

Bringing It Together to Help the Distressed Attorney: Lawyer Assistance Programs, Disciplinary Offices and Law Practice/Office Management Programs

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I. Overview

As professionals of organizations – within or outside of Bar Associations – tasked with providing necessary services and resources to the legal profession, the question of how best to serve our membership with often limited resources, and, at times, geographical limitations, is paramount. That question is of critical concern to the protection of our membership and to the public, to the reputation of our membership in society, and, ultimately, in the face of ever-changing technological and automated advances, to the survival of the profession and the landscape of its services.¹ Lawyer Assistance Programs (LAPs), Disciplinary Offices (DOs) and Law Practice/Office Management Programs (LOMAPs) are three entities with similar goals of protecting the profession and the public.

Lawyers are subjects of continual study and have been for some years. As compared to other professionals or the rest of the population, are we more depressed, anxious, addicted and suicidal? Are we more narcissistic, perfectionistic, skeptical, and ambitious; less likely to seek help; and less emotional, risk averse and resilient? If we are, did law school cause these issues or did we have these tendencies or characteristics prior to law school? Are we worse now because of the saturation of the legal market, the astronomical cost of legal education and the resultant debt, and the state of the economy? What makes us happy – are we different from the rest of the population in terms of what will make us happy – and can we be happy and still practice law? Are we ethical, and, if not, when are we not and why?

We also hear much about legal education and whether it prepares its graduates for the real legal world in which most practitioners are forced to hang a shingle in a rapidly changing marketplace. Do we need education in Law Practice Management (LPM) and business to be

¹ See this link for an example of technological advances impinging on the work of attorneys (experimentation regarding artificial intelligence's ability to perform legal work: http://www.abajournal.com/news/article/ross_to_work_for_dentons_on_bankruptcy_projects/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email&job_id=150813AR#A. See also Modria, an online platform that resolves disputes, at times, without human intervention, and, Rocket Lawyer, a legal service platform for the public to handle legal affairs without the need of a lawyer.

included in the law school curriculum? If it is not included, should Bar Associations² assume the responsibility for this lack?

Professionals of LAPs, DOs and LOMAPs see the same problems from somewhat different vantage points. We all have critical knowledge about the attorneys we serve and methods for best serving our population. There is overlap in the work we do and information that helps us all do our jobs better. DOs, for example, may be a great source of information about/for LPM Continuing Legal Education (CLE) topics and resources. DOs are also good sources of referrals for LOMAP and LAP; if referrals are made early and frequently, attorneys may get the help they need to minimize further discipline. For an attorney who is resistant to help from LAP, but recognizes tendencies or habits that are interfering with his or her practice, LOMAP may be crucial in not only intervening for the LPM issue but also for bridging the attorney's entrance into LAP, if necessary. When an attorney works with LAP to develop insight into a depression issue, for example, LAP may facilitate a referral to LOMAP, such that the attorney can work to improve LPM systems and poor LPM habits that have a high probability of transpiring concurrent to the mental health issue; in this way, the attorney can develop a greater toolkit – in terms of both LPM skills and mental health ones – to increase confidence, and decrease the likelihood of a recurrence of the depression (or other issue) due to subsequent problems with clients or grievances.

Though Bar Associations in the U.S. and Canada vary greatly in terms of available membership resources, most – if not all³ – states and provinces have a LAP and a DO. LOMAPs are offered in less than half of the jurisdiction, including the District of Columbia, and this number includes programs that offer resources, but are not staffed by Practice Management Advisors.⁴ It is the contention of the authors of this paper that LOMAPs are a vital – and sometimes overlooked – piece of the puzzle in lawyer wellness. Attorney issues present along a continuum and every access point is important to an attorney's life and welfare, and to the public. It is imperative that we see self-care broadly construed, and not only as a component of mental health, but also of LPM, and treat it as such.⁵ Mental health issues, substance use disorders or other addictions and LPM problems are often intimately intertwined and may be traceable to similar habits, tendencies or causes; long-term success of an attorney involved with LAP or DO may be highly dependent upon the attorney's interaction with LOMAP or receipt of LPM support through another source. The intervention of LOMAP in an attorney's long-term recovery from impairment, and resilience regarding disciplinary matters – with respect to recidivism and professional success – of course depends on the attorney's state of recovery; but, at times, attorneys may be best served by assistance from LAP and LOMAP simultaneously.

² For purposes of this paper, we simplify how we refer to the array of interested judiciary, mandatory and voluntary Bar Associations, and other independent organizations as “Bar Associations.”

³ American Bar Association Commission on Lawyer Assistance Programs (CoLAP), 2014 Comprehensive Survey of Lawyer Assistance Programs

⁴ <http://apps.americanbar.org/dch/comadd.cfm?com=EP024000&pg=1>

⁵ Self-care is an ethical issue. See ABA Model Rules of Professional Conduct 1.1: Competence.

When jurisdictions do not have LOMAPs, it is possible for LAPs and DOs to provide support and bridge the gap in LPM, such as through diversion programs, which are known to exist in twenty-four states, plus the District of Columbia.⁶ Other possible LPM sources are Solo and Small Firm, or LPM Sections, which in some jurisdictions provide many of the resources made available by LOMAP. In states with or without all three players, the membership and the public are best served by creative relationships, if not joint projects, between available entities, to provide a continuum of care.

LAPs, DOs and LOMAPs each play a vital role in the fulfilment of the goals of protecting the public and the profession and a holistic approach of semi-permeable boundaries between the three – symbolized perhaps best by a Venn diagram with three circles – whereby each remains independent, but understands the needs of the others in terms of education, terminology and identification of issues, is the best opportunity for attorney outcomes, decreased recidivism rates, and other measures of success.⁷

This paper is not an exhaustive resource, but attempts to bring together research from LAPs, DOs and LOMAPs to, ultimately, provide some discussion of holistic efforts, resources and solutions.

II. Why Attorneys Get in Trouble

A. Attorneys Err Because They Are Human

The question of why attorneys get in trouble seems to start with the assumption that they should not – that somehow the intelligence or fortitude or discipline, or some combination thereof, required to become lawyers and continue to meet and exceed expectations of performance throughout a career, preclude imperfection. In the short story “Bernice Bobs Her Hair,” F. Scott Fitzgerald states, “At eighteen our convictions are hills from which we look; at forty-five they are caves in which we hide.”⁸ Arguably, F. Scott Fitzgerald, wisely meant that we outlive some of the expectations of our youth as the realities of life intrude upon those early beliefs and unrealistic – even if passionate and idealistic – visions. That we should hide in caves, however, as perhaps indicative of shame and remorse, is not the solution. The solution, instead, is to start with the assumption that attorneys err because humans err and that in contrast to whatever hero complex is thrust upon the profession and/or internalized in its membership, we must embrace and acknowledge from the very beginning the perils of taking on a profession that, at times, requires herculean efforts and strength beyond which we are sometimes capable. Simply stated, we err because we are human and the practice of law, while rewarding, is, at times, difficult, jealous,

⁶ Susan Saab Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical Examination of Management-Based Regulation of Law Firms*, 4 St. Mary's J. Legal Mal. & Ethics 112 (2014).

⁷ See also Diane M. Ellis at p. 1269, *A Decade of Diversion: Empirical Evidence that Alternative Discipline is Working for Arizona Lawyers*, which states: “There is much overlap between poor management, lack of resources, and personal issues such as stress, addictions, and mental health issues. Assistance to lawyers needs to be more holistic.”

⁸ <https://www.goodreads.com/work/quotes/1535830-bernice-bobs-her-hair>

perfectionistic, contentious, and demanding of our time, energy and resources – physical, emotional, and mental.

The question is then, how can we best protect ourselves and our membership from falling into despair – personally and professionally?

B. Generally What We See

The majority of attorneys facing discipline do not intend to get in trouble; they do not have evil intent. The vast majority of lawyers we work with become involved with the disciplinary process as a result of a cascade of issues in their professional, personal, and familial lives – issues many of us face on a daily basis. The foundation crumbles, the issues come to a head, and the journey into the disciplinary world begins.

Most attorneys we see are solo attorneys.⁹ By and large, the solo and small firm attorneys with whom we work do not have business training and lack sufficient LPM skills. They often do not have staff, organizational support or contingency plans for emergencies or conflicts, which leaves them especially vulnerable to any significant setback to their health – mental or physical, burnout or compassion fatigue, or other factors that prevent full and adequate attention to their practice.

Our experience shows underlying issues that slowly undermine the ability of the attorney to cope well and to practice law, include, but are not limited to, unattended stress, untreated mental health issues, self-medication in the form of substance abuse, mismanagement of medication, wishful thinking, unanticipated and incapacitating life circumstances, and poor physical health. These issues are often exacerbated by poor LPM skills and systems, and a lack of organizational support.

Many of our attorneys do not have a diagnosable mental health issue. Instead, they may suffer purely from LPM problems or a lack of legal experience. They may need mentors or basic knowledge on how to run a business, e.g. the accounting skills required for proper trust account reconciliation. In some instances, the LPM problems may be indicative of a developing mental health issue or a pattern of behavior that could lead to one, e.g., procrastination; perfectionism; cognitive distortions;¹⁰ persistent negative thinking; poor communication/social skills; resistance to LPM help or lack of insight into the necessity of it.

