



The Chemically Impaired Lawyer

A Malpractice Insurance Company's Perspective

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MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY

PROTECTING YOUR PRACTICE IS OUR POLICY.®

The Chemically Impaired Lawyer

A Malpractice Insurance Company's Perspective

PUBLISHED BY:

Minnesota Lawyers Mutual

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Suite 2200

Minneapolis, MN 55402

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Minnesota Lawyers Mutual has been in the risk management business for over 30 years and we've seen plenty of well-planned, well-crafted and wonderfully maintained risk management materials. Unfortunately, we've also "paid the price" in instances where an insured attorney simply wasn't familiar with a particular risk management concept or didn't know "where to go" to find that information.

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Use the checklists and tips as guidelines, not requirements set in stone. At the same time, understand that each of the items is included for a particular reason. Hopefully, you'll be able to match your needs with our materials and in doing so, avoid potential malpractice claims.

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SUBSTANCE USE AND MENTAL HEALTH ISSUES

In February 2016, the American Bar Association and Hazelden Betty Ford Foundation released a study that brought new attention and concerns to attorney substance use and mental health matters. The study, published in the Journal of Addiction Medicine (February 2016 - volume 10, issue 1) marks the first nationwide attempt to capture data about the legal profession, involving the participation of over 15,000 attorneys from 19 states.

Among the findings:

- 21 percent of licensed, employed attorneys qualify as problem drinkers;
- 28 percent of licensed, employed attorneys have struggled with some level of depression during their careers;
- 19 percent of licensed, employed attorneys have demonstrated symptoms of anxiety;
- Younger attorneys in the first 10 years of practice exhibit the highest incidence of problem drinking;
- When focusing solely on the volume and frequency of alcohol consumed, more than 1 in 3 practicing attorneys drink at unhealthy levels;
- Attorneys working in private firms experience some of the highest levels of problematic alcohol use compared with other work environments, which may underscore a relationship between professional culture and drinking;
- The most common barriers preventing attorneys from seeking help were fear of others finding out and general concerns about confidentiality.

Compared with other professions, the study shows that the prevalence of problematic alcohol use is significantly higher for attorneys. Additionally, previous research had demonstrated a positive association between the increased prevalence of problematic drinking and an increased number of years spent in the profession. However, the ABA/Hazelden findings represent a direct reversal of that association, with attorneys in the first 10 years of their practice now experiencing the highest rates of problematic alcohol use.

A TOUGH JOB

Alcohol abuse and depression rates among lawyers versus the general population



DEPRESSION

LAWYERS 28%
GENERAL POPULATION 7%*



ALCOHOL ABUSE

LAWYERS 21%
GENERAL POPULATION 6%*

A PROBLEM ACROSS PRACTICE SETTINGS

Problematic drinking rates by lawyer employment setting



24% BAR/LAWYER ASSISTANCE PROGRAMS



23% PRIVATE PRACTICE FIRM



19% PRIVATE PRACTICE SOLO



19% GOV'T/PUBLIC/NONPROFIT



18% CORPORATE/IN-HOUSE



17% COLLEGE/LAW SCHOOL



16% JUDICIARY



PRIVATE PRACTICE FIRM

JUNIOR ASSOCIATE	31%
SENIOR ASSOCIATE	26%
JUNIOR PARTNER	24%
MANAGING PARTNER	21%
SENIOR PARTNER	19%

THE GENDER GAP

Male attorneys more susceptible to problem drinking



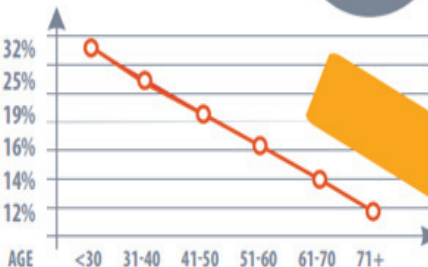
25%
MALES



16%
FEMALES

YOUNGER LAWYERS HIT HARDEST

Problematic drinking rates by lawyer age



Reprinted from: "Lawyers, Drinking, Depression: A Problem That Isn't Going Away" *Bench & Bar of Minnesota*, March 2016. Preprinted with permission of the Minnesota State Bar Association.

INTRODUCTION

With attorneys experiencing substance use disorders at a rate much higher than other professions, firms must consider their role in assisting with lawyer behavioral health. Among the recommendations included in the study: greater education aimed at prevention, along with campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The authors of the study also recommended that the confidential nature of lawyer-assistance programs should be more widely publicized, in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need.

