

# News Brief

**Lawyers Concerned for Lawyers, Minnesota's Lawyers Assistance Program**  
*Free and confidential services provided by lawyers & judges for members of the legal profession*

JANUARY 2003

## UPCOMING LCL PRESENTATIONS

- LCL's first CLE Course, "Disabilities Related to Chemical and Mental Health Issues in the Legal System" will be presented at no cost on February 4, 2003 (9 am) at Court International (conference room # 150S). It will also be presented state-wide over the next three months. Dates, times, and locations will be available on our website. To reserve a space, call the LCL office to register. Two (2) hours of Elimination of Bias credit have been approved by the CLE Board.
- Washington County Bar Association will be sponsoring the one hour version of the same course on Thursday, February 27 at noon.
- LCL will participate in a CLE program, "Disability – the State of the Profession," sponsored by Hennepin County Bar Association. It will focus on disabilities related to mental illness and chemical dependency and will be held on February 25 from 8:30 – 11:45 am at HCBA, 600 Nicollet Mall, Suite 390. 3.0 CLE credits applied for, including 3.0 elimination of bias credits.

## UPCOMING EVENTS

- Plans are being made for more interactive seminars, along the lines of the December 12 presentation by Clinical Director Brenda Kittilson on "Staying Sane Through the Holidays." The next workshop will address career planning and career transition issues. Information on the workshop will be posted on the LCL website (New Programming) as soon as it is available.
- The first meeting of the Women Lawyer's Life Balance Group was held in January. This group will meet for nine weeks and is held over lunch at the LCL office. Interest has also been shown for a late afternoon starting time. If you are interested in such a group (at whatever time), please call the LCL office.

## SUPPORT GROUPS

### LAWYERS AA:

- Minneapolis – Tuesday and Thursday; noon (M.S.B.A. Office);
- St. Paul – Monday, 12:15 pm; (Ramsey County Court House);
- Other AA Meetings – Fridays, 7:00 am at Perkins on France & 494 Mondays, noon at Silver Spoon on 67th and Penn. Avenue.

### LAWYERS MENTAL HEALTH SUPPORT GROUPS:

- Minneapolis – 1st and 3rd Thursday, 6:30 p.m. (M.S.B.A. Office)
- St. Paul – 2nd and 4th Tuesday, 6:30 p.m. (LCL Office)

**UPCOMING NOON LCL MEETINGS** (Please let the office know if you would like to receive reminders of the membership meetings and the opportunity to order a box lunch. There is also a deli on site with sandwiches, salad bar, and soup.)

Wed. February 19 Ken Jorgenson, New Director of the Office of Lawyers Professional Responsibility  
Wed. March 19 Open  
April Date to be set based on availability of Johnny Allem, C.E.O., Johnson Institute

## REPRESENTING IMPAIRED ATTORNEYS BEFORE THE LAWYERS BOARD

At the January Membership Meeting, LCL member ██████ presented on his experiences representing attorneys before the Board of Lawyers Professional responsibility. ██████ stated that he is part of a small group of lawyers who do the vast majority of this work. He directed his remarks to our area of primary interest, attorneys with mental health and chemical health issues.

The case law in Minnesota provides more opportunities for attorneys to get help than in many other states. Further, the Minnesota Supreme Court decided cases making "alcoholism" and "severe psychological problems" mitigating factors when meting out consequences for attorney misconduct earlier than nearly all the other state courts.

The court's decision in *In re: Johnson*, 322 N.W.2d 616 (1982), established that alcoholism may be considered a mitigating factor in determining the consequences for attorney misconduct. Johnson had committed the cardinal sin of misappropriating client funds. Nevertheless, he was not disbarred because the court recognized the value to the public when rehabilitation is an option. The court relied on LCL's experience to support this position:

"Since the establishment of the organization known as Lawyers Concerned for Lawyers there is ample evidence that numerous members of the legal profession whose conduct due to alcoholism had seriously affected their ability to maintain the standards of the profession, by maintaining abstinence, revert to valuable and honorable members of their profession, and have contributed immeasurably to legal services provided the public. There is no reasonable basis to conclude that the Respondent will not join the many members of the profession who have in the past, and will in the future, continue to represent the legal profession admirably." *Id.* at 617

The court then established the following test to establish alcoholism as a mitigating factor in cases of attorney misconduct. The attorney must prove, by clear and convincing evidence, that:

## VOLUNTEER QUESTIONNAIRE REMINDER & VOLUNTEER OPPORTUNITY

Our annual mailing to the membership took place in December. A questionnaire was included to determine the level of volunteer resources and scope of interests.

The questionnaire also has a section concerning membership status. Because we haven't verified continued membership for a very long time, if ever, we are taking this opportunity to screen our mailing list.

If you haven't already, PLEASE RETURN THE QUESTIONNAIRE. Even if you have no interest in volunteering, it is important that we update our membership information. If you've misplaced the questionnaire or didn't receive one, please give the office a call. We plan to call those members who haven't responded (and need volunteers to make those calls – please call the LCL office if you would like to help).

An unpaid intern is being arranged through East Metro O.I.C. to design a data base that will help coordinate our volunteer efforts and make the membership database more functional.

