

Protecting the Most Valuable Asset

The Business Case for Mental Health Awareness and Action in Law Firms

by

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Ask any partner

Ask any partner in any law firm: “What is your firm’s most valuable asset?”

Without hesitation, the partner will usually say: “Our people.”

This seems obvious, which makes it all the more puzzling that, as a group, law firms are singularly inept in recognizing and responding to mental health issues in the practice of law, one of the most intellectually intense and emotionally stressful professions. Even without considering the human toll, the costs of mental illness in law firms can be enormous. Yet most law firms are better at managing office supplies than they are at managing the risks and consequences of stress, depression and mental illness.

As psychologists who work with lawyers and law firms, we have observed three costly weaknesses in how law firms approach mental health issues:

- A habitual denial that mental health is a proper concern of law firm management
- A reluctance to take action in response to obvious signs of a mental health crisis
- A preference for superficial responses to serious mental health issues

These three phenomena appear in law firms worldwide, of all sizes and of all practice specialties. There are a few law firms that have incorporated an active awareness and progressive approach to mental health issues among their partners, fee earners and support staff. Most, however, have not, which is surprising in a profession that clients respect so highly for lawyers’ ability to help clients manage risk.

It does not have to be this way.

Law firms can improve their responses to mental health risks and better protect their most important assets – their people. We offer three suggestions:

1. Accept and be alert to the risks.
2. Respond at the first signs of a problem.
3. Get help from qualified professionals who are experienced in law firms.

Hidden costs and lost opportunities

If more law firms were aware of the full impact and costs of mental illness in even one partner, the profession would not continue to view mental illness as a personal problem rather than a serious business risk. These build a compelling business case for action not only to ameliorate factors that can contribute to depression, burnout and

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substance abuse, but also to be alert to early warning signs of a mental health crisis.

Mental health issues affect everyone.

Managers in many law firms tend to minimize signs of serious and potentially deadly, mental health issues. Everyone experiences feelings of sadness and anxiety from time to time, particularly in response to distress in their lives. When these arise in people in the law firm, the default reaction often is, “It’s a personal matter” or “It will go away.”

In fact, mental illness is a serious business issue. It affects everyone in the firm directly or indirectly. Law firms that continue to deny that they have any role in helping their staff and lawyers to cope and to obtain the necessary support do so at great peril. The risks and consequences of continued denial are substantial, measurable and potentially long-lasting.

The most obvious risk is to the individual in crisis.

Practicing law can be intellectually demanding and emotionally stressful. However, not all lawyers experience the same levels and types of stressors. Individual lawyer personalities, economic pressures, types of legal practice and factors such as age and gender all play a role.

We see symptoms in lawyers typical of those that we would observe in people in other high-stress occupations such as soldiers, emergency room physicians and air traffic controllers. For example, our lawyer clients report sleep disturbances, anxiety and depression, drinking problems, family arguments, breakdowns in professional relationships, irritability, mood swings, withdrawal from meaningful social interactions, drops in self confidence and self esteem, less productivity at work, decreasing job satisfaction and poor physical health.

Lawyers report factors that make them vulnerable to distress:

- Ever-increasing client expectations for low cost, high quality service
- “High stakes” adversarial interactions, in court and out
- Self-imposed perfectionism and anxieties about “loss of control”
- Heavy workload and long hours
- Bullying behaviors from clients
- No expressed appreciation for the complexity and quality of services they provide to clients
- Competition, internally for economic self interest and externally, for dwindling amounts of work
- Social isolation fueled by personal responses to distress

It is no wonder that stress and tension are two everyday conditions in most law firms. The danger is that these have been shown to lead to alcohol and drug abuse in order to cope with anxiety. This substance abuse can cause chemical changes in the brain which can impair thought processes and judgment and can also lead to sudden changes in personal behavior.

It also is possible for the person to deteriorate to the point that he or she may begin to lose touch with what had formerly brought enjoyment and satisfaction. Negative thought patterns, a dwindling sense of self-worth and fear of the future can pull the person into a downward emotional spiral. Without intervention, one can become apathetic, feel trapped and become relatively non-functional at work that one formerly loved. It is even possible to become suicidal.

One of the most common forms of mental illness that we observe in law firms is depression. It can be deadly. According to the U.S. National Institutes for Health, people with depression are four times as likely to develop a heart attack than those without a history of depression. After a heart attack,

people with depression have a significantly higher risk of a second heart attack.

Without adequate treatment, depression can even lead to suicide. A 2006 study in the United States reported that more than 90% of people who die by suicide have depression or another diagnosable mental or substance abuse disorder.

The research strongly suggests that law firms cannot rule out and must therefore be prepared to manage the risk of, suicidal behavior. From a preventive perspective, the distinction between an attention-seeking suicidal gesture and a genuine suicide attempt is irrelevant.

