



MCLE SELF-STUDY

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THE SOBERING TRUTH FACING SUBSTANCE ABUSE IN THE PRACTICE OF LAW

by Carol M. Langford and Robert M. Wells

Today's lawyer is faced with a great deal of stress on a daily basis. You just can't get away from your clients nowadays: they e-mail, call and text you, wanting to discuss the details of their cases. You go on vacation and the e-mails come pouring in. We are of the belief that technology has made things like communicating with clients and filing documents easier, but with the high cost of making practice more stressful.

Each lawyer has his or her own way of handling stress, but many times it is with the help of short-term solutions like drinking a few glasses of wine. As the lawyer ages, it becomes more than a few glasses, and comes to include Ambien to sleep, Valium to cope with anxiety, and depression medications. This combination is deadly and far more common than you may think. Also common are pain killers - the lawyer gets back pain, starts taking Darvon, and then takes one every day. One soon becomes two.

Unfortunately, lawyers have a hard time asking for help, or even admitting they are anxious. Anxiety is closely tied to depression and many lawyers who are depressed and have a developing substance abuse problem do not come forward because of this stigma.

ARE YOU DEPRESSED?

WHAT ARE THE SIGNS OF DEPRESSION?

Generally, people describe depression as feeling down or blue. Although these feelings are a normal part of life, generally one is seen as depressed if these feelings last more than two weeks¹. A past study estimated that lawyers are more than three times as likely to grapple with depression than the general population². Pressures from work and personal problems can make lawyers more susceptible to depression and getting in trouble with the State Bar. Put bluntly, depression can kill a marriage and a career. Knowing the signs of depression and resources available to over-

come this personal challenge is crucial to fully treat depression. Here are some symptoms to be on the lookout for as provided by the American Bar Association³.

SYMPTOMS OF DEPRESSION

- Persistent sadness, anxiety or "empty" feelings
- Feelings of hopelessness and/or pessimism
- Feelings of guilt, remorse, worthlessness and/or helplessness
- Irritability, restlessness
- Loss of interest in activities or hobbies once found pleasurable, including sex
- Fatigue and decreased energy
- Difficulty concentrating, remembering details and making decisions
- Insomnia, early-morning wakefulness, or excessive sleeping
- Overeating or appetite loss
- Thoughts of suicide, suicide attempts
- Persistent aches or pains, headaches, cramps, digestive problems that do not ease, even with treatment

Now we all get some of these symptoms at some point in our lives, but you have to ask yourself: Am I feeling anxious, empty, and just depressed a lot? If the answer is "yes" then don't be afraid - it is good that you have self-diagnosed. It means that, with help from a doctor, you will feel a lot better.

Drinking, smoking pot and/or taking prescription medications only put a band-aid on the underlying problem, and ensure that you will have to continue imbibing. I know some of you will say "So what is the problem? I like to drink, and if it gets me through a rough patch, why not?" My answer is this: if you are drinking to get through a "rough patch" you might already have a problem. ▶

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704 Main Street, Martinez, CA 94553

925.686.6900 (ph) 925.686.9867 (f)

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Often the “rough patch” ends but the drinking continues. This is guaranteed to affect your practice, your marriage and your relationship with your children, even if it takes a while to do so. And pot is no better, really; it may not have the physical effects of alcohol but it still means you are checking out of your relationship with your family and friends and it eventually saps initiative and ambition (pot smoking is one of the most popular reasons people go into rehab; they complain it has taken away their ambition to succeed).

A review of the 2010 annual report from the California Bar’s Lawyer Assistance Program shows substance abuse issues alone accounted for 42% of new participant diagnoses⁴. The report also showed that new participants suffering from both mental and substance abuse issues accounted for 33% of all referrals⁵. This suggests that nearly 75% of all new cases referred to LAP have some type of substance abuse issue. Here are some symptoms of drug and alcohol abuse provided by the American Bar Association⁶.

SYMPTOMS OF DRUG DEPENDENCE


- Changes in appetite or sleep patterns. Sudden weight loss or weight gain.
- Deterioration of physical appearance and personal grooming habits.
- Unusual smells on breath, body, or clothing.
- Tremors, slurred speech or impaired coordination.
- Drop in attendance and performance at work.
- Unexplained need for money or financial problems; May borrow or steal to get it.
- Engaging in secretive behaviors.
- Sudden change in friends, favorite hangouts and hobbies.
- Frequently getting into trouble (fights, accidents, illegal activities).
- Unexplained change in personality or attitude.
- Sudden mood swings, irritability, or angry outbursts.
- Periods of unusual hyperactivity, agitation, or giddiness.
- Lack of motivation; appears lethargic or “spaced out.”
- Appears fearful, anxious, or paranoid, with no reason.

