

INFORMAL SUGGESTIONS FOR JUDGES WORKING WITH THE LAP

One of the important things to keep in mind is that if a lawyer is showing up and exhibiting some kind of unusual conduct, it is not just likely that something is wrong in that lawyer's life, it is probably a 99% certainty. In other words, there is this human tendency to try to assume that another person is probably ok even when their conduct suggests that they're not. Our experience is that when their conduct suggests they are not functioning well, the truth is: they are not functioning well, and there is some underlying cause for that.

Of course the Lawyer Assistance Program has no desire to get involved in talking with every lawyer who happens, that week, to be having some personal issue. However, this usually is not the case. What we do know is that lawyers protect their professional persona, so that if something is going on in their personal life which is causing them to be showing up abnormally in court, then there is usually a pretty serious underlying cause.

These are the types of conduct that should be signals that something is amiss.

1. Repeatedly failing to show up in court.
2. Repeatedly showing up late.
3. Sudden outbursts of anger or inappropriate comments to witnesses or court personnel.
4. Appearing to nod off or be "spaced out" while representing a client in court.
5. A lawyer smelling of alcohol on his or her breath.
6. Dramatic weight gain or loss during short period of time

The mission of the Lawyer Assistance Program (LAP) is to confidentially help lawyers address any underlying issue that may affect their ability to perform professionally as a lawyer. Referring a lawyer to the LAP before a problem gets bad is the most effective way that you as a judge can help protect the public.

Always bear in mind that if the problem is really egregious that you have the option (in some cases, perhaps, duty) to report the lawyer to the Bar and that referring someone to the Lawyer Assistance Program will not result in any communication by the LAP to the Bar concerning the lawyer.

Here are examples of ways in which you can be helpful to a lawyer, whose behavior is symptomatic:

1. Simply give a call to Robynn Moraites, the LAP Director, and talk with her about what you have observed and work out, with her, a game plan about how the lawyer might be assisted.
2. Call the lawyer up to the bench at an appropriate point, tell the lawyer you're concerned about whatever the specific conduct is, and ask the lawyer to contact the LAP and then let you know that he or she has done that.
3. Another level of intervention with the lawyer would be to tell the lawyer to get in touch with the LAP, be evaluated and request that the lawyer sign a release so that the LAP can let you know whether or not the lawyer has followed through.
4. With certain types of persistent conduct, it might be appropriate for you to meet in chambers with the LAP director and, perhaps at her discretion another LAP volunteer, available to talk with the lawyer. Normally you would simply be the convener of this meeting and would excuse yourself after it had started so that the lawyer's confidentiality privilege would be maintained.
5. If the lawyer's conduct is egregious it is certainly appropriate to find that the lawyer is in contempt of court and request that, if the lawyer wishes to purge the contempt, that this can be done by meeting with the LAP and following through with the LAP's recommendations for

assistance. Again, in this case, the lawyer would need to sign a release so that you can be informed of the lawyer's compliance or non-compliance.

Hopefully, this gives you a good feel for the range of remedies you have short of reporting the lawyer to the Bar to proactively help a troubled lawyer. Of course, always be aware that unless a lawyer agrees to sign a release, the LAP is unable, because of confidentiality, to let you know whether the lawyer has gotten on board and is doing great or is not following through and getting worse. What this means is that if the LAP has not been able to report back to you, that you should take whatever next steps, in your judgment, are appropriate if the troubling conduct continues, even after you have tried to affect a LAP intervention.

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Silent Suffering: The High-Functioning Alcoholic Lawyer

BY DON CARROLL AND ROBYNN MORAITES

How do we understand the gap between the level of alcoholism that exists among North Carolina lawyers and the fact that most of the time most of us look like we're functioning pretty well? The recent survey that Professor Darcy Siebert completed of North Carolina lawyers reported that 25% of the lawyers in the state drink five times or more per week. Over 52% (52.3%) drink until high at least one or more times each month. In other words, half the Bar self reports that they are drinking excessively at least once a month.

