



Impairment in the Legal Profession—
A Guide for New Bar Councilors and Local Bar Leaders



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Over half of the Disciplinary Hearing Commission's cases are caused by impairment.

Lawyers in each district see their Bar Councilor as a person who can assist them in making the hard decision to get help.

Introduction

At least one of every ten legal professionals will deal with an addictive disorder (drugs, alcohol, gambling, sex, work, food) during their professional career—some estimates put it as high as 25%. Another 33% of professionals will experience either short-term or chronic symptoms of depression or stress. The cost to clients is obvious: inadequate preparation, missed court dates, trust account violations, irrational or unsound decisions, and so on. Less obvious is the cost to society in general and to the profession in particular. Society pays a price in terms of increased medical costs, accidents, and loss of productivity. Members of the profession, of course, bear the brunt of public ire and outrage.

Studies done by the Washington State Bar and the Oregon State Bar found that over half of their disciplinary cases are caused by these impairments. Data from North Carolina, including the 1991 Bar Association Quality of Life Study, supports this finding. Bar councilors and bar leaders can play an important role in helping the impaired lawyer. As a councilor/bar leader, you are in a unique position to do what often no one else can: move the lawyer into action. The perception lawyers in your district have of you as a person connected to the Bar may give you just the right kind of influence to help a lawyer in your district.

Understanding Chemical and Psychological Impairments

No one takes a drink of alcohol or uses pain medication after surgery thinking they'll become addicted. Most people believe they will be the ones who can "handle it" or may believe the drug they are using is not addictive. The process of moving from use to abuse to dependency varies depending on the person and the substance. Some alcoholics report they were addicted to alcohol from the first drink. Cocaine, especially if smoked, seems to be addictive very quickly. However, the process is usually slow, and it can take years before addiction actually interferes with everyday living. A generic definition of addiction is: "Engaging in the same behavior after suffering negative consequences as the result of that behavior."

There is considerable evidence that all addictions are the result of biochemical processes in the body. It appears that people who are predisposed to addiction metabolize alcohol and other similar drugs (including the adrenaline produced by gambling wins or losses) differently from the rest of the population. Addiction has been recognized by the American Medical Association since the mid-1950's as a chronic (an addict is never "cured"), progressive (it has a predictable course and symptoms and will not get better without some type of treatment), and, if untreated, fatal disease.

Likewise, psychological conditions such as depression, bi-polar disorder, schizophrenia, and obsessive-compulsive disorders are no longer considered to be solely the result of emotional trauma or other issues. Instead, such conditions are now believed to be primarily caused by imbalances in brain chemistry, a condition which can often be remedied through psychotherapy and, at times, proper medication, or both.

Myths and Misconceptions

There are many myths and misconceptions about chemical and psychological impairments. Here are a few of the more common ones.

Myth: I'm just a recreational user/drinker. That won't hurt me.

Fact: The use of drugs and alcohol can result in devastating physical dam-

age. Marijuana can cause lung cancer; cocaine can cause strokes and heart attacks; heroin use can result in mental disorders, death from respiratory collapse, infection, and AIDS if needles are shared; alcohol use is known to cause cirrhosis of the liver, cancer, heart disease, brain damage, loss of memory, and impaired muscle coordination; amphetamine use can result in strokes and mental disorders; and barbiturates can cause death from respiratory collapse.

Myth: Drug use is a private matter. It is none of the Bar's business what I do on my own time.

Fact: Drug use affects performance. Most drugs continue to affect the user for 24 hours after use, long after the high is over. Thus, many users report to work still under the influence, even if they are not "using" on work time.

Myth: I can't be an alcoholic; I still make it to work every day.

Fact: Most alcoholics can maintain a home and a job for extensive periods, but as the illness progresses, all aspects of their life suffer. Only a small percentage of alcoholics are on "skid row."

Myth: I don't know any alcoholics.

Fact: About one of every ten people that drink has a drinking problem.

