



**PennState**  
Dickinson Law

**DICKINSON LAW REVIEW**  
PUBLISHED SINCE 1897

---

Volume 92  
Issue 3 *Dickinson Law Review* - Volume 92,  
1987-1988

---

3-1-1988

## The Cocaine Impaired Lawyer

Raymond P. O'Keefe

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

---

### Recommended Citation

Raymond P. O'Keefe, *The Cocaine Impaired Lawyer*, 92 DICK. L. REV. 615 (1988).  
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol92/iss3/5>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact [lja10@psu.edu](mailto:lja10@psu.edu).

# The Cocaine Impaired Lawyer

## Commentary by Raymond P. O'Keefe\*

### I. Introduction

Society has a new epidemic, cocaine addiction, from which attorneys are not immune.<sup>1</sup> Although the solution escapes precise definition at the present time, the bar should recognize and understand the problem and develop procedures to deal effectively with this epidemic.

The problems of addiction start with the difficulty of defining and quantifying it. The words addiction and alcoholism are often used interchangeably when addressing chemical dependency. For purposes of this article, an acceptable definition of alcoholism and other addictions may be stated as follows:

The alcoholic [addict] suffers from a disease that progresses through a number of stages. It has biological, cultural and psychological elements. Its symptoms may include increased tolerance for alcohol [drugs], physical dependence on it, impaired judgment, blackouts (period in which the alcoholic [addict] is conscious but cannot later remember), and an inability to predict how one will act on any given occasion . . . most alcoholics [addicts] go through withdrawal when they abruptly stop . . .<sup>2</sup>

Because addiction is a disease which is typified by its progression and nurtured denial, the persons most closely involved are frequently the last to admit or recognize that a problem exists.<sup>3</sup> For this reason, studies of the full magnitude of the problem are based only

---

\* Professor of Law, St. Thomas University School of Law; Vice Chairman of The American Bar Association Committee on Alcohol and Drug Law Reform; member of the American Bar Association Advisory Commission on Youth, Alcohol and Drug Problems; Member of The Florida Bar Committee on Attorney Alcoholism; Founding Chairman of the New York State Bar Association Committee on Lawyer Alcoholism and Drug Abuse.

The author acknowledges his debt to Victoria Lieva A.B., J.D. for her research done in connection with this paper.

1. See, e.g., *The Mystery of a Star's Death*, NEWSWEEK, June 30, 1986, at 29; *Cocaine a "Loaded Gun"*, NEWSWEEK, July 7, 1986, at 26; *A Killer Stalks the Locker Room*, U.S. NEWS AND WORLD REPORT, July 14, 1986, at 6; Keteyians & Selcraig, *A Killer Strikes Again*, SPORTS ILLUSTRATED, July 7, 1986, at 18; *Cocaine Linked to Noted Lawyer's Death*, Miami Herald, June 27, 1986, at C1, col. \_\_\_\_.

2. See, e.g., L. BISSELL & P. HABERMAN, ALCOHOLISM IN THE PROFESSIONS, 40 (1984).

3. J. CALIFANO, REPORT TO THE GOVERNOR OF NEW YORK ON DRUG ABUSE AND ALCOHOLISM 48 (1982) [hereinafter CALIFANO REPORT].

on estimates. We can now speak of the "disease of addiction," but this understanding has been available only for a short period of time.

Because of the recognition of addiction as a disease by the American Medical Association, the works of many medical educators,<sup>4</sup> and the driving force of Alcoholics Anonymous, the disease concept received the acknowledgement of the professions in the 1950s and 1960s. By 1976, this widespread recognition caused the California Bar Association to take a bold step by establishing a program to aid attorneys and judges with alcohol abuse problems.

Medical problems associated with addiction result in difficulties for all professions, and for the legal profession in particular. It is difficult to assess the amount of harm caused by lawyers who suffer from addiction; however, there is no doubt of its significance.<sup>5</sup> Yet, intervention is possible at any point in the progression of the disease, and treatment leading to rehabilitation is available.

