

# What's All the Buzz About?

BY ROBYNN MORAITES

A recent national ABA study on attorney mental health and drinking has been getting a lot of buzz. Pun intended. Based on some small, historic studies and anecdotally, to be sure, we have known for years that attorneys are at greater risk for depression, anxiety, and alcohol problems than the general public and even other professionals. This landmark study, however, is the first to ever bring into sharp focus, with hard data and real numbers, what we are facing in our profession across a spectrum of mental health issues. The study was conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs. The findings were published in the peer-reviewed *Journal of Addiction Medicine* in February 2016.

Over 15,000 attorneys participated in the national study, and the dataset was culled to retain only currently licensed and employed attorneys. Responses from attorneys who were retired, unemployed, working outside of the legal profession, suspended, or otherwise on any form of inactive status were eliminated, leaving approximately 12,800 responses. Demographics were diverse in both gender and race and captured a robust range of practice settings, practice areas, years in practice, and positions held. This is the most comprehensive data ever collected regarding attorney mental health, and the single largest dataset.

## Drinking: 21% Drinking at Harmful or Dependent Levels and 36% Drinking at Problematic Levels

Study participants completed a ten-question instrument known as the Alcohol Use Disorders Identification Test (AUDIT-10), which screens for different levels of

problematic alcohol use, including hazardous use, harmful use, and possible alcohol dependence. The test asks about quantity and frequency of use and includes questions as to whether an individual has experienced consequences from drinking. The study found that 21% scored at levels consistent with harmful use including possible alcohol dependence. Males scored higher at 25%, compared to 16% for women. When examining responses purely for quantity and frequency of use (known as the AUDIT-3), the study found an astonishing 36% of respondents drinking at problematic levels. While there is no hard and fast line to define “problematic” levels, problematic drinking behaviors can include drinking at lunch or regularly binge drinking. Binge drinking is typically defined as consuming enough to have a blood alcohol content level of 0.08. That’s about four drinks for women and five drinks for men in a two hour timeframe. When the same AUDIT-3 screening measure was used in a comprehensive survey of physicians, 15% of physicians reported use at this level—less than half of the number of attorneys reporting such use. It appears that more than one in three attorneys are crossing the line from social drinking to using alcohol as a coping mechanism.

## Shocking Reversal of Earlier Findings: Today's Younger Lawyers at Far Greater Risk

In a significant reversal of a conclusion reached by the last documented, statistically valid study—a 1990 study out of Washington State—the study found that younger lawyers struggle the most with alcohol abuse. Respondents identified as 30 years or younger had a 32% rate of problem drinking, almost one in three, higher than any other age group. This finding directly contradicts the Washington study that found the longer an

attorney practiced, the greater the risk of developing problems with alcohol. That data reversal is very significant, signaling major changes in the profession in the last 20 to 30 years. And with job prospects at an all-time low, and student debt at an all-time high, these younger lawyers who are most in need of treatment are least able to afford it. The LAP Foundation of NC, Inc. is working to bridge that gap. Please see page 20 for the story.

## Depression, Stress, and Anxiety: 28% Report Concerns with Depression

Depression and anxiety often go hand in hand. The study found that 28% of attorneys, more than one in four, struggle with some level of depression, representing almost a ten percent increase from the 1990 Washington study. Males reported at a higher rate than females for depression. Nineteen percent reported mild or high levels of anxiety, with females reporting at a higher rate than males. Interestingly, when examining the full span of one’s career, approximately 61% and 46% reported experiencing concerns with anxiety and depression, respectively, at some point in their career. Respondents also reported experiencing unreasonably high levels of stress (23%), social anxiety (16%), attention deficit hyperactivity disorder (12.5%), panic disorder (8%), and bipolar disorder (2.4%). More than 11% reported suicidal thoughts during their career. Three percent reported self-injurious behavior, and 0.7% reported at least one suicide attempt during the course of their career.

Like the findings associated with alcohol use, mental health conditions were higher in younger, less experienced attorneys and generally decreased as age and years of experience increased. The study also revealed significantly higher levels of anxiety, depression, and stress among those with problematic alcohol use, meaning mental health concerns often co-

occurred with an alcohol use disorder.

### Barriers to Seeking Help – No Surprises

As part of the study, participants were asked to identify the biggest barriers to seeking treatment or assistance. Categorically, fear of being “found out” or stigmatized was the overwhelming first choice response. Regarding alcohol use, 67.5% said they didn’t want others to find out, and 64% identified privacy and confidentiality as a major barrier. The responses for mental health concerns for these same two reasons were 55% and 47%, respectively. Additional reasons included concerns about losing their law license, not knowing who to ask for help, and not having insurance or money for treatment.

