Mental Health and the Attorney Discipline Process
In the State of Georgia

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Mental Health and the Attorney Discipline Process in the State of Georgia

Eric C. Lang

I. Introduction

Attorneys face discipline when they violate the rules. Not all violations are the same; not all violators are the same. Attorneys with mental health issues who violate the rules can, if they are incredibly open about their actions and their health, be granted a chance at suspension and rehabilitation, as opposed to disbarment. Because each discipline case is unique, it is not possible to identify an explicit legal standard. The cases discussed below do present a large enough sample, however, to discuss what the *de facto* standard may be.[1]

Having a mental health issue can be grounds for disbarment. Rule 4-104(a) states "[m]ental illness, cognitive impairment . . .to the extent of impairing competency as a lawyer, shall constitute grounds for removing a lawyer from the practice of law." Two things are true with respect to Rule 4-104(a). First, it is not actually a part of the Georgia Rules of Professional Conduct, which can be found in

[1] This paper usually accompanies a presentation entitled "Mental Health and the Practice of Law." That presentation does not track this paper. In fact, the contents of this paper are discussed for less than five percent of the presentation materials. Anyone desiring the presentation materials may contact the author. (elang@langlegal.com), who will be glad to provide them.

Rule 4-102.[2] Second, very few discipline proceedings involve penalties under Rule 4-104. [3] Although lawyers with mental health issues regularly find themselves in the disciplinary process, it is not because of their mental health, it is because of something they did.

Mental health plays a role in the disciplinary process not on the prosecutorial side of the equation, but on the defense side. The Georgia Supreme Court considers many factors in determining the appropriate sanction for violation of the rules, borrowing from the American Bar Association. The ABA's rules view "mental disability" as a mitigation factor when there is evidence of a disability, that the disability caused the harm, that there has been treatment, and that the treatment worked. (ABA Rule 9.32(i).) Though it has never been expressed in this fashion, the Georgia Supreme Court imposes a penalty less harsh than disbarment when (a) the attorney admits the conduct; (b) the attorney rectifies the harm; (c) the ABA standards are met; and (d) there is medical certification of recovery. This result can

[2] The closest the Georgia Rules themselves- come to the issue is Rule 1.1, regarding competence. But, it is clear from the text of the rule that competence refers to skill, and not state of mind: "Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The Bar has proposed a new comment to this rule which does refer to mental health, but that comment has not been adopted by the Supreme Court. ("A lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law.")

[3] *See In re Rand*, 279 Ga. 555 (2005) where, despite five specific violations, attorney suspended under Rule 4-104(a) (although not disbarred).

be seen through an examination of recent cases where mental health played an explicit role, resulting in a lesser sanction than disbarment.

II. Mental Health's Mitigating Role in the Discipline Process[4]

Attorneys with mental health issues engage in the same types of rule violations as do all other attorneys -- financial improprieties and failure to work/communicate. There is a third category involvement out-of-court behaviors that some might say could be more associated with mental health issues, but that is not analyzed here. In each of the following cases, an attorney with a mental health issue sought and received a mitigated sanction in the presence of remorse, openness, and rehabilitation.

A. Trust Account Issues

In re Saunders, 304 Ga. 824 (2018) involved a conversion of client's funds for the attorney's personal use. The attorney was, in fact, willing to explain what drove her to act that way: "her boyfriend, with whom she shared an apartment, had an emotional downward spiral and failed to pay his portion of the expenses . . .unable to meet the couple's shared financial obligations, her credit was destroyed, and her car was repossessed. Her boyfriend then became abusive, causing Saunders to leave the apartment with only the clothes on her back and to give up her office space so that he would be unable to find her." She was forthcoming as to the background, she

[4] This paper is not concerned with substance/alcohol issues, but the Georgia Supreme Court handles disciplinary matters in that context in the same fashion as it does mental health cases. *See In re Barnes* 304 Ga. 324 (2018) (suspension and conditions for reinstatement for drug issues) (*see also In re Barnes*, 307 Ga. 441 (2019)(reinstating attorney)); *In re Duncan* 301 Ga. 898 (2017) (suspension and conditions for reinstatement for substance issues).

repaid the client, and she sought and received help: "the client has been repaid in full . .. her actions were due to extreme emotional distress stemming from domestic violence; she has undergone counseling to rebuild her self-esteem to avoid similar problems in the future." Although she could have been disbarred, she was suspended for one year. No condition was placed on her reinstatement, perhaps because her issues were situational, and not related to a medical condition.

In re Morgan 303 Ga. 678 (2018) is another trust account case. Morgan made the client whole for Morgan's actions, and explained to the Court his mental condition: "Morgan offers that he has no prior disciplinary record; that with the loss of his wife, he experienced personal and emotional problems during the time of his misconduct." His offense could have resulted in disbarment but he sought a two year suspension with conditions: "Morgan requests that this Court impose a two-year suspension that includes the following reinstatement conditions: complete a psychological evaluation and follow all recommendations; continue attending weekly Alcoholics Anonymous meetings; attend the State Bar's Law Practice Management courses; and submit a petition for reinstatement to the Review Panel showing compliance with these conditions for reinstatement." The court accepted the conditions and suspended, rather than disbarred, Morgan.

