

Rule 28. Disability Status

(a) Transfer to disability inactive status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate transfer. 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.

(c) Asserting disability in disciplinary proceeding. A lawyer's assertion of disability in defense or mitigation in a disciplinary proceeding or a revocation of conditional admission proceeding shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates. If a lawyer alleges disability during a disciplinary investigation or proceeding or a revocation of conditional admission proceeding, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

- (1) Transfer the lawyer to disability inactive status;
- (2) Order the lawyer to submit to a medical examination by a designated professional;
- (3) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition in the same manner as eligibility for appointment of a public defender in a criminal case;
- (4) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;
- (5) Direct the Director to file a petition under Rule 12;
- (6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;
- (7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

- (1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and
- (2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) Transfer following hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

- (1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

MINNESOTA COURT RULES

PROFESSIONAL RULES

2

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

(Added July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective September 1, 2005; amended effective July 1, 2009.)