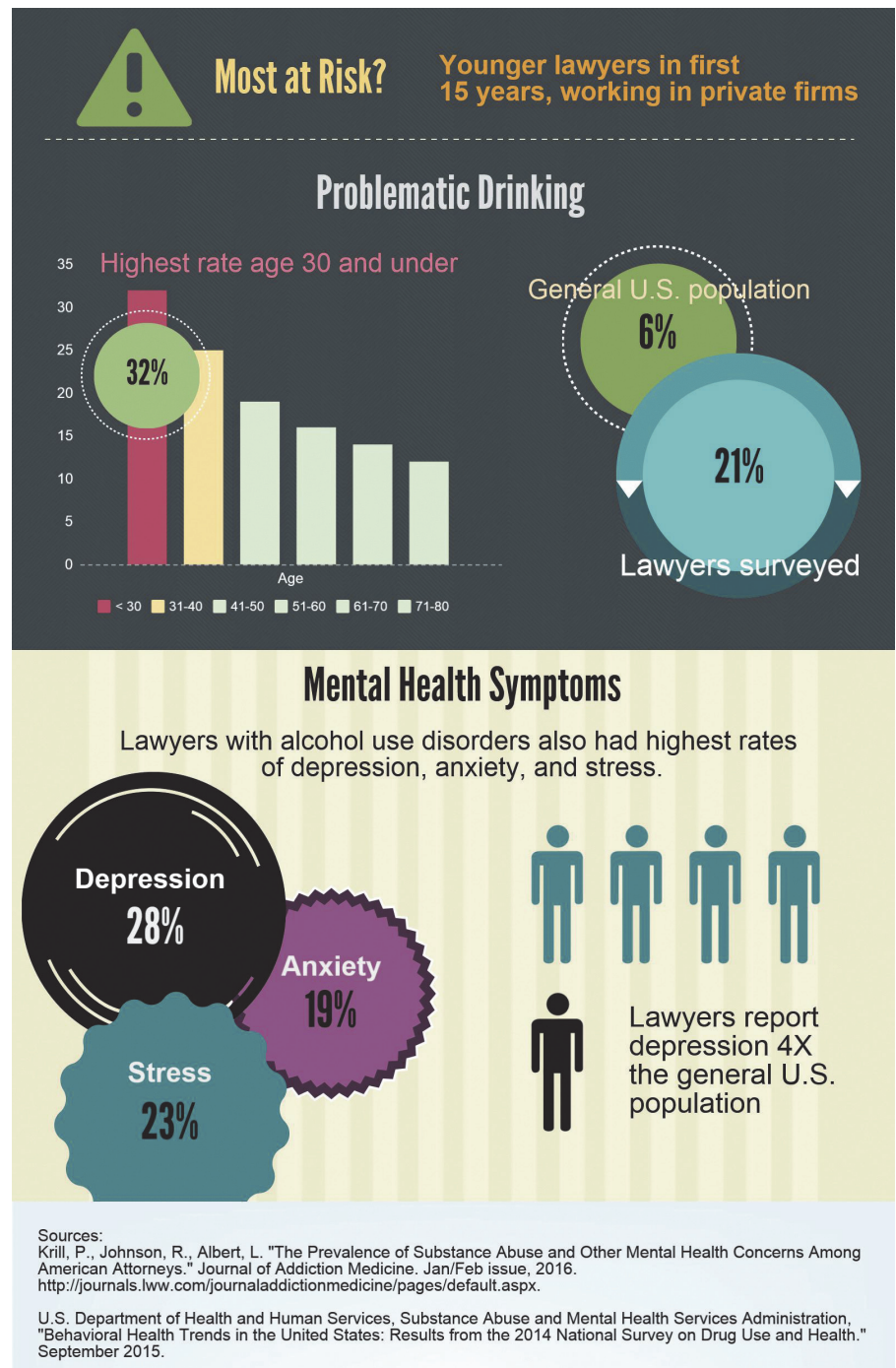
A surprising 84% indicated awareness and knowledge of lawyer assistance programs (LAPs), but only 40% would be likely to utilize the services of a LAP with privacy and confidentiality concerns again cited as the major barrier to seeking help through LAP programs.

### Help and Hope

The data is far more extensive than can be outlined in this short article. There are telling findings about drug use, including use of prescription stimulants. Rates of depression, anxiety, and problematic drinking were also correlated to practice setting, with large firms and bar associations ranking highest. We can slice the data and analyze it extensively for years to come. But the key takeaway is that we now have hard data showing that one in three-to-four of us are at real risk and are not likely to seek out assistance.

Only 7% of participants reported that they obtained treatment for alcohol or drug use, and only 22% of those respondents went through programs tailored to legal professionals. Participants who sought help from programs tailored specifically for legal professionals had significantly better outcomes and lower (healthier) scores than those who sought treatment elsewhere. This suggests that programs with a unique understanding of lawyers and their work can better address the problems.

