The Intersection of Ethics and Wellbeing

Presented By Sharon Nelson and Jennifer Gerstenzang
Paul Rawlinson
Baker McKenzie’s global chairman

- Died at 56
- Took temporary leave to deal with health issues caused by exhaustion
- Paul had recently visited more than half of the 78 offices around the world
- Exact cause of death was not released

So many questions left unanswered:

- Was there a culture of wellness at Baker McKenzie?
- Did his colleagues have reason to suspect how unwell Paul really was?
Gabe MacConaill  
Sidley Austin partner

- Died at 42
- Suicide in the parking garage at work
- Binge drinking, departure of close friends at the firm which created more pressure on him, new position chairing the summer associates, and a huge bankruptcy case
- Worked himself to exhaustion

- Wife arranged mobile IV to come to their home to give him fluids. He then flew to Delaware to file the bankruptcy case.

Here, **ethics** entered as his wife found out later, he had stopped responding to work emails when he returned home to LA.
Gabe MacConaill
Sidley Austin partner

“There is not a culture or feeling of safety right now in that set of offices. You can have resources in place, but unless you have the right culture, people aren’t going to feel safe using them or approaching someone to ask for help.”

Anonymous source at the firm
PETER ZIMMERMAN: THE LAWYER, THE ADDICT

- Successful patent lawyer making $1.4 million
- Kept up at work using cocaine, opioids, Adderall, and crystal meth.
- He died from a heart infection brought on by his dependence on narcotics.
- Ex-wife and family had no idea
After one CLE, a lawyer in another state called to ask for help because, as he said, “I just can’t practice law anymore.”

In his case, he was simply distracted by everything – he had lost the ability to focus.
He was ignoring emails, missing deadlines, failing to call clients back or respond to their email – and very much afraid of getting in disciplinary trouble.

Everything distracted him – the turbulent politics of our time, sports, online games, social media...
Self-Reporting just tells part of the story

• 3,419 lawyers out of ~15,000

“It’s left to speculation what motivated 75% of attorneys to skip over the section on drug use as if it wasn’t there.”

-Peter Krill
The main concern, and it is huge, is confidentiality. Only 6.8% sought treatment and of those who did, only 21.8% went through a program designed for legal professionals.

The most common mental health concerns were:

- Anxiety, 61.1%
- Depression, 45.7%
- Social anxiety, 16.1%
- Attention deficit hyperactivity disorder, 12.5%
- Panic disorder, 8%
- Bipolar disorder, 2.4%
ALM Intelligence and Law.com
2019 Mental Health and Substance Abuse Survey

• 3,800 attorneys
• >50% at law firms of 500 lawyers or more
“An overwhelming majority of legal professionals (74%) believe their mental well-being is worse off as a result of their chosen career.”

- 33% increased drug or alcohol use as a result of their work or work environment
- 44.4% admitted to dealing with stress with alcohol
- 4% with drugs
- 17.9% admitted to contemplating suicide during their career (2x general population)
What about their job negatively impacts their mental well-being?

• Feeling of being always on call and unable to disconnect
• Billable hour pressures
• Lack of sleep
• Client demands

• Only 36% said they use all of their vacation time and cannot disconnect on vacation
• When you have a small window to disconnect, drugs or alcohol take you from 60 to zero the fastest
The resolution supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students.

Adopted at the 2018 ABA Midyear Meeting
The National Task Force on Lawyer Well-Being
Defines lawyer well-being as a “continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections.”
The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, published in August 2017, focus on five central themes

1. Identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession

2. Eliminating the stigma associated with help-seeking behaviors

3. Emphasizing that well-being is an indispensable part of a lawyer’s duty of competence
The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, published in August 2017, focus on five central themes:

4. Educating lawyers, judges, and law students on lawyer well-being issues

5. Taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession
Have we become impervious to the symptoms of extreme stress on our colleagues?
WHY is our profession so susceptible?
“Problem drug use is a symptom, not a cause, of personal and social maladjustment.”
Characteristics of the profession

• Adversarial
• Social influences within the work environment
• Heavy workloads
• Stress attributed to working with clients
• Co-occurring psychological illnesses that precede and/or exacerbate substance abuse problems
Secondary Traumatic Stress (STS)

- Symptoms of STS mimic those of PTSD.

- Despite the high prevalence of this disorder in attorneys, STS has largely been overlooked by the research community.

-Butler Center for Research 2012
Self-Care and Emotional First-Aid

“When you are in emotional pain, treat yourself with the same compassion as you would expect from a really good friend.” Guy Winch
“Law Firms have a culture of keeping things underground, a conspiracy of silence. There is a desire not to embarrass people, and as long as they are performing, it’s easier to just avoid it. And there’s a lack of understanding that addiction is a disease.”

