Insidious and Increasingly Common – Lawyers Struggling with Addiction and Mental Illness: How can we all Help?

ABA Section of Litigation, Insurance Coverage Litigation Committee, CLE Seminar

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I. Welcome to Lawyer Wellness as an Ethical Issue of Competence

The secret is out: lawyers are seriously not well and clients often pay the price. We suffer from problem drinking, depression, anxiety, and suicidal thoughts at levels far higher than other professions or the general population. See, e.g., P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016). The problem is especially acute in lawyers during the first ten years of practice. Overall, one in three practicing attorneys are problem drinkers. That statistic is likely under reporting the extent of the drinking problem in the profession. A small fraction of attorneys with these health issues receive mental health services, treatment or help of any kind. Lawyers are not good about asking for help and worry that admitting to having health challenges will adversely impact retaining jobs and/or clients.

This attitude starts in law school. Law students also are suffering from the same issues at high rates within a short time after starting school, but they also find many reasons not to seek help. Nearly two-thirds fear reporting a drug or alcohol problem, and nearly half fear reporting a health problem, because it might delay their chance to take the bar or undermine their chances to be admitted to practice law. See, e.g. J. M. Organ, D. B. Jaffe, & K. M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Abuse and Mental Health Concerns*, J. Legal Educ., Autumn 2016.
Confronted with these astounding studies, in 2016 the ABA formed a national task force on lawyer well-being and concluded a year later: “[t]o be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being . . . and [these studies] raise troubling implications for lawyers’ basic competence.” See The Path to Lawyer Well-Being: Practical Recommendations for Lawyer Change, available at https://www.americanbar.org/groups/lawyer_assistance/task_force_report.html, at p. 8 (referred to as “Task Force Report”). The Task Force Report defined lawyer well-being as part of the lawyer’s duty of competence and insisted that the legal community start focusing on helping lawyers make healthy, positive work and life choices. The Task Force Report has recommendations to, among other things, expand continuing legal education requirements to include well-being topics (many states have adopted credit requirements) and create proactive management-based programs that include well-being components (multiple firms are taking well-being pledges). Perhaps most to the point, it says we should de-emphasize alcohol at social events. Not easy when lawyer social events are traditionally organized around cocktail hours. But we have to start somewhere.

II. This is Where Professional Liability Insurance Intersects with Attorney Well-Being

Not every malpractice case is the result of attorney well-being, but they are often the most expensive mistakes and hurt the clients the most. Malpractice insurers anecdotally report that attorney impairment leads to between three and ten percent of claims, but they suspect the rate is higher as the insurer never learns of the impairment. See Christine Simmons, Law Firms Face Malpractice Risk Over Substance Abuse, Poor Mental Health (‘This is a problem – this is not something that should be swept under the rug,” said one legal malpractice insurer.), N.Y.L.J., November 28, 2018, available at https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2018/11/28/another-hazard-
of-poor-attorney-mental-health-malpractice-risk/. This lack of clear data prompted the Task Force Report to recommend that professional liability carriers collect data when lawyer impairment is a contributing factor to claims activity. Carriers noted in the article that law firms often hide attorney impairment, because they are more worried about the impact on firm reputation instead of focusing on the well-being of their own lawyers. However, malpractice insurers believe that the route to better law firm profits is to implement pro-active attorney well-being programs, which avoid malpractice claims and assist with attorney recruiting and retention.

Large law firms are not exempt from these well-being issues and worry about the impact on their clients and reputation. A recent survey of Am Law 200 firms by ALM Intelligence confirmed that alcohol abuse (90%), drug abuse (48%), depression (86%) and anxiety (93%) all occur in big firms. See Patrick R. Krill, ALM Survey on Mental Health and Substance Abuse: Big Law’s Pervasive Problem, available at https://www.law.com/2018/09/14/alm-survey-on-mental-health-and-substance-abuse-big-laws-pervasive-problem/, Law.Com, September 14, 2018. The survey revealed that respondents did not think that there is a stigma in the legal profession for occasional alcohol use until it turns to addiction (perhaps we should be worried well before addiction), and also placed a higher stigma on mental health problems like depression and anxiety, which may prevent people from acknowledging these issues. The big law respondents confirmed that their focus on these issues is primarily out of concern for threat or damage to clients or reputation. However, the article asserted that law firms are missing the more profound economic losses caused by substance abuse and mental health problems, including for example, loss of working hours. Again, perhaps tackling the issue of attorney well-being may be the best route to higher profits, while at the same time firms are helping their own lawyers.
III. The Many Ways Lawyers Can Be Well


Being a lawyer is full of stress. Lawyers need to let things go. Bill Murray’s “it doesn’t matter” means being present now, being mindful of this moment, and being connected with life. But we do not let things go and we end up burned out. The Task Force Report noted in a study that over 50% of lawyers responding had elevated levels of perceived stress. Lawyers need training to cope with stress. Also, organizations need to learn how to manage resources to help lawyers avoid and cope with stress. The Task Force Report provides numerous educational topics about lawyer distress and well-being. See Task Force Report, Appendix B.

Work engagement vs. burnout is front and center. Work engagement is about having high levels of energy and mental resilience, dedication (sense of meaningfulness, significance, and challenge), and feeling absorbed in work. Burnout is a stress response associated with depression. Burnout has serious psychological and physiological effects with increased risk of depression, substance abuse, and suicidal thinking, as well as eroding honesty, integrity, altruism, and self-regulation. The trick is to provide lawyers with resources that outweigh demands, while allowing for adequate recovery.

Lawyers can be trained to be more resilient and optimistic. The key is having an optimistic explanatory style, which means putting adverse events in a rational context without being overwhelmed by catastrophic thinking. There are cognitive behavior therapy techniques that build individual resilience skills, but organizations need to create environments that systematically support individual optimism.

Meditation works for well-being. Lawyers spend most of their time in their heads and focused on their own thoughts. We are paid to think. Mindfulness meditation is cultivating the
skill of being present (thanks Bill Murray) by focusing on breath and detaching from thoughts or feelings. It helps work-life balance by reducing preoccupation with work. This practice also enhances cognitive reframing (resilience), so that we can monitor our thoughts and avoid becoming overwhelmed. It reduces rumination, stress, depression, and anxiety. Plus it results in increased focus and concentration, working memory, and cognitive skills. Organizations should provide mediation training and support daily practice.

Other areas of emphasis in the Task Force Report are rejuvenation periods to recover from stress combined with physical activity and adequate sleep. In addition to having adequate time away from work to relax, studies have shown that physical activity (and physical challenges) are particularly effective for lawyers recovering from mentally demanding work. This is in contrast to low effort activities like watching TV that may actually increase fatigue. Physical activity reduces depression, improves brain functioning and cognition, offsets the negative effects of stress, avoids brain atrophy, reduces the chance for dementia, and slows the onset of Alzheimer’s disease. Meanwhile sleep is essential to recovery. Lack of sleep is at the root of many health problems, including depression and burnout. Organizations can help lawyers by supporting and providing training on the importance of time away from work, outside challenges and learning experiences, physical activity, and sleep.

In sum, the well-being of lawyers is front and center as we start 2019. Lawyers have an ethical obligation to take charge of their own well-being so they can maintain their competence. And the entire profession, from law schools to bar associations to malpractice insurers to law firms, need to step up and help.