A large percentage of solo practitioners get in trouble because of poor client relationships.¹¹ This issue usually starts with poor client selection, followed rapidly by poor client management

⁹ This is consistent with the literature. See e.g., Ted Schneyer, *On Further Reflection: How “Professional Self-Regulation” Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 Ariz. L. Rev. 577 (2011), citing research showing that the overwhelming percentage of the lawyers targeted by disciplinary complaints are solo and small firm attorneys. See also demographics provided by the CoLAP 2014 Comprehensive Survey of LAPs.

¹⁰ See, for example: <http://psychcentral.com/lib/15-common-cognitive-distortions/>

¹¹ On occasion, personality disorders impede the establishment of good client relationships.

and communication, leading to giving away services at discounted or free rates. We have even seen attorneys whose inability to communicate has led them to tell a client that a case has settled – when it has not been filed – and then fund the settlement in order to facilitate the façade. Attorneys, also, may fail to screen clients for red flags – in a rush to build or maintain a client base.

For a number of reasons, solo practitioners, especially new attorneys, often fail to seek, require or obtain appropriate compensation for their services. The unwillingness to protect their self-interest can arise from a number of underlying issues. Attorneys may undervalue services due to low self-esteem or lack of confidence, which results in them finding communication regarding the cost of services difficult. The undervaluing of services (for whatever reason) is often exacerbated by an unwillingness to engage in confrontation related to money owed for their services. A common underlying fear and legitimate concern is that a confrontation over fees will result in a malpractice claim or a disciplinary action. Other concerns or reasons may include the attorneys' desire to be a savior/hero; difficulty setting limits; problems saying no; the inability – either due to inexperience or lack of communication skills – to set realistic expectations; the refusal to fire clients they should; the reluctance to deliver bad news or confess a failure; and the lack of a business plan to help ground them in the realities of needed fees to sustain a practice. The issue of reduced remuneration for services is compounded by a bad legal market. A failure to develop a sound economic foundation has significant downsides and once an attorney starts underselling services, it is hard to stop because the attorney always needs the next small retainer.

Although it is seldom documented, there is a startling amount of ignorance about professional responsibility rules of conduct. Given that most new attorneys have recently completed a course on ethics, and have taken the Multistate Professional Responsibility Examination, there appears to be a significant disconnect between the teaching and examination, and compliance with the rules in the real world. For practitioners with more experience there is often a lack of knowledge of changing rules and an over-reliance on “this is how I have always done it.” If access to ethics hotline and advisory opinions is available, there are few excuses for not complying with simple ethics issues. Ultimately, some problems could be solved by simply researching ethical issues.

C. The Lawyer Personality and Profile – Data from LAPs and Other Researchers

Despite criticism that empirical evidence subjected to a high standard of scientific method is lacking,¹² researchers and professionals gather evidence as to characteristics of law students and

¹² The Canadian Bar Association, “Addiction and Psychiatric Impairment of Lawyers and Judges: A Search for Meaningful Data” (2015), at p. 1: http://www.lpac.ca/main/Courses_01/alcohol_03.aspx:

“The Canadian Bar Association and the American Bar Association have searched for a cost-effective methodology for determining actual rates of addiction and impairment, but without success...Collecting reliable data has proved to be difficult. Comprehensive scientific research, analysis and reporting would be prohibitively expensive. Considerable use can be made of the general population data already available but Lawyer Assistance Programs and their funding bodies would benefit from specific data about the rates of those impairments in the legal profession.”

The authors of this current paper (not the above reference), note, however, the forthcoming collaboration between the CoLAP and the Hazelden-Betty Ford Foundation to conduct a study on the current rates of substance abuse, anxiety and depression within the legal profession, as well as the wonderful prior work of CoLAP and other organizations,

lawyers.¹³ As compared to the general population, we may be 1) more driven to achieve; 2) have a preference for an impersonal, strictly logical approach to problem solving; 3) possess a masculine orientation favoring dominance, aggression, and competitiveness; 4) place an emphasis on rights and obligations over emotions and interpersonal relations; and 5) suffer from high levels of psychological distress.¹⁴ Lawyers may lead the nation with the highest incidence of depression.¹⁵ We may be more likely to commit suicide, suffer from substance use disorders or experience career dissatisfaction.¹⁶ According to a “Lawyer Suicide Study” of the Canadian Bar Association’s Legal Profession Assistance Conference performed in the late 1990s, the rate of death by suicide for lawyers was nearly *six times* that of the general population, though rates in Canada are said to have improved since the 1990s.¹⁷ Researchers indicate that we may be more prone to depression, for instance, because we have higher rates of perfectionism, pessimism, and skepticism, all of which lead to “glass half empty” thinking; focusing on problems and potential ones; never being satisfied with results; disillusionment; and problems trusting others.¹⁸ We may also be more likely to be

such as the 2014 Comprehensive Survey of Lawyer Assistance Programs (as well as similar surveys for previous years), the Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them; and the Survey of Law Student Well-Being (primary investigators Jerry Organ and David Jaffe).

¹³ Jeffrey H. Goldfien, *Arguing for the Eclectic: Personality and the Legal Profession*, Book review of *Lawyers, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* by Susan Swaim Daicoff, 10 Lewis & Clark L. Rev. 187 (2006); Debra S. Austin, J.D., Ph.D., *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 Loy. L. Rev. 791 (2013); Lawrence S. Krieger and Kennon M. Sheldon, Ph.D., *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 Geo. Wash. L. Rev. 554 (2015).

¹⁴ Goldfien, *supra* note 13, at 191.

¹⁵ Tyger Lathan, Psy.D., *The Depressed Lawyer: Why are so many lawyers unhappy?*(2011): <https://www.psychologytoday.com/blog/therapy-matters/201105/the-depressed-lawyer>, citing the often-cited 1990 John Hopkins University study finding that lawyers had the highest incidence of depression as compared to other professionals.

¹⁶ *Id.* See also: C. Stuart Mauney, *The Lawyers’ Epidemic: Depression, Suicide and Substance Abuse*: <http://www.sbar.org/Portals/0/Outline%20for%20Lawyers%20Epidemic.pdf>, citing the 1991 North Carolina Bar Association study reporting a 26% rate of depression amongst its members, with suicide being contemplated at a rate of 12% within this group; Dr. Adrian Hill, *Countering despair: Taking steps to deal with suicide among lawyers* (2006): <https://www.cba.org/cba/national/augsep03/PrintHtml.aspx?DocId=6493>; Justin J. Anker, Attorneys and Substance Abuse, Butler Center for Research (Hazelden) (available online).

¹⁷ Hill, *supra* note 16.

¹⁸ Raymond P. Ward, *Depression, The Lawyers’ Epidemic: How You Can Recognize the Signs* (2005): http://www.legalunderground.com/2005/03/lawyer_depressi.html. See also: Dr. Larry Richard, *The Lawyer Personality: Why Lawyers are Skeptical* (2013): <http://www.lawyerbrainblog.com/2013/02/the-lawyer-personality-why-lawyers-are-skeptical/>.

classified as INTJs on the Meyers-Briggs Type Indicator and rank low on Sociability and Resilience scales.¹⁹

In contrast, some research also focuses on how lawyers and law students resemble the rest of the population – in terms of what makes us happy and in terms of neuroscience, e.g., how our brains change in response to stress. Using the human motivation theory of Self-Determination as a guide, researchers determined to answer the question of which lawyers are happy and which are not and why that might be.²⁰ The study drew upon previous research finding, in part, marked increases in depression and negative mood, and “shifts from helping and community-oriented values to extrinsic, rewards-based values in the first year” and “shifts in motivation for becoming lawyers, from salutary internal purposes (for interest, enjoyment, and meaning) to more superficial and external reasons (such as for financial rewards, recognition, or to impress or please others).”²¹ Among the study’s findings are that lawyers who focus on extrinsic factors starting in law school – such as ranking and law review membership – will not, generally, be the happiest people, as such external factors have a very small association with wellbeing.²²

Synthesizing a large body of neuroscience, such as compelling work by psychiatrists Daniel Amen and John J. Ratey, which indicates that chronic stress has long term effects on brain structure, neural networks, learning capacity and long-term tendencies towards mental health issues, Law Professor Debra S. Austin concluded that law students and lawyers need a heightened focus on wellbeing:

“That neurons in the hippocampus – the brain region so important to learning and memory formation and one of only two places in the brain where neurogenesis occurs – can be harmed or killed by exposure to stress hormones creates serious implications for law students, legal educators, law schools, and legal employers. Neuroplasticity allows every

¹⁹ Brian Dalton, *Deviations from the Norm: The Lawyer ‘Type’ and Legal Hiring* (2014): <http://abovethelaw.com/2014/05/deviations-from-the-norm-the-lawyer-type-and-legal-hiring/>, citing research conducted by Dr. Larry Richard.

²⁰ Krieger & Sheldon, *supra* note 13.

²¹ *Id.* at 566.

