

# Education & Practice

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## Lawyers Helping Lawyers: A Critical Time of Need

By Renu Brennan

The legal profession can be immensely rewarding and extremely stressful, often both at the same time. Much is expected of lawyers, whether in private practice or public service. What tools do we have to help ourselves and our peers deal with stress? This article explores one of our best assets in this struggle -- Lawyers Helping Lawyers (LHL). Lawyers Helping Lawyers does just what its name implies: provides lawyers with peers who are willing and able to help them when they sense their professional and personal lives are at risk due to stress, addiction, or mental health concerns.

In my eight years as an assistant bar counsel, it was not often, actually ever, that a lawyer thanked me for disciplining them. It is a true testament, then, to LHL that one who entered into a contract with LHL as part of discipline sought me out to thank me because LHL saved not only his career, but his life. It is my hope that with this article, we create an awareness that will help us help others

before the disciplinary system becomes involved; and better yet, we create an environment that fosters wellness and reduces the numbers of lawyers who face impairment due to stress.

### The Problem and the Need to Act

The statistics and the stories are compelling, and show that stress, depression, and substance abuse affect lawyers of all ages and that we must act to address problems not only after they affect a lawyer's practice, but before. The evidence of our struggles is anecdotal – we all know another lawyer who has struggled with these issues – and borne out by data:

**ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Study published in the January/February 2016 *Journal of Addictive Medicine*:**

- 21% to 36% of lawyers qualify as problem drinkers.
- 28% struggle with depression.
- 18% suffer from anxiety.
- 23% deal with stress.

The Hazelden Study surveyed 12,825 licensed, practicing lawyers across nineteen states assessing alcohol and drug use and symptoms of depression, anxiety, and stress. The Substance Abuse and Mental Health Services Administration reports that while only 6.4% of the general population abuse alcohol and only 6.6% experience major depression, lawyers have far higher numbers in both categories. The Hazelden Study concluded that attorneys

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experience problematic drinking at a higher rate than other professional populations and two to three times the general population. Data also indicates that the incidence of alcohol abuse is higher among lawyers aged 30 or less.

### Law Student Well-Being Survey published in 2016:

- 25% of students at risk for alcoholism.
- 17% of students experience depression.
- 14% of students suffer from severe anxiety.
- 23% suffer from mild or moderate anxiety.
- 6% had suicidal thoughts in the past year.

### The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, The Report of the National Task Force on Lawyer Well-Being

The good news is that our profession is heeding the call to action. Last year, several groups in the American Bar Association, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the National Conference of Chief Justices, and the National Conference of Bar Examiners formed a task force -- the National Task Force on Lawyer Well-Being -- to address the mental health and substance abuse problems that plague the profession.

The Task Force issued a report, which directs the stakeholders (the judiciary, regulators, bar associations, firms, legal malpractice carriers, and legal assistance programs) to take responsibility and galvanize profession-wide action.

Our mandate is to work together to focus on lawyer well-being, so that lawyers are fulfilled and do a better job for their clients, the public, and those they serve, while we continue to attract the best and brightest to our profession.

Critically, the Task Force Report emphasizes a positive state of wellness, not merely the absence of illness, and a continuous process where lawyers actively work to improve their quality of life -- emotionally, intellectually, physically, and socially.

The Report's recommendations emphasize a demonstrated commitment to well-being and a concerted effort by all stakeholders to encourage help-seeking behaviors, provide quality educational

programs, and partner with lawyer well-being experts such as LHL.

- "ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment."<sup>1</sup>
- Lawyers who reported past treatment for alcohol use who used programs tailored to legal professionals reported significantly lower scores on current alcohol use.<sup>2</sup>

### What is LHL? How does LHL help? How can LHL help?

LHL is a 501(c)(3) nondisciplinary, nonprofit organization that provides free confidential assistance to lawyers, judges, law students, bar applicants, and legal professionals who are experiencing professional impairment due to addiction, depression, or cognitive impairment issues.

LHL has the foundational elements outlined at 44.4 of the Report:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals.
- A well-defined program mission and operating policies and procedures.
  - o LHL's program is designed to promote recovery, protect the client, prevent disciplinary issues, support families and professional associates, and strengthen the profession.
  - o A key part of the mission, other than aiding and assisting the lawyers, judges, law students, and legal professionals, is educating about the impact of chemical dependency and other mental health disorders and the resources provided by LHL.
- Regular educational activities to increase awareness and understanding of mental health and substance use disorders. Regular and varied CLEs sponsored by LHL across the state.
- Volunteers trained in crisis intervention and assistance.
- Services to assist impaired members of

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the legal profession to begin and continue recovery.

- Participation in the creation and delivery of interventions.
- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities.
- A helpline for individuals with concern about themselves or others.

Many of LHL's dedicated, compassionate, and hard-working cadre of volunteers have benefitted from LHL's services, and their role in the monitoring, support and ongoing recovery is critical to its success.

LHL devotes considerable time and attention to educating the legal community regarding substance abuse and mental health disorders, cognitive impairment, and transition and succession planning. LHL provides training and seminars to firms, local bar groups, judges, legal assistance groups, and other related organizations. Through these broad based educational efforts, LHL seeks to support lawyers and the legal community as well as the public. LHL is also a resource for wellness days and programs.

LHL is an invaluable resource to all stakeholders, not just lawyers in need.

LHL helps 200 lawyers annually of approximately 31,000 active, practicing lawyers in Virginia. It can help many more<sup>3</sup>.

