LAW FIRMS, ALCOHOL/DRUG POLICIES, AND ASSISTANCE PROGRAMS

Ken had made partner a decade ago and was liked and respected by colleagues within and outside his firm. He enjoyed camaraderie, and though known as a heavy drinker, always got the job done, and done well. But his behavior began to change in ways first seen only by a few, and later by an increasing number of coworkers. He began arriving later and leaving earlier. He seemed irritable more of the time. His formerly exacting standards in document preparation were replaced by a relative apathy. Clients complained that they could not reach him. He often had alcohol on his breath when returning from lunch. On one occasion, his behavior at a lawyers' social function led to allegations of sexual harassment.

Ken's subordinates at the firm, who had become accustomed to correcting his escalating errors, were in no position to confront him. His peers, reluctant to offend one of the firm's major rainmakers, hoped that he would eventually get over whatever was wrong, and said nothing or made excuses for him.

How does this story end? That very much depends on how prepared Ken's firm was to deal with personal problems (particularly alcohol or drugs, the focus of this article) in a pre-planned, rather than ad hoc, fashion.

For too long, law firm management has been reluctant to deal with the impaired attorney. Whether as a result of an unwitting participation in the impaired attorney's denial or a fear of offending or sending him/her over the edge, the underlying hope is that the problem will just go away. It rarely does. But, with the right tools in place, management can effectively facilitate the successful rehabilitation of the lawyer.

To deal with a substance abusing attorney, a law firm needs three tools: 1) a comprehensive alcohol and drug policy, 2) a working relationship with the state's lawyer assistance program, and 3) an awareness of the behavioral signs of impairment (see sidebar).

The purpose of this article is to inform the reader about developing such a policy with the help of existing supports, especially lawyer assistance programs, and about how to recognize when the policy should be applied.

Lawyer Assistance Programs

The Lawyer Assistance Program, or LAP, is a specialized version of the EAP, or Employee Assistance Program. EAPs were conceived as early as 1917, but were embraced more widely in the 1940's when companies such as Macy's, Northern State Power and Gillette recognized the need to address alcoholism among their employees, including white-collar workers. By teaching managers and supervisors how to recognize, document, constructively confront, and offer treatment options to the alcohol-impaired employee, based on deteriorating work performance, they became a powerful means of motivating workers to obtain help for their alcohol problem rather than to risk job loss or disciplinary measures.

A policy-based employer intervention with an impaired employee demonstrated 60 to 80% of the time a win-win benefit to both parties: restoration of the employee to health, retention of a skilled and knowledgeable individual, and avoidance of costs associated with impaired or terminated employees. As employers realized that work performance was affected by factors other than just alcohol and that employees needed help with all kinds of problems, employee *alcoholism* programs evolved into employee *assistance* programs and began to treat mental, emotional, financial and family problems as well. By 1980, approximately 10 million employees were covered by EAPs. With such obvious benefits to both employer and employee, that number is now easily doubled or tripled.

Attorneys are no less vulnerable to alcohol abuse and dependency than others. They are proportionately over-represented among those battling alcoholism, drug addiction and mental health problems, a fact understandable in view of personal and professional patterns of over-achievement, heavy workloads, intense competition, and daily stress. As professionals in positions of special trust, the consequences of their impairment are potentially greater.

It should be no surprise, therefore, that a parallel system of Lawyer Assistance Programs has come into existence. Although most LAPs have evolved to share goals similar to EAPs, they developed much more recently, quite independently, and from 2 separate sources within the profession.

In the 1970's, informal, voluntary networks of recovering attorneys began to form throughout the states. They offered mutual support and outreach to other attorneys whose practices were being compromised by their addictions. As the need grew in the 70's and 80's for assistance offered by these groups, some states solicited funding from various sources and directors were appointed for what would become the first LAPs. The number of states having a lawyer assistance program or chemical dependency committee of the bar increased from 26 in 1980 to all 50 by 1999.

At the same time, the American Bar Association began studying and discussing the problem of alcohol- or drug-impaired attorneys. In 1988, in recognition of the toll this problem was taking on the individual, as well as on the profession (quality, liability, standards of conduct, image and esteem, criminal violations), the ABA created the Commission on Impaired Attorneys. Its purpose was to promote, assist and oversee the efforts of the various volunteer lawyer support networks and LAPs. In that capacity it provided education concerning lawyer addiction and mental health problems, developed and maintained a national clearing house on LAPs and case law, offered models and guidelines for LAPs, and addressed issues of confidentiality and immunity.

In 1996, the Commission changed its name to the Commission on Lawyer Assistance Programs (CoLAP) to avoid the stigma implied in its former name. More importantly, it widened its scope to recognize problems associated with depression and other mental health issues. This change reflected a concurrent expansion of focus among many LAPs in the '90's, beyond addiction to any problem interfering with an attorney's ability to practice.

The structure and scope of a LAP depends on its individual mission statement, the available funding, and whether the state bar is voluntary or mandatory. Some programs are staffed primarily by volunteers, others have professional managers with varying degrees of employee assistance experience, and still others also employ clinical staff. Depending on staffing, programs may address addictive problems exclusively, or may extend their purview to a full range of mental health and quality-of-life issues such as depression, balancing work and family, stress, career concerns. LAPs may also offer support groups, monitored probation, outreach, consultation and training, confidential help lines, individual peer support contacts, and knowledge of professional and community resources.