²² *Id.* generally and *Id.* at 592:

“Taken together, these data continue to indicate the quite limited value of money, grades, and prestige for the well-being of professionals. They also call into question law school grades and honors as measures of competence and suggest that more attention be given to the well-being of those lawyers in the more typical practices who are neither highly paid nor in the public sector. The data should also provide some stress relief to law students and lawyers, and guidance to those trying to decide on a career focus. The competition and stress related to high earnings and high grades – both zero-sum, limited resources – appear overdone. These data consistently indicate that a happy life as a lawyer is much less about grades, affluence, and prestige than about finding work that is interesting, engaging, personally meaningful, and focused on providing needed help to others. The data therefore also indicate that the tendency of law students and young lawyers to place prestige or financial concerns before their desires to “make a difference” or serve the good of others will undermine their ongoing happiness in life. This is a clear direction for increased education of law students and young lawyers. If a lawyer isn’t happy, ‘what is the point?’”

law student and lawyer to self-fashion a cognitive wellness plan. The practice of law demands maximum cognitive function, and the profession is notoriously stressful. Law students, law professors, and lawyers have the capacity to enhance their brains and augment their parasympathetic nervous systems in order to improve performance.”²³

Sleep, exercise, contemplative exercises, and anti-depressants, when needed, are provided as “neural self-hacking” suggestions – to counterbalance the negative effects of stress and serve as a “cognitive wellness plan” – for law students, law professors and lawyers.²⁴

D. The Connection Between LAPs and DOs

According to the Canadian Bar Association:

“A recent study in Ontario, Canada, reveals that the reported decisions of lawyer disciplinary proceedings may offer a sound source of available data that will allow for a quantifiable assessment of the rates of addiction and psychiatric illness in lawyers coming before disciplinary bodies” and “provides a model for further cost effective and reliable research.”²⁵

The “Ontario study” consisted of an experienced trial lawyer’s review and assessment of all disciplinary proceedings – 172 cases in total – reported by the Law Society of Upper Canada for the three-year period of October 1992 to October 1995.²⁶ The trial lawyer reviewed each case for “mention of alcohol problems, drug abuse and psychiatric problems (including depression, stress and serious personal difficulties).”²⁷ Four categories of case disposition type were delineated: 1) Disbarment; 2) Permitted to Resign; 3) Suspension for One Year or More, or Indefinite Suspension; and 4) All Other.²⁸

The study found alcohol, drug or psychiatric impairment alleged in 22.6% of all disciplinary proceedings; however, the rate increased to 48% for the “Permitted to Resign” category; and the rate further increased to 50% for the category of “Suspension for One Year or More, or Indefinite Suspension.”²⁹ Overall, the study concluded that the rate of impairment for serious cases – as defined by this study – appeared to be 50%.³⁰

²³ Austin, *supra* note 13.

²⁴ *Id.* at 826-851.

²⁵ The Canadian Bar Association, *supra* note 12, at 1-2.

²⁶ *Id.*

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Another source of data connecting LAPs and DOs are numbers reported by LAPs regarding referrals from DOs. The Commission on Lawyer Assistance Programs' (CoLAP) 2014 Comprehensive Survey of LAPs indicates that programs who kept records for the previous fiscal year reported that the second most common referral source was from DOs – at a rate of 9.2%. While this number does not tell us whether DOs are referring all possible cases to LAPs, it does give a sense of the intersection between these two entities.

Clearly, the available data demonstrates a strong correlation between DOs and the needs served by LAPs.

E. The Connection Between LOMAPs, LAPs and DOs

Professionals of LOMAPs, LAPs and DOs know that the overlap between LPM issues and attorney impairment of any kind is high. It is difficult, at times, to tease out what actually caused an attorney to enter the disciplinary system – an LPM issue alone, an impairment issue, or a combination of the two. It is difficult also to determine how often mental health or substance use disorders develop or worsen due to poor LPM habits and knowledge that might have created a more successful, less stressful practice, as well as provided a greater safety net for weathering the storms of life's inevitable tragedies. While having a proper business foundation and LPM know-how certainly cannot completely prevent attorney impairment, neuroscience has provided a clue into the effects of repeated bouts of stress over time and their connection to mental health issues.³¹ While the causes of addiction are too broad a subject to review in this paper, self-medicating through alcohol and other drugs often follows mental health issues and addictions are known to be progressive in nature. Without proper LOMAP guidance and/or LPM support, attorneys may have a greater chance of entering LAPs and DOs – due to the sheer stress of running a solo or small firm practice without LPM training, skills and habits.

Unfortunately, we don't have an overlap of the cases reviewed in the "Ontario study," referred to in the previous section, of impairment and specific misconduct found, but our experience and general wisdom would suggest that the overlap of impairment and LPM issues is significant and that a high percentage of misconduct is related to LPM issues.

Our experience demonstrates that a high percentage of attorneys, especially solo and small firm attorneys, tend to be poorly educated about the LPM tools necessary to an efficient, productive, proactive and highly organized law office. A longstanding criticism of legal education by LPM and diversion professionals is that legal education is mostly devoid of LPM skills training. As noted by one commentator:

"New lawyers should get much more management training before they try to run a practice in the real world. Chicken-and-egg thinking is a barrier: Law schools focus on the substantive practice of law with little practical training on running the firm as a business. Students do not realize that they should be interested in learning management skills until they find out the hard way that knowing the law is only the beginning. Because they are

³¹ Austin, *supra* note 13.

not interested while in school, students do not push for more practical training. Bar examinations do not test for practical and management skills, such as how to properly establish and maintain a trust account. Because it does not show up in the exam questions, it does not become a necessity to teach management skills.”³²

Although laws schools are making some efforts, a significant number of attorneys that use LOMAP services lack an understanding of LPM skills, including basic ones such as proper communication with clients and project management of cases (i.e., moving cases towards completion in a timely manner). The impact on disciplinary cases is fairly clear. For example, the Massachusetts Board of Bar Overseers 2014 Annual Report states that 24% of the initial client inquiries concern issues regarding neglect and communications.³³ Of the matters in which an actual complaint was filed, the misconduct cited most often was incompetence or neglect, including failure to communicate, and trust account violations, including notices of dishonored checks.³⁴ An astoundingly high percentage of the total complaints in Massachusetts could be considered to have involved an LPM issue: 1) neglect or lack of diligence: 30%; 2) failure to communicate adequately with client: 25%; 3) fee violations: 11%; 4) conflicts of interest (all types): 7%; 5) trust account violations: 46%; and 6) failure to properly withdraw from representation, including a failure to return files or documents: 11%.³⁵ Because many complaints may have included a number of these issues, the total percentage of LPM-related violations is not in fact over 100%, but the statistics shine light on the significant percentage of cases involving LPM issues.

Getting to the “why” behind LPM issues is crucial. Certainly, factors of intelligence and competence may be relevant at times. And, admittedly, some LPM issues would not have occurred if the attorney was not impaired by an addiction or mental health issue. But, much misconduct is traceable to a lack of LPM skills. The generalized experience of LPM and diversion professionals is that attorneys usually lack appropriate systems and/or habit development in key areas of a practice – e.g., poor or inconsistent systems in communication; technology; trust accounting; calendaring and docketing; boundary setting with clients; billing; Standard Operating Procedures; business planning; employee oversight.

Given the strong correlation between DOs and LPM issues, and, keeping the “Ontario study” in mind, it seems a reasonable step to say that DOs, LAPs and LOMAPs all have a place in helping an attorney create a sustainable professional practice that has a reduced chance of recidivism.

³² Ellis, *supra* note 7 at 1267.

³³ Massachusetts Office of the Bar Counsel of the Supreme Judicial Court, Annual Report to the Supreme Judicial Court, Fiscal Year 2014, pg. 4.

³⁴ *Id.* at 5.

³⁵ *Id.* at 7, Table 3, Classification of 794 Complaints Received by Misconduct Alleged.

III. Bar Resources for LAPs and LOMAPs³⁶

While the various Bar Associations in the U.S. and Canada vary greatly between jurisdictions in terms of available membership resources (e.g. diversion programs for minor misconduct, the existence of a LOMAP), most – if not all³⁷ – jurisdictions offer LAPs and DOs. Even within these two entities, however, is great variation – in services offered by LAPs (e.g. in-house counseling; group work; referral-only services; inclusion of LPM support or resources; diversion) and in services offered by DOs (e.g. diversion; rehabilitative monitoring; inclusion of LPM or support; referrals to the LAP).

From these Bar Associations has over the years arisen a network of systems to help attorneys, but also, to govern attorneys to protect the profession and the public. Fifty-nine LAPs are listed by CoLAP in the United States, its territories and Canada.³⁸ The scope of the programs vary, but all programs seek to provide confidential assistance to lawyers suffering from alcohol or drug dependency. Most programs offer a broader array of services to the legal community at large – attorneys, law students, judges and families. The common foundation of programs – regardless of size and staffing – is a cadre of volunteer attorneys who provide a peer recovery support group for attorneys either seeking or in recovery from substance use disorders. Depending on the program, these groups will meet weekly or monthly, and, are usually considered to be supportive of other group support systems like Alcoholics Anonymous, Narcotics Anonymous or SMART recovery. Many LAPs also provide support groups for issues such as attorneys suffering from depression; solo and small firm; divorce; unemployment; and work-life balance. Programs may use a single staff member and volunteers, or a large staff, including clinicians, to evaluate and refer attorneys to appropriate mental health services and help coordinate the support groups. Unfortunately, given the size of many states and provinces, the ability to provide in-person peer support meetings and clinical services throughout the jurisdiction can be impossible. However, a number of LAPs are successfully using technology to provide online services to allow support throughout a jurisdiction.

