the plight of the alcoholic attorney,²⁵ the discipline imposed had effectively outcast the alcoholic attorney from the legal profession. Essentially, the Illinois Supreme Court had failed to achieve its goal of prescribing a moderate degree of discipline to the attorney that was fundamentally fair.

If the alcoholic attorney was later reinstated to active legal practice, he or she resumed practice without supervision.²⁶ Because the Illinois Supreme Court designed no mechanism to guard against a possible relapse to active alcoholism, it failed to protect the public from the attorney's potential incompetency. Recognizing these deficiencies, the *Driscoll* court fashioned a new approach for the discipline of alcoholic attorney misconduct.

THE DRISCOLL DECISION

James Driscoll's unprofessional conduct came to the attention of the Attorney Registration and Disciplinary Commission (ARDC)²⁷ after one of his clients filed a complaint alleging that Driscoll had not accounted for the client's settlement proceeds.²⁸ The ARDC's investigation revealed that Driscoll had converted clients' funds on two occasions in late 1977.²⁹ The first occurred when Driscoll endorsed his client's settlement check and deposited it into his personal bank account. Subsequently, Driscoll withdrew money from the account thereby causing the balance in the account to fall below the amount owed to his client.³⁰ After repeated demands

N.E.2d 316 (1979) (non-alcoholic attorney's conversion warranted disbarment) and *In re Chapman*, 69 Ill. 2d 494, 372 N.E.2d 675 (1978) (non-alcoholic attorney's neglect of three appeals warranted three-month suspension).

25. In *People v. Tracey*, 314 Ill. 434, 145 N.E. 665 (1924), for example, the court stated: Habitual drunkenness, and inability to pay through lack of means as a result of such habitual intoxication, cannot be recognized by this court as a sufficient excuse or cause for an attorney to escape the condemnation and punishment required [for conversion of clients' funds]. . . . Drunkenness is no excuse for the non-performance or malperformance of any legal services by an attorney for a client, and should such conduct become so habitual and continuous as to endanger clients in securing their legal rights, it will be sufficient ground for disbarment.

Id. at 436-37, 145 N.E. at 666.

26. See *In re McDonnell*, 82 Ill. 2d 481, 413 N.E.2d 375 (1980) (recovering alcoholic attorney reinstated to active practice without supervision or probation). The Rules of the Illinois Supreme Court do not presently provide for supervision or probation following an attorney's readmission to the practice of law.

27. The Illinois Supreme Court has delegated to the ARDC the authority to investigate and prosecute an attorney's alleged unethical conduct and to recommend discipline for misconduct. ILL. REV. STAT. ch. 110A, §§ 751-53 (1979). For a detailed analysis of the rules creating the ARDC, see Swett, *Illinois Attorney Discipline*, 26 DEPAUL L. REV. 325 (1977).

28. 85 Ill. 2d 312, 313, 423 N.E.2d 873, 873.

29. *Id.* Conversion is usually proved by evidence that the attorney deposited funds belonging to the client into one of the attorney's personal bank accounts and that the attorney subsequently allowed the balance in this account to fall below the amount due the client. See, e.g., *In re Stillo*, 68 Ill. 2d 49, 368 N.E.2d 897 (1977).

30. 85 Ill. 2d at 313, 423 N.E.2d at 873. Driscoll had been retained to represent two children in a dram shop action against a tavern owner whose place of business had been the location of the death of the children's father. The court awarded damages to the children and

from the client, Driscoll's wife, with the full knowledge and consent of her husband,³¹ made restitution by withdrawing funds from his business account, wherein Driscoll had deposited the settlement proceeds from a case with a different client.³² This payment caused the balance in his business account to fall below the amount due to the second client.³³ In short, Driscoll had committed a second conversion in order to make restitution to his first client.³⁴

At the disciplinary hearing,³⁵ Driscoll admitted that he committed the two acts of conversion, but explained that both acts had occurred while he was an active alcoholic.³⁶ In an effort to minimize any disciplinary action that might be imposed, he presented evidence of his recovery from alcoholism³⁷ and of his continued participation in Alcoholics Anonymous.³⁸ Despite this evidence, the Hearing Board focused on the nature of Driscoll's misconduct and recommended his disbarment.³⁹ It concluded that his active alcoholism constituted neither a mitigating factor nor a complete defense to his conver-

ordered that the settlement proceeds be placed in a trust account. Driscoll obtained the settlement check, forged the signature of his co-counsel, and in violation of the court order, deposited the check in one of his bank accounts. Findings, Conclusions, and Recommendations of the Hearing Board, at 1-2, *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981).