Myth: You're not an alcoholic unless you drink a pint a day.

Fact: Experts have concluded that the quantity consumed is far less important than when, how, why, and what happens to an individual when he or she consumes alcohol.

Myth: Most alcoholics are middle-aged or older.

Fact: A University of California research team has found that the highest proportion of drinking problems occur among men in their early 20's, followed by men in their 40's and 50's.

Myth: Alcoholics and drug addicts are morally weak.

Fact: Addiction has been medically and legally classified as an illness. Saying an addict is morally weak is the same as saying that having diabetes is a question of willpower.

Myth: All alcoholics drink in the morning.

Fact: The desire or presumed "need" for a morning drink is a "late stage" symptom and is rare among those in the early or middle stages of the disease.

Myth: Alcoholics drink every day.

Fact: Alcoholism is not determined by how often people drink, but by whether or not they can control their drinking once they start.

Myth: You can't become an alcoholic by drinking only beer.

Fact: People who drink beer simply have to drink larger quantities to get the same effect as with wine or distilled spirits. The amount of alcohol in a 12 ounce beer is equal to that in a 6 ounce glass of wine or a 1½ ounce shot of 80 proof alcohol.

Myth: Pills are okay; everybody takes them. Besides, a doctor wrote the prescription.

Fact: Addiction to prescription drugs can be deadly. Withdrawal from



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Alcoholism is not defined by how often people drink, but by their inability to predict how much they will drink once they start.

Because lawyers are naturally directed toward helping others, it is hard for them to get help for themselves.

“I knew I needed help and I only turned to the LAP because it was confidential.”

—LAP Client

barbiturates can be fatal. Withdrawal from tranquilizers such as Valium or Xanax can take up to two years. Unfortunately, most physicians receive little or no training regarding chemical dependency in medical school and consequently are often sadly unfamiliar with the signs, effects, and development of chemical addiction to pain killers or other prescription drugs.

Myth: People are friendlier when they are drunk.

Fact: Sometimes. But they can be more dangerous to themselves and others. The majority of domestic violence and vehicular homicides, half of all murders, and one-third of all suicides are substance related.

Myth: Black coffee and a cold shower will sober up a drunk.

Fact: All this does is produce a drunk who is awake. An awakened drunk may attempt to drive or do other things which he or she is no more capable of doing right than a sleepy drunk. Time is the only method of sobering up.

Myth: Getting out of depression is just a matter of time and right thinking.

Fact: Although it is true that some depression is situational (caused by circumstances that are sad or painful) and will pass with time, clinical depression is a biochemical illness which may have little relationship to external circumstances and will only respond to psychotherapy and, in some instances, pharmacological intervention.

Myth: Stress is just part of practicing law.

Fact: While the practice of law is an increasingly stressful profession, different individuals react differently to that stress. Some understand how to ameliorate or utilize the stress, while others become increasingly debilitated, hostile, and eventually paralyzed by the pressure. Factors contributing to an individual's vulnerability to stress include training, brain chemistry, personality, and lifestyle.

What Kind of Treatment is Available for Impaired Lawyers or Judges?

Treatment for impairments may include inpatient detoxification, inpatient hospitalization (four to twelve weeks is the average), and/or outpatient and aftercare counseling for up to two years. Successful treatment, whether inpatient or outpatient, will address all components of a person's life, including their physical condition, mental and emotional state, appropriate use of antidepressant medications, family and personal relationships, how they spend their leisure time, their professional life, financial situation, and any legal problems they may have.

The type of treatment the individual receives may ultimately depend upon financial resources, including insurance. Private treatment centers can be quite expensive, but many will work with patients and allow them to pay off the bill after they finish treatment and resume practice. There are also a number of nonprofit, sliding scale treatment facilities that cost little or nothing. “Twelve-step programs” such as Alcoholics Anonymous and Narcotics Anonymous are free and available virtually 24 hours a day. Lawyer assistance programs, such as the North Carolina LAP, cost nothing.

