

Stress, Addiction and Mental Health: An Ethical Perspective

Joan Bibelhausen

Chase Andersen



1

Lawyers Concerned for Lawyers (MN)

- Who We Are:
 - Minnesota’s Lawyer Assistance Program (LAP)
- What We Help with:
 - Stress or Distress: substance use, mental health, cognitive, stress, burnout, and others
- Who We Support:
 - Lawyers, Judges & Law Students, their immediate family members AND support staff
 - Free Service and 100% Confidential
 - On average, we assisted over 400 individuals per year.

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mnlcl.org

3

Are we special? Our stress is!

- o Perfection
- o Pessimism
- o Isolation
- o Uncertainty
- o Vicarious trauma



5

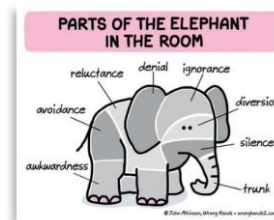
5

Today’s Topics

- If we’re lawyers does it mean we’re special?
- Mental and chemical health challenges in the legal profession
- Ethical considerations
- What help is available?

2

First, Let’s Acknowledge



- The COVID-19 Pandemic
- Social Change & justice
- Economic rollercoaster
- Hyper-partisan politics
- International conflict

-for lawyers AND our clients-

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mnlcl.org

4

Consequences of Failing to Manage Stress

- Reduced personal and professional performance
- Health problems (mental and physical)
- Dangers of increase in alcohol use and other unhealthy coping mechanisms

6

The Rules

1.3 Diligence

- A lawyer shall act with reasonable diligence and promptness in representing a client.

7

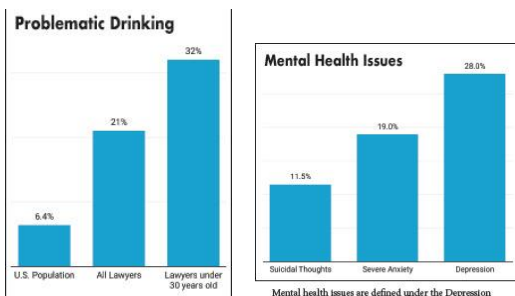
The Rules

1.3 Diligence

- Comment 2: “A lawyer’s workload must be controlled so that each matter can be handled competently.”

8

ABA 2021 Profile of the Legal Profession



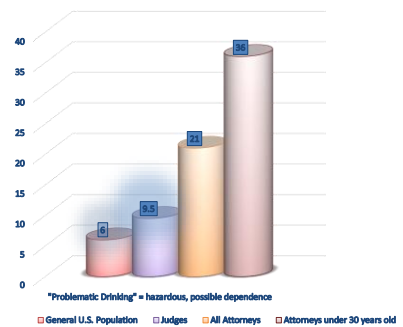
"Problematic drinking" is defined as Zones II, III and IV on the Alcohol Use Disorders Identification Test (AUDIT)

Mental health issues are defined under the Depression Anxiety Stress Scales (DASS-21)

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mlcd.org

9

Alcohol Use



Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mlcd.org

10

Alcohol Use Disorder

- a **primary**, chronic **disease** with **genetic**, **psychosocial**, and environmental factors influencing its development and manifestations. The disease is (often) **progressive and fatal**.
- It is characterized by continuous or periodic: **impaired control** over drinking, **preoccupation** with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably **denial**.

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mlcd.org

11

Other Substances & Behaviors

- o Drugs
- o Gambling
- o Internet Addiction
- o Sexual Compulsivity
- o Eating Disorders
- o Shoplifting Addiction
- o Compulsive Shopping

12

Depression

- A loss of interest in normally pleasurable activities
- Impaired ability to concentrate, remember and decide
- It occurs in stages:
 1. Emptiness
 2. Hopelessness/helplessness
 3. Malaise
 4. Suicidal Ideation
- It's not just a blue mood that can be wished away
- Time element

In a colleague, look for *changes* in behavior.

Calls Answered 24/7: (651) 646-5590 |
(866) 525-6466 | help@mnid.org

13

Other Mental Health Issues

- o Bipolar Disorder
- o Anxiety Disorder
- o Obsessive Compulsive Disorder
- o ADHD
- o Unresolved Grief
- o Post Traumatic Stress Disorder
- o Alzheimer's Disease

14

Younger/Newer Lawyers

- Highest rate of substance misuse/depression
- Increased 5.1 responsibilities
- Well-being initiatives and expectations

15

Chemical Misuse, Discipline and Malpractice

MINNESOTA EXPERIENCE

- Former OLPR Director estimated alcohol involved in 50% of investigated discipline cases – not all are disciplined.
- Probations sometimes include a chemical dependency requirement (verified ASG – e.g. AA attendance or random urinalysis)