The North Carolina survey reflects data that has appeared in earlier studies. The *International Journal of Law and Psychiatry* reported that problem drinking develops in 18% of lawyers who practice for two to 20 years and in 25% of lawyers who practice 20 years or longer. Other studies report the number of lawyers with alcohol abuse disorders is above the national average of about 9%. Some of the studies indicate that figure is significantly above 9%.

There appears to be a gap between this data and the fact that most days—at the courthouse and in our interaction with each other—we as members of the Bar seem to be functioning pretty well. What is actually going on?

We can understand this apparent discrepancy in two ways.

First, like a computer, much of how we think as lawyers is binary. Something is either white or black; yes, we identify with something or no, we don't. For most of us the image that we have of people who suffer from alcoholism is one from the media or seeing homeless people with brown bags in their hands under bridges. Or we have an idea that an alcoholic drinks to drown his sorrows and misfortune in life. These

images are pictures of severe late-stage alcoholism when people have lost almost everything. These ideas or images are what we *emotionally* identify as what alcoholism looks like. We therefore have this picture in mind of what we think an alcoholic looks like, while we simultaneously observe that almost none of us in the Bar looks like that or behaves like that.

The truth is, however, that most people who suffer from alcoholism, particularly lawyers and other professionals, are high-functioning alcoholics. While we do not look at all like the seemingly hopeless street alcoholic, we suffer many of the same emotional and spiritual emptiness that comes with being trapped in the grip of alcoholism. Yet we remain high-functioning in our work life. In fact, keeping up the appearance of proper functioning in our work life becomes paramount because without it we would have to face the emotional reality of the effect alcoholism is having on our lives. In addition, there is always the fear of losing the ability to purchase the alcohol—or other drugs—needed to satisfy the obsession with having alcohol or substance that is characteristic of the disease.

Because of her own personal difficulty in coming to grips with her alcoholism while she was able to maintain a respectable job, home life, and friends, Sarah Allen Benton recently wrote a book entitled *Understanding the High-Functioning Alcoholic*. Her book reveals the story of many high-functioning alcoholics, many of whom could be lawyers. These are stories not of obvious tragedy, but of tremendous silent suffering. She estimates, based on surveys and professional experience, that at least half of all alcoholics are the high-functioning type. These individuals often work for years while abusing alcohol and sometimes putting their lives and the lives of their clients at huge risk.



Individuals who are in positions of power, and who are not closely supervised in their work, are often able to appear to continue to function well for years without immediate job consequences from excessive drinking or drug use. In fact, the use and abuse of alcohol or other drugs tends to be viewed as simply a reward for hard work. In his memoir, *A Drinking Life*, Peter Hamill, a writer, said, "If I was able to function, to get the work done, there was no reason to worry about drinking. It was part of living, one of the rewards."

Because one of the diagnostic criteria for determining when alcoholism exists includes identification of problems created by the excessive use of alcohol, many high-functioning alcoholic lawyers escape being identified as having the illness. Lawyers who often have garnered significant accomplishments in the profession as well as a stellar reputation among their peers find their accomplishments and standing in the legal community both a justification for drinking and a way to avoid seeing themselves as alcoholics. Ms. Benton said, "My success was the mask that disguised the underlying demon that fed my denial."

Often, the high-functioning alcoholic lawyer will occasionally have a glimmer of insight that something is not quite right before any external consequences have begun to occur. This insight suggests the need to seek medical assistance to determine if there is an alcohol problem. However, this glimmer of insight is usually

overridden by the feeling most lawyers have—that we would be perceived as weak to reach out and ask for help. This perception of weakness is not so much about admission of weakness to others, as it is a sign of some weakness we do not want to admit to ourselves. If a lawyer does yield to family pressure to reach out and get medical input about his or her drinking, the high-functioning alcoholic lawyer who is not yet ready to admit to him or herself that there is a problem will usually get an internist or psychiatrist who he or she can co-opt into minimizing the effect of the drinking. Sadly, this reinforcement from the healthcare provider (who has probably unknowingly been manipulated) actually affirms the lawyer's denial.

