

GIVING A COLLEAGUE A HAND

By

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Every year dozens of Minnesota attorneys volunteer their time to serve as supervisors for other attorneys who are on either public or private probation. These volunteer supervisors provide both a safety net for the public and a support system for attorneys who have a problem in their practice. Minnesota has been using probation as a disciplinary disposition since the 1970s. Minnesota is a national leader in the effective use of probation, especially in the use of volunteer practice supervisors.[Ftn 1](#)

During the last five years, 93 attorneys have been placed on public probation by the Court. Public probation is imposed by the Supreme Court pursuant to Rule 15(a) (4), Rules on Lawyers Professional Responsibility (RLPR). Public probations are ordered either as a form of discipline or as a condition of reinstatement following suspension or disbarment. About 45 percent of public probations follow reinstatement.[Ftn 2](#) Public probation may be for a specified number of years or until further order of the Court.

Within the last five years, 114 attorneys have been on private probation. Private probation is authorized by Rule 8(c) (3), RLPR, pursuant to a stipulation between the Director and the attorney with the approval of the chairperson of the Lawyers Professional Responsibility Board. Private probations are for a specified period of time, usually two years. As with other private discipline, the Director's Office maintains a permanent record of the probation.

SUPERVISED PROBATIONS

Only about 60 percent of public and private probations during the last five years have involved volunteer supervisors.[Ftn 3](#) Supervised probations are most often used where practice monitoring and assistance is needed. Supervisors generally practice in the same geographic area, have some familiarity with the probationer's type of practice, but do not frequently have cases adverse to that attorney.

Supervisors have access to confidential client information and must maintain those client confidences. Supervisors are usually nominated by the attorney they monitor and must be approved by the Director's Office. They should not be personal friends or close professional associates. A close personal or professional relationship may interfere with the supervisor's duties which include reporting to the Director any practice problems, noncooperation, or other failures to comply with probation.

The two most common reasons for supervision are: 1) inadequate books and records, and 2) client neglect and inadequate communication. Approximately one-third of public probations entail monitoring books and records. About three-fourths of those probations have volunteer supervisors. Ordinarily public probation is ordered for record-keeping flaws which do not seriously endanger client money and do not

involve intentional misappropriation.

Probation is also ordered following reinstatement from a suspension or disbarment which involved trust account problems. Fewer than 20 percent of private probations involve books and records. Private probations are used only where there is no misappropriation of client funds, the violations are not serious and the public can be protected by educating and monitoring the attorney's compliance.

Compliance is monitored either by a volunteer supervisor or by periodic trust account reviews by the Director's Office. Over the last five years, 21 attorneys have been placed on private probation for failure to reconcile their trust accounts and other lapses in record keeping. Fifteen of the 21 private probations resulted from the trust account overdraft notification program.[Ftn 4](#)

More than a third of probations, both public and private, involve client neglect or inadequate communication. These problems may stem from poor office practices, an inability to deal with difficult clients, or problems with procrastination. Approximately 90 percent of private and 80 percent of public probations for this type of misconduct are supervised.[Ftn 5](#)

Attorneys on supervised probation for neglect and inadequate communication usually are required to provide the Director's Office and their supervisors with an outline of office procedures, including a system for monitoring and recording return of phone calls, file maintenance and review, and calendaring.

THE SUPERVISORY ROLE

Initially, supervisors visit the attorney's office to review these office practices in operation. The first week of each month, attorneys on probation provide their supervisors with an active file inventory, including a description of and the date of the last activity taken on each matter and the next expected activity.

Supervisors meet with the attorney in person for a random review of the files at least once per quarter and make a quarterly written report to the Director's Office regarding their review and the attorney's compliance with the terms of the probation. Supervisors report that their average time commitment is less than two hours per week.

