



PROGRAM MATERIALS

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July 7, 2020

Attorney Self-Care and Caring For Others During COVID-19

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5301 North Federal Highway, Suite 180, Boca Raton, FL 33487
Phone 561-241-1919 Fax 561-241-1969

ABRAMS **AF** FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP

Attorneys at Law

3 Dakota Drive - Suite 300
Lake Success, New York 11042
Telephone: (516) 328-2300
www.abramslaw.com

Attorney Self-Care and Caring For Others During COVID-19

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Carolyn Reinach Wolf, Esq.

Executive Partner

Director, Mental Health Law Practice

cwolf@abramslaw.com

516-592-5857



Jamie A. Rosen, Esq., Associate at Abrams Fensterman LLP, assisted in the research and preparation of these materials.

Overview:

The COVID-19 public health crisis has seriously affected the legal profession. Lawyers, judges, our clients and our colleagues are all struggling with stress, anxiety and fear during this time where our offices and courthouses are generally closed (or severely restricted) and we are relying on virtual platforms and other technology to practice. In addition to the difficulties of managing our law practice and client expectations, we are also juggling childcare and other responsibilities at home while grappling with a 24/7 news cycle and possible illness or death in our families. It is important to know what warning signs to look for in ourselves, our colleagues, and our clients as well as how to implement coping skills, wellness tips or other mental health resources such as Lawyer Assistance Programs.

Outline:

- I. Attorney Self-Care and Caring For Others During COVID-19**
- II. Identifying “Red Flag” Behaviors.**
- III. Mental Health Legal Tool Kit**
- IV. Lawyer Assistance Programs.**

I. Attorney Self-Care and Caring For Others During COVID-19

The Demanding Practice of Law

- Your responsibility to others (your boss, colleagues, clients, the courts, etc.) often requires you to forsake your own well-being.
- Over time this can take a toll on your mental and physical health. Now add in the stressors related to COVID-19.
- Research has shown that lawyers are prone to stress-related illnesses, including burnout, insomnia, clinical depression, gambling addiction, and substance abuse.
- Stress vs. Distress - Some stress is healthy!
- But, lawyers who do not appropriately address their personal, mental health or addiction issues can harm their clients, jeopardize their legal practice, damage the reputation of their law firms and sometimes even lose their lives.

Take-Aways from Recent Media re: Self-Care

- Lawyers are trying to juggle their client crises, worrying about the logistics and changes of remote working, virtual court, and also anxious about the long-term impact of COVID on their careers.
- Much has been said about how to manage risk and stay afloat, maintain your law practice or business during this time, but little has been said about self-care, surviving the stress of balancing client needs with your own needs.
- After all, it's not just clients who are experiencing this unprecedented crisis, lawyers are too! We all have family, friends to worry about, our physical and mental health and finances.
- This COVID crisis is a marathon, not a sprint.

Personal Self-Care/Self-Assessment:

- While it is normal to experience stress, anxiety and sadness during times of crisis, how do we know when we need to seek help?
 - Anxiety and Stress
 - Depression
 - Alcohol/Substance Use
 - Legal community is at higher risk for alcohol abuse.
 - Other compulsive behaviors: online gambling, obsessive news watching, binge eating.
- Self-Assessment - ask yourself if you are experiencing one or more of the following:
 - Difficulty sleeping, concentrating or making decisions.
 - Feeling especially fatigued.
 - Over or under eating.
 - Difficulty controlling anxious or fearful thoughts.
 - Irritability and lack of patience.

Professional Self-Care During COVID-19:

- Create a separate space for work.
- Ensure you have the technological tools to succeed at home: computer, camera, microphone, phone, printer/scanner/fax, etc.
- Stay current with Executive Orders, Court procedures, Judge's new rules and availability.
- Manage expectations - be realistic of what you can and cannot accomplish in your practice given our new normal.