Like all alcoholics, as the illness progresses, the high-functioning alcoholic tends more and more to hide his or her excessive consumption of alcohol by drinking alone. Often the pattern of drinking includes drinking alone before or after a social event, but not during the event itself. And like other alcoholics, high-functioning alcoholics often can abstain from alcohol for days or weeks at a time without experiencing significant withdrawal symptoms. This is another way the illusion is created that there is no need to get help. Although

external consequences like loss of a job or family or arrest for alcohol-related offenses has not yet occurred, like other alcoholics who may have suffered some of those consequences, the high-functioning alcoholic's life nevertheless becomes increasingly narrowed as the illness progresses. The focus of each day turns on when he or she can drink, making sure that alcohol will be available at some point. Another clue, often, is if a lawyer begins experiencing blackouts, which are periods of not remembering what occurred during a period of drinking.

Gradually, the high-functioning alcoholic's life becomes more and more compartmentalized; he or she separates the drinking life and the seemingly successful work life. This strategy works until some kind of crisis occurs: either a dramatic, physical medical problem caused by the alcoholism or some other calamity, such as an alcohol-related arrest or disappearing without communication to colleagues and missing a crucial court date or client meeting, when it becomes clear to everyone that the problem is indeed alcohol. Unfortunately, by that time, very often many of the best years of the person's life have passed. The good news is that there is effective medical treatment for alcoholism

and other addictive drug illnesses. One need not continue to suffer in silence for many years, trying to hold up appearances and keep it all together.

As Ms. Benton's book suggests, there is no need to suffer year after year in a small prison of success. We can take to heart what the statistics for our profession mean and take advantage of the opportunity (there for all of us who might have concerns about our drinking or drug habits) to reach out and get good confidential assistance from the Lawyer Assistance Program for a referral to an addiction's specialist in evaluating if we have a high-functioning alcoholic problem. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers which helps lawyers address problems of stress, depression, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you are a North Carolina lawyer, judge, or law student and would like more information, go to www.nclap.org or call toll free: Robynn Moraites (for Charlotte and areas west) at 1-800-720-7257, Towanda Garner (in the Piedmont area) at 1-877-570-0991, or Ed Ward (for Raleigh and down east) at 1-877-627-3743.

Paralegal Certification (cont.)

systems advocacy. It also provides information and education for lawyers who serve deaf clients.

DSDHH helps deaf people attain equal access to services that are available to the public in North Carolina, and can also be a good resource for lawyers who have deaf clients. The DSDHH website provides a list of licensed interpreters broken out by region of the state. The DSDHH also has tips and guidelines for hiring and working with an interpreter to be able to better serve your deaf clients.

In addition, the Interpreting Services Program of the North Carolina Administrative Office of the Courts provides interpreters free of cost for all deaf litigants and witnesses during court proceed-

ings, and during out-of-court meetings related to indigent defense cases.

The State Bar's Interpreter Reimbursement Program

The use of a licensed interpreter is absolutely crucial to providing effective and accurate communication with deaf clients. The State Bar's Interpreter Reimbursement Program serves to reduce the expense of hiring a licensed interpreter. This program will reimburse a lawyer for the out-of-pocket expenses associated with hiring a licensed interpreter for a deaf client up to \$150 per client meeting. For more information about the Interpreter Reimbursement Program and how to apply for reimbursement, please visit the North Carolina State Bar website at ncbar.gov.

We are grateful to the Board of Paralegal Certification for making this program possible. ■

Kelly Farrow is the assistant director of the Paralegal Certification Program.

Endnotes

1. "Can you read this?" (in German); "How about this?" (in Russian); translated at babelfish.yahoo.com.
2. Communication Methods Used by Individuals Who are Deaf or Hard of Hearing brochure, NC Department of Health and Human Services, Division of Services for the Deaf and the Hard of Hearing, February 2011.
3. 42 USC § 12181.
4. 28 CFR § 36.303(a).

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