PROTECTING THE PUBLIC AND THE PROFESSION:
DISCIPLINE FOR FAILURE TO PAY DEBTS

I. INTRODUCTION

Obviously, most illegal conduct reflects adversely on an attorney's fitness to practice law as a whole. In addition, some types of "legal" conduct that would not interfere with an ordinary professional's performance of his professional duties may be in particular discord with an attorney's fitness to practice law. As a result, an attorney may be disciplined for actions that contravene the ethics of the profession despite the fact that his conduct may be neither criminal nor calculated to obstruct justice. Conduct that evidences dishonesty or a breach of trust encompasses an attorney's failure to pay his debts, and such conduct often results in disciplinary action. This Article analyzes various state cases which have held that an attorney's failure to honor financial obligations and commitments reflects adversely on her moral character and thereby renders her unfit to practice law.

II. WHY DISCIPLINE ATTORNEYS?

Historically, many state courts have held that failure to pay one's debts is grounds for disciplinary action. Recent state court decisions

2. Id.
3. Id.
4. See, e.g., In re Nails, 728 P.2d 840 (N.M. 1986) (holding discipline is appropriate if an attorney engages in fraudulent acts which reflect adversely on his or her fitness to practice law); South High Dev., Ltd. v. Weiner, Lippe & Cromley Co., 445 N.E.2d 1106 (Ohio 1983) (imposing individual liability for professional debts); Infosearch, Inc. v. Horowitz, 459 N.Y.S.2d 348 (N.Y. Civ. Ct. 1982) (holding lawyers individually liable for professional debts of the corporation); People v. Whitaker, 814 P.2d 812 (Colo. 1991) (failing to pay court reporting fees warrants suspension from the practice of law); Florida Bar v. Cook, 567 So. 2d 1379 (Fla. 1990) (failing to pay court reporter in personal proceedings does not warrant discipline); Clark v. Alabama State Bar, 547 So. 2d 461 (Ala. 1989) (failing to pay income taxes is not a crime involving moral turpitude). But see In re Duncan, 844 S.W.2d 443 (Mo. 1992) (failing to pay income taxes is a crime involving moral turpitude).
support this precedent and Model Rule of Professional Conduct 8.4 (Model Rule) provides a basis for disciplining attorneys whose conduct is prejudicial to the administration of justice. Model Rule 8.4(d) states: “It is professional misconduct for a lawyer to: ... (d) engage in conduct that is prejudicial to the administration of justice.” The Model Rules establish minimum standards and were enacted to maintain the integrity of the profession.

The rationale and purpose behind attorney disciplinary proceedings are to deter future attorney misconduct and to “protect the public from attorneys who are unable to properly discharge their duties.” In an attempt to encourage attorneys to live up to the expectations of the public and defray the present nefarious reputation of the profession in general, several courts have held an attorney’s failure to pay debts “reflects adversely on [the attorney’s] commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law.” An attorney is obligated to adhere to the high standards of conduct required of members of the bar, regardless of whether the conduct in question is related to the practice of law based upon the rationale that the legal profession is largely self-regulating; and, as such, it carries with it increased responsibilities to ensure that the integrity of the profession is maintained.

III. WHAT CONDUCT RESULTS IN DISCIPLINE?

The determination of what constitutes attorney misconduct is procedurally subjective; specifically, it is a factual analysis conducted at the

5. See, e.g., In re Haugen, 543 N.W.2d 372 (Minn. 1996) (failing to pay court reporter warrants suspension from the practice of law); Florida Bar v. Nowacki, 697 So. 2d 828 (Fla. 1997) (neglecting to pay former employee warrants discipline); In re Ruffenach, 486 N.W.2d 387 (Minn. 1992) (failing to pay malpractice judgment warrants suspension from the practice of law); In re Harp, 560 N.W.2d 696 (Minn. 1997) (holding disbarment is an appropriate sanction for an attorney with a disciplinary history who failed to pay a law-related judgment).


7. Id.

8. Haugen, 543 N.W.2d at 375 (quoting In re Montpetit, 528 N.W.2d 243, 246 (Minn. 1995)).

9. Haugen, 543 N.W.2d at 375 (quoting In re Pokorney, 453 N.W.2d 345, 348 (Minn. 1990)).


state level on a case-by-case basis. As such, states differ as to the extent of discipline to be imposed as well as to the level of conduct that warrants disciplinary action. What follows is a discussion of specific examples where an attorney’s failure to pay creditors resulted in disciplinary action.