In re Storrs, 300 Ga. 68 (2016) involved a lawyer who used and then repaid trust funds before they were requested by the person to whom they were due. After self-reporting these actions, the lawyer explained that "he was suffering from emotional and mental distress resulting from his separation, and eventual divorce, from his wife of many years, and from the depression suffered by one of his children, which resulted in that child applying for a hardship withdrawal from the university that he was attending. Storrs has sought and continues to seek counseling from his

psychologist, as well as his priest." Rather than disbar Storrs, the court issued a three-month suspension.

In re LeDoux, 288 Ga. 777 (2011) arose out of a disciplinary matter and a subsequent petition for voluntary discipline, relating to financial irregularities, including a bounced trust check. The behavior at issue concerned two matters. In one matter, the attorney made errors with respect to a loan payoff amount in a closing. In the other matter, the attorney, among other things, wrote a check for insufficient funds to her client out of trust funds. It was noted, "financial irregularities, including bounced trust check, in the presence of "acute mental health episode that ultimately resulted in her hospitalization in two different mental health facilities." The court fashioned very specific discipline for the attorney. First, the attorney was suspended indefinitely, but for a minimum of one year. Second, the attorney was required to obtain certification of mental competency before returning to practice law. Third, "every six months for the first 24 months following resumption of the active practice of law, LeDoux shall forward to the State Bar a new medical certificate."

A similar result and rationale can be found in *In re Stephens*, 318 Ga. 375 (2024). There, the attorney engaged in two instances of misuse of trust funds. The lawyer compounded her exposure by providing false information to the court in which one of the related actions was pending about the status of the funds. The Special Master and the Review Board differed over the appropriate discipline, with the Special Master recommended disbarment but the Review Board recommended a six month suspension with conditions for reinstatement. "Stephens stated, as to her mental state, that during the relevant period, she had been dealing with her ailing mother, which required her to travel out of state regularly and which caused her

considerable mental anguish, and that the disciplinary authorities should take into consideration her personal or emotional problems in dealing with her elderly mother at the time." However, this factor was not taken into consideration because of lack of proof: "Stephens asked the Review Board to take into consideration her mental anguish at the time the conduct arose based on her need to take care of her ailing mother, there is no clear error in its failure to do so, as Stephens offered no evidence to support her claim." (This case can also be viewed as part of Section III.B, below, regarding mitigation.)

B. **Client Neglect Issues**

The most recent case concerning the intersection of client neglect and attorney mental health is *In re Sneed,* 314 Ga. 506 (2022). Sneed admitted to a number of client neglect issues and sought a nine month suspension, *nunc pro tunc*. (See *infra* Section IV.) Sneed "largely attributed [her actions] to the effects of depression, for which she eventually sought treatment ." The Special Master noted that "Sneed [asserted] that she was "overwhelmed" or "always worried" while representing her clients but in mitigation of discipline noted that "she sought counselling."[5] The Court issued the nine-month suspension, with the condition that "she provide a statement from a board-certified psychologist to the Office of the General Counsel declaring her fitness to resume the practice of law."

In re Hentz, 300 Ga. 413 (2016) involved multiple issues of client neglect by previously disciplined attorney. In mitigation, he stated that at the time of the

[5] If these terse assertions seem below the standards discussed in Section III.B, it is because they are. Indeed, the Court inserted a 21-line footnote on the need for better factfinding. The Court relied not on the statements of Sneed, the State Bar, or the Special Master, but rather acted "pursuant to our unaided and independent review."

transgressions, "Hentz states that he suffered significant personal and emotional problems, including his son's suicide, marital problems affecting his marriage of thirty-five years, his wife's diagnosis with a rare cardiac disease, his 4 youngest son's drug addiction and incarceration, his daughter's drug addiction and the termination of her parental rights." He noted, though, that he had contacted the Lawyer's Assistance Program and had been in therapy for nine months. Instead of disbarment, he sought a two year suspension, coupled with conditions for his returned. The Georgia Supreme Court accepted this solution.

In re Bagwell, 286 Ga. 511 (2010) concerned five complaints filed against an attorney, who then filed a petition for voluntary discipline, agreeing to suspension from six months to two years. The attorney admits that in connection with his representation of these clients he failed to communicate with his clients and he failed to timely and properly pursue the legal matters entrusted to him. As a result of his misconduct, three of the clients had adverse rulings entered against them. 286 Ga. at 511. However, the attorney also offered evidence that he suffered with "Bi-Polar Disorder, attention deficit hyperactivity disorder, major depressive disorder, and generalized anxiety disorder, and has undergone in-patient psychiatric evaluation." Id. The court imposed a two-year suspension, and conditioned reinstatement on certification of mental competence. It should be noted that Chief Justice Hunstein dissented, stating that "Based on Bagwell's admitted conduct, I disagree that suspension is an appropriate discipline. Because I would disbar Bagwell, I respectfully dissent." Id. at 512.