The risk to performance

The most immediate risk is to the professional performance of the person in crisis. Sometimes the warning signs might not be visible for a long time.

When lawyers are stressed, they often become disengaged from their work, their clients and each other. Lawyers who used to work with their doors open and frequently visited other people's offices might begin to spend most of their time in their offices, with the door closed and emerging rarely during the day.

They start to shut down mentally. They find it harder to focus, to concentrate, to evaluate options and to follow a logical sequence. They start to make mistakes.

None of these early warning signs are positive proof of a developing mental illness, but each one merits inquiry, especially if these behaviors are a significant change from the person's work habits or customary level of performance. These signs are usually more apparent in associates and other fee earners whose work is closely supervised by a partner. They might be more difficult to observe in a partner, particularly one who usually works alone.

Measurable performance data might also send signals that a problem is developing, but might not yet be noticeable to most people in

the firm. Each of these might be the result of factors completely unrelated to mental health; but if more than one of these appear suddenly and continue to deteriorate over several consecutive months, they might collectively be a clue of a crisis. These performance indicators include:

- Increased write-offs and write-downs of fees as a result of unsatisfactory work delivered to the client
- Decreased billings below the normal limits of month-to-month variation
- Increased incidence of errors relating to poor attention to detail, especially in documents prepared for or on behalf of clients
- Increased absence from work, particularly immediately after holidays or weekends

The risk to organizational effectiveness

Not all early warning signs of a mental health crisis are hidden. Frequently one of the first overt signs of a problem is a change in the person's behavior to others in the firm, particularly junior fee earners and support staff. Even in the most intense "pressure cooker" law firm cultures, mutual respect and courtesy are values that are prized and protected, often to a degree that is not common in other businesses.

In such a workplace environment, verbal or emotional abuse of staff is often one of the first obvious indicators, especially if it becomes more frequent or more intense than before. The mentally ill person frequently will have an outwardly rational excuse for his or her behavior; but it is not unusual to hear accusations that "the associates have a bad attitude" or that "my secretary is trying to sabotage me."

These outbursts and disruptive episodes can strain collegial professional relationships beyond the breaking point. The victims of the abusive behavior naturally will try to minimize contact with the person in crisis, or avoid that person altogether. This can, in turn,

produce a growing sense of isolation from the rest of the firm, which can accelerate the downward spiral.

In this environment, operating efficiency and teamwork quickly fall apart. Although it might not be readily apparent to the people caught in this internal organizational firestorm, client service usually suffers. When that happens the damage has moved from inside to outside the firm.

The risk to financial performance of the firm

To ignore the gathering storm clouds of a developing mental crisis increases the firm's vulnerability to a far-reaching schedule of costs and consequences. Only a few of these ever appear on a profit and loss statement. Most of them are hidden costs that, although not obvious to most people in the firm, are real and can be measured or calculated with surprising accuracy.

The direct costs: 6-12 months compensation

The most obvious of these are the costs of losing a lawyer permanently to disabling mental illness, substance abuse, or worse. Not only does the firm lose the value of the departed lawyer's services, but it usually must incur substantial costs to find a replacement and make the initial investments necessary while the replacement becomes fully productive.

There is also the opportunity cost resulting from the need to reassign work to other lawyers who, being less familiar with the files, must spend considerable otherwise billable time to become knowledgeable about the work that is reassigned to them from the departed lawyer. Even the most understanding clients seldom are willing to pay extra for these "learning curve" costs. The firm must absorb them. Ultimately, they come out of each partner's pockets in the form of lower profits.

A reliable general benchmark for these directly measurable costs is an amount

equal to six months compensation (in the case of a mid-level to senior associate) to one year (for a partner).

Loss of partner leverage

In most law firms, the most valuable use of a partner's time is marketing. Studies performed by the international legal management consultancy, Walker Clark LLC, show that, with considerable variation according to the type of practice and target client base, every hour that a partner spends on marketing and business development activities to current and recent clients can produce an average of 8 to 16 hours of new legal work.

When a law firm loses a partner, the opportunity to leverage the partner's business development capabilities also departs. For a partner who spends 100 hours per year in marketing to current and recent clients, in a firm that has average fee revenue of \$200 per lawyer hour, the lost revenue opportunity can be \$160,000 per year even at a relatively low 8:1 average return on investment.

Loss of investment

The loss of an associate, whether by mental illness or otherwise, also is a loss of a substantial investment. A good general benchmark is that if a partner, or group of partners, is going to train a newly-qualified lawyer to come fully productive and profitable within 12 months, the firm will need to invest 150 to 200 hours of partner time in coaching, mentoring and on-the-job training. This time usually is not recorded; or, if it is, it might be part of otherwise billable work that the partner performs to supervise the matter.

