

**AMERICAN BAR ASSOCIATION
COMMISSION ON IMPAIRED ATTORNEYS
REPORT TO THE HOUSE OF DELEGATES**

RECOMMENDATION

RESOLVED, that the American Bar Association approves the guiding principles set forth below to assist state and local bar associations in the development and maintenance of effective programs to identify and assist those lawyers and law students impaired by alcoholism, other forms of substance abuse or for other causes.

BE IT FURTHER RESOLVED, that the Standing Committee on Ethics and Professional Responsibility is requested to draft amendments to the Model Rules of Professional Conduct implementing Guideline #2 regarding confidentiality for approval by the House of Delegates.

1. A statewide lawyer assistance program should be in place.
2. The confidentiality of those who seek and provide help must be maintained through a rule of court or a legislative act.
3. Members of the profession who serve in lawyers assistance programs should be immune from civil liability.
4. Strong, but not exclusive, ties with the recovering community should be maintained.
5. Strong working relationships should be maintained between state and local programs and their sponsoring bar organizations.
6. A program for monitoring attorneys who have been brought to the attention of the disciplinary system as a result of an impairment problem should be maintained with the appropriate disciplinary agency.
7. Impairment programs and disciplinary agencies should establish and maintain a system for the referral of lawyers with impairment problems to the assistance program.
8. An educational element should be developed to inform the public, the judiciary, the bar, law students and the disciplinary agencies of the assistance that is available for those in need.
9. A substance abuse lecture should be part of the continuing legal education of each bar and the curriculum of each law school.
10. A periodic review of the lawyer assistance program should be accomplished.

REPORT

According to national studies, 10% of the population suffers from substance abuse. It has been suggested that the problem is greater among the professions.

The American Bar Association created the Commission on Impaired Attorneys in 1988 to assist the profession in seeking solutions to this problem. This Commission was charged with the responsibility of developing and implementing a program to address attorney impairment.

“A comprehensive Association-wide program for attorney impairment related activities.”

The American Bar Association should promulgate guiding principles which will assist state and local associations in the development and improvement of effective lawyer assistance programs:

The following principles are commended to state and local bar organizations as standards for existing and future substance abuse programs

1. A state-wide lawyer assistance program should be in place.

Each state should have an active lawyers assistance program for attorneys with substance abuse or other impairment problems. This program should include representatives from the judiciary, the bar and legal educators with a goal of guiding lawyers and law students with substance abuse or other impairment problems into successful and continuing recovery.

2. The confidentiality of those who seek and provide help must be maintained through a rule of court or a legislative act.

Those involved in lawyer assistance programs cite confidentiality as essential to the success of any program. The fear that their problem will be reported to disciplinary authorities is so great that many in need will not seek help unless their confidentiality is assured.

3. Members of the profession who serve in lawyers assistance programs should be immune from civil liability.

Volunteers who give of their time and efforts to assist those with impairment problems should not be liable in damages for acts done in good faith.

4. Strong, but not exclusive, ties with the recovering community should be maintained.

Those in recovery from substance abuse must make a commitment to abstain from using alcohol and other drugs. Participation in one of the twelve steps programs or their equivalent is necessary to sustain that commitment. It is essential therefore that leaders of the bar and the recovering lawyer community work together.

5. Strong working relationships should be maintained between state and local programs and their sponsoring bar organizations.

The state program should maintain the responsibility for assuring that local programs in the state maintain a high standard of quality and that their activities assure the confidentiality of those with problems and the immunity from civil liability of those working in the programs. Local programs should seek assistance from their state programs and assurances that the other principles embodied in this statement are provided by the state if the local association cannot fully implement them.

6. A program for monitoring attorneys who have been brought to the attention of the disciplinary system as a result of an impairment problem should be maintained with the appropriate disciplinary agency.

Most states recognize that substance abuse may be a mitigating factor in a disciplinary case where the lawyer has recognized the problem and is in recovery. It is essential that a method of monitoring the lawyer's activities be in place for a program of recovery and restoration to work.

7. Impairment programs and disciplinary agencies should establish and maintain a system for the referral of lawyers with Impairment problems to the assistance program.

Disciplinary agencies frequently receive complaints which may be the result of impairment problems. With a proper referral mechanism in place, many lawyers may be assisted before the need for disciplinary enforcement is necessary.

8. An educational element should be developed to inform the public, the judiciary, the bar, law students and the disciplinary agencies of the assistance that is available for those in need.

As part of ongoing efforts at early intervention and prevention, direct efforts to educate the profession should be implemented. Ethics and professional responsibility classes in law schools should be used to inform law students about the nature and effects of substance abuse. Presentations to the membership of bar associations, law firms, civic clubs and the like are also encouraged.

9. A substance abuse lecture should be part of the continuing legal education of each bar and the curriculum of each law school.

The effect of substance abuse is so devastating upon the law practice and potentially so damaging to clients' interests that all lawyers should be trained to recognize the early symptoms, to understand that the disease is treatable and how to get help for themselves and their colleagues.

10. A periodic review of the lawyer assistance programs should be accomplished.

Periodic review of the programs by the bar responsible for its sponsorship is essential to the proper functioning of the program. This review should assure that the programs are effective

and are staying current with new developments for handling impaired lawyers and are functioning in accordance with these principles and those established locally for its operation.

These guiding principles were developed by the Commission based on the information collected in its Survey of State and Local Lawyer Assistance Programs published September, 1989) and the programs and seminars which it has sponsored or participated in during the past two years. Forty-four programs in the U. S. and one from Canada responded to the survey, and the Commission has participated in more than ten programs and seminars.

These guiding principles were then presented to over one hundred representatives from Lawyer Assistance Programs at the National Workshop on Lawyer Substance Abuse held in Boston, Massachusetts in September, 1990. Discussion of the proposed principles was collected, reviewed by the Commission and incorporated in this final report.

The Commission on Impaired Attorneys requests the House of Delegates to adopt the resolution approving the guiding principles for lawyer assistance programs.

Respectfully submitted,

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