What Motivates Someone to Seek Treatment?

The old adage that “you can't help an addict until he's ready to help himself or until he has hit bottom” has been proven to be inaccurate. While internal

motivation on the part of the impaired person is important, external motivating factors are often necessary to overcome the denial and ambivalence which is universal in addiction, and which is especially entrenched in high intellectually functioning professionals such as judges and lawyers. There are a number of very effective factors which are useful in externally motivating the person into initial treatment.

Legal: Substance related charges such as driving while intoxicated, disturbing the peace, or possession of controlled substances represent manifest evidence of behavioral problems with chemicals. The treatment versus punishment issue frequently coerces a begrudging individual into treatment who later may move successfully into the long-term rehabilitation process.

Job: In those instances in which the impaired lawyer is referred by a local judge, the Grievance Committee, the DHC, or the lawyer's firm, the threat to job and profession can be one of the strongest determinants in the lawyer's commitment to the initial phase of treatment.

Family: Chemical and psychological impairments are illnesses affecting all members of the family leading to disruption and deterioration of relationships within both the nuclear and extended families. A family's willingness to set limits on the patient's behavior can precipitate a "family crisis" which frequently motivates the impaired lawyer toward the initial phase of treatment.

What Are the Warning Signs?

Warning signs of impairment are there if you know what to look for.

Absenteeism

- Unexplained or repeated absences or tardiness for court appearances, depositions, etc.
- Peculiar or improbable excuses for absences.

Confusion or difficulty in concentration

- Difficulty in recalling instructions, details, etc.
- Increasing difficulty in handling complex assignments.
- Difficulty in recalling own mistakes.
- Work requires more effort than it should.

Spasmodic work patterns

- Alternate periods of high and low productivity.

Generally lowered job efficiency

- Missed deadlines.
- Mistakes due to inattention or poor judgment.
- Making bad decisions.
- Complaints from clients.
- Improbable excuses for poor performance.

Poor interpersonal relationships

- Overreaction to real or imagined criticism.
- Wide swings in morale or mood.
- Unreasonable resentments or hostility.
- Excessive suspicion.

Physical problems/symptoms

- Complaints of fatigue.

Alcoholism is one of the rare diseases that affects a person's ability to perceive the effect the disease is having. Thus, a constructive threat to job can be a helpful factor in a lawyer committing to getting help.

"The tough and frank advice of my Bar Councilor is what caused me to seek help from the LAP. That help was confidential and the Bar never knew I had a problem."

—PALS Volunteer

Back pains or other vague medical problems.
Complaints of stomach problems or nausea.
Repeated hospitalizations and/or accidents.
Observable physical signs such as bleary eyes, wobbly, shakes, flushed face, widely dilated or tightly constricted pupils, bloodshot eyes, staggering, blank look/expressionless, standing or sitting immobile (as if in a trance), hand or leg tremors, downcast or disheveled appearance, slurred speech, lethargy, restlessness/nervousness/anxiety, panic reaction, facial tic, excessive talking, disoriented thoughts (“word salad”), silence.

Financial or legal problems

DUIs.
Client complaints such as failure to communicate or return telephone calls, failure to appear at hearings or depositions, or missing statute of limitations dates.
Trust account violations or misappropriation of client funds.

Appearing in court or elsewhere in an obviously abnormal condition

Specific Signs of Clinical Depression (5 or more of the following symptoms continuing for more than 2 weeks):

Feelings of sadness or irritability
Loss of interest or pleasure in activities once enjoyed
Changes in weight or appetite
Changes in sleeping patterns
Feelings of guilt, hopelessness, or worthlessness
Inability to concentrate, remember things, or make decisions
Fatigue or loss of energy
Restlessness or decreased activities
Complaints of physical aches and pains for which no medical explanation can be found
Thoughts of death or suicide

What Can You Do?