A. Acts Involving Moral Turpitude

Model Rule 8.4 states: “It is professional misconduct for a lawyer to: . . . (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Failure to file and/or pay income taxes is a criminal offense that may reflect adversely on an attorney’s trustworthiness, thereby affecting his fitness to practice law. For instance, in Clark v. Alabama State Bar, the Supreme Court of Alabama has held that the failure to file an income tax return is a felony offense that may constitute a crime involving moral turpitude because it usually involves inherent deceit and fraud. However, as the court noted, the failure to pay one’s income taxes is classified only as a misdemeanor offense, which, absent inherent deceit or fraud, does not give rise to the level of conduct constituting an offense involving moral turpitude. Moral turpitude is defined as “an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general.” As an attorney has a legal duty to serve the public, by definition, an act of moral turpitude renders him unfit to practice law. The court elaborated on the importance of the determination of whether the offense involves moral turpitude and concluded that it is this determination which “often determines whether a disciplinary proceeding is appropriate, and, if appropriate, the severity of the discipline to be imposed.” The court reversed the decision of the Disciplinary Commission and held that failure to pay one’s income taxes does not constitute a crime of moral turpitude.

15. Id. at 462.
16. Id. (quoting Lee v. Wisconsin Board of Dental Examiners, 139 N.W.2d 61 (Wis. 1966)).
17. Clark, 547 So. 2d at 462.
18. Id. at 463.
Contrary to the Alabama Supreme Court's general disposition regarding failure to file an income tax return, the Supreme Court of Missouri indefinitely suspended an attorney for failing to pay his federal income taxes and held that the willful failure to pay one's income taxes is an offense which involves moral turpitude. The court reasoned that intentional dishonesty in failing to pay one's income taxes, although only a misdemeanor, can adversely impact the image of the profession and is therefore that type of conduct which warrants discipline for attorneys.

B. Acts that Question One's Integrity

Disciplinary action may also be taken against an attorney for offenses that call into question the integrity of the attorney, although such conduct does not rise to the level of an offense involving moral turpitude. Failure to pay one's financial obligations, other than taxes, may not necessarily give rise to the type of conduct involving moral turpitude, absent fraud or intentional deceit. However, such conduct may call into question the integrity and trustworthiness of the attorney. As the following cases demonstrate, most states agree that determining whether an attorney should be disciplined for failure to honor his financial obligations and commitments may depend on the specific circumstances of the case, combined with any mitigating or aggravating circumstances.

1. Failure to Pay Professional Debts.—Whether an attorney is subject to discipline for failure to pay his debts may also depend on whether the debt is a business debt or a personal debt. A business debt is an obligation which might be incurred during the normal course of business. On the other hand, personal debts are those unrelated to the attorney's practice of law. An attorney's failure to pay his professional debts ultimately impacts the quality of services rendered and reflects negatively on the overall image of the profession. For this reason, courts in both New York and Ohio have held that the owner of a firm may be liable for an individual member's failure to pay his individual debts which arose

19. In re Duncan, 844 S.W.2d 443 (Mo. 1992).
20. Id. at 445.
23. Id.
out of the ordinary course of business. The Supreme Court of Ohio held the owners of a firm personally liable for the rent due under a lease agreement based upon the rationale that the advantages of limited liability should not be afforded attorneys since the purpose of the profession is to render services to the public, not to accumulate wealth. Likewise, a New York court held lawyers individually liable for the business debts incurred by a corporation based upon the reason that the "purpose of permitting professional incorporation was . . . not to shield lawyers from the payment of just debts." 

Outside the limited liability context, the concern for the image of the overall profession has played a major role in a number of attorney disciplinary proceedings. For example, a Florida attorney received a ninety-one day suspension for his delay in paying a former employee for time worked and subsequent failure to pay an employee for days worked during the employee's last week of employment. Similarly, in In re Haugen, the Supreme Court of Minnesota noted that an attorney's pattern of failing to pay court reporter fees indicated a lack of concern for the rights of others. Moreover, this conduct reflected adversely on the attorney's commitment to serve the public and thus his fitness to practice law. To determine the appropriate sanction, the court considered the specific facts of the case, in addition to any aggravating or mitigating circumstances. The aggravating circumstances the court focused on consisted of previous disciplinary actions for the attorney's failure to timely file his tax returns and other disciplinary proceedings involving the attorney. Further, the court considered the nature of the misconduct, the weight of the disciplinary rule violation, the potential harm to the public and the harm to the legal profession in determining the appropriate disciplinary action to be taken in order to deter conduct of this sort.

28. 543 N.W.2d 372 (Minn. 1996).
29. Id. at 375.
30. Id. at 374.
31. Id.
32. Haugen, 543 N.W.2d at 374.
33. Id.
The court concluded that the attorney's continued violations made it "highly probable that future violations will occur" and as a result, the attorney was indefinitely suspended from the practice of law with no right to apply for reinstatement for twelve months.

