

How Wellness Affects a Lawyer's Ethics

By: Robert E. Kleinpeter

April 27, 2017

The ethical rules we lawyers are subject to are formally known as the Louisiana Rules of Professional Conduct. The Louisiana Supreme Court enacted them effective March 2004. There's been revision to a few of the advertising rules on constitutional grounds, but, other than that, they have stayed intact and usually align with the American Bar Association's Model Rules upon which they are based. For decades, continuing legal education requirements have mandated that lawyers learn an hour of ethics annually. In the early 1990s, after much debate, the supreme court required that one hour of professionalism also be part of the yearly 12.5 hours total. And for newly admitted lawyers, the ethics/professionalism requirements for the first year are 8 of the 12.5 yearly hours.

In large part, the thrust of education in ethics and professionalism has been anecdotally based. Presenters frequently lecture on what comprises best practices in the subject area. They tell stories which seek to convey a teaching moment or provide aspirational goals that listeners should strive to attain. Many of the presentations discuss the serious consequences of failing to comply with ethical standards and admonish lawyers to know the rules and follow them.

According to the Office of Disciplinary Counsel,¹ the top five ethical complaints against Louisiana lawyers are:

1. Neglect/lack of diligence
2. Lack of communication

¹ Based on a recent personal phone call with Chuck Plattsmier, Chief Disciplinary Counsel.

3. Fee dispute/charging an excessive fee
4. Dishonesty/fraud
5. Conflicts of interest

A problem rarely touched upon in the presentation of ethics is that the presenter is teaching an audience of lawyers with more mental and physical health problems than that of the general population. As a group, lawyers are in poor health. Abundant studies document that many lawyers are unhappy in their work, and that lawyers experience levels of depression, anxiety, and other mental illnesses at a higher rate than any other profession. Commentators have identified several reasons for lawyers' despair: heightened competitiveness, a quest for money, a general decline in values, dissatisfaction with work, and the diminished view in which the public holds the profession (only 18% of the public view lawyers favorably according to the latest Gallup Poll).

In the last decade, an explosion of social science research has provided insight into the reasons why the practice of law can create so much emotional distress. Investigations cover a broad range of academic areas, including neuroscience, evolutionary biology, moral psychology, positive psychology, and others. Researchers are finding effective ways to decrease stress. Some involve a new idea such as reframing troublesome issues to allow self-disputation, a suggestion from positive psychology. Older remedies like mindfulness, meditation, and yoga have been tested and measured. So far, much of this research has been limited to scholarly books and publications. Little has found its way into presentations about ethics.

Research shows that lawyers' health problems start in law school.

Investigations conducted by Professors Kennon Sheldon and Lawrence Krieger consistently reveal that the optimism law students possess when they enter law school is substantially eroded by the time the students finish their first year of study.

The authors explain their findings:

The popular notion that law school is an exceptionally stressful experience for many students has been substantiated by longitudinal studies. Indeed, the emotional distress of law students appears to significantly exceed that of medical students and at times to approach that of psychiatric populations. These findings have substantial human and social significance, given that the level of adjustment of graduating law students is likely to carry over into professional practice and may set the stage for the unparalleled frequency of psychological distress and other problems seen broadly among lawyers today.²

Further complicating matters, renowned psychologist Martin Seligman studied over 100 professions and pursuits and found that law is the only one where pessimists outperform optimists. Seligman is the founder of Positive Psychology which basically looks at psychology from the perspective of wellness as opposed to dysfunction. Seligman explains that a “pessimist views bad events as pervasive, permanent and uncontrollable, while the optimist sees them as local, temporary and changeable.”³ In all other endeavors pessimism is a bad trait, and pessimists tend to perform more poorly than their optimistic cohorts. Writes Seligman:

Pessimism is seen as a plus among lawyers, because seeing troubles as pervasive and permanent is a component of what the law profession deems prudent. A prudent perspective enables a good lawyer to see every conceivable snare and catastrophe that might occur in any

² Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

³ MARTIN E. P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT 177-78, The Free Press (2002).

transaction. The ability to anticipate the whole range of problems and betrayals that non-lawyers are blind to is highly adaptive for the practicing lawyer who can, by so doing, help his clients defend against these far-fetched eventualities. If you don't have this prudence to begin with, law school will seek to teach it to you. Unfortunately, though, a trait that makes you good at your profession does not always make you a happy human being.⁴

Causes that contribute to our profession's unhappiness include the selection of lawyers for their pessimism which they too often generalize to their personal lives; jobs characterized by high pressure and low decision latitude; and the adversary nature of our legal system (a zero-sum game) from which negative emotions flow.

A recent study transcends the anecdotes and instead uses data from several thousand lawyers in four states. The authors designed their work to research empirically how to guide lawyers and law students who seek well-being. This latest research from Krieger and Sheldon shows:

Psychological factors related to self, others, and meaningful, personally engaging work were far more predictive of well-being than external factors relating to competitive standing, honors, or financial rewards. Secondary analyses showed that public service lawyers were happier and more satisfied than other lawyers, including those in the most prestigious, highly paid positions. Further, across the sample, a number of personal routine and life style choices matched or exceeded the power of income, honors, and credentials as predictors of lawyer well-being.⁵

In other words, lawyers, and the schools that educate us, have misplaced priorities. The things that gain the most attention—income, law school debt, class rank, law review, and school ranking—show zero to minimal correlations with lawyer

⁴ *Id.* at 178.

⁵ Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers* 55 (FSU College of Law, Working Paper No. 667, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2398989###.

well-being. In fact, the group with the lowest incomes and grades in school (public interest lawyers) had the highest autonomy and purpose and were the happiest.

This presentation will explore some of the social science studies which explain negative well-being in lawyers and examine possible solutions to eliminate or lessen the causal factors. For those interested, further reading in this area is found below.

Alcoholism/Chemical Dependency/Mental Health

John F. Harkness, Jr., *Lawyers Helping Lawyers: A Message of Hope*, 73 FLA. B.J. 10 (1999).

Martin E. P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33 (2001).

William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990).

The Role of Law School in Causing Lawyer Unhappiness

G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986).

Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270 (1979).

Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357 (2009).

Lawyer Attitudes About the Profession

Amiram Elwork & G. Andrew H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205 (1995).

Deborah L. Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. 1335 (2000).

Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers* (FSU College of Law, Working Paper No. 667, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2398989###.

Patrick J. Schiltz, *On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

Coping with Stress, Increasing Professional Satisfaction, and Inoculating against Pessimism

AMIRAM ELWORK, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW, Vorkell Group (3d ed. 2007).

Debra S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791 (2013).

GEORGE W. KAUFMAN, THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK: TAKING THE STRESS OUT OF SUCCESS, American Bar Association (2d ed. 2006).

Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness, Meditation to Law Students, Lawyers, and Their Clients*, 7 Harv. Negotiation L. Rev. 1 (2002).

MARTIN E. P. SELIGMAN, *LEARNED OPTIMISM, HOW TO CHANGE YOUR MIND AND YOUR LIFE*, Vintage Books (2006).

MICHAEL F. MELCHER, *THE CREATIVE LAWYER: A PRACTICAL GUIDE TO AUTHENTIC PROFESSIONAL SATISFACTION*, American Bar Association (2007).

NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW*, Oxford University Press (2010).

STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE*, American Bar Association (10th ed. 2011).

SUSAN SWAIM DAICOFF, *LAWYER KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES*, American Psychological Association (2004).

TERESA KISSANE BROSTOFF, *MEDITATION FOR LAW STUDENTS: MINDFULNESS PRACTICE AS EXPERIENTIAL LEARNING*, LEGAL STUDIES RESEARCH PAPER SERIES, WORKING PAPER NO. 2016-26 (2016).