

Superior Court Judges Conference Dealing with Addicted Attorneys

Strategies for Success

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nclap.org



Superior Court Judges Conference Program Outline

Presented by Robynn Moraites, Director, LAP, and

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I. Judicial Jurisdiction to Discipline Lawyers

- Bench Book, General Tab, Inherent Authority, Section VII, pages 4-6 (handout)

<https://benchbook.sog.unc.edu/sites/benchbook.sog.unc.edu/files/pdf/Inherent%20Authority.pdf>

1. State Bar has statutorily granted concurrent jurisdiction
 - i. The only powers that are statutorily granted **exclusively** to the Superior Court are granting injunctive relief sought by the State Bar and the appointment of trustees.
 - ii. State Bar rules outline detailed procedures and time frames. For example, standard practice at State Bar is not to allow petition for reinstatement until at least one year after disability inactive status. Judges are not so constrained.
2. Evidentiary standard of clear and convincing evidence
 - i. **The Lawyer Assistance Program provides independent, objective assessments and reports.** This is a very different standard than an expert witness hired to assist in an advocacy role.

II. Symptoms and Visible Behaviors

1. A note about confidentiality.
2. Jellinek Curve handout
 - i. Disease of addiction is progressive. Over time it gets worse if left untreated. Stages are predictable, timing is not – sometimes quickly sometimes slowly.
3. Quick Look Checklist handout
4. Red Flags Slides handout

If the court is seeing an issue, that is the last domino to fall, not the first.

Discussion Point: Panel Observations and Experiences – Audience Experience/Observations Also Welcome

5. Hoping issue will resolve itself or giving a lawyer the benefit of the doubt is unsuccessful. Avoidance in these cases constitutes enabling of disease to progress unchecked.
6. “When Helping Hurts” Part 1 and 2 in handouts. A good read.

III. Judicial Intervention Strategies

1. No accountability or follow up
 - i. Expressing concern, suggesting a call to LAP
 - ii. Calling the attorney into chambers, dialing LAP directly and handing the phone to the attorney (please give us advanced notice if at all possible)
 - iii. Arranging behind the scenes with LAP for 2 volunteers or a volunteer and a LAP clinician to meet with the attorney in your chambers, with you present
2. Beginning accountability
 - i. Next step: requiring attorney to sign a release so LAP can confirm a) contact and b) that the attorney continues to work with us and follow clinical recommendations.
3. If these informal interventions are not working, may need a formal process, such as a show cause for contempt, emergency disability inactive order, or other mechanism.

IV. Sample LAP-Drafted Orders with Noted Commentary

1. Review simple order – often times this is all it takes procedurally.
 - i. To be used early with lawyers who are willing to consent and are willing to work with LAP. Sometimes, as the process unfolds, this may be a precursor document to the next, more complex document when a judge is not confident (because LAP is not confident) a lawyer’s recovery is solid and stable.
2. Review complex order

*Discussion Point: Panel Observations and Experiences – Audience Experience/Observations
Also Welcome*

V. Special Features and Considerations

*Discussion Point: Panel Observations and Experiences – Audience Experience/Observations
Also Welcome*

1. Home district vs. visiting a district
 - a. Does it make it more or less difficult?
 - b. Politics, local personalities and other considerations
2. Unique Procedures – balancing due process with duty to protect the public
 - a. Delay/Contempt continuances
 - i. Impact on calendared matters (continuances)
 - b. Recusal
 - c. State Bar Involvement (for example with a disability inactive order) – Usually State Bar represented by Root Edmunson
 - d. Emergency Orders

3. Appointment of trustees
4. Request for lawyer's family to be involved (or family attempt at forceful insertion into process)

VI. Do's and Don't's

TRoublesome Lawyers

Judges and other court personnel have the opportunity to see lawyers at their best – and at their worst. Even the best lawyers sometimes need to be admonished if they pursue an unreasonable line of questioning or specious argument. In an adversarial system, part of a judge's responsibility is to keep the litigants from straying too far out of bounds.

As a judge, you may see more serious problems with an individual lawyer's behavior that requires corrective action. Here is a summary of referral information for the various issues you may encounter:

Misconduct and Ethical Violations

- Attorney misconduct or clearly unethical behavior can (and in some instances must) be reported to the North Carolina State Bar, at 919-828-4620. For more information, refer to the Rules of Professional Conduct or the State Bar website: <https://www.ncbar.gov/>

Unprofessional Conduct

- Attorney behavior that may not be unethical but is consistently unprofessional can be reported to the Chief Justice's Commission on Professionalism, which has operates the Professionalism Support Initiative, to investigate concerns regarding unprofessional behavior by attorneys. The program is described here: <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/PSI.asp>

Suspected Problems with Alcohol, Drugs, Depression, Bi-Polar, Anger Management, or Mental Illness

- Attorneys whose behavior raises questions regarding alcohol or drug problems, or issues with depression, grief, anxiety, bi-polar, anger management or other possible mental health issues, should be brought to the attention of the North Carolina Lawyer Assistance Program. For Charlotte and areas west, call 704-910-2310, for the Piedmont, call 919-719-9290, and for Raleigh and areas east, call 919-719-9267. Or visit the LAP website at www.nclap.org for more information. LAP often guides judges early in the process about next best steps when a judge suspects an issue related to some form of impairment with an attorney appearing before him or her. LAP has a detailed brochure outlining possible courses of action available to you included on the next page. Referrals are confidential unless you have decided to issue a show cause order to hold the lawyer in contempt. It is strongly suggested to contact LAP early in the process to discuss avenues of intervention that can result in the best outcomes.

Dementia or Cognitive Impairment

- Attorneys who are showing signs of dementia or cognitive impairment, often as a result of aging, should be referred to the Transitioning Lawyers Commission, at 919-662-7407, or through its website: <https://www.ncbar.org/members/committees/transitioning-lawyers-commission/> Referrals can be maintained as confidential.

though no criminal proceeding had been initiated and the DA did not know the name of the alleged victim or alleged perpetrator nor know when and where the alleged homicide occurred. *In re Albemarle Mental Health Center*, 42 N.C. App. 292, 298-99 (1979).

“Within the guidelines of our Constitution, the legislature is charged with the responsibility of providing the necessary procedures for the proper commencement of a matter before the courts. Occasionally, however, the proscribed procedures of a statutory scheme fail to embrace the unanticipated and extraordinary proceeding such as that disclosed by the record before us. In similar situations, it has long been held that courts have the inherent power to assume jurisdiction and issue necessary process in order to fulfill their assigned mission of administering justice efficiently and promptly.” *Id.* at 296.

- VI. Inherent Authority to Correct Court Records.** A court has inherent authority to correct its records, at any time, to assure that they accurately reflect the court's actions. *State v. Cannon*, 244 N.C. 399, 406 (1956).

“It is universally recognized that a court of record has the inherent power and duty to make its records speak the truth. It has the power to amend its records, correct the mistakes of its clerk or other officers of the court, or to supply defects or omissions in the record, and no lapse of time will debar the court of the power to discharge this duty.” *State v. Old*, 271 N.C. 341, 343 (1967) (quoting 14 Am. Jur., Courts, §§ 141, 142, 143).

This power is to be exercised with great caution and may not be used to correct judicial errors. *Shaver v. Shaver*, 248 N.C. 113, 119 (1958) (court could not reopen ten-year old divorce judgment on its own to vacate judgment because of fraud); *State v. Stafford*, 166 N.C. App. 118, 121-23 (2004) (court could not amend sentences after entry of final judgment to correct court's error in application of structured sentencing). Once a case has been appealed, the record may be corrected only on directive of the appellate court. *State v. Dixon*, 139 N.C. App. 332 (2000).