When I first took this job as director of our NC LAP, I met a lawyer in a spin class. She was sitting on the bike next to me and recognized me because my photo had appeared in a local bar newsletter. She said, “I hope I never have to call you or have need for your program’s services.” I thought about her com-



ment for a moment and said, “Our volunteers are some of the happiest, most balanced, most resilient lawyers—people—you could ever hope to meet. They don’t come to us that way. But if they follow our suggestions, they become so. And they even like being lawyers again.” She said, “Wow. That’s cool. I never thought about it like that.” Because we are confidential, most lawyers never see the miracles of healing and regeneration that take place every day in the transformed lives of those

who are willing to pocket their pride and simply ask for help. There is help and there is hope, and plenty of it. ■

*Robynn Moraites is the executive director of the North Carolina Lawyer Assistance Program.*

*Infographic reprinted with permission from the February 2016 Wisconsin Lawyer article, “Landmark Study: US Lawyers Face High Rates of Problem Drinking and Mental Health Issues,” published by the State Bar of Wisconsin.*



**NCLAP**  
NORTH CAROLINA  
LAWYER ASSISTANCE PROGRAM

## Identifying Illness Based Impairment in Colleagues

Depression, Anxiety and Stress  
Alcoholism and Substance Abuse

Every aspect of an addicted or depressed attorney's life is affected. When there are problems at work or home, with health or finances, or there is police involvement, chances are the attorney is suffering from a medically based illness which can be successfully treated. If you recognize the following warning signs in a colleague, call us. *We can help.* Visit [NCLAP.org](http://NCLAP.org)

### Relationship Problems

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

### Performance Problems

- Missed deadlines
- Decreased efficiency
- Decreased performance after long lunches involving alcohol
- Inadequate follow through
- Lack of attention
- Poor judgment
- Inability to concentrate
- Difficulty remembering details or instructions
- General difficulty with recall
- Blaming or making excuses for poor performance
- Erratic work patterns

### Personal Problems

- Legal separation or divorce
- Credit problems, judgments, tax liens, bankruptcy
- Decreased performance after lunches involving alcohol
- Frequent illnesses or accidents
- Arrests or warnings while under the influence of alcohol or drugs
- Isolating from friends, family and social activities

### Attendance Problems

- Arrive late and/or leaving early
- Taking "long lunches"
- Not returning to work after lunch
- Missing appointments
- Unable to be located
- Ill with vague ailments
- Absent (especially Mondays/Fridays)
- Frequent rest room breaks
- Improbable excuses for absences
- Last minute cancellations

## **North Carolina State Bar's Model Law Firm Alcohol and Drug and Mental Health Policy**

The firm regards depression, anxiety, alcoholism, and drug addiction as illnesses and desires to assist employees suffering from such illnesses to obtain effective treatment.

The firm regards the unauthorized possession or distribution of controlled substances as crimes and will discipline any employee proved to be involved in such a crime whether or not such employee is addicted to drugs.

The impairment of any employee's performance due to mental illness or drug or alcohol addiction is deemed to be the firm's business, not a reserved aspect of one's private life. It is the firm's policy to encourage and offer qualified medical assistance to any employee who appears to the firm management to suffer from such illnesses.

No employees will be disciplined solely for impairment due to any illness, so long as the employee cooperates with a qualified treatment program agreed to by the firm and the employee, preferably in consultation with the NC Lawyer Assistance Program. The employee's choice of treatment will be accepted only if approved by a specialist retained by the firm, which may include the NC Lawyer Assistance Program, after consultation with the employee's personal physician. Any treatment undertaken in accordance with this policy shall be entirely confidential and no disclosure by an employee to any treatment personnel will be reported to the firm nor will any such disclosure be available to any legal authority whatever except in accordance with the requirements of applicable law.

The firm will name a supervisory employee as administrator of this policy and as the firm's representative in all matters pertaining to its execution. This person shall be a firm liaison with the Lawyer Assistance Program, and no other person within the firm shall be informed of any consultation or referral under this policy without the consent of the affected employee except as necessary to complete the ongoing work of the employee.

## **North Carolina Model Law Firm Alcohol and Drug Policy Explanatory Statement**

A law firm desiring to provide appropriate assistance to employees suffering from alcohol or drug problems or mental health issues should consider doing three things: (1) adopt a policy, (2) implement the policy, and (3) educate the members and employees of the firm.

The North Carolina State Bar has recommended to its membership a law firm policy which recognizes that depression, other mental health issues, alcoholism and drug addiction are treatable illnesses; however, the policy condones neither impaired job performance nor illegal conduct.

The model policy provides for the establishment of an understanding and supportive atmosphere within which lawyers and employees may seek personal help or express concern about a colleague or other employee.

The two major obstacles to reaching out for help for oneself or another are based on the fear of being punished (losing a job) and the fear of causing harm to one's reputation (stigma).

These can be overcome by express recognition of the medical models of addiction and mental health issues and the establishment of appropriate safeguards as to confidentiality.

The firm's partners should fully understand the model policy before adopting it. Representatives from the LAP Committee are available to assist them in its understanding.

It is very important for the partners to understand that the firm should not ignore impaired job performance. Work-related problems are a major indicator that "something" may be wrong. If that "something" is alcohol or drug related, or related to depression or other mental illness, then trying to protect the employee from the consequences of his/her own action is harmful, not helpful to the employee. This is called "enabling" and it is the direct result of not understanding the disease process.