Nonetheless, it is a significant amount. For a law firm with an average partner billing rate of only \$300 per hour, that investment amounts to \$45,000 to \$50,000 in partner time.

Loss of clients

The firm can lose clients in two ways. Because of the high frequency of the link between mental crisis in a lawyer and deteriorating professional quality and client service, a significant number of clients might leave the firm even before the situation degrades to the loss of a lawyer.

There is an additional risk for partners. Even when the reason for a departure is not due to mental illness, when a partner leaves the firm there is a high probability that a substantial number of the clients whom the partner served also will depart, notwithstanding efforts by the firm to keep them. In some instances, this attrition rate can be as high as 50% of the clients within 12 months of the partner's departure.

The loss of clients poses two financial risks. The obvious one is the loss of fee revenue that the departed clients represent.

The second risk is subtle, but it can be estimated with a high degree of accuracy. Satisfied clients are a powerful marketing force for a law firm. In some of the client surveys that Walker Clark LLC conducts for law firms, it is not unusual to have 60% to 70% of the respondents report that they have recommended the firm to others. Moreover, these recommendations typically produce new clients for the firm in slightly more than 50% of the recommendations. When a partner leaves, the firm not only can lose a substantial number of clients, but also the potential revenue that those clients could have steered toward the firm by their recommendations to others.

The "death spiral"

In small and midsize law firms in particular, an entire practice group might be built on the reputation and performance of one lawyer, usually a partner. The departure of a key partner and the client exodus that usually follows, can result in the voluntary departure of other lawyers

from the group, who see little future in the practice group. This in turn can contribute to the loss of more clients, resulting in a financial death spiral that usually wipes out what once was a substantial profit center for the firm.

These observations lead to an inescapable conclusion. The business case for an active, rather than reactive, approach to mental health in law firms is compelling. We believe that the failure of law firms to take a more active approach toward mental health issues in the workplace is the result of several factors.

Some law firms may be unaware of the risks, because they have never knowingly experienced a mental health crisis in one of their key people. Other firms understand the importance of strategies such as work-life balance, quality of work life initiatives and alertness to mental health issues; but they are nonetheless inept when confronted with an actual problem.

In the latter group of law firms, we frequently observe one of two weaknesses:

- Extreme reluctance to inquire into what appear to be obvious signs of a possible mental health crisis
- Superficial, limited responses that offer only limited chance of success -- and might actually make things worse

Reluctance to confront an obvious risk

Why are law firm managers so reluctant to raise concerns when they observe obvious signs of possible mental illness? Why are lawyers so reluctant to ask for help?

In our practices in law firms, we have collected a long list of rationales for inaction. Each one is distressing, coming from a profession that rightfully prides itself in logical problem-solving, objectivity and intellectual discipline.

- "Mental illness is a personal matter, not one that the law firm should get involved in."

- “I’m not an expert. I’m not competent to have this discussion.”
- “We don’t have all of the facts. What if I am jumping to conclusions?”
- “It will only upset the other person and could make things worse.”

Raising a concern about a possible mental health crisis in another person should take place in an atmosphere of inquiry, not accusation. There is a lot of truth embedded in the excuse that “I’m not an expert.”

The discussion should therefore focus on observations, not conclusions. The logic should be inductive. For example:

I have observed these behaviors.

I am not an expert, but they concern me because they might be signs of some serious problems in your personal life. I think that these problems might be beginning to affect your performance and to have an impact in the firm, perhaps even with clients.

What is your view?

You are a valuable part of our firm. We want to help you. Is there anything that we can do for you?

Usually the management of the law firm will need to initiate this conversation. Lawyers often are extremely reluctant to ask for help on their own, except in the most serious circumstances. Stigma, guilt, denial and past bad experiences with “helping professionals” may all deter a lawyer -- or anyone else -- from seeking help, even when he or she realizes, at least on some level, that it is badly needed.

To some extent, this might be due to denial, particularly when addiction or substance abuse are part of the problem. Because the law is an intellectual discipline, based on logic and analysis, some lawyers might be doubly alarmed at the suggestion of impairment of the basic tool of their trade, their minds. In highly competitive law firms, any admission of a personal problem, however severe, might put a lawyer at a

significant disadvantage in obtaining advancement to partner, inclusion in major cases and transactions, or distribution of high-value legal work.

It is no wonder then, that to some lawyers an admission that they might be in a mental health crisis and might need professional help is like signing one’s own professional death warrant. The irony is that, in most instances, the lawyer’s career is already in critical condition.

Law firm managers and lawyers in crisis must overcome the many forces that make the honest, non-judgmental discussion of a possible mental health issue so uncomfortable. Until that discussion takes place, with reference to specific observations reinforced by genuine concern, the chances of a successful outcome, for both the individual and the firm, are not good.