If you are concerned about a lawyer or fellow judge, the most unkind act you can do is to do nothing. If you suspect a lawyer in your district has a problem with drugs, alcohol, depression, or another condition which appears to be interfering with their law practice, or if you have any questions regarding impairment, call Don Carroll, LAP Director at 1-800-720-7257 or Ed Ward, Assistant LAP Director at 1-877-627-3743. LAP can help in exploring options available to assist the lawyer.

In July 2004, the State Bar Council adopted a policy which provides, in certain circumstances, when a lawyer is non-responsive to the Bar, a councilor will be delegated to seek out the non-responsive lawyer. If the councilor believes that the lawyer’s non-responsiveness is due to a mental health or addictions issue, the policy provides that the councilor may refer to the LAP. This may be done by suggesting the lawyer call the LAP or by requesting that the LAP contact the lawyer.

What is the Lawyer Assistance Program?

The Lawyer Assistance Program is the organization created by the Bar Council to assist lawyers, judges, and law students who may have personal problems that interfere with their personal or professional lives. These problems may include stress, depression, family problems, emotional problems, and substance abuse problems.

REMEMBER: All people, including you, exhibit some of the symptoms of depression occasionally. It is a pattern of problems over a period of time (several months) that should alert you.

The most unkind act you can do is do nothing when you become aware of a lawyer’s possible impairment.

The program is confidential and this confidentiality is protected by Rule 1.6 of the Rules of Professional Conduct. The LAP is governed by a nine member board of directors, consisting of three members who are Bar Councilors, three LAP volunteers, and three experts in the field of mental health and addiction. The program is staffed by an executive director and assistant director and a volunteer network of over 200 lawyers across the state.

What Services Does the Program Offer?

LAP provides assessment, referral, follow-up, peer support, consultation, intervention, and monitoring.

Assessment The LAP staff can assess the problem and assist the judge or lawyer in getting appropriate help. An initial assessment is generally done in one to three sessions.

Referral If the judge or lawyer is assessed to need additional help, the LAP will refer the individual to the most appropriate resource in the community. This may include social service agencies, private therapists, physicians, hospitals, etc.

Follow-Up After referral, the LAP staff will follow up to ensure that the judge or lawyer is satisfied with the service and that he or she is progressing toward their goal. If the problem is chemical dependency, the person will be followed for at least two years.

Peer Support An individual contacting the LAP will, when appropriate, be connected with a recovering judge or lawyer in their part of the state who can assist them in getting involved with a 12 Step or mental health care program. In addition, they will be directed to the closest chemical dependency or mental health lawyer support meeting in their area. There are over 15 such meetings throughout North Carolina, composed of lawyers, judges, and law students, who meet to assist and support each other.

Consultation The LAP can provide assistance to judges, law partners, friends, or family members who are concerned about a judge or lawyer. The LAP staff will help the concerned person explore the options available and make recommendations.

Intervention If a judge or lawyer is seriously in trouble with drugs or alcohol, or has a mental disorder that demands immediate treatment, the LAP staff can intervene with the person, arrange for appropriate treatment, and encourage the person to accept the necessary help.

Monitoring In situations where the lawyer's impairment has resulted in ethical or disciplinary violations, the LAP has a monitored reporting system to insure that the lawyer or judge enters into and maintains his or her recovery, providing the best insurance that such actions will not be repeated.

Is It Confidential?

Yes! The Lawyer Assistance Program has absolutely no connection with the discipline function of the Bar, except in those cases referred to it by Grievance or DHC for monitoring. Its primary purpose is to assist judges and lawyers before they deteriorate to the point of receiving client complaints or otherwise become involved in the disciplinary process. Confidentiality is protected by Rule 1.6 of the Rules of Professional Conduct.

The State Bar's new policy of having a councilor reach out to non-responsive lawyers offers a unique opportunity for a councilor to encourage the lawyer to get help from the LAP.

How Do I Reach The Lawyer Assistance Program?

For more information go to www.nclap.org or contact:

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