Likewise, the Supreme Court of Colorado upheld the suspension of an attorney for failure to pay court reporting services which arose out of a judgment entered against her in a separate disciplinary proceeding involving her willful neglect, abandonment of a client, and the failure to refund the client's money. After considering the aggravating circumstances of the attorney's prior disciplinary proceedings, the court concluded that a ninety-day suspension was appropriate.

From these cases, it appears as though failure to pay professionally related debts, such as court reporter fees, can be classified as a specific type of conduct that results in disciplinary action. However, the Supreme Court of Florida reversed a decision to discipline an attorney for failing to pay a court reporter hired to record a deposition in his own divorce case. The Florida court reasoned that the case was not that which warranted disciplinary action because it did not involve fraud, misrepresentation, dishonesty or deceit. Thus, it appears that classification of specific conduct warranting disciplinary action is subjective at best and usually viewed not in a vacuum but rather in light of the attorney's actions as a whole.

2. Failure to Pay Personal Debts.—In In re Nails, the Supreme Court of New Mexico held that disciplining an attorney is proper when the attorney engages in acts prejudicial to the administration of justice or reflecting adversely on the attorney's fitness to practice law, regardless of the context in which the misconduct occurs. In re Nails arose out of an incident unrelated to Nails' practice of law. Nails shared an office with another attorney who had a client/mechanic present in the office one day when Nails' car refused to start. The mechanic agreed to tow the car

34. Id.
35. Id. at 375.
37. Id. at 815.
38. People v. Cook, 567 So. 2d 1379, 1380 (Fla. 1990).
39. Id. at 1380.
40. 728 P.2d 840 (N.M. 1986).
41. Id. at 843.
42. Id. at 841.
and perform the necessary repairs.\textsuperscript{43} When Nails went to retrieve his car, he stated that he had forgotten his checkbook.\textsuperscript{44} After several attempts to contact Nails, the mechanic went to Nails' office and waited until Nails issued him a check for the repairs.\textsuperscript{45} When the mechanic presented the check for payment at the bank, it was dishonored due to insufficient funds.\textsuperscript{46} Thereafter, the mechanic attempted to telephone Nails, but Nails refused to speak with him. The mechanic then had the car towed and Nails reported the car to the police as stolen.\textsuperscript{47} When the police arrived, they were advised of the surrounding circumstances and allowed the mechanic to tow the car. Subsequently, Nails made no attempt to pay for the repairs to his car. The mechanic filed a pro se action against Nails in which Nails represented that he would transfer title of the car in order to satisfy his debt.\textsuperscript{48} However, Nails never transferred the title and a judgment was entered against him, with which, as of the time of the disciplinary proceeding, Nails had yet to comply.\textsuperscript{49} Nails maintained that the court could not discipline him for personal conduct unrelated to his practice of law. However, the court pointed out that New Mexico's Rule 17-205\textsuperscript{50} imposes a duty upon an attorney to "conduct himself at all times, both professionally and personally, in conformity with standards imposed upon members of the bar . . . ."\textsuperscript{51} Thus, even though Nails' acts were unrelated to his practice of law, the court noted that the he was subject to discipline because the acts were fraudulent and reflected adversely upon his ability to practice law.\textsuperscript{52} As a result, Nails was suspended from the practice of law for a period of at least six months and

\begin{itemize}
  \item \textsuperscript{43} Id.
  \item \textsuperscript{44} Id.
  \item \textsuperscript{45} Nails, 728 P.2d at 841.
  \item \textsuperscript{46} Id.
  \item \textsuperscript{47} Id.
  \item \textsuperscript{48} Id. at 842.
  \item \textsuperscript{49} Id.
  \item \textsuperscript{50} NEW MEXICO RULES OF COURT Rule 17-205 (1998) states: "It is the duty of every recipient of the conditional privilege to practice law to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for that privilege." The court in In re Nails discussed the 1978 version of this rule; however, there is no difference between this version and the 1998 version.
  \item \textsuperscript{51} NEW MEXICO RULES OF COURT Rule 17-205 (1998).
  \item \textsuperscript{52} Nails, 728 P.2d at 842-43.
\end{itemize}
was ordered to take and pass the Multistate Professional Responsibility Examination before being readmitted to the practice of law.\textsuperscript{53}

Other instances of personal conduct resulting in professional disciplinary action involve the failure to pay child support obligations. For example, in \textit{In re Anderson},\textsuperscript{54} the Kansas Supreme Court sanctioned an attorney for willfully defying a valid child support order.\textsuperscript{55} The court held the attorney’s conduct evidenced “a contempt for judicial process and an indifference to his legal obligations.”\textsuperscript{56} Furthermore, as the Supreme Court of South Carolina noted, an attorney is an officer of the court and his failure to comply with a court order provides an even further basis for disciplinary actions to be instituted against him.\textsuperscript{57}