## DUAL DIAGNOSIS – THE COMBINATION OF CD & MH IMPAIRMENTS

Think it was tough to finally get help for your chemical health or mental health issue? What do you think it would have been like to get your arms around your issues if you both had depression and were alcoholic? (These are the most common mental and chemical health issues we encounter.)

This situation is now recognized as being far more common than was previously believed. In fact, it is estimated by the National Institute of Mental Health that 32 % of the individuals with a depressive disorder are also abusing psychoactive substances. Another mood disorder, bipolar disorder, is even more challenging in this regard. 56% of the individuals with bipolar disorder are abusing substances. Bipolar mood disorder involves severe mood swings from manic "highs" to depressive "lows". During manic episodes, high levels of energy, initiative, mood, and sexual desire are experienced.

Dual diagnosis (also known as co-morbidity) creates greater difficulty than its constituent parts in both the evaluative and treatment phases. Diagnosing someone who is abusing alcohol and has depression is difficult for two reasons: denial is inherent to chemical dependency and alcohol is a depressant. Similarly, someone with bipolar mood disorder who is abusing methamphetamines will be difficult to diagnose because both the drug and the disorder create extreme mood swings. Thus, in either case the person is taking something that causes the same symptoms as the mood disorder and not telling you about it.

Some mental health professionals exacerbate the problem inherent in diagnosing co-morbidity by not responding appropriately to cues related to chemical health issues. If a patient being seen for depression does begin to open up about substance abuse issues, the response may be, "Well, I'm treating you for your mental health issues, here's a referral to see someone about your drinking" (or drugging). This fails to recognize that the mental health diagnosis may well be flawed due to the similarity in symptoms between the mood disorder and abusing specific psycho-active substances.

In the treatment phase, dual diagnosis with bipolar is especially problematic because of the strong motivation it provides both to resist medication and to relapse. Skipping medications is rewarded by providing manic highs. Further, individuals are likely to relapse on specific drugs to achieve those same feelings and the drugs commonly used in those situations are quite addictive, i.e. methamphetamine and crack.

Despite these difficulties, individuals with a dual diagnosis do get into recovery, maintain their sobriety, and stabilize their mental health. Available resources include treatment programs that specialize in addressing dual diagnosis issues and 12 step dual recovery groups. It is critical to find a mental health professional who truly understands the ramifications of these issues. It is also important for people in the dual diagnosed individual's support system (broadly construed, this includes everyone who attends 12 step groups) to have a good understanding of the interplay of mental health and C.D. issues. LCL is blessed to have Brenda Kittilson as our clinical director because she has extensive knowledge of and experience with the ramifications of and treatment for dual disorders.



## LAWYERS ASSISTANCE PROGRAM OF LCL

The Lawyers Assistance Program offers free, confidential help to lawyers, judges and law students affected by stress, depression and other mental health problems and/or chemical dependency which may impair their ability to perform competently and professionally. LCL has contracted with TEAM, Inc. to provide services including short term counseling, crisis assessment and referral on a 24-hour basis.

LCL (651) 646-5590 or (866) 525-6466  
TEAM, Inc. (651) 642-0182 or (800) 634-7710

1. the accused attorney is affected by alcoholism,
  2. the alcoholism caused the misconduct,
  3. the accused attorney is recovering from alcoholism and from any other disorders which caused or contributed to the misconduct, and
  4. the recovery has arrested the misconduct and the misconduct is not apt to reoccur.
- Id. At 618

Since then, of course, the lawyers board has applied the same analysis to addictions involving other psycho-active substances.

The very next year, the court created a test regarding severe psychological problems that is identical to the Johnson test. The only difference is to substitute "severe psychological problem" for "alcoholism" above. In re: Weyrich, 339 N.W.2d 274 (Minn. 1983). Mr. Weyrich's outcome was different than Mr. Johnson's, however, because Mr. Weyrich did not make the claim for his depression as a mitigating factor until the date of his hearing and he presented no evidence to support his bare claim. Mr. Weyrich was disbarred.

Since then, the standard of proof has been made somewhat less onerous for impaired attorneys. It is no longer necessary for an attorney to prove by clear and convincing evidence that the impairment caused all the misconduct in a particular case. In In re: Isaacs, 406 N.W.2d 526 (Minn. 1987), the court held that a determination in favor of mitigation can be based upon the totality of the elements in the test and each one need not be proved by clear and convincing evidence.

■ also discussed his experience in working with the attorneys who investigate and prosecute cases for the Office of Lawyers Professional Responsibility. It is ■ belief that these attorneys understand the potential treatment has to arrest the behaviors that lead to misconduct. Further, the opportunity to transfer to disability inactive status while charges are pending in order to receive treatment makes it possible for attorneys to avoid being disbarred even if they haven't sought help before they are charged. In those situations, the both the attorney's practice and misconduct charges are put on hold while the attorney avails him or herself of the appropriate course of treatment. The attorney then petitions to return to active status, which requires a similar showing to what is needed to establish a mitigating factor. The attorney's misconduct is addressed at the same time.

At next month's membership meeting, Ken Jorgenson, new Director of the Office of Lawyer's Professional Responsibility will provide his views on these issues and on his plans for the agency.