LOMAPs are offered in less than half of the states, including the District of Columbia, and this number includes programs that offer resources, but are not staffed by Practice Management Advisors.³⁹ In jurisdictions without an active LOMAP-type program often Bar Associations maintain Solo and Small Firm, or LPM Sections or Committees, which provide CLE and active forums capable of providing many of the resources available through a LOMAP. When these Bar Association sections/committees are active they can be excellent avenues for LPM assistance to help attorneys – especially self-directed ones – improve LPM techniques.

³⁶ A discussion of DOs and their resources is beyond the scope of this paper.

³⁷ Id. American Bar Association CoLAP supra note 3.

³⁸ http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html

³⁹ <http://apps.americanbar.org/dch/comadd.cfm?com=EP024000&pg=1>

IV. Successful Programs

A. Texas – Some of What Works

In 2014, Texas had 94,804 active members.⁴⁰ Forty-one percent of private practitioners work in firms of five or fewer attorneys.⁴¹ As Texas is the second largest state, the DO has four offices to meet the needs a state of this size; its headquarters is in Austin, and its regional offices are in San Antonio, Dallas and Houston. In 2014, 387 Texans served on local grievance committees.⁴²

1. Diversion – the Grievance Referral Program⁴³ – and Rehabilitative Compliance

A diversion program – the Grievance Referral Program (GRP) – is housed within the DO’s headquarters in Austin and consists of an administrator and a legal assistant. The administrator of this program directs the diversion program, monitors judgments with rehabilitative terms (Rehabilitative Compliance) and coordinates LPM efforts and/or creates special LPM projects – e.g., contingency planning materials, self-audit materials and LPM informational sheets. This position serves as a bridge to various entities of the Bar Association – in particular, LAP; TexasBarBooks, in which the LPM program is housed; and TexasBarCLE. In 2014-2015, the administrator worked with over 120 attorneys, including 63 attorneys who successfully completed GRP.

GRP was implemented in 2007 and addresses issues of LPM, addictions, mental health and general attorney health and well-being. The current administrator is a lawyer, licensed social worker, and licensed chemical dependency counselor intern. Her position works very closely with LAP on a regular basis, and thus, regular communication between LAP and the DO is maintained.⁴⁴

Housing diversion in the DO has worked for Texas. The positioning of the role in the DO allows for internal education of Bar Counsel of LAP issues; centralized LAP referrals from the DO; and joint projects between the DO and other Bar Association entities, such as for CLE topics, presentations and resource development. By maintaining diversion in the DO, a certain or heightened accountability on the part of respondent attorneys may also be created.

An integral part of GRP is the initial GRP interview, which is conducted after the agreement is reached to participate and transpires by phone. During this initial interview, the

⁴⁰ State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2013 – May 31, 2014.

⁴¹ Id.

⁴² Id.

⁴³ See Linda Acevedo, Grievance Referral Program, How the Texas Disciplinary Counsel’s Office Is Helping Lawyers Help Themselves, Tex. B.J., June 2013.

⁴⁴ All reports to TLAP and all communication between staff and the impaired lawyer, as well as the person making a report about an impaired lawyer, are confidential under Ch. 467 of the Texas Health and Safety Code (with very limited exceptions). Thus, information – with very limited exceptions – only flows from the DO to LAP.

administrator conducts an informal audit of the respondent's practice. The attorney is asked to describe the reasons for the referral to the program in his or her own words and to provide a description of his or her practice. Various LPM topics are then discussed, so as to gain a global view of the practice and glean information necessary to the creation of an individualized program. All programs are individualized to a particular attorney's needs. Resources are sent to attorneys via email and attorneys are asked to participate in their program development by responding with specific ideas for their participation using materials that both address the allegations of misconduct and meet a need or failing of the practice. When there is not sufficient motivation to do so or there is too much delay for whatever reason, programs are fully designed by the administrator. Participation, however, is always voluntary.

The program aims to address the allegations of misconduct while also going beyond the allegations to educate the attorney about the problems faced by members of the profession and LPM principles and resources. Also critical is the normalization of LPM issues, mental health issues, substance use disorders and other addictions and other general issues of health and well-being; attorneys feel alone in their struggles and reaching out is one of the first steps in recovery for anything.

Many attorneys enjoy being part of the creation of their programs; it is empowering and offers choice and self-direction. Multiple phone appointments for each participant is a common feature of the program. The interaction between the administrator and the participant is instructive, e.g. if deadlines are not adhered to or correspondence is not responded to in a timely manner, then programs can be modified to reinforce LPM principles and underscore the changes in the practice that need to occur to avoid further discipline.

Resources used in the program are those created by our Bar Association and those of other Bar Associations. The resources also include materials on such topics as LPM; self-help; mental health; substance use disorders and other addictions; and literature on habit development. Written self-audits are highly useful at times for helping attorneys gain a global view of their practices. The program aims to be diverse and creative to meet the needs of participants. The goal is for attorneys to meaningfully participate and address the root of the alleged misconduct.

2. Texas Lawyers Assistance Program

Texas has a robust LAP, providing 1) confidential support and referrals; 2) public awareness and outreach; and 3) mandated monitoring. The Texas Lawyers Assistance Program (TLAP) is staffed by three full-time employees: the TLAP Director, a Senior Staff Professional and a Staff Professional. All three are licensed attorneys with extensive training. Recently, a part-time administrative assistant joined the ranks. Much of TLAP's work is accomplished by the Lawyers Assistance Committee of the Bar, as well as its 800 volunteer attorneys. In 2014-2015, TLAP handled 624 cases and its staff provided 124 presentations.

TLAP collaborates with other entities, such as Texas Lawyers Concerned for Lawyers (TLCL) and the Sheeran Crowley Memorial Trust, whose missions complement its work. TLCL volunteers help convene local support groups in Austin, Beaumont, Dallas, El Paso, Fort Worth, Houston, Lubbock, San Antonio, Tyler and the Rio Grande Valley. An annual TLCL convention

is also held. The Sheeran Crowley Memorial trust, a 501(c)(3) non-profit governed by several trustees pursuant to a Declaration of Trust, provides grants to lawyers who are in need of professional services for substance use or mental health issues and cannot otherwise afford them. From 2011 through 2014, the Trust distributed \$186,786 in grants.

Recently, TLAP unveiled a new and compelling video, “Courage, Hope and Help: TLAP is There.”⁴⁵ Our current Bar President, Allan K. DuBois has made TLAP a top priority and the video was as one of his presidential initiatives.

3. LPM

The LPM program of the Bar is housed under TexasBarBooks, which staffs the LPM Committee, and consists primarily of educational resources, such as a website, webcasts, articles, forms, checklists, and live CLE at the Bar Association’s annual conference.

LPM efforts are assumed by various Bar stakeholders, e.g., the LPM Committee; the General Practice, Solo and Small Firm Section; TexasBarCLE; TexasBarBooks; the Texas Young Lawyers Association; TLAP; the DO; the State Bar of Texas Task Force on Aging Lawyers; the Client-Attorney Assistance Program; the Ethics Helpline, which is part of the DO; the Texas Center for Legal Ethics; volunteer attorneys

4. Putting It All Together

Part of what really works in Texas is the synergy of the various players that come together to meet the needs of Texas attorneys. For example, 1) the DO staff routinely provide CLE presentations to Texas lawyers; 2) TLAP and the DO work on joint projects and 3) the DO, LPM and TexasBarCLE staff consult with one another to decide where to invest energy. The diversion program also is integral to the disciplinary system and has an important vantage point for assessing the needs of the membership.

B. Massachusetts – Some of What Works

In addition to diversion and monitoring, Massachusetts’s Lawyers Concerned for Lawyers (MA-LCL) has developed a successful support group for attorneys seeking to re-establish their careers after a suspension or disbarment: the Massachusetts Professional Conduct group (MPC) The support group experience has proven to be critical to this group of suspended/disbarred attorneys. The group experience provides a forum to share and hear that other members of the legal community are experiencing the same issues. This allows the participant to address many of the attending issues, such as, shame, remorse, and self-loathing, that often underlie the cause of discipline, and allow individuals to recognize the need to re-tool. The experience can also help the participant learn how to inform family, friends, and legal associates about difficult subjects. It may be an important mechanism for helping an attorney discuss a disciplinary complaint, an actual negative disciplinary action, or current practice issues. It has also been critical to helping lawyers prepare themselves to approach a disciplinary matter in manner that will increase the likelihood that they will continue to practice, or re-emerge from suspension or disbarment.

⁴⁵ The video can be viewed at: texasbar.com/tlapisthere.

A critical component of the MPC is that it incorporates the services provided by the MA-LCL's Law Office Management Program (LOMAP). The interface between the two services allows for interdisciplinary assistance. In our case, the programs are housed one office, which enhances the key concepts of the attorney taking care of mind and body and implementing good LPM. From a disciplinary standpoint, lawyers who did not know about LOMAP are introduced to the benefits and efficacy of utilizing the services in organizing their reinstatement efforts.

