

Impairment
in the
Legal Profession

A Guide for Judges

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Introduction

One of every 10 legal professionals will deal with an addictive disorder (drugs, alcohol, gambling, sex, work, food) during their professional career - some estimates put it as high as 20%. Another 33% of professionals will experience either short-term or chronic symptoms of depression or stress. The cost to clients is obvious: inadequate preparation, missed court dates, trust account violations, irrational or unsound decisions, and so on. Less obvious is the cost to society in general and to the profession in particular. Society pays a price in terms of increased medical costs, accidents, and loss of productivity. Members of the profession, of course, bear the brunt of public ire and outrage.

Studies done by the Washington State Bar and the Oregon State Bar found that over half of their disciplinary cases are caused by these impairments. Data from Florida cases supports this finding. **Judges can play an important role in helping the impaired attorney. As a judge, you are in a unique position to see what often no one else does: the attorney in action. You also have considerable power and influence over the attorneys in your area.**

Understanding Chemical and Psychological Impairments

No one takes a drink of alcohol, snorts a line of cocaine, or places a bet on a football game thinking they'll become addicted. Most people believe they will be the ones who can "handle it" or may believe the drug they are using is not addictive. The process of moving from use to abuse to dependency varies depending on the person and the substance. Some alcoholics report they were addicted to alcohol from the first drink. Pathological gambling can begin in high school or earlier. Cocaine, especially if smoked, seems to be addictive very quickly. However, the process is usually slow, and it can take years before addiction actually interferes with everyday living. A generic definition of addiction is: "Engaging in the same behavior after suffering negative consequences as the result of that behavior."

There is considerable evidence that all addictions are the result of biochemical processes in the body. It appears that people who are predisposed to addiction metabolize alcohol and other drugs (including the adrenaline produced by gambling wins or losses) differently from the rest of the population. Addiction has been recognized by the American Medical Association since the mid-1950's as a **chronic** (an addict is never "cured"), **progressive** (it has a predictable course and symptoms and will not get better without some type of treatment), and, if untreated, **fatal** disease.

Likewise, psychological conditions such as depression, bi-polar disorder, schizophrenia, and obsessive-compulsive disorders are no longer considered to be solely the result of emotional trauma or other issues. Instead, such conditions are now believed to be primarily caused by imbalances in brain chemistry, a condition which can often be remedied through therapy and proper medication.

Myths and Misconceptions

There are many myths and misconceptions about chemical and psychological impairments. Here are a few of the more common ones.

Myth: I'm just a recreational user/drinker. That won't hurt me.

Fact: The use of drugs and alcohol can result in devastating physical damage. Marijuana can cause lung cancer; cocaine can cause strokes and heart attacks; heroin use can result in mental disorders, death from respiratory collapse, infection and AIDS if needles are shared; alcohol use is known to cause cirrhosis of the liver, cancer, heart disease, brain damage, loss of memory and impaired muscle coordination; amphetamine use can result in strokes and mental disorders; and barbiturates can cause death from respiratory collapse.

Myth: Drug use is a private matter. It is none of the Bar's business what I do on my own time.

Fact: Drug use affects performance. Most drugs continue to affect the user for 24 hours after use. Thus, many users report to work still under the influence, even if they are not "using" on work time.

Myth: I can't be an alcoholic; I still make it to work every day.

Fact: Most alcoholics can maintain a home and a job for extensive periods, but as the illness progresses, all aspects of their life suffer. Only a small percentage of alcoholics are on "skid row."

Myth: I don't know any alcoholics.

Fact: About one of every ten people that drink has a drinking problem.

Myth: You're not an alcoholic unless you drink a pint a day.

Fact: Experts have concluded that the quantity consumed is far less important than when, how, why, and what happens to an individual when he or she consumes alcohol.

Myth: Most alcoholics are middle-aged or older.

Fact: A University of California research team has found that the highest proportion of drinking problems occur among men in their early 20's, followed by men in their 40's and 50's.

Myth: Alcoholics and drug addicts are morally weak.

Fact: Addiction has been medically and legally classified as an illness. Saying an addict is morally weak is the same as saying that having diabetes is a question of willpower.

Myth: All alcoholics drink in the morning.

Fact: The craving for a morning drink is a "late stage" symptom and is rare among those in the early or middle stages of the disease.

Myth: Alcoholics drink every day.

Fact: Alcoholism is not determined by how often people drink, but by whether or not they can control their drinking once they start.

Myth: You can't become an alcoholic by drinking only beer.

Fact: People who drink beer simply have to drink larger quantities to get the same effect as with wine or distilled spirits. The amount of alcohol in a 12 ounce beer is equal to that in a 6 ounce glass of wine or a 1½ ounce shot of 80 proof alcohol.

Myth: Pills are okay; everybody takes them. Besides, a doctor wrote the prescription.

