

# Going Up River: Lawyer Discipline, Lawyer Assistance and the Legal Profession's Response to Lawyer Alcoholism

By Barbara F. Smith

## Introduction

Upon the formation of the Commission on Alcohol and Substance Abuse in the Legal Profession in 1999, then-Chief Judge Judith S. Kaye offered a folk parable about two men fishing alongside a stream, when an infant floated past them. The first jumped in, rescued the child and handed him to the second fisherman, who placed the child safely on the grass. This scenario was repeated several times, until a group of babies came floating downstream. The first fisherman grabbed as many as he could, but the second walked away. "Hey," the first fisherman shouted, "aren't you going to help me save these children?" The second replied, "You save them, I'm going upstream to see who's throwing them into the river!"



This article will address a topic related to this journal's overall theme of regulation of beverage alcohol by considering how the legal profession regulates its members' professional conduct as affected by beverage alcohol. Similar goals may be attributed to those involved in the disciplinary function—with duties to the clients, the profession and the public; and to those involved in lawyer assistance whose vision to help the lawyers affected by disease inures to the benefit of clients, the profession and the public. But their paths to achieving those goals are necessarily different, yet not necessarily discordant.

The regulation of the impact of alcohol on attorney conduct parallels the rise of bar association committees and programs on "lawyer impairment," "lawyer alcohol abuse," "lawyer alcohol and drug abuse," "lawyers helping lawyers," and "lawyer assistance." These names for committees or programs accomplishing much the same purpose indicate the evolution of their development and scope. And the creation of the Lawyer Assistance Trust marks yet another milestone. But we get ahead of the story.

## The Continuum of Regulation

### Law Graduates

The first hurdle in career-long oversight of professional conduct begins with the character and fitness pro-

cess. The Appellate Division in each Judicial Department determines whether applicants for admission possess the "character and general fitness requisite for an attorney and counselor-at-law."<sup>1</sup> Pertinent here is the requirement that applicants report conduct evincing drug or alcohol abuse or addiction, including any open bottle, DWI, or underage drinking charges.

Decisions regarding admission are made on a case-by-case basis; however, a history of alcohol-related incidents prior to application for admission to the bar is not necessarily fatal. Committees and related staff will consider the relative seriousness of the conduct, its recentness, any record of treatment and/or rehabilitation, etc. Monitoring by a Lawyer Assistance Program, discussed below, would also be a factor to be weighed.

### Lawyer Conduct

Pursuant to authority granted by section 90(2) of the New York Judiciary Law, the courts adopt the rules governing professional conduct<sup>2</sup> and the disciplinary process for dealing with violations.<sup>3</sup>

Rule 8.4 proscribes lawyer misconduct adversely reflecting on the lawyer's honesty, trustworthiness or fitness as a lawyer, or engaging in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.<sup>4</sup>

Lawyers who know that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer are required to report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.<sup>5</sup> Lawyers are not required to disclose information otherwise protected by Rule 1.6,<sup>6</sup> or information gained while participating in a bona fide lawyer assistance program.<sup>7</sup>

None of the Rules of Professional Conduct refers to a lawyer's use of alcohol [or substance abuse] specifically, but the consequences of such use may reflect on the lawyer's fitness as a lawyer, within Rule 8.3.<sup>8</sup> The Appellate Division, First Department's 1982 decision in *Matter of Corbett* appears to be the first where an attorney who suffered from alcoholism and was found guilty of misconduct was permitted to continue in the practice of law under supervision. The court noted the attorney's recovering status and the fact that none of the charges involved "moral turpitude or misappropriation of funds."<sup>9</sup>

## Personal Conduct

If an attorney has an alcohol-related criminal conviction, such as driving drunk, the attorney is subject to automatic discipline pursuant to section 90(2) of the Judiciary Law.<sup>10</sup> Generally, for a first-time misdemeanor or lesser offense conviction (e.g., Driving While Ability Impaired, a traffic infraction), absent any aggravating circumstances (e.g. accident, resisting arrest, prior alcohol related offense, etc.), the attorney is not likely to lose his/her license and the court will either issue a public censure or refer the matter to the disciplinary committee for the imposition of a private sanction. In appropriate cases, the attorney may be referred for monitoring, if he/she is not already working with a lawyer assistance program.<sup>11</sup> In misdemeanor cases where there are aggravating circumstances, the court may impose a period of suspension. In appropriate cases, monitoring may be ordered or made a condition of reinstatement.<sup>12</sup> For conviction of a felony, the attorney ceases to be an attorney by operation of law at the moment of plea or verdict. In such cases the disciplinary committee will move to strike the name of the attorney from the rolls, a ministerial act confirming the earlier fact of automatic disbarment.<sup>13</sup>