In re Moody, 281 Ga. 608 (2007) concerned an attorney who failed to properly represent two clients, and who appeared in court intoxicated and unable to represent a client. Though the opinion did not develop the details, the court noted

that "In mitigation of her behavior, we find that Moody has diabetes and a bi-polar condition, and on and off consumes alcohol heavily to self-medicate. During one of the cases at issue here Moody was hospitalized and told by her doctor not to return to work." 261 Ga. at 608. Moody sought a six-month suspension in a voluntary petition. The court accepted the petition, but imposed the condition that before returning to practice law, Moody obtain "a written certification from a psychiatrist or psychologist licensed to practice in Georgia that she has no mental condition or impairment that would affect her ability to practice law." Id.

In re Jaconetti, 291 Ga. 772 (2012) arose out of eight formal complaints filed by the State Bar of Georgia, coupled with a voluntary petition and two amendments. In short, the attorney both admitted in her petition, and was found by a special master to have: "neglected civil and criminal matters involving eight clients, often with harm to the client; failed to communicate in a timely and effective way with her clients; and failed to account for fees received or to refund unearned fees." 291 Ga. at 772. It was also noted that "Jaconetti has exhibited indifference to making restitution." The court discussed the attorney's mental health as follows:

The special master noted that Jaconetti admitted that she was not currently mentally competent to practice law. His report discussed in detail the mitigating circumstances he found related to a series of personal and physical problems Jaconetti faced beginning in 2005, including the fact that she worked for several years with undiagnosed and untreated Bipolar Disorder. The special master found that Jaconetti has sought professional help for her mental health issues on a regular basis since 2009 and is now under the care of a board-certified psychiatrist and receiving treatment. Id. The court concluded that the three-year suspension

sought by the attorney was appropriate, but, conditioned reinstatement both on repayment to clients and on certification of mental competency.

In re Ricks, 289 Ga. 136 (2011). Ricks concerned an attorney who "accepted money to represent a client in separate domestic relations matters and either performed none, or only some, of the work. In each case Ricks admits he did not complete the work for which he was retained, did not communicate with his client and did not refund the client's fee." The lawyer placed his conduct in the context of impairment: "he began to suffer from debilitating depression during this time period and, while he sought treatment, he did not take the prescribed medication or follow through with a therapist. His family obtained inpatient treatment for him at an institution where he was diagnosed as suffering from severe depression and bi-polar illness." The court accepted his petition for a one-year suspension, and conditioned reinstatement on a certification of mental competency.[6]

C. **Other Conduct and Competency Issues**

In re Corley 303 Ga. 290 (2018), Corley was convicted of domestic violence – first degree, which conviction would normally result in disbarment. Corley opened himself up publicly: "In particular, he states that in 2012, he was diagnosed with Attention Deficit Hyperactivity Disorder and depression and began receiving treatment; in January 2016, he began seeing a different doctor for issues related to his depression, which resulted in changes in his medication; and following the incident in December 2016, he sought help through the State Bar and was ultimately diagnosed as having Bipolar II disorder, resulting in a new daily prescription. He asserts that the doctor he sought treatment from through the State

[6] *In re McCall*, 314 Ga. 200 (2022) could just as well be discussed in this section but is discussed below in the mitigation and *nunc pro tunc* sections.

Bar informed him that the medication he was previously prescribed exacerbated the symptoms of his Bipolar II disorder and that, while certainly not an excuse for his conduct, his inability to have his mental health condition properly diagnosed and medicated was a factor to his conduct in December 2016." Rather than disbarring Corley, "Before being reinstated, Corley must demonstrate that he has completed his probation, that a board-certified and licensed mental health professional has certified that he is fit to return to the practice of law, and that he is continuing to receive mental health treatment by a board-certified and licensed mental health professional."

An attorney's forgery of a judge and assistant district attorney on court orders authorizing the removal of his client's electronic device led to the complex decision in *In re York*, 318 Ga. 784 (2024). Mr. York's actions were of course criminal and resulted in the entry of a thirty-six month pretrial diversion agreement, set to expire in August 2025. Among other things, the PDA required Mr. York to undergo counseling for mental health and substance abuse, and, refrain from the practice of law. Mr. York sought a three-year suspension*, nunc pro tunc.* (See below, Section IV.A).

