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TLAP: Past, Present, and Future

The Texas Lawyers' Assistance Program (TLAP) has been an active program of the State Bar since 1989. As the third director to head up the program, I follow in the footsteps of Patrick Sheeran and Don Jones. Pat Sheeran died in 1992 and in 1999 Don Jones moved on to do other work at the State Bar, but their legacy and lifework of caring, concern, outreach, and help for lawyers, judges, and law students challenged by substance abuse disorders and mental health issues continues today. This article explains the history of the program and assesses the future of lawyer assistance programs.



Early Years

A flurry of articles and research in the late 1980s and early 1990s documented the secret that some already knew: the high incidence of substance abuse and mental health disorders in the legal profession. While generally accepted figures at that time estimated that 10 to 11 percent of the general population in this country suffered from the disease of substance dependence, surveys in Arizona, Washington, and Maryland indicated that the illness affected 15 to 18 percent of lawyers. A study by the Johns Hopkins University School of Medicine in 1990 found that of all the professions surveyed, lawyers had the highest rate of clinical depression. A 1992 study by the National Institute for Occupational Safety and Health indicated that male lawyers in the United States were twice as likely to commit suicide than men in the general population. Unfortunately, many involved with lawyer assistance programs across the country anecdotally echoed that fact: suicide among lawyers was all too common.

Establishment of Lawyer Assistance Programs

Lawyer assistance programs in some form or another have been around for a long time. Many states report that independent, grassroots lawyers-concerned-for-lawyers groups have been operating discretely and effectively for 20 years. Grounded in the principles of service work and anonymity from Alcoholics Anonymous and other 12-step programs, these programs fashioned responses to the crisis of lawyers and colleagues in trouble with alcohol and drugs. TLAP credits the lawyer support groups in Dallas and Houston as two of the longest running grassroots organizations in the state. Both groups report a history of meetings dating back to the early 1980s. No doubt there were other such support groups in existence throughout the state.

In 1989, as part of the national movement towards instituting employee and peer assistance programs, the State Bar of Texas institutionalized outreach to lawyers by creating and funding TLAP. Mindful that the goal of the organization was to provide a safe and confidential place for lawyers to seek help for addiction and other disorders, TLAP was authorized as the approved peer assistance program for lawyers in Texas; as such, it benefits from the statutory confidentiality and immunity protections afforded peer assistance programs under the Texas Health and Safety Code. Texas was one of a handful of similar formal programs in the nation. In 1988, when the American Bar Association (ABA) created the Commission on Impaired Attorneys (it was renamed the Commission on Lawyer Assistance Programs in 1996), there were only four states that had formal statewide lawyer assistance programs. Today, all 50 states, the Canadian provinces, and Great Britain have comprehensive assistance programs, most with paid directors and staff.

Lawyer assistance programs have always been successful, albeit one lawyer at a time. Capitalizing on its collective experiences and hard-won successes, the ABA Commission on Lawyer Assistance Programs began taking its message of recovery, progress, and hope to the national leadership. In 1995, the ABA House of Delegates adopted the commission's proposed Model Lawyer Assistance Program, which addressed the most important issues concerning the creation, funding, and operation of lawyer assistance programs. This work continues today as several entities concerned with these issues, including the ABA Commission on Lawyer Assistance Programs, ABA Commission on Mental and Physical Disability Law, and ABA Standing Committee on Substance Abuse, proposed for adoption a newly revised Model Lawyer Assistance Program. The ABA House of Delegates adopted the 2004 Model Lawyer Assistance Program in February. The collaboration of the authors, the adoption by the House of Delegates, and the comprehensive substance speak well of the advances made locally and nationally regarding the problems and solutions surrounding

substance abuse, mental health issues, and quality of life issues within the legal profession.

At their core, lawyer assistance programs seek to provide outreach, support, peer assistance, and confidentiality for communications and information relating to actions taken by staff, volunteers, and participating lawyers, judges, and law students. Separation from the discipline authority for lawyers was identified as an early prerequisite for many lawyer assistance programs and the Texas program was no exception. Agreements between the Texas disciplinary system and TLAP were hammered out long ago: TLAP staff and volunteers remain independent of the disciplinary process and do not advocate for or against a lawyer who finds him or herself in that system. The discipline system, in turn, respects and appreciates the confidentiality of all communications and actions of TLAP.

Attorney Discipline Issues

The issue of the nature and effect of alcoholism, drug addiction, and mental health disorders within the legal profession gets the most attention when juxtaposed against and within the disciplinary system. In 1987, as lawyer peer assistance programs were being put in place in different jurisdictions across the United States, controversy raged over whether alcoholism was a disease or simply a character flaw. In the midst of these arguments came a U.S. Court of Appeals for the District of Columbia decision, *In re Kersey*, 520 A.2d 321 (1987), which stated that a lawyer's alcoholism could be considered in mitigation for disciplinary offenses. This was a watershed moment for all concerned as it was estimated at the time that a majority of attorney discipline cases involved alcoholism or substance dependency. Balancing the system's need to protect the public, deter future unethical conduct, and maintain the integrity of the profession with the need to acknowledge and address the underlying causes of the conduct became the fulcrum on which the decisions of courts and disciplinary systems would rest. Eventually, an acknowledgment of the scope and the validity of the issues required that all jurisdictions take some measure to help with the identification, treatment, and disposition of cases involving impairment.

