

An Elephant in the Law Firm: Maybe No One Will Notice

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Getting Help for a Colleague in Trouble – A Step-by-Step Guide

Maybe it is the bright, eager associate you hired a few years ago who is now missing appointments or coming in late. Maybe it is the senior department head who is isolating himself and seems to be working less and less. Maybe it is the partner you are covering for after long lunches or poorly handled client matters. These types of behavior are probably signs that something is wrong – that something may be happening in these attorneys' personal lives that is spilling over into their professional lives. What could cause once effective or even brilliant lawyers to slip away, to neglect matters that once seemed so important, and to act in ways contrary to their ethics and values?

Having a practicing alcoholic¹ in a law firm can be frustrating and embarrassing for others in the firm. Everyone seems to know there is a problem, but no one knows what to do or does not want to get involved.

What should be done? Should the person be confronted? Told to shape up? Should you take your concerns to the managing partner? Should the problem be ignored? Is it a phase brought on by a stressful case or some personal problem that will work itself out? Is it even any of your business?

Alcohol abuse is a major problem in this country and appears to be more prevalent in the legal profession than in the rest of the population. Substance abuse is often intimately linked to attorney misconduct and legal malpractice. Addictive illnesses such as alcoholism manifest in ways that cause afflicted individuals to violate their own moral and ethical standards. Sooner or later, an impaired attorney loses the ability to practice law in accordance with professional rules of conduct. As a result, a high percentage of attorney discipline cases involve alcoholism or chemical dependency. An attorney whose illness remains untreated will likely become the subject of grievance committee investigations. Alcoholism does not get better without treatment – it gets worse. Therefore, ignoring the possibility that an attorney may be in trouble enables continued or future misconduct, exposes clients to injury and the firm to malpractice liability, furthers the erosion of public confidence in the legal profession, and facilitates the deterioration of the impaired attorney.

How Can You Recognize The Elephant?

Alcoholism is sometimes difficult to recognize because the behavioral symptoms may vary greatly between individuals, and because the alcoholic's job is often one of the last areas to deteriorate. However, there are many identifiable signs of the early stages of alcoholism. Although there is no one

¹ The terms alcoholic and addict, and alcoholism and chemical dependency are used interchangeably. The term substance refers to all mood altering chemicals including alcohol. Substance "abuse" means using any mood altering chemical in such a way, and to the extent that, such use causes problems.

specific behavior that either definitely means there is or is not a problem, evidence of impairment is likely to include some of the behaviors² listed below:

- inconsistent work patterns
- fluctuations in quality of performance
- overreaction to real or imagined criticism
- irritability
- heightened impatience and hyper-criticism
- behavior at work becomes less and less responsible:
 - missed deadlines
 - complaints from clients
 - mistakes due to negligence or poor judgment
 - improbable excuses for poor job performance
 - failure to return phone calls
 - financial difficulties

Some behaviors directly related to the use of alcohol indicate your colleague may have a problem. These include:

- drinking to manage emotions and stress
- denying that problem with drinking or using drugs exists
- rationalizing drinking or using – “I just won a big case; I just lost a big case; it has been a long day; I deserve a couple of drinks”
- Blames others or situations for drinking too much – “If you had a spouse/caseload/family/boss you’d drink too!”
- trying to control his or her use:
 - limits the time of day of use – “I’ll only drink on the weekends/after 5:00 p.m.”
 - periodically “going on the wagon”
 - switching from hard liquor to beer or wine
 - over time, efforts to control his or her use fail
- drinking begins to increase negative emotions:
 - more and more resentful/blaming of friend/co-workers drinking/using followed by periods of remorse, guilt, or anxiety
 - increase in depression, desperateness, sense of hopelessness
- tolerance to the substance increases – more is needed to achieve the desired effect
- only going to functions or places where alcohol is offered
- undergoing a personality change when drinking or using
- driving after drinking or reacting defensively if someone asks for the car keys

² The signs and symptoms of substance abuse listed in this article are not intended to be all inclusive or exclusive. They do not include all the possible signs and symptoms, nor is it necessary for a person to meet all of these to have a problem with alcohol or drug abuse.

Alcoholism is a primary, chronic, and progressive illness. The afflicted individual will pass through a series of increasingly severe stages of the disease, causing problems in virtually every area of his or her life. As the rest of the impaired attorney's life becomes more and more unmanageable, work is often the last area to deteriorate. As the disease progresses noticeable symptoms at work include:

- frequent unauthorized absences
- excessive sick leave
- frequent absences on Mondays and Friday
- frequent tardiness
- improbable excuses for absences
- frequent trips to the water fountain or restroom or car in the parking lot
- mental functioning is affected
- physical health decreases
- behavior conflicts with values and ethics – mishandling of funds, lying, DWI

Although these behaviors are not hard and fast indicators of chemical addition, seeing these behaviors in someone who did not exhibit them before is an indication that something is wrong.

What Do You Do If You Think There Is a Problem?

1. Find out if your firm has an employee assistance program.
2. Call the Lawyers Assistance Program, for information about support and help available for your colleague.
3. Call a local chapter of Alcoholics Anonymous or Narcotics Anonymous and get the name of a recovering person willing to take your colleague to a meeting, or talk with him or her on the phone.
4. Call a treatment facility or trained professional if you want to attempt an intervention on your colleague.