The Director attempts to tailor probations – especially those relating to problems of client neglect, communication, or competence – to meet the needs of the particular attorney and the nature of his or her practice. For example, one attorney has several supervisors. He has a supervisor for each practice area and an overall supervisor who meets with him monthly after reviewing reports from the other supervisors. Several attorneys' probations require more intense supervision at the beginning of the probationary period with reduced reporting requirements as the probation proceeds successfully.

Even the most stringent probation does not provide intense day-to-day supervision. Supervisors do not give substantive advice or serve as "cocounsel" on client matters. Supervisors are not expected to evaluate the substantive performance of attorneys on probation or to "guarantee" compliance with the Rules of Professional Conduct. Supervisors are immune from civil liability pursuant to Rule 21, RLPR.

Most volunteer supervisors report good experiences with the attorneys they supervise. Several supervisors have been willing to volunteer again and work with attorneys they do not know personally. Their success stories are inspiring.

SUCCESS STORIES

One greater Minnesota supervisor who practices in a small town worked with a solo practitioner in a nearby town who was on probation for neglect of probate matters and inadequate communication with clients. While he knew the attorney casually before he agreed to become a supervisor, by the end of the probation they had become friends. The attorney on probation had a reputation as a good attorney but had problems with time management, record keeping, and returning phone calls: especially difficult or unpleasant calls. The supervisor helped the attorney set up a better office management system and counseled him on how his office handled similar practice problems. By the end of the probation the supervisor felt that the attorney's outlook as well as his office practices had improved.

A family law attorney in a medium-sized Minnesota city was placed on probation for neglect and inadequate client communication. When the supervisor reviewed the practice she discovered that the attorney had far too many active files for any attorney to handle diligently. The supervisor helped the attorney cut back on client intake, do a better job of client screening, and refer out cases which were likely to make her practice less manageable. The supervisor has served as a mentor and a resource for this solo practitioner to consult about troublesome cases.

A metro area attorney was placed private probation for neglect and inadequate communication. The attorney had major health and family problems which had an impact on his practice. His supervisor's patient support helped the attorney successfully complete his probation.

As one might expect, not all probations are successful. Of the 65 attorneys on supervised private probations during the last five years, 13 have since been publicly disciplined: seven had their private probations revoked; eight were publicly disciplined after completing private probation. Twenty-three of 93 attorneys on public probation have had those probations revoked, extended, or a second public probation imposed within the last five years. Almost half of those revoked were unsupervised probations.

The efforts of volunteer supervisors have resulted in a major contribution to the public and to their fellow members of the bar. An 80 percent success rate for private probations and a 75 percent success rate for public probations indicate that probation can protect the public while giving attorneys who have violated the rules an opportunity to correct their conduct and continue to serve their clients. Additional volunteer supervisors are always needed. Any attorney willing to consider serving as a volunteer supervisor should contact the Director's Office at 296-3952 (metro) or 1-800-657-3601 (greater Minnesota).

NOTES

¹ See William Wernz, "Probation as a Disciplinary Disposition," 44 The Bench & Bar of Minnesota 4 (April 1987), p.9.

² *More than half of this group were suspended for six months or less and reinstated by affidavit following the expiration of their suspension period. They were placed on probation pursuant to the Court's original disciplinary orders. The remainder were placed on probation in the reinstatement order at the recommendation of a Lawyers Board Panel following a hearing pursuant to Rule 18, RLPR.*

³ *Unsupervised probations are monitored directly by the probation department of the Director's Office. For example, the Supreme Court has ordered probation to monitor tax compliance for attorneys, following suspension for failure to file tax returns timely. About one-fourth of public probations involve tax monitoring. These probations generally do not require a volunteer supervisor.*

⁴ *The trust account overdraft notification program was implemented August 1, 1990, pursuant to an amendment to Rule 1.15, Minnesota Rules of Professional Conduct.*

⁵ *Unsupervised probations usually involve special circumstances such as a change from private practice to public or corporate practice, a winding down of practice, or a practice where there are insufficient open files to warrant the use of a supervisor.*