

## **Balancing Compassion With The Need For Public Protection**

**by**  
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The lawyer discipline system makes every effort, consistent with protection of the public, to work with attorneys suffering from depression and other mental illnesses. During the last four years, the Director has entered into several stipulations for private probation with attorneys suffering from depression or other mental illnesses where the attorney is cooperative, consistently compliant with therapy and medication requirements, and the Director's Office has been able to work out a supervision structure which is reasonably likely to protect the public from future misconduct by the attorney.

The following case descriptions are of actual successfully completed private probations. Names, genders, geography and other potentially identifying characteristics have been modified to protect attorney and client privacy.

Attorney A worked for a mid-size metro area firm. He neglected a case and initially failed to cooperate with the Director's Office in the investigation of the complaint. The attorney had no discipline history and in addition to suffering from depression, apparently developed a phobia for this single case.

He was placed on supervised probation and required to comply with all recommendations made by his therapist.

Attorney B, a sole practitioner, neglected a case, failed to respond to discovery and failed to appear for a hearing on a motion to compel. She began receiving treatment for major depression and taking antidepressant medication. Almost 10 years earlier she had successfully completed a private probation for neglect which had also been the result of a major depressive episode. She was given a practice supervisor and in addition, her probation contained the following provision:

"Because a supervisor cannot know, on a daily basis, whether respondent's psychological condition has changed or whether respondent is attending to her office obligations, an attorney, who sees or agrees to see respondent on approximately a daily basis, such as an office sharer, must also agree in writing to monitor respondent and report immediately to the Director's Office and to respondent's supervisor, any major discernible change in respondent's condition."

Government Attorney C suffered from severe depression. After his supervisor discovered severe neglect in a number of files, he was placed on medical leave. Several months later when the attorney was able to return to practice on a part-time basis in a highly structured and monitored setting, he was placed on supervised probation with regular reporting on his psychological progress. Absent extreme extenuating circumstances the Director's Office would have sought public discipline or disability status in such a case.

Attorney D, a young recent law school graduate, was not living in Minnesota or actively practicing law. He was arrested and pled guilty to a class D felony for entering a women's dormitory and stealing undergarments. He was granted a deferred sentence, placed on probation and ordered to undergo psychiatric testing and counseling. Ordinarily, the Director's Office would have sought public discipline for such conduct. Because the conduct was outside the practice of law and the attorney agreed not to practice in Minnesota until he could provide the Director with sufficient information that he was presently fit to practice, he was placed on private probation.

### **Public Discipline**

Balancing public protection and the concerns of the errant attorney is a difficult task. Private probation is not a panacea. Private probation is not appropriate when the attorney's misconduct is very serious or where the attorney has not sufficiently addressed his or her mental illness or disability to ensure that the misconduct will not recur. Great care is required in assessing whether present treatment and recovery make an attorney a good candidate for private probation. Not all private probations requiring continued treatment or therapy are successful. In 1997 two attorneys received public discipline following revocation of their private probations.

While on private probation and continuing to treat with his psychologist for depression, Mr. Bergstrom neglected a client matter and lied to the client about it. When the client fired him, he did not promptly turn over the file and failed to cooperate with the investigation of the complaint made against him. *In re Bergstrom*, 562 N.W.2d 674 (Minn. 1997).

While under investigation for several client complaints about neglect and lack of communication, Marianne Milloy was diagnosed with Attention Deficit Disorder (ADD). Ms. Milloy had previously been on both public and private probation for similar misconduct. Her psychologist gave an opinion that her neglect and failure to communicate with clients was directly related to her undiagnosed ADD. Her psychologist stated that she believed that with medication and continued therapy to control ADD symptoms, Ms. Milloy could continue to practice with supervision. Ms. Milloy was again placed on private probation. Unfortunately her neglect, lack of communication and non-cooperation with her supervisor and the discipline investigation of complaints continued and she was indefinitely suspended. *In re Milloy*, 571 N.W.2d 39 (Minn. 1997).