



2024 Professional Liability Practice Group Seminar

November 8, 2024

Keeping the Law in Tune:

Managing Lawyer Impairment in a Nashville Legal Honky Tonk'

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“I got a feeling called the blues, oh Lord

Since my baby said goodbye Lord,

I don’t know what I’ll do

All I do is sat and sigh,”

- Hank Williams, Lovesick Blues

Impaired lawyers present a significant risk not only for malpractice claims but also for a law firm's reputation and client retention. It is estimated that between 40 percent and 70 percent of disciplinary proceedings and malpractice claims against attorneys involve substance abuse or depression or both.ⁱⁱ To mitigate these risks, law firms must have effective programs and strategies in place.

Lawyer impairment can stem from issues such as substance abuse, mental health challenges, or cognitive decline, such as Alzheimer’s disease. In many cases, the root cause of missed deadlines or failure to communicate with clients is not immediately clear, as impaired lawyers are often reluctant to disclose their struggles.

Addressing these issues often requires collaboration between firm management, human resources, and third-party consultants/attorneys. While it's important to support the impaired lawyer, the firm must balance this concern with its duty to clients, its own interests, and ethical responsibilities. Rule 5.1 of the ABA Model Rules of Professional Conduct, holds law firm partners and supervisors accountable for ensuring that subordinate lawyers comply with ethics rules and may also make them responsible for another lawyer’s professional misconduct. Therefore, firm leadership must be vigilant about recognizing and addressing any issues that could affect a lawyer’s competence.

A Common Problem

According to the ABA “one in five lawyers is a problem drinker—twice the national rate.”ⁱⁱⁱ Symptoms of alcohol use disorder may include:

- An inability to limit alcohol consumption
- Feeling a strong need or compulsion to drink
- Developing tolerance
- Drinking alone or in secret
- Experience withdrawal symptoms
- Missing deadlines or commitments
- Making a ritual of having drinks
- Losing interest in hobbies or activities that do not involve alcohol consumption
- Irritability and poor sleep habits
- Intentionally becoming intoxicated to feel “normal”

Mental health statistics from a survey of 13,000 practicing attorneys are also jarring^{iv}:

- 28 percent of the lawyers suffer from depression
- 19 percent of lawyers had severe anxiety
- 11.4 percent of lawyers had suicidal thoughts in the previous year.

Substance abuse, depression and anxiety are more common in younger lawyers: “the younger the lawyer, the greater the rate of impairment.”^v

Recognizing the Signs

The first step in addressing lawyer impairment is recognizing the warning signs. These can include chronic lateness, missed deadlines, absence from meetings, erratic behavior, or a sudden decline in performance. It’s essential for law firms to cultivate a culture where such signs can be reported without fear of retaliation.

There are many potential causes of depression. According Dr. Joann Muddin, M.D., author of “The Dark Side of Success: A Psychiatrist’s Exploration of Depression in the Legal Profession,” potential causes include^{vi}:

1. **High pressure and demands.** Being a lawyer requires consistently high performance, facing intense stress, and managing high stakes on a daily basis.
2. **Perfectionism.** Attorneys often strive for perfection, which, while beneficial for client work, can lead to chronic stress and burnout in pursuit of unattainable standards.
3. **Lack of essential non-legal skills.** Although lawyers are trained to practice law, a successful legal career also demands strong management, financial, and communication skills—areas in which many attorneys are underprepared, as these skills are rarely emphasized in law school.
4. **Deficiency in mental resilience and self-care.** Many attorneys lack the tools needed for maintaining resilience and mental well-being, contributing to emotional exhaustion and declining mental health.