- Organize your day, create a new routine at home.
- Stay in touch with family, friends, religious supports, and/or cultural supports.
- Take breaks. Exercise. Sleep. Read a book. (Anything you enjoy)

Taking Care of Colleagues:

- Connect with others. Reduce feelings of isolation.
- Hold regular virtual meetings with your team to check-in, see how they are feeling, how their families are doing.
 - If you are able, return to your office and check-in in person.
- Schedule calls or virtual meetings to review pending cases.
- Work together on new projects or articles.
- Offer resources and coping skills.

Taking Care of Clients

- Maintain contact with clients by phone, videoconference, and/or e-mail.
 - Call proactively to check in.
 - Show compassion- How are you feeling? How is your family?
 - Show that you respect their time- ask “is this a good time to talk?”
- Listen to what clients are feeling, how their families are faring and what is on their minds.
 - Active listening makes a huge difference in how a client experiences a crisis.
 - “This must be a very difficult time for you...”
 - Show you have been listening-
 - “I remember you telling me last week that...”
 - Paraphrase, summarize and restate what you are hearing to show understanding
 - “What I’m hearing you say is...”
 - Avoid interrupting.
- Ask if any priorities have changed due to recent circumstances.
- Adjust legal plans and strategies as necessary based on these conversations.
- Educate clients on new court procedures, the use of e-filing, etc.
- Manage expectations and anxieties about how this epidemic is affecting their case.
- Assure clients that you are available to assist them in both good times and bad.
- BUT ALSO.. it is OK to set boundaries. (Law360 article)
 - Boundaries are healthy ways of communicating needs to other people.

- Research is starting to show that it takes us 3 more hours of time per day to get the same amount work done at home rather than a normal day at the office. It is OK to take a break.
- Clients having access to our cell phone numbers while we work at home might give the impression that we are reachable 24/7. It is OK to tell a client/colleague that you are not available at a certain time, but will call them back.
 - Similar to when you work at your office, you do not need to answer every phone call or email as it comes in if you are in the middle of something else.

II. Identifying “Red Flag” Behaviors

Red Flag Behaviors or “Warning Signs” of an Impaired Attorney, Colleague or Client

- Pay attention to changes over time.
- A single warning sign by itself does not necessarily warrant immediate action, however when repeated signs emerge, the risk becomes more serious.

Examples of Red Flag Behaviors Related to Performance at Work

- Odd, unpredictable or erratic behavior.
- Unexplained or inappropriate outbursts.
- Missed deadlines or appointments.
- Diminished quality of work product.
- Not returning calls timely or at all.
- Poor concentration and inattention to details.

Examples of Red Flag Behaviors: Health Related Issues

- Frequent illnesses.
- Drastic change in appearance (on Skype/Zoom)
- Appears exhausted.
- Easily overwhelmed.
- Irritable, impatient, angry.
- Unpredictable, rapid mood changes (mood lability).
- Over/under reactions to situations.
- Insomnia.

- Sudden weight gain or loss.

Examples of Red Flag Behaviors Related to Financial Issues

- Disorganized, inconsistent record-keeping.
- Personal use of trust account funds.
- Attorney trust account overdrafts.
- Failure to timely disburse funds.
- Credit problems, writing bad checks.
- Judgments, tax liens, bankruptcy.

III. Mental Health Legal Tool Kit

What are the legal and/or clinical options available to individuals suffering from a serious mental illness, substance use and/or alcohol use disorder?

- **Psychiatric Hospitalization**

- Each state has specific standards and procedures for the commitment of civil patients who require psychiatric inpatient care.
 - Individual poses a substantial risk of harm to self or others.
 - Hospitalization would allow physician to evaluate and diagnose.
 - Treat any acute symptoms with psychiatric medication and other therapies.

- **Assisted Outpatient Treatment (AOT)**

- Forty-five states permit the use of Assisted Outpatient Treatment (AOT) or “outpatient commitment”.
- AOT is **court-ordered treatment** for the individual’s mental illness and supervision in the community with the goal of preventing “a relapse or deterioration” in their psychiatric condition.

- **Mental Hygiene Warrant**

- Many states have legal procedures whereby a Court can issue a Mental Hygiene Warrant. (This procedure may have a different name in your individual states.)