31. 85 Ill. 2d at 313, 423 N.E.2d at 873.

32. *Id.* Driscoll had been retained by the second client to institute a personal injury claim. The claim was later settled out of court. After the client endorsed the settlement check, Driscoll endorsed it himself and deposited it in his own business account. Findings, Conclusions, and Recommendations of Hearing Board, at 2, *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981).

33. *Id.*

34. *Id.* at 313, 423 N.E.2d at 873. Restitution was made to the second client some time after the client filed his complaint with the ARDC. *Id.*

35. The Hearing Board of the ARDC conducts hearings and makes findings of fact and conclusions of law on complaints regarding alleged unethical conduct. Based on these findings and conclusions, the Hearing Board recommends to the Review Board the degree of discipline it deems appropriate, the dismissal of the complaint, or the transfer of the attorney to inactive status. ILL. REV. STAT. ch. 110A, § 753(c) (1979).

36. 85 Ill. 2d at 313-14, 423 N.E.2d at 873. Driscoll presented evidence that during his active alcoholism

[h]is personal appearance disintegrated, his weight dropped, he ate little, and his fingernails 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.

Id.

37. *Id.* Driscoll introduced evidence that he voluntarily entered Lutheran General Hospital in August 1978, where he began receiving medical and psychiatric treatment for his alcohol problem. *Id.*

38. *Id.* Driscoll testified that he had begun participating in Alcoholics Anonymous while at Lutheran General Hospital and was still active in the program. He further testified that he had abstained from alcohol use since entering Lutheran General. The doctor in charge of the alcoholism treatment program at Lutheran General Hospital testified that Driscoll was perfectly fit medically. *Id.* at 313-14, 423 N.E.2d at 873-74.

39. *Id.* at 314, 423 N.E.2d at 874.

sion of clients' funds.⁴⁰ Because the Hearing Board recommended discipline, the action proceeded to the Review Board.⁴¹

Before the Review Board Driscoll argued that his alcoholism should be a mitigating factor and, as such, disbarment constituted too severe a sanction.⁴² After examining the findings and recommendations of the Hearing Board, the Review Board recommended Driscoll's suspension for thirty months and until further court order.⁴³ The Board noted that alcoholism should be considered a mitigating factor in the discipline imposed because "alcoholism is a disease and not a condition for which the individual should be held responsible."⁴⁴ Following the Review Board's recommendation of disciplinary action, the case proceeded to the Illinois Supreme Court for final determination.⁴⁵

Before Illinois' highest court, Driscoll contended that his alcoholism should be viewed as a complete defense to his misconduct.⁴⁶ He further claimed that even if some disciplinary action was instituted, probation was the proper sanction because he was now sufficiently rehabilitated to practice law competently.⁴⁷ The supreme court disagreed with Driscoll's contention that his alcoholism was a complete defense to the misconduct involved.⁴⁸

40. *Id.* The Hearing Board stated that alcoholism, no matter how severe, cannot constitute a defense to the breach of an attorney's duties that occurred here. We are not dealing with matters of neglect, but with two positive acts of moral turpitude and fraudulent behavior involving the funds of clients held in trust by the attorney. . . . Whatever disability [Driscoll's] drinking habits may have imposed upon him, it is . . . clear that it did not . . . interfere with his handling of the clients' claims until it came time to disburse to them the funds that were rightfully theirs.

Findings, Conclusions, and Recommendations of the Hearing Board, at 6, *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981).

41. The Hearing Board's reports are scrutinized by the Review Board when action by the supreme court has been recommended or in other cases when the Administrator has filed exceptions to the Hearing Board's report. The Review Board may approve, reject, or modify the findings or recommendations of the Hearing Board. It may also remand the proceeding for further action or dismiss the proceeding. ILL. REV. STAT. ch. 110A, § 753(c) (1979).

42. 85 Ill. 2d at 314, 423 N.E.2d at 873.

43. The Review Board determined that the Hearing Board's recommendation of disbarment was excessive. Report and Recommendation of the Review Board, at 1, *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981). Two members of the Review Board filed a separate report recommending Driscoll's suspension for one year on the condition that he continue rehabilitation. 85 Ill. 2d at 314, 423 N.E.2d at 874.

44. Report and Recommendation of the Review Board, at 4, *In re Driscoll*, 85 Ill. 2d 312, 423 N.E.2d 873 (1981). The Board noted that this concept is "almost universally recognized." *Id.* The Board further recommended that "a program be developed for an alcoholic lawyer to permit his resumption of the practice of law after a period of supervision during which his activities are monitored and his progress to regain self-control measured." *Id.* at 5.

