



A LAWYERS ASSISTANCE PROGRAM AND THE DISCIPLINARY PROCESS

BY EDWARD J. CLEARY

*“our valley is
their abyss”*

Churchill had his “black dog.” Lincoln suffered from it throughout his extraordinary career. Recently, Tipper Gore, wife of the vice president, stated publicly that she too suffered from severe depression after her youngest child was severely injured.¹ Those of us who go through life with generic ups and downs do a disservice to those who suffer from severe psychological illnesses when we fail to recognize that our valley is their abyss.

When I was a child, my father’s best friend took his own life, leaving five small children. He was an attorney, as was my father, and he had suffered from severe depression for some time. I remember well how frustrated my father felt that he had been powerless to convince his friend to get the help he needed. In the years that have passed since this incident, I have heard other, similar stories about lawyers failing to get the help they needed.

Members of the legal profession are over-represented among those in the work force who suffer from severe depression. A study conducted by Johns Hopkins University in 1991 surveyed 12,000 people from different occupations and concluded that lawyers ranked number one on the list of occupations prone to depression.² Explanations offered for this result have included the pervasive stress inherent in the practice of law, the conflict-driven nature of the practice, and the demise of professional civility and camaraderie among practitioners.

These explanations offer little insight into how the profession should address the problem and serve only to show that some of the forces at work are interrelated (stress leading to incivility, etc) and perhaps why so many lawyers are dissatisfied with the profession — dissatisfaction being far removed from depression. Further, they don’t attempt to explain the serious cases, where depression threatens the life of the lawyer.

We all feel frustrated and disappointed on occasions but the medical profession tells us that chronic or clinical depression and bipolar disorder are something else entirely.

When I became director in July of 1997, I was saddened to learn of two recent apparent suicides of lawyers on the

day they were publicly disciplined. I was also disturbed to find that more lawyers than I had anticipated suffered from psychological illnesses of one kind or another. It could be argued that this is “not our problem,” as some have suggested, but I think we have an obligation within the legal community to address this issue and not ignore it or sweep it under the rug.³

DEPRESSION AND DISCIPLINE

In 1983 the Minnesota Supreme Court announced criteria for evaluating the defense of psychological illness when it is offered in a disciplinary matter.⁴ It is not enough simply to prove a severe psychological problem. A respondent must also show causation as to the misconduct; that treatment is underway; that it is working; that it has arrested the misconduct; and that the misconduct is not apt to recur. Few respondents can prove these factors by clear and convincing evidence.

Occasionally, an attorney facing charges and public discipline will raise the issue of depression, often when there are few other arguments supporting mitigation. If the conduct is serious enough (i.e. misappropriation), it is unlikely that such a defense will help. Even if the conduct is not as serious, the defense, without substantiation, carries little weight. However, in the close cases where private probation is an option, when a respondent can meet the criteria in support of a defense of psychological illness, we will often give the attorney a chance to prove that the misconduct is not going to recur. In those cases, we will monitor the treatment of the attorney and, if the attorney complies with the conditions of probation, he or she will not face public discipline.

It is not a defense to claim depression occurring after you have been charged with an offense. “Post-charging” depression is a rational response to an often highly stressful situation. Further, as a previous director noted, “psychological

insights may help distinguish transitory disorders from fundamental character but character itself must be dealt with in serious matters When an attorney takes funds, commits a crime, or lies to gain an advantage, . . . the law traditionally does not look to psychology for an explanation.”⁵ On the other hand, when an attorney without a discipline history or disciplinary problems “shuts down” and appears unable to cope, she may well be suffering from a psychological illness and she may well be heading towards serious professional problems coupled with immediate health concerns.