→ **VII. Authority to Discipline Lawyers.**

- A. Recognition of Authority.** A court's authority to discipline lawyers is one of the most well established inherent powers of a court. “This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, and punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice.” *In re Northwestern Bonding Co.*, 16 N.C. App. 272, 275 (1972).
- B. Not Superseded or Limited by State Bar's Disciplinary Authority.** G.S. 84-36 declares: “Nothing contained in this Article [North Carolina State Bar] shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys.” Although questions of propriety and ethics ordinarily should be referred to the State Bar, because it was created by the legislature for that purpose, “nevertheless the power to regulate the conduct of attorneys is held concurrently by the Bar and the court.” *Gardner v. North Carolina State Bar*, 316 N.C. 285, 288 (1986). It appears that the State Bar and court could both

discipline a lawyer for the same conduct. By § .0102 of its Discipline and Disability Rules the State Bar stays its own proceedings pending completion of the court's action.

- * C. Discipline Not Limited to Violations of Rules of Professional Conduct.** The grounds on which a court may impose discipline are not limited to violations of the State Bar's Rules of Professional Conduct. *Sisk v. Transylvania Community Hospital, Inc.*, 364 N.C. 172, 182 (2010) ("[T]his authority is not limited by the rules of the State Bar.").
- D. Court May Not Dismiss State Bar Proceeding.** Because the State Bar and the court have concurrent jurisdiction over discipline of lawyers the court does not have authority to order that a grievance filed with the State Bar be dismissed. *North Carolina State Bar v. Randolph*, 325 N.C. 699, 701-02 (1989).
- E. Procedural Requirements for Court Discipline.** When the lawyer's misconduct occurs in a matter then pending before the court and the material facts are not in dispute, the court may act summarily. *In re Hunoval*, 294 N.C. 740, 744 (1970).
- When the misconduct occurs otherwise, due process requires that the disciplinary proceeding be initiated by a sworn written complaint; that the court issue an order advising the lawyer of the charges and directing the lawyer to show cause why discipline should not be imposed; that the lawyer be given a reasonable time to respond; and that the lawyer be allowed to have counsel. *In re Burton*, 257 N.C. 534, 544 (1962). No written complaint is required when the judge initiating the proceeding is acting on records from the judge's own court. *In re Robinson*, 37 N.C. App. 671, 677 (1978). The show cause order or notice should not be written in conclusory terms that may indicate bias on the part of the judge. *Id.* (order that said "you have negligently and willfully failed to perfect the appeal" suggested that the judge had mind made up and should have disqualified self). The judge may designate the DA or another lawyer to prosecute the discipline case. *Id.*
- F. Proceeding May be Initiated by Complaint.** Although a disciplinary proceeding usually is initiated by the court itself, it may be triggered by a complaint from a party. *In re Northwestern Bonding Co.*, *supra*. Or the State Bar may request the court to commence a disciplinary proceeding. *In re Delk*, 336 N.C. 543, 546 (1994).
- G. Appointment of Committee to Investigate.** When the factual issues are in dispute the court may appoint a committee of lawyers to investigate. *In re Burton*, 257 N.C. at 544. And the court may ask a committee to review the lawyer's conduct and recommend whether disbarment is warranted. *Brummitt v. Winburn*, 206 N.C. 923 (1934).
- H. No Right to Jury Trial.** There is no right to a jury trial in a court proceeding for discipline of a lawyer. *In re Northwestern Bonding Co.*, 16 N.C. App. at 278.
- * I. Standard of Proof.** The standard of proof for disbarment by the court, and presumably for other discipline, is clear and convincing evidence. *In re Palmer*, 296 N.C. 638, 648 (1979).

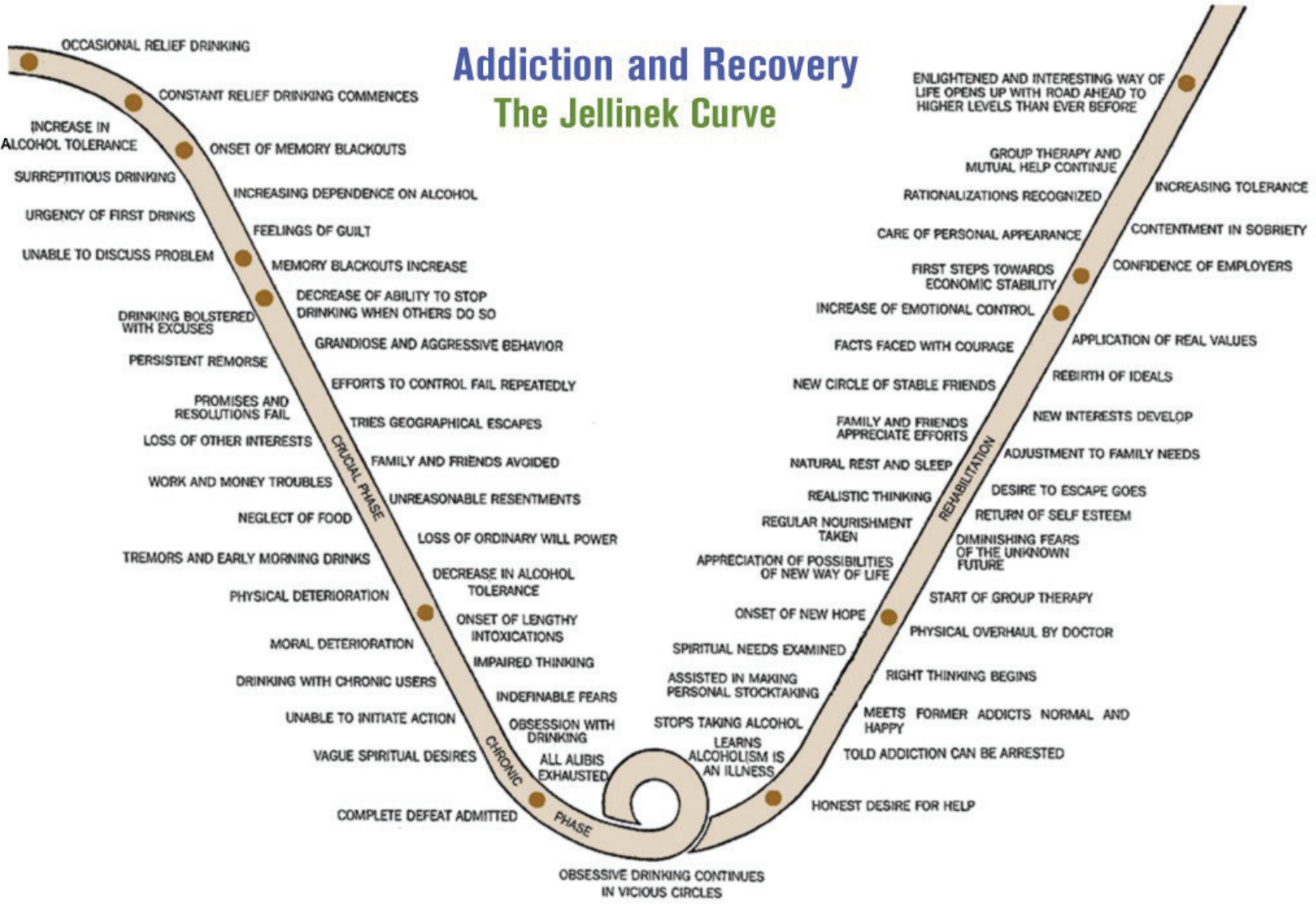
↳ the standard we follow for reinstatement as well.
Inherent Authority - 5