Existing policies or Employee Assistance Programs (EAP) should be reviewed and any real or potential conflicts should be identified and resolved.

The partners need to agree on who will handle these matters and establish appropriate safeguards for confidentiality.

They may wish to retain an independent provider of EAP services. Be advised, however, that many lawyers will not use firm sponsored EAP services due to the fear of information about utilization being provided to the law firm as plan administrator. Law firm sponsored medical insurance needs to be reviewed to verify what is covered by the insurance before a need arises.

Once a policy is adopted, the firm should announce it and visibly post it. LAP is available to conduct educational programs, at no charge, for the benefit of the firm's lawyers and employees.

These programs discuss the prevalence and impact of the problem in the workplace, explain the progressive and the harmful nature of these conditions, teach how to identify job related symptoms, explore how supervisors and co-workers enable sick colleagues, and explain how to appropriately respond to a possible problem using the firm's policy.

Always keep in mind that LAP is a ready and willing resource to help your firm, using recovering lawyer volunteers and referral to treatment professionals. LAP exists to serve and save lives and help your firm remain productive.





[NCLAP.org](http://NCLAP.org)

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*A program of the  
North Carolina State Bar*

## Guidance for Law Firms

You have invested a lot of time, money, and sweat equity in the ongoing operation and success of your law firm. We all know that good quality work is key, yet it remains only part of the equation. It is hard to overstate the value of a great reputation of not only your firm as a whole but also of the lawyers who work there.

When an [attorney](#) is impaired due to an issue like [depression](#), bipolar disorder or [substance abuse](#), the law firm begins to suffer the consequences. The costs can be as obscure as lost opportunity costs of clients taking future work to another firm or as concrete as a drop in billable hours and revenue, professional malpractice claims or discipline resulting from ethical violations. Lawyer impairment impacts both work quality and law firm reputation. In short, lawyer impairment affects your firm's bottom line.

And as any good business owner knows, the success of your firm has also depended upon your on-going investment in your lawyers. It is for this reason that most law firms contact the [Lawyer Assistance Program](#). When a law firm's management team or managing partner becomes aware of an issue of impairment with an attorney within the firm – a long-time friend, a trusted colleague, and a valued member of the team – the almost universal response is to figure out a way to help the attorney and to keep him or her at the firm.

The biggest mistake most firms make is waiting too long to take action after an issue has come to their attention. Usually, because the attorney is so well liked and respected, the partners do not want to embarrass the attorney. They hope the issue will resolve itself without a conversation, much less an informal intervention which can feel like a confrontation or an accusation. But rarely does the issue go away or resolve itself. It almost always gets worse over time. In fact, by the time partners become aware of a situation, it means the lawyer's impairment is very far advanced. Lawyers are masters of maintaining a professional persona and image, regardless of what is happening behind the scenes. One of the last dominoes to fall is the all-is-well-lawyer façade. Law firms should read this sign as it is: a huge red flag that a lawyer is in real trouble.

The Lawyer Assistance Program has worked with law firms across the state, from large, multi-national firms, to small, closely-held firms. We educate partners about the nature of the impairment and associated issues and offer guidance about what to expect behaviorally and symptomatically if the impairment is not addressed. Sometimes law firms decide to require an impaired attorney to agree to enter into and comply with a "last clear chance"

agreement – providing the attorney an opportunity to get the help he or she needs – as a condition of maintaining employment at the firm. NC LAP guides firms and partners through this process. If the lawyer is willing to accept help, NC LAP assists the lawyer and can put accountability tools in place to assure the law firm the lawyer is continuing to follow clinical recommendations and to address whatever issues he or she needs to address.

If you are concerned about a lawyer in your firm, [please call us today](#). Your communication will remain confidential. Let us work with you so that together we can save a lawyer's life and livelihood.



# 2013 FORMAL ETHICS OPINION 8

## Search Adopted Opinions

### RESPONDING TO THE MENTAL IMPAIRMENT OF FIRM LAWYER

*Adopted: July 25, 2014*

*Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.*

#### Introduction:

As the lawyers from the “Baby Boomer” generation advance in years, there will be more instances of lawyers who suffer from mental impairment or diminished capacity due to age. In addition, lawyers suffer from depression and substance abuse at approximately twice the rate of the general population.<sup>1</sup>This opinion examines the obligations of lawyers in a firm who learn that another firm lawyer suffers from a mental condition that impairs the lawyer’s ability to practice law or has resulted in a violation of a Rule of Professional Conduct. This opinion relies upon ABA Commission on Ethics and Professional Responsibility, Formal Opinion 03-429 (2003) [hereinafter ABA Formal Op. 03-429] for its approach to the issues raised by the mental impairment of a lawyer in a firm. For further guidance, readers are encouraged to refer to the ABA opinion.

#### Inquiry #1:

Attorney X has been practicing law successfully for over 40 years and is a prominent lawyer in his community. In recent years, his ability to remember has diminished and he has become confused on occasion. The other lawyers in his firm are concerned that he may be suffering from the early stages of Alzheimer’s disease or dementia.