The disciplinary system in Texas was particularly responsive; in 1992, it provided that an attorney's demonstration of his or her good-faith recovery from these disorders may be considered as a mitigating factor when imposing sanctions for disciplinary adjudications. The disciplinary system in Texas also established a unique avenue for disposition of cases involving impairment that rose to the level of a disability. Monitoring, diversion, and education became the watchwords for this time period and the development of the Texas Professionalism Enhancement Program and, more recently, the Client Attorney Assistance Program further demonstrate the State Bar's commitment to the human issues underlying the rules violations in disciplinary cases.

Quantifying the number of cases within the disciplinary system that are related to substance abuse or mental health disorders has proven difficult. The statistics quoted for jurisdictions around the United States estimate that 27 to 70 percent of all professional disciplinary cases involve alcohol or substance abuse at some level. In Texas, an informal survey in 1989 found that grievance panel members estimated the mean percentage of all inquiries, complaints, and petitions involving impaired attorneys to be nine, 10 and 14 percent respectively. In relation to trust fund matters, the ABA Commission on Lawyer Assistance Programs has suggested that as many as 90 percent of serious trust fund disciplinary matters involve substance abuse, primarily alcoholism. The State of Georgia has estimated that more than 80 percent of security fund-related disciplinary cases involve attorney substance abuse. While it may be reasonable to believe that impaired lawyers are likely to be the subjects of grievance proceedings, most reports and statistics are anecdotal.

It has been suggested that discipline procedures are generally reserved for the most egregious conduct and that lawyers from large firms rarely find themselves in the disciplinary process. Indeed, there may be many factors, enabling behaviors, controls, or institutionalized ways that a law firm deals with impairment issues that obscure cause for concern on the part of the client. Consider also that the disciplinary process is geared toward determining the legal sufficiency of the complaint and is governed by rules and procedures that operate to limit inquiry into the underlying causes and conditions precedent to the misconduct. In truth, it is very difficult to detect, allege, or substantiate the existence of a lawyer's impairment during the disciplinary process unless the attorney admits to, or offers evidence of recovery from, dependency or mental illness in mitigation or there is evidence of criminal offenses directly related to the impairment. Unless a disciplinary system operates in such a way as to engender or compel such disclosures, an accurate, verifiable, and reliable statistical analysis or assessment of the number of disciplinary cases that involve alcohol,

drugs, or mental health disorders may be difficult and costly to accomplish.

The Canadian Bar Association, the ABA Commission on Lawyer Assistance Programs, and various state-based lawyer assistance programs have searched for cost-effective methods for determining the actual rates of attorney impairment within and outside disciplinary systems. An Ontario study may provide a model for further cost-effective and reliable research. The 1995 study of discipline cases in Ontario revealed that nearly 50 percent of lawyers facing serious disciplinary sanctions admitted to an alcohol, drug, or psychiatric impairment. The study lists convincing reasons to believe that the rate may be higher, but nonetheless it remains the most recent serious study of impairment in the discipline system.

The Future of Lawyer Assistance Programs

The nature of lawyer assistance programs is changing. The 2002 ABA Commission on Lawyer Assistance Programs survey of lawyer assistance programs indicates that a majority of lawyer assistance programs have moved to provide outreach services for lawyers with mental health issues as well as the traditional outreach to those dealing with alcohol, drugs, or other addictions.

Texas has been at the forefront of this challenge. Since the mid 1990s, TLAP has offered its services to lawyers, judges, and law students who are challenged by mental health and substance abuse disorders. TLAP statistics indicate that once TLAP advertised that its outreach included mental health issues, the number of these cases increased to a 50/50 split between substance abuse disorders and mental health concerns. Today, a lawyer with complex, poly-substance abuse and mental health disorders is more the norm than the exception. While the number of cases increases yearly, pure addiction cases and pure mental health cases make up a smaller portion of the TLAP caseload. The response remains the same: crisis assistance and counseling, education, peer assistance, intervention, referral, and outreach.

Does TLAP help? Yes. A recent Oregon study confirms what TLAP and other lawyer assistance programs have been saying all along. A 2001 research project studied the incidence of malpractice and disciplinary claims against Oregon lawyers who suffered from alcoholism or chemical dependency. The study examined their claim rates during the five years before sobriety and the five years after sobriety. It was found that malpractice and discipline complaint rates for lawyers with untreated substance abuse disorders are nearly four times higher than they are after recovery and that malpractice and discipline complaint rates for lawyers in recovery are lower than those for the general lawyer population. The individuals who comprise these statistics have stories to tell. This issue of the Texas Bar Journal brings you the personal stories of three lawyers who found help through TLAP. There are countless others who have achieved recovery and there are countless others who still need help.