Additionally, the Supreme Court of Minnesota approved an addition to its Rules of Professional Conduct which allows for the suspension of lawyers who are in arrears on their child support payments.\textsuperscript{58} Also, “in an effort to get tough on lawyers who fail to meet their child support obligations,” the Montana Supreme Court has added a provision for “[w]illful contempt of court and failure to purge the contempt” to its list of grounds for disciplining attorneys.\textsuperscript{59}

Other violations of court orders by attorneys have resulted in disciplinary actions being instituted against them. For example, two cases in Minnesota have resulted in disciplinary action for attorneys who failed to pay judgments entered against them. In \textit{In re Ruffenach},\textsuperscript{60} the Minnesota Supreme Court found that Ruffenach owed a valid, law-related debt in the form of a malpractice judgment which he had neglected to pay for over three years in violation of Minnesota Rule of Professional Conduct 8.4(d).\textsuperscript{61} The court reasoned that “[h]onesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe disci-

\textsuperscript{53} \textit{Id.} at 843-44.
\textsuperscript{54} 795 P.2d 64 (Kan. 1990).
\textsuperscript{55} \textit{Id.} at 67.
\textsuperscript{56} \textit{Id.}
\textsuperscript{57} \textit{In re Norwood}, 260 S.E.2d 177, 177 (S.C. 1979).
\textsuperscript{58} \textit{Minnesota Adds Administrative Suspension Rule}, 8 NO. 1 PROF. LAW. 26 (1996).
\textsuperscript{60} 486 N.W.2d 387 (Minn. 1992).
\textsuperscript{61} \textit{Id.} at 389.
pline." Although a year’s suspension was recommended, the court determined that it was "unduly punitive" and suspended Ruffenach for a period not to be less than ninety days.

In In re Harp, the Supreme Court of Minnesota disbarred an attorney for repeatedly failing to comply with court orders. The court noted that although disbarment may seem to be "unduly harsh" at first glance, the aggravating circumstances of the attorney’s prior disciplinary history, including public reprimand, probation, neglecting client matters, and co-mingling client funds, led the court to conclude that disbarment was the only way to adequately protect the public from such unscrupulous attorneys. The court noted that "'[t]he purpose of discipline is not to punish the lawyer but to guard the administration of justice and to protect the courts, the legal profession, and the public.'"

IV. FAILURE TO PAY DEBTS MAY AFFECT ADMISSION TO THE BAR

In an effort to protect the legal profession, mismanagement of debts has also resulted in applicants being denied admission to the Bar. In In re O'Brien, the Supreme Court of Connecticut held that writing a large number of bad checks was sufficient to support the bar’s action in refusing to rank the petitioner among those who were entitled to the confidence of the community.

In In re Parry, the Ohio Supreme Court affirmed the decision of the fitness board and refused to admit Parry to the bar based upon evidence that he failed to pay numerous parking and traffic violations, was $65,000 in debt, and had been dismissed from several jobs. The court reasoned that the failure to honor legal obligations and commitments is proper grounds for refusing to deem one as having the requisite character

62. Id. at 391.
63. Id.
64. 560 N.W.2d 696 (Minn. 1996).
65. Id. at 701.
66. Id. at 700-01.
67. Id. at 701 (quoting In re Simonson, 420 N.W.2d 903, 906 (Minn. 1988).
68. 63 A. 777 (Conn. 1906) (overruled on other grounds).
69. Id. at 779-81.
70. 674 N.E.2d 774 (Ohio 1995).
71. Id. at 774-75.
and moral fitness for purposes of admission to the bar. The court, however, did decide to allow Parry an opportunity to demonstrate that he does have the requisite moral character to be fit to practice law.

V. CONCLUSION

As the foregoing cases demonstrate, the determination of what conduct constitutes misconduct is the first analysis courts must make. After it is determined that the conduct in question constitutes misconduct, courts then must determine the degree of the misconduct before deciding on the appropriate disciplinary action to take. Courts will also consider the impact on the legal profession as a whole, as well as the potential harm to the public.

While courts differ as to the level of discipline to be administered to attorneys for violating their ethical duties, most courts seem to agree that some level of discipline is appropriate for an attorney who neglects to honor his commitments and obligations to others. The reasoning behind most of these decisions is the fact that an attorney’s primary duty is to serve the public. This duty, therefore, mandates that the public have confidence in the attorneys who serve their community as well as in the legal profession as a whole. Consequently, if an attorney evidences a lack of concern for the rights of others, how can he then expect the public to put their trust and confidence in him? For these reasons, failure to pay one’s debts, whether a business debt or a personal expense completely unrelated to the practice of law, may result in discipline, if that failure to pay evidences a lack of concern for the rights of others.

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72. Id.
73. Id.