45. Reports and recommendations of the Hearing Board and the Review Board are merely advisory. ILL. REV. STAT. ch. 110A, § 753(c) (1979).

46. 85 Ill. 2d at 314, 423 N.E.2d at 874.

47. *Id.* at 314-15, 423 N.E.2d at 874.

48. *Id.* at 316-17, 423 N.E.2d at 874. It should be noted, however, that the court recognized the possibility of alcoholism as a complete defense in rare cases. See *infra* notes 78-81 and accompanying text.

Instead, it accepted the Review Board's recommendation that his alcoholism was a mitigating factor⁴⁹ and, thus, concluded that a six-month suspension from the practice of law was appropriate.⁵⁰ The court agreed, however, with Driscoll's claim that probation was appropriate and imposed an indefinite period of supervision during and after his suspension.⁵¹

In reaching this result, the Illinois Supreme Court noted that this case did not present the rehabilitation of an active alcoholic because Driscoll was well on the road to recovery.⁵² The court stated, however, that where an attorney remains an active alcoholic, it would likely impose disbarment or suspension until further order.⁵³ Because Driscoll had established his substantial rehabilitation from alcoholism, the supreme court concluded that disbarment or suspension until further order was inappropriate for his misconduct.⁵⁴

In addition, the court noted that it has not hesitated to disbar an impaired attorney where the attorney has not shown that the impairment substantially contributed to his wrongdoing.⁵⁵ Moreover, the supreme court observed that disbarment also has been imposed where the impaired attorney did not demonstrate that rehabilitation rendered him competent to practice law.⁵⁶ The court surmised, however, that Driscoll's situation did not fall into either of these categories. Rather, it observed that active alcoholism had substantially caused Driscoll's misconduct⁵⁷ and recognized that as a result of his successful efforts to recover from alcoholism he was now fit to practice law.⁵⁸ The supreme court also concluded that Driscoll's fitness would be presumed as long as his recovery from alcoholism was ensured.⁵⁹ In view of Driscoll's successful rehabilitation, the Illinois Supreme

49. *Id.*

50. *Id.* at 317, 423 N.E.2d at 875.

51. *Id.*

52. *Id.* at 315, 423 N.E.2d at 874. The court pointed out that given the opportunity it would attempt to induce the active alcoholic's recovery. *Id.*

53. *Id.* The court's rationale for pursuing a stricter form of discipline when an active alcoholic is involved is that extra caution must be taken in order to protect the public from an active alcoholic attorney's unfitness to practice law. *Id.*

54. *Id.*

55. *Id.* In support, the supreme court cited *In re Smith*, 63 Ill. 2d 250, 347 N.E.2d 133 (1976). In *Smith*, the attorney contended that his emotional, financial, and drinking problems contributed to his conversion of client's funds. Although the Illinois Supreme Court responded that these circumstances were unfortunate, they afforded no excuse, and therefore, the court ordered disbarment. *Id.* at 254, 347 N.E.2d at 135.

56. 85 Ill. 2d at 315, 423 N.E.2d at 874 (citing *In Re Patlak*, 368 Ill. 547, 15 N.E.2d 309 (1938)).

57. 85 Ill. 2d at 315-16, 423 N.E.2d at 874. The supreme court observed that Driscoll's "judgment and will were undermined by alcoholism; he cared only for drink, and neglected all other concerns, at great cost to himself." *Id.*

58. *Id.*

59. *Id.* at 316, 423 N.E.2d at 874. The supreme court stated that "[w]hen someone 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." *Id.* at 315-16, 423 N.E.2d at 874.

Court concluded that disbarment was not warranted.

Nevertheless, the supreme court determined that alcoholism could not constitute a complete defense to the two counts of conversion.⁶⁰ It reasoned that although alcoholism might render an attorney incapable of exercising judgment in rare circumstances,⁶¹ Driscoll's alcoholism did not have such a devastating effect. Driscoll had competently handled his clients' cases until the time came to disburse their settlement proceeds.⁶² Consequently, the supreme court concluded that Driscoll should be disciplined for the two acts of conversion.⁶³

In determining the appropriate degree of discipline, the Illinois Supreme Court recognized that a prolonged period of suspension might adversely affect Driscoll's recovery.⁶⁴ The court reasoned that a six-month suspension from the practice of law would be sufficient punishment.⁶⁵ Moreover, to encourage Driscoll's continued recovery, the court prescribed an indefinite period of probation during which he would be required to report his progress to the ARDC.⁶⁶ According to the *Driscoll* court, suspension and supervised probation would best discipline Driscoll's wrongdoing because it would encourage his recovery, protect the public from incompetency, and safeguard the legal profession from reproach.⁶⁷