In the Fifth Judicial District, grievance committee staff members have suggested to the Onondaga County District Attorney's office that they report all lawyer prosecutions to the grievance committee, especially for DWI and drug offenses, at the arrest stage. The committee noted:

Although the Rules, new and old, require attorneys to report knowledge of misconduct by other attorneys, the obligation of prosecutors to do so is still a matter of interpretation...since the rules require the DA's to go forward with prosecutions only upon evidence constituting probable cause, that same standard equals knowledge that raises the obligation to report.<sup>14</sup>

The earlier reporting may provide an "added incentive for evaluation and treatment at earlier stages."

In the Tenth Judicial District, the grievance committee staff takes a similar approach, having requested the District Attorney's office to inform them any time an attorney is arrested, so they can track the matter.

For non-conviction alcohol-related matters, the treatment of each case is dependent on facts and circumstances. Over the last fifteen years, there has been a trend to greater awareness and sensitivity on the part of disciplinary committees, staff and the Courts in dealing with the impaired attorney, especially in alcohol-related matters. This may be attributed to more information of the nature and breadth of the problem being available as well as the heightened awareness of lawyer assistance resources.<sup>15</sup>

## Alcoholism or Alcohol Abuse?: What It Is—as an Indication of Unfitness to Practice

The American Psychiatric Association publishes a *Diagnostic and Statistical Manual of Mental Disorders*, currently in its fourth edition and often referred to by the shorthand *DSM-IV*. The DSM-IV criteria for alcohol abuse are:

(a) maladaptive pattern of alcohol abuse leading to clinically significant impairment or distress, as manifested by one or more of the following, occurring within a 12-month period:

1.) Recurrent alcohol use resulting in failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions or expulsions from school; or neglect of children or household).

2.) Recurrent alcohol use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine).

3.) Recurrent alcohol-related legal problems (e.g., arrests for alcohol-related disorderly conduct).

4.) Continued alcohol use despite persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol (e.g., arguments with spouse about consequences of intoxication or physical fights).

These symptoms must never have met the criteria for alcohol dependence.<sup>16</sup>

The DSM-IV criteria for alcohol dependence are:

(a) maladaptive pattern of alcohol use, leading to clinically significant impairment or distress, as manifested by three or more of the following seven criteria, occurring at any time in the same 12-month period:

1. Tolerance, as defined by either of the following:

- A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
- Markedly diminished effect with continued use of the same amount of alcohol.

2. Withdrawal, as defined by either of the following:
  - The characteristic withdrawal syndrome for the alcohol.
  - Alcohol is taken to relieve or avoid withdrawal symptoms.
3. Alcohol is often taken in larger amounts or over a longer period than was intended.
4. There is a persistent desire or there are unsuccessful efforts to cut down or control alcohol use.
5. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol or recover from its effects.
6. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
7. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the alcohol.<sup>17</sup>

How much drinking is too much?<sup>18</sup> How many lawyers are we talking about? Statistics on the numbers of attorneys who may abuse or be dependent on alcohol vary,<sup>19</sup> with many cited articles having been written in the 1990s and based on lawyer populations outside of New York State. According to G. Andrew Benjamin, et al., as many as “18-25% of lawyers may be affected by alcoholism.”<sup>20</sup>

As with the general population, alcoholism is a chronic problem in the legal community.

As the Alcoholics Anonymous community might put it, “alcoholism is an equal opportunity disease,” crossing social, economic, and educational barriers. Although the disease of alcoholism is chronic and progressive, it may be successfully arrested and treated—although no “cure” exists, recovery is possible. Denial is a common attribute of those with the disease; lawyers appearing before disciplinary staff do not necessarily offer their alcohol abuse or dependence as a mitigating factor, and some disciplinary staff do not routinely question respondents concerning possible mitigating factors such as their alcohol abuse or dependence. This catch-22 effect is another reason why accurate statistics on the severity of the problem are difficult to gauge.

