20. Attorney Discipline, Referral and Treatment

(a) Because lawyers often play leadership roles in their communities and therefore serve as role models for youth, the bar should exercise leadership in dealing with substance abuse by providing programs for its members who suffer from alcohol and other drug problems, by utilizing appropriate disciplinary procedures and by encouraging its members to avoid abuse of alcohol and other drugs.

(b) The state court and bar disciplinary authorities should place a high priority on the adoption of appropriate model disciplinary rules regarding attorney abuse of alcohol and other drugs.

As the ABA considers efforts regarding youth alcohol and drug abuse, it does so with an awareness that the legal community itself is not immune to this disease which threatens the rest of the country. The legal community has not been satisfied with the mere awareness of this problem, but has already taken steps to identify, discipline, and treat those attorneys suffering from alcohol and other drug problems. Therefore, as attorneys focus on the problem of substance abuse among today's youth, they do so attendant to the voice which says "Lawyer, heal thyself."

The Advisory Commission addresses the bars' support of peer group programs for attorneys and judges suffering from alcohol and other drug problems supra. It is unfortunate, however, that peer group support, intervention and other voluntary programs cannot address all attorney substance abuse problems. Discipline in some intractable situations may be the only option to help the attorney and to protect the public.

Even in the context of discipline, the issue of attorney substance abuse can be raised in several different manners, each requiring different procedures and approaches. For example, cases occur in which attorneys are charged with professional misconduct, such as misappropriation of client's funds, or keeping inadequate financial records, and the attorney raises his chemical dependency as a mitigating factor in his defense. Though such mitigating factors do not excuse violations of an attorney's professional responsibility, they are considerations in determining the nature and extent of the sanction to be imposed.

Another context for attorney substance abuse is in regard to professional incapacity. Currently, most states possess rules governing attorney conduct which provide that attorneys may be placed on inactive status for incapacity not related to misconduct. Yet these rules often fail to
define incapacity, resulting in little practical use. Thus, several state bars are presently working to rewrite their rules governing incapacitated attorneys. For example, the Florida Bar Legal Standards Commission submitted to the Florida Board of Governors a proposed modification to its impaired attorney proceedings rule. The Florida proposal explicitly states that when an accused attorney is brought before a grievance committee, and that committee has reasonable cause to believe that the attorney's ability to practice law and abide by the Code of Professional Responsibility has become impaired by reason of alcohol or drug use, the committee may immediately hold proceedings to determine whether the attorney is so impaired. The purpose of the proposal is to bring the problems of alcoholism, drug use, and other matters of impairment before the grievance committee early in the process.

The Florida Impaired Attorney proceedings can only be triggered through a complaint within the course of the normal grievance process. Other state bars provide that action may be taken in the absence of a formal grievance.

Again, without endorsing any specific model disciplinary rules or proposals, the ABA urges the state courts and bar authorities to develop, and/or continue to develop, disciplinary rules regarding attorney alcohol or other drug problems.

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509. Wolfson, supra note 504, at 22.

510. See People v. Luxford, 626 P.2d 675 (Colo. 1981). (attorney suspended from the Colorado Bar for a year for negotiating insufficient funds checks and failing to repay loans extended to him by clients, is given opportunity for reinstatement if within a year, he can demonstrate he has abstained from alcoholic beverages); In re McDonnell, 82 Ill.2d 481, 413 N.E.2d 375 (1980) (attorney disbarred after conviction for conspiracy to transport stolen securities and for failure to file tax returns, is reinstated upon meeting burden of proving he had overcome his alcohol dependency); Attorney Grievance Commission of Maryland v. Aler, Md. 389, 301, 483 A.2d 56 (1984). See also Annot., Mental or Emotional Disturbance As Defense to or Mitigation of Charges Against Attorney in Disciplinary Proceeding, 26 A.L.R.4th 995, 1029 (1984) (lawyer guilty of misappropriation of funds and similar offenses suspended without prejudice and right to reapply conditioned on continued rehabilitation, supervision in financial matters and restitution).
Florida Bar Integration Rule 11.01(4) states: Whenever an attorney who has not been adjudged incompetent, is incapable of practicing law because of physical or mental illness, incapacity or other infirmity, he may be placed upon an inactive list and shall refrain from the practice of law....


See the proposed Model Rules of Lawyer Disciplinary Enforcement, by the Standing Committee on Professional Discipline and the Center for Professional Responsibility. While these rules have not been approved by the ABA House of Delegates, some jurisdictions researched have followed the Model Rules in regard to substance abuse. See, e.g., District of Columbia, District Ct. Rule 4-4. See also Pa. Disciplinary Enforcement Rule 30I(d), 301(3); and Pressler's N.J. Rule of Gen. App., 1:20-9.

Proposal to change Florida Bar Integration Rule 11.01(4). But see Dunballurger, Bar Grapples with Member Drug and Alcohol Problems, 12 Fla. Bar News 3 (May 15, 1985) (regarding the rejection of proposal).

Muller, supra note .507, at 35.

California Rules of Disciplinary Procedure, 644; See also ABA Center for Professional Responsibility, Disciplinary Procedures in the United States at 33, question 96 (1984) (38 jurisdictions provide for such proceedings without grievance).

Another proposed set of model rules has recently been prepared by a committee chaired by Judge Phillip M. Saeta of the California Superior Court. See "Proposed Model Rule Relating to Discipline of Attorneys Impaired by Alcohol or other Drug Abuse."
Another aspect of the problem of lawyer discipline and substance abuse is the problem of confidentiality of lawyer peer-group activities from the disciplinary process. Without such protection, the lawyer with an alcohol or other drug problem may be afraid to seek help voluntarily. Several states have already provided for such confidentiality. See, e.g., Kentucky Supreme Court Rule 3.130 and 3.150 (noted in The Impaired Lawyer - Help in Kentucky, 10 Ky. Bench Bar 14 (Jan. 1984). Illinois Supreme Court Rule 4-101(f) (noted in Wolfson, supra note 507, at 20. See also Committee on Professional Ethics: Confidentiality of Communication to Member of Rehabilitation Committee, Opinion No. 531, N.Y. State Bar Assoc. Ethics Committee (no duty under DR-1-103A to report evidence obtained by Committee on Lawyer Alcoholism and Drug Abuse since the position of such a rehabilitative committee was analogous to that of an authority empowered to act in such situation), N.Y.S. B.J. 20 (January, 1984).