

“We’re From The Bar, And We’re Here To Help You” Lawyer Assistance Programs

By John W. Clark Jr.

There are times in life, usually times of crisis, when a friendly face is welcomed with relief and gratitude. Sometimes it’s the face of someone we know personally who is willing to do what she can to comfort and console us. Sometimes it’s the face of someone whose familiarity with crises and expertise in such situations is much needed and appreciated. Sometimes it’s the face of someone we’ve never met and who is not a trained professional, but someone who nonetheless has been through exactly what we are going through and is willing to take some time, lend a friendly ear, and offer advice or words of encouragement. A Lawyer Assistance Program (LAP) is, in many ways, a friendly fireman—not there to judge, only to help put out the fire.

From time to time, the person in need, the person in crisis, is an attorney. Such a situation is made all the more precarious by virtue of the position of authority maintained by attorneys in our society and the enormous responsibility that attorneys are asked to carry—for themselves, their partners, coworkers, employees, clients, friends, and family. What happens when an attorney can no longer shoulder that burden? What happens when an attorney’s ability to practice law becomes impaired?

The purpose of this article is to examine the type of situation described above, to educate attorneys, their friends, and families regarding one of the resources available to provide assistance to impaired attorneys, and to describe, albeit generally, how this resource assists troubled attorneys, helps them and their families get back on their feet, and returns such attorneys back to the healthy productive practice of law.

What Is a LAP?

An important resource available to most struggling attorneys is an entity known generally as a “LAP,” or lawyer assistance program. The nature and operation of LAPs vary from state to state. Briefly put, a LAP is a coordinated program, usually supported by a state bar association or related agency, consisting of trained professionals or volunteers charged with the duty of assisting members of the legal community—usually attorneys, judges, and law students—who are suffering from mental or physical conditions that may impair their ability to practice law.

Origins of LAPs

During the past 25 or so years, there has been a broad trend among state bar associations to commit more resources toward improving the quality of life for bar members

specifically and members of the legal community generally, including judges, attorneys' families, law students, former attorneys, paralegals, and legal assistants. One such initiative that began in the mid-1980s was an attempt on the part of a few bar associations to address the disturbing increase in abuse of alcohol and drugs by licensed attorneys. In many states, these initiatives took the form of LAPs.

Much of the precise history of LAPs, including their point of origin and early history, is subject to conjecture. It is generally accepted, however, that the original LAP began as an effort on the part of recovering alcoholic lawyers in the state of Kentucky to help their colleagues get and stay sober. The LAP in Kentucky was begun in the mid-1980s under the aegis of the Kentucky Bar Association and was loosely based on the 12-step program of Alcoholics Anonymous. The organizational structure and operational tenets of that LAP were embraced by the American Bar Association, which in 1988 created what is now known as the Commission on Lawyer Assistance Programs (CoLAP), designed to help member state bar associations address addiction issues among their membership.

During the past 16 years, with the help of thousands of people, both lawyers and nonlawyers alike, LAPs have grown remarkably, not only geographically but also technologically. CoLAP now offers support to independent LAP programs in almost every state in the United States. In most cases, these programs are administered by professionally trained and licensed counselors who offer help and support with issues ranging from addiction (including drug/alcohol abuse, gambling, eating disorders, and addiction to sex) to problems having to do with mental health issues (including depression, bi-polar disorder, and burnout). In some states, LAPs have even attempted to reach out to attorneys suffering from all manner of physical impairment, from physical disabilities to other types of diseases that could affect an attorney's ability to practice law.

Problems Presented to LAPs by Attorneys

Substance abuse. As mentioned above, LAPs were originally organized to address the problems surrounding addiction to alcohol and drugs. In the field of behavioral health, it is generally accepted that addiction constitutes a chronic, progressive disease that, left untreated and barring intervening factors, is fatal. Surveys reveal that as high as 18 percent of all lawyers—nearly one in five—will personally develop problems related to substance abuse. That figure does not include the number of partners, associates, family members, and colleagues who will be forced to deal with the effects of addiction as a result of an impaired attorney they know or work with.

Unlike many other diseases, addiction still carries pejorative connotations. Many well-educated and otherwise caring people continue to believe that substance abuse stems from some sort of moral failing or ethical shortcoming, and that those so "afflicted" are personally flawed. If the addicted person were merely willing to adequately exercise his or her will, he or she would be able to stop drinking or using. Unfortunately, such beliefs only impede recognition and treatment of substance abuse.

