

The Rules Regarding Disability Inactive Status

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When an attorney is unable to represent clients because of a physical or mental disability or because of a chemical addiction, the Supreme Court may place the attorney on disability inactive status pursuant to Rule 28 of the Rules on Lawyers Professional Responsibility (RLPR).^{Ftn 1} When the attorney has recovered from the disability he or she may petition for reinstatement under Rule 18. Over the last 20 years approximately 30 attorneys have been placed on disability inactive status in Minnesota.

Most cases involve a transfer to disability status when the attorney asserts a disability as a defense or mitigation in a disciplinary proceeding. The attorney may assert that he or she is unable to assist in the defense and/or cannot presently represent clients competently. The issue may arise at almost any point in the disciplinary proceedings. For example, it may be clear to the Director's Office when investigating the initial complaint that the attorney is suffering from a disability. In that case, the Director's Office, with the attorney's cooperation, works with his or her doctors to file the appropriate petition and stipulation for transfer to disability.

Sometimes the attorney does not disclose the disability until a petition for discipline has been filed. In one case, the matter had reached referee hearing and in another the attorney petitioned for disability inactive status after having defaulted on the petition for disciplinary action.

When attorneys are transferred to disability status while serious allegations of misconduct are pending against them, the court ordinarily stays the disciplinary proceedings during the period of disability. The court then orders that the allegations of misconduct be considered at the reinstatement proceeding and that a recommendation for disciplinary sanctions, if any, be made to the court at that time.

While the overwhelming majority of attorneys have been transferred to disability inactive status following the filing of complaints against them, this is not always the case. This year an attorney petitioned for transfer to disability inactive status because of her serious depression. Upon review of her medical records, the Director's Office stipulated that her mental condition prevented her from competently representing clients and the court issued an order placing her on disability inactive status.

Another way in which the issue may arise is pursuant to Rule 28(b) which provides: "This Court may

immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.”

In 1993, an attorney was criminally charged with stalking. Psychiatrists who evaluated the attorney to determine whether he was competent to stand trial concluded that he suffered from paranoia. Because he met the necessary insanity criteria, criminal charges were dropped and he was placed on disability inactive status.

In 2000, the court placed another attorney on disability status when she was found to be an incapacitated person after twice being charged with gross misdemeanors. In the first case, the attorney stipulated to placement on disability inactive status. In the second case, the attorney refused to stipulate or to cooperate with the Director’s Office in any way.

Unfortunately, only three attorneys have been successfully reinstated from disability status. In 1988, an attorney who was suffering from severe depression petitioned the court for transfer to disability status. One year later, the attorney was substantially recovered from the depression and successfully petitioned for reinstatement. He has practiced without any discipline problems for the last 20 years.

Another attorney who transferred to disability status in 1990 while suffering from depression was reinstated four years later. His reinstatement was conditioned on continued psychotherapy until his psychologist determined that future therapy was no longer appropriate. The attorney successfully completed two years of supervised probation and continues to actively practice.

A third attorney suffered from manic depression. Before his transfer to disability status he seriously neglected several client matters and misappropriated money from his trust account to go on buying sprees. He was hospitalized and the court established a trusteeship to wind up his practice. Two years later, he was removed from disability status but agreed not to resume practice until the disciplinary charges, which had been stayed during his disability status, had been resolved. In 1994, after a referee hearing, the court issued an order suspending him for three years retroactive to the date of his placement on disability inactive status. Because the attorney’s misconduct was caused by a severe psychological disability from which he had now recovered so that misconduct was not apt to recur, the referee recommended a more lenient sanction. See *In re Weyhrich*, 339 N.W.2d 274 (Minn. 1983). Since his reinstatement, this attorney has been an active advocate on behalf of attorneys suffering from depression and manic depression.

¹ Placement on disability is by public Supreme Court order. These orders tend to be short and provide very little detail regarding the attorney’s disability and/or any allegations made against the attorney. Names and cites have not been given in this article to protect the privacy of these individuals. Anyone needing to know the names and case citations can obtain them by calling the Office of the Director of Lawyers Professional Responsibility.