- J. Court Does Not Need Pending Case to Impose Discipline.** The court's authority to impose discipline applies to any lawyer practicing before the court, even if the case which gives rise to the discipline is not currently pending. Thus the trial court may sanction of lawyer even though the case creating the disciplinary issue has been appealed and no longer is before the court. *In re Robinson*, 37 N.C. App. at 677.
- K. Action May be Taken at any Session of Court.** Disciplinary action may be taken against a lawyer at any session of court, it does not matter whether it is a civil or criminal session. *Id.* at 678.
- L. Sanctions.** A court using its inherent authority to discipline lawyers is not limited to the sanctions that the State Bar might impose. "Sanctions available include citations for contempt, censure, informing the North Carolina State Bar of the misconduct, imposition of costs, suspension for a limited time of the right to practice before the court, suspension for a limited time of the right to practice law in the State, and disbarment." *Id.* at 676. The court may order the misbehaving lawyer to pay the other side's attorney's fees. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 667 (2001). The court also may order the lawyer to pay a fine. *In re Small*, 201 N.C. App. 390, 395 (2009). And the court may suspend the lawyer's right to represent indigents. *In re Hunoval*, 294 N.C. at 745.
- M. Discipline of Attorneys Admitted Pro Hac Vice.** By statute a judge may revoke an out-of-state lawyer's *pro hac vice* admission to practice in North Carolina summarily and on the court's own motion. G.S. 84-4.2. The statute applies even if the admission was granted by a different judge. *Smith v. Beaufort County Hosp. Ass'n, Inc.*, 141 N.C. App. 203, 210 (2000). Disciplinary action against a *pro hac vice* lawyer may include removal from other cases in North Carolina, requiring the lawyer to report the disciplinary action to other state bars, and requiring the lawyer to attend continuing education classes in North Carolina before seeking to represent clients here. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. at 662.
- N. Appeal.** The standard of review for the appellate court is abuse of discretion. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. at 662-63. Unlike the State Bar, the trial court is not required to make findings concerning the potential harm of the lawyer's misconduct and a demonstrable need to protect the public. *In re Key*, 182 N.C. App. 714, 720 (2007). The State may use certiorari to appeal the trial court's failure to discipline. *In re Palmer*, 296 N.C. at 646.
- VIII. Authority to Require Lawyers to Represent Indigents.** A court has authority to require lawyers admitted to practice before it to represent indigents and, if necessary, to do so without being paid. It is an obligation lawyers accept as part of the privilege of practicing law.

"The majority of jurisdictions hold that an attorney is an officer of the court with many rights and privileges, and must accept his office *cum onere*. One of the burdens incident to the office, recognized by custom of the courts for many years, is the duty of the attorney to render his services gratuitously to indigent defendants at the suggestion of the

Addiction and Recovery

The Jellinek Curve





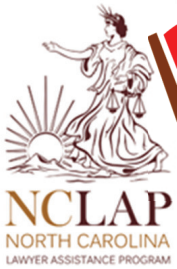
Quick Look Signs - Professional

Attendance Problems

- Arrive late / leaving early
- Taking "long lunches"
- No return to work after lunch
- Missing appointments
- Unable to be located
- Ill with vague ailments
- Absent (especially Mon/Fri)
- Frequent rest room breaks
- Improbable excuses for absences
- Last minute cancellations
- Can't get a meeting with them

Performance Problems

- Missed deadlines
- Decreased efficiency
- Decreased performance after lunch
- Inadequate follow through
- Lack of attention
- Poor judgment
- Inability to concentrate
- General difficulty with recall
- Blaming or making excuses for poor performance
- Erratic work patterns
- Non responsive
- Failure to show up in court



Additional Professional Cues

- So depressed can't open mail – mail piling up
- Inability to see big picture
- Refuse to stop working because they need the money
- Paralyzed in decision making
- Knows what needs to happen but can't make it happen
- Personality change – not the lawyer you used to know

Trust your gut. If you suspect something is wrong, it probably is.



These signs are huge red flags.

Once the professional façade is cracked, it is the last domino to fall, not the first.





Quick Look Signs - Personal

Relationship Problems

- Complaints from clients
- Problems with supervisors
- Disagreements or inability to work with colleagues
- Avoidance of others
- Irritable, impatient
- Angry outbursts, combative
- Inconsistencies or discrepancies in describing events
- Hostile attitude
- Overreacts to criticism
- Unpredictable, rapid mood swings
- Non-responsive communication

Personal Problems

- Legal separation or divorce; custody issues
- No family support
- Children won't speak to them
- Living outside financial means
- Credit problems, judgments, tax liens, bankruptcy
- Frequent illnesses or odd accidents
- Arrests
- Isolating from friends, family
- Avoids social activities
- Personal life very intertwined with practice
- Handling their own legal problems
- Chaotic personal life/lots of drama



When “Helping” Hurts—A Guide for Law Firms and Families, Part 1

BY ROBYNN MORAITES

Most lawyers, regardless of practice area, are accustomed to solving others’ problems and providing solutions. Lawyers are helpers by nature. While many of us may try to project a certain image, and despite whatever lawyer-joke-du-jour may be fashionable, most lawyers have big hearts and want to help people. It only makes sense that when a colleague or family member is struggling with alcoholism or addiction in any form, we want to help. But if we do not understand the disease of addiction (to alcohol or any other substance or process), our help can become a hindrance.

Do you remember “Opposite Day” as a child? When I was growing up, once a year all the elementary school kids and our teachers had an Opposite Day. It was great fun. The teacher would dramatically pronounce, “OK class, line up at the door,” and we would settle down at our desks. When she said, “Let’s settle down,” we’d all run to the door and line up to go outside to play. It always made for a fun day trying to figure out the coded messages of our teachers and friends.

Alcoholism is like Opposite Day. It turns everything on its head. Helping an alcoholic by enabling an alcoholic to avoid the consequences of addiction may feel like helping, but it actually hurts him and his chance of recovery. What feels to us like hurting or betrayal, actually helps an alcoholic find recovery. Let’s consider some real world examples.

When a non-alcoholic family member is in the middle of a contentious divorce (with lots of fighting at home), we may offer to have the kids stay over for a while and take them to school. When a non-alcoholic colleague has an unexpected family emergency, we may offer to cover for her and handle some work in the immediate short term. If a non-alcoholic friend suddenly became unemployed, we might be willing to lend money to

cover living expenses for a few months until he got back on his feet. If a non-alcoholic lawyer recently suffered a personal family loss and is grieving, judges and opposing counsel might go to great lengths to have cases continued. None of these helping impulses is wrong or misplaced. In fact, these are the very types of interactions that build connections and strengthen community, all of which are imperative for maintaining good mental health as a lawyer.

When carrying out these very loving, helpful actions while dealing with an alcoholic or addicted lawyer, however, suddenly “helping” becomes “hurting,” although it does not seem like it or feel like it to the one offering the help. Often, when family and friends try to help alcoholic or addicted lawyers, they are actually—albeit unwittingly—making it easier for the lawyer to continue in the progression of the disease. Whatever form of conventional help (as described above) we provide to someone who is engaged in the disease of addiction, that help often boomerangs and begins to hurt the addicted person (and us) because it allows him or her to avoid the consequences of the disease. The specific word for the phenomenon when help has crossed the line and starts to hurt is “enabling” because the help provided enables the disease to continue unimpeded.

The disease of addiction is progressive in nature; it builds up over time and gains momentum. Over any considerable period of time it gets worse, not better. What started out as the one-time lending of money or continuing of cases gradually turns into a pattern of behavior. Our first response is to give the lawyer the benefit of the doubt: “Joe is in a rough patch. Give him some time.” But usually a precedent has been set, so if Joe is an alcoholic or addict, he knows you are willing to cover for him in whatever way you have done so in the past. So he continues to come to you—maybe more frequently now— for



help. This help in turn allows him to continue to engage in the destructive behavior of his addiction while simultaneously avoiding the consequences. The person giving help (or even the law firm that continues to look the other way) has unknowingly and unconsciously become an ally of the disease. Wikipedia describes an ally as, “...people, groups, or nations that have joined in an association for mutual benefit or to achieve some common purpose, whether or not explicit agreement has been worked out between them.” Ouch. For those of us who only sincerely wanted to help, it can be a devastating blow to learn that we have been assisting the disease of addiction, not the lawyer who suffers from it. If we step out of the helper role, the alcoholic lawyer is forced to face consequences and may find recovery sooner. It can be hard to discover we have been actually hurting the alcoholic lawyer’s chance for recovery.