The changes in alcoholism treatment came about as the result of other drugs becoming a great social issue. Initially, addiction to drugs other than alcohol was treated by including it in alcohol treatment programs since almost sixty percent of alcoholics are also addicted to other depressants, such as mild sedatives and sleeping pills.<sup>6</sup> The emergence of narcotics as recreational drugs enhanced the need to include drug abuse in these existing alcohol treatment programs.<sup>7</sup>

Cocaine abuse represents an additional problem for the professions since all private use is criminal; the mere possession of cocaine is a felony.<sup>8</sup> As it relates to the legal profession, conviction mandates disciplinary action for violation of the rules of professional responsibility.<sup>9</sup> The ethical standards provide that attorneys not "engage in illegal conduct involving moral turpitude."<sup>10</sup> Highlighting the seriousness of such an offense is the American Bar Association footnote to the rule which states:

The most obvious non-professional ground for disbarment is conviction of a felony. Most states make conviction for a felony

4. BISSELL & HABERMAN, *supra* note 2, at 22.

5. U.S. DEP'T OF HEALTH AND HUM. SERVS., TARGET: ALCOHOL ABUSE IN THE HARD TO REACH WORK FORCE 210 (1982).

6. Olms, *The Disease Concept of Alcoholism*, 2 ALCOHOLISM CLINICAL AND EXPERIMENTAL RES. 7 (July 1978).

7. Washton, *Cocaine Abuse Overview: Testimony Before the Select Committee on Narcotics*, GRASSROOTS, DEVELOPMENT 32 (July 1985).

8. *See, e.g.*, FLA. STAT. ANN. § 893.13 (West 1976 & 1987 Supp.).

9. *See generally* MODEL CODE OF PROFESSIONAL RESPONSIBILITY, DR 1-102(A) (1985).

10. *Id.* at DR 1-102(A)(3).

grounds for automatic disbarment. Some of these states . . . make disbarment mandatory, upon conviction for any felony, while others require disbarment only for those felonies which involve moral turpitude."<sup>11</sup>

Standard 9 of the ABA Standards For Lawyer Discipline and Disability Proceedings provides for disciplinary proceedings in the case of conviction of a serious crime.<sup>12</sup> This standard also provides that "upon receipt of a proposed order for interim suspension predicated upon the conviction of a lawyer for a 'serious crime,' the court should immediately and regardless of the pendency of any appeal, place the lawyer on interim suspension."<sup>13</sup>

The once accepted concept of allowing the alcoholic to "hit bottom" will not assist the cocaine addicted attorney whose "bottom" is not reached until he is convicted of a crime. For the cocaine addicted attorney, intervention becomes essential in treating the disease. Intervention is a method of interrupting the symptoms of alcoholism or drug addiction by using the consequences of the disease progression, information, and counselling as motivational devices to facilitate entry into diagnosis and treatment.<sup>14</sup> Intervention is usually accomplished by confrontation. Consequently it poses significant questions concerning confidentiality and the individual's right to privacy.

Ideally, judgmental evaluation of the addicted attorney should be rendered concurrently with medical treatment. Arguably, the degree of criminality is less in the case of the addicted attorney who drinks or uses drugs to satisfy a compulsion over which he or she is powerless, as compared to a person who drinks or uses drugs for recreation, or deals in them for profit. Although the addict, recreational or social user, and dealer may commit the same offense — "possession" — the criminality of each offense surely is different and should merit individual consideration in each of the three circumstances. Addicts, including addicted attorneys, should be granted the opportunity for treatment with conviction and punishment to be predicated upon the result of treatment. The criminality of the problem, while it cannot be overlooked, should be considered in a more humane manner if we are to serve the profession and save a valuable

---

11. *Id.* at DR 1-102(A)(3), n.13 (1985).

12. ABA STANDARDS FOR LAWYER DISCIPLINE AND DISCIPLINARY PROCEEDINGS, Standard 9 (1983).

13. *Id.* at Standard 9.2.

14. See ABA, *Working Papers on Alcoholism and Intervention and the Right to Privacy Conference* (March 1983).

human resource.

## II. Historical Perspective

The use of cocaine dates back to the time of the Incas who considered the plant a divine gift from the gods.<sup>15</sup> Sigmund Freud wrote his findings and recommendations on the use of cocaine for medical and psychological purposes.<sup>16</sup> Freud and his contemporaries found that the new drug was a powerful stimulant with valuable use as a topical anesthetic.<sup>17</sup> During the years that followed, cocaine appeared in several different forms, including flaked crystals, tablets, ointments, and solutions for injections. Traces of the substance were even included in the original formula for Coca-Cola until 1903.<sup>18</sup>

By the turn of the century, however, psychological deterioration, demoralization, and violence were being associated with the use of the drug.<sup>19</sup> Initial attempts to legislate began with the Federal Pure Food and Drug Act of 1906.<sup>20</sup> Subsequently, the Harrison Act of 1914<sup>21</sup> extended controls by requiring registration of handlers and the report of all transfers. Although these applied limitations brought about a temporary decline of usage, by the 1970s cocaine emerged as a widespread recreational drug.<sup>22</sup> In 1970, the Comprehensive Drug Abuse Prevention and Control Act<sup>23</sup> introduced the scheduled system<sup>24</sup> in use today. The extent of control imposed by this system is based on the potential for abuse, recognized medical use, and the extent of user dependency on the particular drug.

