

Your Well-Being Matters: Attorney Mental Health and Professional Competence

Attention to well-being is critical from the perspective of a lawyer's own health and the attorney's law practice.

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By Alesia S. Sulock and Josh J.T. Byrne

On the heels of “Well-Being in the Law Week,” a refresher on the importance of attorney well-being as a matter of professional competence is appropriate. While we routinely understand competence to include expertise in the field of law pertaining to a particular matter, the concept is so much more. Often, a lack of competence in providing legal representation has nothing to do with the attorney's experience in the area of the law, but instead arises from external factors that impact the lawyer's ability to operate effectively in his or her practice. Thus, on the one hand, the Pennsylvania Bar recognizes the well-being challenges faced by attorneys in this commonwealth and strives to support attorneys facing such challenges. On the other hand, attorneys must be held to a standard that includes providing clients with effective representation, notwithstanding the attorney's personal life. Thus, attention to well-being is critical from the perspective of a lawyer's own health and the attorney's law practice.

Pennsylvania Rule of Professional Conduct 1.1 requires attorneys to provide competent representation to their clients. “Competent representation requires the legal knowledge, skill, thoroughness and preparation

reasonably necessary for the representation.” See Pa. R.P.C. 1.1. In the context of disciplinary matters, mental health, addiction, and other well-being issues are routinely found to impact questions of attorney competence. While such matters can be mitigating factors in considering the imposition of discipline, the Disciplinary Board must also consider the risk an attorney facing such issues poses to clients and potential clients in the commonwealth. Thus, these matters are often only mitigating factors to the extent an attorney recognizes and strives to address these issues. In *ODC v. Childs*, 160 DB 2022 (2023), the respondent was suspended for two years on consent after he failed to comply with court orders in several matters pertaining to one client, made misrepresentations to opposing counsel and his client, falsified letters and failed to respond to the DB-7 request for respondent's statement of position. The joint petition for discipline noted as a mitigating factor that the respondent suffered from mental health and addiction issues which may have been a factor in his misconduct and, importantly, that respondent had sought treatment and was continuing to address those issues.

The Rules of Professional Conduct expressly address what an attorney must do when a lack of well-being impacts the ability to adequately represent clients. “A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: ... the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client[.]” Pa. R.P.C. 1.16(a)(2). A failure to withdraw when competent representation cannot be provided may result in discipline against an attorney. In *ODC v. Grenko*, 141 DB 2023 (2023), the respondent was suspended for one year and one day on consent when the “respondent’s physical or mental condition materially impaired the respondent’s ability to represent the client yet the respondent failed to withdraw his representation.” The respondent had failed to competently perform legal services in a guardianship proceeding in which he had been appointed guardian for an incapacitated person.

The respondent suffered from metastasis of an earlier cancer illness, depression related to his medical condition and resulting deteriorating personal finances and legal practice. Suspension of one year and one day was specifically recommended, and accepted, so that respondent would be required to petition for reinstatement, at which time he would have to address his physical and mental health issues in connection with proving his fitness to practice law. Thus, although the Office of Disciplinary Counsel and the Disciplinary Board recognized the respondent’s physical and mental health problems as mitigating factors, they likewise required the attorney to address and improve those conditions before he would be permitted to practice law again.

Efforts to address and improve attorney well-being have escalated in recent years. In 2017, the American Bar Association launched its well-being pledge campaign, focusing on improving substance use and mental health issues in the legal profession. Closer to home, last year the Pennsylvania Disciplinary Board created a lawyer well-being webpage where Pennsylvania attorneys can find articles, resources, events and CLEs addressing mental health and well-being among attorneys. Many attorneys are familiar with Lawyers Concerned for Lawyers, a resource that confidentially helps attorneys and their families address not only substance use but also a wide range of mental health topics, including grief, stress, anxiety, depression, gambling, eating disorders and others. Law firms and employers are expanding efforts and resources for attorneys to prioritize their own well-being and that of their colleagues.

Attorney well-being is an all encompassing phrase that runs the gamut from physical health to mental health and everything in between. During the first week of May, attorneys will see programming aimed at promoting physical fitness, positive work environments, emotional health and work-life balance. These issues cannot be adequately addressed with one week of motivational emails, however. It is incumbent upon attorneys and their employers to recognize the importance of attorney well-being, to put practices in place to improve and promote well-being, and to recognize when problems arise to promptly address and mitigate them. These efforts can improve the quality of services attorneys provide to their clients, protecting against disciplinary complaints and legal malpractice matters. Even more importantly, careful attention to attorney well-being can improve

the quality of life of members of our profession, an outcome which benefits attorneys, their families and employers, and our clients.



Alesia S. Sulock, a shareholder with Marshall Dennehey, is a member of the professional liability department where she focuses her practice on the defense of claims made and suits brought against attorneys, including legal

malpractice claims, Dragonetti suits, abuse of process claims and disciplinary matters. Contact her at assulock@mdwcg.com.

Josh J.T. Byrne is a shareholder at the firm where he represents attorneys in civil and disciplinary matters. He is the chair of the Pennsylvania Bar Association's professional liability committee and co-chair of the amicus curiae brief committee, the co-chair of the Philadelphia Bar Association's professional responsibility committee, and former co-chair of the professional guidance committee. Contact him at jtbyrne@mdwcg.com.