

ADDICTION TO ALCOHOL AND OTHER DRUGS: RECOGNIZING THE SIGNS OF LAWYER IMPAIRMENT

by George H. Hettrick

Addiction to alcohol and other drugs¹ exists throughout our society and throughout the legal profession, yet all of us have a tendency to minimize and explain away the problem when it presents itself. The behaviors of the impaired individual cause us discomfort and often destroy relationships. Feelings of helplessness, frustration, shame, guilt, and even disgust can cause us to shy away from addressing the issue squarely. It is easy to isolate an unhappy event as an aberration and to hope things will get better. That reaction is called denial.

The February 1994 issue of *The Bar Examiner* includes an excellent article by Dr. Daniel H. Angres in which he explains that addiction to alcohol is a primary, chronic disease.² Dr. Angres stresses the medical facts that (a) the disease is progressive, i.e., it will always get worse over time, and (b) left untreated, the disease is fatal. Dr. Angres also emphasizes a strong genetic factor in the determination of whether an individual will have a natural predisposition to becoming an alcoholic.

What distinguishes this addiction from so many other diseases is the mental disorder created by the continual use of alcohol that produces a blurred and

distorted sense of reality. It also encourages abnormal behaviors—behaviors that disrupt healthy relationships and often involve deviation from societal norms and moral value systems. When we consider these effects in terms of the legal profession, we see that the alcoholic lawyer will cause problems in his or her professional life with serious consequences for legal staff, peers, clients and bar disciplinary systems.

Experience has demonstrated the strong correlation between the disease of addiction and criminal behavior. Any trial court judge will say that most criminal defendants have addiction or substance abuse lurking in their background. Lawyers charged with responsibility for sitting on disciplinary panels will tell us that addiction often lies at the root of the behavior leading to disciplinary charges.

The alcoholic lawyer is far more likely to get into trouble, with the courts, the disciplinary system, or both. When they are in denial, other lawyers who observe the alcoholic lawyer's behavior too often ignore their duty to report unprofessional conduct. Early identification and an offer of help can be effective tools in avoiding these dire consequences, perhaps saving the lawyer's license and career, perhaps even saving his or her life. In order to do a better job

of (a) protecting the profession and our clients, and (b) showing compassion for a suffering fellow professional, we all need to learn more about the warning signs that tell us, yes, there may indeed be a problem.

WHY IDENTIFICATION MAY BE DIFFICULT

In addition to our own propensity for denial, the difficulty of identifying an alcoholic lawyer is compounded by his or her sustaining efforts to conceal the problem. A typical alcoholic male lawyer may drink heavily for twenty-five or thirty years before colleagues at work or in the courthouse begin to notice that something is terribly wrong.³ The self esteem of a lawyer is often strongly dependent on his or her status as a lawyer. A lawyer's financial livelihood is dependent upon the perception of clients and fellow lawyers that he or she is a competent practitioner. For those reasons, a lawyer will often do everything humanly possible to prevent others from knowing there is a problem. In almost every case involving a lawyer,⁴ the signs or symptoms will appear last in the workplace. Family and social friends will know the truth long before colleagues at work. Over the years, however, the progressive nature of the disease will erode the impaired lawyer's effectiveness at hiding the truth even at work, and the signs will then become more obvious to coworkers.

Perhaps the most baffling impediment to helping a lawyer suffering from alcoholism is the simple fact that the lawyer will be dishonest about what he or she is doing. The alcoholics' dishonesty can be wholly unconscious but the deceptions will cover a whole range of behaviors: reasons for missing appointments, where they have been, how much they have had to drink, whether they have been arrested, why work commitments have not been

met, and so forth. In order to justify or explain away questions about strange, irrational or non-conforming behaviors, alcoholics will tell so many stories that it becomes almost second nature. One of the many burdens carried by the alcoholic is trying to remember all the stories he or she has told, and to whom, in order to maintain consistent explanations.

THE WARNING SIGNS

Each jurisdiction's lawyer assistance program (discussed below) will furnish a standard list of the warning signs. The list highlighted on the following page is a comprehensive one and will serve as a useful guide.

If you have concerns about another lawyer, if somehow that person seems to have changed over the years, or if something just doesn't seem right with him or her, try to see if the behaviors that gave rise to your concern show up on the list. In my experience with confidential investigations as a volunteer for the lawyer assistance program in Virginia, if there really is an alcohol problem, reaching that conclusion by using this list is not very difficult. Often a lawyer who had come to me with concern about a colleague looked at the list and said, "that's it, those are the behaviors I have seen, I just didn't know what the problem was."