The problem is made worse by the fact that many doctors, nurses, and other healthcare professionals are not adequately trained regarding the disease model of addiction, nor are they sufficiently trained to recognize and treat addiction when confronted with it in their patients. Most addiction treatment professionals will tell you that less than 10 percent of the persons actually suffering from substance abuse and in need of professional help will ever break through the barrier of denial and stigmatization and receive/accept the assistance they need. Every year, hundreds of thousands of people die as a result of addiction-induced problems (e.g., cirrhosis, heart attack, stroke, emphysema, accidents involving alcohol/drugs, etc.), and many die never acknowledging that they had a problem.

It is now generally acknowledged that most, if not all, impairment problems, particularly substance abuse-related impairments, can be successfully treated with therapy and/or medication. The first step, however, is to break through the denial, stigma, and shame often associated with substance abuse so the affected person can get the help he or she needs. This step is invariably made easier by better public education and awareness of the medical basis of addiction.

Mental health. LAPs now often help attorneys address problems involving mental health. Any of a variety of mental health challenges may confront attorneys, but by far the most frequently encountered by LAPs among legal professionals is depression.

It should be noted here that when we talk about depression, we are not talking about a “bad day at the office” or a mild “case of the blues.” Instead, we are talking about a clinical depression that, left undiagnosed and untreated, can and often does prove fatal, whether as the result of suicide or otherwise. It should further be noted that there is not merely one type of depression. *The Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (DSM-IV), the primary diagnostic tool used by mental health professionals to diagnose and treat mental health problems, lists a variety of ways in which depression can manifest itself, from long-term low-grade depression (dysthymia) to the type of depression that makes it virtually impossible for a person to work or even get out of bed (major depressive disorder). Additionally, depression can be merely one symptom of a more involved condition. For instance, a person can experience alternating periods of highs (hypomania or mania) and lows (depression). A person with such mood swings may be experiencing any of a variety of mood disorders (cyclothymia, bi-polar II, bipolar I) that, if severe enough, can inhibit an attorney’s ability to practice law.

Research has shown that approximately 15 percent of lawyers will encounter some form of depression during their careers. While many of those suffering from alcohol/drug abuse also experience some form of depression (a condition known clinically as comorbidity), there are many attorneys who experience depression independent of alcohol/drug abuse, and vice versa.

In light of the foregoing, it is readily apparent why many LAPs during the past ten years have been forced to educate and train themselves to confront mental health problems in the attorney population at large.

Other problems. Recently, many LAPs have been called upon to address a variety of other conditions that, though not related to substance abuse or mental health disorders, nonetheless can materially impair an attorney's ability to practice law. Many addiction-based issues, including problems with eating disorders, gambling, sexual addictions, and the like, readily lend themselves to the same types of treatment protocols required for treating substance abuse. Other impairment issues—including physical disabilities and/or diseases such as Alzheimer's, Parkinson's, and multiple sclerosis—are less readily ameliorated by LAP staff and volunteers. Nonetheless, some LAPs have taken it upon themselves to attempt to address such issues.

How Does a LAP Work?

What happens when someone actually calls a LAP seeking to obtain help or information for him- or herself or for a colleague?

First, it should be noted that no two LAP programs operate in precisely the same fashion. In 1995 the ABA House of Delegates approved (and in 2004 amended) a model LAP upon which actual programs have been founded. But like all "model" programs or codes, the format is only suggestive, not mandatory.

The backbone of most LAPs is the maintenance and operation of a confidential hotline that can be accessed directly by attorneys, family members, and friends to get help for an impaired attorney and facilitate his or her access to treatment.

A LAP staff member usually will conduct an in-depth interview with the person making the call. Who are they? Are they seeking assistance for themselves or someone else? What have they experienced or observed that leads them to believe they or the other person has a problem? In short, the LAP staff member will ask the materially relevant questions necessary to determine if the person in question is in fact experiencing a problem that the LAP can help address.

If the answer is "yes," the LAP staff member will proceed to evaluate the needs presented by the caller and to determine what resources are available. In some states, the LAP staff member may be a trained counselor and may be able to immediately begin discussing the caller's problems.

Sometimes, the impaired attorney has not yet lost everything and still has access to resources, including personal financial assets and health insurance. In many instances, however, the lack of financial resources represents a legitimate and substantial impediment to the impaired person's access to assistance. Often it is incumbent upon the impaired person, the LAP staff member, or others to marshal the assets necessary to obtain assistance. In rare cases, LAPs may be prepared to provide some sort of financial aid to the impaired person.

Volunteers are another resource that most LAPs can utilize. Through the years, many LAPs have developed networks of volunteers ready and willing to help other attorneys

suffering from the effects of alcohol, drugs, depression, or other impairments. Many of the volunteers have personal experience with these same problems. This personal experience tends to increase the likelihood that impaired lawyers will accept their assistance.

