



# Caring for Our Colleagues

## A CALL FOR AGGRESSIVE INTERVENTION

BY IRWIN R. KRAMER



By popular account, lawyers are a menace to society. Often the butt of jokes, there is nothing funny about shysters who never saw an ambulance they wouldn't chase, a bill they wouldn't pad, or a case they wouldn't take.

**T**aking whatever nickel-and-dime accident cases come in the door, the stereotypical lawyer is an overwhelmed sole practitioner from a second-rate law school who passed the bar on his fifth try, trips over disorganized files lining the hallway of a cramped office, and couldn't even spell an "A/V" rating, much less earn one. This fictional lawyer impugns the integrity of our time-honored profession and must be removed from it if we are ever to restore faith in the American legal system.

Rather than correct this distorted image, too many of us embrace it and look down on these "inferior" lawyers. Viewed from the comfort of a well-appointed office adorned with diplomas and other accolades, we may take solace in a stereo-

### CONFRONTING REALITY

It may be convenient to view all sanctioned lawyers as sloppy practitioners who lack respect for the legal system or dedication to their clients. But, in my experience, very few lawyers fit this description. Imperfect though they may be, many of the lawyers that I have had the privilege to represent are well-intentioned and hard-working professionals. There is much more to their stories than one will read in the pages of Petitions for Disciplinary Action or in judicial opinions granting them.

Working in a profession with a higher incidence of addiction than society at large, many of us struggle with alcoholism, substance abuse or other conditions which, if left untreated, place our lives and the lives of our clients in peril. One recent study

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type that not only permeates society, but is shared within the profession itself. Though *others* may miss filing deadlines, fail to raise important claims, or omit critical evidence, attorneys with years of experience, superior education, or the enormous resources of a firm with hundreds of similarly esteemed colleagues may believe that their pedigree insulates them from grievances plaguing far less competent counsel.

Our professional arrogance makes it easy to expel "bad" lawyers from our ranks. To err is human, but we hold lawyers to a "higher standard." Judging our colleagues harshly, we cling coldly to the rule of law and ignore the human side of our profession. Rather than look out for one another, we are told to report on each other. While some offenses may require a report to "the appropriate professional authority," Maryland Rule 19-308.3, our Rules of Professional Conduct say nothing of our need to refer colleagues for appropriate professional help.

"reveals a concerning amount of behavioral health problems among attorneys in the United States," with addiction and other psychological disorders nearly twice those of other professionals. Patrick Krill, et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 *Journal of Addiction Medicine* (2016) at 46-52. Of the lawyers surveyed, "[a]ttorneys working in private firms experience some of the highest levels of problematic alcohol use," as well as higher rates of drug abuse, depression, anxiety and other mental illness. *Id.* Once reported to be 3.6 times more likely to suffer from depression than non-lawyers, lawyer suicides are now on the rise. William Eaton, et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 *Journal of Occupational and Environmental Medicine* 1079-1087 (1990); Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN.com (January 19, 2014).

Beyond these health issues, many among us lack the business

experience to effectively manage our practices, as law schools defer to the “school of hard knocks” to teach the practical tasks of IOLTA account management, client retainer agreements, billing and other “non-legal” tasks. Given a tight job market, young lawyers who hang out their own shingles must confront two separate, distinct and steep learning curves—how to practice law and how to run a business.

These problems are amplified for lawyers who serve the “under-represented” in society. Despite our profession’s continuing plea for greater access to justice, those who serve the *under-served* often lack the staff, resources or business acumen to manage a large volume of “*low bono*” work. Facing frequent complaints, these lawyers learn that no good deed goes unpunished.

## A PUNISHING PROFESSION

According to the Court of Appeals, “the purpose of disciplining a lawyer for professional misconduct is to protect the public and to preserve public confidence in the legal profession, rather than to punish the lawyer.” *Attorney Grievance Comm’n v. Hopp*, 330 Md. 177, 185, 623 A.2d 193, 197 (1992); *Attorney Grievance Comm’n v. Slate*, 457 Md. 610, 646-47, 180 A.3d 134, 155-56 (2018). The Court repeats this mantra whenever it’s about to punish a lawyer.