Superficial responses

Imagine that you own a new Ferrari 599. You paid more than \$300,000 for this car. It has a computerized fuel injection system that is one of the most sophisticated in the industry. If it needed adjusting, would you take your Ferrari to the dealership, or would you take it to the nice guy who runs the quick oil change station in your village?

One of the ironies of the way that law firms manage legal talent is that a lawyer’s mind is like a Ferrari engine. High performance is a must, especially in one of the most competitive professional environments in the business world. Law firms spend hundreds of thousands of dollars recruiting lawyers, especially lateral partners. They then take pot luck when it comes to looking after the mind in which they have invested a small fortune.

Once a possible mental health crisis has been identified, there are a number of ways of handling it.

Treat the symptoms

Fairly cheaply, a psychiatrist can prescribe a drug to counteract anxiety, insomnia, or depression. But that does not teach the lawyer

anything about handling the root causes of his or her problems.

Employee Assistance Programs

Even more cheaply, the firm can employ an outsourced counseling service -- sometimes known as employee assistance programs or EAPs. These services might already be contracted by your firm. The lawyer gets three or four "sessions," usually by telephone. Sometimes this provides short-term help. To some people this might seem like entrusting your new Ferrari to the friendly neighborhood "shade tree" mechanic.

Psychology, peer mentoring, peer recovery support groups

The most productive approaches are multi-faceted, providing a lawyer with immediate support coupled with the development of solid foundational coping skills for the future. A psychologist, experienced with lawyers and law firms, is often the best immediate source of assessment, referral and treatment advice for a law firm. In most cases, the overall goal will be to help the lawyer to:

- Formulate a new personal strategy.
- Clear out disabling conflicts and ambivalences.
- Refocus on his or her practice.
- Re-engage with the firm in a coordinated and systematic way.

Re-engaging with the firm may require that the lawyer rehabilitate a damaged reputation and begin to earn the trust back from clients and working colleagues. It may involve ongoing external work with a psychologist, peer mentor or peer support recovery group while at the same time implementing actions, internally, with firm management and an internal peer mentor.

The benefit of a multi-faceted, developmental approach is that it teaches lawyers how to mentor and facilitate each other, as well as to give and receive feedback more productively

which is essential to improving intellectual resiliency and healthy coping behaviors, long term, for both the individual lawyer and the firm.

Moreover, this approach can also facilitate improved communications between the lawyer and the firm's management, especially with agreed performance goals to reintegrate the lawyer into a productive role in the firm.

Which approach is best for your firm?

Although many law firms become uncomfortable about the higher fees typically involved in a formal and more integrated psychological counseling approach (which discomfords makes EAPs so popular), this usually produces the best return on investment for the lawyer and the firm.

Indeed, because the psychological advisor or professionally qualified mentor or coach takes a deeper and more detailed interest in the type of work and clientele that the distressed lawyer manages, they are often able to introduce alternative approaches to difficult clients and even to help, by proxy, win pitches and contentious negotiations. If one professional psychologist can help one disaffected rainmaker who has decided to leave the firm to re-orientate and re-engage, their "expensive" retainer can produce returns on investment of 8:1 or 10:1 that typically occur, and even as high as 20:1, if the disaffected partner was about to decamp with a practice team.

Another risk-management benefit to the firm is the higher probability of the most effective intervention at the right moment. Although drug therapy and phone counseling might have a place for some people in some businesses, they are primarily passive, rather than interactive, methods. Lawyers require and respond best to intellectual engagement by a professional advisor. They usually need more than just medication, reassurance, and sympathy.

Being well-intentioned and caring is not enough, because the lawyer in crisis may be facing complex decisions with profound consequences for his or her career, self-image, and professional identity. This is particularly true when a lawyer is considering leaving what he or she considers to

be an intolerable situation. Unless one knows and understands how lawyers and law firms really operate, it is hard to help a lawyer evaluate the “frying pan” of the current situation or the “fire” into which the lawyer is contemplating leaping.

Both of us have had the experience of a high value partner coming back for a session, during which they have torn up a contract with a new firm or a company seeking a General Counsel saying “Thank goodness I talked this through properly first!”

The worst thing that a law firm can do

Inaction is the worst response of all.

Some law firms will be lucky enough not to experience a serious mental health crisis, but the odds are against it. Challenging economic times, both good and bad, elevate the mental health risks for law firms. Although lawyers sometimes display better coping mechanisms, because of the need for problem-solving and resourcefulness in their practices, they are as vulnerable as anyone else to stress, burnout, depression and worse.

Law firms can take highly effective measures to promote a personally supportive workplace, healthy relationships within the firm and the ability to respond to even the most urgent crisis promptly, efficiently and in a way that protects the most valuable asset of all: the mental and emotional well-being of each person in the firm.