It is in the best interest of some problem drinkers to abstain. For others, unhealthy levels of alcohol use indicate other problems. Once those are addressed, the drinking issues are lessened or disappear. Firms should look at these issues through a wide lens.

This booklet is designed to help lawyers and law firms recognize the signs of impairment and understand the corresponding ethical obligations.

In order to understand the behavior of impaired colleagues, it is essential to know what addiction is and how it is typically manifested. An understanding of this misunderstood disease is critical to make necessary changes in firm culture and to appropriately confront the attendant stigma, behaviors and dangers.

WHAT IS ADDICTION?

For centuries, addiction was attributed as a moral failing or lack of willpower, but recent medical research has determined that genetics and biology are responsible for at least 50% of addiction.

Addiction is a chronic and progressive disease of the brain's reward, motivation, memory, and related circuitry that causes compulsive alcohol or drug-seeking and use, despite harmful consequences to the addict.

The symptoms of addiction are primarily behavioral, so it is difficult to understand that it is a chronic disease. It is characterized as continuous or periodic with impaired control over one's use and a preoccupation with the drug or alcohol, use of the drug or alcohol despite adverse consequences, and distortions in thinking, most notably denial.

Checklist: Denial Characteristics

- ☒ Denial of misuse of alcohol/drugs
 - ☒ Denial of dependency
 - ☒ Denial of acutely painful feelings
 - ☒ Defenses become rigid and compulsive
 - ☒ Nurturing and open communication is blocked
 - ☒ When substance impairment is glaringly evident, insist it is only a complicating factor
-

Level of Substance Use Disorder

Addiction is a progressive disease. The progression of the disease can be classified in three stages: early, middle and end/late-stage dependency. The following are common characteristics associated with each of these stages.

- **Early:** Using to release stress and emotional tension; usage increases in frequency and amount; usage leads to blackouts/ memory loss, possible harmful consequences including DUI and other criminal justice interactions.
- **Middle:** The addiction causes family problems, personality changes, behavior inconsistent with values, work and financial deterioration, continued use despite harmful consequences, using to feel “normal”.
- **Late:** Physical deterioration, free-floating anxiety, using to eliminate pain, liver disease and other illnesses, premature death.



For many people, including those with no drinking problem, alcohol relieves stress. But if you find it difficult to reduce your stress without it, this may be a sign of a problem.

SIGNS OF LAWYER IMPAIRMENT

Unfortunately, there is still a stigma and secrecy surrounding addiction. A lawyer’s financial livelihood is dependent upon the perception of clients and fellow lawyers that he or she is a competent practitioner. For these reasons, an impaired attorney will often do everything humanly possible to prevent others from knowing there is a problem. Over the years, however, the progressive nature of the disease will erode the lawyer’s effectiveness at hiding the truth and the signs will then become more obvious to colleagues.

The following is a non-exhaustive list to help identify signs.

Personal Behavior

- Gradual deterioration of personal appearance
- Losing control at social gatherings
- Distorting the truth, dishonesty
- Managing finances poorly; failing to file tax returns and payments timely

Attendance

- Routinely arriving late and/or leaving early
- Regularly returns late or fails to return from lunch
- Fails to keep scheduled appointments
- Frequent unexplained absences

Job Performance

- Procrastinates; pattern of missed deadlines
- Neglects to process mail or return phone calls in a timely manner
- Overreacts to criticism; shifts blame to others
- Unable to get along with or withdraws from fellow attorneys and other staff
- Decline in performance throughout the day
- Complaints from clients about performance/communication
- Misuse of clients' trust funds because of financial problems caused by addiction

SUBSTANCE USE TREATMENT

Addiction cannot be cured, but it can be successfully treated, typically with the assistance of professional help or support organizations. Clinical resources can range from residential treatment to outpatient groups and sober houses. Treatment can take many forms including supports groups such as Alcoholics Anonymous, Women for Sobriety or Smart Recovery as well as individual counseling. When an addict accepts treatment, they are said to be in recovery, which is the process of change through which an individual achieves abstinence and improved health, wellness, and quality of life. As with other chronic diseases, it is essential to receive help and support from professionals, make fundamental lifestyle changes, and alter many values.