As long as the alcoholic lawyer has enabling devices and people in place, it is easy for him to continue to deny he has a problem, because most of his problems are being solved by those around him. Only when he is forced to face the consequences of his own actions and inactions will it finally begin to sink in how deep his problem has become.

Some of these choices are not easy for the friends or families of alcoholics. For example, if the alcoholic drinks up the money that was supposed to pay the utility bill, he is not the only one who will be living in a dark, cold, or sweltering house. The rest of the family will suffer right along with him. If the alcoholic lawyer is a high-profile, high-functioning lawyer with a reputable practice, the law firm may not want to suffer a revenue loss or reputational harm. (Not to mention, it is just plain hard emotionally for all of us to talk about these things.) So the firm as a whole may ignore a known, growing problem until one day a catastrophe happens in a public forum. Often times the firm is left with no choice but to fire the lawyer. But it does not need to happen this way.¹

When “Hurting” Helps

So let’s change the verbiage and now discuss what I will call “unconventional help,” which, to be frank, will feel to the helper like nothing less than a betrayal of the alcoholic lawyer friend or colleague. Unconventional help is an action (or a refusal to act) we take in response to requests for help from the alco-

holic lawyer that does not shield him or her from the consequences of the disease. In almost all cases, only when faced with consequences is an alcoholic or addicted lawyer able to begin to gain some clarity about the nature of the impairment.

The acts that truly help an alcoholic or addict are those actions (or inactions) which point the alcoholic in the direction of recovery. We may refuse to lend money, except to help pay for treatment (always give the money directly to the treatment center, not to the alcoholic or the family of the alcoholic). We may refuse to cover a case load or to have cases continued, unless it is because the lawyer goes to treatment. We may agree to represent the lawyer in a contempt hearing before a judge or a discipline matter before the State Bar on the condition that the lawyer agrees to get help and follows all directives from the EAP, LAP, or treatment center.² Saying “no” or setting these conditions can be very difficult for us (the helpers) emotionally, particularly because we can see so clearly what the impaired attorney cannot—the almost sure consequences coming down the pipeline. These actions can be very painful for us to carry out, and our

every instinct urges us to try to prevent those consequences and pain that he or she will face as a result. But remember, we’re living in Opposite Day when dealing with alcoholism or addiction. Sometimes when we cannot help an alcoholic up, we need to step out of the way as he or she falls down. It is sometimes only in that falling down that an alcoholic or addicted attorney can then begin to wake up to the situation and ask for help.

It may feel to us like we are hurting the alcoholic when we stop helping. In fact, depending upon how close we are to the addicted lawyer, he may actually accuse us of hurting him or of causing the consequences. If we are very tied to the person emotionally, while we understand intellectually we are not causing consequences, it can feel like we are because we are not preventing them from occurring. It is so important to remember that when the alcoholic lawyer is blaming us or others, it is just the disease talking. Because it is hard to remember this and not take the blaming personally, often the person who has been put into the helping role needs support of his own in order to stand his ground. The LAP offers this kind of support.

The following short story is from one of our volunteers.

Years ago when I lived in another state and before I enrolled in law school I began dating a man who lived downstairs from me in my quadraplex. He was a very successful computer engineer. One day he was unexpectedly fired from his job. He downplayed the incident and obtained another job of equal stature quickly. Then one day he was very late in meeting me for an event. When he arrived he seemed rushed and preoccupied. He said he had been tied up at work. I had no reason not to believe him. Soon after, he asked me for money so that he could make his car payment. I asked him why he needed it and he told me that he had some old debts he was paying off and had come up short that particular month. I was uneasy, but I lent him the money against my better judgment. Within the next few months things unraveled very quickly for him. I learned that he was a cocaine

addict, but he had managed to keep it hidden for years, even from me. I sincerely cared for this man, and we had been in a relationship for a few years at that point. I began attending Al-Anon meetings and open AA meetings to learn about the disease of addiction. In the few months that followed, he had four different jobs, eventually working part-time at a fast food burger place. He parked his car several blocks away from the quadraplex in an attempt to avoid repossession of the vehicle. He had been spending all of his money on cocaine and had not paid rent for many months. An eviction notice was served on him. At this point we were broken up, but I lived right upstairs and had helped him before. He continued to ask me for money to pay for his car and rent. I started saying no and it was incredibly difficult. He began blaming me, telling me that if he was evicted or had his car repossessed it would be my fault. I leaned heavily on my friends in Al-Anon for support during this time. Then the day came

that the car was repossessed. Soon after, he was evicted and asked if he could sleep on my couch. I said no. That was one of the hardest days for me, but it turned out to be the day he got sober. He had been attending AA off and on for the prior months, but that night he slept outside of an AA room, leaned up against the door. When the person came to make coffee for the 7 AM meeting, he was let in the AA room, and he spent the day there attending a bunch of meetings. He began a sincere program of recovery that day. He has not had a drink since and is now about 15 years sober. He is married with two children and is back to being a successful computer engineer. There was certainly no guarantee he would get sober if I said no to his request, but it was very clear to me he most assuredly would not have gotten sober had I said yes. I got out of the way and he was able to face his disease and recover. I do not take credit for him getting sober, I take credit for getting out of the way so that he could get sober. ■

If you know an attorney who you suspect may be an alcoholic or addicted, give the LAP a call. We can help guide and support you as you navigate what kind of help to offer. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for

Charlotte and areas west) at 704-892-5699, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

Endnotes

1. Please tune in next quarter when we will be interviewing a managing partner who orchestrated an intervention some years ago with a leading lawyer in the firm.
2. Requiring treatment as a condition of representation is a practice known as therapeutic jurisprudence. There is a growing body of academic research in this area with guidance for lawyers, particularly in criminal practice. See David Wexler's work.

New Look, New Logo, Same Program

This quarter marks the first official publication use of our new logo for the NC Lawyer Assistance Program ("LAP"). We will continue to roll out the new brand, logo, and look via a new website and updated collateral and print materials. I have now been the director of the LAP for a year and a half. After getting to know the program from the inside out, meeting with our dedicated volunteers across the state, and working with the LAP Board and staff, we have determined that due to the size of our program and its increasing diversity, we need to streamline and consolidate some aspects of our program.

LAP History at a Glance

The Positive Action for Lawyers with Substance Abuse Subcommittee ("PALS") was formed in 1979 as a purely volunteer-run organization, formed to help alcoholic lawyers. PALS has been extremely successful. Then in 1998, several lawyers committed suicide. These suicides were not related to alcoholism or substance abuse. In response, the leadership of the Bar recognized the need to broaden PALS' mission to include issues of depression, anxiety, burnout, and other mental health issues. By that time, however, the PALS "brand" was totally associated with alcoholism and substance abuse. So an altogether new program was created to address depression, anxiety, and mental health issues: the FRIENDS program. The FRIENDS program developed its own logo and its own brand. The FRIENDS program was launched in 1999-2000 to widespread acceptance and success.

Reorganization – Same Services and Same Program

The LAP is experiencing quite a bit of brand confusion. Lawyers do not realize PALS and FRIENDS are programs of the LAP. Because of this brand confusion, current and expected trends in our client base, and the need to offer targeted programs based on the broader role we now play, the LAP Board and staff are in the process of reorganizing and rebranding the LAP as a single program with a single name to address all issues that may be impairing to lawyers. *The LAP mission, approach, and services will remain the same.* Moreover, our active volunteer base is and will continue to be comprised of lawyers helping other lawyers overcome whatever impairing issues and challenges they face.