SYMPTOMS OF ALCOHOL DEPENDENCE

- Being unable to really limit the amount of alcohol you drink.
- Feeling a need or even a strong compulsion to drink.
- Developing tolerance to alcohol so that you need increasing amounts to feel its effects.
- Having legal problems or problems with relationships, employment or finances due to drinking.
- Drinking alone or in secret.
- Experiencing physical withdrawal symptoms - such as nausea, sweating and shaking - when you don’t drink.
- Not remembering conversations or commitments, sometimes referred to as “blacking out.”
- Making a ritual of having drinks at certain times and becoming annoyed when this ritual is disturbed or questioned.
- Losing interest in activities and hobbies that used to bring you pleasure.
- Irritability when your usual drinking time nears, especially if alcohol isn’t available.
- Keeping alcohol in unlikely places at home, at work or in your car.
- Gulping drinks, ordering doubles, becoming intoxicated intentionally to feel good or drinking to feel “normal.”

Here is the best test ever to determine if you are developing a problem: has someone complained about your drinking or drug use or asked you to slow down or stop? That is usually a strong indicator that you may need to look at how much you are imbibing. Here is another one: are you full of remorse the next day over the dumb things you did while drinking (and this seems to occur more often than you’d like? Remember, it is not true that in order to be an alcoholic you have to be someone who cannot pass up a drink. Many alcoholics will tell you that they could ratchet down their drinking or quit drinking altogether for a few weeks or months, but then they would start drinking again.

HOW DO LAWYERS GET IN TROUBLE FOR DEPRESSION AND SUBSTANCE ABUSE

Under the California Rules of Professional Conduct, many lawyers with a depression or substance abuse problem will violate one of the following rules. 

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RULE 3-110 FAILING TO ACT COMPETENTLY

Rule 3-110 states that a lawyer shall not intentionally, recklessly or repeatedly fail to perform legal services with competence⁷. With regard to depression and substance abuse, a lawyer's competence may be impaired to the point where the member does not have the mental, emotional and physical ability reasonably necessary for the performance of his/her legal services⁸.

If a lawyer's depression or substance abuse problem is to the extent where the lawyer cannot provide adequate legal services to their client, they are incompetent and are in violation of Rule 3-110.

RULE 3-700 TERMINATION OF EMPLOYMENT

Rule 3-700(B)(3) provides that a member must withdraw from employment if required by the CRPC and when the lawyer's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

Generally this would mean Rule 3-700 requires lawyers who are not before a tribunal to withdraw if their depression/substance abuse problem affected their mental or physical capacity to the point where they could not perform their duties of employment effectively. Additionally, lawyers actively before a tribunal while representing a client have to obtain permission from the tribunal under Rule 3-700(B). Failure to withdraw when the lawyer cannot perform his services could lead to a violation of Rule 3-700 as well as 3-110 for failing to act competently as stated above.

RULE 3-500 INFORMING CLIENTS OF SIGNIFICANT CHANGES OF REPRESENTATION

Rule 3-500 states that a lawyer shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed⁹.

Many times, lawyers with a depression or substance abuse problem get into trouble with Rule 3-500 by not keeping up with changes to client cases and/or relay information to clients in a timely matter. Also lawyers with depression/substance abuse issues tend to be less prompt

in returning client phone calls or communications within a timely matter. Also, if you have a problem that impairs your ability to function, the client has to know or you had better pass on that case to someone who can handle it.

INACTION IS COSTLY

Discipline costs imposed by the State Bar Court can be high both financially and emotionally. Besides fees charged by your defense attorney, and any costs to complete any discipline terms, the State Bar Court will charge lawyers for their expenses incurred by its own prosecution of you. Matters can range from \$2,797 to as high as \$18,700 depending on the stage of your discipline action¹⁰. If you or someone else has a problem that could affect your performance as a lawyer, it is best to address the problem yourself before involving disciplinary action from the State Bar.

RESOURCES AVAILABLE FOR YOUR SUPPORT

For those facing a personal challenge with depression or substance abuse or if you are helping a colleague overcome a challenge, you are not alone. The good news is there are resources and assistance available to assist you overcome what you are going through.

