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Recent Developments: Attorney Grievance Comm'n v. Drew: Workaholism Rejected as a Mitigating Factor in Attorney Disciplinary Proceedings

Carole N. Roche'

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*Attorney Grievance
Comm'n v. Drew:*

**WORKAHOLISM
REJECTED AS A
MITIGATING
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ATTORNEY
DISCIPLINARY
PROCEEDINGS.**

The Court of Appeals of Maryland, in *Attorney Grievance Comm'n v. Drew*, 341 Md. 139, 669 A.2d 1344 (1996), rejected workaholism as a mitigating factor in attorney disciplinary proceedings. In so holding, the court of appeals rejected the analogy drawn between workaholism and other mitigating factors, such as alcoholism and drug addiction.

Attorney Alan C. Drew ("Drew") was admitted to practice law in the State of Maryland on June 16, 1976. Drew's law practice focused primarily on bankruptcy and criminal cases. In an effort to assist his bankruptcy clients in making timely payments to creditors, Drew organized an office procedure whereby his clients would make their payments directly to his office. In turn, Drew forwarded disbursements on behalf of his clients to various creditors. Prior to 1989, Drew received a warning from the Attorney Grievance Commission of Maryland because of his failure to properly manage his escrow account and disbursement procedures. During 1989, as a result of Drew's continued failure to properly monitor and reconcile his escrow account, one of his clients, Dena Spain ("Spain"), lost her home in a foreclosure proceeding.

Subsequently, Spain filed a grievance against Drew with the Attorney Grievance Commission of Maryland (the "Commission"). The investigation of Drew's escrow ac-

count revealed many serious concerns, including an absence of recordkeeping, as well as twenty-three bank charges for overdrafts and insufficient funds.

The Commission then filed a Petition for Disciplinary Action against Drew in the Court of Appeals of Maryland. The court referred the case to the Honorable Marjorie L. Claggett of the Circuit Court for Calvert County for an evidentiary hearing. Drew offered testimony that his mismanagement of the escrow account was the result of his workaholism and excessive reliance on his staff. After finding violations of Rules 1.3, 1.4, 1.15, and 5.3 of the Maryland Rules of Professional Conduct, Judge Claggett failed to find that Drew violated Maryland Rule BU9 and Maryland Rule of Professional Conduct 8.4(c) and (d).

The Bar Counsel excepted to Judge Claggett's holding. *Drew*, 341 Md. at 149, 669 A.2d at 1348. In applying the clearly erroneous standard of review, the Court of Appeals denied Bar Counsel's exception as to Maryland Rule of Professional Conduct 8.4, but sustained the exception as to Rule BU9. *Id.* at 149, 669 A.2d at 1349. In pertinent part, Maryland Rule BU9 provides that "[a]n attorney or law firm may not borrow or pledge any funds required by these Rules to be deposited in an attorney trust account . . ." *Id.*

At the outset of its anal-

that it never considered “an attorney’s decision to take on more work than the attorney could properly handle . . . a mitigating factor.” *Id.* The court held that the lower court’s finding that Drew’s misappropriation of funds was not intentional was of no consequence in light of the unqualified prohibition contained in Rule BU9. *Id.*

In determining the appropriate sanction for Drew’s departure from the Rules of Professional Conduct, the court of appeals prefaced its review of prior holdings by recognizing the gravity of Drew’s actions. *Id.* at 150, 669 A.2d at 1349. The court explained that “the misappropriation by an attorney of funds of others entrusted to his care, be the amount small or large . . . represents the gravest form of professional misconduct.” *Id.* (citing *Bar Ass’n v. Marshall*, 269 Md. 510, 519, 307 A.2d 677, 682 (1973) and

Attorney Grievance Comm’n v. McBurney, 283 Md. 628, 631, 392 A.2d 81, 82 (1978)).

The court of appeals then reviewed the sanctions imposed in cases of intentional, as well as unintentional, misappropriation of funds and held that Drew’s violation was the result of an unintentional misappropriation of funds. *Id.* at 150-54, 669 A.2d at 1349-51. The court of appeals indefinitely suspended Drew and held that Drew may not be permitted to apply for reinstatement for a period of one year. *Id.* at 154, 669 A.2d at 1351.

In *Attorney Grievance Comm’n v. Drew*, the Court of Appeals of Maryland categorically denied that workaholism is the equivalent of alcoholism or drug addiction as a mitigating factor in attorney disciplinary proceedings. The *Drew* decision reinforces the fundamental obligation of every attorney to properly bud-

get time and resources to serve the best interests of each client. In so holding, the court sends a clear message to attorneys that the Rules of Professional Conduct will not be relaxed in any way when workaholism is advanced as the sole mitigating factor in a disciplinary proceeding.

- *Carole N. Roche'*