The cocaine using attorney of the 1980s is similar to the alcoholic attorney of the prohibition era. In both cases the addiction is criminal.

15. C. Dye, *Cocaine Papers: From Freud to Freebase*, DO IT NOW FOUNDATION No. 102 (Oct. 1981).

16. Bosch & School, *Cocaine — Review of Current Literature & Interface with the Law*, 3 BEHAVIORAL SCI. & L. 283, 287 (Summer 1985).

17. Dye, *supra* note 14, at 1.

18. R. Siegel, *Changing Patterns of Cocaine Use: Longitudinal Observations, Consequences and Treatment*, GRASSROOTS DEVELOPMENT (reprinted from NIDA Research Monograph, No. 50, DHHS Publication No. (ADM) 84-1326).

19. *Id.* at 10.

20. Federal Pure Food and Drug Act, ch. 3915, 34 Stat. 768 (1906).

21. Harrison Act, ch. 1, 38 Stat. 785 (1914).

22. Dye, *supra* note 14, at 1.

23. Pub. L. No. 91-513, 84 Stat. 1236 (1970).

24. See 21 U.S.C.A. §§ 811-812 (West 1981).

### A. Alcoholic Attorneys

In the 1920s, alcoholic attorneys were labeled as weakwilled, eccentric, or ill-mannered. Their behavior went unchecked. Fellow professionals became "enablers" by covering-up inappropriate behavior. Professional organizations offered little or no help for these individuals. Unfortunately, the bar associations ignored the problem until ethical violations occurred. By that time, there were no options other than suspension or disbarment.

In 1922, the Supreme Court of Oregon held that an attorney who was convicted of the possession and sale of an intoxicating liquor had committed a crime involving moral turpitude.<sup>25</sup> The court ordered disbarment, which was required since the attorney's crime involved moral turpitude. In *Mays v. Mason*,<sup>26</sup> moral turpitude was defined as "an act of baseness, vileness, and depravity in the private or social duties which a man owes to his fellowman, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

By 1927, courts seemed to be less stringent in dealing with moral turpitude in cases involving the possession and sale of intoxicating liquor. For example, the Eighth Circuit Court of Appeals held that an attorney's storage of 700 quarts of beer in his house for personal consumption did not involve moral turpitude.<sup>27</sup> The court also noted that it had "no regulatory power over the private life of members of the Bar, and cannot exclude them from practice for acts in that capacity unless they be such as to clearly demonstrate their unfitness to longer enjoy the privileges of the profession."<sup>28</sup> In the same year, an Alabama court held that distilling liquor was not a crime involving moral turpitude.<sup>29</sup>

The prohibition laws mandated by the eighteenth amendment were repealed by the twenty-first amendment.<sup>30</sup> The professional organizations and the courts reacted, but not by changing the degree of the punishment. Instead, they held that the attorneys found guilty of intoxication or other crimes involving drunkenness were to be judged by a lower standard. The new standard became "conduct that adversely reflects on his fitness to practice law."<sup>31</sup> Even though the

---

25. *State ex rel. Young v. Edmunson*, 103 Or. 243, \_\_\_\_\_, 204 P. 619, 620-21 (1922).

26. *State ex rel. Mays v. Mason*, \_\_\_\_\_ Or. \_\_\_\_\_, 43 P. 651, 652 (1896).

27. *Bartes v. United States District Court*, 19 F.2d 722 (8th Cir. 1927).

28. *Id.* at 727.

29. *Bough v. State*, 215 Ala. 619, 112 So. 157 (1927).