BARRIERS TO SEEKING HELP

The ABA/Hazelden study identified several critical barriers to lawyers seeking the help they need. The primary barriers were the reluctance to have anyone else learn of the problem and concerns about confidentiality and privacy. Additional barriers include:

- The belief among legal professionals that they could handle their problem on their own, due to their strong sense of self-reliance;
- The impact on reputation – including the fear of disappointing others;
- Fear of losing ones job or law license;
- Financial barriers;
- Uncertainty of where to access help and an unwillingness to admit this.

The key to increasing the likelihood that an impaired lawyer will seek and accept help is to prepare a plan and consult with experienced others. Programs such as confidential Lawyer Assistance Programs, have trained personnel who can advise and offer resources.

The Myth of the High Functioning Addict

The very personality traits that lawyers often define as keys to success drive the impaired lawyer's misconception that one is functioning well despite heavy substance use. Because lawyers are already competitive, appearing to be normal and high functioning is a competitive success. Lawyers' perfectionism means they avoid consequences perfectly and their workaholic tendencies allow them to believe they can push through the difficulties that chemical use may bring. Addicts may believe they function at very high levels, and they will go to great lengths to protect their relationship with the addictive substance and its supply. Yet there can be harm to the clients or the law firm because of reduced ability to deal with complex issues and problems. A previous strong reputation of a high functioning addict can mask problem recognition among colleagues.

It can be a grueling task to identify a colleague and confront addictive behaviors. Often a troubled attorney will deny they have a problem, further compounding the difficulty of the situation and eroding the trust of the attorney's colleagues. There may be no established precedent for how to handle the matter and the employer may be left feeling overwhelmed as to the situation and the best course of action.

GETTING LAWYERS BACK TO WORK

The three components to a successful strategy of getting a lawyer in recovery and back to work are:

- (1) Dealing with the issue head-on with the purpose of helping the troubled lawyer to accept that they have a problem they cannot solve on their own;
- (2) Primary treatment for ridding the lawyer of the alcohol and drugs that are in the body's system and are the paramount cause of the lawyer's life-disrupting behaviorism;
- (3) Intense aftercare programming that is designed to identify the underlying issues in the lawyer's life that led to the addiction and the troubling behavior. There is a direct correlation between the length of time in aftercare programming – with ongoing monitoring and support to help the lawyer stay in touch with the systems and tools that got them on the right path – and the lawyer's chances of a sustained recovery.

Addicted lawyers are highly motivated to participate in a treatment program if their refusal might mean losing their job. In fact, the majority of successful interventions involving legal professionals occur with participation of legal colleagues and co-workers of the addicted lawyer who have the authority to impose consequences on the lawyer.

Last-Chance Agreements

Last-chance agreements between the employer and the addicted lawyer can be a constructive part of recovery by outlining the lawyers's recovery responsibilities and providing the return-to-work motivation the lawyer often needs.

Treatment and return-to-work agreements typically require the lawyer to formally acknowledge their work performance and/or behavior have provided a basis to terminate their employment. To avoid termination, the lawyer voluntarily agrees to seek an immediate evaluation and follow all recommendations of a health care professional. The agreement authorizes treatment professionals to submit regular progress reports to the firm during the course of treatment. The employer may also consult with treatment counselors to obtain information about treatment compliance and get advice for structuring lawyer's return to work.

The agreement also acknowledges that the employer will allow the lawyer to return to work upon completing the recommended treatment program, with an understanding that the return to work is conditioned on the lawyer's strict compliance with aftercare recommendations, such as complete abstention from all alcohol and mood-altering substances, frequent attendance at recommended 12-step or support programs, regular testing for the presence or use of drugs or alcohol, and a plan for immediate return to treatment if relapse occurs.

Law Firm Impairment Policy

Law firms should have an impairment policy in place to address these types of situations. Many bar associations, including the American Bar Association, provide templates that law firms may tailor to fit the needs of their firms within existing personnel policies. These policies protect the firm's clients and are not meant to serve as an obstacle or impediment for impaired lawyers.

Special Accommodations

Depending on the nature, severity and permanence of the lawyer's impairment, under **ABA Model Rule 5.1** the firm may have an obligation to supervise the work performed by the impaired lawyer or it may have a duty to prevent the lawyer from rendering legal services to clients of the firm until the lawyer has recovered from the impairment. Accommodations may include:

- Reducing the impaired lawyer's workload
- Supervision or monitoring of work on cases
- Removing of the lawyer from time-sensitive projects
- Assigning the lawyer to supporting roles, including research and drafting
- Giving the lawyer time off to attend counseling or other recommended aftercare

Remember there are legal obligations that may need to be addressed under various federal and state laws including the Americans with Disabilities Act, the Family Medical Leave Act, and the Health Insurance Portability and Accountability Act.

