

Mental Health, Malpractice Avoidance and Ethical Conduct

By now we have all seen the headlines regarding the mental health crisis among lawyers. In the ALM Intelligence 2022 Mental Health and Substance Abuse Survey, 44% of respondents agreed that mental health problems and substance abuse are at a “crisis level” in the profession.

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A staggering three-quarters of the respondents reported the profession had a negative impact on their mental health over time. The causes of this stress included always being on call, billing pressures, client demands and lack of sleep.

In May 2021 the peer-reviewed journal PLOS One (Public Library of Science) published an article titled “Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among Licensed Attorneys.” The article was produced with the participation of the California Lawyers Association and the D.C. Bar. The article found that nearly half of the attorneys surveyed/screened were experiencing symptoms of depression and anxiety, and nearly 20% of the participants were rated in the moderate to severe range. More than 50% of the participants reported moderate to severe stress. More than 50% of the participants reported “risky drinking,” and nearly 30% reported “hazardous drinking.” The rates of mental health distress and “hazardous drinking” were both higher for women than men.

Younger attorneys were much more affected by stress than older attorneys. The study found that nearly a quarter of the female attorneys and 17% of the male attorneys were thinking about leaving the profession. Work-family conflict and work over-commitment were the largest factors leading to these mental health issues and contemplation of leaving the practice of law. For purposes of legal malpractice avoidance and the ethical practice of law, I found these lines from the conclusion of the study to be the most telling:

“Ultimately, when a client hires an attorney or law firm, they expect that the individuals representing them are not experiencing cognitive impairment or diminished executive function due to job burnout. In a profession where work over-commitment appears both rampant and significantly predictive of high stress, it would be reasonable to question how consistently those client expectations are being met and whether more safeguards are warranted to facilitate less over-commitment across a variety of legal work environments.”

This rings true to what I have seen over and over again in my practice representing attorneys. Many excellent attorneys over-commit themselves, causing undue stress, and their work for their clients suffers as a result. This can result in both civil liability for legal malpractice and discipline from the Supreme Court.

In March, a former Morgan, Lewis & Bockius attorney was suspended for a year-and-a-day. The attorney did not inform his client or the supervising partner about an adverse decision on a tax assessment appeal, and failed to timely file an appeal. Once a lien was imposed upon the client, the attorney repeatedly lied to the client stating that he was investigating what was going on while failing to inform the client that the assessment appeal had been denied. The lien created serious problems for the client because it caused a default of loan provisions. Eventually, the attorney prepared a false affidavit stating that he could not locate the decision.

An internal investigation was performed at Morgan Lewis after the client complained, and the attorney was terminated. At his disciplinary hearing, the attorney testified that he was in fear of losing his job and thought he could fix the problem. The attorney testified that a few years prior to this issue he was separated from his wife, and was diagnosed with severe depression, anxiety and adult onset ADHD. The attorney testified he was “in no way prepared” to handle the position as a practice group leader at Morgan Lewis.

The most telling aspect of the Disciplinary Board’s Report and Recommendations is a paragraph stating:

“In hindsight, respondent believes he should have taken some time before he accepted the position at Morgan Lewis to address his mental health, but at the time thought that his mental health issues were a weakness he could ‘power through.’ He recognizes now that his issues were not a problem he could handle on his own.”

The concept of “power through” is pervasive in our industry, as is the belief that stress, anxiety or depression are weaknesses. Many, if not most, attorneys like to see ourselves as able to take on whatever is thrown our way. There is no question that our profession self-selects for individuals who are willing to take on and handle stressful tasks. However, we must also recognize our limits and accept when it is time to seek help.

Fortunately, there are excellent resources for attorneys during these times. Most attorneys in Pennsylvania have at least heard of Lawyers Concerned for Lawyers (LCL). LCL is a free anonymous and confidential service which provides assistance and referrals for attorneys and their family members in dealing with a wide variety of mental health and substance abuse issues. While many might think of LCL as primarily a resource for dealing with substance abuse issues, it offers a wide spectrum of services to deal with everything from stress/anxiety/depression to all types of problematic behaviors including substance misuse, eating disorders and gambling. Importantly, LCL can offer services not only for yourself and family members, but you can also confidentially contact LCL regarding concerns about a colleague’s well-being.

The study published in PLOS One also offers some more general thought on how the profession as a whole might consider tackling

these issues. The study suggests looking to the efforts made by physicians to reduce burnout in their profession:

“Professional training and interventions that have proven effective in addressing burnout among physicians could be considered for the legal profession, such as cognitive behavioral therapy, monthly meetings focused on work-life and personal challenges, offloading nonessential tasks to staff, standardizing and synchronizing workflows, stress-reduction activities and adherence to limitations in work hours.”

The bottom line is that your mental health affects not only you, but also your ability to effectively and professionally represent your clients. If your mental health is impaired and you do not address it, then you are much

more likely to engage in behaviors that can lead to bad outcomes for your clients and potentially legal malpractice claims or ethical violations. If you believe that you or a colleague is suffering from a problem that affects your ability to work effectively, then please seek help before it becomes a bigger issue for you and your clients.



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