

Message in a bottle: lawyers and alcohol

Seems like I've been getting more letters lately from judges and prosecutors telling me that yet another lawyer has been charged with or convicted of an alcohol-related criminal offense. Alcohol has long been a prominent fixture when lawyers gather together. From time immemorial, prosecutors, defense counsel, cops and reporters have waited out jury deliberations at local watering holes near the courthouse. Many lawyers will recall, from John Mortimer's *Rumpole of the Bailey* books, Horace Rumpole's after-court reveries with a glass of plonk at Pommeroy's Tavern.

But the intersection of alcohol and the legal profession is not always benign. Alcohol dependency and addiction plagues many lawyers, affecting both their personal and professional lives. It has been estimated that lawyers abuse drugs and alcohol at twice the rate of the general population.¹ A study of Washington State lawyers revealed that 18 percent of lawyers in practice from two to 20 years had an alcohol problem, and 25 percent of lawyers in practice for more than 20 years were problem drinkers.²

What business is it of yours?

What should the role of the discipline system be when alcohol gains the upper hand in the life

of a lawyer? Given the modern understanding of alcoholism as a disease, should it be of any moment to the regulators of our profession that a lawyer is alcohol dependent or addicted? If there is no provable connection between a lawyer's alcohol problems and her legal practice, of what business is

it to the system of lawyer regulation?

Historically, the Indiana Supreme Court has taken a bifurcated approach to the discipline of lawyers whose alcohol-induced misconduct, whether directly related to law practice or not, causes them to run afoul of the criminal law. The seminal Indiana case setting the stage for this distinction was *Matter of Oliver*, 493 N.E.2d 1237 (Ind. 1986). In that case, the respondent pled guilty to a misdemeanor charge of driving while intoxicated after being involved in a single-car accident. The criminal court withheld judgment in the case, and after a successful period of probation, it was dismissed without a conviction.

The question before the Supreme Court was whether the respondent should be disciplined as a lawyer. As it turned out, the defining fact in the case was that the respondent, at the time of the accident, was serving as a special prosecutor in a single criminal case in an adjoining county.

Prosecutors are different

The Court first examined whether the respondent should be disciplined for committing a criminal act that had a nexus with his fitness as a lawyer. The Court concluded that, absent aggravating circumstances, an isolated misdemeanor that is not directly related to law practice and not otherwise a crime reflecting adversely on honesty or trustworthiness will not support professional discipline. But in this case, that was not the end of the analysis. Reasoning that law enforcers, such as prosecutors, should not be lawbreakers, the Court held that the lawyer's conduct was prejudicial to the administration of justice. Unlawful conduct by lawyers charged with enforcing the criminal laws breed

public disrespect for law compliance.

Thus began the differential treatment between law enforcement lawyers and other lawyers for isolated convictions of alcohol-related misdemeanors. But what about "regular" lawyers? The Court believed that an isolated conviction should not normally result in professional discipline. But on the theory that there is a nexus with fitness to practice when lawyers engage in a pattern of disregarding laws that govern society-at-large, a series of criminal law violations will potentially result in discipline. Comment [2] to Rule of Professional Conduct 8.4 points out that a "pattern of repeated [criminal] offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation."

Disciplinary consequences

When lawyers run afoul of criminal laws, often because of alcohol-induced conduct, the disciplinary sanction usually includes probationary terms directed at abstention from alcohol. A material failure to comply with probation will generally result in an indefinite suspension from practice. This happened most recently in *Matter of Belleperche*, 846 N.E.2d 668 (Ind. 2006). Occasionally, if the lawyer's conduct is prompted by irresponsible use of alcohol and not the result of alcohol dependency or addiction, the conduct will be viewed as a conscious failure to conform to the requirements of the law, in which event, the disciplinary sanction may not involve probation. See, e.g., *Matter of Roberts*, 809 N.E.2d 841 (Ind. 2004).

This is not to say that the Commission is oblivious when lawyers are convicted of isolated, alcohol-related misdemeanors. Admission & Discipline Rule



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23(11.1)(2) requires lawyers to self-report any criminal conviction to the Commission, and Admis. Disc. R. 23(11.1)(1) requires the judge of the court in which a lawyer is convicted to also report the conviction to the Commission.

Where there's smoke

Some sobering statistics are that one arrest is made for driving under the influence for every 772 episodes of driving within two hours of drinking and for every 88 episodes of driving over the legal limit in the United States.³ In other words, a single drunk driving arrest is a huge red flag, signaling possible alcohol dependency or addiction.

Recognizing this concern, even when the criminal matter is an isolated event, I send a letter to the lawyer asking him to contact the Indiana Judges & Lawyers Assistance Program (JLAP) to get evaluated and, if appropriate, take advantage of its services. It is just a request, but its importance was reinforced a while ago when, within a few weeks of sending just such a letter to a lawyer, he was killed when his car ran into a tree. His blood alcohol content was over .20 percent. Just prior to the accident, his impaired driving had placed others at risk of serious injury or death.

The better alternative to disciplinary involvement is when a lawyer or a colleague of that lawyer sees that alcohol has become a problem in the lawyer's life, and the lawyer contacts JLAP of his own accord or because of a colleague's intervention. Too many of us have witnessed alcohol ruin a good lawyer's career. Standing by and feeling bad about it is cowardly. It is a disservice to the lawyer's clients and to the lawyer as a friend.

JLAP as a resource

Take a look at Admission & Discipline Rule 31. You will see that JLAP's services are highly confidential. Admis. Disc. R. 31(9). Plus, Rule of Professional Conduct 8.3(d) exempts JLAP staff and volunteers from the duty to report serious lawyer misconduct to the Disciplinary Commission. The Disciplinary Commission is never informed that a lawyer has gone to JLAP for help. My point is that there is no good reason to avoid taking advantage of JLAP's resources. The JLAP staff, Terry Harrell and Tim Sudrovech, are qualified, knowledgeable and caring professionals. Together with the JLAP board and a cadre of committed volunteers, they can help turn around the lives of lawyers who are struggling with alcohol and other problems. Check out their services at www.in.gov/judiciary/ijlap

or give them a call, toll free, at 866/428-5527.

Reasonable people might differ about the extent to which the discipline process should intervene in the private lives of lawyers, but I hope we can agree that if intervention contributes to preventing the death or disability of one of our brothers or sisters at the bar, we will all be better off for it. ☺

1. C. Beck, et al., "Lawyer Distress: Alcohol-Related Concerns Among a Sample of Practicing Lawyers," *10 J. L. & Health* 1, 50 (1995-96).
2. G. Benjamin, E. Darling and B. Sales, "The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers," *Int'l J. Law & Psychiatry*, 233, 241 (1990).
3. P. Zador, S. Krawchuk and B. Moore, "Drinking and Driving Trips, Stops by Police, and Arrests: Analyses of the 1995 National Survey of Drinking and Driving Attitudes and Behavior," DOT HS 809 184 (Washington, DC: National Highway Traffic Safety Administration 2000).

The views expressed do not necessarily represent the positions of the Indiana Supreme Court or the Disciplinary Commission.