30. U.S. CONST. amend. XVIII; U.S. CONST. amend. XXI.

31. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY, *supra* note 9, at 7.

wording of the decisions seemed more liberal and reflective of social change, the outcome for most addicted attorneys remained severe. In Georgia, the court found an attorney in violation of the standards because he appeared drunk in public and suffered repeated arrests.<sup>32</sup> This, the court noted, was behavior clearly unbecoming of the profession. An attorney who drank with people of "low morals and criminal disposition" was found guilty of violating the rules of ethics, even when he argued that drinking was a necessary adjunct to his practice of law.<sup>33</sup> Habitual intoxication resulting in neglect of professional services, together with similar charges, usually resulted in permanent disbarment.<sup>34</sup>

This attitude on the part of professional organizations and the courts continued until the 1960s. In *Lanahan*,<sup>35</sup> alcohol use that resulted in client neglect was viewed as bringing disrepute to the profession as a whole. This in turn, prompted findings that the attorney was unfit to be a member of the bar. However, three years later the same attorney was reinstated to membership in the bar upon a showing of clear and convincing evidence of rehabilitation.<sup>36</sup> This 1967 decision reflected a new attitude, at least with respect to alcoholic attorneys, that addiction was a treatable disease and that the attorney's rehabilitation and payment of restitution, when appropriate, could be considered a mitigating circumstance.<sup>37</sup>

### *B. The Vice of the 1980s — Cocaine*

In the 1980s, cocaine became the attorney's alternative to alcohol, the new recreational drug of choice. Cocaine is administered in its most common form by inhalation through the intranasal mucous membranes. This results in a twenty to forty minute stimulation or "high."<sup>38</sup> The effects of cocaine on the central nervous system are evidenced by any combination of the following: dilation of the pupils; increased pulse rate, blood pressure, temperature, and blood sugar level; slowdown of the digestive process; hypothalamic stimulation; eu-

32. *Wood v. State ex rel. Boykin*, 45 Ga. App. 783, 165 S.E. 908 (1932).

33. *E.g., In re Osmond*, 174 Okla. 561, 54 P.2d 319 (1935).

34. *E.g. In re Hermann*, 165 Or. 59, 105 P.2d 512 (1940).

35. *In re Lanahan*, 95 Ariz. 268, 389 P.2d 263 (1964).

36. *Application of Lanahan*, 102 Ariz. 191, 427 P.2d 142 (1967).

37. *See, e.g., Matter of Schunk*, 126 A.D.2d 772, 510 N.Y.S.2d 716 (1987); *Tenner v. State Bar*, 28 Cal.3d 202, 617 P.2d 486, 168 Cal. Rptr. 333 (1980); *In re Driscoll*, 85 Ill.2d, 423 N.E.2d 873, 53 Ill. Dec. 204 (1981); *Attorney Grievance Com'n. of Md. v. Dunphy*, 297 Md. 377, 467 A.2d 177 (1983); *Petition of Johnson*, 322 N.W.2d 616 (Minn. 1982).

38. M. Fischman, *The Behavioral Pharmacology of Cocaine in Humans*, GRASSROOTS DEVELOPMENT 28 (1984) *reprint from* NIDA Research Monograph No. 50 DHHS Publication No. 84-1326.

phoria; fever; and potentially fatal seizures.<sup>39</sup> Since 1982, cocaine addiction in the United States has almost doubled; the death rate is expected to increase similarly.<sup>40</sup>

A major myth once associated with cocaine was that the drug was not addictive and could be used safely as a recreational drug. This erroneous belief was based on the absence of an immediate physical withdrawal syndrome normally associated with abuse of alcohol or drugs.<sup>41</sup> The myth has been shattered; the addictive power of cocaine has now been scientifically proven by findings of chemical alterations in the brains of the users.<sup>42</sup>

Cocaine addiction manifests itself by loss of control, compulsion to use, and continued use regardless of the consequences.<sup>43</sup> Upon cessation of usage, the high dose addict experiences severe depression accompanied by various other symptoms including incoherence for a period of approximately three to five days.<sup>44</sup> The physical dependency, which is usually defined by tolerance to a drug or the presence of withdrawal syndrome upon cessation, is therefore quite apparent in cocaine addicts.<sup>45</sup>

In 1986, a new form of cocaine appeared on the streets. Known as "crack" or "rock,"<sup>46</sup> this new form releases the user from the burden and risk of preparing his own drug for freebasing<sup>47</sup> and produces an even more euphoric and addictive "high."<sup>48</sup> This tremendous "high" is brief and is followed by an overwhelming depression that creates a need in the user for more cocaine. It is this "see-saw" effect that creates the compulsion to continue use. Crack is a concentrated form of cocaine resulting from a change in the processing. Ether, the dangerous solvent used in freebasing, is no longer necessary.<sup>49</sup> To manufacture crack, cocaine that is about seventy-five per-

39. *Survey Findings from 800-Cocaine*, GRASSROOTS DEVELOPMENT 13 (July 1984).

