

Returning To Practice After Suspension

by

Betty M. Shaw, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

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During the last five years, the Supreme Court has suspended more than 90 Minnesota attorneys. The length of suspension varies from 30 days to indefinite suspensions with no right to apply for reinstatement for at least five years. The seriousness of the misconduct and the aggravating and mitigating circumstances surrounding the misconduct determine the length of the suspension.

If the Court imposes a relatively short suspension (30-90 days), the attorney may ordinarily be reinstated based upon an affidavit of compliance with (1) the preconditions stated in the court's order, (2) Rule 24, Rules on Lawyers Professional Responsibility (RLPR), imposing costs and disbursements, (3) Rule 26, RLPR, requiring the attorney to file an affidavit with the Director's Office indicating that the attorney has notified clients, courts and adverse counsel of the suspension, and (4) Rule 18(e)(4), RLPR, requiring CLE compliance and payment of any Client Security Board subrogation claim. See Rule 18(e)(3), (4) and (5), and Rule 18(f), RLPR. Unless the Director's Office objects to the reinstatement, the court promptly issues an order reinstating the attorney. The reinstated attorney has one year from the date of the suspension order to pass the professional responsibility portion of the bar examination.

Attorneys suspended for more than 90 days ordinarily must petition for reinstatement. See Rule 18(a) - (e), RLPR. The petition is served on the Director's Office and the state bar association president. The Director's Office investigates the attorney's character and fitness including his other conduct since suspension and compliance with any court-ordered preconditions for reinstatement such as restitution to clients, tax filing compliance or abstinence. If mental health or chemical dependency was an issue in the discipline proceedings, the attorney must show a pattern of stable recovery. If the suspension has been lengthy, the attorney must either retake the full bar examination or demonstrate current legal knowledge and skills.

Most importantly, an attorney applying for reinstatement must "establish by clear and convincing evidence that she or he has 'undergone such a moral change as now to render him a fit person to enjoy the public confidence and trust once forfeited.'" *In re Hanson*, 454 N.W.2d 924, 925 (Minn. 1990) (citations omitted). Evidence of this moral change "must come not only from an observed record of appropriate conduct, but from the petitioner's own state of mind and his values." *Id.* This standard requires stronger proof of good character and trustworthiness than is required in an original application for admission to practice. *In re Swanson*, 343 N.W.2d 662, 664 (Minn. 1984).

Reinstatement after suspension is not automatic. It is a careful and serious process seeking to give those attorneys who once forfeited the trust placed in them as attorneys a chance to prove that they have changed and that the public can once again be assured that they will honestly and competently handle their most important affairs. The petitioning attorney presents his or her case to a three-member panel of the Lawyers Professional Responsibility Board, which makes findings and a recommendation to the court. If the panel recommends against reinstatement, the attorney may order a transcript and challenge the panel's report through briefing and oral argument before the Supreme Court.

Approximately 60 attorneys have petitioned for reinstatement during the last 10 years. About 70 percent were reinstated, 20 percent were denied reinstatement after hearing and 10 percent withdrew their petitions before the panel hearing. Some attorneys are reinstated with limitations or conditions placed on their practice. For example, one attorney was excluded from personal injury or product liability practice, another was restricted from solo practice and yet another was required to obtain his probation supervisor's recommendation and the Director's consent before taking cases outside the one or two practice areas in which he had the most experience.

Almost all attorneys returning to practice after reinstatement are placed on probation.

Probations are designed to protect the public and to assist the attorney in successfully reentering practice.

Many probations have unique features designed to meet specific concerns regarding individual attorneys. For example, one attorney returning to solo practice after more than five years of suspension had a group of supervisors, one for each area of practice.

Some attorneys are required to continue counseling and some are required to continue AA or NA meetings or support groups.

Even with all these safeguards, a few reinstated attorneys commit further serious misconduct.

Within the last 10 years, two attorneys reinstated after a hearing have been disbarred. *In re William Peters*, 474 N.W.2d 164 (Minn. 1991) and *In re Chester Graham*, 609 N.W.2d 894 (Minn. 2000). Another received a long-term indefinite suspension (*In re Schutter*, 489 N.W.2d 233 (Minn. 1992); 528 N.W.2d 239 (Minn. 1995); and 562 N.W.2d 790 (Minn. 1997)). The vast majority of reinstated attorneys return to successful and ethical practice providing years of service to the public and the administration of justice.