Looking Forward

Following release of the ABA/Hazelden study, a coalition of ABA and other entities created the National Task Force on Lawyer Well-Being. In August 2017, the National Task Force released "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change." The report offers guidance to help employers reduce the risk of impairment and institute practices that encourage well-being, build stronger firms, and provide better service. The report and recommendations can be found at <http://lawyerwellbeing.net>.

CULTIVATING A POSITIVE WORKPLACE CULTURE

A positive workplace environment plays a significant role in any lawyer's mental health. A positive workplace culture can increase productivity and loyalty while helping decrease potential impairment issues. Tactics include:

- Educate/de-mystify employees about mental health and addiction issues
- Create avenues for assistance, counseling and treatment
- Develop crisis protocols for firm employees
- Craft back-to-work paths for successful substance use recovery

While seeking help for an impaired lawyer may not be easy, remember that ignoring the situation only permits the individual to continue in a manner that is destructive for themselves, their family, their career, their clients, and their law firms.

ASSISTANCE PROGRAMS & RESOURCES

With encouragement from the American Bar Association's Committee on Lawyer Assistance Programs, almost every jurisdiction's organized bar supports a lawyer assistance program for recognizing and addressing substance abuse and addiction.

The shared purpose of these programs is to help all of us do a better job of identifying a problem when it exists and to provide free, confidential, non-disciplinary help to the impaired lawyer. Help may include education about the disease, professional counseling, or, when warranted, a formal intervention followed by inpatient or outpatient treatment.

The programs also provide a general educational framework for the bar, support for families of impaired lawyers, and monitoring services for lawyers newly in recovery. These statewide programs could not succeed without a large network of volunteers, most of whom are lawyers in recovery from their own addiction. A directory of Lawyer Assistance Programs can be found in Appendix II.

Other resources include:

- National Alliance on Mental Illness
 - o www.nami.org
 - o 703-534-7600
- Make it OK
 - o <http://makeitok.org>
 - o 651-254-2376
- National Institute of Mental Health
 - o www.nimh.nih.gov
 - o 865-443-8431
- American Psychological Association
 - o www.apa.org
 - o 800-374-2721
- National Institute on Alcoholism and Drug Dependence
 - o <http://ncadd.org>
 - o 212-269-7797
- National Institute on Drug Abuse
 - o <http://drugabuse.gov/nidahome.html>
 - o 301-443-1124
- The Path to Lawyer Well-Being: Practical Recommendations for Positive Change
 - o <http://lawyerwellbeing.net>
 - o 301-443-1124

The ethical obligation of an impaired lawyer is the same as any other lawyer. A lawyer's impairment is not a defense, nor an excuse, for failing to comply with the rules.

LAWYER IMPAIRMENT AND RELATED ETHICAL CONSIDERATIONS

An impaired attorney owes the same duties to their clients as a non-impaired attorney. While addiction is a significant issue within the attorney disciplinary system, it does not constitute misconduct by itself.

The following ABA Model Rules of Professional Conduct should be reviewed regarding lawyer impairment (*see* Appendix I). Most states follow the model rules but some variation may exist in your jurisdiction.

ABA Model Rule 1.3: Diligence

Rule 1.3 reads: “A lawyer shall act with reasonable diligence and promptness in representing a client.” **Rule 1.3** affirms that neglect, procrastination, carelessness, and unreasonable delay can negatively affect a client’s case or even destroy a client’s position.

To prevent the neglect of client matters, the duty of due diligence may require that a firm thoroughly examine a colleague’s work if a question arises as to whether the attorney’s health condition may have prevented them from diligently representing the client.

To prevent neglect of client matters in the context of a solo practice, the issues can involve a practitioner’s death, disability, or cognitive impairment. The duty of diligence in that setting may require that each sole practitioner prepare a succession 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 or determine whether there is a need for immediate protective action. **[Rule 1.3, Cmt. 5]**. MLM'S Law Practice Management booklet, *Succession Planning* offers guidance in this area.



If a law firm discovers a lawyer is suffering from impairment, it is imperative that the firm promptly review all that lawyer's files to verify the status of each file independently. Do not take the impaired lawyer's word that the files are in order. Often discovery of one mishandled file means there are multiple files that have been mishandled.