### If I don't have a substance abuse, anxiety, or mental health issues why should I care about LHL?

Lawyers are a self-governing, relatively autonomous profession, and with that privilege comes the responsibility of assuring that our behavior conforms to the Rules of Professional Conduct and serves the public interest. As the Preamble to the Virginia Rules of Professional Conduct instructs, **"Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves."**

The Rules of Professional Conduct, including Rule 1.1, Competence; Rule 1.3, Diligence; and Rule 1.4, Communication, **are the most common causes of bar complaints** and often the first manifestation of substance abuse and mental health issues. Addiction, along with mental and physical disorders, can create cognitive deficits that are manifested and particularly severe in terms of executive functions: problem solving, abstract thinking, planning, organizing, and memory. That dysfunction leads to lack of competence and diligence, and a concomitant breakdown in client communications. While Rule 1.16(a) (2) requires a lawyer to withdraw from representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent his/her client, an impaired lawyer does not always withdraw. While the Rules of Professional Conduct may not create a duty to proactively address potential impairment, a lawyer who is concerned about another lawyer's impairment could encourage contact with LHL or contact LHL on the lawyer's behalf, confidentially.

### Legal Ethics Opinions (LEOs) 1886 and 1887

LEO 1886, approved by the Supreme Court of Virginia on December 15, 2016, instructs that Rule of Professional Conduct 5.1, Responsibilities of Partners and Supervisory Lawyers, requires partners or lawyers with managerial authority to act when they reasonably believe a lawyer under his/her supervisory authority may be suffering from an impairment that poses a risk to clients or the general public. LEO 1886 instructs the managing partner or supervisory attorney to confront the impaired lawyer and encourage an evaluation and/or treatment. The LEO also suggests LHL as a resource to seek assistance, initiate an intervention and obtain an initial evaluation of the lawyer's condition and a referral to an appropriate mental health provider. LHL can provide guidance on how to handle the possible impairment and resources.

Like LEO 1886, LEO 1887, approved by the Supreme Court of Virginia August 2017, discusses LHL as a resource for lawyers who know of a lawyer who is struggling, but are not sure about how and whether to act. While LEO 1887 states that there is no duty to act if there is no supervisory relationship, and no misconduct has occurred, the LEO discusses the distinction between the duty to report to the VSB, and the option to seek guidance

from LHL. Where an attorney observes that a solo practitioner’s cognitive abilities are declining, and is concerned, the attorney can encourage the impaired lawyer to contact LHL, or contact LHL for guidance on how best to address the situation.

Both LEOs also instruct that Rule 8.3(a) requires a lawyer to inform the appropriate professional authority if the lawyer has reliable information 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 to practice law.

**Conclusion**

When we help each other, we improve our profession. If you suspect a lawyer is in need of LHL’s service, call LHL’s 24-hour toll-free number 1-877-545-4682 or confidential voicemail: 804-644-3212. There should be no stigma in struggle, nor in the seeking of help. We as a profession are made better by our willingness to help ourselves and help others when we encounter addiction, mental health, or cognitive disorders. ✧

**End Notes**

1. Task Force Report, p. 16.
2. Task Force Report at p. 14 citing P.R. Krill, R. Johnson, & L. Albert, *the Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).
3. Task Force Report Recommendations to Work with LHL

As the well-being report emphasizes, all stakeholders benefit from partnership with lawyer assistance programs, like LHL. The following are recommendations for all stakeholders and then specific stakeholders (numbered as in the report) that emphasize LHL’s value to the stakeholders:

4. Facilitate, destigmatize, and encourage help-seeking behaviors.
5. Build relationships with lawyer well-being experts.
  - 5.1 Partner with lawyer assistance programs.
8. Provide high-quality educational programs and materials about lawyer well-being.
9. Guide and support the transition of older lawyers.
11. Use monitoring to support recovery from substance abuse disorders.
12. Begin a dialogue about suicide prevention.

**Recommendations for Judges**

14. Communicate that well-being is a priority.
15. Develop policies for impaired judges.
16. Reduce stigma of mental health and substance use disorders.
18. Provide well-being programming for judges and staff.

20. Monitor for impaired lawyers and partner with lawyer assistance programs.

**Recommendations for Legal Employers**

24. Establish organizational infrastructure to promote well-being.
  - 24.2 Assess lawyers’ well-being.
25. Establish policies and procedures to support lawyer well-being.
  - 25.1 Monitor for signs of work addiction and poor self-care.
26. Provide training and education on well-being including during new lawyer orientation.

**Recommendations for Law Schools**

27. Create best practices for detecting and assisting students experiencing psychological distress.
  - 27.1 Provide training to faculty members relating to student mental health and substance use disorders.
  - 27.3 Provide mental health and substance abuse disorder resources.
32. Facilitate a confidential recovery network.

**Recommendations for Bar Associations**

36. Encourage education on well-being topics in association with lawyer assistance programs.
  - 36.1 Sponsor high-quality CLE programming on well-being related topics.
  - 36.3 Train staff to be aware of lawyer assistance program resources and refer members.

**Recommendations for Lawyers Professional Liability Carriers**

40. Actively support lawyer assistance programs. ✧

**MEMBER RESOURCES AREA  
ELECTRONIC NEWSLETTERS  
FOR SECTION MEMBERS**

<http://www.vsb.org/site/sections/educationoflawyers/membersonly>

To receive newsletters electronically, post your email address on the VSB’s website at <https://member.vsb.org/vsbportal/>. You may limit the use of your email address on this site.

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