New Logo and Symbolism

The new logo is based on Adolph A. Weinman's image for the "Walking Liberty" half dollar issued by the United States Mint from 1916 to 1947. The image has been modified, however, to remove her Depression-era hat, the drape of the flag, and her flowers. Those elements have been replaced with a crown of liberty and scales of justice, creating the more-familiar and widely-accepted image of the Lady of Justice. She strides towards the sun, with her hand extended. For lawyers dealing with depression, anxiety, alcoholism, or other impairments, the journey of recovery is one from despair to hope and is often described by many lawyers as moving out of the darkness into the light. Her extended hand represents the work that the LAP and its volunteers have done for four decades: reach-

Have you ever called in sick for the alcoholic because he or she was too hung over to go to work or school?

Do you ever make excuses for the alcoholic's drinking or behavior?

Have you ever lied to ANYONE (friends, family, neighbors, co-workers, bosses) to cover up for the alcoholic?

Have you bailed the alcoholic out of jail or paid his or her legal fees?

Have you accepted part of the blame for the alcoholic's drinking, behavior, or consequences?

Do you avoid talking about the alcoholic's drinking with him or her out of fear of the response?

Have you paid bills that the alcoholic was supposed to have paid?

Have you loaned the alcoholic money?

Have you tried drinking with the alcoholic in hopes of strengthening the relationship?

Have you given the alcoholic "one more chance" and then another and another?

Have you threatened to leave if the alcoholic didn't stop drinking and then did not leave?

Have you finished a job or project that the alcoholic failed to complete himself?

If you answered "Yes" to any of these questions you may have enabled the alcoholic or addict to avoid the consequences of his or her own actions.

ing out a helping hand to those who need it. And finally, she is not blindfolded. Instead, she sees those to whom she reaches while she also looks to the horizon and the path to be taken. It is a dynamic image that we hope conveys the compassion and strength that the Lawyer Assistance Program has come to be known for over its many years of assisting lawyers. ■

When “Helping” Hurts—A Guide for Law Firms and Families, Part 2

BY ROBYNN MORAITES

The LAP recently conducted an interview with a managing partner of a firm who years ago orchestrated an intervention with a leading lawyer in the firm. This example illustrates how a law firm can proactively address an issue of impairment. The following is taken from that interview and told from the point of view of the managing partner. In order to maintain the highest level of confidentiality, all gender-related personal pronouns have been removed.

We have an attorney who started as an associate and came to us as a young lateral. The attorney worked with us for years without incident. The only thing we noticed was that the attorney partied a lot and bragged about it, but it was nothing too out of the ordinary. I did question the attorney’s judgment when the attorney got drunk at some firm functions early on, but the attorney’s performance was very competent. We had a lot of confidence in that attorney, and so did the clients. After the attorney had been with us for about seven years we were comfortable making the attorney a partner based on excellent work performance.

I never worked with the attorney personally; our practice areas did not overlap. But I always saw the attorney at our firm’s social events. Several years went on without incident, and then I started receiving reports occasionally from younger associate attorneys with whom the attorney worked. The reports at first were that the attorney wasn’t showing up to meetings with them or replying to their emails. They couldn’t get in touch. There was no oversight or supervision. No mentoring was occurring. Assignments would be made and that would be it. When they needed assistance, the attorney wasn’t available.

The attorney’s secretary brought to my

attention that the attorney had started changing and cancelling client appointments. The attorney was calling in sick a lot. I would have never known because we really didn’t see a significant drop in billable hours. There was nothing happening other than these reports that would have raised concern.

Then I noticed that the attorney did not look well and appeared hung over, but the attorney would always attribute it to something else. The attorney began looking pale and clammy, with circles under the eyes, and started to look disheveled. Interestingly, I never smelled alcohol. Soon we were all noticing the deteriorating health and learned of significant marital and financial issues. The attorney talked with some of the partners about these various issues, but never mentioned problems with drinking, nor did we ask about it.

About a year before the firm decided to take action, I talked to the then-current LAP chair about what to do. I decided to wait and watch. I didn’t want to be wrong. The attorney was still doing competent work, trying cases and winning them, so I was comfortable knowing clients were not being hurt. I wanted to give the attorney the benefit of the doubt. Everybody liked each other at the firm, but the attorney didn’t have any real social friends within the firm.

The situation deteriorated over the year with more of the same kind of reports, so I approached the partners individually. They had noticed some things as well, though nobody had the concerns I had. To their credit, they did not dismiss my concerns, and when I suggested I would call the LAP, they thought that was a good idea.

I went over the history and the signs with a LAP staff member who confirmed my suspicions and told me that we were going to need to confront the attorney to seek recovery. I was warned going into the



intervention, “The attorney will deny it and lie about it. That’s the pattern. Don’t tolerate it.”

We gathered all the partners together and brought the attorney in to talk. The attorney admitted the drinking problem, but thought it was something that could be handled without help. We told the attorney to get an evaluation from the LAP and if the LAP gave a clean bill of health, we would accept it. The attorney agreed to do this and met with a LAP staff person. The LAP concluded that there was a need for in-patient treatment, with the recommended length of stay of 90 days given the condition of the attorney.

We had another firm meeting then, and the attorney reported that the LAP staff person had recommended 90-day in-patient treatment. We all agreed with the recommendation. We told the attorney to follow what was recommended by LAP. The attorney understood our position but respectfully declined because of the financial consequences of taking three months off from work and the cost of treatment. The attorney claimed that family obligations precluded in-patient treatment and was also worried that clients would find out the reason for the departure.

We told the attorney that the firm would

lend money for treatment, but the response was that the attorney did not want to be in debt to us. The LAP staffer had alerted us that this was the likely response, so we were ready. We said—and this was the hardest part—that we wanted the attorney to get better, that the attorney was a valuable member of the firm, that we'd lend the money for treatment, that we'd pay for whatever the insurance wouldn't pay, but if the attorney didn't go to treatment then there would be no job at the firm. We threw the hammer down. The reaction was anger; in fact, extreme anger. But within a day or two, it sunk in that treatment wasn't optional. There was no choice and there were no other options. The attorney borrowed money from the firm to cover what the insurance would not cover and went to treatment.

While the attorney was in treatment, the partners obviously knew about it. In order to cover the workload, we had to tell some of the associates about the attorney's treatment because they were the ones who had to cover the work for three months. It was our understanding that the attorney would be completely incommunicado, so this had to be done. We didn't have any problems with continuances or the local bar, and we never had to tell opposing counsel anything specific. We said there were some personal issues that were keeping the attorney away from the office. No one asked any questions and we did not tell any clients.

There was a real willingness on the part of our partners to step in and provide help. No one even questioned it. We opted to continue to pay salary and insurance benefits during treatment. Everyone supported that decision and supported the attorney during this time.

When in-patient treatment was finished, the attorney came back into the practice. The attorney continued in a recovery program as well. The attorney doesn't talk about it much, except on the sobriety anniversary day. The attorney doesn't come to many firm social gatherings these days. We always drink at these events, so the attorney won't come to a firm cocktail party, but will attend a firm holiday dinner for a few hours. The loan was repaid, an action recommended by the LAP as an important part of the recovery process. It was an investment for the firm, but an extremely good one. Our attorney is one of our most successful and productive lawyers.

Over the years, I have seen a complete transformation. All aspects of the life of this attorney in recovery seem to be incredible these days. I have no idea how, but somehow the broken family life was repaired. Involvement with children increased. Physical fitness returned. Vacations are taken. Balance has been restored.

The attorney became an incredible mentor to young lawyers. Absence and a lack of instruction or guidance have been replaced by teaching, and very good teaching at that. The attorney is far more reliable and congenial and much more of a team player now within the firm.

The most amazing part is witnessing how a good practice has become an amazing practice. I was concerned initially because of the levels of stress at our firm and in that practice area in particular. It's stressful for the most stable of us, much less someone coming out of treatment. I worried it was too much to take on all at once. But the attorney stepped up to the challenge, and has had success like never before. The attorney is very skilled at winning really difficult cases, is in high demand, has brought tremendous success to the firm, and has great prospects. We always knew this attorney was an asset that we wanted to get better, and this attorney in recovery has exceeded our expectations in the process.