Almost every LAP maintains a list of well-qualified mental and physical health providers. In some states, direct referrals are made to treatment centers and mental and/or behavior health hospitals.

In most states, LAPs operate on a purely voluntary basis. Such programs possess no authority to compel an attorney to confront his or her impairment issues. Other LAPs do contain a regulatory component. In such states, the LAP usually becomes involved once an attorney has been sanctioned through the grievance process; the LAP is often responsible for helping the attorney comply with a disciplinary order, and it can conduct ongoing monitoring where necessary.

Anonymity, Confidentiality, and Immunity

Most states have adopted, by court order or state statute, clear and direct rules protecting the confidential nature of any and all phone calls made to a LAP or information received by a LAP. When someone calls a LAP, not only is the anonymity of the caller protected, but the confidential nature of the information conveyed to the LAP is also guarded. Thus, the LAP is prohibited from relating any of the information received to any person or body, regardless of that person's or body's identity or bona fide need to know. LAPs are barred from responding to any court order or subpoena requesting information regarding the identity of a caller or the specifics of a caller's conversation with the LAP staff member.

Additionally, many states have afforded to callers a qualified grant of immunity from prosecution, whether in criminal or civil court, when the caller's justification for making the call is a good-faith belief that the person in question was truly in need of assistance.

Even with the assurance of confidentiality, anonymity, and immunity, many people are reluctant to call LAPs because they "just don't want to get themselves or someone else in trouble." Sometimes truly caring and informed attorneys, judges, partners, and friends will not make that first call because they fear they may become exposed to a lawsuit. This reluctance extends to family members who may not like the problem they are living with, but fear that any change may affect their own security.

Unfortunately, just as no one can force an impaired attorney to get healthy, no one can force relevant parties to report an attorney who they know is practicing under an impairment. The Model Code of Professional Responsibility is neither so carefully written nor so rigorously enforced as to uniformly compel judges, partners, etc., to report a lawyer who only appears to be addicted or suffering from some form of mental illness. In most cases, the Code of Professional Responsibility is interpreted to recommend or suggest reporting the apparently afflicted lawyer. Until there is some clearly identifiable

breach of the Code of Professional Responsibility, most observers, including an attorney's partners, associates, other attorneys, and judges, are not compelled to take action to address the underlying causes.

LAPs and the Law Firm Setting

In the past, LAPs have most routinely and effectively confronted and assisted with the problems presented by the impaired sole practitioner or small firm attorney. Such attorneys are often more inclined to run into trouble, as they usually have no one around to monitor their activities. Frequently, such attorneys have no insurance and are less likely to have extensive resources for treatment. LAPs are frequently "the last house on the last block" for such attorneys. On the other hand, such attorneys often have no one to run interference for their transgressions or "enable" them professionally.

Large law firms are much less likely to access the resources offered by LAPs. Instead, larger firms have tended in the past to attempt to address impairment problems internally. They may have committees charged with the duty of obtaining help for partners or associates in trouble. Unfortunately, while the lawyers participating in such committees may be excellent attorneys, they are not often excellent treatment professionals. Furthermore, it is not uncommon for in-house committees to attempt to minimize the liability to which the firm may be exposed, rather than immediately seeking help for the impaired attorney.

Some of the aforementioned ethical quandaries have been addressed in two very recent ethical opinions published by the ABA. These commendable opinions have or will soon cause law firms to review their policies on how to deal with impairment. Most LAPs are quite happy with the supporting language found in ABA Formal Opinions 03-431 and 03-429, published in 2003. These ethical opinions impose more rigorous duties and standards upon law firms, administrators, and judges when it comes to reporting attorneys who may be practicing under the influence of drugs, alcohol, or other impairments. (For further discussion of these opinions, see the article, "When Colleagues Need Help," on page 14 of this issue.)

It's a sad commentary that most partners and associates in a typical law firm setting are still unaware of the confidential assistance available through LAPs. It is also disappointing that LAPs have not been able to penetrate the protective walls of most larger law firms and develop a protocol for working within such firms on a confidential basis. It is to be hoped that the two ethics opinions cited above will, over time, help improve the relation between LAPs and larger law firms.

Conclusion

In addition to LAPs, there are many other avenues to recovery for impaired lawyers, including many fine independent drug and alcohol counselors and addiction-educated psychologists. Individual lawyers must find the path to recovery appropriate for them. In

times of crisis, however, LAPs often present a very welcome face to the attorney and family in need.

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