- File a petition with the court, requesting a warrant to bring the at-risk individual to Court for a hearing to determine if he/she requires a psychiatric evaluation at a hospital.
- At the hearing, the Court determines if he/she currently poses a danger to self or others and should be remanded to a psychiatric emergency room for immediate evaluation not to exceed 72 hours.

- **Psychiatric Case Management**
 - Case management is used to coordinate the delivery of services to mentally ill persons through state and local agencies or private organizations.
 - A case manager, often a social worker, or other trained in behavioral issues, assess the individual's ability and needs, arrange and advocate for services, and monitor the individual in the community.
 - A case manager can also assist with daily living skills, obtaining benefits and finding housing or employment.

- **Psychiatric Intervention**
 - A team (psychiatrist, mental health case manager, mental health attorney, security professionals) meets with the individual and family members with the goal of bringing him/her to the hospital for inpatient treatment, setting up private case management, or admission to a residential treatment facility or rehabilitation/detox program.

- **Mental Health Professionals/Referrals**
 - The individual may need a referral to a mental health professional for individual or group therapy.
 - Mental health professionals include Psychiatrists, Psychologists, Psychiatric Social Workers, Therapists, Life Coaches, and Care Managers, among others.

Confidentiality

- HIPAA and State Confidentiality Laws.
 - Confidentiality rests with the individual patient.
 - Release of medical records requires the consent of the individual or an authorized person.
- Mental health treatment records are protected by HIPAA and state law.

- Substance and/or Alcohol Use Disorder records are protected by state and federal law.

IV. Lawyer Assistance Programs

What are Lawyer Assistance Programs?

- Another valuable tool available to lawyers, judges, law students, and their immediate family members who are affected by mental health, alcohol/substance use issues, or other addiction issues.
- Available through county or state bar associations.
- Assist in the “prevention, early identification and intervention of problems that can affect professional conduct and quality of life”. (NYSBA mission)

Confidentiality of LAPs

- LAP services are free and strictly confidential pursuant to Section 499 of the Judiciary Law and the Rules of Professional Conduct (See Rule 8.3(c)).

- **Section 499: Lawyer Assistance Committees.**

“Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privilege may be waived only by the person, firm or corporation which has furnished information to the committee.”

- **Rule 8.3: Reporting Professional Misconduct**

(a) A lawyer who knows 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 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.

(c) This Rule does not require disclosure of: (1) information otherwise protected by Rule 1.6; or (2) information gained by a lawyer or judge while participating in a bona fide lawyer assistance program.

LAP Services

- Consultation
- Evaluation/Assessment
- Supportive Counseling
- Peer Support
- Group Support
- Stress Management/Wellness Workshops
- Treatment referrals
- Law practice closings
- Monitoring Programs (for attorneys facing grievance procedures or for those that are court ordered)
- Helpline

LAPs During COVID-19

- LAP operations are mostly virtual. Limited in-person therapy, meetings.
- Support groups are meeting on video group platforms, seminars are being conducted online, and clinical assessments are performed by video calls.
 - More difficult to assess body language, other behaviors by video. Impossible by telephone.
- The lack of social support and interaction with peers during this time can fuel more substance abuse issues, alcohol use, anxiety and depression.
- Attorneys anxious and worried about the financial health of their practice, their job security.
- Monitoring programs are more difficult.
 - Substance abuse testing is usually done in a controlled environment to meet requirements set by an employer or court. Now, individuals do not want to go to an urgent care facility for urine testing during a pandemic.
- Law students and recent graduates are now facing a delayed bar exam and an unpredictable job market.
- Less referrals.
 - While courts are closed, LAPs are not receiving referrals from court employees, judges, etc.
 - While law schools are closed, LAPs are not receiving referrals from administrators, faculty, etc.

Thank You!

Carolyn Reinach Wolf, Esq.
Executive Partner
Director, Mental Health Law Practice

cwolf@abramslaw.com
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Attorneys at Law