There was no dispute that Mr. York took the counseling seriously. He attended regularly and exhibited changed behavior. "The psychologist opined at the disciplinary hearing that York's judgment and mental and emotional functioning had been impaired by his drug addiction, clinical depression, and anxiety, which caused or contributed to his acts of forgery, but as a result of treatment, York was in a state of recovery and could safely practice law." The Court discussed the role of mental health and substance issues in mitigating punishment for a significant portion of the opinion.

There was, however, an impediment to giving York the three-year suspension he sought: the still pending PDA. "But if he were permitted to resume practicing law before the PDA expires, "the public is likely to lose respect for the legal system," just as it would if an attorney were permitted to resume the practice of law while serving criminal probation. . . . The same reasoning applies when felony charges remain pending, albeit under a pretrial diversion agreement." (Citations omitted.)

In re Morris, 298 Ga. 864 (2016) simply states that "Morris admits that his competency as an attorney is currently impaired due to addiction and mental health issues" and that he sought a suspension with conditions on reinstatement. He stated that "he will sign releases authorizing his treating counselors and physicians to provide quarterly reports to the Bar regarding his treatment, and he will continue to cooperate with the Bar in addressing all disciplinary matters that have been or may be filed. He acknowledges that he may owe refunds to clients and commits to endeavoring to repay those fees as soon as he is able." The court accepted those conditions and agreed to suspension, not disbarment.

In re Franklin, 299 Ga. 4 (2016) concerned a lawyer accused of what amounted to unauthorized practice during a time while her license was inactive. "she has suffered from various mental and emotional conditions for an extended period of time prior to and during the time giving rise to this matter, that she has been diagnosed with clinical depression and is currently undergoing regular counseling and treatment, and that she is sincerely embarrassed and remorseful for having violated the disciplinary rules." Accordingly, the court issued a three-month suspension, much more lenient than otherwise available in that situation.

In re Dale 304 Ga. 446 (2018) involved an attorney who "entered a guilty plea on October 6, 2017 to one count of "Peeping Tom," in violation of OCGA § 16-11-61."

Though this offense would normally result in disbarment, Dale sought a suspension with reinstatement conditions. After examining evidence of his mental condition, the Court agreed: "At the conclusion of this period, Dale may seek reinstatement by demonstrating to the State Bar's Office of General Counsel that he has met the conditions for reinstatement, specifically that his probation has terminated, that a board-certified and licensed mental health professional has certified that he is fit to return to the practice of law, and that he is continuing to receive mental health treatment by a board-certified and licensed mental health professional."

In re Palmer, 313 Ga. 115 (2022) concerned an already suspended attorney (suspended due to CLE violations) who practiced law during the suspension. The attorney made multiple appearances after being suspended, and then continued to appear on behalf of clients after being repeatedly placed on notice by a court and the Bar. "Palmer had suffered mental and emotional difficulties arising from the death of her father in August 2018, which apparently necessitated her admission to a rehabilitation program, and from a past violent relationship." 313 Ga. at 116. From there, "The special master recites that Palmer has been involved in counseling and has made significant improvements in dealing with these challenges." *Id.* The Bar recommended, and the Supreme Court entered relief requiring, that along with a three month suspension, that Palmer "she adhere to her current medication regimen; attend monthly appointments with licensed psychiatrists; attend psychotherapy appointments with a qualified therapist, as prescribed; attend an impaired professional's program for substance abuse." 313 Ga. at 117. Ms. Palmer fulfilled the conditions for reinstatement and has presumably returned to practice. *In re Palmer*, 316 Ga. 255 (2023).

III. Scrutiny Applied to Assertions of Mental Health Issues

A. Burden on Reinstatement

In re Moore, 305 Ga. 419 (2019) and its predecessor *In re Moore* 300 Ga. 407 (2016) show just how serious the court is with respect to the reentry requirement. Moore was suspended in 2016 for failing to provide the District Attorney with pleadings and then misrepresenting the facts to the Judge. After reviewing the situation, the Special Master found "Moore adamantly and unreasonably maintained throughout the hearing that he had done nothing wrong, and that he never expressed remorse or accepted any responsibility for the consequences of his actions. The special master recommended an indefinite suspension and that, as a condition of reinstatement, Moore undergo a physical and mental evaluation and be certified as fit to practice law.' The Review Panel clarified conditioning Moore's reinstatement on, among other things, "providing a detailed, written evaluation by a licensed psychologist or psychiatrist certifying that Moore was mentally competent to practice law." Whatever it was that Moore submitted to comply with that edict, it "did not address Moore's mental fitness to practice law and that the psychologist did not describe any familiarity with the rigors and demands of the practice of law, did not have a clear understanding of the facts, and appeared to be unaware of the specific request from this Court for a written evaluation certifying that Moore was 'mentally competent to practice law.'" Moore's petition for reinstatement was denied, and as of this writing has been no further review of Moore's case.

