Now is the time to intervene...

Making New Rules for the Legal Culture:
A Risk Management Perspective

“Operating out of a sense of loyalty and love, they will unwittingly enable the disease to progress. Inevitably, the alcohol or other drug use becomes worse.”

-Jeff Jay

Sometimes when we get calls for assistance through the State Bar of Michigan Lawyers and Judges Assistance Program (SBOM LJAP), we wonder, “Why did they wait so long to call?” With regard to harm reduction and risk management, the sooner struggling attorneys seek help, the better.

Let’s examine why attorneys who are suffering from substance abuse, a mental health issue, or other impairment, sometimes wait so long before getting help. . .

First, even if struggling attorneys were able to see the reality of their circumstances, it’s difficult to acknowledge vulnerability due to the thought distortions inherent in impairment. They often don’t feel it’s appropriate to need help and are afraid to ask for it. And because they don’t know what to do—they do nothing. Then, when things become unbearable, the damage seems irreparable.

Second, those close to struggling attorneys are often conflicted and confused, believing it disloyal and disrespectful to acknowledge problems and address them openly. Friends, family, and colleagues don’t know what to do and try to “help” by covering for or making concessions to accommodate problems associated with the attorney’s impairment. Nothing is done until the situation becomes such a liability that change is critical. Too often, such impairment leads to malpractice, law enforcement involvement, lawyer discipline, dissolution of families, and/or injury or death to the attorney or members of the public.

(continued on page 2)
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I've come to understand that if I am to be optimally effective in the work I do for SBOM LJAP, I must understand and be sensitive to the subtleties and nuances of the greater legal culture. In addition, I must understand the organizational culture, and the environment in which attorneys live and work—the family and social cultures in which they are immersed. Understanding these respective cultures gives me a comprehensive contextual framework; it allows me to build a bridge between an attorney and the services LJAP has to offer to help that individual build a brighter future. Comprehending and appreciating the contextual framework on which a person's life is built and functions makes it possible for me to learn their value systems. The cultural rules, norms, and expectations, and the “language” they speak emanate from this framework through attitudes, ideas, and behaviors. Some of these attitudes, ideas, and behaviors are positive and affirming of personal and professional wellness, while others are less so. Ideally, individuals themselves become more aware of the ways they are influenced, guided, and affected by cultural rules, norms, and expectations. At times, they choose to question and/or challenge institutionalized assumptions. As a result, they become better equipped to function within their framework and/or consciously develop a new operational platform that better supports personal integrity and wellness.

In my observation, professionalism in the law is predicated on knowledge and skills. Beyond those tools, professionalism is cultivated and supported by attitudes and behaviors that: value honor and integrity; manifest respect for laws and man; strive for excellence in scholarship; demonstrate leadership, responsibility, and accountability; express caring, compassion, and meaningful communication; demand a strong work ethic; and, above all, produce loyalty. This model of professionalism is the foundation from which an attorney builds his or her profession and life. He or she then strengthens that foundation by integrating personal values learned and ingrained within the confines of family and social cultural experience. Ideally, those values are congruent with the foundation that professionalism within the legal culture provides.

The incidence of substance use and/or mental health disorders among members of the legal community—left unidentified and untreated—has the potential to destroy the integrity of individuals, firms, and the greater legal culture.

It is also my observation that, as a group, legal professionals see themselves (as does the general public) as experts, counselors, and problem solvers. Indeed, they are all of that and more. In clinical jargon coined some time ago, attorneys are viewed as “pedestal professionals”—a characterization they share with clergy, law enforcement, counselors, physicians, nurses, pharmacists, and CEOs. As such, they sometimes subscribe to distorted notions about themselves based on implicit cultural, organizational, and/or personal rules, norms, and expectations that preclude vulnerability. These implicit, and often subliminal, rules send a powerful message: “Don't talk, don't trust, and don't need!”

The obvious truth is that pedestal professionals are human beings who are vulnerable to life's ups and downs—a reality that sometimes escapes these professionals. Like all humans, they experience pain and confusion—losing direction and focus—and sometimes need the help of others. In a professional culture that discourages vulnerability, it is easy to feel lost in the crowd or isolated. If individuals believe it is not safe to talk about what they are experiencing or trust those around them, they may feel powerless to change. This loss of power can lead to feelings of helplessness and hopelessness, rendering an individual more susceptible to physical and other health issues like anxiety, depression, and substance use disorders. In such an environment, it becomes difficult to identify personal challenges or to appropriately address the problems of others. And if problems are not addressed, they grow—manifesting work performance issues, interpersonal problems, poor office morale, resentment of co-workers, and, sometimes, grievances, disciplinary actions, and loss of licensure.