40. Washton, *supra* note 7, at 29.

41. *Id.* Adding to the myth was the dispute in the medical world over the labeling of cocaine as a Schedule II narcotic. FLA. STAT. ANN. § 893.03(2) (West 1976 & 1987 Supp.). Discrepancy has existed since the grouping of cocaine with opiates and derivatives seems to many a misplacement of the drug. *E.g.*, Siegel, *supra* note 17, at 11. *See also* Commonwealth v. Miller, 366 Mass. 387, 318 N.E.2d 909 (1974).

42. *Id.*

43. *Id.*

44. *Id.* at 30.

45. *Id.* at 29.

46. *Id.* at 30-31.

47. "Freebasing" is the "conversion of sniffable cocaine crystals into a smokable 'base' form of the drug." *Kids and Cocaine*, NEWSWEEK, March 17, 1986, at 58.

48. *Crack: A Cheap and Deadly Cocaine is a Spreading Menace*, TIME, June 2, 1986, at 16 [hereinafter *Crack*].

49. *Id.* at 17.

cent pure is mixed with simple household items like baking soda or flour to create a thick paste which results in a crystalline that is shaped into tablet or pellet ("rock") form.<sup>50</sup> This new product is easily concealed and is usually sold for \$10 to \$15 per dose.<sup>51</sup>

The medical effects of crack differ from those of other snorted cocaines. One doctor has stated that "crack throws the entire cardiovascular system into turmoil. Your blood vessels rapidly constrict. You're a key candidate for respiratory failure."<sup>52</sup> Additionally, coronary attacks may result from increased blood pressure and heart rate, and the "intense stimulation of the brain may trigger convulsions."<sup>53</sup>

The compulsive use of crack brings into sharp focus the severe addictive capabilities of cocaine.<sup>54</sup> Recreational use of cocaine can result in addiction within two to five years of the first use.<sup>55</sup> Even more alarming are recent statistics from the crack epidemic in New York and Los Angeles which show that addiction to this variation of cocaine will occur in several weeks or after a few dosages.<sup>56</sup> The extent of cocaine use, recorded by a national service,<sup>57</sup> demonstrates the addictive life threatening characteristics. Sudden death among college and professional athletes shows that cocaine is treacherous

---

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* Death caused by cocaine often takes the appearance of a myocardial infraction or pulmonary misfunction, and therefore such deaths are often not properly recorded. The toxic side effects of cocaine are apparent, but their full extent remains unknown.

54. Addiction was labeled as the number one health problem in the United States by Joseph Califano, Former Secretary of Health, Education and Welfare. Mr. Califano has referred to addiction as "our most wanted criminal." See CALIFANO REPORT, *supra* note 3, at 88.

55. *E.g.*, *Crack*, *supra* note 48, at 58.

56. *Id.*

57. The following data is based on random samples of 500 callers to a national "1-800-COCAINE" telephone hotline. The surveys were completed during three-month periods in 1983 and 1985.

even to the healthy and the young.<sup>58</sup> Even first time use, as in the case of a healthy thirty-four year old Miami attorney, can prove fatal.<sup>59</sup>

### III. The Cocaine Impaired Attorney

Legal problems occur at an anticlimactic point when the attorney-users must face up to their addiction. If they are fortunate, the legal system will order them to seek help. The sad reality is that often this occurs only after conviction. In the case of attorneys, this point in the progression of the disease comes too late to offer a solution.

When dealing with the cocaine impaired attorney, the first step should be consideration of the purpose of professional discipline:

The purpose of lawyer discipline and liability proceedings is to maintain appropriate standards of professional conduct in or-

CHART I

	<u>1983</u>	<u>1985</u>
Origin of call:		
Northeast	47 %	32 %
Midwest	11 %	23 %
West	33 %	22 %
South	9 %	23 %
Demographics:		
Males	67 %	58 %
Females	33 %	42 %
Whites	85 %	64 %
Black/Hispanic	15 %	36 %
Average age	30 yr	27 yr
Adolescents (age ___ and under)	1 %	7 %
Yearly income:		
\$10-\$25,000	60 %	73 %
over \$25,000	40 %	27 %
Cocaine Use:		
Weekly Consumption	6.5 grams	7.2 grams
Expenditure	\$637	\$535
Intranasal	61 %	52 %
Smoking	21 %	30 %
Intravenous	18 %	18 %
Use of Other Drugs to alleviate unpleasant effects of cocaine:	68 %	87 %
Auto Accident on Cocaine:	11 %	19 %
Use of Cocaine at Work:	42 %	74 %

58. Ford, *Drugs, Athletes and the NCAA: A Proposed Rule for Mandatory Drug Testing in College Athletics*, 18 J. MARSHALL L. REV. 205 (1984).