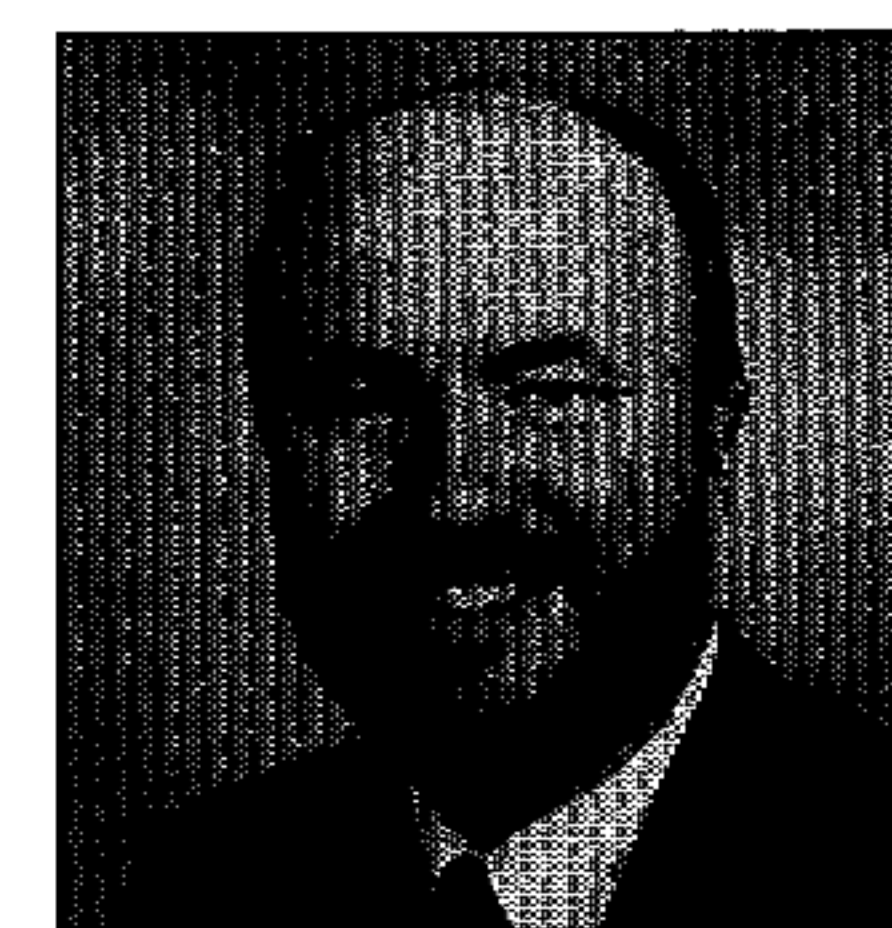
LAWYERS RESPOND

Three years ago the ABA created the Commission on Lawyers Assistance Programs with the primary goal of advancing “the legal community’s knowledge of impairments facing lawyers and its confidential efforts to assist with those issues.”⁶ In the spring of 1998, I contacted MSBA President Mark Gehan to inform him of my concerns regarding the lack of any emergency assistance for seriously depressed members of the bar. Other bar members had similar worries so the decision was made to have the MSBA revisit an issue that had last been examined in 1990.

This past year, the Minnesota State Bar Association created a Depression Task Force to study possible responses to the rising incidence of psychological illnesses and other impairments among the members of the legal profession.⁷ Members of the task force included representatives from this office, the MSBA, the judiciary, and attorneys in private practice. A decision was made to follow the Lawyers

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PROFESSIONAL RESPONSIBILITY

Concerned for Lawyers (LCL) model in proposing a Lawyers Assistance Program (LAP) for Minnesota lawyers.

LCL has provided various services confidentially to chemically dependent members of the profession along with their families for over two decades. With that limited mandate, LCL was not in a position to help lawyers suffering from problems not related to substance abuse, so there has not been a program for Minnesota lawyers who suffer from other impairments, particularly psychological illnesses. In a discussion with LCL members in February of 1998, I suggested to them that there was a significant need not being met by their organization. A number of them agreed and helped formulate a plan to address that need.

The final proposal of the Depression Task Force is for the creation of a new LAP, which will provide confidential services to lawyers in need, including a 24-hour crisis line and a network of mental health providers for in-person evaluations. The proposal, involving an \$8 increase in the attorney registration fee to fund the

program, was passed by a wide margin in the MSBA House of Delegates this past July. The Supreme Court will make the final decision regarding the implementation of the plan.

CONCLUSION

From the perspective of this office, it is important that Minnesota lawyers understand that, as was stated over a decade ago, we should "resist the idea that psychological labeling of certain behavior necessarily implies a disease-like situation and freedom from blame."⁸ Abdication from personal responsibility appears to be the hallmark of our times. That said, it is also important that this office continue its efforts at helping members of the profession before they get into disciplinary trouble. The LAP promises to assist lawyers and their families when the first signs of trouble arise. If we can keep some families intact and perhaps save lives in the process, while preventing disciplinary problems from starting or at least from getting worse, we may look back and wonder why we didn't act sooner to assist those

members of our profession who are truly in need of professional help. □

NOTES

1. Albert R. Hunt, "A Contributory and Courageous Revelation," *The Wall Street Journal*, May 13, 1999, A. 31.
2. Michael J. Sweeney, "The Devastation of Depression," *Bar Leader*, March/April 1998, 11.
3. See Mark W. Gehan, "Depression Among Lawyers," *Bench & Bar of Minnesota* (July 1998).
4. Matter of Disciplinary Action Against Weyhrich, 339 N.W.2d 274 (Minn. 1983). See also *In re Johnson*, 322 N.W.2d 616 (Minn. 1982), for similar criteria for evaluating chemical dependency mitigation claims.
5. William J. Wernz, "Psychological Problems and Discipline," *Bench & Bar of Minnesota* (August 1988), p. 13.
6. Robert A. Stein, "Aiding the Practice Impaired," *ABA Journal* (May 1999), p. 82.
7. Brian Becker, "MSBA task force considers need for attorney-counseling program," *Minnesota Lawyer* (Oct. 16, 1998), p. 1.
8. Wernz, *op. cit.*

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