ABA Model Rule 1.1: Competence

Rule 1.1: "A lawyer shall provide competent representation to a client." Like **1.3 Diligence**, this rule addresses factors such as "thoroughness" and "preparation," which are essential to good case-planning. An otherwise smart attorney can still be considered incompetent if case preparations are substandard due to the distractions of addiction.

If a problem is later discovered, it is important the firm address the problem directly with the client and to keep the client reasonably informed as to the status of the legal matter. [**Rule 1.4(3) Communications**].

ABA Model Rule 1.16: Declining or Terminating Representation

Rule 1.16 prohibits a lawyer from representing a client if "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client..." Problems can arise when an impaired lawyer is not aware of their disability or refuses to acknowledge it.

ABA Model Rule 5.1: Responsibility of Partners, Managers and Supervisory Lawyers

A law firm's paramount obligation is to take steps to protect the interests of its clients. Under **Rule 5.1(a)** all partners in a law firm and all lawyers with direct supervisory authority over another lawyer are required to make reasonable efforts to establish policies and procedures that ensure compliance with the Model Rules.

The measures required depend on the firm's size, structure, nature of its practice, and mandates a supervisory lawyer to maintain direct authority over the supervised lawyer. This assures that the firm has taken reasonable efforts to establish that the supervised lawyer conforms to the rules. When a partner or supervising lawyer knows or reasonably believes that a lawyer under their direction and control is impaired, **Rule 5.1(b)** requires that they take reasonable steps to prevent the impaired lawyer from violating the rules.

Rule 8.3: Reporting Professional Misconduct

Rule 8.3 requires lawyers to report certain professional misconduct by other lawyers. Reports should be made to the state's disciplinary agency, unless some other agency, such as a peer review agency, is more appropriate in the circumstances. [**Rule 8.3, Cmt. 5**].

Lawyers are often reluctant to report colleagues whom they suspect suffer from alcoholism, drug misuse, or other impairments. However, ignoring or disregarding these issues can result in malpractice claims, loss of clients and disciplinary actions.

Under **Model Rule 8.3(a)**, lawyers in the firm are mandated reporters – they are required to report known ethics violations that raise “a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer”. It is not at all difficult to imagine scenarios where an impaired lawyer’s honesty, trustworthiness or fitness as a lawyer would be substantially in question. The chart on page 18 provides a summary of common errors and the affected ethical rules.

There are two important exceptions to mandated reporting under **Rule 8.3**:

First, reporting is not required for information gained while participating in an approved lawyer’s assistance program.
See 8.3(c).

This broad exception helps remove any disincentive from getting help before the situation gets to the point where reportable violations of the rules have occurred and are occurring. It also helps prevent future harm. Triggering this exception -- by reaching out to your local lawyer assistance program for assistance early in the process -- will often be the wisest course for the firm.

Second, reporting is *never* required for client information otherwise protected by **Rule 1.6 Confidentiality of Information**. Any information relating to a particular client's matter may not be reported *at all* without the client's informed consent.



Review ABA Model Rules in Appendix I

NEGLECT, COMMON ERRORS, AND AFFECTED ETHICS RULES

It may be true that a chemically addicted lawyer is sometimes able to provide uninterrupted quality legal services for their clients. However, in the case of a lawyer suffering from addiction, the risk of client inattention is so great that it is imperative the lawyer's colleagues take a closer look at the lawyer's work in order to make a determination whether client matters have been neglected.

It is not uncommon for a professional liability carrier to receive a reported malpractice claim resulting from a neglected file that was discovered after a lawyer declared that they are suffering from addiction. Often times, it is a surprise for the firm when they later discover that there are several more neglected client matters beyond the one or two problem files they might have been informed about.

In the world of professional liability, neglecting client matters can directly trigger a cause of action for legal malpractice. Even where there has not been an actionable error, neglect will cause anxiety for the client and undermine the client's confidence in the lawyer's trustworthiness. In addition to neglect, procrastination, dishonesty, and financial mismanagement may be signs readily apparent to the lawyers practicing alongside the addicted attorney.

If you are a colleague of a lawyer struggling with addiction it is critical for you to understand, not only the likelihood that client matters may have been seriously and adversely affected but also you and the law firms's ethical responsibilities involving the safe handling of the firm's clients may have been compromised.

