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Are Impaired Lawyers Insurable?

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Multiple lawyers and firms have reached out to me over the years, each concerned about impairment and wanting to discuss their options. In light of these conversations, and with a desire to put a significant misconception to rest, I have asked and answered several questions as a way to share my response.

What is your definition of the phrase “lawyer impairment” and why is this definition important?

While I often define this phrase quite broadly, for the purposes of this article I am going to narrow it slightly. Lawyer impairment can encompass impairments that to varying degrees our society tends to stigmatize such as mental illness and chemical dependency. Lawyer impairment also includes long-term disabilities from an accident or illness, and also a terminal illness caused by, for example, cancer.

This definition of lawyer impairment is important because any one of us can become impaired and we need to be more open and proactive about addressing impairment when it arises. The longer an impairment remains unaddressed, the more severe the impairment or its consequences can become.

Lawyers struggling with a mental health impairment are often quite resistant to seeking help due to a fear of being viewed as weak, crazy, or even dangerous; as unable to cut it as a lawyer; as different because there’s something wrong with them; or of being told that their problem is self-inflicted so they should just get over it. Those struggling with a chemical dependency face similar fears.

Those suddenly dealing with a disability or terminal illness sometimes hide the truth due to embarrassment; a belief that they have let others down and will be viewed as such; and a fear that they may no longer be competent or will be viewed as incapable.

When all of this is considered in the context of impact on livelihood, such feelings and fears can be a substantial roadblock to dealing with an impairment in a healthy way. It needn’t be this way.



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Okay, so what is the significant misconception?

There is a significant misconception that there will be some type of negative repercussion if a firm's malpractice insurer somehow learns that one of its lawyers is impaired. Worries include being charged higher premiums, being denied continuous coverage, having someone forced into quitting the practice of law, being told how the firm must manage the situation in order to remain insurable, and the list goes on. The overriding concern is one of insurability.

Here's the reality. There is no truth to any of this. Malpractice insurance applications don't ask firms to disclose the number of firm attorneys who are currently struggling with depression, being treated for a terminal illness, or have an opioid addiction. The fact that one or more firm attorneys may have an impairment in and of itself doesn't matter. Should an insurer come to learn of an impairment, perhaps in the process of handling a claim, the concern will be whether the impairment is being responsibly addressed.

Think about it this way: There's a huge difference between a lawyer who refuses to acknowledge he is an alcoholic and a lawyer who recognizes that a drinking problem exists and seeks appropriate help. Life happens and insurers understand that. It's the fallout of failing to appropriately address the issues that can result in adverse consequences with your insurance coverage, not the impairment itself.

Look at it from an insurer's perspective. Which firm would you rather insure: 1) a firm that has a culture of zero tolerance for even acknowledging that someone might be impaired, or 2) a firm that recognizes life happens and is culturally supportive of whoever might be dealing with an impairment?

I assure you the zero-tolerance firm is a much higher risk. Denial, intentional ignorance, and intolerance create conditions that allow potential problems to fester and multiply. That's high risk. Openness, empathy, and support leads to the exact opposite outcome. This is a far more acceptable risk.

Insurers are in the business of evaluating risk and you are in control of what that risk looks like. Stated another way, individuals and even firms are not defined by the circumstances they find themselves in. They are defined by how they respond to the situation. Again, life happens. Rise to the occasion.

With this misconception put to rest, do you have any practical advice to share about dealing with an impairment?



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Here is some practical advice for dealing with impairment:

1) Failing to deal with an impairment individually and as a firm has consequences. Should the legal interests of clients be adversely affected as a result, malpractice claims and disciplinary complaints may not be far behind. In light of this, my best advice is to do all that you can to create an environment that seeks to prevent such a thing from ever happening. If not already in place, a firm culture that prioritizes well-being would be a great place to start.

2) In order for an individual to responsibly address an impairment, recognize that some type of temporary or permanent transition may need to take place. As a firm, do all you can to identify and work through the transition issues together. This is a time when the efforts of a team can make a huge difference for all involved. Issues to consider might include workload, file review, schedule changes, role changes, file handoffs, client contact, client introductions, conditions of remaining with the firm, conditions of returning to the firm after an extended absence, capturing any intellectual capital before the opportunity is lost, impact on the impaired attorney's income, necessary workplace accommodations, and the list goes on. A solo practitioner should work with a trusted colleague on many of these same issues.

3) Should you ever find yourself having to accept the reality that you have an impairment, don't try to go it alone. Reach out to and rely upon your personal support systems. Allow spouses, friends, family members, colleagues, and the like to be there for you. Be open to accepting their support, respect, and care. Your journey will be all the better for it.

What are your parting words of wisdom?

A misconception that needlessly creates risk by preventing someone from prioritizing their health is a misconception that must be dispelled. My hope is that by correcting the record, this will lead to different and better choices. Individuals who might have been reluctant to seek treatment may feel more inclined to do so. The firm that has been unwilling or unable to acknowledge that its lawyers and staff do struggle with serious problems at times may now be more open to taking both proactive and responsive actions.

Lawyers and firms have wide latitude in how impairment can be addressed. Just know that it starts with 1) recognizing that impairments are common and 2) understanding that no one should have to work through the challenges of personal impairment alone.