In an effort to address the problem of lawyer alcoholism (and substance abuse) the Second, Third and Fourth

Departments of the Appellate Division have adopted “diversion to monitoring” rules.<sup>21</sup> Pursuant to these rules, an attorney whose misconduct (which would not result in suspension or disbarment if found guilty) is sufficiently related to alcohol or substance abuse or dependency may be diverted to a monitoring program sponsored by an approved Lawyer Assistance Program. During the monitoring period, the attorney would undergo random testing for alcohol/drug use and would be required to participate in appropriate treatment. If the attorney successfully completes the monitoring period (often two years), the charges may be dismissed.

Statistics on the numbers of New York attorneys seeking to participate in the diversion program are not available, and it is difficult to estimate how many lawyers involved in the disciplinary process in New York have an alcohol-based problem.<sup>22</sup>

However, the Illinois Attorney Registration and Disciplinary Commission recently circulated its 2007 Annual Report, which includes a study of “demographic data for lawyers disciplined with identified impairments during a ten-year period (1998–2007).”<sup>23</sup> According to that Report, the statistics reflect “only those cases in which an impairment was raised by the lawyer or otherwise known by staff counsel. It is likely that many cases involving impaired lawyers are never so identified.”<sup>24</sup> During the ten-year period (1998–2007), 17.7% of attorneys sanctioned had impairments caused by alcohol.<sup>25</sup> Cases of alcohol and depression accounted for another 8%; and alcohol and other drugs, an additional 13%.<sup>26</sup> Of 215 lawyers with identified impairments disciplined between 2003 and 2007, “86% of impaired lawyers were sole practitioners or practiced in a firm of 2–10 lawyers at the time of the misconduct.”<sup>27</sup> Tracy Kepler, Senior Counsel for the Commission, characterized the findings as “surely under-inclusive,” and noted that “it appears that Illinois may be alone (among states) in its record keeping on statistics of impairment.”

## Reporting Requirements

The requirement for lawyers to report another lawyer’s misconduct was described above—but to what entity is that report to be made? Ethics Opinion 822 of the New York State Bar Association’s Committee on Professional Ethics addresses the question to whom lawyers, who are not members of lawyer assistance or lawyer helping lawyer committees,<sup>28</sup> are obliged to report lawyer misconduct.<sup>29</sup> It concludes that, “while lawyers are to be encouraged to refer to a LAP lawyers who are abusing alcohol or other substances or who face mental health issues, such a referral would not satisfy the ethical reporting requirement.”<sup>30</sup> Rule 8.3 requires reporting to a “tribunal or other authority empowered to investigate or act upon such violation.”<sup>31</sup> Opinion 822 continues:

[T]he phrase “investigate or act” suggests that the “authority” must be a court of competent jurisdiction or a body having enforceable subpoena powers. Thus, a violation in the course of litigation could be reported to the tribunal before which the action is pending. In both a litigation and a non-litigation context, the report could be filed with a grievance or disciplinary committee operating under the powers granted to them by the Appellate Division of the State Supreme Court pursuant to Section 90 of the Judiciary Law and court rules. The report could be filed with the grievance committee in the Appellate Department in the Department where the lawyer is admitted or where the prohibited conduct occurred.<sup>32</sup>

### Background of Lawyer Assistance in New York State and the U.S.

The history of the lawyer assistance movement necessarily is linked to the creation and expansion of the Alcoholics Anonymous movement in the United States. Alcoholics Anonymous—“AA”—as it is known, began 1935 in Ohio, with the meeting of two alcoholics—Bill W. and Dr. Bob S.<sup>33</sup> Dr. Bob, responding to Bill’s concept that “alcoholism was a malady of mind, emotions and body,”<sup>34</sup> had not known alcoholism to be a disease; but responding to Bill’s ideas, he got sober. Four years later, the three founding groups, in Akron, Cleveland and New York, had approximately 100 sober alcoholic members.<sup>35</sup>

In 1939, the basic textbook, *Alcoholics Anonymous*, commonly referred to as the “Big Book,” was published, explaining AA’s philosophy and methods, the core of which was the now well-known Twelve Steps of recovery.<sup>36</sup> Thanks to the circulation of the Big Book, publication of articles about AA, and the proliferation of AA groups, by 1950, 100,000 recovered alcoholics could be found. Seventy-five years after AA’s founding, in 2010, the AA General Services Office reports more than 1.2 million AA members in the United States, participating in more than 56,000 groups; and, worldwide, membership totaling more than 2.1 million, in more than 115,000 groups. By sharing their “experience, strength and hope,” this fellowship of individuals has as its purpose “to stay sober and to help other alcoholics achieve sobriety.”<sup>37</sup>

