2019 Insurance Coverage Litigation Committee CLE Seminar

Wednesday, February 27, 2019

#LitigationInsurance
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

February 28, 2019
Ethical Duty of Competence

- ABA Model Rules of Professional Conduct
- 1.1 “provide competent representation”
- 1.3 requires diligence in client representation
- 4.1 through 4.4 regulate working with people
- Goal is to “strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.”
Lawyers are **Not** Well

- 2016 Study of attorney substance abuse and mental health issues
- Attorneys suffer from high levels of problem drinking (1 in 3), depression, anxiety, and suicidal thoughts
- Levels far higher than other professions or general population
- Small fraction receive (or seek) mental health services, treatment or help of any kind
Law Students are Not Well

- 2016 Study of law students found similar issues
- Suffer at high levels within a short time after starting school
- Fear of reporting a substance abuse or mental health problem
- Worried delay taking bar or undermine chances of practicing law
ABA Task Force Findings 2017

• ABA formed a task force in 2016 after the two prior studies

• Task force issued findings in 2017

• Report insists legal community start focusing on helping lawyers make healthy, positive work and life choices

• Report has recommendations on CLE, proactive management-based programs at firms, and de-emphasizing alcohol at firm functions
Well-Being is a Continuous Process

A continuous process in which lawyers strive for thriving in each dimension of their lives:

- **Occupational**
  - Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development. Monitoring cognitive well-being.

- **Intellectual**
  - Developing a sense of meaningfulness and purpose in all aspects of life.

- **Spiritual**
  - Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and rejuvenation. Minimizing the use of addictive substances. Seeking help for physical health when needed.

- **Social**
  - Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

- **Physical**
  - Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

- **Emotional**
  - Cultivating personal satisfaction, growth, and enrichment in work. Financial stability.
Law Firm Pledge

The Well-Being Pledge for Legal Employers

1. Provide enhanced and robust education to attorneys and staff on well-being, mental health, and substance use disorders.

2. Reduce the expectation of alcohol at firm events by seeking creative alternatives and ensuring that non-alcoholic alternatives are always available.

3. Partner with outside providers who are committed to reducing substance use disorders and mental health distress in the profession.

4. Provide confidential access to addiction and mental health experts and resources, including free, in-house, self-assessment tools.

5. Develop proactive policies and protocols to support assessment and treatment of substance use and mental health problems, including a defined back-to-work policy following treatment.

6. Show that the firm’s core values include taking care of yourself and getting help when needed by regularly & actively supporting programs to improve physical, mental and emotional well-being.

7. Use this pledge, and the firm’s commitment to these principles, to attract and retain the best lawyers and staff.

American Bar Association Working Group to Advance Well-Being in the Legal Profession
13 Healthy Workplace Factors

1. Culture of Trust
2. Mental Health Support
3. Effective Leadership
4. Civility & Respect
5. Good Person-Job Fit
6. Growth & Development
7. Recognition & Reward
8. Involvement & Influence
9. Workload Management
10. Employee Engagement
11. Work-Life Balance Support
12. Psychological Safety
13. Physical Safety
How Can We All Help?
What Can I Do? Be Willing to Offer Help . . . or Ask for Help.
What to Look For – Signs of Impairment

Personal behavior:

• Social behavior
• Appearance/hygiene
• Distorts truth
• Financial concerns
• Defensiveness
• Smells of alcohol / marijuana
What to Look For – Signs of Impairment

Professional Behavior

- Attendance: arrival, absences, missed appointments
- Job Performance:
  - Procrastination or neglect
  - Decline in productivity
  - Client complaints
  - Trust account questions
  - Excuses
I Don’t Have a Problem . . . or Do I?

High-functioning yet impaired.
- We’re competitive overachievers who do not like asking for help.
- No public consequences / professional accountability for behavior.
- Outward appearances and boundaries seem “normal”
- Isolation can be subtle.

Justifying behavior.
- Never missed court appearance/deadline/meeting.
- No client / colleague complaints about my work.
- But are you failing to consistently bring your “A” Game?
Taking a Closer Look at Your Own Behavior

• Have you ever felt you should **Cut down** on your drinking/use/behavior?

• Have people **Annoyed** you by criticizing (or commenting on) your drinking?

• Have you ever felt bad or **Guilty** about your drinking?

• Have you ever had a drink before or during the work hours to get rid of a hangover or steady your nerves (**Eye opener**)?
Other Substances and Behaviors

- Drugs
- Gambling
- Internet Addiction
- Sexual Compulsivity
- Eating Disorders
- Shoplifting Addiction
- Compulsive Shopping
What to Look For – Mental Health Issues

Depression

- It occurs in stages: persistent sadness -> emptiness -> hopelessness/helplessness -> suicide
- A loss of interest in normally pleasurable activities
- Impaired ability to concentrate, remember and decide
- In yourself, look for changes in appetite, sleep patterns, energy levels, physical pains, worsening feelings of sadness/worthlessness
- In a colleague, look for changes in attitude – more gloomy, pessimistic, cynical, irritable, anxious, complaining, etc.
General Anxiety Disorder

- Pressure in/on chest
- Hyperventilating
- Sweating
- Rapid Pulse
- Sense of Impending Doom/Feeling Like a Fraud
- Strong Emotional Reactions
- Similar Outward Symptoms as Depression – Pessimistic, Irritable, Moody
Other Mental Health Issues

- Bipolar Disorder
- Obsessive Compulsive Disorder
- ADHD
- Unresolved Grief
- Post Traumatic Stress Disorder
- Cognitive Impairment
Reaching Out – Different Scenarios

• Informal expression of concern from one lawyer to another.
  • Drop off a brochure from a Lawyer Assistance Program (LAP) or contact LAP for coaching prior to visit.