When You Talk to Your Colleague:

1. Express concern about his or her life and health; do not admonish or criticize. "People who care about you personally and professionally are concerned..."
2. Be specific when you talk – referring to specific incidents or occurrences. "The brief was held up because your work was not turned in on time..." "Our client Mr. Jones says you are not returning his calls..."
3. Do not talk to your colleague when he or she is drunk or high. Wait until he or she is clear-headed, perhaps during a period of remorse or when the person seems to be suffering from a hangover.

How Can the Lawyer Assistance Program Help?

A call to LCL, Minnesota's Lawyers Assistance Program, is the first step in obtaining confidential assistance for an impaired colleague. LCL was established in 1976 and provides free, confidential peer and professional assistance to Minnesota lawyers, judges, law students, and their immediate family members on any issue that causes stress or distress. LCL assists those whose lives or careers may be impaired because of mental, physical, or emotional problems. Calls are received 24 hours a day, seven days a week from attorneys seeking help, from their families and friends, and from their colleagues. All cases are handled confidentially, no identifying records are kept, and no reports are made to the State Bar or any other authority.

When a call comes into LCL that an attorney may need assistance, LCL staff will assess the situation and offer several courses of action. Sometimes a family member, friend or colleague would like coaching on how to have an informal conversation about their concerns. They will then speak with the lawyer and sometimes that will generate an interest in receiving help. LCL can also coach a lawyer in a supervisory capacity to speak to the individual about their conduct and make a specific referral to an assessor.

If the caller does not wish to approach the lawyer directly, the next step may be for LCL volunteers to become involved. Arrangements are made with two volunteers in the lawyer's area to contact the lawyer and offer whatever assistance is appropriate. Often, the volunteer attorneys already know the lawyer in question. They will tell the impaired attorney that the LCL office has received some calls – they will not know who the call or calls came from – and that there is a concern that this attorney may be having some problems. The volunteers will share their own experiences with alcoholism (or other substance use or depression), recovery, and the practice of law. They will offer peer support, information on local lawyer support groups, and when appropriate, referral to professional assistance. These meetings are often effective because the volunteers are attorneys who have experienced much of what the impaired attorney is experiencing, and are especially effective in recognizing and confronting denial.

This kind of contact may or may not be successful. The impaired attorney may have known for a while that his or her life was out of control, and may be relieved to find out that there are others like him or her who have recovered from the insanity; that there is help available. On the other hand, the attorney may say "thank you very much but no thank you." The volunteers will leave their business cards and phone numbers, keeping the door open for future contact if the attorney ever decides he or she needs help. In no event will any information or report about the meeting be made available to anyone outside of LCL.

In some instances a law firm or family may decide to do a formal intervention. LCL can help facilitate the intervention or provide referrals to other interventionists. The intervention is a process where the attorney is directly presented with specific instances and evidence of behavior and conduct and the impact those have had. The group will address the impending consequences if he or she does not seek immediate help. The goals of an intervention are to address the alcoholic's or addicts denial system in a caring way, to teach colleagues, family and friends how to stop contributing to the disease through their own denial and enabling, and to offer immediate help for the alcoholic or addict.³ This can also take place if there are potential mental health issues, but the protocol is adapted.

³ For more information on interventions, see Vernon E. Johnson, *Intervention: How To Help Someone Who Doesn't Want Help*, Johnson Institute (1986) or Jeff and Debra Jay, *Love First, a Family's Guide to Intervention* (2nd ed. 1986), Hazelden

What Not to Do:

Colleagues of an impaired lawyer may feel angry, confused, resentful, or helpless to address the situation. Often the family and colleagues of the alcoholic are in as much denial as the alcoholic. This may lead co-workers to act in ways they believe to be helpful, but in fact are harmful to the alcoholic by facilitating or enabling progression of the disease. The alcoholic becomes deluded that the problem will stay under control with everyone's help. If you want to help an impaired colleague, do *not*:

- Cover for the drinker by making excuses or shifting work responsibilities (one lawyer reports that during the worst days of his drinking as a partner at a large firm, the firm responded by moving his office away from the main reception area, and hiring a private cleaning staff for his office).
- Angrily admonish the lawyer – the impaired attorney already feels shame and self-judgment; the anger you may feel cannot compare with the anger and humiliation the attorney is feeling toward him- or herself.
- Ignore the problem – it will only get worse without help. Denial will enable misconduct and malpractice, and may expose the firm to liability.
- Try to control the lawyer's drinking/using – they would definitely control it if they could.

Be willing to say, "Excuse me, did you notice there is an elephant in the law firm?"

The majority of lawyers do not suffer from chemical dependency. At some point, however, many lawyers will encounter a colleague who does. Education and awareness are the most effective means of recognizing and helping an impaired colleague. You do not have to wait until the colleague is before a grievance panel, about to lose his or her job, under arrest for DWI, or in the hospital. You can offer support and understanding without compounding the problem. You can all someone who can help. You can call Lawyers Concerned for Lawyers: 651-646-5590, help@mnlcl.org, www.mnlcl.org.

Bibliography

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If you or someone you know needs assistance, please call your Lawyer Assistance Program. *All calls are handled in confidence.*