What are the professional responsibilities<sup>2</sup>of the other lawyers in the firm?<sup>3</sup>

#### Opinion #1:

The partners<sup>4</sup>in the firm must make reasonable efforts to ensure that Attorney X does not violate the Rules of Professional Conduct.

Mental impairment may lead to inability to competently represent a client as required by Rule 1.1, inability to complete tasks in a diligent manner as required by Rule 1.3, and inability to communicate with clients about their representation as required by Rule 1.4. Although a consequence of the lawyer’s impairment, these are violations of the Rules of Professional Conduct nonetheless. As noted in ABA Formal Op. 03-429, “[i]mpaired lawyers have the same obligations under the [Rules of Professional Conduct] as other lawyers. Simply stated, mental impairment does not lessen a lawyer’s obligation to provide clients with competent representation.” Under Rule 1.16(a)(2), a lawyer is prohibited from representing a client and, where representation has commenced, required to withdraw if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.” Unfortunately, an impaired lawyer may not be aware or may deny that his impairment is negatively impacting his ability to represent clients. ABA Formal Op. 03-429.

Rule 5.1(a) requires partners in a firm and all lawyers with comparable managerial authority in the firm to “make reasonable efforts to ensure that the firm or the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.” Similarly, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” Taken together, these provisions require a managerial or supervisory lawyer who suspects or knows that a lawyer is impaired to closely supervise<sup>5</sup>the conduct of the impaired lawyer because of the risk that the impairment will result in violations of the Rules.

When deciding what should be done in response to a lawyer’s apparent mental impairment, it may be helpful to partners and supervising lawyers to consult a mental health professional for advice about identifying mental impairment and assistance for the impaired lawyer.

Id. As observed in ABA Formal Op. 03-429,

[t]he firm’s paramount obligation is to take steps to protect the interest of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer’s impairment. Other steps include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

Id. If the lawyer's mental impairment can be accommodated by changing the lawyer's work environment or the type of work that the lawyer performs, such steps also should be taken.<sup>6</sup> "Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, management of the firm has an obligation to supervise the legal services performed by the lawyer and, in an appropriate case, prevent the lawyer from rendering legal services to clients of the firm." Id. Making a confidential report to the State Bar's Lawyer Assistance Program (LAP) (or to another lawyers assistance program approved by the State Bar<sup>7</sup>) would also be an appropriate step. The LAP can provide the impaired lawyer with confidential advice, referrals, and other assistance.

#### Inquiry #2:

Attorney X's mental capacity continues to diminish. Apparently as a consequence of mental impairment, Attorney X failed to deliver client funds to the office manager for deposit in the trust account. It is believed that he converted the funds to his own use. In addition, Attorney X failed to complete discovery for a number of clients although he declined assistance from the other lawyers in the firm. Some clients may face court sanctions as a consequence. Although Attorney X is engaging and articulate when he meets with clients, he no longer seems able to prepare for litigation and, on more than one occasion, Attorney X's presentation in court was muddled, meandering, and confused.

What are the professional responsibilities of the other lawyers in the firm?

#### Opinion #2:

Attorney X has violated Rule 1.15 by failing to place entrusted funds in the firm trust account. He has also violated Rule 1.1 and Rule 1.3 by providing incompetent representation and by failing to act with reasonable promptness in completing discovery. These are violations of the Rules of Professional Conduct that may have to be reported to the State Bar or to the court. In addition, steps may have to be taken to provide additional ongoing supervision for Attorney X or to change the circumstances or type of work that he performs to avoid additional violations of his professional duties. The other lawyers in the firm must also take steps to mitigate the adverse consequences of Attorney X's past conduct including replacing client funds.

Rule 8.3(a) requires a lawyer "who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects [to] inform the North Carolina State Bar or the court having jurisdiction over the matter." Only misconduct that raises a "substantial question" as to the lawyer's honesty, trustworthiness, or fitness must be reported. As noted in the Comment,

[t]his Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

Rule 8.3, cmt. [4].

If an impaired lawyer's misconduct is isolated and unlikely to recur because the mental impairment has ended or is controlled by medication or treatment, no report of incompetent or delinquent representation may be required. See RPC 243 (an "isolated incident resulting from a momentary lapse of judgment" does not raise a substantial question about honesty, trustworthiness, or fitness). "Similarly, if the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the [Rules] through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation." ABA Formal Op. 03-429.

However, reporting is required if the misconduct is serious, such as the violation of the trust accounting rules described in this inquiry, or the lawyer insists upon continuing to practice although his mental impairment has rendered him unable to represent clients as required by the Rules of Professional Conduct.<sup>8</sup>In either situation, a report of misconduct may not be made if it would require the disclosure of confidential client information in violation of Rule 1.6, and the client does not consent to disclosure. See Rule 8.3(c).

Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." If the managing lawyers determine that the impaired lawyer cannot provide competent and diligent representation and should be removed from a client's case, the situation must be explained to the client so that the client can decide whether to agree to be represented by another lawyer in the firm or to seek other legal counsel.