COMMON ERRORS AND AFFECTED ETHICS RULES



Overbilling & Mishandling Client Funds

- Borrowing from trust account, billing for work not performed
- ABA Rules: 1.15 Safekeeping Property; 1.5 Fees



Neglecting Clients & Procrastination

- Missing file deadlines, lack of organization, not returning calls
- ABA Rules: 1.1 Competence, 1.3 Diligence, 1.4 Communications



Dishonesty to Court & Lying to Clients

- Lying to clients on status of case, lying to judiciary to gain time
- ABA Rules: 3.3 Candor to Tribunal, 4.1 Truthfulness in Statements

Although many jurisdictions do not keep detailed statistics on the correlation between lawyer discipline and alcoholism or chemical dependency issues, the statistics that are available indicate that many disciplinary cases involve underlying alcoholism or chemical dependency issues. For example:



27%
Disciplinary
cases involve
alcohol misuse
(ABA)



60%
LAP *
participants
had malpractice
suits (Oregon)



80%
Client Protection
Fund cases
involve addiction
(Louisiana)



40-75%
Disciplinary
cases involve
addiction or
mental health
(Illinois)

*Lawyers Assistance Program

CONSEQUENCES AND CLAIMS

Treatment has been shown to have a tremendous impact on attorneys' malpractice liability and discipline. An Oregon Attorney Assistance Program (OAAP) study conducted in 2001 demonstrates that getting lawyers into recovery has a direct effect on the number of disciplinary and malpractice complaints.

HANDLING AN IMPAIRED LAWYER'S PRACTICE MATTERS

Once a firm has identified an impaired lawyer, it must also decide what to do about the practice matters to ensure that no client is adversely affected.

- **Assess Potential Removal from Client Matters:**
 - o The first decision may be whether the impairment is so severe that the lawyer should no longer work on client matters.
 - o A lawyer may not represent a client if the lawyer's "physical or mental condition materially impairs the lawyer's ability to represent the client."
- **Review the Lawyer's Files:**
 - o A review may be needed of all matters the lawyer recently handled to discover if the lawyer's impairment has interfered with his representation.
 - o The review might include a review of client files, the lawyer's time, billing and telephone records, and interviews with others in the firm with whom the lawyer worked.
- **Take Appropriate Remedial Action:**
 - o The firm should take any remedial action on client matters immediately.
 - o Follow the applicable ethical rules for disclosure of problems on a client's file.

PROMPT REPORTING CANNOT BE OVER EMPHASIZED

Make sure you review your policy's definition of a claim and give prompt notice to your carrier. Prompt reporting not only allows prompt claim repair, but it is also a condition of the policy. Failure to comply with the policy conditions could jeopardize the coverage afforded by the policy. The earlier you react, the better. For example, the Minnesota Lawyers Mutual policy states:

NOTICE OF CLAIMS AND DISCIPLINARY PROCEEDING

In the event of a CLAIM, DISCIPLINARY PROCEEDING, disciplinary investigation or notice to appear before a review board, the INSURED must:

- (1) give immediate written notice to US; and
- (2) forward every demand, notice, summons or other communication received by the INSURED or his or her representative to:

Mail or Delivery

Minnesota Lawyers Mutual Insurance Company
333 South Seventh Street, Suite 2200
Minneapolis, MN 55402

Fax

(800) 305-1510

You must give US notice during the POLICY PERIOD or within 60 days after the end POLICY PERIOD for the coverage to apply.

Claim repair is the implementation of activities that can correct or minimize a situation that may lead to a client sustaining a loss. With significant resources and experience, options previously not considered may come to light. Often, a fresh look at the issues may prove the catalyst to successful resolution of tricky details. Importantly, in cases where a loss has already occurred, claim repair can assist in minimizing damages.

CONCLUSION

Lawyers must recognize the civil liability and disciplinary exposure associated with a colleague's impairment. Apart from malpractice judgments, lawyers and law firms can suffer loss of clients, loss of reputation, and loss of goodwill in the community. A willingness to be totally honest about observed behaviors is essential to helping colleagues with addiction problems. If you have doubts about how to approach this problem, ask a professional for help in assessing your observations. Professional help is available from the lawyer assistance program in your state. Getting help for the troubled lawyer is one big step toward avoiding malpractice, running afoul of ethical rules, and maintaining a good reputation with a solid client base.