At this point a word of caution is in order. Do not assume that a lawyer who demonstrates some of these traits is necessarily an alcoholic. Many of us, for example, have some bad habits such as procrastinating, blaming problems on others, or being late for meetings. Many of us are not as successful as we would like to be in interpersonal relations. Identification of a few of these traits in isolation is not sufficient to confirm the presence of an addiction; usually the observation must be coupled with a pattern

SIGNS OF LAWYER IMPAIRMENT

Attendance:

- Routinely arrives late and/or leaves early
- Regularly returns late or fails to return from lunch
- Fails to keep scheduled appointments
- Fails to appear at depositions or court hearings
- Has frequent sick days or days off and unexplained absences

Job Performance:

- Procrastinates; has pattern of missed deadlines
- Neglects prompt processing of mail or timely return of calls
- Shows decline in productivity/number of hours worked each year (can occur over a period of years)
- Shows decline (often gradual) in overall quality of work
- Overreacts to criticism; shifts blame to others
- Is unable to get along with and/or withdraws from fellow lawyers and other staff
- Performance declines throughout the day
- Clients complain about performance/accessibility/communication
- Co-mingles or borrows clients' trust funds
- Appears under the influence and/or smells of alcohol in office and during court appearances

Personal Behavior:

- Gradual deterioration of personal appearance/hygiene/health
- Loses control at social gatherings, even where professional decorum is expected
- Distorts the truth; is dishonest
- Manages finances poorly; fails to make tax filings and payments on a timely basis
- Is arrested for driving under the influence, drunkenness in public, or possession of an illegal drug
- Withdraws from friends and associates
- Pattern of family crises; marital infidelity
- Pattern of mood swings or unpredictable emotional reactions

of gradual, behavioral changes over time. If you have doubts about whether what you are seeing should be a cause for concern, talk to someone with your bar's lawyer assistance program who is qualified to advise you. Any inquiry on your part will be treated in total confidence and if there is not strong evidence of a problem, the matter will be dropped.

The warning signs generally are divided into three groups: attendance patterns, performance on the job, and personal behaviors. While the items on the list are fairly straightforward, some commentary may be helpful.

Attendance.

Standards of professionalism require that lawyers be responsible and keep their commitments. For the alcoholic lawyer, especially in the later stages of the disease, this becomes difficult. Attendance problems may result from a number of alcohol-related factors including: dealing with the regular morning hang-over, looking for the next drink, shame and the fear of other people discovering the addiction, and increasing self-centeredness with declining concern for the expectations of others. These factors may also cause an unusual number of "sick days." Sometimes there will be periods of time during the day when no one, neither the secretary nor regular colleagues, will have any idea where the lawyer is. And leaving the office early in the afternoon with a lame excuse or with no notice can be very common.

Job Performance.

Lack of prompt and conscientious attention to office and client needs is the most common cause of client complaints filed with the bar. The obvious examples are not returning phone calls or responding to correspondence. The alcoholic lawyer's change in priorities is likely to erode the normal work ethic, resulting

in a noticeable decline over time in the quality and quantity of work. For lawyers who keep time records, the decline in work can be observed by comparing the hours reported over a number of years.

Interpersonal relationships at work may well suffer. The standards of customary civility that we all expect can be replaced with irascibility, hostility and a dismaying penchant for blaming others for mistakes or shortcomings. The skilled and self-respecting secretary will not tolerate the abuse for long; there may be a series of successive secretaries in the office. On the other hand, the alcoholic lawyer may have a secretary who is either afraid of losing the job or codependent to the extent of making excuses for his or her boss and helping to hide the behavior.

An alcoholic lawyer's addiction is often discovered after he or she has "borrowed" client funds. Inappropriate use of client funds is a serious breach of professional ethics, usually resulting from poor personal financial management. The reasons for this, in the case of the alcoholic lawyer, are discussed under the *Personal Behavior* section, below.

If a lawyer appears inebriated or smells of alcohol⁵ during the workday, whether at the office or in court, there is a clear and immediate cause for concern. If this behavior should occur with any frequency, specific inquiry should be made. Because an impaired lawyer will do everything possible to hide the drinking behavior, in many cases the observed behavior is only the tip of the iceberg.

Personal Behavior.

The warning signs relating to personal behavior may be easier to detect than other signs. In the early morning, after a night of heavy drinking, the lawyer will have a generally unhealthy appearance, with puffy skin and bleary eyes. The body breaks down alcohol into a substance called acetaldehyde that causes the heart to beat forcefully and the face to turn red. There may be a visible tremor in the hand that holds the coffee cup. The usual crisp and incisive response to the morning routine may be perceived as lethargic. There may be a disheveled appearance in the clothing, a lack of cleanliness, or unkempt hair. All of these behaviors are associated with the toll of the typical morning hangover.

We all attend social gatherings with other lawyers. Over time, we cannot help but notice that a few lawyers will always seem to drink more than the rest. These few may become boisterous, argumentative or just plain obnoxious after a number of drinks and they will often stay at the party longer than most. This kind of behavior is not normal and should alert colleagues to a problem.

