

Lawyers and the Bottle (Part 2) **A talk with Eileen Travis and Meredith Heller**

I. Substance Abuse and High Functioning Alcoholism

- A. Substance abuse
 - 1. Substance abuse is also a big issue in the legal profession.
 - 2. Some lawyers abuse cocaine, heroin, prescription drugs, painkillers, Adderall, and others.
 - 3. NYC LAP offers assistance for alcoholism, substance abuse, and mental health issues.
 - 4. Severe drug addictions may require a medically supervised detox to be safely weaned off the drugs.
- B. Lawyers as high functioning alcoholics
 - 1. Many lawyers are high functioning alcoholics for a period of time. They are able to maintain their jobs and hide their alcohol abuse for years. All high functioning alcoholics do not remain high functioning for a long period of time.
 - 2. Typical high functioning alcoholics are in denial of their problem. They are able to hide the severity of their alcoholism from others, for the most part. They appear well groomed and are able to stay employed and maintain relationships for the time being.

II. NYC LAP Programs

- A. NYC LAP
 - 1. When a lawyer calls the confidential hotline, they may be invited to a confidential meeting.
 - 2. LAP representative assesses the extent of the issues. May recommend that the attorney attend the AA meetings or partake in a peer support program.
- B. Peer support program
 - 1. NYC LAP provides formal and informal monitoring
 - 2. Formal monitoring
 - a. Occurs when a disciplinary action has been taken or when an attorney received a letter from the disciplinary committee. Free peer support program
 - b. Requires attorney to sign an agreement. Is assigned a monitor.
 - c. Monitor is present to ensure that the attorney is meeting all their requirements.
 - d. Attorney must attend certain number of 12-step or abstinence based meetings, meet with the monitor once a month, have weekly calls with the monitor, and submit to random drug screens, paid for by the attorney themselves.
 - e. Monitor submits a report to the disciplinary committee stating whether the attorney is in compliance.
 - 3. Informal monitoring
 - a. Bar applicants who have history of DUIs or other similar crimes will participate in informal monitoring to show the Character and Fitness Committee that they are addressing the program.
- C. Preemptive response
 - 1. Talk to law students and warn them of risks.

2. Importance of awareness and education of these issues not uncommon in the profession.
3. Early intervention crucial to prevent escalating the problem.
4. Onus on firms to create a sense of community and collegiate environment without relying on alcohol.

III. Disciplinary Consequences

A. Disciplinary committees

1. Disciplinary committees typically get involved when there is a complaint of professional misconduct.
2. Ideally, any problems should be addressed before it reaches that point.
3. New York Rule 8.4 prohibits lawyer misconduct adversely reflecting on the lawyer's honesty, trustworthiness or fitness as a lawyer, or engaging in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.
4. Lawyers who know that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer are required to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. Client protection

1. Purpose of Lawyers' Fund for Client Protection is to protect legal consumers from dishonest conduct in practice, to preserve the integrity of the bar, to safeguard the good name of lawyers for their honesty in handling client money, and to promote public confidence in the administration of justice.
2. The Fund provides reimbursement to law clients who have lost money or property as a result of lawyer's dishonest conduct. It is a remedy for clients who cannot get reimbursement from the lawyer, insurance, or other sources.
3. Lawyers' Fund for Client Protection reimburses clients for funds that have been misappropriated by their attorney, up to \$400,000.¹

C. Disciplinary action

1. Typically initiated when a client, other attorneys, or a judge files a complaint to the disciplinary committee.
 - a. E.g. client files complaint alleging the attorney failed to communicate or was neglectful of client matters.
2. The committee screens and investigates the complaint. May institute disciplinary action against the attorney.
 - a. Committee investigates complaints that provide specific, factual basis for the complaint.
 - b. If committee determines the complaint has merit, it will give attorney the opportunity to respond to the complaint.
 - c. Ignoring the complaint is considered a failure to cooperate and may lead to suspension or disbarment.
3. Disciplinary committee purpose is to protect the public.

¹ State of New York Lawyers' Fund for Client Protection: <http://www.nylawfund.org/faq.html>

- a. Being an alcoholic or drug addict is insufficient to warrant a complaint. If the alcoholism or substance abuse interferes with the lawyer's ability to handle client matters or ability to practice, that is when the disciplinary committee gets involved.
4. Depending on the alleged wrong conduct, following forms of discipline may be doled out:
 - a. Letter of advisement – serves as a warning to the attorney from the committee. Does not go in the attorney's permanent file and does not need to be reported to the attorney's malpractice insurance.
 - b. Private admonition or censure – does go into attorney's formal file and must be reported to their malpractice insurance, as well as any other jurisdictions in which attorney is seeking to practice or be admitted pro hac vice.
 - i. Admonition s discipline issued by the committee where the respondent engaged in professional misconduct that does not warrant public discipline by the court.
 - ii. Censure, pursuant to Judiciary Law § 90(2), is issued by the NY Supreme Court.
 - c. Disbarment
 - d. A minimum of seven years, after which the attorney may apply to vacate the disbarment.
 - i. To be readmitted, the attorney must not have been convicted of a crime during the seven-year period.
 - e. After the seven-year period, the attorney may petition for reinstatement, submitting affidavits and information showing that he has fully complied with the order of suspension or disbarment. He must also retake and pass the Multi-State Professional Responsibility Exam.
 - f. When considering the attorney's readmission, the courts will consider a variety of factors including the attorney's admittance of wrongdoing and remorse, absence of other crimes, restitution, evidence of financial responsibility and employment, and any treatment for alcohol or drug abuse.
- D. Diversion program
 1. Disciplinary committee may place attorneys in diversion programs.
 2. Model Rules Diversion Rule recommends that during the course of disciplinary proceeding or investigation, Appellate Division may defer disposition of the matter and divert the respondent to the monitoring program if a respondent claims disability due to alcohol or other substance dependency.²
 3. When a complaint is filed against attorneys who do not have a prior disciplinary record, instead of getting a private admonition, they will be put into diversion, meaning the proceedings will be put off while the attorney participates in a program/treatment through the LAP.
 4. If the attorney can show a connection between the alcohol/drug addiction problems to a mental health issue, then they may be diverted into the LAP monitoring program.

² NY Model Diversion Rule <http://www.nylat.org/projects/diversionrules/comparison.html>

5. If the attorney successfully completes the program or treatment, he may avoid any disciplinary action.