While they vary from state to state, LAPs share the common goal of providing assistance exclusively to members of the legal profession. They serve attorneys, judges, law students and their families. According to the 1996 CoLAP Survey of Lawyer Assistance Programs, judges are the second most frequently served group after lawyers, followed by law students, family members of lawyers, and legal staff. About half of LAP clientele is self-referred, the rest referred by firms, companies, friends, or the Bar. Basic service, which at minimum usually means assessment and referral, is free of charge. All service is confidential.

Law Firms' Alcohol/Drug Policies

Rationale

In choosing to develop an alcohol/drug policy*, a law firm recognizes that:

- Alcohol/drug problems are disorders and pervasive public health concerns rather than chosen behaviors or moral deficits. Thus, the most desirable response is not punishment but identification, education, and treatment/rehabilitation.

- The professional actions that flow from these impairments can nonetheless damage firms, clients, families, and society at large; shielding the alcohol- or drug-affected individual from the natural consequences of his/her behavior ultimately helps no one, and in fact perpetuates the problem.

- A rehabilitated attorney, who can return to a formerly high level of functioning, is worth more to the firm than a fired one or a new "trainee."

* Such policies often expand their scope to include other mental health concerns, which are outside the purview of this article.

Key Policy Elements

There is no "cookbook" recipe for a law firm alcohol/drug policy, which must be carefully thought through, negotiated, and adapted to the specific setting and culture, but these policies tend to have common elements. In 1990, the ABA Commission put together a set of recommendations for law firm alcohol/drug policies (copies available from COLAP), prominently including the following elements:

- A committee of appropriate, trusted individuals (from all levels of the firm's hierarchy) is designated as a resource and contact point for any partner/ associate/employee. It is important that members of this committee provide confidentiality to the extent permitted by law and ethics, though the concept of lawyer-client privilege does not apply.

- The policy specifies what kinds of alcohol/substance use are considered acceptable vs. unacceptable in the context of involvement with the firm, both on and off premises. For example, the firm might permit limited drinking at social functions and would need to distinguish this from what would be viewed as problem drinking.

- Although self-referrals are encouraged, there must be a mechanism for identifying and intervening with individuals who are impaired or unable to keep to the limits of the policy yet do not seek assistance. Earlier intervention, rather than delayed action, is more likely to achieve successful results. Typically, education/training is provided to staff as a component of this mechanism.

- A connection is maintained with the area lawyer assistance program and/or with a contracted employee assistance program. (Our experience is that there is a greater degree of trust with an entity having no direct connection with the firm.)

- Termination still results if there are repeated episodes of poor performance or behaviors prohibited by the policy.

Understandings and Caveats

- The firm supports (including, in some measure, financially) the idea of treatment/rehabilitation, with the expectation that the individual will undertake treatment (and monitoring, if applicable) in *good faith*.

- The fact of having accessed treatment or identified a problem cannot, in itself, result in disciplinary action, but treatment is not an excuse for ongoing poor performance or for further deviations from the firm's policy. Once a treatment/rehabilitation agreement has been reached, adequate performance does not remove the requirement for compliance with the treatment plan.

- It is important to note that lawyers are not clinicians. It is completely appropriate, in accord with the policy, to note poor performance, erratic behavior, etc., and to refer the individual for evaluation, but the *diagnosis should be left to a mental health/addictions professional*. For example, many of the tell-tale signs that we have listed (see sidebar) could be indicative of any number of conditions, including alcohol/drug dependence, mood disorders, post-traumatic stress disorder, neurological problems, family stresses, etc.

- *No member of the firm is so important or special as to be exempt from the limits set by the policy.*

Partnership

Partnership with your state's lawyer assistance program and all its resources can be the key to your success when a troubled partner, associate, or employee needs help. Your LAP can provide you with options on everything from developing an alcohol and drug policy, to how to confront the attorney, to treatment and continuing care plans.

Often, attempts to help or persuade an alcohol or drug impaired attorney, without professional help, meet with discouraging results. The impaired attorney's defenses create confusion and doubt in others and serve to intimidate those who care the most. In the treatment of substance abuse, the most effective strategies happen to be the most counter-intuitive. Alliance with your LAP can keep you on track and support you in taking the necessary measures.

Start with the LAP's confidential help-line and go from there. Some programs can, if needed, assist with an intervention (i.e., confronting the client regarding unacceptable behaviors or work performance and offering the option of treatment instead of discipline or possible termination). Or the LAP can refer you to an outside provider.

Most programs are equipped to evaluate the problem and make an appropriate referral depending on the lawyer's insurance, particular addiction and treatment recommendations. Most programs also have peer support networks and lawyer support group meetings made up of lawyers who are willing to serve as mentors for those beginning the recovery process. Certain programs provide monitored probation for impaired attorneys who have been disciplined. The formalized monitored probation helps to insure that the attorney is following the prescribed rehabilitation, which, in turn, protects the firm and supports the client's recovery.

It bears repeating that utilization of alcohol/drug policies and collaboration with lawyer assistance programs help the firm's bottom line, since valued attorneys/employees are rehabilitated rather than lost. With timely intervention, a potential crisis becomes manageable, the disease process is arrested, and often a career is saved.

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