B. Burden on Seeking Mitigation

In re Vega, 318 Ga. 600 (2024) is a very recent example of how the court weighs various factors relative to mitigation. *Vega* involved an attorney who took a

case, basically did nothing, and missed the statute of limitation (summary facts only). In defending the disciplinary proceeding and concurrent malpractice action, the attorney provided a "likely falsified" email to defend herself. In the malpractice action, she filed untruthful discovery responses. There was evidence of other fabrication, and no reason was given for missing the statute of limitations. Vega put on evidence that she had a quickly growing caseload coupled with family healthcare obligations. Her "licensed counselor" explained that Vega "did not know how to say no" and "eventually unplugged." Vega was diagnosed with General Anxiety and ADHD. Both the Special Master and the State Bar didn't object to a 2-year suspension, yet the Court disbarred Vega.

With respect to mental condition, the Court made a distinction between "personal and emotional problems" and "mental disability." That's a valid distinction – there's a difference between being sad because your pet died and being in depression because it's Tuesday. There are, however, cases in which the Court has not drawn so bright a line. There's also an undercurrent of "General Anxiety and ADHD" not being "Serious Mental Illness" as that term is used clinically. The Court's use of "counselor" as opposed to psychiatrist or psychologist could have meaning. Against that, the Court was weighing "false statements to a tribunal and in connection with disciplinary proceedings and [] fabricat[ion of] evidence." The Court noted such actions are among "the most serious charges that can be leveled against attorney."

In re Kirby, 304 Ga. 628 (2018) provides another example of what precise testimony and conditions need to appear to justify a lessened punishment. Kirby admitted to four instances of client neglect. In seeking only a reprimand, he presented evidence from a doctor. "Kirby submitted under seal the March 2018

report of a psychologist who performed the evaluation and found Kirby to be fit to practice law. Generally speaking, the psychologist's report discusses Kirby's statements regarding particular stress he was under, including the 2012 death of his father, an attorney with whom he shared office space, and the 2016 death of his mother. The psychologist noted various challenges Kirby faced in managing his practice and his stress." Thus Kirby established both the existence of mental issues and their relationship in time to the client harm. However, "[t]he psychologist made specific mental health recommendations but also expressed a concern about whether Kirby would follow through with his stated plans for personal and professional improvement. Kirby's petition for voluntary discipline provides no indication that he is following the psychologist's recommendations." Though Kirby sought only a reprimand, the court ultimately concluded that the repeat nature of his transgressions coupled with a less than enthusiastic letter from his doctor would not permit that much mitigation.[7] Kirby then filed a second petition, seeking a thirty-day suspension, which was rejected as an insufficient sanction. *In re Kirby*, 307 Ga. 316 (2019). Kirby ultimately received a six-month suspension. *In re Kirby*, 312 Ga. 341 (2021).

In re Matteson, 314 Ga. 576 (2022) ("*Matteson I*") contained a detailed roadmap as to the types of proof the Court will require when mental health is

[7] *In re Tuggle*, 307 Ga. 312 (2019)(rejecting proposed discipline) contains a similar conclusion when substance abuse or addiction is presented as a mitigating factor: "Of additional concern is the lack of specificity provided, under seal or otherwise, by Tuggle as to the substance abuse issues that led to his misconduct in these disa ciplinary matters."

asserted as a mitigating factor in discipline.[8] Mr. Matteson, in his petition, admitted to the underlying conduct (involving funds and client communications), asserted that he made his clients whole, and described a mental health issue including his ongoing treatment. He sought a six month suspension and the State Bar did not oppose his request, yet the Court rejected it. Citing the first *Kirby* case, the Court stated "at least where an attorney has provided proof of the mental health issues that allegedly contributed to his misconduct and his efforts to overcome those issues—in this case Matteson has not provided any such proof." The Court also noted the lack of "conditions . . . on Matteson's return to the practice of law following his suspension."

Mr. Matteson filed a second petition, which was granted. *In re Matteson*, 316 Ga. 879 (2023) ("*Matteson II*"). That petition followed the roadmap provided by *Matteson I*. The approved petition also called for post-reinstatement mental health certification, which appears to be a growing trend in Georgia as well as in other jurisdictions. Further aspects of *Matteson II* are discussed below, with respect to *nunc pro tunc* relief.

The Court issued very strong language regarding the level of proof required in *In re Sneed*, discussed above. The Court was concerned that "The special master's report and recommendation clearly relied upon, arguably deferred to, and in some cases adopted verbatim the Bar's response." This was troubling to the Court because "Both omit, without explanation, numerous facts from Sneed's petition and occasionally assert facts that contradict those asserted by Sneed." The Court admonished as follows:

[8] Since the time of the decision in *Matteson I*, the author appeared as counsel for Mr. Matteson in the disciplinary process, including *Matteson II*, discussed below.

> We take this opportunity to remind the Bar and all special masters of the importance of resolving factual discrepancies present in these cases and in providing legal authority, or noting the lack thereof, demonstrating the appropriateness of proposed discipline.