DRISCOLL: THE APPROPRIATE RESULT

The Illinois Supreme Court's imposition of suspension and supervised probation for Driscoll's conversion of clients' funds during his active alcoholism demonstrates the court's recognition of alcoholism as an impor-

60. *Id.* at 316, 423 N.E.2d at 874. The court stated that although Driscoll was now presently fit to practice law, his past conduct was unacceptable to the legal profession under any conditions and required some degree of punishment. The court further noted that "[n]ot all alcoholics appropriate the money of their clients; the slide from drink to dishonor may be smooth, but it is neither automatic nor uncontrollable." *Id.*

61. *Id.*

62. *Id.* at 316, 423 N.E.2d at 875.

63. *Id.* at 316-17, 423 N.E.2d at 875. The court reasoned that Driscoll had not been "entirely an innocent victim of forces beyond his control." *Id.* at 316, 423 N.E.2d at 875.

64. *Id.* at 317, 423 N.E.2d at 875. The supreme court observed that the hardship and depression which could result from prolonged suspension could induce Driscoll's return to active alcoholism. *Id.*

65. *Id.*

66. *Id.* The supreme court suggested that the rehabilitation program could be Alcoholics Anonymous, the Lawyers' Assistance Program, or a similar program acceptable to the ARDC. The supreme court reserved the right to take further action if Driscoll relapsed to active alcoholism or engaged in other activities demonstrating his unfitness to practice law. *Id.*

The court also remarked that after further experience with alcoholic attorneys it may revise its present rules, which do not provide for supervised probation. The court contended, however, that it has the inherent authority to impose this new form of discipline prior to modification of its rules. *Id.* at 318, 423 N.E.2d at 875.

67. *Id.* The supreme court emphasized: "[w]e would like to see [Driscoll] 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." *Id.*

tant consideration in the Illinois disciplinary law. The sanction imposed in *Driscoll* indicates that the supreme court will make every reasonable effort to aid an alcoholic attorney's return to a useful, productive position within the legal profession and within society. This result benefits all concerned—the disciplined attorney, the bar, and the public—and represents significant progress in the discipline of alcoholic attorney misconduct.

In keeping with its aim of imposing fair and moderate sanctions, the supreme court's sanction in *Driscoll* was fundamentally fair.⁶⁸ The court recognized Driscoll's alcoholism, not as an indication of his moral weakness, but rather as a physical and mental impairment that substantially hampered his ability to practice law competently.⁶⁹ Additionally, the court's decision to reduce the period of suspension from thirty months to six months rewarded Driscoll's efforts to recover from his disability.⁷⁰ The Illinois Supreme Court's requirement that Driscoll participate in Alcoholics Anonymous or the Lawyers' Assistance Program also encouraged his continued successful rehabilitation.⁷¹ Accomplishment of this goal was ensured by permitting the ARDC to call upon other members of the legal profession to directly supervise Driscoll's progress.⁷² The overall effect of the court's

68. See *supra* note 8 and accompanying text.

69. 85 Ill. 2d at 315, 423 N.E.2d at 873-74. For example, the supreme court noted that Driscoll's alcoholism had led him to a self-destructive course of behavior, where he cared for nothing but a drink. *Id.*

70. The supreme court specifically reduced the length of suspension to encourage Driscoll's continued rehabilitation. *Id.* at 317, 423 N.E.2d at 875. For a case consistent with *Driscoll* in another jurisdiction, see *Tenner v. State Bar of California*, 28 Cal. 3d 202, 617 P.2d 486, 168 Cal. Rptr. 333 (1980). In *Tenner*, the Supreme Court of California considered the appropriate discipline for an attorney's conversion of clients' funds and neglect of their legal matters during a period of active alcoholism. Subsequent to the misconduct, the attorney had made substantial progress in recovering from his alcoholism. The court determined that the proper discipline was a stay of a two-year suspension, and the imposition of supervised probation with strict conditions attached. If these conditions were not met, the two-year suspension would be imposed. The California Supreme Court reasoned that this approach would be sufficient to protect the public and the profession while inducing the alcoholic attorney's continued recovery. *Id.* at 206-09, 617 P.2d at 487-89, 168 Cal. Rptr. at 334-36.