The early history of “lawyer assistance” in the United States is largely the story of individual attorneys, themselves in recovery, who brought the message to other lawyers needing help. These charismatic leaders played a vital role in the founding of Lawyer Helping Lawyer Committees, which first developed in New York State’s metropolitan areas where sufficient lawyers in recovery

supported their founding. By 1976, New York and Canadian attorneys in recovery met in Niagara Falls, Canada at an event that has since become known as International Lawyers in Alcoholics Anonymous (ILAA); they continue to hold annual meetings throughout the U.S. and Canada. In 1978, Ray O’K, an attorney from Westchester County, was appointed by the State Bar President as Chair of a Special Committee created to address the problem of lawyer alcoholism and drug abuse. He wrote to the presidents of the sixty-two county bar associations to inform them of the existence and work of the new Committee, and he encouraged the bar associations to form local Lawyer Helping Lawyer Committees.<sup>38</sup>

In the late 1980s, as the Special Committee’s visibility increased, and the numbers of lawyers seeking assistance continued to grow, the Committee petitioned the State Bar to hire an individual to direct the program and provide initial assessments and referrals for treatment. Ray Lopez, the first NYSBA Lawyer Assistance Program Director, came on board in 1990, and a major early success for the Program and Committee was the enactment of section 499 of the Judiciary Law, which grants confidentiality to communications between Lawyer Assistance Committee members or its agents and lawyers or other persons. In 1999, the Association of the Bar of the City of New York created its own Lawyer Assistance Program and hired Eileen Travis as its Director. The Nassau County Bar Association has had part-time LAP Directors for the last two decades; the current Director is Peter Schweitzer. In 2005, Patricia Spataro became the staff Director of the NYSBA Lawyer Assistance Program.

Institutionally latest on the scene is the New York Lawyer Assistance Trust, created in 2001 as an initiative of the Unified Court System, following the recommendation of the Commission on Alcohol and Substance Abuse in the Legal Profession. The Trust [or “NYLAT”] mission is to bring statewide resources and awareness to the prevention and treatment of alcohol and substance abuse among members of the legal profession. Its mission has been expanded to include addressing mental health issues as well.<sup>39</sup> Responsibility for the administration and management of the Trust lies with a twenty one-member board of trustees appointed by the Chief Judge, and the Trust works to enhance the efforts of the bar associations’ LAPs and committees. With the advent of the Trust and its grant program, additional part-time mental health professionals have been added to enhance LAP staffs. Full contact information for Lawyer Assistance Programs and Lawyer Helping Lawyer Committees may be found at the end of this article.

As of 2010, there are numerous Lawyer Helping Lawyer Committees<sup>40</sup> throughout the State, performing outreach and personal visits with attorneys as appropriate, informing them of the availability of resources for help.

Most recently, the New York State Bar Association adopted a Model Law Firm policy addressing alcohol, substance abuse and mental health issues, which marks another recognition by the organized bar that the problems exist and that there are resources for addressing them.<sup>41</sup> Individual firms are encouraged to adopt the model policy or adapt it to the firm's culture.

The Model Policy on Impairment has three fundamental goals: (1) to protect clients; (2) to foster a culture and environment that encourages attorneys to seek help and to provide structure necessary to address those circumstances where an attorney's judgment is impaired; and (3) to recognize that it is far more cost effective to treat and rehabilitate afflicted attorneys than it is to deny that such problems exist or to simply fire the afflicted attorney, destroying careers, wasting years of experience and potentially jeopardizing the best interests of the firm's clients.<sup>42</sup>

Lawyer Assistance Programs are now found in all 50 states, and the American Bar Association has a standing Commission on Lawyer Assistance Programs (CoLAP). CoLAP has the mandate to educate the legal profession concerning alcoholism, chemical dependencies, stress, depression and other emotional health issues, and to assist and support all bar associations and lawyer assistance programs in developing and maintaining methods of providing effective solutions for recovery.