314 Ga. 506, fn. 1.

The 2022 decision in *In re McCall*, 314 Ga. 200 (2022) is a useful touchstone to what does, and does not, suffice for mitigation of discipline. The underlying facts fit well within the discussion of client neglect above. Following that pattern, Mr. McCall did not respond to the notices of discipline served upon him. He eventually admitted his wrongful conduct and sought a six month suspension, applied *nunc pro tunc* (discussed below). At first glance, it appeared that McCall had been forthcoming and detailed about his mental health condition:

> [H]e states that in early 2018 he began experiencing physical and mental health issues, and after realizing that something was wrong, he sought health care and answers for himself, recounting a number of treatment facilities that he visited in 2018 and 2019. In 2019, he arranged admission to one facility as part of "his bond conditions." McCall states that he ultimately received a mental health diagnosis, is being treated with medication and therapy, and has used no alcohol or other substance — beside his prescribed medications — since 2018.

314 Ga. at 203-04. Although the Bar generally agreed with the level of discipline sought by McCall, "the Bar also notes that on April 13, 2021, McCall voluntarily participated in a mental health evaluation by Dr. Matthew W. Norman, M.D., who issued a Bar Fitness Evaluation and found that McCall was unfit to practice law." 314 Ga. at 206.

The Court rejected McCall's petition. With respect to mental fitness, the Court stated "while it may not be necessary to prove fitness at this juncture, it concerns us that McCall claimed to be fit to practice law in his petition, even though

an April 13, 2021 Bar Fitness Evaluation concluded otherwise." 314 Ga. at 204. The Court focused on the need for a certification of mental fitness, which did not appear to be what Mr. McCall sought.

In re Davis, 316 Ga. 30 (2023) also provides guidance. Davis's misconduct arose out of his "mishandling of his sister's estate and his nephew's conservatorship as well as his repeated failure to comply with orders of the Cobb County Probate Court." Though there is lengthy detail concerning this "mishandling," the bottom line was that Davis was liable: "$9,971 for breaches related to the estate and . . . $190,043.48 for breaches related to the conservatorship."

The Court earlier rejected a proposed suspension of 18 months which would convert to an indefinite suspension until those amounts were paid off which the Court noted "would effectively result in Davis being suspended for approximately 50 years." The Court "does not allow suspensions of this length." The case was returned to a Special Master, who recommended disbarment, with reinstatement conditioned on payment in full and the presentation of "a certification of fitness to practice law from a licensed mental health professional."

Davis urged that his mental health should have been viewed by the Special Master as a mitigating factor against disbarment. The Special Master "found that Davis was affected by grief, depression, and anxiety" and that "Davis's clinical depression and anxiety played a role in his general avoidance of his duties." However, the Special Master did not see a link between Davis's condition and the unethical acts: "Davis's mental state when he drafted his sister's will and when his sister died shortly thereafter was different than the mental state he had five years later . . . Davis's depression did not explain his behavior." Despite this finding, the Special Master did find as mitigation that "Davis's partially untreated depression

and anxiety played a role in his misconduct." The key language in Davis is this: "The Special Master concluded that disbarment remained the presumptive penalty because, sympathy aside, the mitigating factors were not sufficient to offset the aggravating factors."

The Court accepted the recommendation of the Special Master. Davis was disbarred "with reinstatement conditioned upon full payment of the probate judgment and certification from a licensed mental health professional of Davis's fitness to practice law." It appears that those standards are in addition to the detailed readmission factors already in place, including (re)taking the bar examination.

In re Jackson, 320 Ga. 318 (2024) was a burden case focusing not on the attorney's proof of a mental health issue, but rather on the steps the attorney took with his clients. "Jackson asserts that an ongoing mental health crisis forced him to close his private law practice — first temporarily and then permanently — and that, in the process of doing so, he failed to adequately communicate with and to properly withdraw from his representation of some of his clients." After getting past his mental health issues, Jackson sought to be disciple via reprimand for violations regarding client communication.

The Georgia Supreme Court rejected Jackson's request, focusing on two things. First, the Court expressed concern that Jackson did not provide all relevant information "about when and how he allegedly advised his clients of his decision to terminate his practice." Second, the Court was concerned that Jackson's limited request may have "overlook[ed] the fact that Jackson's conduct may have caused fairly serious harm to one or more of his clients and may also have negatively affected the public's perception of the legal profession in general

IV. **Procedural Issues**

A. **Nunc Pro Tunc**

Attorneys with serious mental health challenges – whether subject to discipline or not – often stop practicing law for a time until those challenges have been overcome. When this absence from practice coincides with a suspension from practice, the Court is sometimes asked to address whether the practice absence (occurring before the Court addresses discipline) can be counted toward the time of suspension. The "legal latin" for this principle is *nunc pro tunc*, literally "now for then." *Truett v. The Justices Of The Inferior Court*, 20 Ga. 102, 104 (Ga. 1856).