-Dr. Daniel Angres
Professor of Psychiatry at Northwestern University Feinberg School of Medicine
The TWO most common barriers to treatment:

• Not wanting others to find out they needed help
• Concerns regarding privacy or confidentiality
“People are dying who don’t need to die,” […]

“If it were safe for more people to say, ‘I’m in recovery,’ I think many more people could say, ‘I need help.’ ”
“Addiction is a disease, not a moral failing. It's characterized [...] by compulsive repetition of an activity despite life-damaging consequences.”

By Fran Smith
An attorney could demonstrate a pattern of conduct:

- Missed deadlines
- Missed appointments
- Last-minute requests for continuances
- Frequent absenteeism
- Failing to return client phone calls or respond to mail
- Co-mingling or inappropriately taking client trust funds
- Making false representations

ETHICAL MISSTEPS MAY INDICATE A PROBLEM
An attorney may become socially withdrawn, procrastinate, have unpredictable and frequent mood swings, demonstrate unwarranted anger or hostility, and seek to point the finger at others for personal failings.

- Depression/anxiety
- Neurological dysfunction
- Gambling addiction
- Substance use disorder
Small-Firm Lawyer Tells Biglaw Team To ‘Eat Bowl Of Dicks’ During Settlement Negotiations

Don't try this 'confidential negotiating tactic' in practice, folks.

By STACI ZARETSKY
THE STRESS OF PRACTICING LAW TODAY

The demands of being a lawyer can often hide substance or mental health issues and the high-achieving people who become lawyers often do not avail themselves of available resources to help them.
THE STRESS OF PRACTICING LAW TODAY

There is a stigma attached to asking for help and a fear that one will seem “weak” or perhaps not worthy of rising within the firm.
Though Rule 1.1 is often implicated, **ethical violations** by impaired lawyers can involve violating many rules, including these.

- Rule 1.15 (Safeguarding Property)
- Rule 1.3 (Diligence)
- Rule 1.4 (Communications)
- Rule 1.6 (Confidentiality)
- Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)
• Rule 5.2 (Subordinate Lawyers)
• Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants)
• Rule 8.3 (Maintaining the Integrity of the Profession)
• Rule 8.4 (Misconduct)
WHEN MUST A LAWYER WITHDRAW OR BE REMOVED FROM CLIENT REPRESENTATION?

Rule 1.16 (a)(2) prohibits a lawyer representing or continuing to represent a client where “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”
In Formal Opinion 03-429 (Obligations with Respect to Mentally Impaired Lawyer in the Firm)

The ABA Standing Committee on Ethics and Professional Responsibility writes, “Simply stated, mental impairment does not lessen a lawyer’s obligation to provide clients with competent representation.”
Lawyer Assistance Programs

Many programs are run by volunteers or other attorneys who are in recovery. Check to see what your state’s organization is able to offer.
Some LAPs merely provide referrals to mental health professionals in the community, while others may have mental health professionals on staff.

Most LAPs are not able to provide a ‘fitness to practice’ evaluation. In those cases, a referral to a forensics psychologist will be needed.
If you do not say something, eventually, someone else will.
SOLUTIONS ARISE WHEN WE IDENTIFY, RECOGNIZE, AND TALK ABOUT THE PROBLEM
WE CANNOT CHANGE WHAT WE CANNOT SEE
This Commercial That Shows a Mom's Postpartum Body Was Banned for Being 'Too Graphic'—and There isn't Even Nudit... It
Since 2016, conversation has opened up and stigma surrounding discussions about mental health and substance abuse in the legal profession has dissipated some.

(ALM Study)
THE ABA’S WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION
The primary vehicle for the Campaign is a Pledge calling upon legal employers (including law firms, corporate entities, government agencies and legal aid organizations)
The Pledge:

Recognizing that high levels of problematic substance use and mental health distress present a significant challenge for the legal profession, and acknowledging that more can and should be done to improve the health and well-being of lawyers, we the attorneys of ______ hereby pledge our support for this innovative campaign and will work to adopt and prioritize its seven-point framework for building a better future.
PROMOTING LAWYER WELLNESS – BEGINNING TO ADDRESS THE PROBLEM

How do firms nurture lawyers and help them stay well?

- Director of Wellness
- Fitness Centers
- Yoga Space
- Policies to encourage
- Training, Education, Retreats about Wellness
- Non-alcohol Events
- Maximum billable hours and lowering minimum
The National Task Force on Lawyer Well-Being concluded, in part:

“To preserve the public’s trust and maintain our status as a self-regulating profession, we must truly become “our brothers’ and sisters’ keepers,” through a strong commitment to caring for the well-being of one another, as well as ourselves.”
To be a good lawyer, one has to be a healthy lawyer

QUESTIONS?

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See You Next Year!
TECHSHOW 2021: March 10-13, 2021