Best of all, the anger is gone. The anger turned into appreciation. The attorney's predominant emotion is one of extreme gratitude that everything happened the way it did. We all just have an incredible respect for what has been accomplished. It takes an extremely strong person to overcome alcoholism and battle for recovery.

My advice to a partner at a firm in a similar situation would be that if you see red flags and you're unsure if they're meaningful, call the LAP. Advice and guidance are sitting there waiting to be given. I didn't want to open up a can of worms if it wasn't necessary. The LAP staff person hit the nail on the head right away and really helped pull it all together for me. The LAP staff person said the LAP was there not just supporting our partner, but supporting the firm as well.

I understand more now that when red flags start to show up at work, that's usually the last domino to fall. When you see something, you need to take action right when you see it. I should have acted earlier when I started receiving those early reports of the attorney not working with the associates and

calling in sick a lot. Pay attention to those kinds of reports and listen to the people who work the most closely with the lawyer.

There was one time about a year after the attorney returned from treatment that I became concerned. I forget now exactly the incident or reason for my concern. I knew that because of confidentiality the LAP couldn't talk to me, but I could talk to the LAP. So I called and told the LAP staff person about my concerns. The LAP staffer listened and said, "Let me make some calls. I'll get back to you." I received a call a few days later assuring me that the LAP staffer had spoken to some of the volunteers who were mentoring the attorney and that there was nothing to worry about. It was suggested that in this scenario I should let the incident pass and not confront the attorney. The LAP staff person said that sometimes a confrontation might be called for, but that in this case with whatever my concern was, all was well. And it was.

Looking back, I feel like I should have done something sooner. But then again, people have to be ready for help. It has all worked out well and I am grateful for the guidance the LAP gave me and our firm along the way. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-892-5699, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

Thank You to Our Meeting Sponsor

Thank you to the following sponsor of the State Bar's quarterly meeting:

**The Title Company of
North Carolina**

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE
GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
SPC

IN THE MATTER OF:

ATTORNEY AT LAW.

CONSENT ORDER
IN CAMERA

THIS CAUSE coming to be heard pursuant to North Carolina General Statutes Sections 84-23 and 84-28 and 27 North Carolina Admin. Code 1(D), Section .0600 *et seq.* and specifically .0617 Consensual Inactive Status, upon the request of the Lawyer Assistance Program's LAP Committee of the North Carolina State Bar, by and through the Lawyer Assistance Program Director Robynn E. Moraites, and upon the consent of Respondent, _____; and the parties presenting to the Court the following:

1. That the Respondent, _____, is a lawyer licensed to practice law in North Carolina and is a resident of _____ County, North Carolina and is subject to the disciplinary authority of the Court and the rules and regulations of the North Carolina State Bar.
2. The Affidavit of the Respondent and other evidence presented to the Court adequately set out evidence of the lawyer's current impairment from his/her chemical addiction.
3. That the Court is authorized to enter an Order of Consensual Inactive Status pursuant to State Bar Rule .0617.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Respondent's license to practice law in the State of North Carolina is hereby transferred to Inactive Status; and

1. Upon entry of this Order Respondent shall surrender his/her license to practice law.
2. Respondent may petition the undersigned Superior Court Judge, or any Resident Superior Court Judge of the ___ Judicial District, at any time for transfer to active status upon proof satisfactory to such Judge that Respondent has regained his/her capacity to practice law. Such Judge hearing Respondent's petition may enter an order transferring Respondent back to active status upon his/her showing to the Court that his/her treating professionals and the Lawyer Assistance Program have submitted evidence demonstrating that the Respondent's active addiction is in remission, that Respondent has sufficiently taken responsibility for keeping his/her active addiction in remission, and that he/she has regained his/her ability to practice law free of impairment.

3. Any Petition relating to his/her re-instatement, this Order and all proceedings in this Cause shall be, as authorized by the State Bar's Rules, filed under seal by the Clerk. However, Respondent is advised that by violating this Order, and/or practicing law while suspended, will waive the in camera nature of this proceeding and this Order and enforcement of this Order may, in that event, proceed through ordinary judicial processes that are not under Seal.
4. During the term of Inactive Status, Respondent shall not owe dues or have to complete CLE requirements.

A Copy of this Order shall be served upon Respondent and upon the Secretary of the North Carolina State Bar.

This is the ____ day of _____, _____.

Superior Court Judge Presiding

Consenting Lawyer

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE
GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN THE MATTER OF:

AFFIDAVIT IN SUPPORT
OF ORDER

ATTORNEY AT LAW

_____, being first duly sworn, deposes and says:

1. I am a lawyer licensed by the North Carolina State Bar to practice law in the state of North Carolina.
2. This affidavit is made and submitted under seal pursuant to the provisions of 27 N.C. Admin. Code 1(D), Section .0617 of the Rules and Regulations of the North Carolina State Bar.
3. I believe that I have a chemical addiction problem which is or is likely to affect my current capacity to practice law and is an impairment that supports the temporary transfer of my status to inactive to give me time to obtain the necessary treatment and convalescence in order to regain my capacity to practice law.
4. I have read the accompanying order which this affidavit is offered in support of and do consent to its terms and its entry.

This the ____ day of _____, _____.

Sworn to and subscribed before me this
the ____ day of _____, _____

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF HERE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
__SPC__

IN THE MATTER OF:
JOHN DOE
ATTORNEY AT LAW

CONSENT INTERIM ORDER
AND RECOVERY PROGRAM
IN CAMERA

THIS CAUSE coming on to be heard pursuant to North Carolina General Statutes Sections 84-21 and 84-28 and 27 North Carolina Admin. Code 1(D), Section .0600 upon the request of the Lawyer Assistance Program of the North Carolina State Bar and its LAP Committee, by and through its Director Robynn E. Moraites, and upon the request of Respondent John Doe; and the parties presenting to the Court the following:

WHEREAS the Respondent John Doe is a resident of Here County and practices law in District XYZ, North Carolina and is subject to the disciplinary authority of the Court and the rules and regulations of the North Carolina State Bar; and

WHEREAS the Lawyer Assistance Program of the North Carolina State Bar and its LAP Committee is authorized pursuant to Section .0600 et al. of Subchapter D, of Title 27 of the North Carolina Administrative Code to investigate and to assist lawyers concerning allegations of substance abuse and/or chemical dependency; and

WHEREAS Respondent (historic facts/behaviors: failed to appear for court, etc.) and other evidence presented to the Court adequately set out evidence of the Respondent's impairment from substance use and mental health disorders; and

Comment [RM1]: Fact patterns vary widely.

WHEREAS Judge Justice issued a show cause order to Respondent and scheduled a hearing for contempt based upon performance issues caused by Respondent's substance use and mental health disorders; and

Comment [RM2]: A typical procedure used by the court. Most judges have already spoken to the lawyer, offered encouragement, and suggested contact with the Lawyer Assistance Program. Those suggestions are rarely followed and the court usually resorts to a more formal procedure. But this could be that a lawyer went out on consensual disability inactive status or was placed on emergency disability inactive status by the court.

WHEREAS Judge Justice met with Respondent to discuss the possibility of staying the contempt hearing upon the condition that Respondent agree to meet with the Lawyer Assistance Program and follow any clinical recommendations of the Lawyer Assistance Program; and

Comment [RM3]: Every lawyer we know of has consented to this process. Even though the entire district knows there is an issue, the impaired lawyer has an investment in maintaining his or her reputation and not airing dirty laundry.

WHEREAS, Respondent agreed to do so and after meeting with the Clinical Director of the Lawyer Assistance Program, and upon the recommendation of same, Respondent admitted himself for treatment at an inpatient facility approved by the Lawyer Assistance Program; and

Comment [RM4]: Due to the rapid unfolding of events, these orders are usually drafted after a lawyer has returned from treatment – but there is no requirement. We have had some that require admission to treatment on the front end. It is solely based on time available.