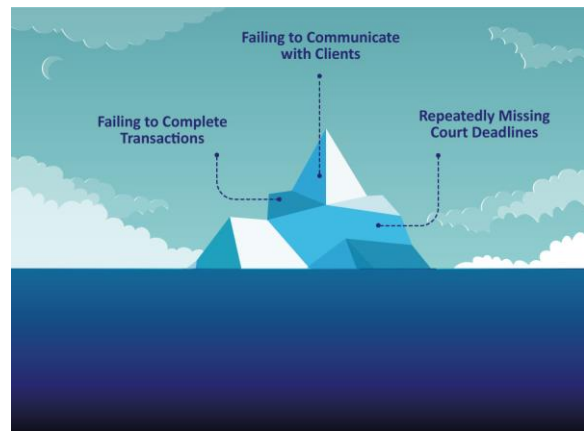
16

Mental Health Issues and Disciplinary Proceedings

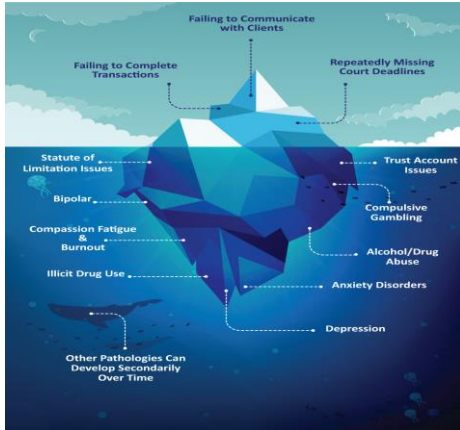
MINNESOTA EXPERIENCE

- Probations sometimes include a mental health treatment requirement
- Open OLPR cases include:
 - neglect and non-communication
 - non-cooperation

17



18



19

It's an Ethics Issue!

Anxiety results in an ethical sinkhole

- We act rashly
- In our own self-interest

Trauma → Avoidance

The rules:

- Rule 1.1 – competence
- Rule 1.3 – diligence
- Rule 1.4 – communication

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mnicd.org

20

Impact of Behavioral Disorder on the Legal System

- o Criminal Justice System
- o Disciplinary System
 - o Decline or Withdraw
 - o Prepare for Disability
 - o Take Responsibility within Firm
 - o Report Violations of the Rules

21

21

Declining or Terminating Representation

- [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

22

Diligence: Making a Plan

- [5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

23

Rule 8.3 Reporting Professional Misconduct

- (a) 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, shall inform the appropriate professional authority.

24

Rule 8.3 Reporting Professional Misconduct

- (c) This rule does not require disclosure of information . . . gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.

25

25

Mitigation: Alcoholism and Disciplinary Proceedings.

In re: Johnson, 322 N.W.2d 616 (Minn. 1982).

Attorney must prove four factors by clear and convincing evidence to have substance abuse be a mitigating factor in discipline.

1. The accused attorney is affected by alcoholism.
2. The alcoholism caused the misconduct.
3. The accused attorney is in recovery from alcoholism and any other disorders which caused or contributed to the misconduct.
4. The misconduct has been arrested and is not apt to reoccur.

26

26

Mitigation: Mental Health Issues and Disciplinary Proceedings.

In re: Weyhrich, 339 N.W.2d 274 (Minn. 1983).

To successfully raise psychological disability as a mitigating factor, an attorney must prove four factors by clear and convincing evidence

1. The attorney has a severe psychological problem.
2. The psychological problem caused the misconduct.
3. The attorney is undergoing treatment and is making progress to recover from the psychological problem that caused or contributed to the misconduct.
4. The misconduct is not apt to reoccur.

27

27

Mitigation Today

- The causal connection is difficult to prove.
 - In re Mayne, 783 N.W.2d 153 (Minn. 2010).
 - In re Rodriguez, 783 N.W.2d 170 (Minn. 2010).
- Some lawyers are reluctant to raise mitigating factors because of concern that their condition will be made public if public discipline is issued.
- In Re Clark, 834 N.W.2d 186 (Minn. 2013) – medical records sealed.

28

28

Professional Misconduct is not Excused

- Disability Inactive Status
 - Abates Disciplinary Action
 - Consequences Upon Reinstatement
- Probation
 - Public or Private
 - Non-serious Misconduct
- Mitigation of Discipline

29

What about Clients?