Schedule demands on attorneys are rigorous. All too often attorneys try to compensate by cutting back on sleep and good nutrition. They may abandon exercise routines and spend less time with their families and in relaxation, recreation, meditation, prayer, and other related activities. This costs them dearly. Unwittingly, they cut themselves
off from activities that replenish. Relationships with friends and family become strained and sometimes deteriorate irreparably. Some feel work is their purpose, and everything else is incidental. Self perception becomes seriously distorted. It becomes easier to believe personal value is completely tied to professional productivity—and that can be a very lonely, empty place. Alcohol and/or other drugs, gambling, sex, or excessive spending are common coping mechanisms. Some attorneys are able to maintain a semblance of manageability in this regard, while others go down a harrowing path of addiction.

According to a 2003 study conducted by the North Carolina Bar Association, 23 percent of surveyed attorneys younger than age 36 admitted to daily drinking. And 21 percent of surveyed attorneys aged 36 years or older admitted to daily drinking. Numerous studies have documented this problem. It is estimated the number of attorneys in the U.S. who abuse alcohol and other drugs is twice that of the general population.4

It is chilling to think about the levels of depression and substance abuse among attorneys. For struggling attorneys, it can be extremely difficult to maintain consistently appropriate, ethical functioning in their professional lives. It is estimated that 40-70 percent of attorney disciplinary proceedings and actions are linked to alcohol and other drug use or mental illness.5 These statistics speak only about depression and substance abuse/addiction. They make no mention of eating disorders, excessive spending, sex, or gambling addictions—each of which can be equally debilitating. My experience has led me to conclude that it is neither an inability to see the problem nor a lack of concern that precludes appropriate problem identification and subsequent support for problem solving. In fact, it is quite the contrary. Attorneys are astute people with great heart, and they can be the most loyal and ardent advocates imaginable for a peer in distress. Rather, it is an unintentional distortion of that loyalty to a brother or sister in trouble—a well intentioned, survival-based “pack mentality”—that says, “We take care of our own.” While this mentality may be admirable, it can be misguided. Often the problems at hand are physiological in nature and colleagues trying to help lack knowledge, training, or expertise to properly address the cause of the problem. In covering, compensating, and/or making accommodations for a colleague's dysfunction, they are unwittingly pandering to the condition and allowing it to worsen, thereby exacerbating the problem.

By taking a closer look at the contextual framework that supports their professional lives, attorneys may be able to evaluate how that framework really fits with their personal value systems. Does it allow for integrity? Do they feel free to act consistently in ways that reflect their core personal values with regard to their relationships with their work, organizations, communities, families, and selves? Do their contextual frameworks support wellness? If the answer is “yes,” they are very fortunate. If they do not, are there attitudinal and behavioral changes that can be instituted on a personal level that may influence healthy change? Can they find places where they can talk, trust, feel, and ask for what they need? Are they willing to support others in doing so? The good news is that members of the legal profession don’t have to go it alone. Most states have Lawyer Assistance Programs (LAP) that are there to help. A comprehensive listing of these programs with contact information can be found on the American Bar Association (ABA) Commission on Lawyer Assistance Programs (COLAP) website: http://www.abanet.org/legalservices/colap/lapdirectory.html.

Legal professionals do not have to be able to diagnose or refer themselves or their peers for treatment and support. They don’t need all the answers in order


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to ask the right questions and bring attention to a peer who may be suffering from impairment.

It is critical legal professionals decide to do the difficult, yet right, thing for themselves and their peers by intervening early. As a self-regulating profession, they have an ethical responsibility to ensure the health of the profession. It may be necessary to report the impairment of a peer to disciplinary entities in order to protect the attorney’s welfare, the public, the firm, and the greater profession.

Nationwide, the LJAP or LAP is there to help. Experts in these organizations will respect confidences and consult with individuals by phone, email, or in person to help identify issues and problem-solve responses—whether a personal issue or that of a peer. LJAP and LAP experts understand the professional culture and contextual framework for the personal and professional lives attorneys lead; they know how to speak and hear the collective language. Seasoned counselors can help decide what level of intervention is most appropriate. It may be helping prepare colleagues and/or family to speak with the individual or it may be providing a referral for an assessment or treatment.

Not all situations require a formalized intervention, but if it is deemed necessary, most LAPs provide intervention services. In addition, they can direct inquiries to someone from an extensive list of trusted treatment providers and trained volunteers who can help.

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