Rule 5.1(c) requires a partner or a lawyer with comparable managerial authority or with supervisory authority over another lawyer to take reasonable remedial action to avoid the consequences of the lawyer's violation of the Rules. Even if the impaired lawyer is removed from a representation, the firm lawyers must make every effort to mitigate any adverse consequences of the impaired lawyer's prior representation of the client.

#### Inquiry #3:

If the firm partners determine that Attorney X has violated the Rules and there is a duty to report under Rule 8.3, may they fulfill the duty by reporting Attorney X to the State Bar's Lawyer Assistance Program (LAP)?

#### Opinion #3:

No. 2003 Formal Ethics Opinion 2 addressed this issue in the context of reporting opposing counsel as follows:

The report of misconduct should be made to the Grievance Committee of the State Bar if a lawyer's impairment results in a violation of the Rules that is sufficient to trigger the reporting requirement. The lawyer must be held professionally accountable. See, e.g., Rule .0130(e) of the Rules on Discipline and Disability of Attorneys, 27 N.C.A.C. 1B, Section .0100 (information regarding a member's alleged drug use will be referred to LAP; information regarding the member's alleged additional misconduct will be reported to the chair of the Grievance Committee).

Making a report to the State Bar, as required under Rule 8.3(a), does not diminish the appropriateness of also making a confidential report to LAP. The Bar's disciplinary program and LAP often deal with the same lawyer and are not mutually exclusive. The discipline program addresses conduct; LAP addresses the underlying illness that may have caused the conduct. Both programs, in the long run, protect the public interest.

Inquiry #4:

Attorney X announces his intent to leave the firm to set up his own solo practice and to take all of his client files with him. The other lawyers in the firm are concerned that, absent any supervision or assistance, Attorney X will be unable to competently represent clients because of his mental impairment.

What are the duties of the remaining lawyers in the firm if Attorney X leaves and sets up his own practice?

Opinion #4:

In addition to any duty to report, the remaining lawyers may have a duty to any current client of Attorney X to ensure that the client has sufficient information to make an informed decision about continuing to be represented by Attorney X.

As noted in Opinion #2, Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The clients of an impaired lawyer who leaves a firm must decide whether to follow the departed lawyer to his new law practice. To make an informed decision, the clients must be informed of "the facts surrounding the withdrawal to the extent disclosure is reasonably necessary for those clients to make an informed decision about the selection of counsel." ABA Formal Op. 03-429.<sup>9</sup> There is no comparable duty to former clients of the impaired lawyer as long as the firm avoids any action that might be interpreted as an endorsement of the services of the departed, impaired lawyer, including sending a joint letter regarding the lawyer's departure from the firm.

The remaining lawyers in the firm may conclude that, while under their supervision and support, the impaired lawyer did not violate the Rules and, therefore, there is no duty to report to the State Bar under Rule 8.3. Nevertheless, subject to the duty of confidentiality to clients under Rule 1.6, voluntarily reporting the impaired lawyer to LAP (or another lawyer assistance program approved by the State Bar) would be appropriate. The impaired lawyer will receive assistance and support from LAP and this may help to prevent harm to the interests of the impaired lawyer's clients.

Inquiry #5:

Associate lawyers and staff members are often the first to observe behavior indicating that a lawyer has a mental impairment. If an associate lawyer or a staff member reports behavior by Attorney X that indicates that Attorney X is impaired and may be unable to represent clients competently and diligently, what is a partner's or supervising lawyer's duty upon receiving such a report?

Opinion #5:

If a partner or supervising lawyer receives a report of impairment from an associate lawyer or a staff member, regardless of whether the lawyer suspected of impairment is a senior partner or an associate, the partner or supervising lawyer must investigate and, if it appears that the report is meritorious, take appropriate measures to ensure that the impaired lawyer's conduct conforms to the Rules of Professional Conduct. See Opinion #1 and Rule 5.1(a). It is never appropriate to protect the impaired lawyer by refusing to act upon or ignoring a report of impairment or by attempting to cover up the lawyer's impairment.

Inquiry #6:

If an associate lawyer in the firm observes behavior by Attorney X that indicates that Attorney X is not competent to represent clients, what should the associate lawyer do?

Opinion #6:

The associate lawyer must report his or her observations to a supervising lawyer or the senior management of the firm as necessary to bring the situation to the attention of lawyers in the firm who can take action.

Inquiry #7:

An associate lawyer in the firm reports to his supervising lawyer that he suspects that Attorney X is mentally impaired. He also describes to the supervising lawyer conduct by Attorney X that violated Rules 1.1 and 1.3. The supervising lawyer tells the associate to ignore the situation and to not say anything to anyone about his observations including clients, other lawyers in the firm, or staff members. The associate concludes that no action will be taken to investigate or address Attorney X's behavior. Does the associate lawyer have any further obligation?

