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‘I Wasn’t Myself’: Mental Illness and Legal Ethics

The attorney disciplinary system in New Jersey is structured to allow—nay, to encourage —treatment and rehabilitation.

By **Marc Garfinkle** | February 15, 2018

For countless and varied reasons, lawyers violate ethical rules, court rules, common protocols, civil procedure and even criminal statutes in the practice of our profession. Sometimes our offenses are subtle, unintended and unnoticed.

Other times, they are egregious, flagrant, destructive and far-reaching. Our offenses run the full gamut from

innocent transgression to frontal assault, from sloppy (or non-existent) bookkeeping to feathering our retirement from funds siphoned from a client’s estate. Irrespective of the gravity of the offense, whenever lawyers act wrongfully, we violate at least one RPC in the process. As a result, our offenses are often more dangerous to us than to anyone else.

With an apology to readers who object to the word “crazy,” today’s column looks at bad attorney behavior when that behavior stems from a character disorder or a mental illness or defect. Unreliable empirical data gathered at this writer’s desk proves that lawyers are, as a group, crazier than most. The same factors—genetic, environmental and acquired—that explain mental or emotional disorder or disease in the rest of the



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population also apply to us, plus, as attorneys, our stressful jobs and lifestyles readily morph into additional neuroses and psychoses. Little wonder that suicides and suicidal thinking are so common among our colleagues, especially when they are caught acting wrongfully.

Sometimes attorneys do bad things with stealth or in solitude, concealing some ongoing offense or keeping some long-dead malfeasance from disinterment. Sometimes we are far too public, shining an unwanted light on lawyers' wrongdoing, and further denigrating our collective reputation. Sometimes we act in ignorance, oblivious to legality or appropriateness, and other times we act in open violation the order of some court. Often, we violate our own espoused morality.

We also get in trouble when we are lazy or unprepared or unable to concentrate. We get in trouble when we "misspeak." (What does that mean, anyhow?) We get in trouble when our judgment is clouded by liquor, drugs, passion, hubris or some other intoxicant, and when we act out of fear, jealousy, anger, revenge or greed. Financial desperation, triggered by inadequate income or excessive expenditures, is another pitfall for previously ethical attorneys. All sorts of factors can contribute to our psychiatric malaise.

Few of us can leave our quirks and issues at home. Instead, we take them with us to the office, to the conference room, to the courtroom, to the telephone and to the computer keyboard. Accordingly, it is normal that our personal psyche will affect some of our cases, our clients and our careers. When they do, we often respond poorly. We don't see ourselves in a neutral light. We miss the warning signs. We ignore or deny or hide the root causes. We are, as psychologists say, "in denial." Even when we acknowledge the deeper causes of our aberrant or otherwise wrongful behavior, we fear the truth and are reluctant to reveal it. We hide it from our spouses, our children, our partners or colleagues, our co-workers and our friends. Sometimes we know we need "a checkup from the neck up," but we refuse to submit, preferring to avoid the stigma of treatment. We convince ourselves of handy untruths, ignoring our illness and failing to grasp the meaning of "fitness to practice law."

Mental illness, substance dependency, and compulsive behavior such as gambling, can ruin our marriages, partnerships, friendships, law firms and lives. To make matters worse, the disciplinary process, itself, is maximally stressful. Merely learning that you are the focus of an ethics investigation is enough to trigger anxiety and depression.

Even “healthy” individuals respond with extraordinary anxiety to ethics inquiries, grievances and complaints—demonstrating sleeplessness, loss of appetite, inability to concentrate and marked personality changes. Few attorneys can confront an ethics case without some impact on his or her mental health. Imagine how devastating the effect can be when ethics investigates someone whose mental health has already been compromised.

The disciplinary system, as personified by the ethics investigator, the District Committee, the three-attorney panel, the Special Master, the Disciplinary Review Board, the Committee on Character and the Supreme Court, understands the plight of attorneys who have run afoul of the RPCs because of psychiatric or emotional problems, character issues or substance dependency. Although charged with protecting the public from unfit practitioners, the OAE does not believe that all such conditions automatically render an attorney unfit to practice. They believe that many offending attorneys can be rehabilitated. Rehabilitation means something different for each attorney, but, since rehabilitation takes time, it is wise to seek therapy immediately. Doing so may help you return to the practice more quickly, should your license be suspended.

The attorney disciplinary system in New Jersey is structured to allow—nay, to encourage—treatment and rehabilitation. This is critical, because most attorneys, even having been declared unfit to practice, can return to fitness through time and treatment. Very few cases fall outside that rule. Sometimes attorneys with these issues are permitted to practice subject to various conditions. These may include requirements that the attorney remain in treatment, submit to monitoring in various fashions, work only under the aegis of an experienced attorney, and so forth. Thus, the attorney who hides the ball, so to speak, and does not address the mental component of his problem, may have difficulty getting back into the game, while the attorney who confronts the problem and gets treatment has a far greater chance of returning to practice.

Consider the (altered fact) case of one your colleagues. Attorney A had been practicing 28 years, self-employed for most of that, had never been disciplined, had been a long-time public official and had earned an excellent reputation in the profession. One time, standing in line at a department store, a large diamond earring fell from the ear of the woman in front of her, and, wonder of wonders, landed in Attorney A’s open handbag!

She hesitated for a second or two, looked around, and then quickly closed the bag and left the store. Subsequent investigation by store security resulted in a 20-second video tape that showed it all. A well-known figure, she was recognized from the screen shot and was arrested for theft by failing to return lost or misplaced property to its rightful owner. When the police questioned her, she confessed on the spot and turned the earring over to the police.

She was arrested on the spot. She soon became suicidal. Never having sought mental health assistance before, she was urged by family to seek help for her anxiety and depression. In short order, her doctor discovered that she had been suffering from a long-standing depression arising out of childhood experiences of neglect and abandonment. She began therapy immediately, cooperated with the treatment and found it helpful and liberating.

The criminal matter was handled first, as they usually are, and, a first offender, she was sentenced to a pre-trial intervention program, wherein the matter would be essentially forgiven following a year of good behavior, which she completed. By the time Attorney A had finished serving her criminal sentence, triggering the ethics complaint for her guilty plea to theft, she was already recovering. Her doctor was able to declare that she would be fit to practice whenever the bar would allow it. Her case was handled sensitively and appropriately by the disciplinary system, which noted with favor her candor, her new self-awareness and her determination to be rehabilitated. In an unusual result for a case involving theft, her discipline did not include suspension.

Treatment, however, can be expensive, and many excellent physicians do not understand the attorney disciplinary system or the role that the treatment and report will play. Fortunately for many, New Jersey has a unique resource available to attorneys who have psychological, emotional, family, substance abuse, gambling and other issues that impact upon their happiness, sanity, marriage, career and self-esteem. The NJLAP (Lawyers' Assistance Program) is an independent facility offering top-tier services at no cost to New Jersey attorneys, judges and bar candidates. Although it is conveniently housed at the State Bar Association facility in New Brunswick, it is unaffiliated with the bar, and the professionals there respect their patients' privacy and confidentiality as at any other facility. Working only with legal professionals, the NJLAP is uniquely qualified

to help willing attorneys vanquish their hobgoblins and return to productive, rewarding, ethical careers. Their slogan is: "Never again will an attorney have to say, 'There was nowhere to go.'"

Attorneys act wrongfully for a myriad of reasons. When our actions are prompted or buttressed by psychological or character disorders, the danger is deep, and we must not ignore the signs. Prompt attention to our issues may save us. Failure to seek professional attention would be crazy.

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