- Diminished Capacity
- Confidentiality
- Communication
- Supervisory Lawyer
- Lawyer as Advisor

30

Rule 1.14—Clients with Diminished Capacity

(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

31

Rule 1.14

c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(b)(3) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

33

Rule 5.1 Responsibilities of a Supervisory Lawyer

- (c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

35

Rule 1.14

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonable protective action, including consulting individuals or entities that have the ability to take action to protect the client. . . .

32

Rule 1.4: Communication

- [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14.

34

Rule 2.1: Advisor

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client’s situation.

36

Rule 2.1: Advisor

- Scope of Advice
- [2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

37

Rule 2.1: Advisor

- [4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work. . . Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

38

The Rules 1.3 Diligence

- Comment 2: "A lawyer's workload must be controlled so that each matter can be handled competently."

39

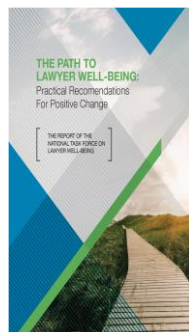
What's Next?

40

The Path to Lawyer Well-Being:

*Practical
Recommendations
for Positive Change*

THE REPORT OF THE NATIONAL
TASK FORCE ON LAWYER WELL-
BEING



41

National Task Force on Lawyer Well-Being:

*"...seeking to create a MOVEMENT
towards improving the health and
well-being of the legal profession."*

42

Task Force Report

- “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change”
 - Focused on impairment *and* well-being
 - 44 recommendations
 - Addressed to legal stakeholders:
 - Judges
 - Regulators
 - Legal Employers
 - Law Schools
 - Bar Associations
 - Professional Liability Carriers
 - Lawyers Assistance Programs

43

Five core steps for a sustainable culture in the legal profession:

1. Identify stakeholders and their roles in bringing about culture change
2. Diminish stigma associated with seeking help for disorders
3. **Emphasize that well-being is part of duty of competence**
4. Expand educational outreach on mental health and substance use disorders, as well as issues related to well-being
5. Change tone of legal profession to make health and well-being a top priority

44

Three Reasons to Take Action

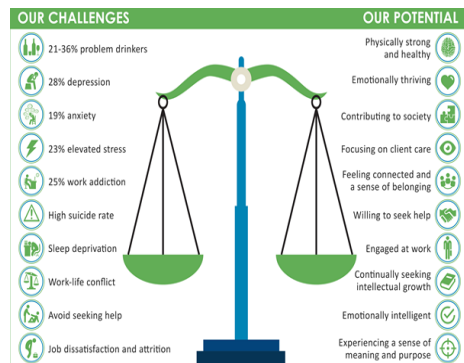
(1) Organizational success—in law firms, corporations, and government entities.

(2) Well-being influences ethics and professionalism.

- Rule 1.1 – competence
- Rule 1.3 – diligence

(3) Humanitarian reasons—untreated mental health and substance use disorders ruin lives and careers.

45



46

Well-Being Resources

- www.mnlcl.org - Resources and links to all ABA well-being content
- The Path to Lawyer Well-being – www.americanbar.org/colap
- Lawyer Well-being Week Resources <https://lawyerwellbeing.net/lawyer-well-being-week/>
- Minnesota Supreme Court Well-Being <https://www.mncourts.gov/lawyer-well-being.aspx>

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mnlcl.org

47

How LCL Can Help...

- Available Services:
 - 4 Free Counseling Sessions
 - Peer Volunteers (Maybe You?)
 - 24-hour hotline
 - Coaching
 - Referral to Community Services
 - Treatment Center Visits
 - CLEs, Outreach, Tabling & Education
 - Group Therapy & Support Group
 - Crisis Intervention
 - Someone to listen

Calls Answered 24/7: (651) 646-5590 | (866) 525-6466 | help@mnlcl.org

48

Partnership with The Sand Creek Group

- Up to 4 free counseling sessions
- Resource website
 - www.sandcreekeap.com
 - Click on “Member Portal & App”
 - When registering use the Company Code “lawyers”
- Contact Sand Creek directly at
651-430-3383 or toll-free: **1-888-243-5744**

Calls Answered 24/7: (651) 646-5590 |
(866) 525-6466 | help@mncl.org

49

LAWYERS CONCERNED FOR LAWYERS

2250 University Avenue West, Ste. 313N
St. Paul, MN 55114

(651) 646-5590

Toll Free: (866) 525-6466

Website: www.mncl.org E-mail help@mncl.org



<https://www.facebook.com/mncl/>



<https://twitter.com/mncl>



<https://www.youtube.com/channel/UCucChTR319VNNK6lnyVYxA>

Calls Answered 24/7: (651) 646-5590 |
(866) 525-6466 | help@mncl.org

50

LAWYERS CONCERNED FOR LAWYERS

There is Help



&



There is Hope

51