5. **Burnout culture.** Chronic physical and emotional fatigue is common in the legal field. Long hours and intense pressure can lead to severe burnout, leaving lawyers drained and overwhelmed.
6. **Stigma around mental health.** Fear of being judged or facing discrimination because of mental health struggles prevents many attorneys from seeking help. This stigma is a significant barrier, with over half of those affected not receiving the treatment they need.
7. **Imposter syndrome.** The complexities of practicing law can cause even seasoned attorneys to feel incompetent or inadequate. The fear of being "found out" by clients or colleagues can be mentally debilitating.
8. **Disillusionment with the profession.** Many law students enter the field expecting to feel confident and in control post-graduation, but the inherent uncertainty of legal practice can lead to disappointment and despair if not accepted as part of the profession.
9. **Exposure to trauma.** Like first responders and military personnel, legal professionals, especially those handling sensitive cases, are at risk of developing post-traumatic stress disorder (PTSD) due to their exposure to traumatic situations.

Dealing With The Problem

In 2016, the ABA Center for Professional Responsibility formed a National Task Force on Lawyer Well-Being which, after reviewing troubling surveys on statistics of lawyer impairment made the following recommendations:

1. "Identify stakeholders and the role each of them can play in reducing the level of toxicity in the legal profession;
2. Eliminate the stigma associated with help-seeking behaviours;
3. Emphasize that well-being is an indispensable part of a lawyer's duty of competence;
4. Educate lawyers, judges and law students on lawyer well-being issues;
5. Take small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession."^{vii}

Mistakes Happen. Support Your Team

One way to reduce firm toxicity and mitigate exposure from lawyer impairment is to promote a team mentality and show your people that you understand that mistakes will happen and the firm is there to support the attorney and help find solutions. A lawyer's duty of competence does not require perfection. Lawyers and law firms dealing with mistakes should keep the following in mind.

1. It's almost always not as bad as you think it is.
2. Don't try to fix it yourself.
3. Talk to a mentor whose judgment you trust.
4. People want to help.
5. Discuss with management whether to contact your malpractice carrier as soon as possible.
6. Develop a plan (with firm management and your malpractice carrier).
7. Know your ethical obligations to disclose information to clients.

8. Clients are people too. They understand that mistakes happen.
9. Trust the process.

The Inevitability of Dealing With Difficult People

As much as a firm can do to create a positive, non-toxic, work environment, the practice of law is inevitably adversarial, and law firms cannot control how their opponents act. Senior attorneys should be cognizant when younger lawyers are dealing with difficult opponents and ready to step-in when needed. Experienced mentors should also train younger lawyers how to deal with difficult people. Matt Potema, author of *Law Practice Today*, recommends the following tips for dealing with difficult people in the practice of law:^{viii}

1. **Listen actively.** Understand the source of the frustration without interrupting or correcting. Truly hearing the other person is the first step toward resolution.
2. **Educate respectfully.** Offer clarity without being condescending or dismissive, ensuring that everyone understands the situation fully.
3. **Confront when necessary.** Know how and when to address difficult realities. Choose the appropriate medium for communication based on the situation. If a client is in the wrong, be candid but respectful in delivering the truth. Always evaluate objectives through the lens of testimony and parties' positions, not just through how they wish things to be.
4. **Be responsive and attentive.** Unresponsiveness or inattentiveness in law can cause significant delays and expenses. If progress is blocked by silence or conflict, take a strategic and constructive approach. Like chess, effective lawyering requires thinking several steps ahead. Treat every communication as if it might one day be presented in court or read aloud in a conference room.
5. **Own mistakes and act quickly.** If you've made an error, acknowledge it promptly, mitigate the damage, and take steps to prevent recurrence. As Thomas Jefferson said, "If you have to eat crow, eat it while it is young and tender." Addressing mistakes early avoids festering problems, and most issues can be fixed or minimized if dealt with in a timely manner.
6. **Minimize future conflicts.** Whenever possible, distance yourself from irrational people who unnecessarily complicate matters. While this isn't always possible in personal life, in a professional setting, assess whether it's worth continuing with someone who is perpetually difficult. A staff change, new position, or parting ways with a challenging client may be necessary.
7. **Maintain professionalism under pressure.** Effectively handling difficult people is key to maintaining mental well-being in law. Strive to understand their perspective before responding. Avoid emotional outbursts—whether it's pounding on a conference table, sending heated emails, or making rash phone calls. Acknowledge their frustration, no matter how misdirected, and develop a strategy to either collaborate constructively or plan an exit.

