

1 **Rule ~~14-607~~11-588. Aggravation and mitigation.**

2 **(a) Application.** After ~~misconduct has been established~~the presumptive sanction has  
3 been determined, aggravating and mitigating circumstances may be considered and  
4 weighed in ~~deciding what sanction to impose~~deciding whether departure from the  
5 presumptive sanction is warranted.

6 **(b) Aggravating circumstances.** Aggravating circumstances are any considerations or  
7 factors that may justify an increase in the degree of discipline to be imposed.

8 Aggravating circumstances may include:

- 9 (1) prior record of discipline;
- 10 (2) dishonest or selfish motive;
- 11 (3) a pattern of misconduct;
- 12 (4) multiple offenses;
- 13 (5) obstruction of the disciplinary proceeding by intentionally failing to comply  
14 with rules or orders of the disciplinary authority;
- 15 (6) submission of false evidence, false statements, or other deceptive practices  
16 during the disciplinary process;
- 17 (7) refusal to acknowledge the wrongful nature of the misconduct involved,  
18 either to the client or to the disciplinary authority;
- 19 (8) vulnerability of victim;
- 20 (9) substantial experience in the practice of law;
- 21 (10) lack of good faith effort to make restitution or to rectify the consequences of  
22 the misconduct involved; and
- 23 (11) illegal conduct, including the use of controlled substances.

24 (c**b**) **Mitigating circumstances.** Mitigating circumstances are any considerations or  
25 factors that may justify a reduction in the degree of discipline to be imposed. Mitigating  
26 circumstances may include:

27 (1) absence of a prior record of discipline;

28 (2) absence of a dishonest or selfish motive;

29 (3) personal or emotional problems;

30 (4) timely good faith effort to make restitution or to rectify the consequences of  
31 the misconduct involved;

32 (5) full and free disclosure to the client or the disciplinary authority prior to the  
33 discovery of any misconduct or cooperative attitude toward proceedings;

34 (6) inexperience in the practice of law;

35 (7) good character or reputation;

36 (8) physical disability;

37 (9) mental disability or impairment, including substance abuse when:

38 (A) the ~~¶~~**R**espondent is affected by a substance abuse or mental disability;

39 ~~and~~

40 (B) the substance abuse or mental disability causally contributed to the  
41 misconduct; ~~and~~

42 (C) the ~~¶~~**R**espondent's recovery from the substance abuse or mental  
43 disability is demonstrated by a meaningful and sustained period of  
44 successful rehabilitation; and

45 (D) the recovery arrested the misconduct and the recurrence of that  
46 misconduct is unlikely;

47 (10) unreasonable delay in disciplinary proceedings, provided that the  
48 ~~R~~espondent did not substantially contribute to the delay and provided further  
49 that the ~~R~~espondent has demonstrated prejudice resulting from the delay;

50 (11) interim reform in circumstances not involving mental disability or  
51 impairment;

52 (12) imposition of other penalties or sanctions;

53 (13) remorse; and

54 (14) remoteness of prior offenses.

55 (~~e~~d) **Other circumstances.** The following circumstances ~~should~~may not be considered  
56 as either aggravating or mitigating:

57 (1) forced or compelled restitution;

58 (2) withdrawal of ~~e~~C~~om~~plaint against the ~~L~~awyer;

59 (3) resignation prior to completion of disciplinary proceedings;

60 (4) ~~e~~C~~om~~plainant's recommendation as to sanction; and

61 (5) failure of injured client to complain.

62 Effective December 15, 2020