59. *Cocaine a "Loaded Gun,"* NEWSWEEK, July 7, 1986, at 26.

der to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable . . . to properly discharge their professional duties.<sup>60</sup>

The process of bringing a lawyer to discipline is said to be nonadversarial; however, this perspective seems to have been forgotten at times. The original purpose of these proceedings has been, to some degree, reinstated by decisions allowing evidence of the disease of alcoholism, addiction, or other chemical dependency, together with evidence of restitution and rehabilitation, to serve as mitigating factors.<sup>61</sup>

Proceedings for disciplinary violations, as in all other proceedings, depend on the application of the particular circumstances of each individual case.<sup>62</sup> In *Florida Bar v. Murell*,<sup>63</sup> the court formulated a test to determine the reasonableness of the discipline ordered in relation to the offense and held that discipline imposed must be 1) fair to the attorney; 2) just to the public; 3) designed to correct anti-social tendencies on the part of the attorney; and 4) severe enough to deter similar conduct by other members of the bar. Through its own flexibility this workable standard produced a balanced decision.

In 1981, the Supreme Court of Illinois held that alcoholism would be considered a mitigating factor in the disciplinary process. In reference to the alcoholic attorney, the court said: "Alcoholics need not be treated just like other people; our duty to uphold the standards and reputation of the profession is not incompatible with sympathy and leniency for victims of alcoholism. But their tragedy cannot be used as a license to exploit clients . . . ."<sup>64</sup> This decision led to the enactment in 1982 of Illinois Supreme Court Rule 772 that established probation as a sanction for professional misconduct.<sup>65</sup> In addition, other states have held that addiction is a relevant mitigating factor and have concluded that probation is an effective remedy.<sup>66</sup> Conviction of crimes involving moral turpitude rightly re-

---

60. MODEL CODE OF PROFESSIONAL RESPONSIBILITY, *supra* note 9, at 309.

61. *See, e.g.*, *Disciplinary Bd. of Hawaii Supreme Ct. v. Bergan*, 60 Haw. 546, 592 P.2d 814 (1979); *Matter of Corbett*, 87 A.D.2d 140, 450 N.Y.S.2d 802 (1982).

62. *Florida Bar v. Wilson*, 425 So. 2d 2 (Fla. 1983).

63. *Florida Bar v. Murell*, 74 So. 2d 221 (Fla. 1954).

64. *In re Driscoll*, 85 Ill.2d 312, \_\_\_\_, 423 N.E.2d 873, 874-75, 53 Ill. Dec. 201, \_\_\_\_, (1981).

65. Carroll & Feldman, *Supreme Court Rule 772: Support for the Impaired Attorney*, 73 ILL. B.J. 14 (Sept. 1984).

66. *See, e.g.*, *Matter of Corbett*, 87 A.D.2d 140, 450 N.Y.S.2d 802 (1982); *In re Cohen*, 11 Cal. 3d 416, 521 P.2d 477, 113 Cal. Rptr. 485 (1974); *see also* Annotation, *Mental or Emotional Disturbance as a Defense to or in Mitigation of Charges Against Attorney in Disciplinary Proceeding*, 26 A.L.R. 4th 995 (1983).

sults in disbarment as a general rule, but this sanction should be used only in cases when the evidence shows that the addicted attorney acted for the purpose of self-enrichment.<sup>67</sup>

Addiction creates such a compulsion to use that ultimately every aspect of the user's life is destroyed. Accepted as part of the circumstances that surround the abuse of cocaine is the fact that by the time the abuser reaches a \$500-a-week habit he or she usually begins to sell cocaine in order to maintain the addiction.<sup>68</sup> The resultant financial burden places the impaired attorney in a situation in which he often invades trust accounts.<sup>69</sup> Some attorneys obtain loans which are not repaid or write checks against insufficient funds.<sup>70</sup> In other situations, the addicted attorney is unable to function as counsel<sup>71</sup> or fails to carry out the stipulations of an employment contract.<sup>72</sup> In one case, an impaired attorney even made false accusations against state supreme court justices.<sup>73</sup>

As indicated, some courts now consider addiction and rehabilitation as mitigating factors in disciplinary actions.<sup>74</sup> Applying the *Murell* standard<sup>75</sup> to cases of violations of professional responsibility involving moral turpitude, many courts have avoided the severity of disbarment and instead ordered suspension or probation with special conditions, most notably among them, rehabilitation.<sup>76</sup> This procedure is the established practice of Florida.<sup>77</sup> The Florida Supreme Court has stated:

Normally, the referee would recommend disbarment. However, the record reveals that the downfall of the respondent was due to his not enjoying the practice of law plus his becoming addicted to alcohol. The combination of these two factors led to gross neglect of his clients' affairs . . . [he] has joined Alcoholics Anonymous and is trying to straighten himself out and to make restitution. He has hit bottom. The referee believes he

---

67. *E.g.*, *Muniz v. State*, 575 S.W.2d 408 (Tex. Civ. App. 1978).