1. MA-LCL Procedure

The MPC is not a diversion program. Rather, MA-LCL actively recruits potential participants by identifying and sending letters to lawyers recently suspended or disbarred, and it receives requests from attorneys facing a discipline hearing. Interested lawyers must participate in a pre-group interview conducted by the clinician facilitating the group. During the initial contact, pre-interview, the clinician always reinforces that to join the group, the lawyer will have a confidential meeting with the clinician, which will explore the group dynamics, the purpose of the group, the background for the disciplinary action, and the lawyer's thoughts about reinstatement. The clinician will use this interview to determine the lawyer's appropriateness for participating in the group.

a. The Interview:

The lawyer coming in for the pre-group interview is encouraged to bring a copy of the disciplinary decision documenting the suspension or disbarment to share with the clinician. In the pre-group interview, the lawyer details his/her understanding of the events, circumstances, and conditions that led to the decision regarding suspension or disbarment. This interview technique allows the clinician the ability to evaluate the lawyer's judgment, insight, thoughtfulness, and denial, and explore issues related to substance use and mental health functioning. The meeting is used to set forth the rules of the group and the confidentiality and safety of the environment, but to help evaluate the lawyer's reaction to a group setting. Importantly, the clinician is seeking to assess the lawyer's readiness to benefit from the group experience based on the lawyer's motivation, self-awareness, readiness for change (transformation), and ability to be vulnerable to the group process. Also, the clinician uses the meeting to identify and target issues that the lawyer must address and share with the group to gain maximum benefit from the experience.

If substance abuse and/or mental health issues are identified during the meeting, then those issues will be discussed for relevance to group participation and eventual reinstatement. Lawyers early in their recovery, or with unstabilized mental health issues, will often be put "on hold" for group participation. The clinician schedules meeting check-ins with potential participants for ongoing evaluation for group participation. If a lawyer becomes stable, the clinician will invite him or her to participate in the group.

b. The MPC

The dynamics of the MPC help engaged lawyers reboot their thinking, psychology and professional selves in getting ready to address issues and barriers to a successful practice and life. An important aspect of the MPC is a strong culture that is both supportive and instructive, and

focused on helping lawyers see how they participated, consciously or unconsciously, in contributing to the situation that resulted in discipline. The group members – with facilitated discussion from the clinician – use the discussions to gain powerful insight, and, ultimately, understanding about their shortcomings. With this insight and understanding, they can focus on the improvements that are necessary, if they wish to be reinstated.

As with most support groups, the participants both grow and learn from participating in the shared experiences of other suspended/disbarred lawyers. We see the shared experience allow lawyers to undergo a common process. Universally there is anger and denial by new participants. A critical aspect of the group dynamic is that the new participant hears from other lawyers who have gone through similar experiences and gained acceptance of both the process and their personal shortcomings. The group also works to challenge the new participant's denial of responsibility. The process helps the new participant accept personal shortcomings and reduce his/her reliance on blaming the client, or the DO, and move towards a productive self-evaluation and personal growth. The group provides constant feedback and often helps lawyers realize they are not yet ready for reinstatement – based on the growth or lack of growth demonstrated in the group, e.g., that the lawyer is still in some denial about his/her responsibility in the conduct leading to discipline.

As the attorney moves away from blaming others, the importance of the participation of the lawyers who have gone through the reinstatement process becomes even more valuable. Routinely, several group attendees have been through the reinstatement process and returned to practice, and are able to provide good role modeling and hope for those lawyers just beginning their reinstatement efforts. The success stories help reduce the anxiety and panic that often accompanies the process of preparing for reinstatement. In preparing for reinstatement, the group often has to answer the question of whether the lawyer needs his/her own lawyer to represent him/her. (Ego, money, and lingering self-righteousness may prevent an attorney from hiring counsel.) But an important group lesson learned is the old adage sometimes attributed to Abraham Lincoln: "He who represents himself has a fool for a client." Once past this issue, the group helps the lawyer learn to be a good client for his/her attorney. As the lawyers get closer to reinstatement, the group also encourages them to attend a reinstatement hearing, so as to understand the process and the focus of the hearing officers, and to prepare for the emotional stress of their own reinstatement.

As they grow personally and prepare emotionally for reinstatement (this can take years), the attorneys must also plan for their future practice. The successfully-reinstated group participants speak freely about the stress of practice; the angst of interacting with lawyers, judges and other professionals after being reinstated; and how they managed their anxiety about their re-entry. In addition, they articulate the struggle in re – building a practice and the rewards of walking through their fears and gaining new skills and knowledge about themselves and the practice of law. These discussions open the door for many attorneys to realize that poor LPM skills not only impede professional success, but also were a factor in the disciplinary matter. Thus, when LPM skills are introduced within the group setting, or through individual consultations, by LOMAP staff, and the ideas are reinforced by the successful implementation by existing members of the

group, the attorney can set forth a better plan for preventing the disciplinary issues, and look forward to a better, ideally more efficient, less stressful, and more profitable practice.

In preparing to address the DO it is helpful for the attorney to set forth a plan as to how they will prevent a reoccurrence of the problem resulting in discipline. If the issue is related to mental health or substance abuse, the attorney can point to therapy, medication, 12-step programs, or other appropriate options, but, often, the attorney must also address an LPM issue. A common example is the ethical violation of failing to properly reconcile trust/IOLTA accounts, resulting in further violations caused by over-drafts, and improper use of client money. Other common examples are missed deadlines resulting from poor docket management; poor client communications; and violations resulting from poor management of underqualified employees, or, an unwillingness to properly supervise employees.

The demands and expectations for better LPM are increasing. Of note, is the expanded requirement that Rule 1.1 Competence includes maintaining requisite knowledge and skill, which includes the benefits and risks associated with relevant technology. For attorneys facing personal and professional trials or struggles, the LPM challenge of properly assessing and knowing the benefits and risks of technology can lead to overwhelm. LOMAP advisors help educate our group members to prevent all of these common problems.

A strong selling point for attorneys is that coming to the MA-LCL and engaging with mental health and LPM professionals is usually regarded in a very positive fashion by the DO, or, the concerned agency or firm. MA-LCL benefits because 1) more attorneys are likely to use the services offered if they know that such services will be viewed in a positive light; 2) the attorney stays focused on the prize because they know of prior successful outcomes and are aware of the positive reinforcement from the interested agencies; and 3) the program is seen in a positive light by judiciary, the DO, agencies and firms. On occasion it is expressed that attorneys will seek services to further manipulate the system to maintain their professional status without fully committing to change. However, we have found that this potential negative outcome has not occurred due to, we believe, the use of an experienced clinician who is willing to limit participants who are not appropriate for the program, and a strong culture within the group, which does not abide lawyers seeking to manipulate the use of the program.

V. Potential Solutions

A. Use a holistic approach.

Best practices mandate a holistic approach for the achievement of optimal attorney health, well-being and success, the protection of the public and reduced attorney misconduct. As has been noted: “Part of having a ‘whole-lawyer’ approach to assistance programs is having a variety of tools, techniques, and tips available that are flexible and can be used to resolve a wide range of difficulties.”⁴⁶

⁴⁶ Id. Ellis, *supra* note 7.

1. Increase the number of LOMAPs, if possible.
2. Regardless of whether you have a LOMAP, be creative with LAPs and DOs and other entities

Use the resources that your state has and be creative in finding and fostering relationships, e.g., LPM Sections and Committees, Ethics Helplines. Even in smaller communities the key decision makers in the organizations critical to a successful, holistic approach may not be aware of all of the players, understand the benefits of working together, or, even know what each organization can bring to the table. Therefore educational outreach inspired by Bar Associations to increase awareness of and communication between its stakeholders is necessary for success.

Do not forget the wealth of information held by the DO. The “Ontario study” shows the wealth of data regarding attorney impairment available through DOs. CoLAP information cited previously indicates that DOs are a major source of referrals to LAPs. DOs should be encouraged to make referrals to LAPs liberally – and not only when rehabilitative terms, such as monitoring and drug testing, are imposed. DOs are also capable of providing staff for LPM support, such as contingency planning materials, self-audits, and CLE.

B. Increasing the use of self-audits may be helpful.

Researchers of the Australian regulatory regime, which requires that incorporated legal practices (ILPs) complete a self-assessment process and report on their compliance with ten objectives of a sound law practice, are extolling the benefits of this system.⁴⁷ Data has shown that the impact on North South Wales has been substantial – after completion of an initial self-assessment, rates of complaints for ILPs went down by two-thirds.⁴⁸ After a firm’s completion of the self-assessment process (SAP), seventy-one percent of firms studied reported that “they had revised firm systems, policies, and procedures.”⁴⁹ Another forty-two percent “indicated that they ‘strengthened firm management’ following the completion of the SAF.”⁵⁰

The self-assessment process presents an interesting opportunity to create a convergence of LAP, DO and LOMAP issues. It is an educational piece that can be used in a variety of ways in different jurisdictions, such as a requirement for new attorneys or a requirement of diversion programs.⁵¹ Self-assessments should take care to emphasize self-care and awareness of mental health, substance use disorders and suicidality concerns facing the profession. Self-assessments should also address the overlap of LPM issues and attorney impairments, and place a strong

⁴⁷ Fortney supra note 6.

⁴⁸ Id. at 119 (describing 2008 empirical study of Dr. Christine Parker).

⁴⁹ Id. at 121-122.

⁵⁰ Id. at 122.