If we truly want to restore public confidence, we won’t achieve it with more headlines of reprimands, suspensions and disbarments. To protect the interests of our clients, we must attend to the needs of the professionals sworn to serve them. We must replace any perverse pride in punishing these lawyers with compassion for those working in a profession that can be punishing enough.

With an Attorney Grievance Commission budget approaching \$5 million per year, Maryland’s judiciary devotes far greater resources to *prosecuting* lawyers than to saving them. *Attorney Grievance Commission Audited Financial Statements* (as of June 30, 2018). Maryland provides few alternatives to discipline for lawyers who may benefit from a comprehensive program of intervention and education.

At present, the Maryland Rules only provide for *ad hoc* “conditional diversion agreements,” or CDAs, which require the consent of a prosecutor who lacks the staff and resources to manage their rehabilitation or to develop the kinds of programs needed to save the lives and careers of our colleagues. *See* Maryland Rule 19-716. This is far from adequate.

## COMPASSIONATE SOLUTIONS

If we care about the future of our profession, we must care for the professionals within it.

Considering the plight of colleagues in crisis, we must, in many cases, embrace aggressive intervention as an alternative to aggressive prosecution.

A comprehensive, structured plan to address these issues should include four key components:

**Remedial Education** – practical courses and hands-on instruction covering problems which may prompt discipline, and teaching lessons that reprimands and other sanctions cannot;

**Addiction and Crisis Intervention** – as part of a comprehensive diversion program, the MSBA’s statewide Lawyer

Assistance Program can reach more lawyers, save more lives and provide key strategies for coping with the pressures of a stressful occupation;

**Mentorship** – a volunteer network of attorneys and accountants to mentor and to monitor lawyers on practice management, retainers, billing, IOLTA account management and other practical tasks. This may be coupled with an “IOLTA amnesty” program so that lawyers may come forward to rectify deficient accounts without fear of prosecution;

**Community Service** – a *pro bono* component letting lawyers “work off” potential sanctions and further enhance the public’s access to justice.

## To protect the interests of our clients, we must attend to the needs of the professionals sworn to serve them.

Asked to choose between a program that would improve their own health and the stability of their practices, and sanctions that may jeopardize both, virtually all lawyers that I have ever encountered would embrace the former and work toward necessary changes. Lawyers who can afford to do so may even pay the expense of this intervention – a cost far below that of fighting disciplinary actions or the economic loss of their licenses to practice law.

For many years, we have debated the wisdom of mandatory CLE and *pro bono* requirements. Opposed by many lawyers, the bar has yet to implement either proposal. But as part of an effective diversion program, we place these requirements where they are needed the most – upon a class of lawyers who would regard them as opportunities rather than as impositions.

Aspects of this program may also help lawyers who have lost their privilege to practice law. Rather than “excommunicate” them from our profession, suspended lawyers may gain competence, build a record of positive community service, and “earn” a return to practice. Without any program, we currently pretend that lengthy suspensions will rehabilitate lawyers through the passage of time alone. This does little to reduce recidivism and does nothing to restore public confidence.

Confronting the serious problems plaguing our profession, a comprehensive program of intervention, education and service will help lawyers better serve their clients, and provide solutions that lend the public a helping hand. Caring for our colleagues, we give our own profession a chance to learn from its mistakes and better serve all segments of society. This is the only positive way to protect the public and to earn its trust.

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IRWIN R. KRAMER is the managing attorney at Baltimore’s Kramer & Connolly, where he represents attorneys facing disciplinary action. He publishes a popular blog on ethical issues at [AttorneyGrievances.com](http://AttorneyGrievances.com) and may be reached at [irk@KramersLaw.com](mailto:irk@KramersLaw.com).