For members of the California Bar, you can check out the Lawyer Assistance Program (yes, it really is confidential from the Bar). The Other Bar is a great organization and you will find other fine lawyers who have resurrected their career and lives with the help of that organization. More information about services offered can be found at: <http://www.calbar.ca.gov/Attorneys/MemberServices/LawyerAssistanceProgram.aspx>

The ABA also has a large library of information, referrals and resources as well at: http://www.americanbar.org/groups/lawyer_assistance.html

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ENDNOTES

¹ Depression, American Bar Association, http://www.americanbar.org/groups/lawyer_assistance/resources/depression.html, Accessed September 2011.

² What About Me? Mary L. Geiner, Texas Bar Journal, 59 Tex. B.J. 816, September, 1996.

³ Depression, American Bar Association, http://www.americanbar.org/groups/lawyer_assistance/resources/depression.html, Accessed September 2011.

⁴ 2010 Annual Report of the Lawyer Assistance Program of the State Bar of California. Available online at: <http://www.calbar.ca.gov/AboutUs/Publications/Reports.aspx>

⁵ Id.

⁶ Drug Abuse and Dependence, American Bar Association, http://www.americanbar.org/groups/lawyer_assistance/resources/drug_abuse_dependence.html, June 2011; Alcohol Abuse and Dependence, American Bar Association, http://www.americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence.html, June 2011.

⁷ California Rules of Professional Conduct Rule 3-110(A)

⁸ California Rules of Professional Conduct Rule 3-110 (B)

⁹ California Rules of Professional Conduct Rule 3-500

¹⁰The State Bar Court of California, Discipline Costs (Effective January 10, 2011) <http://www.statebarcourt.ca.gov/ProceduresProgramsandRules/DisciplineCosts.aspx>

ABOUT THE AUTHORS

Carol M. Langford is a lawyer in Walnut Creek who specializes in attorney conduct and State Bar defense matters. She is an adjunct professor at U.C. Berkeley Boalt Hall School of Law.

Robert M. Wells is currently finishing his final semester at USF School of Law. After passing the Bar exam, Robert is interested in beginning his law career in real estate litigation and risk management.

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- 1 Lawyers are generally likely to admit they are suffering from depression or a substance abuse problem. True False
- 2 Lawyers are three times more likely to become depressed than the general population. True False
- 3 Feeling “down” or “blue” for more than 2 weeks is a normal part of life. True False
- 4 Symptoms of depression may include insomnia, early morning wakefulness or excessive sleeping. True False
- 5 A person suffering through depression may appear to be fatigued and have a decreased amount of energy. True False
- 6 The Lawyer Assistance Program (LAP) is a program designed to help lawyers pay for loans incurred in law school. True False
- 7 LAP statistics for 2010 indicate that 42% of all new participant diagnoses involve substance abuse issues alone. True False
- 8 Some signs of drug abuse include bloodshot eyes, sudden change in friends, and lack of motivation. True False
- 9 Some signs of alcohol abuse include being open about one’s drinking, having interest in recreational activities/hobbies, and being able to feel good through constant exercise. True False
- 10 A lawyer is in violation of CRPC Rule 3-110 if he/she repeatedly fails to perform their legal services competently. True False
- 11 A lawyer may not be competent for CRPC Rule 3-110 if the lawyer does not have the mental, emotional, and/or physical ability to reasonably necessary to perform their legal services. True False
- 12 Lawyers do not have a duty to inform clients about significant developments regarding their representation. True False
- 13 If a lawyer is before a tribunal and must withdraw because of a substance abuse problem where the lawyer cannot adequately represent a client, the lawyer must get permission from the tribunal to withdraw. True False
- 14 The California State Bar does not charge lawyers for their expenses incurred by the State Bar for disciplining the lawyer. True False
- 15 The State Bar of California and the American Bar Association provide resources to assist lawyers regarding depression and substance abuse. True False

HOW TO RECEIVE ONE HOUR OF MCLE CREDIT

Answer the test questions above, choosing the one best answer to each question. Mail this page and your payment for \$20* to CCCBA at the address below. (* this fee is waived for 2011 MCLE Spectacular guests with full-day registrations.)

Name	State Bar #
Firm Name	
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Phone	Email
<input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Amex <input type="checkbox"/> Check (payable to CCCBA)	
Cardholder Name	
Card Number	
Expiration Date	
Signature	

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