⁵¹ Id. See also Susan Saab Fortney, *Promoting Public Protection Through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation of Lawyers*, 23 No. 1 Prof. Law. 16 (2015).

emphasis on the need to think of one's legal practice as a business. See Attachment A, Massachusetts Law Office Management Program Self-Audit.

C. Group work is very effective. Increase it, if possible (Especially MA's model, as described above).

Assuming the lawyer is ready to address the underlying personal issues and move past blame, lawyers working within the group structure will see and hear from lawyers who have, or are in the process, of transformation. The impact on the attorney that has just started the process of transformation is profound. It starts with breaking down barriers and self-delusion, and gives them hope. Once they stop the blame game, and see the hope for future success, they can begin to organize and think about taking the responsibility in their lives that will inform their readiness to risk the reinstatement process. As discussed in detail above, those attorneys who attend a group with regularity, utilize LOMAP services, and sit in on others reinstatement hearings are better prepared and are better lawyers when they return to practice.

Critical to a holistic approach is the coordination between the DO and the LAP. Fortunately, almost – if not every – state has both discipline and a LAP program that can work with attorneys with substance abuse issues, and, at a minimum, find appropriate resources to help attorneys with mental health issues. Ideally, however, group meetings are part of the landscape. Again, ideally, the group facilitator would then be able to refer attorneys to an LPM professional.

D. Increase diversion programs, if possible.

Diversion presents an opportunity for intervention, individualized programs, guidance, support and education.⁵² An empirical study on diversion in Arizona (Arizona study) reported results from a ten-year period, tracking over 100 variables for 661 referrals, representing 448 lawyers.⁵³ Though this study has received some criticism regarding its ability to fully track recidivism,⁵⁴ the study finds “a statistically significant difference in the number and severity of subsequent disciplinary charges between lawyers who have completed a LOMAP diversion program and those who have not completed such a program.”⁵⁵ A factor that tended to correlate with positive outcomes was the “extensiveness of terms.”⁵⁶

Diversion programs can offer an opportunity to address DO, LAP and LOMAP issues. Some standardization of process within diversion, such as through the use of self-audits, could prove fruitful; but, the difficulty in standardizing, lies, in part, in the variety of cases sent to diversion and root causes for the alleged misconduct or findings of misconduct.

⁵² Fortney, *supra* note 6.

⁵³ Ellis, *supra* note 7.

⁵⁴ Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 *Go. J. Legal Ethics* 1 (2007).

⁵⁵ Ellis, *supra* note 7 at 1255.

⁵⁶ *Id.* at 1265.

- E. Increase statistics or metrics of some kind and use them to inform further programs and resource development.

The findings of the resources referred to in this paper (and others not cited to) on lawyers are extremely helpful to the work we do.

The findings of the Arizona study referred to in the previous section included that about twenty percent of lawyers would receive additional disciplinary charges after three or more years; thus, the benefits of the program appeared to be limited in time, with further assistance needed at a later date.⁵⁷ This kind of data is very helpful to future program development. A suggestion from the study was to provide “maintenance” consultations for previous participants.⁵⁸

Another noteworthy finding provided by lawyer research previously alluded to was that “lawyers in the more typical practices who are neither highly paid nor in the public sector” – i.e. solo practitioners – were the “least happy group.”⁵⁹ These kinds of findings help direct attention and resource development to attorneys most in need.

Creativity may be required in the face of limited resources and difficulty in simplifying the complexity of the cases we see. For example, recidivism is one way of tracking success, but it also is limited in light of the myriad reasons why an attorney may re-enter the disciplinary system. A simple recidivism measure does little without a much larger discussion and analysis of the reasons for re-entry. Diversion data might provide a smaller window on the DO data for analysis.

What other metrics could be used to gauge success?

- F. Use crisis and whatever access point possible.

The common points of intervention to prevent, or to correct, disciplinary issues are at the beginning of practice, where the DO has been contacted but there is no actionable misconduct; where minor misconduct warrants a diversion (if allowed); where actionable misconduct warrants a suspension/disbarment; or upon reinstatement. At times, the crisis is recognized and the attorney will reach out voluntarily, but, often the crisis is recognized only when the attorney is contacted by the DO. This is an excellent point to educate attorneys about the depth of support a program can provide and the mental health and substance abuse issues facing attorneys.

- G. Start awareness at earliest stage possible.

It may be obvious to say, but the earlier the attorney gets help the easier it is to improve his/her professional and personal life. The attorney who has the mindfulness to contact the LAP early in anticipating a problem or client complaint, or who recognizes an ethical issue (even if it may not lead directly to a complaint), is usually a very good candidate to be successful in making changes to improve his/her situation. Those that arrive via the hammer of a disciplinary process

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id. at 591-592.

are often less likely to make good candidates, but, if they are able to let their guard down and start to listen to objective advice from others, they also can benefit from the honest information and sharing received from a therapist or, better yet, a group comprised of similarly situated attorneys.

At the beginning of practice an increasing number of states require a professionalism course, which will often include the DO, the LAP, and the LOMAP. Early education about resources available to prevent or reduce the impact of underlying issues leading to discipline is key, as is making as many tools available to help online. These may include self-audits related to mental health/substance abuse, disciplinary issues, malpractice prevention, and self-care.

VI. Resources for Attorneys

A. Recommended books for attorneys and those who work with them:

1. *The Anxious Lawyer: An 8-Week Guide to a Happier, Saner Law Practice Using Meditation* Paperback – March 7, 2016, by Jeena Cho and Karen Gifford
2. *Stress Management For Lawyers: How To Increase Personal & Professional Satisfaction In The Law* Paperback – January 2, 2007, by Amiram Elwork
3. *Work* by Brené Brown, such as *the Gifts of Imperfection: Let Go of Who You Think You're Supposed to Be and Embrace Who You Are*; and *Daring Greatly: How the Courage to Be Vulnerable Transforms the Way We Live, Love, Parent, and Lead*; and her YouTube videos available on the internet.
4. Gabor Maté, such as *In the Realm of Hungry Ghosts: Close Encounters with Addiction*
5. Charles Duhigg, *The Power of Habit: Why We Do What We Do in Life and Business*
6. Gretchen Rubin, *Better Than Before: Mastering the Habits of Our Everyday Lives*
7. David D. Burns, *Feeling Good: The New Mood Therapy*
8. John J. Ratey, *Spark: The Revolutionary New Science of Exercise and the Brain*

B. Blogs:

1. <http://mindfulaw.com/> Mike Lubofsky is a holistic attorney and mindfulness teacher that works to integrate mindfulness in the practice of law.
2. <http://themindfullawyer.com/> Scott Rogers is founder and director of the Institute for Mindfulness Studies,

the University of Miami School of Law's Mindfulness in Law Program, and co-founder of the University of Miami's Mindfulness Research and Practice Initiative. He has practiced mindfulness and other contemplative practices for more than 22 years.

3. <http://theanxiouslawyer.com/mindfulness-for-lawyers-workshop/> Jeena Cho is a partner at JC Law Group PC, a bankruptcy law firm in San Francisco, CA. In addition to her law practice, she teaches mindfulness and meditation to lawyers. She regularly speaks and writes about wellness, self-care and mindfulness. She also works with lawyers and law firms on stress management, work-life balance, career transition, increasing productivity and overall wellness.
4. <http://www.lawyerswithdepression.com/> Dan Lukasik is a 1988 graduate of the University at Buffalo School of Law in Buffalo, New York and a managing partner at the law firm of [Bernhardi Lukasik PLLC](#). In 2008, Dan created Lawyerwithdepression.com, the first website and blog of its kind in the country, to help law students, lawyers and judges cope with and heal from depression. Read more at: <http://www.lawyerswithdepression.com/about-dan-2/#5CHLJr6FMjKB6hq.99>

C. Law Practice Management Resources

1. <http://apps.americanbar.org/dch/comadd.cfm?com=EPO24000&pg=1>. The American Bar Association Law Practice Division provides contact information for the Law Practice Management Advisors by State and Province if the program is active in the Law Practice Division.
2. http://www.americanbar.org/groups/law_practice/publications/lp_books.html. A leading provider of Law Practice Management books the ABA's LPD publications department has a catalog of 106 law practice management books including, *How to Start and Build a Law Practice*, Jay Foonberg.
3. Contact your state and local bar associations to find out if they have active law practice or general practice|solo

practice sections which provide educational or networking opportunities where management issues are discussed.

4. Independent attorneys/consultants/coaches that work with attorneys on practice management issues. Examples are:
 - a. Allison Shields, Legal Ease Consulting, <http://lawyermeltdown.com/>
 - b. Edward Poll, LawBiz, <http://www.lawbiz.com/>
 - c. Lee Rosen, Law Practice Marketing, Management and Technology, <https://divorcediscourse.com/>
 - d. Arthur G. Greene, Consulting, LLC, <http://arthurggreene.com/>
 - e. Susan Letterman-White, Letterman White Consulting, <http://www.lettermanwhite.com/our-services/#our-services-consulting>
 - f. Carolyn Elefant, My Shingle, <http://myshingle.com/>.
 - g. Debra Bruce, Lawyer-Coach LLC: <http://www.lawyer-coach.com/index.php/debra-l-bruce/>
 - h. Martha Newman, Top Lawyer Coach LLC: <https://www.facebook.com/TopLawyerCoach>
 - i. Chris Kirby, PCT Solutions, Inc.: <http://mypctsolutions.com/about/>
5. Association of Legal Administrators, <http://www.alanet.org/>, is a leader in the business of law and law practice management which is primarily aimed at law firm management professionals.
6. Blogs, Forums and eNewsletters:
 - a. <http://www.americanbar.org/groups/gpsolo/resources/solosez.html>. SoloSez™ is the internet discussion forum for solos and small firm lawyers which can provide very good advice on various practice management issues. As the ABA's most active email discussion list, SoloSez™ features approximately 1,500 solo and small firm e-mail subscribers discussing everything from tech tips and legal opinions to what to wear to court.