WHEREAS the Lawyer Assistance Program was in regular communication with the treatment center and where Respondent signed a release allowing the Lawyer Assistance Program to provide on-going clinical updates on Respondent's progress to Judge Justice; and

WHEREAS Respondent successfully completed a 90-day inpatient treatment program geared towards professionals at Reputable and Reliable Treatment Center,

Comment [RM5]: Key point here: Not all treatment centers are created alike. The LAP spends a considerable amount of time vetting and monitoring treatment centers in conjunction with the consortium of professional recovery programs.

returned home, and signed and entered into a Recovery Contract to be monitored and supervised by the Lawyer Assistance Program; and

WHEREAS Respondent has agreed and consented that Judge Justice, may continue to monitor his progress, receive updates, and enforce this *in camera* Recovery Contract within the consent order; and

Comment [RM6]: If truly working a recovery program there will be little to no resistance to this.

WHEREAS because Respondent has continued to comply with the terms of his Recovery Contract to date; and

WHEREAS, the parties hereto have agreed on entry of this Order for appropriate relief pursuant to North Carolina General Statutes Sections 84-23 and 84-28 and 27 North Carolina N. C. Admin. Code 1 (D), Section .0600;

NOW THEREFORE, IT IS HEREBY, ORDERED, ADJUDGED AND DECREED,

A. The original show cause order and scheduled contempt hearing are hereby dismissed and replaced in their entirety with this Order.

B. John Doe's license to practice law is hereby suspended for two years, such suspension to be stayed upon continuing compliance with the following terms and conditions, compliance with such shall be considered evidence that Respondent has successfully undertaken the steps set out herein to minimize the chance of further impairment and relapse. To do so, John Doe, Respondent, shall comply with the following by:

Comment [RM7]: Time frames differ based on severity of illness or use of particular substance. Minimum is 2 years. More severe is 3 to 5 years.

1. **Totally refraining from the use of alcohol or any other mind-altering substances**

Comment [RM8]: 100% abstinence.

a. An exception may be made when specifically prescribed or approved by Respondent's psychiatrist, primary care physician, or such other physician as may be approved by the Lawyer Assistance Program. Prior to the use of any such prescribed drugs, Respondent will inform his physician of his participation in the Lawyer Assistance Program, communicate the identity of his physician to the Lawyer Assistance Program, and have his physician consult with the Lawyer Assistance Program before any such prescription medications are used by Respondent, or otherwise provide the documentation required by paragraph 12 of this Order. *Failure to do so shall be deemed a violation of this Order and shall subject Respondent to the remedies set forth in this Order.* Use of any prescriptions other than those approved by Respondent's identified physician, or taken other than as prescribed, *shall be deemed a breach of this Order and subject Respondent to the remedies set forth in this Order.*

2. Accepting Assigned LAP volunteer or such other person(s) as may be designated by the Lawyer Assistance Program as mentor/monitor(s) for his performance under this Order, and assuming the responsibility of making at least one personal contact per week with said mentor/monitor, or on a frequency and manner (in person versus by phone) as decided by the mentor/monitor.

Comment [RM9]: Key for accountability that later turns into part of support network.

3. Providing the mentor/monitor with whatever reasonable substantiating documentation that he may require assuring Respondent's compliance with this Order. Assuming the responsibility for seeing to it that monthly mentor/monitor reports are submitted to the Lawyer Assistance Program in a timely fashion.
4. Providing the Lawyer Assistance Program with current contact information, including home address, telephone number, email address, cell phone number, work address and phone number, and indicating which of these is his preferred method of contact.
5. Having successfully completed inpatient treatment at Reputable and Reliable Treatment Center; and following that, actively participate in an abstinence based self-help group as follows:
 - a) Respondent agrees to attend at least 4 such meetings per week for the term of his contract. The number of meetings Respondent is required to attend may be reviewed by the Lawyer Assistance Program, and deemed to be decreased or increased. This decision will be based on information provided by the Respondent, his sponsor, and any treating clinician. Respondent's meetings with the professionals or support groups listed in section 6 and 7 below may be counted as a meeting.
 - b) Should Respondent choose to participate in AA or NA as an abstinence based self-help group, Respondent acknowledges by his initials hereto that his decision to do so is voluntary. () In that event, Respondent also agrees that he will join a home group, and select and maintain a sponsor. Respondent will actively work the 12 Steps with his sponsor, and maintain his relationship with his sponsor at all times. Respondent will become involved in service work as agreed upon by him and his sponsor. The identity of his sponsor shall be communicated to the Lawyer Assistance Program, and Respondent will authorize the Lawyer Assistance Program to communicate with his sponsor regarding the status of his recovery. The Lawyer Assistance Program will seek no other confidential information from his sponsor.
6. Participating in outpatient therapy with Counselor Jane Doe on such basis as recommended by this counselor and the Lawyer Assistance Program. If clinically indicated, seeking additional forms of therapy by Respondent, such as relapse prevention, group therapy, or therapy workshops, for a frequency and duration as recommended by this counselor and the Lawyer Assistance Program. Respondent agrees to ensure that this counselor will provide treatment updates to the Lawyer Assistance Program on a regular basis.
7. Attending the monthly Lawyer Assistance Program Support Group Meetings held in the Town area. Respondent will be given sufficient notice as to date, time, and place for meetings as they occur. Respondent may be exempt from attendance if there is an unavoidable conflict requiring appearance in court. Given that the meeting happens at lunch time, court conflicts are not anticipated.

Comment [RM10]: Monthly reports from monitors. Monitors are in recovery. Good instincts. Example of "doing everything right but just not getting it."

Comment [RM11]: If written on front end, would require successful completion of treatment.

Comment [RM12]: Modified based on when drafted. If early, usually 90 meetings in 90 days, with decreasing meetings over time, usually flattening out to 3 meetings a week in final years of order.

Comment [RM13]: Protection of LAP from later arguments of coercion. LAP will allow attendance at things like SMART recovery.

Comment [RM14]: Aftercare relapse prevention therapy is essential. Depending upon severity and geographic location, we sometimes recommend IOP or lawyer specific relapse prevention groups.

Comment [RM15]: Key for getting peer support from others who have been down that road and understand pressures lawyers face when trying to recover.

8. Providing follow up contact with Reputable and Reliable Treatment Center on such frequency as indicated on his aftercare plan.
9. Recognizing that proper diet and exercise are essential components in recovery, Respondent agrees to consult with his physician and/or other professionals to develop a healthy diet and exercise program that is appropriate for him.
10. Within one year of this Order, Respondent will attend a Recovery Renewal Program such as the LAP 12 Step Retreat, Renewal Center for the South (www.rcsouth.org), Matt Talbot Group 142 (mtg142@gmail.com), alumni events at Reputable and Reliable Treatment Center, or other such renewal programs approved by the LAP.
11. Submitting to and paying for random urine and/or blood screens, and/or breathalyzers and/or hair tests, on a frequency as established by the Lawyer Assistance Program. Absent some other arrangement approved by the Lawyer Assistance Program, Respondent shall enroll with Affinity eHealth (www.affinityehealth.com) or such other agency as approved by the Lawyer Assistance Program for his screening. Respondent agrees to abide by the procedures of Affinity or other such agency, including a daily check-in and testing when notified that he has been selected. Respondent acknowledges that his failure to do so will for purposes of this Order, shall be considered a positive screen. Respondent shall notify the screening agency or person taking the sample prior to the taking of the blood/urine/hair sample as to any prescription or over-the-counter medications he is currently taking. Upon receipt by the Lawyer Assistance Program of a positive alcohol and/or drug test report, Respondent agrees to submit to further evaluation as specified in paragraph 11 or otherwise, either by the Lawyer Assistance Program or another professional as deemed clinically appropriate by the Lawyer Assistance Program, and agrees to follow the recommendations of that evaluation. Respondent acknowledges that this Order may be amended to include additional provisions considered by the Lawyer Assistance Program in the best interest of the lawyer and the public. Respondent stipulates that the results of any alcohol and/or drug test may be admitted into evidence as reported without the necessity of further authentication in any *in camera* proceeding authorized by the Lawyer Assistance Program rules.
12. Providing the Lawyer Assistance Program prior to the use of prescription medications, adequate documentation from the prescribing physician to the effect that such prescribing physician has knowledge of Respondent's substance abuse history, and that the use of such medication(s) is nevertheless required.
13. Immediately notifying his mentor/monitor in the event of the use of alcohol or other mind-altering substances, in violation of paragraph 1 of this Order. If the Respondent uses mind-altering substances without promptly notifying his mentor/monitor, he agrees to undergo a 96 hour inpatient evaluation, or other clinically indicated evaluative procedure. If as a result of this evaluation, further treatment is found to be necessary and appropriate, Respondent agrees for this Order to be amended to provide for such treatment.

