

Psychological Fitness: Dealing With Mental Health Issues

by

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Recognizing the increasing number of attorneys whose practice has been adversely affected by depression, addiction and other mental health issues, a Depression Task Force composed of Lawyers Concerned for Lawyers (LCL) and the Life and the Law Committee of the Minnesota State Bar Association petitioned the Minnesota Supreme Court for a change to Rule 8.3(c) of the Minnesota Rules of Professional Conduct (MRPC), and for an \$8 per attorney assessment to establish a Lawyers Assistance Program (LAP).

Effective July 1, 2000, the court amended Rule 8.3(c), MRPC, to exclude information gained by a lawyer or judge while participating in a lawyer assistance program^{Ftn 1} from the mandatory reporting requirement. Rule 8.3, MRPC, "Reporting Professional Misconduct" now reads:

This Rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.

Between 1990 and 2000 more than a dozen attorneys have been placed on disability inactive status due to mental health issues. In addition, a significant number of attorney public and private discipline during the last decade involved mental health issues--primarily depression. Where mental health issues cause or contribute to an attorney's misconduct, a lesser disciplinary sanction may be imposed. See *In re Weyhrich*, 339 N.W.2d 274 (Minn. 1983). In order for the mental health issue to mitigate the misconduct, the attorney must prove by clear and convincing evidence that the five factors set out in *Weyhrich* have been met. Those factors are:

- the attorney suffers from a severe psychological disability;
- the severe psychological disability caused the misconduct;
- the attorney has undergone or is undergoing treatment for the psychological disability;
- the recovery has arrested the misconduct; and
- the misconduct is not apt to recur.

While protection of the public is and must be the primary focus of the attorney discipline system, the Director's Office makes every effort to work in a positive way with attorneys struggling with mental health issues.

Addressing mental health concerns before they have a negative impact on an attorney's practice is a very important goal. A statewide LAP will provide confidential initial help and referral services for more intensive or long-term help. The court has designated the Interest on Lawyers Trust Account Board (IOLTA) to receive the annual \$8 per attorney LAP funding. IOLTA will contract with an agency to set up and administer the LAP. In October 2000, IOLTA sent out requests for proposals.

After receiving proposals IOLTA determined that revisions needed to be made to the request for proposals.

IOLTA is now in the process of making those revisions. While no specific timeline has been established, the LAP could be up and functioning by sometime in the summer 2001.

In the interim, attorneys should be aware that a depression support group that meets twice per month is available in the Twin Cities. Chuck Steffey is the contact person for that group and can be reached at 612-373-6970. LCL continues to receive calls regarding attorneys with mental health issues and refers those individuals to appropriate service providers. Barbara Kneggi, program coordinator for LCL, can be reached at 651-646-5590, or through LCL's web site at www.mnlcl.org.

¹ The comment to the rule (which is included for convenience and does not reflect court approval) states:

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a bona fide lawyers assistance program or other program that provides assistance, support or counseling to lawyers, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression or other mental disorders. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The Rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the Rule may nevertheless report misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.