71. 85 Ill. 2d at 317, 423 N.E.2d at 875. The Minnesota Supreme Court has taken a similar position in its discipline of alcoholic attorney misconduct. For example, in *In re Johnson*, 298 N.W.2d 462 (Minn. 1980) (per curiam) the supreme court imposed prolonged suspension followed by supervised probation for an attorney's conviction of theft arising from the attorney's involvement in a scheme to divert funds belonging to his employer. The attorney engaged in these activities during a period of active alcoholism, and had since begun recovery. The court stated that requiring the attorney's participation in an acceptable alcoholic treatment program, which was a condition to the attorney's suspension and to his supervised probation upon readmission, would adequately encourage the attorney's continued recovery from alcoholism. *Id.* at 463-64.

72. 85 Ill. 2d at 317, 423 N.E.2d at 875. The Illinois Supreme Court's decision allowed the ARDC to call upon the Lawyer's Assistance Program (LAP) for assistance, if it desired. *Id.* This flexible, cooperative approach allows both organizations to pursue their separate goals and permits LAP to maintain its policy of confidentiality. See generally Lavine, *supra* note 13, at 311-12 (cooperation between private bar groups and state disciplinary bodies allows both to pursue particular interests to the fullest).

Other jurisdictions have adopted a similar approach. For example, the imposition of supervised probation following the recovering alcoholic attorney's return to active practice has been

rehabilitation measures was to provide Driscoll with a moderate sanction specifically tailored to aid in his recovery and return to a competent legal practice.

The *Driscoll* court arrived at this moderate sanction without forsaking its duty to protect the public from unfit attorneys or compromising the reputation of the legal profession. The court's requirement of rehabilitation to justify the prescription of a reduced degree of discipline ensures that those returning to the practice of law will be competent to act as officers of the court.⁷³ Further, the supreme court's imposition of supervised probation provides a mechanism for guarding against relapse to active alcoholism.⁷⁴ The court's sanction also demonstrates that attorneys will be held to a demanding standard of ethics and will not be exonerated from a wrongdoing.⁷⁵ In the court's view, disbarment or suspension is likely to be imposed

instituted as a standard practice in both California and Minnesota in recent years. In 1977, the State Bar of California instituted a pilot alcohol abuse program, whereby alcoholic attorneys are supervised by members of the State Bar to ensure the attorney's compliance with the conditions of his or her probation. *Tenner v. State Bar of California*, 28 Cal. 3d 202, 617 P.2d 486, 168 Cal. Rptr. 333 (1980). In *Tenner*, the California Supreme Court designated the State Bar as *Tenner's* probation officer during his probationary period. It has been estimated that out of 76,000 persons licensed to practice law in California, 1,500 have taken advantage of this program. Of these 1,500, approximately 65% have remained sober following termination of supervised probation. Telephone interview with Russell Longaway, Counsel, State Bar of California (November 18, 1981).

Minnesota utilizes a similar procedure to that in California, but without the aid of a state bar association. Instead, the Minnesota Supreme Court has delegated to the Director of its Professional Responsibility Board the authority to designate particular attorneys from Lawyers Concerned for Lawyers (LCL), a private organization, who must directly supervise the disciplined attorneys to ensure their compliance with the terms of probation. *In re Nurnberger*, Stipulation, File No. 48931, *In re Nurnberger*, 272 N.W.2d 914 (Minn. 1978) exemplifies this approach. In *Nurnberger*, two attorneys from LCL agreed in writing to supervise the recovering alcoholic's progress and to report to the Director of the Professional Responsibility Board periodically regarding the attorney's compliance with the conditions of probation. *Id.*

73. 85 Ill. 2d at 317, 423 N.E.2d at 874. For an analysis in accordance with this view see *In re Walker*, 254 N.W.2d 452 (S.D. 1977). In *Walker*, the court stayed suspension of an attorney for conviction of criminal conduct, noting that his misconduct had occurred while he was an active alcoholic. Pointing out that the attorney had begun successful rehabilitation two and one-half years prior to the court's review, the court stated:

The respondent did not receive the consideration that we have given him today because he is an admitted alcoholic but rather because he is, in our view, a bona fide recovered . . . alcoholic who has for the past two and one-half years demonstrated his fitness to continue in the practice of law.

Id. at 457.

