Temporary Leaves

Lawyers may need or choose to step away from practice temporarily for a variety of health-related reasons. These include treatment for physical illnesses such as cancer, mental illnesses such as depression or substance use disorder, parental leave, and others. With appropriate care, treatment, and support; unless the issue is age-related cognitive impairment or a terminal illness where the lawyer later chooses to end a practice, the lawyer is likely to be able to return to practice if they wish to do so.

Risks of waiting. When a lawyer resists treatment or other assistance, regardless of the illness, the illness will progress, and more damage may have occurred within the practice. The lawyer deeply about their clients and may make poor decisions for their own health. It is not uncommon for a lawyer to know they need help, but they delay taking steps because of that concern. Unfortunately, there are also lawyers who have delayed treatment for other illnesses, such as cancer, because they are afraid of what will happen to their practice and clients. As their anxiety grows, their depression deepens or their substance use, which may have been a way to cope with stress, spins out of control, and things only get worse. Their practice and clients may be impacted but they believe that they are serving clients more effectively by being present than they would by being absent in treatment or elsewhere. They miss things, they make mistakes and they choose paths that they would not have with a healthy mind. To the outsider this may not make sense. To the person with a mental health disorder, including substance use, they see no other way. There is no question that this desperation is a contributor to the higher than average suicide rate for lawyers.

Support options for health. Support for a lawyer may involve attending treatment or taking a leave of absence from practice for health reasons. The sooner an issue can be dealt with, the fewer problems there will be. Lawyers in organizations such as law firms or government offices will often have colleagues who can step in and assist with practice issues. Solo practitioners typically do not. They may be afraid to ask, or they may have already burned bridges while their illness has been active. Further, the lawyer who is suffering will often not have procedures in place or if they do, will not have recently followed them. The success of one’s recovery may depend, in part, on how much must be done to salvage a practice.

The lawyer who is contemplating a leave for health reasons would benefit from a checklist and sample forms. These could include:

1. Notification letter to clients regarding temporary leave
2. Procedures for arranging continuances, who must be notified
3. Information about temporary disability within one’s disability insurance
4. Considerations for utilizing substitute counsel
5. Considerations for utilizing LCL assistance?

Permanent leaves

A lawyer may decide to retire for health reasons and may be limited in what they are able to accomplish. Templates for closing a practice could include checklists, form letters, file tracking documents, etc. that are approved as meeting MRPC requirements. If a person is dealing with an illness but is competent, they may have limited capacity to create these items. Clients will be served more quickly and effectively if the lawyer can access a procedure. .

In 2015, the MSBA Rules of Professional Conduct Committee established a Task Force to look at protection of lawyers helping other lawyers. Its charge was:

Succession Resources

LCL’s perspective has to do with the well-being of lawyers, the reduction of risk for impairment and assistance when impairment is present.

Well-being: There is no question that a lawyer will sometimes have difficulty admitting to things with which they are not familiar. There is no statute, case law, or summary guide about how to make retirement decisions, how to deal with the emotional aspects, and what to put in place to ensure a smooth transition. Stressed or burned out lawyers who would like to slow down or stop but don’t have any idea of where to begin. And it’s incredibly difficult to admit you don’t know. Whatever is developed, it would provide a reason to consider necessary steps and perhaps some guidelines.

Risk reduction: Increased stress means an increased likelihood of mental health, including substance use, issues. A toolkit or guidelines would make a difference. LCL has shared documents and guides created by other states, but we provide a disclaimer that there may be Minnesota consideration.

The impaired lawyer: LCL has worked with lawyers who choose not to continue in practice because there is too great a risk that mental health issues will return. LCL has also assisted lawyers or those who are concerned about them when a cognitive issue is suspected or present. These lawyers need to close their practices and if they had a plan when they were healthier, the transition will be better. The lawyer who is impaired is unlikely to make a plan. The lawyer who made a plan before they were impaired will be able to transition from practice with less emotional impact. The mental health of the impaired lawyer who does not have a successor or plan may be more greatly impacted if there is a punitive aspect.