Opinion #7:

A subordinate lawyer is bound by the Rules of Professional Conduct notwithstanding that the subordinate lawyer acts at the direction of another lawyer in the firm. Rule 5.2(a). If the associate lawyer believes that the duty to report professional misconduct under Rule 8.3 may be triggered by the conduct of Attorney X, the associate lawyer should discuss this concern with his supervising lawyer. If the supervising lawyer declines to address the situation, the associate lawyer should seek guidance as to his professional responsibilities from the lawyers at the State Bar who provide informal ethics advice.

Inquiry #8:

Assume that Attorney X is the sole principal in the firm and there is one associate lawyer. Attorney X displays behavior that may indicate that he is in the early stages of Alzheimer's disease or dementia. There is no senior management to whom the associate lawyer can report. What should the associate lawyer do?

Opinion #8:

If the associate lawyer believes that the duty to report professional misconduct under Rule 8.3 may be triggered by the conduct of Attorney X, the associate lawyer should seek guidance as to his professional responsibilities from the lawyers at the State Bar who provide informal ethics advice. See Opinion #7. Regardless of whether Attorney X's conduct triggers the duty to report, the associate lawyer may seek advice and assistance from the LAP or from another approved lawyer assistance program, or may contact a trusted, more experienced lawyer in another firm to serve as a mentor or advisor on how to address the situation.

Inquiry #9:

Assume Attorney X is a sole practitioner and the lawyers in his community observe behavior that may indicate that he is in the early stages of Alzheimer's disease or dementia. What is the responsibility of the lawyers in the community?

Opinion #9:

The Rules of Professional Conduct impose no specific duty on other members of the bar to take action relative to a potentially impaired fellow lawyer except the duty to report to the State Bar if the other lawyer's conduct raises a substantial question about his honesty, trustworthiness, or fitness to practice law and the information about the lawyer is not confidential client information. See Opinion #7. Nevertheless, as a matter of professional responsibility, attendant to the duties to seek to improve the legal profession and to protect the interests of the public that are articulated in the Preamble to the Rules of Professional Conduct, the lawyers in the community are encouraged to assist the potentially impaired lawyer to find treatment or to transition from the practice of law. A mental health professional, the LAP, or another lawyer assistance program can be consulted for advice and assistance.

Inquiry #10:

Do the responses to any of the inquiries above change if the lawyer's impairment is due to some other reason such as substance abuse or mental illness?

Opinion #10:

No.

## Endnotes

1. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 03-429 (2003) (citing George Edward Bailly, *Impairment, the Profession, and Your Law Partner*, 11 No.1 Prof. Law. 2 (1999)) [hereinafter ABA Formal Op. 03-429].
2. This opinion does not address the issues that may arise under the Americans with Disabilities Act of 1990, 42 US C. §§12101 et seq. (2003) (the ADA) relative to an employer's legal responsibilities to an impaired lawyer. Lawyers are advised to consult the ADA and the Equal Employment Opportunity Commission's website, [eeoc.gov](http://eeoc.gov), for guidance.
3. "Firm" as used in the Rules of Professional Conduct and this opinion denotes "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation, government entity, or other organization." Rule 1.0(d).

4. "Partner" as used in the Rules of Professional Conduct and this opinion denotes "a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law." Rule 1.0(h).
5. It is improper for a firm to charge a client for additional supervision for an impaired lawyer if the supervision exceeds what is normally required to ensure competent representation unless the client is advised of the reason for the additional supervision and agrees to the charges. See Rule 1.5(a).
6. ABA Formal Op. 03-429 provides the following examples of accommodation: A lawyer who, because of his mental impairment, is unable to perform tasks under strict deadlines or other pressures, might be able to function in compliance with the [Rules] if he can work in an unpressured environment. In addition, the type of work involved, as opposed to the circumstances under which the work occurs, might need to be examined when considering the effect that an impairment might have on a lawyer's performance. For example, an impairment may make it impossible for a lawyer to handle a jury trial or hostile takeover competently, but not interfere at all with his performing legal research or drafting transaction documents.
7. One such program is the Transitioning Lawyers Commission (or "TLC") of the North Carolina Bar Association, which considers issues of aging and cognitive impairment and helps lawyers to wind down their law practices to "retire gracefully." See more at: [tlc.ncbar.org](http://tlc.ncbar.org).
8. ABA Formal Op. 03-429 cautions that when reporting an impaired lawyer pursuant to Rule 8.3, disclosure of the impairment may be necessary; however, the reporting lawyer should be careful to avoid violating the ADA.
9. ABA Formal Op. 03-429 counsels that, when providing a client with information about the departed lawyer, a firm lawyer "must be careful to limit any statement to ones for which there is a reasonable factual foundation." This will avoid violating the prohibition on false and misleading communications in Rule 7.1 and the prohibition on deceit and misrepresentation in Rule 8.4(c).

# 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.<sup>1</sup>

### 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.<sup>2</sup> 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](http://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.

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## 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.*

**W**e 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](http://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.*

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# An Important Free Resource for Lawyers

One of the free resources available to you as a State Bar member is the **Lawyer Assistance Program (LAP)**. From time to time, lawyers encounter a personal issue that, left unaddressed, could impair his or her ability to practice law. Accordingly, the LAP was created by lawyers for lawyers to assure that free, confidential assistance is available for any problem or issue that is impairing or might lead to impairment.