74. 85 Ill. 2d at 317, 423 N.E.2d at 875. *Cf.* *In re Lewelling*, 244 Or. 282, 417 P.2d 1019 (1966). In *Lewelling*, the Supreme Court of Oregon disciplined an attorney for neglect of clients' legal matters during active alcoholism by staying suspension and placing the attorney on probation during his continued recovery from alcoholism. The court reasoned that since the attorney had already begun rehabilitation, probation would be an "adequate measure to protect the public against a recurrence of the harm" which had been caused by the attorney's alcoholism. *Id.* at 283, 417 P.2d at 1020.

75. For example, the *Driscoll* court emphasized that conversion is theft "of the most aggravating sort, . . . [un]acceptable to the bar under any circumstances" 85 Ill. 2d at 316, 423 N.E.2d at 874.

where an attorney has not yet sought treatment for alcoholism or where rehabilitation has failed to restore the attorney to a position of fitness.⁷⁶ Accordingly, incompetent attorneys will be prohibited from practicing law.

By encouraging Driscoll's return to a productive position within the legal profession, the Illinois Supreme Court implicitly recognized the value of his legal skills, knowledge, and experience. In aiding Driscoll's return to "an active practice and a position of esteem in his profession,"⁷⁷ rather than ostracizing him from the community, both society and Driscoll benefited.

CRITICISM OF THE *DRISCOLL* COURT'S ANALYSIS

Although the Illinois Supreme Court's sanction and supporting rationale are primarily sound, a closer scrutiny reveals that the decision may actually impede achievement of the goals of attorney disciplinary actions. Specifically, the court's assertion that, in some cases, alcoholism may constitute a complete defense to a charge of misconduct⁷⁸ is counterpoised to protecting the public from unfit attorneys and preserving the reputation of the bar.

A successful assertion of alcoholism as a complete defense to the attorney's misconduct would produce an anomaly in that no discipline would be imposed on an attorney who committed a wrong. If the court recognizes alcoholism as a complete defense to attorney misconduct, it would be unable to prohibit the attorney from practicing law pending rehabilitation. Moreover, the court would be unable to impose supervised probation to guard against relapse. These results would leave the public defenseless against attorney incompetency and would severely undermine the bar's reputation for fitness.⁷⁹

The supreme court justified its recognition of alcoholism as a complete defense on the ground that alcoholism may in some instances render an individual so incapable of exercising judgment that the individual should be exculpated for a wrongdoing.⁸⁰ The logical implication of this assertion is that an attorney's misconduct may go undisciplined as the attorney's active

76. *Id.* at 315, 423 N.E.2d at 874. *Cf.* *Comm. on Prof. Ethics v. Bergren*, 300 N.W.2d 85 (Iowa 1980). In *Bergren*, the court confronted the issue of the appropriate discipline of an active alcoholic attorney's failure to successfully begin recovery and consequent neglect of clients' legal matters. The court determined that suspension for one year and until the attorney recovered was required to prohibit the attorney's practice of law during his period of incompetence. *Id.* at 87.

77. 85 Ill. 2d at 318, 423 N.E.2d at 875.

78. *Id.* at 316, 423 N.E.2d at 874. In its analysis, the *Driscoll* court stated that "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." *Id.*

79. In fact, failure to impose a sanction may serve to inhibit rather than promote the active alcoholic's recovery. It has been generally recognized that allowing the active alcoholic to refuse to assume responsibility for the results of alcoholism usually prolongs the individual's active alcoholism. See *The Not So Silent Killer*, 14 ARIZ. B.J. 5, 8 (1978) (alcoholic attorney admitted that those who permitted him to escape consequences of alcoholism inhibited his seeking treatment); Lavine, *supra* note 13, at 311 (covering up for active alcoholic attorney's incompetence unwittingly contributes to attorney's deterioration).

80. 85 Ill. 2d at 316, 423 N.E.2d at 874.

alcoholism becomes more severe and debilitating. Thus, the more incompetent the alcoholic attorney, the more likely it is that he or she will be allowed to continue the practice of law.

The logical extension of the court's approach also may lead to disturbing consequences in other areas. For example, the *Driscoll* court's rationale could apply with equal persuasion to an attorney's alleged narcotics use, emotional aberrations, or occasional memory lapses. If these claims are recognized as complete defenses to a wrongful act, incompetent and potentially dishonest attorneys will not be disciplined and will continue to practice law.

In short, application of the *Driscoll* court's complete defense assertion could serve to undermine the dual goals of protecting the public from unfit attorneys and safeguarding the bar's reputation. To avoid this result, the Illinois Supreme Court should establish explicit rules⁸¹ that would allow alcoholism to serve as a mitigating factor in appropriate circumstances, but would not allow it to be considered a complete defense.

