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## **BOUNCED from the BAR:**

### Lawyers Who Lose Their Licenses for Fraud or Other Misconduct Can Win Reinstatement, if They Practice in the Right State

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IN THE LATE 1990s, NEW JERSEY BAR LEADERS fought hard to keep a well-known lawyer from being disbarred; they felt his severe clinical depression should mitigate, and said so in an amicus brief. It was the biggest in a string of challenges over the years trying to soften the toughest lawyer discipline system in the country.

They lost.

Joel A. Greenberg was disbarred in 1998 for taking \$ 35,000 from his Atlantic City law firm. His transgression came under the Wilson rule, set out in a 1979 New Jersey Supreme Court decision that leaves no wiggle room. Anyone who takes client funds shall be permanently disbarred. Period. And the Greenberg court treated law firm funds the same way.

But then, Greenberg won. A year after being disbarred in New Jersey, he was admitted to practice in Pennsylvania, where he convinced the Board of Law Examiners that he was fit to practice.

There are two truisms about disbarment. It most often stems from dipping into client funds. And the ease or difficulty of getting a law license back depends on where you practice.

New Jersey, for example, is widely known for having the professional equivalent of life without parole for any lawyer who knowingly takes from a client.

Next-door-neighbor Pennsylvania was known for being more lenient, but it slammed the door immediately after admitting Greenberg and another disbarred New Jersey lawyer, Dennis J. Iulo. After Greenberg and Iulo were admitted to practice, the state Office of Disciplinary Counsel moved to impose reciprocal disbarment based on the action in New Jersey. The Pennsylvania Supreme Court ruled that, while reciprocal disbarment would be legal, it would be a gross injustice. *In re Iulo*, 766 A.2d 35 (Pa. 2001).

But the court immediately amended its rule to require a certificate of good standing to show a lawyer seeking admission is not under suspension or disbarment elsewhere.

In the 10-year period before Pennsylvania changed its rule, it readmitted 37 lawyers its authorities had disbarred. During the same time period, Ohio, New Jersey and Delaware, all neighbors, let no disbarred lawyer return to the profession. Of the 37 readmitted in

Pennsylvania, 22 had taken client funds.

"We're happy to send all our disbarred attorneys to Pennsylvania or any other state that wants them," quips David E. Johnson Jr., director of New Jersey's Office of Attorney Ethics, which prosecutes discipline cases. "Good luck. Hire them for your friends and relatives."

There is no nationwide statistical databank for disbarment, but jurisdiction after jurisdiction reports theft or misuse of client funds to be the No. 1 reason for revoking law licenses. This can be via loans, commingling funds, improper use of escrow or trust accounts, or theft by fraud.

For discipline cases overall--ranging from private admonition to suspension and ultimately disbarment--most transgressions concern negligence or neglect.

"You don't usually see a lot of exotica in terms of the basis for disbarment," says James Grogan, chief counsel for the Attorney Registration and Disciplinary Commission in Illinois. "It's the tried-and-true things: client funds, serial neglect, fraud and criminal convictions. It's pretty consistent because you're dealing with people. Troubles are universal, and professionals have troubles."

Or sometimes, they just want more. Louis Robles made a lot of money as a prominent plaintiffs lawyer handling class actions nationwide in asbestos and other mass torts. But then the Miami lawyer was accused of taking \$ 800,000 that was supposed to go to his clients.

He was disbarred for misappropriation in May.

Robles was a high-profile lawyer disbarred for a high-dollar taking from clients. He collected settlements from asbestos manufacturers and other companies and failed to pass some of the money along to 293 clients, The Florida Bar concluded. He also billed clients for extra fees for computer services from a company he owns, the bar said.

It was a high-profile case, and the bar and state's high court came down hard on Robles.

Florida added the possibility of true permanent disbarment in 1998, with no chance of reinstatement, but Robles was spared that. Still, it is unlikely he will be reinstated, according to a veteran bar prosecutor.

In New Jersey, there would be no question. No jurisdiction is tougher on dipping into client funds.

Johnson is a strong proponent of permanent disbarment. He is widely known among bar counsel nationwide as the toughest prosecutor of attorneys in the toughest state for lawyer discipline. New Jersey disbarred 42 lawyers last year.

#### **OTHER STRINGENT JURISDICTIONS**

NEW JERSEY IS ONE OF 10 STATES WITH PROVISIONS for permanent disbarment in certain cases, meaning lawyers cannot seek reinstatement. The other states with some form of permanent disbarment are Alabama, California, Florida, Indiana, Kentucky, Louisiana, Mississippi, Ohio and Oregon.

Most jurisdictions place greater emphasis on rehabilitation than punishment, particularly when mental illness, alcohol or drug dependence is involved. Washington, D.C., is typical. *In*

*re Kersey*, 520 A.2d 321 (1987).

But critics question whether there was any mitigation in the case of one Washington, D.C., lawyer, Eugene T. Austin. A hearing committee of the Board on Professional Responsibility found that Austin had borrowed \$ 26,875 from an elderly client with little education and failed to repay the money. The woman then hired another lawyer to pursue the debt. The committee cited circumstantial evidence that Austin drafted a letter purportedly from her to the other lawyer to say the matter was being solved and she no longer needed his services. Austin filed for bankruptcy and moved to Georgia. He did not appear in person or otherwise fight an effort to disbar him.

The D.C. Bar's Client Security Fund gave the woman nearly \$ 29,000 to cover principal and interest on the money Austin took.

The hearing committee, made up of two lawyers and one member of the public, recommended that Austin be disbarred. But the full Board on Professional Responsibility, which includes the hearing committee and has seven lawyers and two members of the public, overruled that decision and suspended Austin from practice for 18 months.