Comment [RM16]: Some judges have also added language that any judge may order a test at any time and it must be carried out within an hour. Also, LAP has total control of back end operations of testing. We can order a test at any time (and it will still look random if we want it to). We can order hair, nails or blood tests in addition to the standard urine.

14. Providing appropriate signed **release** forms for any drug screens, treatment records, therapist's reports, and any other written and verbal information as needed to verify compliance with the terms of this Order. **Respondent** authorizes the Lawyer Assistance Program to provide any information concerning his condition, treatment, and recovery to any treating clinician or agency, and authorizes any treating clinician or agency to provide information concerning his condition, treatment, and recovery to the Lawyer Assistance Program. In addition, **Respondent** agrees that the Lawyer Assistance Program may provide information concerning his condition, treatment and recovery progress (or lack thereof) to Judge Justice or other Superior Court Judge presiding over this matter.

Comment [RM17]: Must always require releases so that LAP can communicate with judge.

C. If John Doe fails to follow the terms of his recovery program as set out in this Order and/or fails to comply with the terms of monitoring by the Lawyer Assistance Program pursuant to this Order, and/or tests positive for alcohol and/or any other mood altering drug (except such drugs as might be prescribed by a physician who has consulted with the Lawyer Assistance Program and is aware of the **Respondent's** addictive status), and/or any such use of same, then upon such relapse (consumption of any alcohol or other mind altering substances) occurring, or otherwise the failing by John Doe to follow the recovery program set out herein then, **John Doe** agrees that his license to practice law shall be actively suspended for 1 year to give him the opportunity to enter into a focused period of time to work upon his **recovery**.

Comment [RM18]: Relapse triggers active suspension. Huge incentive not to use and to stay focused.

Comment [RM19]: Need to discuss "line in the sand" and enabling.

Comment [RM20]: After a year of documented recovery, may petition for return to stayed suspended status under terms of revised and updated second order.

D. At any time following the completion of the **1 year active** suspension, John Doe may petition the Court to have the active suspension lifted by petitioning the undersigned Superior Court Judge or the Chief Resident Superior Court Judge of the XYZ Judicial District for return to stayed suspension status in the North Carolina State Bar. Upon proof satisfactory to the hearing Judge that John Doe is able to show that his active addiction is in satisfactory remission and the chances of relapse minimized, the court may enter an order transferring John Doe to stayed suspended status. At such hearing the Lawyer Assistance Program shall provide to the court its recommendations regarding any necessary further program of rehabilitation that may be needed. And any order entered lifting the active suspension shall include in it as a condition of ongoing stayed suspended status such program of continuing care and monitoring by the Lawyer Assistance Program as the Court shall deem appropriate based upon the Lawyer Assistance Program's recommendation and the continuation of random drug screens in the manner set forth above.

E. Such petition filed with the undersigned Superior Court Judge or the Chief Resident Superior Court Judge of the XYZ Judicial District for return to stayed suspended status shall be **served** on the Director of the Lawyer Assistance Program at least ten days prior to any hearing. John Doe shall have the burden to show by **clear and convincing** evidence that his active addiction is in remission, the chances of his relapse are minimized and his practice of law does not pose a threat to the public. **Evidence** of satisfactory control and remission of his addictive disease will need to include, among other things, a) documentation that he has participated in a program of random drug screens for at least one year and has not used any mind altering drugs; b) extended treatment and

Comment [RM21]: Has never been necessary as we are integrally involved in process.

Comment [RM22]: Evidentiary standard.

Comment [RM23]: Provided by the LAP.

counseling (extended treatment would include a 90-day inpatient program and at least a year of intensive relapse prevention counseling at a counselor recommended by the Lawyer Assistance Program) and recommendations by those treating him that he is sober, mentally stable, and at low risk to relapse, and c) an agreement to enter into a continuing in camera consent order with the Lawyer Assistance Program providing for a monitored aftercare program of rehabilitation as a condition of the reinstatement.

- F. This Order and all proceedings in this Cause shall be filed under seal by the Clerk. However, Respondent is advised that by violating this Order, and/or in the event of active suspension for failure to comply with this Order, Respondent's practice of law while actively suspended, in either case will waive the in camera nature of this proceeding and this Order and enforcement of this Order may, in that event, proceed through ordinary judicial processes that are not under seal.
- G. John Doe shall report back to the Court quarterly during the term of this Order as to his compliance with this Order and progress in recovery. A copy of this Order shall be served upon Respondent and upon the Secretary of the North Carolina State Bar.

Comment [RM24]: LAP also provides on-going compliance reporting and updates to the judge.

This the _____ day of _____, 2017.

Superior Court Judge Presiding

We consent:

John Doe

Lawyer Assistance Program of the North Carolina State Bar

Clinical Coordinator

DO's and DON'T's Guide for Judges

DO:

- Call LAP for information or to talk through concerns about a lawyer, even if it is not at the point of you needing to take action. LAP can provide “things to look out for,” can coach you on talking points (if needed), and can offer suggestions for handling concerns now and down the road.
- Once you feel compelled to take formal action, assume it is probably worse than you realize in all 3 arenas:
 - Attorney's impaired status
 - Attorneys' personal life
 - Client harm
- Take action once you decide to. Your action may be the only thing standing between that lawyer and death, psychosis or disbarment.
- Call LAP and allow us to guide you, both procedurally and about what to expect clinically. We deal with this day in and day out, both clinically and procedurally.
- REQUIRE the lawyer to sign a release with LAP allowing us to speak candidly with you.
- Give thought to what is “the line in the sand” and when you draw the line in the sand it is imperative to STICK to it. So only draw a line you are willing to actually hold firm.
- Be prepared to be “light on your feet” with rapidly changing circumstances.
- Know that LAP is there for you as well as the lawyer. Some judges struggle with feeling like they are “betraying” the lawyer, not giving him/her a chance, feel guilty, etc., so the LAP can help you process your own feelings and provide support through the process.

DON'T:

- Wait to call LAP for guidance. There are several options/ways to approach that lawyer before a consent order is needed.
- Excuse worrisome behavior because “he's a good guy”, “she is an exceptional lawyer” or “he has enough on his plate already”.
- Be overly focused on due process. I am not saying to ignore due process, but these lawyers are severely impaired and they know it (deep down, under the denial). Once they know you know it, the jig is up (usually) and it is enough to force them to get help. Use the leverage you have to persuade them to do this consensually.
- Believe most of what a severely impaired lawyer tells you.
- Allow the lawyer to ignore or cross the line in the sand without the consequences, or all is lost early in the process. Once a lawyer has regained what he or she perceives to be even a modicum of control over the situation (or you, because you changed the boundary based on his or her non-compliance), it is nearly impossible to ever get them into recovery after that. The disease thinks it can continue to exert control and will push all future boundaries, even into disbarment.

You need not go it alone. LAP can help you every step of the way.



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Thank you!

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