This Court has in the past when disciplining attorneys with mental health issues allowed some or all of the suspension to be imposed *nunc pro tunc*. In *In re Mathis*, 288 Ga. 548, (2011) (12 month suspension, 11 months *nunc pro tunc*; see, however, Nahmias, J, dissent). Although Mathis provides a convenient example of a *nunc pro tunc* ruling, it is silent as to standards. Interestingly, it was decided within a few months of *In the Matter of Onipede*, 288 Ga. 156, 157 (2010), which did set the standards:

> When an attorney requests [discipline] *nunc pro tunc*, it is the lawyer's responsibility to demonstrate that [he] voluntarily stopped practicing law, the date on which [his] law practice ended, and that [he] complied with all the ethical obligations implicated in such a decision, such as assisting clients in securing new counsel and facilitating the transfer of client files and critical information about ongoing cases to new counsel.

258 Ga. at 157. *See also In re Coggins*, S22Y1159, (Ga. October 4, 2022) (citing *Onipede* and permitting six months *nunc pro tunc*); *In re Sneed* (supra) (same, nine months). Most to the point is *In re Corley*, 303 Ga. 290 (2018), where a mental health condition was coupled with a conviction of a "serious and dangerous felony offence." 811 S.E.2d 347, 349 (official reported citation unavailable). Citing *Onipede*,

the Court held the suspension *nunc pro tunc* from the time the petition for discipline was filed.

In re McCall, 314 Ga. 200 (2022) is again instructive. The Court took issue with McCall's claim that he had stopped practicing law for a long enough period of time to act as a suspension. However "he attests that he only informed "some" of his clients that he was closing his practice" and – with respect to the matters at issue in his suspension,, he *failed* to assist his clients in securing new counsel or transferring information.

The opposite fact pattern resulted in the Court's approval of *nunc pro tunc* relief in *Matteson II*. Mr. Matteson presented evidence of written notice to all of his clients that he was stepping away from his practice, and that he was neither practicing nor receiving income from practice. He provided a copy of a notice letter to a client, as well as copies of tax records from his time of inactivity.

The 2023 decision in *In re Van Dyke,* 316 Ga. 168 (2023) is another case highlighting the role of mental health as a mitigation factor in the attorney discipline process. This case is the third appearance of Van Dyke's plight, with the proposed discipline rejected in the first two appearances. In 2018 (in Texas, where he is also admitted), Van Dyke made what was labelled a false report of a crime, and was arrested for the false report. He was then accused of procuring the unavailability of the witness against him. He pled nolo, and was given 24 months deferred adjudication. He was also disciplined by the Texas bar for unrelated threatening of a witness. The Special Master in the case noted a "pattern of misconduct showing … lack of respect for the legal process."

Van Dyke sought, and was given, a three year suspension in Georgia, measured from the time he ceased practicing law in 2019. Part of the Special

Master's analysis considered that "Van Dyke successfully completed counseling as a condition of his criminal probation . . . Van Dyke's emotional problems and completion of counseling were mitigating." Further, "Van Dyke had completed a counseling program and was pronounced fit to return to the practice of law by a licensed therapist."

B. Reciprocal Discipline

In re Williams, 319 Ga. 314 (2024) concerned an attorney barred both in Florida and Georgia. The attorney was disciplined in Florida, with reinstatement requiring "the express support of the Florida Lawyers Assistance Program and a showing of rehabilitation. Moreover, prior to making a showing of rehabilitation, Williams will be required to undergo a comprehensive mental health evaluation." The record does not specify the nature of the attorney's mental health issues. This is the first case in which Georgia entered reciprocal discipline regarding a mental health issue.

V. Mental Health Issues Not Asserted, Disbarment Follows

A. Possible Instances of an Attorney's Choice Not To Assert the Existence of Mental Health Issues

In re Levine 303 Ga. 284 (2018) is a case where the issue of the lawyer's mental condition raised, but not by the lawyer and therefore did not impact the final decision. The special master "concluded that Levine's personal or emotional problems were a mitigating factor, describing them as "self-evident" but noting that Levine offered no medical evidence in the disciplinary proceeding to support his claim of disability."

In re Nicholson, 299 Ga. 737 (2016) is similar, with slightly more discussion of the behavior of the attorney, who was accused of financial issues and false statements. "Nicholson conveyed his contempt for the disciplinary process in

general, and in others, he signaled his contempt for the special master in particular, flinging personal insults, unsupported accusations of misconduct, and conspiracy theories along the way." Further "Nicholson abruptly walked out of the hearing before its conclusion, remarking that "I don't want to listen to [the special master] for another ten minutes," and explaining that he had a more pressing engagement — a card game — to attend." With that and other actions observed, "In the latter, however, the special master also found a mitigating circumstance, noting the evidence that Nicholson previously had received psychiatric treatment, and finding that his bizarre behavior in the course of the disciplinary process was proof of an ongoing mental health issue. The special master explained that, if Nicholson were not mentally ill, the special master would recommend disbarment. But because the special master found mental illness, she instead recommended that Nicholson be suspended from the practice of law for not less than one year," with conditions. However, both the Review Panel and the Georgia Supreme Court noted that "Nicholson never urged mental illness as a mitigating circumstance and that he had presented no admissible evidence of a mitigating mental illness." He was disbarred.