• Request LAP Volunteer to call or visit.

• Intervention – Use of a trained facilitator is recommended.
  • Family/Close Friends
  • Law Firm/Partners

• Crisis response.
How to Reach Out Informally

- Tell the person that you care.
- Briefly talk about what you’ve observed and your concerns.
- Tell them how you feel.
- Then listen.
- Tell the person what you want them to do.
- Let them know that you are willing to help.
Steps Law Firms / Legal Employers Can Take

- Form a Lawyer Well-Being Committee
- Assess attorneys’ well-being as part of the annual review process
- Monitor for signs of addiction and poor self-care.
- Actively combat social isolation at work and encourage interconnectivity.
- Provide CLEs and other training on well-being, mental health, and addiction, including during orientation of new hires.
- Emphasize a service-centered mission.
- Create standards, align incentives, and give feedback
Law Firm / Employer Action Is Vital

• One of the largest barriers to attorneys seeking out help for substance use or mental health issues is **STIGMA**

  o 2016 ABA/Hazelden Study found that two of the biggest barriers to attorneys seeking help were (1) not wanting others to find out; and (2) concerns about privacy or confidentiality

• A firm or employer that actively promotes well-being and talks about these difficult issues with compassion will foster an environment where their attorneys are more willing to ask for the help they need.
How Do I Get Help for Me?

• ASK. FOR. HELP. It may be the hardest thing you ever do, but it may also save your life.

• Who do I ask for help?
  • Family / Friends
  • Mentor or colleague at your firm/company
  • Your state’s Lawyer Assistance Program
  • Local AA or other “12-Step” Group
Lawyer Assistance Programs

- Free and Confidential
- 24/7 crisis line
- Lawyers can call for help with mental health and substance use issues
- Firms can call for guidance
- Several states offer free counseling sessions
- Groups and peer support
- www.americanbar.org/colap
Professional Liability and Well-Being
How often are substance abuse or mental health issues factors in ethics or malpractice claims?
If I am impaired and I seek help, will I be punished?

Is a law firm that employs a lawyer with known chemical or mental health issues at increased risk?
HYPOTHETICAL NO. 1
Attorney Amy, an associate at a mid-sized plaintiffs’ personal injury law firm, is going through a divorce. Amy has developed a habit of calming her anxiety with drinks after work at The Thirsty Tavern (TTT). Amy’s friend Susan also likes to drink at TTT, and confides in Amy that her son Bill has been arrested for his fourth DUI. Amy doesn’t have criminal law experience, but she agrees to defend Bill in the DUI pro bono. The night before the hearing on Bill’s DUI, Amy has a few too many drinks at TTT. Amy oversleeps the next morning, missing the hearing . . .
. . . Later that day, Susan calls Amy livid that Amy has failed to show up to court to defend Bill. Susan is also very angry because Carl, another associate at Amy’s firm who frequents TTT, told her that Amy had been loudly telling everyone at the bar embarrassing information about Bill and his DUI arrest. Amy calls Carl and begs him to not tell the firm about this – she was intending to do the work pro bono anyway, and Bill was going to go to jail regardless.
HYPOTHETICAL NO. 2
Attorneys Fred and Sara are law partners. Fred is general counsel for various local companies, and Sara mostly does real estate work, so their practice areas rarely overlap. Due to the nature of their work, they sometimes go for days without seeing each other and they don’t necessarily know what the other is working on. Lately, Sara notices that Fred is absent more than usual and appears haggard when he does make it in. A few of Fred’s clients have called the office asking when they can expect to hear back from him. When Sara talks to Fred about this, Fred reveals that he has cancer and is undergoing treatment. Sara, trying to be understanding, offers to do whatever she can to allow him to recover. Fred assures her he has explained to his clients what his limitations are and they are all okay with it. . . .
A few months later, a very angry client of Fred’s comes to the office demanding to speak to him, and since Fred is not there, to Sara. The client says Fred has stolen hundreds of thousands of dollars from him and his company by making unauthorized charges on corporate credit cards Fred had access to. Alarmed, Sara confronts Fred who admits that he does not have cancer after all; he is a heroin addict and he has been stealing money from various clients to support his habit. Fred agrees to enter treatment. Sara contacts her malpractice insurer – is she liable for Fred’s theft? What duties does she owe to Fred’s clients?
HYPOTHETICAL NO. 3
Since childhood, Attorney Jeff has experienced mood swings. As a solo lawyer, there are some periods when he is incredibly productive, working around the clock to generate clients and obtain excellent results for them. But he is increasingly noticing that the times when he is not productive he is not able to do anything at all, let alone keep up on his files. His concerned wife checks him into a mental health care facility where he is diagnosed with bipolar disorder and intense inpatient treatment is recommended. Jeff is a solo practitioner and he thinks he might be able to turn this all around and maintain his practice and his reputation. But then the bar complaints and malpractice suits start to flood in.
Panel

- Jim Davis, Reed Smith LLP
- Laura Hanson, Meagher & Geer, P.L.L.P.
- Daniel Payne, One Beacon
- Alice Sherren, Minnesota Lawyers Mutual
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