The disciplinary implications for lawyers abusing "beverage alcohol" cannot be predicted, as much depends on the particular circumstances.<sup>43</sup> Education—along with individual success stories—will be the key to the continuing evolution of the legal profession's response to the problems addressed by Lawyer Assistance Programs.

### **Contact Information for Lawyer Assistance Program Staff and Committee Chairs**

NYSBA LAP Director—Patricia Spataro (800) 255-0569;  
Lawrence Zimmerman, Committee Chair (518) 429-4242

NYC Bar LAP Director—Eileen Travis (212) 302-5787;  
Gary Reing, Committee Chair (914) 245-7609

Nassau County Bar LAP Director—Peter Schweitzer (516) 747-4070

Brooklyn Bar LHL Committee—Sarah Krauss (718) 637-7561

Bronx County Bar Committee—William Peterman (718) 515-6000

Broome County Bar LAP Committee—Tom Schimmerling (607) 435-6225

Capital District LHL Committee—William Better (518) 758-1511

Bar Association of Erie County—LHL Committee  
Katherine Bifaro (716) 852-1777

Committee to Assist Lawyers with Depression—Daniel Lukasik (716) 852-1888

Dutchess County Bar LAC Committee—Lee Klein (845) 454-9200

Jamestown Bar Association—Peter Yoars (716) 338-0413

Jefferson County Bar LHL Committee—David Antonucci (315) 788-7300

Monroe County LCL Committee—Terry E (585) 233-3598

Nassau County LAP Committee (888) 408-6222 (helpline);  
Annabel Bazante (516) 776-7030

Oneida County Bar LAC Committee—Tim Foley (315) 369-3544

Onondaga County Bar LHL Committee—Bill Morgan (315) 476-2945

Queens County Bar LAC Committee—Robert Carlsen (718) 366-0058

Richmond County Bar—Jonathan Behrins (718) 442-4500

Rockland County Bar LHL Committee—Benjamin Selig (845) 942-2222 or Barry Sturz (845) 369-3000

Saratoga County LAC Committee—Richard Zahnleuter (518) 280-1974 or Neil Weiner (518) 348-7900

Schenectady County Bar LAP Committee—Vincent Reilly (518) 285-8425

Suffolk County Bar LAC Committee—Rosemarie Bruno (631) 979-3481 or (631) 697-2499 (helpline)