If the future holds anything, it holds the promise of continued success, collaboration, and innovation. Here are a few noteworthy developments:

- The ABA has adopted a 2004 Model Lawyer Assistance Program that speaks to the issues of concern: addictions, mental health disorders, and quality-of-life issues.

- More and more lawyer assistance programs are being asked to directly monitor lawyers or develop monitor programs for law firms, disciplinary systems, and boards of law examiners.
- The State Bar of California has produced an innovative outreach system that combines the strengths and experiences of The Other Bar (a network of volunteer lawyers and judges who deal with alcoholism and chemical dependency), the Lawyers' Assistance Program, and the California State Bar Court Pilot Program for Attorneys with Substance Abuse and Mental Health Issues, a stunning combination of recovery forces and discipline strategies, which, in the words of Deputy Trial Counsel for the State Bar of California Cydney Batchelor, "has produced astonishing changes in the lawyers' professional and personal lives."
- In 2003, the ABA Standing Committee on Ethics and Professional Responsibility issued two ethics opinions regarding a lawyer's duty to report the misconduct of another lawyer and in doing so recognized the assistance of lawyer assistance programs throughout the United States.
- The ABA National Legal Malpractice Conference has developed and presented a series of seminars related to law firms and impaired lawyers.

- The ABA Commission on Lawyer Assistance Programs has addressed the needs of law students and law schools by dusting off the 1994 *Association of American Law Schools Committee Report on the Problem of Substance Abuse in Law Schools* and revitalizing the issues the report addressed.
- A conference in New York State, “Meeting Our Responsibilities: Substance Abuse and Law Schools,” was made possible through the assistance of the newly created New York Lawyer Assistance Trust and its \$1 million annual budget dedicated to financing local lawyer assistance programs.
- Two nationally recognized substance abuse treatment centers have conducted and made public separate and distinct research relating to the special needs of lawyers in treatment for substance abuse and mental health disorders.

These activities bode well for the lawyers, judges, and law students of Texas. The community of lawyer assistance programs and the ABA Commission on Lawyer Assistance Programs is deeply committed to working together to provide much-needed and much-appreciated assistance to our colleagues in crisis. With the help and assistance of these and other programs, the continued support of the State Bar of Texas, the hundreds of hours of time and energy provided by TLAP volunteers, and the collective wisdom of a well-educated profession, TLAP will continue to provide responsible outreach to lawyers who suffer.

Confidentiality and Civil Immunity

Chapter 467 of the Texas Health and Safety Code provides that any information, report, or record that the Texas Lawyers’ Assistance Program receives, gathers, or maintains is **confidential**.

That statute also provides that one who in good faith reports information or takes action in connection with the Texas Lawyers’ Assistance Program is **immune from civil liability** for reporting the information or taking the action.

<p>How TLAP Works</p> <p>When a lawyer seeking help calls the Texas Lawyers’ Assistance Program (TLAP), he or she will have an opportunity to speak directly with the program’s professional staff, all of whom are lawyers who will listen to the particular situation and issues presented and help devise a plan of action. When professional help seems indicated, TLAP will make a number of referrals and will assist the attorney in accessing that assistance. Depending on the particular circumstances, the lawyer may be put in contact with one of the program’s volunteers in his or her local community who can work with the lawyer face-to-face and assist in getting further help.</p> <p>Colleagues, family members, friends, office staff, and sometimes judges and court personnel also call with concerns about the behavior of a lawyer, judge, or law student. In these cases, again, the caller will have an opportunity to speak to a member of the TLAP staff who will listen and consult concerning appropriate options available. Often, the caller and TLAP staff will devise a plan of action. It may be appropriate for TLAP volunteers to meet with the lawyer in question and offer their help.</p>	<p>Reporting Professional Misconduct</p> <p>Rule 8.03(c) of the Texas Disciplinary Rules of Professional Conduct reads:</p> <ol style="list-style-type: none"> Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority. Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial questions as to the judge’s fitness for office shall inform the appropriate authority. A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program
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In these cases, the offer of help is accepted about 50 percent of the time. In the other 50 percent, the volunteers try to “keep the door open” and will often follow up with the lawyer later.

All communications with TLAP are confidential. While referrals are received from the State Bar disciplinary system, TLAP does not report any lawyer to the disciplinary authorities, nor will it intervene or advocate in any disciplinary action.

If you, or an attorney you know, need assistance, call (800)343-TLAP for more information.

rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer’s report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).

The State Bar of Texas has designated the Texas Lawyers’ Assistance Program (TLAP) as the “approved peer assistance program” for Texas lawyers.

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