The alcoholic lawyer's distorted sense of reality and deep-seated sense of inadequacy will often result in financial irresponsibility, with the lawyer living well beyond his or her means. The lawyer may experience frequent pressures from unpaid creditors. It is not unusual for alcoholic lawyers who are responsible for making regular income tax payments to get behind in those payments because it is so easy

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for them to “borrow” the funds, telling themselves that the deficit can be restored later on.

A lawyer who is arrested for driving under the influence gives friends and colleagues cause for serious inquiry. The same is true for a charge of public drunkenness or possession of an illegal drug. While persons who are not addicted may be arrested for drunk driving, it is almost axiomatic that a person who is arrested twice for that offense is addicted to alcohol. This conclusion derives from the fact that most people will do everything necessary to ensure that they will not be arrested again. The alcoholic is unable to control the drinking and will eventually drink and drive in spite of the risk of adverse consequences.

The family life of the alcoholic lawyer is rarely a happy one. Constant conflict and stress are to be expected because of self-centeredness and irresponsibility of the alcoholic. Acting out in sexually unhealthy ways and repeated marital infidelity can be common problems. The alcoholic will tend to withdraw from old friends who do not drink abnormally and from members of his or her family.

Finally, details about the lawyer’s family history—e.g., identification of alcoholism in parents, grandparents or siblings—may provide significant clues. As noted earlier, there is compelling evidence of a genetic factor in the predisposition to addiction.

LAWYER ASSISTANCE PROGRAMS

With encouragement from the American Bar Association’s Committee on Lawyer Assistance Programs (initially created as the ABA Committee on Lawyer Impairment), almost every jurisdiction’s organized bar supports, to some degree, 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 honestly identifying a problem when it exists and to provide confidential, non-disciplinary help to the impaired lawyer. When a potential problem is reported, a highly confidential investigation will be conducted. If the investigation does not confirm the suspicion of addiction, the matter is dropped; if addiction is determined to be likely, the next step is to offer help. The 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 general educational programs for the bar, support for families of impaired lawyers and monitoring services for lawyers newly in recovery. In most cases, professional staff resources are limited and the statewide programs could not succeed without a large network of volunteers, most of whom are lawyers in recovery from their own addiction.

BAR EXAMINING AUTHORITIES AND LAWYER ASSISTANCE PROGRAMS

The monitoring services offered by lawyer assistance programs can serve as valuable tools for bar examiners. The character and fitness review process will inevitably present some applicants with a history of treatment for addiction problems or arrests for alcohol-related behavior. When those applicants represent that they do not have a problem, or that they have acknowledged their problem and dealt with it, e.g., they are in early or fragile recovery from their addiction, it is wise to insist on regular monitoring as a condition of license approval. The monitoring services typically include random testing, further treatment when appropriate, attendance at 12-step meetings such as those conducted by Alcoholics Anonymous, and regular meetings with a monitor who is a recovering lawyer. The term of the monitoring should be adequate to permit the licensing

authority to feel comfortable about the grant of the license. Because of the expertise they offer and their ready availability, lawyer assistance programs have proven their worth to bar examining authorities.

CONCLUSION

A willingness to be totally honest about observed behaviors is essential to helping colleagues with addiction problems. If you have doubts about the right conclusion, ask a professional for help in assessing your observations. The professional help you need should be available from the lawyer assistance program affiliated with your state or local bar association. If the likelihood of addiction is confirmed, the professional will advise you on what can and should be done to try to help the lawyer suffering from this disease.

ENDNOTES

1. For ease of reference, the terms "alcohol," "alcoholic" or "alcoholism" are frequently used in this article without repeating the addition of "or drugs," "or drug addict" and "or drug addiction." The disease of chemical dependency includes both. The warning signs and the adverse psychological effects for the impaired individual are much the same. While abuse of alcohol continues to be more prevalent among lawyers, abuse of prescription or illegal drugs appears to be on the rise, especially among younger lawyers.
2. "The Disease of Chemical Dependency" by Daniel H. Angres, M.D., *The Bar Examiner*, February 1994, pp. 6-14.
3. The alcoholic male is more likely to begin to lose control of the drinking and show obvious signs of severe physical and psychological disorder in his mid-forties. Due to biological and other differences, the female alcoholic is more likely to reach that point in her mid-to-late thirties. While the age ranges reported here are fairly typical, the behaviors may occur at any age. For addicted lawyers using mood altering drugs other than alcohol, the behavioral disorders may well reach crisis levels at a much younger age.
4. The observation that the warning signs will appear last in the workplace is not limited to lawyers. It applies to most working people, but is especially true for professionals.
5. When the warning signs are present but there is no detectable odor of alcohol, the lawyer may be addicted to prescription or other drugs.



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