Tompkins County Bar LHL Committee—Richard Wallace (607) 272-2102

Westchester County Bar LHL Committee—Charles Goldberger (914) 949-6400

## Endnotes

1. N.Y. JUDICIARY LAW § 90(1)(a) (McKinney 2010).
2. N.Y. COMP. CODES R. & REGS. tit. 22, § 1200 (2010) (The New York Rules of Professional Conduct became effective on April 1, 2009, superseding the New York Code of Professional Responsibility) (hereinafter N.Y. PROF'L R.).
3. For department-specific information regarding the disciplinary process, see N.Y. COMP. CODES R. & REGS. TIT. 22, §§ 603 (First Department), 691 (Second Department), 806 (Third Department), 1022.17 (Fourth Department).
4. N.Y. PROF'L R. 8.4(b), (h).
5. N.Y. PROF'L R. 8.3(a) (Reporting Professional Misconduct).
6. N.Y. PROF'L R. 1.6.
7. N.Y. PROF'L R. 8.3(c).
8. N.Y. PROF'L R. 8.3.
9. Matter of Corbett, 450 N.Y.S.2d 802, 803 (N.Y. App. Div. 1982).
10. See N.Y. JUDICIARY LAW § 90(4)(c) (McKinney 2010) (requiring attorneys convicted of a crime in a court of record to inform the Appellate Division within thirty days of such conviction—failure to do so is deemed professional misconduct, provided the Appellate Division may grant an extension to file upon good cause shown).
11. See *infra* p. 79 and note 21 (describing the diversion to monitoring program).
12. In some circumstances, the suspension may be stayed when monitoring is in place and the attorney is complying with the terms of the monitoring agreement.
13. N.Y. JUDICIARY LAW § 90(4)); E-mail Interviews with Robert P. Guido, Special Counsel for Grievance Matters, New York Supreme Court Appellate Division, Second Judicial Department (August 19, 2010 and September 13, 2010).
14. E-mail Interview with Anthony J. Gigliotti, Principal Counsel, Attorney Grievance Committee, Fifth Judicial District (September 13, 2010).
15. E-mail Interviews with Robert P. Guido, *supra* note 13.
16. See AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 198–99 (4th ed. 2000). The DSM-IV further elaborates on alcohol abuse and should be read in conjunction with the criteria set forth for substance abuse. *Id.* at 214.
17. *Id.* at 197; see *id.* at 213 (elaborating on alcohol dependence).
18. “It makes a difference both *how much* you drink on any day and *how often* you have a ‘heavy drinking day’—that is, more than 4 drinks in a day for men or more than 3 drinks for women... [t]he more drinks in a day and the more heavy drinking days over time, the greater the chances for problems.” THE NATIONAL INST. ON ALCOHOL ABUSE AND ALCOHOLISM, RETHINKING DRINKING: ALCOHOL AND YOUR HEALTH 4 (2010), available at [http://pubs.niaaa.nih.gov/publications/Rethinking\\_Drinking/Rethinking\\_Drinking.pdf](http://pubs.niaaa.nih.gov/publications/Rethinking_Drinking/Rethinking_Drinking.pdf) (emphasis added).
19. One defense lawyer who represents lawyers involved in professional misconduct cases laments that many lawyers are understandably reticent about disclosing alcohol or substance abuse. As a result, in that lawyer’s opinion, many disciplinary prosecutors, hearing panels and courts do not appreciate the full impact of substance abuse in the profession.
20. G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 LAW & PSYCHOL. REV. 113, 113–14 (1992) (reporting that one-third of practicing attorneys suffer from depression, alcohol or cocaine abuse).
21. Diversion rules have been adopted in the Second Department, see N.Y. COMP. CODES R. & REGS. tit. 22, § 1022.20(d)(3) (2010); see also N.Y. COMP. CODES R. & REGS. tit. 22, 691.4(m) (for Third Department), 806.4 (for the Fourth Department). The First Department has not adopted such rules, but has addressed similar circumstances informally and on a case-by-case basis.
22. The New York Fund for Client Protection reimburses clients for losses caused by dishonest conduct of certain lawyers; since their establishment, their payouts have involved misconduct by less than one-third of one percent of the bar’s membership. In its calendar year 2007 annual report, the Fund states that “[T]he apparent causes of misconduct by these lawyers are often traced to alcohol or drug abuse and gambling. Other causes are economic pressures, mental illness, marital, professional and medical problems.” THE LAWYERS’ FUND FOR CLIENT PROTECTION OF THE STATE OF NEW YORK, ANNUAL REPORT OF THE BOARD OF TRUSTEES FOR CALENDAR YEAR 2007, at 16 (2009).
23. ILL. ATTORNEY REGISTRATION AND DISCIPLINARY COMM’N (ARDC), ANNUAL REPORT 4 (2007), available at <https://www.iardc.org/AnnualReport2007.pdf>.
24. *Id.* at 28.
25. *Id.*
26. See *id.*, Chart 29B *Impairments Identified for Attorneys Sanctioned between 1998–2007*. The Full text of Chart 29B follows this article.
27. See *id.* at 20, Chart 29C.
28. Lawyer Assistance Program (LAP) services are confidential pursuant to N.Y. JUDICIARY LAW § 499 (McKinney 2010), which provides:
  - (1) Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privilege may be waived only by the person, firm or corporation which has furnished information to the committee. (2) Immunity from liability. Any person, firm or corporation in good faith providing information to, or in any other way participating in the affairs of, any of the committees referred to in subdivision one of this section shall be immune from civil liability that might otherwise result by reason of such conduct. For the purpose of any proceeding, the good faith of any such person, firm or corporation shall be presumed.
29. NYSBA Comm. on Prof’l Ethics, Formal Opinion 822 (2008).
30. *Id.*
31. N.Y. PROF'L R. 8.3(a).
32. NYSBA Comm. on Prof’l Ethics, Formal Opinion 822.
33. Bill W. is Bill Wilson, and Dr. Bob is Bob Smith. The custom in AA is to refer to the individual by their first name and first initial of the last name, to preserve anonymity.
34. As learned from Dr. William Silkworth of Towns Hospital in New York, where Bill had been a patient
35. For more information, visit [www.aa.org](http://www.aa.org), a website maintained by the General Services Office.
36. See *The Twelve Steps of Alcoholics Anonymous*, ALCOHOLICS ANONYMOUS WORLD SERVICES (last visited Oct. 10, 2010), available at [http://www.aa.org/en\\_pdfs/smf-121\\_en.pdf](http://www.aa.org/en_pdfs/smf-121_en.pdf). The Twelve Steps are:
  1. We admitted we were powerless over alcohol—that our lives had become unmanageable.
  2. Came to believe that a Power greater than ourselves could restore us to sanity.
  3. Made a decision to turn our will and our lives over to the care of God as we understood Him.
  4. Made a searching and fearless moral inventory of ourselves.
  5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.