Fact: Addiction to prescription drugs can be as deadly as any other. Withdrawal from barbiturates can be fatal. Withdrawal from tranquilizers such as Valium or Xanax can take up to two years. Unfortunately, most physicians receive little or no training regarding chemical dependency in medical school and consequently are often sadly unfamiliar with the signs, effects, and prescribing protocols used for addicts and alcoholics.

Myth: People are friendlier when they are drunk.

Fact: Sometimes. But they can be more dangerous to themselves and others. The majority of domestic violence and vehicular homicides, half of all murders, and one-third of all suicides are substance related.

Myth: Black coffee and a cold shower will sober up a drunk.

Fact: All this does is produce a drunk who is awake. An awakened drunk may attempt to drive or do other things which he or she is no more capable of doing right than a sleepy drunk. Time is the only method of sobering up.

Myth: Getting out of depression is just a matter of time and right thinking.

Fact: Although it is true that some depression is situational (caused by circumstances that are sad or painful) and will pass with time, *clinical* depression is a biochemical illness which has little relationship to external circumstances and will only respond to treatment and proper medication.

Myth: Stress is just part of practicing law.

Fact: While the practice of law is an increasingly stressful profession, different individuals react differently to that stress. Some understand how to ameliorate or utilize the stress, while others become increasingly debilitated, hostile, and eventually paralyzed by the pressure. Factors contributing to an individual's response include training, brain chemistry, personality, or life style.

What Kind of Treatment is Available for Impaired Attorneys or Judges?

Treatment for impairments may include inpatient detoxification, inpatient hospitalization (four to twelve weeks is the average), and/or outpatient and aftercare counseling for up to two years. Successful treatment, whether inpatient or outpatient, will address all components of a person's life, including their physical condition, mental and emotional state, appropriate use of antidepressant medications, family and personal relationships, how they spend their leisure time, their professional life, financial situation, and any legal problems they may have.

The type of treatment the individual receives may ultimately depend upon financial resources, including insurance. Private treatment centers can be quite expensive, but many will work with patients and allow them to pay off the bill after they finish treatment and resume practice. There are also a number of nonprofit, sliding scale treatment facilities that cost little or nothing. "Twelve-step programs" such as Alcoholics Anonymous and Narcotics Anonymous are free and available virtually 24 hours a day. Lawyer assistance programs, such as Florida Lawyers Assistance, Inc. (described below), usually cost little or nothing.

What Motivates Someone to Seek Treatment?

The old adage that "you can't help an addict until he's ready to help himself" or until he has hit bottom has been proven to be inaccurate. While internal motivation on the part of the impaired person is important, external motivating factors are often necessary to overcome the denial and ambivalence which is universal in addiction, and which is especially entrenched in high intellectually functioning professionals such as judges and attorneys. There are a number of very effective factors which are useful in externally motivating the person into initial treatment.

Legal: Substance related charges such as driving while intoxicated, disturbing the peace, or possession of controlled substances represent manifest evidence of behavioral problems with chemicals. The treatment versus punishment issue frequently coerces a begrudging individual into treatment who later may move successfully into the long-term rehabilitation process.

Job: In those instances in which the impaired attorney is referred by a local judge, a grievance committee, The Florida Bar, or the attorney's firm, the threat to job and profession can be one of the strongest determinants in the lawyer's commitment to the initial phase of treatment.

Family: Chemical and psychological impairments are illnesses affecting all members of the family leading to disruption and deterioration of relationships within both the nuclear and extended families. A family's willingness to set limits on the patient's behavior can precipitate a "family crisis" which frequently motivates the impaired attorney toward the initial phase of treatment.

What Are The Warning Signs?

Warning signs of impairment are there if you know what to look for.

Absenteeism.

- Unexplained or repeated absences or tardiness for court appearances, depositions, etc.
- Peculiar or improbable excuses for absences.

Confusion or difficulty in concentration.

- Difficulty in recalling instructions, details, etc.
- Increasing difficulty in handling complex assignments.
- Difficulty in recalling own mistakes.
- Work requires more effort than it should.

Spasmodic work patterns.

- Alternate periods of high and low productivity.

Generally lowered job efficiency.

- Missed deadlines.
- Mistakes due to inattention or poor judgment.
- Making bad decisions.
- Complaints from clients.
- Improbable excuses for poor performance.

Poor interpersonal relationships.

- Overreaction to real or imagined criticism.
- Wide swings in morale or mood.
- Unreasonable resentments or hostility.
- Excessive suspicion.

Physical problems/symptoms.

- Complaints of fatigue.
- Back pains or other vague medical problems.
- Complaints of stomach problems or nausea.
- Repeated hospitalizations and/or accidents.
- Observable physical signs such as bleary eyes, wobbly, shakes, flushed face, widely dilated or tightly constricted pupils, bloodshot eyes, staggering, blank look/expressionless, standing or sitting immobile (as if in a trance), hand or leg tremors, downcast or disheveled appearance, slurred speech, lethargy, restlessness/nervousness/anxiety, panic reaction, facial tic, excessive talking, disoriented thoughts ("word salad"), silence.

Financial or legal problems.