68. *Cocaine Use and Abuse in the U.S.: A Brief Overview of Some Facts*, GRASSROOTS DEVELOPMENT, Nov. 1984, at 18.

69. *E.g.*, *Florida Bar v. Blalock*, 325 So.2d 401 (1976); *In re Webb*, 37 S.D. 509, 159 N.W. 107 (1916); *In re Manahan*, \_\_\_\_ Minn. \_\_\_\_, 242 N.W. 548 (1932).

70. *E.g.*, *In re Bialick*, 298 Minn. 376, 215 N.W.2d 613 (1974).

71. *E.g.*, *In re Chmelik*, 203 Minn. 156, 280 N.W. 283 (1938).

72. *E.g.*, *In re Vincent*, \_\_\_\_ Ind. \_\_\_\_, 374 N.E.2d 40 (1978).

73. *State ex rel. Dabney v. Ledbetter*, 127 Okla. 85, 260 P. 454 (1927).

74. *See supra* notes 62-67 and accompanying text.

75. *See supra* note 64 and accompanying text.

76. *See, e.g.*, *In re Cohen*, 11 Cal. 3d 935, 523 P.2d 651, 114 Cal. Rptr. 611 (1974); *Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. Rabe*, 284 N.W.2d 234 (Iowa 1979).

77. *E.g.*, *State ex rel. Florida Bar v. Black*, 150 So. 2d 724 (1963).

merits a chance to redeem himself.<sup>78</sup>

As a result of decisions such as *Florida Bar v. Ullensvang*, an attorney charged with twenty-six counts of neglect was not disbarred but was permitted to seek treatment and return to the practice of law after a three-year suspension.<sup>79</sup> In other cases, ethical violations resulting from the effects of alcohol have resulted in suspension with special conditions of rehabilitation or disbarment with provisions for reapplication.<sup>80</sup>

Rehabilitation from cocaine usage and addiction is available in most cases through the same treatment approach used successfully in the treatment of alcohol addiction. Three basic tenets underlie all of the specific techniques or therapeutic practices employed in the treatment: 1) addiction is a disease which has its basis in genetic, physical, social, and emotional factors; 2) with appropriate treatment recovery is not only possible but quite probable; and 3) while people may not be responsible for their addiction, they are responsible for their recovery.<sup>81</sup> This process, with the help of support groups and long-term follow-up such as Alcoholics Anonymous or, more recently, Cocaine Anonymous, offers the best chance for arresting this disease.

Recently, possession of controlled substances has been held to be a crime *not* involving moral turpitude.<sup>82</sup> Evidently, the recent years of positive experience in dealing with alcohol impaired attorneys have aided the courts and professional organizations in dealing with cocaine abuse. The 1986 case of *Florida Bar v. Rosen*<sup>83</sup> is instructive on this point. Howard Rosen was convicted of two counts of possessing cocaine with intent to distribute. The Florida Supreme Court, in reviewing the referee's recommendation, noted that "Rosen illustrated yet another tragedy related to cocaine abuse."<sup>84</sup> The court found that Rosen had not only been a valuable member of the bar prior to his disease, but after conviction had sought medical help. In view of the mitigating circumstances, the court ordered three years of suspension with demonstrated rehabilitation rather than disbarment.

---

78. *Florida Bar v. Ullensvang*, 400 So. 2d 969, 182 (Fla. 1981).

79. FLORIDA PRACTICE RULE 3-7.9, cited in *Florida Rules of Court* 593 (West 1987).

80. *Florida Bar v. Knowles*, 500 So. 2d 140 (Fla. 1986).

81. See, e.g., *Pearl v. Florida Bd. of Real Estate*, 394 So. 2d 189 (Fla. Dist. Ct. App. 1981); *In re Conduct of Chase*, 299 Or. 391, 702 P.2d 1082 (1985).