- b. ABA Law Practice Today,
<http://www.lawpracticetoday.org/>
- c. ABA Law Technology Today,
<http://www.lawtechnologytoday.org/>
- d. Massachusetts Law Office Management Assistance Program Blog, Law Practice Advisor, <http://masslomap.org/blog/>.
- e. Jim Calloways' Law Practice Tips Blog,
<http://jimcalloway.typepad.com/>

ATTACHMENT A

Self-Audit Checklist

The purpose of this self-audit checklist is to help clarify areas of your practice that do not comply with best practices.

Please take a few moments to review all of the questions and make note of any areas that you would like to discuss more thoroughly. The last page allows space for your notes and clarifications.

We recommend that you discuss answers with all employees in the office to ensure that your actual office procedures are documented.

CLIENT RELATIONS

Your client relationships are the most important aspect of law office management.

	Yes	No	N/A
INTAKE			
During the initial client meeting, do you establish communication guidelines and are you asking the clients how they want to be kept informed?			
Do you communicate the client's preferences to the team members and put a notation in the client file?			
Do you introduce all team members to the client at the onset of representation?			
Do you always discuss fees and billing procedures in the first meeting with the client to avoid surprises?			
COMPLIANCE WITH MASS RULES OF PROFESSIONAL CONDUCT RULE 1.5			
Does the firm provide your clients with a written Agreement of Representation and/or fee agreement that include:			
a) Details regarding the scope of your representation?			
b) The basis or rate of the fee?			
c) The expenses for which the client will be responsible?			
d) Reminders that no specific result has been promised?			
e) Obligations of the client to the matter?			
Does the firm enter into written contingent fee agreements, signed in duplicate by the firm and the client, where required by Rule 1.5? If so:			
a) Does the firm keep one copy?			
b) Does the firm retain proof that the duplicate copy has been delivered or mailed to the client?			
c) Does the firm retain a copy for 7 years after the conclusion of the matter?			
If the firm does contingent fee cases, does it use either Form A or Form B?			
If the firm uses Form B, does it obtain the client's informed consent, confirmed in writing, that the fee agreement uses alternative provisions from those in Form A?			
If the firm uses alternative contingent fee agreements to Form A or Form B, does the firm explain those differences and obtain the client's written informed consent as required by Rule 1.5(f)(1-3)?			

COMMUNICATIONS			
If you are not engaged by a potential client, do you send a non-engagement letter?			
Do you have established telephone policies and procedures and do you explain to all firm employees the critical importance of handling all calls with professional courtesy?			
Do you return clients' phone calls and email within 24 hours?			
Do you send follow-up letters after a meeting or a telephone conversation in which new decisions have been reached?			
Do you follow up with clients at least every six weeks even when their cases are inactive?			
Do you ask the client for feedback as the matter moves along?			
Do you send a letter at the end of each matter telling the client your representation is complete and thanking them for the opportunity to serve them?			

CONFLICTS OF INTEREST

Many law firms rely on the staffs’ collective memories to do their conflict of interest checking. This method rarely works accurately over any period of time. Every case handled cannot be so memorable that you will never forget every person involved. You should maintain a written conflict of interest system and keep it up to date. All staff members should be trained to use the system and conflict checks should be done prior to the discussion of any new matter with a client or potential client.

	Yes	No	N/A
Do you maintain and update a master contact list of current client, former clients, parties, employees and other individuals with cross references to files to facilitate researching possible conflicts of interest?			
Do you request information regarding other names (i.e., maiden, marital, etc.) that potential clients and adverse parties may have used in the past as part of our intake?			
Do you check your master list for potential conflicts of interest before interviewing the potential client about substantive facts and before accepting a new client or matter?			
Do you have a system to clear potential conflicts before proceeding with the client intake?			
Do you get a signed waiver from the client if representation is requested after a potential conflict has been discussed?			
Do you properly identify and record information regarding the adverse party?			

DOCKET/CALENDARING

Missing a filing deadline or court appearance can be extremely damaging to a client as well as cause embarrassment and a potential malpractice claim for you. Each firm member should maintain an individual calendar in addition to a master calendar for the entire firm. Answer the following questions to determine how well you are doing in this area:

	Yes	No	N/A
Does the firm maintain a master calendar?			
Do you keep individual calendars, i.e. attorney and secretary/paralegal?			
Does the master calendar and individual calendar include (as applicable):			
a) Statutes of limitations?			
b) All court appearances?			
c) Client and other appointments?			
d) All administrative hearings?			
e) Real estate closing dates?			
f) All litigation deadlines?			
g) All self-imposed, discretionary deadlines (i.e., promises made to others, promises made to you, and work deadlines you have set for yourselves)?			
Does the firm always update and maintain each calendar in case of scheduling changes?			
Does the firm use reminders or tickler slips to draw the attorney’s attention to an upcoming deadline?			
Does the firm use a system to follow up on assignments to team members?			
If the calendar is maintained on the computer, does the firm maintain a backup, printed or electronic, which may be used even if access to the computer is lost?			

CONFIDENTIALITY

	Yes	No	N/A
Do all new employees sign a confidentiality form acknowledging they have discussed confidentiality with you, read the relevant Rules of Professional Conduct, and will not breach the confidentiality of any client during and after their association with the firm?			
Do you make sure no client files or other confidential materials are ever left in the reception area?			
While conferring in person with clients, do you avoid taking calls or otherwise talking with other clients so as to protect client identities and confidentialities?			
Are the fax machines and copiers located away from areas where non-firm persons may be able to see confidential materials?			
If you are in an office sharing arrangement, have you taken steps to ensure that client confidentiality is protected by all?			

RECORDS MANAGEMENT

The client file represents a record of the work you have performed for the client. It also represents one of the most frequently overlooked tasks in the office. Maintaining the files in an orderly manner that allows for efficient access to client information will save time and money and promote your professional image. The following questions should help you determine the current status of your records management program for paper and electronic documents:

	Yes	No	N/A
Does the firm have a standardized filing system for all client files?			
Are all materials filed timely and regularly (i.e., files are not piling up on desk or floor)?			
Do you follow a file retention schedule after a case is completed (i.e., when to close, when to review for destruction, what to return to client, what to keep, and for how long)?			
Do you store current records in a secure area and safe from water and vermin damage?			

FINANCIAL MANAGEMENT

Timekeeping, billing, budgeting, and financial recordkeeping and reporting are included under the financial management umbrella. All of these activities should be coordinated to produce an efficient accounting and recordkeeping system. Mastering the elements of financial management should give you a sense of control over the direction of your firm.

	Yes	No	N/A
Does the firm have documented timekeeping procedures?			
Do you train all timekeepers in proper timekeeping methods?			
Is time recorded at the time the work is performed? If not, when is it recorded?			
Do you use time and billing software? If so, what software?			

BILLING

	Yes	No	N/A
Are all expense disbursements posted to clients' files on a regular basis?			
Are all internally incurred expenses (postage, long distance, etc.) posted to clients' files regularly?			
Are all payments and credits posted to clients' files regularly?			
Are all entries reviewed for accuracy?			
Are all bills reviewed and approved?			
Are bills sent out on a regularly scheduled basis?			
Are the accounts receivable evaluated and followed up on regularly?			

TRUST PROPERTY AND TRUST ACCOUNTS

	Yes	No	N/A
Are client trust funds kept in a bank trust account (IOLTA or “individual accounts”) separate from operating funds in the operating account?			
Do you keep only minimum funds (less than \$150) belonging to the firm in the trust account(s)?			
Are all other funds belonging to the attorney withdrawn from the trust account at the earliest reasonable time after the attorney’s interest becomes fixed?			
Is the trust account named or titled with words, such as “IOLTA”, “Trust”, “Escrow”, that indicate the fiduciary nature of the account?			
Do you only use prenumbered checks for withdrawals from the trust account?			
Are procedures in place to prevent withdrawals for cash or by automatic teller machine?			
Is a chronological check register kept for each trust account documenting details of each transaction, including the identity of the client matter pursuant to Mass. R. Prof. C. 1.15(f)(1)(B)?			
Is an individual client matter ledger and bank charge ledger maintained pursuant to Mass. R. Prof. C. 1.15(f)(1)(C) and (D)?			
Are bank accounts reconciled at least every 60 days?			
Are all trust accounts, including the IOLTA account, subject to “three-way reconciliation” at least every 60 days?			
Are clients provided an accounting of funds upon final disbursement?			
Are all records related to trust accounts preserved for a period of at least 6 years after termination of representation and distribution of the property?			

FINANCIAL RECORDKEEPING AND REPORTING

	Yes	No	N/A
Do you prepare tax returns timely?			
Do you have cash handling and accounting checks and balances in place (i.e., division of responsibilities)?			