ABA MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3: Diligence

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

Rule 1.16: Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) The representation will result in violation of the rules of professional conduct or other law;
 - (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) The lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) Withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) The client has used the lawyer's services to perpetrate a crime or fraud;

- (4) The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) Other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (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.

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.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by **Rule 1.6** or information gained by a lawyer or judge while participating in an approved lawyer's assistance program.

DIRECTORY OF LAWYER ASSISTANCE PROGRAMS

Lawyer assistance programs provide free, confidential, non-disciplinary help to impaired lawyers.

ALABAMA	Lawyer Assistance Program	334-269-1515
ALASKA	Lawyer Assistance Committee	907-272-7469
ARIZONA	Member Assistance Program	602-252-4804
ARKANSAS	Arkansas Judges and Lawyer Assistance Program	501-907-2529
CALIFORNIA	State Bar of California LAP	877-527-4435
COLORADO	Colorado Lawyer Assistance Program	303-986-3345
CONNECTICUT	Lawyers Concerned for Lawyers	860-563-4900
DELAWARE	Delaware Lawyers Assistance Program	302-777-0124
DC	DC Bar Lawyer Assistance Program	202-347-3131
FLORIDA	Florida Lawyers Assistance, Inc.	800-282-8981
GEORGIA	Georgia Lawyer Assistance Program	800-327-9631
HAWAII	Hawaii Attorneys and Judges Assistance Program	808-531-2880
IDAHO	Idaho Lawyer Assistance Program	208-334-4500
ILLINOIS	Lawyers' Assistance Program, Inc.	312-726-6607
INDIANA	Judges and Lawyers Assistance Program	866-428-5527
IOWA	Lawyers Assistance Program	800-243-1533
KANSAS	Kansas Lawyers Assistance Program	888-342-9080
KENTUCKY	Kentucky Lawyer Assistance Program	502-564-3795
LOUISIANA	Judges and Lawyers Assistance Program, Inc.	866-354-9334
MAINE	Maine Assistance Program for Lawyers and Judges	800-530-4627
MARYLAND	Lawyer Assistance Program	443-703-3041
MASSACHUSETTS	Lawyers Concerned for Lawyers, Inc.	800-525-0210
MICHIGAN	Lawyers and Judges Assistance Program	517-346-6348
MINNESOTA	Lawyers Concerned for Lawyers	651-646-5590

APPENDIX II

MISSISSIPPI	Lawyers and Judges Assistance Program	800-593-9777
MISSOURI	Lawyer Assistance Program	800-688-7859
MONTANA	Lawyer Assistance Program	406-683-6525
NEBRASKA	Nebraska Lawyers Assistance Program	402-475-6527
NEVADA	Lawyers Concerned for Lawyers	775-322-2154
NEW HAMPSHIRE	New Hampshire Lawyers Assistance Program	877-224-6060
NEW JERSEY	Lawyer Assistance Program	800-246-5527
NEW MEXICO	Lawyers and Judges Assistance Program	800-860-4914
NEW YORK	Lawyer Assistance Program	800-255-0569
NORTH CAROLINA	North Carolina Lawyer Assistance Program	704-892-5699
NORTH DAKOTA	State Bar of North Dakota Lawyer Assistance Program	701-255-1404
OHIO	Ohio Lawyers Assistance Program, Inc.	800-348-4343
OKLAHOMA	Lawyers Helping Lawyers	800-364-7886
OREGON	Oregon Attorney Assistance Program	503-226-1057
PENNSYLVANIA	Lawyers Concerned for Lawyers Help line	888-999-1941
RHODE ISLAND	Confidential Assistance Program	401-421-5740
SOUTH CAROLINA	Lawyers Helping Lawyers	866-545-9590
SOUTH DAKOTA	Lawyers Concerned for Lawyers	605-624-4449
TENNESSEE	Tennessee Lawyers Assistance Program	877-424-8527
TEXAS	Texas Lawyers' Assistance Program	800-343-8527
UTAH	Lawyers Helping Lawyers	800-530-3743
VERMONT	Lawyer Assistance Program	800-525-4352
VIRGINIA	Lawyers Helping Lawyers	877-545-4682
WASHINGTON	Lawyer Assistance Program	855-857-9722
WEST VIRGINIA	Lawyer Assistance Program	304-529-2391
WISCONSIN	Lawyer Assistance Program	800-543-2625
WYOMING	Lawyer Assistance Program	307-996-6834



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PROTECTING YOUR PRACTICE IS OUR POLICY.*

Print Publication
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General Public \$14.95