In *In re Farmer*, 307 Ga. 307 (2019), disciplinary proceedings were brought because of counsel's in-litigation conduct. Counsel himself described this conduct as "'Conflictineering,' the purpose of which was to disrupt the judicial process to the point that either the court or the opposing party would simply capitulate for the sake of restoring order." This strategy included making more than 500 filings and *ad hominem* attacks against the judge. He threatened witnesses, was sanctioned for his conduct, expanded the litigation, and was ultimately found civilly liable for his conduct. He was disbarred. (Unlike *Levine* and *Nicholson*, mental health issues are not mentioned by the court in *Farmer*.)

B. Systemic Failure to Seek Mitigation Because of Mental Health Issues

Attorney mental health issues were once considered "under the radar." Steven Keeva et al., *Flying Under the Radar*, ABA J. COVER STORY (Jan. 8, 2006, 7:48 PM), https://www.abajourna.l.com/magazine/article/flying_under_the_radar1. That is no longer the case. The legal industry has made great progress with respect to these issues, with the State Bar of Georgia among the leaders in that respect. Given this growth in awareness, it would not be unreasonable to expect a growing number of discipline cases to relate in some fashion to mental health. The data indicates differently.

The bulk of the decisions in this paper are from 2016 or later. When comparing the number of published discipline cases that relate to mental health to the total number of disciple cases, it is plain to see that mental health discipline cases have rose neither in absolute number nor percentage of cases reported:

Year	Mental Health Cases	Total Cases	Percentage
2016	6	60	10.00%
2017	1	63	1.59%
2018	8	71	11.27%
2019	4	40	10.00%
2020	1	32	3.13%
2021	2	27	7.41%
2022	5	45	11.11%
2023	5	40	12.50%
2024	5	39	12.82%
Total	37	417	8.87%

Data for "Total Cases" comes from the collection of State Bar of Georgia Office of General Counsel Annual Reports (https://www.gabar.org/general-counsel/ogc-annual-reports) as well as the Georgia Supreme Court's Opinions and Summaries

pages (https://www.gasupreme.us/2025-opinions/). With a single-digit annual sample, caution should be exercised before relying too heavily upon it. During the subject decade (2014-2024) the State Bar of Georgia has put forth extreme effort to raise awareness of mental health, ranging from suicide awareness campaigns to lawyer assistance hotlines to wellness initiatives. It is difficult to tell whether those efforts have had any impact in discipline matters.

VI. **Conclusion: Reinstatement – The Desired Outcome of Rehabilitation**

Although the Georgia Supreme Court treats every attorney discipline case on its own merits, definable steps have evolved when asserting an attorney's mental health as a mitigating factor, all of which require the attorney to be exceedingly open. The attorney must recognize the wrongful act, eliminate the harm it caused and demonstrate remorse. The attorney must then demonstrate – not just assert – that a mental health issue exists, relates to the wrongful act, and is the subject of ongoing treatment. Many of the attorneys described above followed those steps and ultimately were reinstated. In some instances, the reinstatement was based upon a demonstration that conditions have been met. *In re Morgan*, 310 Ga. 756 (2021); *In re Corley*, Supreme Court of Georgia, S18Y0350, January 31, 2020 (838 S.E.2d 588. *In re Ledoux*, 303 Ga. 804 (2018), In *re Bagwell* 292 Ga. 340 (2013). In others, reinstatement was conditioned only on the passage of time, and the attorneys chose to show a return to practice (Storrs; Moody (though currently inactive); Franklin). Thus, though the Georgia Supreme Court must treat each discipline case on its own merit, the opportunity for a return after rehabilitation is clearly present.[9]

[9] It would be disingenuous to exclude the matters that caused this paper and the accompanying presentation to come into existence *See In re Lang*, 292 Ga. 894, 741 S.E.2d 152 (2013) (one-year suspension of attorney with bipolar disorder for misuse of trust funds); *In re Lang*, 295 Ga. 220, 759 S.E.2d 47 (2014) (one-year suspension of same attorney for failing to communicate with client). *See also In re Lang*, 297 Ga. 156, 773 S.E.2d 253 (2015) (reinstating same attorney). The author is not competent to give a detached evaluation of those matters, other than to express gratefulness to the State Bar of Georgia and the Georgia Supreme Court for understanding repayment, remorse, mental condition, and the necessity and efficacy of treatment.