- DUI's
- Client complaints such as failure to communicate or return telephone calls, failure to appear at hearings or depositions, or missing statute of limitations dates
- Trust account violations or misappropriation of client funds.

Appearing in court or elsewhere in an obviously abnormal condition.

Specific Signs of Clinical Depression (5 or more of the following symptoms continuing for more than 2 weeks):

- Feelings of sadness or irritability
- Loss of interest or pleasure in activities once enjoyed
- Changes in weight or appetite
- Changes in sleeping patterns
- Feelings of guilt, hopelessness, or worthlessness
- Inability to concentrate, remember things, or make decisions
- Fatigue or loss of energy
- Restlessness or decreased activities
- Complaints of physical aches and pains for which no medical explanation can be found
- Thoughts of death or suicide

REMEMBER: All people, including you, exhibit some of these problems occasionally. It is a pattern of problems over a period of time (several months) that should alert you.

What Can You Do?

If you are concerned about an attorney or fellow judge, the most unkind act you can do is to do nothing. If you suspect an attorney in your area has a problem with drugs, alcohol, or another condition which appears to be interfering with their law practice, or if you have any questions regarding impairment, **call Florida Lawyers Assistance (FLA) at 800-282-8981**. FLA can assist in exploring options available to you and to the attorney. You needn't give your name or the attorney's name. If you believe you or a fellow judge may have a chemical or psychological problem, you can call **FLA's confidential judges' hotline at 888-972-4040**. You need only give your location and a contact phone number - a recovering judge in your area will call you back as soon as possible.

What is Florida Lawyers Assistance?

Florida Lawyers Assistance is the organization created by the Supreme Court of Florida to assist attorneys, judges, law students, and other members of the legal community who may have personal problems that interfere with their personal or professional lives. These problems may include stress, family problems, emotional problems, and substance abuse problems.

The program was incorporated as a Florida non-profit corporation in 1986 in order to maintain separation and confidentiality from The Florida Bar and the Judicial Qualifications Commission, and is governed by a 15 member board of directors, five of whom are non-lawyers. The program is staffed by an Executive Director and Assistant Director, both of whom are recovering attorneys, and a volunteer network of over 300 individuals around the state.

What Services Does the Program Offer?

FLA provides assessment, short-term counseling, referral, follow-up, peer support, consultation and crisis intervention.

Assessment The FLA staff can assess the problem and assist the judge or attorney in getting appropriate help. An initial assessment is generally done in one to three sessions.

Short-Term Counseling If the person's problem is assessed to be something that can be treated by short-term counseling, FLA can provide this service at no charge, either in the office or by phone. Also available are audio tapes, video tapes, and written material on topics such as stress management, time management, and the like.

<u>Referral</u>	If the judge or attorney is assessed to need more than short-term counseling, FLA will refer the individual to the most appropriate resource in the community. This may include social service agencies, private therapists, physicians, hospitals, etc.
<u>Follow-Up</u>	After referral, the FLA staff will follow up to ensure that the judge or attorney is satisfied with the service and that he or she is progressing toward their goal. If the problem is chemical dependency, the person will be followed for a year.
<u>Peer Support</u>	An individual contacting FLA will be connected with a recovering judge or attorney in their part of the state who can assist them in getting involved with a 12 Step or mental health care program. In addition, they will be directed to the closest chemical dependency or mental health attorney support meeting in their area. There are over 25 such meetings weekly throughout Florida, composed of attorneys, judges, and law students who meet to assist and support each other.
<u>Consultation</u>	FLA can provide assistance to judges, law partners, friends or family members who are concerned about a judge or attorney. The FLA staff will help the concerned person explore the options available and make recommendations.
<u>Intervention</u>	If a judge or attorney is seriously in trouble with drugs or alcohol, or has a mental disorder that demands immediate treatment, the FLA staff can intervene with the person, arrange for appropriate treatment, and encourage the person to accept the necessary help.
<u>Monitoring</u>	In situations where the attorney's impairment has resulted in ethical or disciplinary violations, FLA can develop a monitored reporting system to insure that the attorney or judge enters into and maintains his or her recovery, providing the best insurance that such actions will not be repeated.

Is it Confidential?

Yes! Florida Lawyers Assistance has absolutely no connection with The Florida Bar or JQC other than one of cooperation. Its primary purpose is to assist judges and attorneys before they deteriorate to the point of receiving client complaints or otherwise become involved in the disciplinary process. Confidentiality of FLA's records is protected by Rule 3-7.1(o) of the Rules Regulating The Florida Bar.

How Do I Reach Florida Lawyers Assistance?

You can call the Fort Lauderdale office at 954-566-9040 or the toll-free number at 800-282-8981. A separate, confidential toll-free number is available for judges only at 888-972-4040. After business hours you will be provided with the 24 hour pager numbers for FLA's Executive and Assistant Directors. You can also reach Michael Cohen, FLA's Executive Director, by e-mail at: michael@fla-lap.org or Judy Rushlow, FLA's Assistant Director, at: judy@fla-lap.org.