A SUGGESTED APPROACH

The Illinois Supreme Court should codify *Driscoll's* treatment of alcoholism as a mitigating factor and expressly delineate what role this factor will assume in attorney disciplinary decisions. Initially, the court should define the terms "active alcoholism" and "recovering alcoholism." This would facilitate the application of alcoholism as a mitigating factor or as an aggravating factor in determining the appropriate degree of discipline. Active alcoholism should be defined as sufficient proof that dependence on alcohol so seriously impairs the attorney's ability to practice law competently that the attorney's conduct has violated the Illinois Code of Professional Responsibility.⁸² Recovering alcoholism, on the other hand, should be articulated as sufficient proof of rehabilitation from alcoholism such that the attorney is competent to practice law in accordance with the Illinois Code of Professional Responsibility.⁸³

81. The Illinois Supreme Court's adoption in 1981 of the Code of Professional Responsibility, ILL. REV. STAT. ch. 110A, § 771 (Smith-Hurd Supp. 1981), exemplifies the court's desire to provide more explicit guidelines for the discipline of attorney misconduct. The court's adoption of rules which specifically set forth the procedure for the discipline of alcoholic attorney misconduct would simply be another step in this process. The option is also available to the court to clarify this area on a case-by-case basis. Such an approach might prove unsatisfactory, however, because in the interim it would fail to provide explicit guidelines to hearing and review boards and attorneys subject to discipline.

82. *Cf. Comm. on Prof. Ethics v. Bergren*, 300 N.W.2d 85 (Iowa 1980) (active alcoholism leading to wrongdoing supported a finding of unfitness to practice law); *In re Stearns*, 309 Minn. 548, 243 N.W.2d 312 (1976) (active alcoholism contributing to misconduct evidenced incompetency to practice law).

83. *Cf. Tenner v. State Bar of California*, 28 Cal. 3d 202, 207, 617 P.2d 486, 488, 168 Cal. Rptr. 333, 335 (1980) (alcoholic attorney's rehabilitation demonstrated fitness to practice law); *In re Walker*, 254 N.W.2d 452, 457 (S.D. 1977) (alcoholic attorney's two-year abstention from alcohol and participation in treatment programs signified competency).

In addition, the supreme court's rules should provide that an attorney's active alcoholism at the time of misconduct may be considered an aggravating factor in determining the appropriate degree of discipline where the attorney has not subsequently been rehabilitated.⁸⁴ The rules also should set forth that an attorney's active alcoholism at the time of misconduct, where the attorney has subsequently been rehabilitated, may be considered a mitigating factor to a charge of misconduct.⁸⁵ Further, the rules should stipulate that an attorney's petition for reinstatement will be granted when rehabilitation from alcoholism has been established by clear and convincing evidence.⁸⁶

A rule requiring an alcoholic attorney's abstinence from alcohol and participation in a rehabilitation program acceptable to the disciplined attorney and to the ARDC should also be adopted.⁸⁷ This requirement should be imposed upon the period of suspension and the period of supervised probation.⁸⁸ Direct supervision of the attorney's progress would be accomplished by a recovering alcoholic and an attorney suitable to both the disciplined attorney and to the ARDC.⁸⁹ This team would be responsible for making

84. Cf. *Comm. on Prof. Ethics v. Bergren*, 300 N.W.2d 85, 87 (Iowa 1980) (attorney's relapse into active alcoholism warranted additional discipline). *In re Kumbera*, 91 Wash. 2d 401, 405, 588 P.2d 1167, 1170 (1979) (conduct resistant to efforts at rehabilitation is aggravating factor in determining requisite discipline).

85. Cf. *Tenner v. State Bar of California*, 28 Cal. 3d 202, 207, 617 P.2d 486, 488, 168 Cal. Rptr. 333, 335 (1980) (recovering alcoholic attorney's strenuous rehabilitative efforts considered in mitigation); *In re Nurnberger*, 272 N.W.2d 914, 914 (Minn. 1978) (recovering alcoholic attorney's successful efforts to rehabilitate considered in mitigation); *In re Walker*, 254 N.W.2d 452, 457 (S.D. 1977) (recovering alcoholic attorney's successful recovery considered grounds for lesser degree of discipline); *In re Kumbera*, 91 Wash. 2d 401, 405, 588 P.2d 1167, 1170 (1979) (recovering alcoholic attorney's voluntary, successful efforts to rehabilitate considered in mitigation). Thus, in a future disciplinary action where the recovering alcoholic attorney's misconduct is not as egregious as was Driscoll's, the Illinois Supreme Court could reasonably conclude that supervised probation without a period of suspension would be appropriate.