6. Were entirely ready to have God remove all these defects of character.
  7. Humbly asked Him to remove our shortcomings.
  8. Made a list of all persons we had harmed, and became willing to make amends to them all.
  9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
  10. Continued to take personal inventory and when we were wrong promptly admitted it.
  11. Sought through prayer and meditation to improve our conscious contact with God *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out.
  12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.
37. See THE A.A. GRAPEVINE, INC., [www.aagrapevine.org](http://www.aagrapevine.org).
  38. Certainly, local groups of attorneys meeting in AA format preceded these bar association committees, but the formation of the bar association Lawyer Helping Lawyer Committees marked an important step in the recognition of the problem and the visibility of resources for lawyers seeking help.
  39. Since the focus of this *Journal* is regulation of beverage alcohol, the text of this article focuses primarily on that aspect of lawyer assistance services. Readers interested in learning more about the mental health aspects of the LAP efforts should visit [www.nylat.org](http://www.nylat.org)

org or the websites of the New York State and New York City Bar Associations.

40. In addition to the statewide Lawyer Assistance Committee (LAC) of the New York State Bar Association, and the New York City Bar's LAC, local committees may be found in: the Bronx; Brooklyn; Queens, Richmond, the Capital District; Broome County; Dutchess County; Erie County; Jamestown (Chautauqua County), Jefferson County, Monroe County, Nassau County, Oneida County, Onondaga County, Rockland County, Saratoga County, Schenectady County, Suffolk County, Tompkins County and Westchester County. Contact information follows the text of this article.
41. Copies of the Model Policy are available at [www.nysba.org/lap](http://www.nysba.org/lap) or by calling 800/255-0569.
42. See NEW YORK STATE BAR ASS'N, LAWYER ASSISTANCE COMM. MODEL POLICY (2010), available at [http://www.nysba.org/AM/Template.cfm?Section=Lawyer\\_Assistance\\_Program\\_LAP\\_&Template=/CM/ContentDisplay.cfm&ContentID=40704](http://www.nysba.org/AM/Template.cfm?Section=Lawyer_Assistance_Program_LAP_&Template=/CM/ContentDisplay.cfm&ContentID=40704).
43. See, Leigh Jones, *Dazed and Confused: Disciplinary Actions for Substance-Abusing Attorneys Vary Widely*, 33 Nat'l L.J. 1 (2010).

**Barbara F. Smith is Director of the New York Lawyer Assistance Trust, a court system initiative bringing state-wide resources and awareness to the prevention and treatment of alcoholism, substance abuse and mental health issues among members of the legal profession.**

**Chart 29B: Impairments Identified for Attorneys Sanctioned Between 1998-2007**

	1998-2002		2003-2007		1998-2007	
<b>Impairments of Lawyers Sanctioned</b>	519		676		1,195	
<b>Substances:</b>						
Alcohol	30	24.2%	30	14%	60	17.7%
Cocaine	7	5.6%	7	3/2%	14	4.2%
Other drugs	4	3.2%	23	11%	27	8%
<b>Mental Illness:</b>						
Depression	45	36.3%	73	34%	118	35%
Bipolar Disorder	8	6.5%	5	2.3%	13	3.8%
Schizophrenia	2	1.6%	3	1.4%	5	1.5%
<b>Other</b>						
Gambling	5	4%	10	4.6%	15	4.4%
Sexual Disorder	5	4%	4	1.8%	9	2.7%
<b>Combinations:</b>						
Alcohol & Depression	5	4%	22	102%	27	8%
Alcohol & Other Drugs	9	7.3%	35	16.2%	44	13%
Alcohol & Gambling	1	1%				
Depression & Drugs	2	1.6%	2	1%	4	1.2%
Gambling & Drugs	1	1%	1	1%	2	1%

Source: Ill. Attorney Registration and Disciplinary Comm'n (ARDC), Annual Report 28 (2007).