PROFESSIONAL PRACTICE (Staff responses not necessary)

These questions relate to several of the details of how the lawyers handle daily events on your matters. Your standards of care should be consistent and timely – that can be difficult with many interruptions.

	Yes	No	N/A
Do you give legal advice over the phone if you are not familiar with the client?			
Do you have a designated back-up attorney for your files?			
Is this relationship, including rights and responsibilities, documented?			
Do you regularly go to CLEs in your specialty?			
Do you discuss the recommended course of action with clients at a time and place conducive to a good exchange of information and questions?			
Do you notify clients of the results of motions on their cases and so document the file?			
Do you complete all work in a timely fashion which you told the client you would complete?			

TECHNOLOGY

	Yes	No	N/A
Do all your lawyers and staff use computers?			
Do you use a networked (if applicable) computer system that allows all users access to appropriate documents and information?			
Is everyone trained to fully use your software?			
Is the office locked every night to discourage theft?			
Do you use case management software?			
Is your email to clients marked "Confidential Privileged Communication"?			
Do you back up our data at least daily?			
Do you attempt periodic "restores" of data (to check if it works)?			
Do you use computer software and a firewall to prevent computer viruses, malware, and spam from infecting the computers?			
Do you need a password to access data?			
Do you have confidentiality agreements for cleaning services, contract staff, and computer maintenance vendors who have access to your computer systems?			

MARKETING

	Yes	No	N/A
Do you review Rules 7.1 through 7.5 annually to ensure that you are in compliance with all marketing and advertising requirements?			
Do you review existing advertising and marketing materials at least annually to ensure that there are no false or misleading statements contained therein?			
Do you keep copies of any advertisements for 2 years after its last dissemination, along with a record of when and where it was used? (Rule 7.2)			
Do all advertisements include the name of the lawyer(s) or firm? (Rule 7.2)			
Does your website list your actual office address, and identify the lawyer(s) responsible for the website and jurisdictional limits of the practice? (Rule 7.2)			
Do all advertisements, website included, offer services only in fields in which you actually specialize in, or include appropriate disclaimers? (Rule 7.4)			
Is all targeted communication, electronic included, labeled "advertising"? (Rule 7.3)			

STAFF MANAGEMENT

A large part of a client’s impression of your law firm will come from the actions of your staff. It is critical to your success that your staff is well trained and motivated to provide excellent service to the firm’s clients. Your and your client’s welfare is often placed directly in your staff’s actions and decisions.

	Yes	No	N/A
Do you have a current office policies and procedures manual and follow it?			
Do you sufficiently train your employees when first hired as well as when major procedural changes occur, e.g. automation?			
Do you offer your staff continuing education opportunities?			
Do you keep staff members informed and give them an opportunity to offer input regarding matters affecting them?			
Do you properly supervise employees by reviewing their work?			
Do you set a good example for our staff by creating, implementing, and monitoring dependable office policies and systems (i.e., docket/work control, conflicts of interest, good documentation, etc.)?			
Do you express appreciation to employees for work well done and make sure any necessary criticism is shared privately, in a timely and constructive manner?			
Do you acknowledge staff members for good client relations?			
Do you encourage and motivate employees to take pride and ownership in their work?			
Do you provide support and assistance for staff members in the handling of disrespectful, rude, and otherwise out-of-line clients and others?			
Do you keep our staff informed as to your whereabouts and schedule?			
Do you provide a “safe” office environment? This refers to both the physical space, as well as the office culture that allows for the questioning of work by anyone before it leaves the office without feeling that his/her competence is being challenged.			

MANAGING YOURSELF

The viability of your practice ultimately depends on taking time to care for your own mental and physical needs. Use these optional questions to help you determine if you are mindful of your own needs.

	Yes	No	Maybe	N/A
Do you have concerns about time-management or procrastination?				
Do you have concerns about your work-life balance?				
Are you concerned about the level of stress you experience?				
Do you have any concerns about how you handle or have recently dealt with stress?				
Do you have a way of dealing with stress that does not have a negative impact on you or others?				
Are you dissatisfied with your career/work?				
Do you find it difficult to exercise on a consistent basis?				
Do you find that you have difficult relationships with individuals at work?				
Are you concerned that work issues impact your relationships with family or friends?				
Do you get a good night's sleep so that you feel rested?				
Do you find yourself unwinding in ways that make you uncomfortable in hindsight?				

LOMAP is a program of Lawyers Concerned for Lawyers (LCL). LCL employs mental health clinicians with whom you can further address your answers to these questions in a confidential setting. To learn more about LCL, visit the company website at www.lclma.org. You can make an appointment with LCL by calling (617) 821-7288 or (800) 525-0210.



Diversion



Grievance Referral Program

*How the Texas Chief Disciplinary Counsel's Office
is helping lawyers help themselves.*

BY LINDA ACEVEDO

IN 2006, THEN STATE BAR PRESIDENT MARTHA DICKIE APTLY RECOGNIZED THE Pervasiveness of Lawyer Impairments

and the likelihood that such impairments—if left unchecked—would eventually contribute to the types of behavior that give rise to attorney grievances. Her vision was to create a comprehensive diversion program that would protect the public by helping attorneys make changes in the way they practice law. A year later, the Grievance Referral Program—designed to help identify and assist lawyers who have impairment or law practice management issues and who enter the disciplinary system as a result of minor misconduct—was born. In just six short years, the GRP has become an integral part of the Texas attorney discipline system; more than 230 attorneys have successfully completed the program, and approximately 30 attorneys are currently participating.

“We are pleased to provide Texas attorneys with the opportunity to stop and analyze what’s working in their

practices, what’s not working, or what mostly works but could be improved,” said Lisa Villarreal-Rios, a licensed attorney, licensed master social worker, and licensed chemical dependency counselor-intern who has been the GRP administrator since 2010. The GRP offers an individualized program to address a variety of issues including attorney-client communication, poor law practice management skills, mental health issues, and substance dependency. The program represents an important chance to educate attorneys about the necessity of self-care and strong law practice management skills and habits.

Respondent attorneys may enter the GRP only if they meet the eligibility requirements and receive a formal referral from the Commission for Lawyer Discipline. Eligible attorneys include those who have not been disciplined within the prior three years, have not been disciplined for similar conduct within the prior five years, and have not engaged in professional misconduct that substantially harmed or prejudiced the client. Respon-

dents are not eligible if the misconduct is criminal or involves misappropriation of funds, breach of fiduciary duties, dishonesty, fraud, or misrepresentation. “Most attorneys who participate in the GRP have violated ethical rules related to communication and neglect,” Villarreal-Rios explained. “Failing to keep a client reasonably informed or missing a court date, for example, may result in a referral to the GRP.”

If an eligible respondent agrees to participate in the program, the first step is a meeting with Villarreal-Rios to assess and discuss the issues that contributed to the alleged misconduct. Villarreal-Rios then works with the attorney to design a program that will both meet the respondent’s needs and address the underlying allegations of misconduct. A plan for participation may include one or more of the following: mandatory completion of continuing legal education, law practice management consultations, business development, contingency planning, technological improvements, analysis of office needs, mental health or life coaching services, recovery meetings, mentoring opportunities, or restitution. “Most important is that attorneys come to the program willingly and enthusiastically,” Villarreal-Rios emphasized. “The program isn’t about avoiding misconduct; it is about facing the allegations, addressing them, and not making the same mistakes again. The practice of law is stressful, and it doesn’t look like it’s getting easier. The question is: How can attorneys cope and best take care of clients at the same time?”

The GRP works closely with the Texas Lawyers’ Assistance Program, TexasBarCLE, and TexasBarBooks on mental health, continuing legal education, and law practice management resources. “I am not interested in providing a cookie-cutter service,” noted Villarreal-Rios. “We are here to provide a valuable service with a meaningful takeaway and to provide it from within the disciplinary system. To do that, we have to get to the root of the problem so that we can provide the necessary energy, structure, and resources to address it.”

If the respondent completes the terms of the individualized program, the Commission for Lawyer Discipline may dismiss the underlying disciplinary complaint, allowing the attorney to continue practicing law without a disciplinary record. However, if the respondent fails to complete the terms of the program in a timely manner, the underlying complaint is moved forward through the standard disciplinary process.

Most attorneys successfully complete the GRP and provide strong feedback. “I am grateful to have participated in this program as it genuinely helped me to find assistance in improving myself and the services I provide to clients,” said one attorney who recently completed the program. “Thank you for pushing me on to seek some

help with what turned out to be a severe case of depression. You made a difference in my life personally, and I hope I too can do that for someone else in the future,” said another. **TBJ**

LINDA ACEVEDO

is the chief disciplinary counsel of the State Bar of Texas.

CRITERIA FOR REFERRAL

- Respondent has not been disciplined within the prior three years.
- Respondent has not been disciplined for similar conduct within the prior five years.
- Misconduct does not involve the misappropriation of funds or breach of fiduciary duties.
- Misconduct does not involve dishonesty, fraud, or misrepresentation.
- Misconduct did not result in substantial harm or prejudice to the client or complainant.
- Respondent maintained a cooperative attitude toward the proceedings.
- Participation is likely to benefit respondent and further the goal of the protection of the public.
- Misconduct does not constitute a crime that would subject the respondent to compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure.

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