## Lawyers at Particular Risk

Of all professionals, lawyers are at the greatest risk for anxiety, depression, alcoholism, drug addiction, and even suicide. As many as one in four lawyers are affected. This means it is likely that you, an associate, a partner, or one of your best lawyer friends will encounter one of these issues. Whether you need to call the LAP for yourself or to refer a colleague, all communications are completely confidential.

## Anxiety and Depression

Anxiety and depression often go hand-in-hand. These conditions can be incapacitating and can develop so gradually that a lawyer is often unaware of the cumulative effect on his or her mood, habits, and lifestyle. Each condition is highly treatable, especially in the early stages. Asking for help, however, runs counter to our legal training and instincts. Most lawyers enter the profession to help others and believe they themselves should not need help.

The good news is that all it takes is a phone call. The LAP works with lawyers exclusively. The LAP has been a trusted resource for thousands of lawyers in overcoming these conditions.

## Alcohol and Other Substances

Often a lawyer will get depressed and self-medicate the depression with alcohol. Alcohol is a central nervous system depressant but acts like a stimulant in the first hour or two of consumption. The worse you feel, the more you drink initially to feel better, but the more you drink, the worse you feel. A vicious cycle begins. On the other hand, many alcoholic lawyers who have not had depression report that their drinking started normally at social events and increased slowly over time.

There is no perfect picture of the alcoholic or addicted lawyer. It may be surprising to learn that he or she probably graduated in the top one-third of the class. Also surprising, lawyers may find themselves in trouble with addiction due to the overuse or misuse of certain prescription medications that were originally prescribed to address a temporary condition. Use of these kinds of medications, combined with moderate amounts of alcohol, greatly increases the chances of severe impairment requiring treatment. The LAP knows the best treatment options available, guides lawyers through this entire process, and provides on-going support at every stage.



## Confidentiality

All communications with the LAP are **strictly confidential** and subject to the attorney-client privilege. If you call to seek help for yourself, your inquiry is confidential. If you call as the spouse, child, law partner, or friend of a lawyer whom you suspect may need help, your communication is also treated confidentially and is never relayed without your permission to the lawyer for whom you are seeking help. The LAP has a committee of trained lawyer volunteers who have personally overcome these issues and are committed to helping other lawyers overcome them. If you call a LAP volunteer, your communication is also treated as confidential.

The LAP is completely separate from the disciplinary arm of the State Bar. If you disclose to LAP staff or to a LAP volunteer any misconduct or ethical violations, it is confidential and cannot be disclosed. See Rules 1.6(c) and 8.3(c) of the Rules of Professional Conduct and 2001 FEO 5. The LAP works because it provides an opportunity for a lawyer to get **safe, free, confidential** help before the consequences of any impairment become irreversible.

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*LAP recognizes alcoholism, addiction, and mental illness as diseases, not moral failures. The only stigma attached to these illnesses is the refusal to seek or accept help.*

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*Know the signs. Make the call.  
You could save a colleague's life.*



### TAKE THE TEST FOR DEPRESSION

YES NO

- 1. Do you feel a deep sense of depression, sadness, or hopelessness most of the day?
- 2. Have you experienced diminished interest in most or all activities?
- 3. Have you experienced significant appetite or weight change when not dieting?
- 4. Have you experienced a significant change in sleeping patterns?
- 5. Do you feel unusually restless...or unusually sluggish?
- 6. Do you feel unduly fatigued?
- 7. Do you experience persistent feelings of hopelessness or inappropriate feelings of guilt?
- 8. Have you experienced a diminished ability to think or concentrate?
- 9. Do you have recurrent thoughts of death or suicide?

If you answer yes to five or more of these questions (including questions #1 or #2), and if the symptoms described have been present nearly every day for two weeks or more, you should consider speaking to a health care professional about treatment options for depression.

Other explanations for these symptoms may need to be considered. Call the Lawyer Assistance Program.

Adapted from *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*. Fourth Edition. Washington, DC. American Psychiatric Association: 1994.

### TAKE THE TEST FOR ALCOHOLISM

YES NO

- 1. Do you get to work late or leave early due to drinking?
- 2. Is drinking disturbing your home life?
- 3. Do you drink because you are shy with other people?
- 4. Do you wonder if drinking is affecting your reputation?
- 5. Have you gotten into financial difficulties as a result of drinking?
- 6. Does drinking make you neglect your family or family activities?
- 7. Has your ambition decreased since drinking?
- 8. Do you often drink alone?
- 9. Does drinking determine the people you tend to be with?
- 10. Do you want a drink at a certain time of day?
- 11. Do you want a drink the next morning?
- 12. Does drinking cause you to have difficulty sleeping?
- 13. Do you drink to build up your confidence?
- 14. Have you ever been to a hospital or institution because of drinking?
- 15. Do family or friends ever question the amount you drink?

If your answer is yes to two or more of these questions you may have a problem. Call the Lawyer Assistance Program.

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