86. Cf. *In re McDonnell*, 82 Ill. 2d 481, 413 N.E.2d 375 (1980) (recovery from alcoholism favorably considered in granting petition for reinstatement).

87. Cf. *Tenner v. State Bar of California*, 28 Cal. 3d 202, 208, 617 P.2d 486, 489, 168 Cal. Rptr. 333, 335 (1980) (recovering alcoholic attorney's probation conditioned on participation in alcohol abuse program); *In re Johnson*, 298 N.W.2d 462, 464 (Minn. 1980) (per curiam) (recovering alcoholic attorney's suspension and probation conditioned on attorney's participation in acceptable treatment program).

88. For example, Rule 15 of the Minnesota Supreme Court provides that the court may "place [an attorney] on a probationary status for a stated period, or until further order of [the] court, with such conditions as [the] court may specify and to be supervised by the Director [of the Lawyers Professional Board]." Minn. Sup. Ct. R. on Lawyers Prof. Resp. 15, MINN. STAT. ANN. ch. 52 (West 1977). See *In re Johnson*, 298 N.W.2d 462, 464 (Minn. 1980) (per curiam) (alcoholic attorney's suspension and probation conditioned on participation in alcohol treatment program and abstinence from alcohol).

89. The ARDC and the disciplined alcoholic attorney could choose an individual associated with LAP, Alcoholics Anonymous, or some other private treatment group. In addition, these parties could enter into agreements which specifically designate the duties and responsibilities of the supervising team. See, e.g., *In re Nurnberger*, Stipulation, File No. 48931, *In re Nurnberger*, 272 N.W.2d 914 (Minn. 1978). Supervision by another recovering alcoholic would aid

periodic reports to the ARDC regarding the disciplined attorney's progress.⁹⁰ In the event that the attorney relapsed to active alcoholism, additional discipline would be warranted.⁹¹

The Illinois Supreme Court's adoption of these suggested rules would highlight *Driscoll's* positive impact and avoid its flawed assertion that alcoholism is a complete defense to acts of attorney misconduct. Additionally, the proposed rules would ensure that the public is served by fit attorneys, would protect the bar's reputation for competency, and would encourage rehabilitation from alcoholism.

CONCLUSION

In *In re Driscoll*, the Illinois Supreme Court confronted the issue of disciplining an alcoholic attorney's conversion of his clients' funds in a way that would protect the public and the integrity of the bar, yet encourage the attorney's continued recovery from alcoholism. The court's imposition of suspension and supervised probation should achieve these goals. The supreme court also rejected its previous stance that alcoholic attorneys should be expelled from the legal profession and in so doing made significant progress in the discipline of alcoholic attorney misconduct.

Although the *Driscoll* court's decision is primarily sound, its reasoning that alcoholism may constitute a complete defense under other circumstances is a proper subject of criticism. The application of this assertion may preclude the supreme court's suspension and supervised probation of alcoholic attorneys in future disciplinary cases and may fail to shelter the public from unfit attorneys or maintain the integrity of the legal profession. To remedy this deficiency in the *Driscoll* decision, it is urged that the Illinois Supreme Court develop a comprehensive procedure that would allow recovering alcoholism to be considered as a mitigation factor and would require supervised probation during a recovering alcoholic attorney's practice of law. These suggested procedures provide sufficient guidelines to ensure that alcoholic attorney misconduct is disciplined in a manner that is fundamentally fair to the alcoholic, yet at the same time protects the public from unfit attorneys and safeguards the bar's reputation for competency.

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in ensuring that the supervised attorney had not relapsed into active alcoholism. Supervision by another attorney would also ensure that the supervised attorney was performing legal duties in accordance with the Code. Middleton, *supra* note 21, at 30.

90. *Cf. In re Flannery*, No. 80-20 BD (Mass. Nov. 5, 1980) (supervisors responsible for periodic reports to Bar Counsel regarding alcoholic attorney's progress); *In re Nurnberger*, Stipulation, File No. 48931, *In re Nurnberger*, 272 N.W.2d 914 (Minn. 1978) (supervisors responsible for reporting to Director of Lawyers Professional Responsibility Board).

91. *Cf. In re Lewelling*, 244 Or. 282, 284, 417 P.2d 1019, 1020 (1966) (recovering alcoholic attorney's relapse into active alcoholism or misconduct would be grounds for imposition of additional discipline); *In re Walker*, 254 N.W.2d 452, 457 (S.D. 1977) (future relapse would be grounds for additional suspension).