Protecting Clients

While supporting an impaired lawyer is important, the firm must also take steps to safeguard its clients. Ethics rules prioritize the duty to clients above all. If a lawyer's impairment interferes with their ability to provide effective representation, the firm is obligated to intervene. Potential steps include:

- **Confrontation and Intervention:** A sensitive but necessary conversation with the impaired lawyer, focusing on concerns about their behavior and offering support, while emphasizing the firm's ethical obligations to clients.
- **Referral and Leave:** The firm may refer the lawyer to a lawyer assistance program, often available through jurisdictional bar associations, and consider placing them on leave. Lawyer assistance programs provide confidential help for lawyers dealing with addiction or mental health issues.
- **Workload Adjustments:** In cases of mild or temporary impairment, the firm may reassign the lawyer's workload or increase supervision to ensure client matters are properly handled.

Implementing Policies

To manage impairment effectively, law firms should establish clear, well-communicated policies. These policies should outline the steps to take when lawyer impairment is suspected or reported, ensuring a standardized and fair approach. Key elements of these policies include:

- **Confidentiality:** A lawyer's personal struggles should remain private, with information shared only on a need-to-know basis and with the lawyer's consent.
- **Support Options:** The policy should detail resources available to impaired lawyers, including employee assistance programs and lawyer-specific support services.
- **Encouraging Self-Disclosure:** Fostering an environment where lawyers feel safe to seek help is vital. Lawyers should be reassured that asking for help is a sign of professionalism and commitment, not weakness.

Promoting Wellness

Prevention is key. Law firms should actively promote wellness to reduce the risk of impairment. This can include encouraging work-life balance, offering stress management resources, and fostering a supportive firm culture. Impairment often arises during personal crises, such as a divorce, illness, or the death of a loved one. Regular check-ins with lawyers experiencing such difficulties can help ensure they are managing their professional responsibilities effectively.

Conclusion

Handling impaired lawyers is a sensitive and multifaceted issue that demands a thoughtful, structured approach. By recognizing the signs of impairment, implementing comprehensive policies, offering support, protecting clients, and promoting lawyer wellness, law firms can address this challenge responsibly. Ultimately, this is not just about safeguarding the well-being of the lawyers themselves, but also about maintaining the integrity of the legal profession and upholding the trust of clients.

ⁱ This article and panel presentation was inspired by the “Smokey Joe’s ‘Agony of Defeat’ Blues Saloon: Where Olympic Quality Lawyers Come to Sing the Blues” panel presentation at the ALFA 2024 International Client Seminar on March 1, 2024 presented by Christopher A. Page of the ALFA member law firm Young Moore and Henderson, Raleigh, N.C., D. Jay Davis, Jr., of the ALFA member law firm Clement Rivers, LLP, Charleston, SC, and Carlos Vera of the ALFA member law firm Johnson & Bell, Ltd.

ⁱⁱ <https://www.americanbar.org/news/abanews/publications/youraba/2017/december-2017/secretcy-and-fear-of-stigma-among-the-barriers-to-lawyer-well-bei/>

ⁱⁱⁱ https://www.americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence/#:~:text=As%20many%20as%20one%20in,lawyer's%20career%20and%20personal%20life.

^{iv} <https://www.americanbar.org/news/abanews/publications/youraba/2017/december-2017/secretcy-and-fear-of-stigma-among-the-barriers-to-lawyer-well-bei/>

^v Id.

^{vi} <https://www.lawyerswithdepression.com/articles/the-dark-side-of-success-a-psychiatrists-exploration-of-depression-in-the-legal-profession/>

^{vii} Id.

^{viii} <https://www.lawpracticetoday.org/article/tips-dealing-difficult-people/>