

Lawyer Well-Being: It's an Ethics Issue, Too

By Joshua A. Klarfeld

You are a young associate and it's 2:00 a.m. It's been a long day of document review, research, and briefing in what feels like the biggest, most important case of your career.

You're ready to settle down and get some sleep before starting up again in a few hours. And then your cell phone buzzes. You have an email. Diligently, you open the email, which happens to be from the senior partner on the case, copying you on his message to another member of the team.



You assume the email contains some great insight the senior partner wants to share right away. Why else would he be emailing at 2:00 in the morning? But no. The partner is writing to berate you unfairly and call your work ethic into question. Your mind begins to race. What did you do wrong? Did you leave the office too early? Did you forget to return a phone call or respond to an email? Did you miss a deadline? Did you cite a case incorrectly? Did you produce a privileged document? Was there a typo in the brief you filed last week?

In the moment, the answers don't matter. Despite the long hours, despite skipping family events, despite checking your email countless times an hour (even on weekends), despite working through "vacations," despite never turning down an assignment, you have somehow failed. No, it's worse than that; you are a failure. You feel like you are falling into a black abyss.

Of course, it's not just this one email. This has been building for a long time. The stresses of college and law school, getting good grades, scoring well on exams, securing a place on law review, landing that great summer clerkship, getting a job offer, making sure you pass the bar exam, and doing everything in your power to get great

reviews as an associate—it all piles up. This email is just the straw that breaks the camel's back. And in that moment, you are swamped by anxiety and depression that have also been building up for a long time. The next day, you can barely function.

You are hardly alone. The [National Task Force on Lawyer Well-Being](#) recently recounted the sobering findings of the ABA's 2016 joint study with the Hazelden Betty Ford Foundation of 13,000 practicing lawyers:

- struggling with depression - 28 percent;
- struggling with anxiety - 19 percent;
- struggling with stress - 23 percent.

Between 21 and 36 percent of the respondents qualified as "problem drinkers."

Those numbers are staggering—over a quarter of responding attorneys suffer from depression (perhaps the greatest rate of any profession), and possibly over a third have a drinking problem. And who is most at risk for depression and drinking problems? According to the Task Force report: "[Y]ounger lawyers in the first ten years of practice and those working in private firms[.]"

Remember when your professor told you on the first day of law school to look to the left, look to the right, and said that one of the three of you won't graduate? Well, consider sitting at graduation and looking to the left, looking to the right, and realizing that one of the three of you is likely to have a drinking problem and nearly that many will suffer from depression or anxiety in the years to come.

Make no mistake: Lawyer well-being is an ethics issue. As the National Task Force noted in its report, what is at stake is nothing less than "many lawyers' basic competence."

The anecdotal experience of those involved in the lawyer disciplinary system confirms that in many cases the ethics issues that put a lawyer on the path to professional discipline—failure to return client phone calls, neglect of client work, missing deadlines, sloppy handling of client trust accounts—are fueled by the lawyer’s impaired mental health or by substance abuse, including alcohol.

And it sometimes doesn’t take a lot to make us lose our way. Our own drive to succeed, and our feelings of perfectionism in a profession that demands the highest standards in carrying out our duties to our clients, can do us in. A [lawyer](#) suspended for inflating her billable hours after going on her honeymoon (subscription required) and realizing that she would fall short of her firm’s quota poignantly spoke in her disciplinary response of being “someone who has excelled her entire life and set high expectations for herself.” When she raised the concern about missing the target with her practice group leader, the partner tried to be reassuring, but the message failed to reassure the associate. She appears to have been undone by the stress of her work and the thought of failing.

Fortunately, you’re going to hear a lot about lawyer well-being in the near future. The American Bar Association [says](#) that it is “on a mission to give the legal industry a new focus: improving the well-being of lawyers,” in light of the “alarmingly high rates” of depression, anxiety, and substance abuse. We are starting to hear about [efforts](#) to destigmatize mental illness in the law firm setting, and recent [books](#) like Mark Cuban’s have detailed the profession’s drug issues. Law students are [insisting](#) on services to address their needs.

DRI itself is on board. This past July, DRI solicited anonymous participation in a University of Alabama-sponsored survey of lawyers and their perceived work stress. The data gathered from the survey will be made available to DRI

and its members in an effort to help lawyers develop and increase their “stress hardiness.” If you took the survey, you may have found the questions themselves to be self-revealing.

But you do not need to wait for the ABA—or, worse, disciplinary counsel—to come to you. Every state in the union has an assistance program, usually funded through the state supreme court, to help lawyers, judges and law students cope with mental health and substance abuse concerns. Here is a [link](#) to a directory of state programs. Ethics rules can exempt the lawyer staff members of these programs from the duty to report misconduct they become aware of when a member of the profession seeks help. (See [Model Rule of Professional Conduct 8.3\(c\)](#); check your local version for any variation.)

As a profession—and as individuals—we need to do a much better job of making sure that we can realize our potential as people and lawyers. As the National Task Force says, “To be a good lawyer, one has to be a healthy lawyer.” If you need help, try to reach out to get it. And if you can aid any of the many lawyer well-being initiatives at the national or local level, please do so. Our obligation to each other as humans demands that we not be mere bystanders in the face of this serious problem.

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