82. See, e.g., *Florida Bar v. Rosen*, 495 So. 2d 180 (Fla. 1986).

83. *Id.*

84. *Id.*

*Rosen* is a prime example of the cocaine tragedy. Mr. Rosen was a member in good standing of the Florida Bar, *magna cum laude* in his undergraduate work, and second in his graduating law school class. A tax attorney with a successful practice, he had been recognized by the bar for his contribution to the profession. In 1981, Mr. Rosen began to abandon his practice as he lost control of his life due to his addiction to cocaine. By 1982, he was trafficking in cocaine.

The Florida Bar recommended disbarment based on the felony convictions in federal court. The bar argued, consistent with the ethical rules, that Mr. Rosen's illegal conduct involved moral turpitude and his behavior showed him unfit to be a member of the profession. The hearing referee found that Mr. Rosen's involvement in the crime for which he pleaded guilty was a result of his own addiction to cocaine and that the addiction was the prime force behind his felony conviction. The court decided that these statements, bolstered by favorable witness testimony and Mr. Rosen's cooperation in the criminal prosecutions and rehabilitation, warranted suspension rather than disbarment. Thus, the court effectively expressed its belief that Mr. Rosen would once again become an asset to the Florida Bar.

The partial dissent in *Rosen* maintained that Mr. Rosen should be tested by examination before being allowed to re-enter practice. The dissent further suggested that such attorneys be required to re-take and pass the Bar examination in order to reestablish their proficiency. This approach reflects the Florida Rule<sup>85</sup> requiring bar members who have been disbarred or have resigned to wait five years before re-applying for admission, subject to passing the bar examination. In *Florida Bar v. Knowles*,<sup>86</sup> the court ordered disbarment based upon a plea to a substantial conversion by an alcoholic attorney. The court disbarred Knowles *nunc pro tunc* so that reapplication could be made upon successful completion of the trial court ordered probation. Re-examination by the bar examiners was required.

During the last fifty years, the status of drugs has fluctuated from uncontrolled to strictly and legally controlled. As society has reacted to these changes, so have the bar associations in disciplining their membership. The support and assistance of attorneys who are themselves rehabilitated alcoholics or addicts actively involved in re-

---

85. *Supra* note 79.

86. 500 So. 2d 140 (Fla. 1986).

habilitation programs constitute the driving force in educating attorneys and the judiciary about the disease concept of addiction. In fact, twenty-eight states have developed assistance programs for their membership. These programs vary; some are bar sponsored and controlled, while others are independent of the bar association. All of the programs utilize recovered alcoholic or addict attorneys as indispensable volunteers. The International Lawyers in Alcoholics Anonymous has regular meetings to confer on the problem of the addicted attorney.

Today, the challenge is greater than ever before because of the availability of cocaine, especially in the form of crack. As the consumption of cocaine by the general public rises, it can be expected that a similar increase will occur in the legal profession. To help the profession, educational programs for attorneys must be developed. It is imperative that these programs instruct attorneys on the fatal aspects of the drug and teach them how to identify victims. Early intervention is essential to assist the drug impaired attorney. The legal educational system should, at least, offer some information to law students on the seriousness and extent of this problem.

#### IV. Conclusion

The courts and the bar associations must deal with the drug impaired attorney in a just, but humane, way. There must be a balancing of the drug impaired attorney's duties to his clients, the profession, and the public. Moreover, the bar associations have a corresponding duty to the attorney, the profession, and the public.

The courts, which are the forum in which the actual balancing will be affected, must accept a few basic propositions as valid:

- (1) Alcohol and drug addiction are treatable diseases.
- (2) The attorney who commits disciplinary infractions, which in many instances are even criminal, may be under the influence of this disease.
- (3) Effective treatment and rehabilitation programs, most notably those in conjunction with Alcoholics Anonymous and those which seek to adapt Alcoholics Anonymous principles, are readily available.

Once the courts accept the foregoing axioms, they may then consider, on a case by case basis, the addictive nature of the disease, the amount of restitution where appropriate, and the attorney's efforts at rehabilitation. Consideration of these factors in determining punishment would probably result in a decree of interim suspension,

## COCAINE IMPAIRED LAWYER

probation, or disbarment without prejudice to reapplication for admission rather than an arbitrary disbarment. In this fashion, the court fulfills its obligations to the profession and the public while humanely balancing the rights and duties of the cocaine impaired attorney.<sup>87</sup>

---

87. Compare *In re Sonderen*, 303 Or. 129, 734 P.2d 348 (1987) (disbarment not ordered) with *In Re Eads*, 303 Or. 111, 734 P.2d 340 (1987) (attorney disbarred).

