



ARKANSAS JUDICIARY

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## **SECTION 19. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.**

A. General Factors. In addition to any other considerations permitted by these Procedures, a panel of the Committee and any judge, in imposing or recommending any sanctions, may consider:

- (1) The nature and degree of the misconduct for which the lawyer is being sanctioned.
- (2) The seriousness and circumstances surrounding the misconduct.
- (3) The loss or damage to clients.
- (4) The damage to the profession.
- (5) The assurance that those who seek legal services in the future will be protected from the type of misconduct found.
- (6) The profit to the lawyer.
- (7) The avoidance of repetition.
- (8) Whether the misconduct was deliberate, intentional, or negligent.
- (9) The deterrent effect on others.
- (10) The maintenance of respect for the legal profession.
- (11) The conduct of the lawyer during the course of the Committee action.
- (12) The lawyer's prior disciplinary record, to include warnings.
- (13) Matters offered by the lawyer in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the lawyer demonstrates that he or she is successfully pursuing in good faith a program of recovery.

B. Aggravating Factors. Any panel or judge may also consider the following aggravating factors identified by the American Bar Association Joint Committee on Professional

Standards and recognized by the Arkansas Supreme Court in *Wilson v. Neal*, 332 Ark. 148, 964

S.W.2d 199 (1998):

- (1) prior disciplinary offenses;
- (2) dishonest or selfish motive;
- (3) a pattern of misconduct;
- (4) multiple offenses;
- (5) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with these Procedures or orders of the Committee;
- (6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (7) refusal to acknowledge the wrongful nature of the conduct;

- (8) vulnerability of the victim;
- (9) substantial experience in the practice of law;
- (10) indifference to making restitution; and
- (11) illegal conduct, including that involving the use of controlled substances.

C. Mitigating Factors. Any panel or judge may also consider the following mitigating factors identified by the American Bar Association Joint Committee on Professional Standards and recognized by the Arkansas Supreme Court in *Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (1998):

- (1) absence of a prior disciplinary record;
- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems;
- (4) timely good faith effort to make restitution or to rectify the consequences of the misconduct;
- (5) full and free disclosure to the disciplinary board or cooperative attitude towards the proceedings;
- (6) inexperience in the practice of law;
- (7) character or reputation;
- (8) physical disability;
- (9) mental disability or chemical dependency including alcoholism or drug abuse when:
  - (a) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
  - (b) the chemical dependency or mental disability caused the misconduct;
  - (c) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (d) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.
- (10) delay in [the] disciplinary proceedings;
- (11) impositions of other penalties or sanctions;
- (12) remorse;
- (13) remoteness of prior offenses.

#### **Associated Court Rules:**

Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

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