The board said that because it believed Austin intended to repay the loan (he had made three payments totaling \$ 1,700) and had no prior discipline problems, he should be suspended. The board recommended that reinstatement be conditioned on proof of fitness and restitution. That decision is on appeal to the D.C. Court of Appeals. *In re Eugene T. Austin*, No. 56-99.

Such cases fuel public skepticism about lawyer discipline. Still, reinstatement after disbarment is a long shot in most jurisdictions, including Washington, D.C.

"In most places, these people tend to fall off the face of the earth," says Grogan, whose office oversees discipline for Illinois' more than 75,000 registered attorneys. "The success rates are pretty low. It was less than 5 percent the last time we tracked the stats for Illinois."

Last year, 31 Illinois lawyers were disbarred.

Rehabilitation is the key to reinstatement, as well as making former clients whole, if that was the reason for disbarment. A record of community service or charity work since the disbarment is almost an unwritten requirement.

"You generally have to grovel and spell out chapter and verse that what you did was a terrible thing, and you're very sorry and not trying to excuse the conduct but trying to explain how you came to do it," says Susan Brotman, who practices in a small New York City firm that specializes in lawyer discipline matters. "It is time-consuming and very expensive."

Brotman spent more than five years as an associate counsel in the First Judicial Department Disciplinary Committee, which regulates lawyers in Manhattan and the Bronx. She recently was involved in the case of a disbarred lawyer who sought reinstatement 10 or more times before finally succeeding, though hurdles remain. It took that long, she says, for her client to take full responsibility for his actions.

New York won't accept reinstatement applications for seven years, the longest period of all the states. (The court may reduce that term at the time of disbarment, except when the

discipline is the result of a felony conviction.) And the applicant must pass the bar exam, a requirement in a number of states, including Florida and Texas.

"That's no easy feat for someone who is older and maybe not in the best health," Brotman says.

The ABA Model Rules for Lawyer Disciplinary Enforcement recommend disbarment last for five years and set strict standards for readmission. In some states, disbarred lawyers can petition for reinstatement after relatively brief periods, especially if they consent to the discipline.

In Illinois, for example, disbarment is for five years, but if the lawyer consents to the sanction, it is three years. The reinstatement process takes about two years and, says disciplinary counsel Grogan, "remember, it rarely happens."

And when it does, he says, the lawyer's age is usually pertinent to a court's consideration of the likelihood of rehabilitation. "For someone in their 70s, there's not much chance for reinstatement. Someone younger, 30s or 40s, at some point in the future might try to get back in."

It is likely that, though it goes unsaid, age and family circumstances sometimes can make the difference between suspension and disbarment. That's probably what happened, according to several lawyers specializing in discipline matters, in the case of a New York City lawyer recently disciplined for forging court documents over a number of years to convince clients their cases were proceeding, when in fact he neglected them. Testimony indicated that Lawrence M. Furtzaig, 44, the sole support for his wife and young triplets, suffered severe depression, caused in part by the pressure to succeed in his law firm.

In overruling the Departmental Disciplinary Committee's recommendation that Furtzaig be disbarred, the Appellate Division, First Department, ruled that his mental condition was a mitigating factor. It also gave considerable weight to the fact that not only had he not taken client funds, Furtzaig had given \$ 60,000 of his own money to a client to cover up his neglect in one case. *In re Furtzaig*, 2003 N.Y. Slip Op. 13023 (April 15).

Most scholars and ethicists say lawyer discipline is primarily to protect the public and not for punishment. It is believed that the criminal justice system can take care of the more egregious transgressions.

Indeed, public perception of widespread leniency in the lawyer discipline system was a reason for California's adoption in 1996 of permanent disbarment in some cases. But also part of the reasoning is the finding in Louisiana a few years ago when the Louisiana State Bar Association looked into recidivism among disbarred lawyers after readmission.

The bar looked at disbarments over a 25-year period, 1975 to 2000, and found that 85 percent of the lawyers who applied for readmission succeeded and that 44 percent of them were disciplined again.

"It was a figure that stunned us," says Charles B. Plattsmier, chief discipline counsel for the bar. In 2001, in large part as a result of the study, the Louisiana Supreme Court adopted a provision for permanent disbarment, listing nine types of conduct in the guidelines. The first: "Repeated or multiple instances of intentional conversion of client funds with substantial harm."

Some jurisdictions are so concerned about the trustworthiness of suspended or disbarred lawyers that they are not permitted to work in law offices as paralegals, researchers or sometimes even as janitors. It varies. California, for example, permits them to work as paralegals. On the other hand, the Indiana Supreme Court in May issued a private reprimand to a lawyer who hired a suspended lawyer to work for her, first as a bookkeeper and then as a paralegal. That violated the rule that no suspended or disbarred lawyer may "maintain a presence" in an office where law is practiced. *In re Anonymous*, 787 N.E.2d 883.

"The temptations are great," says Joseph Glavin, an insurance company general counsel who used to represent lawyers in New Jersey discipline matters. "I have control of millions in trust accounts and can imagine what it must be like for some lawyers with problems. I have no sympathy for them, but I can imagine what it's like when there's a drop in the economy or the real estate market goes south."

Glavin once represented a lawyer who had a severe drinking problem and neglected several cases over a number of years. The New Jersey Supreme Court voted 4-3 not to disbar him under the mandatory disbarment rule for taking client funds. It was a close case because client funds had been misused. But it had occurred as a result of the lawyer's confusion over separate accounts kept by his secretary. Testimony indicated she kept money in various accounts so he could not access it, to ensure there was enough money to run the office.

The lawyer was suspended for five years rather than permanently disbarred. He is now a federal administrative law judge. "Now that's rehabilitation," Glavin says.