

Supervising probation is a great way to volunteer

by

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Probation, private or public, is an important form of discipline. Discipline in attorney misconduct cases is not to punish the lawyer; its purpose is to protect the public and the profession, and to deter misconduct by the lawyer and others. Probation fits well within this model.

There are three ways that lawyers are placed on probation. An attorney may agree to private probation generally in lieu of public discipline. This form of discipline requires the attorney's agreement and the Lawyers Board chair's approval, and is used for instances where an admonition is not appropriate because the misconduct is not isolated and non-serious, but a period of supervised practice is warranted. Public probation is ordered as part of public discipline, and lawyers are frequently placed on public probation following reinstatement to the practice of law after a period of suspension or disbarment. Probation terms are generally two years, but this can vary. They can be unsupervised or supervised.

In 2020, there were 88 open probations, most of them supervised. Recently a reader wrote me to suggest a column on probation supervisors. I thought this was a fantastic idea, because I know that many people are not aware of this part of the attorney discipline system, and we are always looking for volunteers to serve as probation supervisors. Let's cover what is involved in this process and why you might want to consider volunteering in this manner. I would also like to highlight the work of three probation supervisors, who share in their own words, why you might want to consider volunteering.

Selection

In all cases, lawyers are asked to nominate their own probation supervisor, subject to approval by the Office. Because this is an important relationship, it helps if the supervising lawyer already knows or has otherwise worked with the probationer in some capacity. This is how attorney Jeff Jacobs came to be a probation supervisor. Mr. Jacobs has more than 40 years of experience as an attorney, and is with the law firm of

Wilkerson, Hegna, Kavanaugh & Johnston in Edina. Mr. Jacobs was approached in 2020 by an attorney he knew from the community to serve as the attorney's probation supervisor.

Mr. Jacobs was unfamiliar with the process but was happy to try to help. After discussions with our Office about what probation entails, Mr. Jacobs agreed to serve as a probation supervisor for two years and is very glad he did. Mr. Jacobs reports that his supervisee has taken the Board's probation order and the requirements to heart, and this experience has been equally as rewarding for Mr. Jacobs, who has used this opportunity to improve his own practice. Communication deficiencies were the issue that troubled Mr. Jacobs' supervisee, and through regular quarterly meetings, Mr. Jacobs has seen improvement in his supervisee's practice.

Sometimes probationers are unable to find a volunteer, and in those cases the Office turns to a roster of volunteers who have previously served as volunteer supervisors. One such volunteer is Judith Rush, director of mentor externship programs at the University of St. Thomas School of Law. Ms. Rush, a former LPRB Chair, has successfully supervised several probationers with an emphasis on lawyers who struggle with lawyer wellness issues that affect their ability to competently and ethically practice law. Ms. Rush, having worked as a solo practitioner for many years, understands the unique challenges, both professional and personal, that solo practitioners face.

Role of a Supervisor

The role of a probation supervisor varies depending on the type of probation involved. Most probation supervisors focus on implementation of and compliance with office procedures and review of active case file management procedures. All probations generally involve at least quarterly meetings with a supervisor, a quarterly report to our Office, and sometimes monthly reviews of active case files to ensure compliance with probation terms. Most probationers embrace the opportunity to refine client-related practices, and after initial meetings the time spent in active supervision is often minimal. Mr. Jacobs estimates that he spends three to five hours on a quarterly basis now that he and his supervisee have gotten into a groove and reports that it has not been an imposition on his time at all. Other probations can be more challenging.

For example, immigration attorney Leslie Karam, managing attorney at Karam Law in the south metro, was recruited to supervise another immigration attorney. Ms. Karam dedicated a lot of time to assist her supervisee in setting up good office practices that would help to assure an ethically compliant practice. Ms. Karam believes strongly

that “we are all human and humans make mistakes. We do not have to be defined by our mistakes; rather we should be judged by our response when things go wrong.” Ms. Karam approached her probation role as an observer, mentor, and ally, aiming to help her supervisee develop better approaches to lawyering. Despite receiving the gift of a lot of Ms. Karam’s time and guidance, her supervisee was unable or unwilling to make the improvements that were needed; ultimately her supervisee continued to have issues and received additional discipline. Sometimes, as Ms. Karam notes, a career change may be what is best for all involved.

Why Volunteer?

“Lawyers who agree to probation are not ‘bad’ lawyers—they are typically lawyers who haven’t had mentoring or haven’t been able to take the time from practice to institute and internalize best practices, or have encountered significant challenges in their lives that have impacted their ability to serve clients,” according to Ms. Rush. “Supervising their probation gives me an opportunity to assist them in taking the time to focus on practice management, client service, and integration and internalization of the Rules of Professional Conduct.” Ms. Karam agrees: “Probation supervisors introduce the opportunity to learn from past mistakes and grow professionally into stronger advocates and advisors to our clients.” Each volunteer I spoke with for this column believed the investment of time was well worth it as a service to the profession and as a way to strengthen their own practices. It is also a concrete and meaningful way to strengthen the quality of service rendered by the legal profession as highlighted in the Preamble (para. 6) to the Rules of Professional Responsibility.

Most probations end successfully for both the supervisee and the supervisor. Only a few probationers have issues while on probation, and everyone is sorry to see this happen. Supervisors serve without compensation, but as noted by several volunteers, it is a rewarding form of service to the profession. Another statistic that is important to note—most discipline is received by experienced attorneys. In typical years, practitioners with between 11-30 years of experience receive the most discipline. I’m not sure we know all the reasons for this, but I will always be a strong believer in “there but for the grace of God go I.”

Conclusion

If you are looking for a way to invest in the profession, consider volunteering as a probation supervisor. Mistakes happen, life can be hard, and practicing law is a challenging career. Many of us have benefited greatly from mentors and advisors who have helped us course-correct when needed. Who among us does not need

encouragement, support, and a helping hand at times? If you would like to learn more, please call our Office at 651-296-3952.

And if you are approached by a lawyer to serve as their supervisor, consider saying yes. Thank you to everyone who has answered the call to serve as a probation supervisor within the discipline system—the profession is stronger because of you. If being a probation supervisor is not your cup of tea, consider volunteering for a local district ethics committee. It is a fantastic way to learn the ethics rules as well as a great service to the profession. Please don't forget we are always looking for non-lawyers to volunteer. If you know a non-lawyer who is interested in the law and ethics, send them our way. Finally, thanks to Bob Beutel for recommending this topic. If you have suggestions for future columns, please let me know.