

The Pursuit of Attorney Well-Being

How Organizations Can Ethically Assist Attorneys with Mental Health and Substance Abuse Issues

BY DAVID P. HERSH



Legal employer A wants to establish a lawyer well-being program for its lawyers, encouraging them to approach management for help with their mental health or substance abuse. Lawyer B works for employer A and has a drinking problem. She wants to get help from her employer but fears being reported to the Office of Attorney Regulation Counsel. How can employer A create a way for lawyer B to candidly discuss her issues and get the help she needs without subjecting her to discipline?

The answer is: it's complicated—but legal employers and their employees desperately need to figure this out. Fortunately, we are not alone. In recent years, there has been a profession-wide discussion about well-being, and the Colorado

Supreme Court has committed to helping lawyers pursue well-being by convening a task force to study the issue under the leadership of Justice Monica M. Márquez.¹

This article identifies challenges to promoting lawyer well-being and offers current resources that can assist with meeting those challenges. Hopefully, it will also stimulate a fruitful discussion that generates lasting solutions.

Framing the Challenges

This pandemic has been hard on lawyers, driving isolation, anxiety, and substance abuse to record levels. Of course, the data show that lawyers—more than other “high stress” professions—generally suffer from heightened

incidences of depression, anxiety, and substance abuse.² The pandemic has only made this worse as it interrupts our work life, our social life, and our connections to peers and family.

Experts tell us that “stigma” is a significant inhibiting factor for most lawyers, discouraging them from seeking help for well-being issues.³ Stigma arises from fear that other lawyers or judges will think poorly of the lawyer, that clients will become insecure, or that disciplinary authorities will take action if the issue is reported. For lawyers, this “professional stigma” fear is layered over the typical societal fear that any individual with mental health issues or substance abuse issues may face when contemplating asking for help and revealing a vulnerability.

The Ethics Environment

So how do supervising lawyers⁴ address stigma and encourage their peers and subordinate lawyers⁵ to come forward and get help while remaining ethical and discharging their obligations under the Colorado Rules of Professional Conduct (Colo. RPC)? How can supervising lawyers and subordinate lawyers work together to ensure we are all ethically pursuing and enhancing lawyer well-being, especially in these days of COVID-19? Supervising lawyers have obligations under Colo. RPC 5.1.⁶ All lawyers are obligated by Colo. RPC 8.3 to report misconduct.⁷ What happens if a lawyer's impairment caused or risks causing professional misconduct?

Relatedly, how can organizations establish a culture that encourages lawyers to come forward, be transparent, and seek help for well-being issues (and provide that help to those in need) while still maintaining ethical propriety? Firm management

and leadership set the tone and are likely in the best position to convey the message that well-being matters. They can also destigmatize seeking help. That said, at some level the need to destigmatize well-being issues may place supervising lawyers in a position that conflicts with the type of confidentiality required to "encourage lawyers and judges to seek treatment" or help for their well-being issues.⁸ And if subordinate lawyers fear the supervising lawyer will report their request for help to disciplinary authorities, that certainly could have a "chilling effect" on that subordinate lawyer's request for help. Returning to the initial hypothetical at the top of this page, how can this legal employer navigate these waters to a successful outcome?

At a minimum, legal employers should focus on creating an atmosphere that is conducive to employees seeking help and consistently promote the message that if employees need help, the firm wants them to get help. Employers

should encourage employees to seek help from the resources available.

Resources Available Now

Colorado has several excellent resources that are accessible to all lawyers in this state. The Colorado Lawyer Assistance Program (COLAP),⁹ a free and confidential well-being program for the legal community, is an independent agency of the Colorado Supreme Court providing confidential professional services to members of the legal community in need.¹⁰ Other peer assistance programs such as the Colorado Attorney Mentoring Program (CAMP)¹¹ and Colorado Lawyers Helping Lawyers¹² are excellent resources. Further, many health insurance policies provide employee assistance programs as part of the policy benefits, including behavioral health benefits and medical benefits for in-patient and out-patient care, and intensive out-patient programs. Employers should

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ensure employees are aware of these resources. The answer to the hypothetical question above may not require the firm to reinvent the wheel but rather publicize existing resources.

For example, a lawyer can immediately contact COLAP for consultation. This would both maintain confidentiality and ensure that the lawyer receives excellent resources to assist her or him in obtaining help. Once COLAP is involved, further guidance will be given to the lawyer, the organization, and anyone else who requests it, such as the lawyer's family. Confidentiality is assured separately for everyone, and real help can be provided to the lawyer in need of well-being assistance.¹³

Conclusion

It is essential for legal employers to support lawyer well-being, but they must also consider the constraints imposed by the Rules of Professional Conduct. A healthy in-house well-being culture

can encourage lawyers to get the help they need while protecting ethical norms. As we work together in pursuit of enhanced lawyer well-being, it is encouraging to know that the promise of further guidance and resources is on the horizon.¹⁴ ^{CL}



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NOTES

- See Márquez and White, "Call to Action: The Supreme Court's Task Force on Attorney Well-Being," 96 *Denver L. Rev.* 247 (2019), https://static1.squarespace.com/static/5cb79f7ef6793296c0eb738/t/5cb7a01a02d7bcc7a186379d/1551423412037/Vol96_Issue2_MarquezWhite_FINAL.pdf.
- See Krill et al., "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," 10 *J. Addiction Med.* 46 (2016). See also Buchanan et al., "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change (The Report of the National Task Force on Lawyer Well-Being)" (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>. For additional resources, visit <https://www.coloradosupremecourt.com/Current%20Lawyers/TaskForceWellBeing.asp>, <https://lawyerwellbeing.net>, and <http://coloradolawyerwellbeing.org>.
- This article focuses on aspects of well-being encompassing mental health (such as depression, stress, and anxiety) and substance abuse. Of course, there are many other aspects to lawyer well-being.
- For convenience, the terms "supervisory lawyer" and "supervising lawyer" are used here as a shorthand for the descriptions in the Colorado Rules of Professional Conduct, such as Rule 5.1.
- This term is lifted from Colo. RPC 5.2.
- Rule 5.1 requires supervising lawyers to be responsible for the ethical compliance of subordinate lawyers, requires supervising lawyers to have in place measures giving reasonable assurance that all supervised lawyers are complying with the rules, and imposes responsibility for ethical violations in certain circumstances. See also Colo. RPC 5.2, addressing a subordinate lawyer's responsibilities.
- Rule 8.3 governs the responsibility of all lawyers to report professional misconduct and provides exceptions and confidentiality for certain Supreme Court-approved peer assistance programs. See CBA Formal Ethics Op. 64 and abstracts of informal letter responses of CBA Ethics Committee 96/97-08 and 96/97-14.
- See Colo. RPC 8.3, cmt. 5.
- <http://coloradolap.org>.
- COLAP is one of the peer assistance programs specifically exempted from reporting requirements under Colo. RPC 8.3(c). See also comments 3 and 5 to that rule. Our registration dollars support COLAP, and there is no charge for its services. The dedicated professionals at COLAP exist to help Colorado lawyers.
- <https://coloradomentoring.org>.
- Colorado Lawyers Helping Lawyers provides confidential support group meetings for judges, lawyers, and law students in need, <https://www.cobar.org/For-Members/Confidential-Assistance-for-Attorneys#9423369-colorado-lawyers-helping-lawyers-clhl>.
- See CRCP 254, which establishes COLAP's purpose and details the program's strict confidentiality.
- The Colorado Supreme Court has initiated a well-being pilot program to explore many of these issues and potentially provide further guidance to legal employers. See <http://coloradolawyerwellbeing.org>.

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