

Student Commentary on Professor Weldon's Ten Ethics Traps for Business Lawyers

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INTRODUCTION

First, I would like to thank both Professor Weldon and Professor Long for presenting their insights into the practical ethical issues that business lawyers can face both personally and professionally. Professor Weldon, thank you for your important contribution to our symposium.¹ Professor Long, I had the pleasure of taking your Professional Responsibility class, and it is an honor to be able to comment alongside you on such an interesting and well-articulated topic.

As a student, I found Professor Weldon's article, *Ten Ethics Traps for Business Lawyers*, particularly important given the expanding use of technology in the legal field since Covid-19.² While many benefits have arisen from the technology's new opportunities, lawyers are now facing higher accessibility to communications with clients and to work responsibilities. One of the ethical questions posed in the article stood out after reviewing Professor Weldon's discussion, specifically, whether lawyers have an ethical duty to take care of their well-being in an ever-demanding profession. In this comment, I will offer three thoughts on that question: (1) lawyers do have an ethical duty to take care of their well-being; (2) simple methods are available to assist lawyers in the maintenance and enhancement of their well-being; and (3) if lawyers fail to take care of their wellness, fallback measures have been established in Tennessee to ensure the lawyers can get help.

ETHICAL DUTY OF WELL-BEING

A lawyer's ethical duties originate from the Model Rules of Professional Conduct, not just their conscience or ideals. The Model Rules of Professional Conduct Rules 1.1 and 1.16 require, "[a] lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness, and preparation reasonably

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¹ Marcia Weldon, Professor, Univ. of Miami Sch. of Law, Presentation at the University of Tennessee College of Law Business Symposium: Connecting the Threads (Sept. 24, 2021).

² Marcia Weldon, *Ten Ethics Traps for Business Lawyers*, BUS. L. PROF BLOG, (Sept. 24, 2021), https://lawprofessors.typepad.com/business_law/2021/09/ten-ethical-traps-for-business-lawyers.html.

necessary for the representation,”³ and, “a lawyer shall not represent a client where the lawyer’s physical or mental condition materially impairs the lawyer’s ability.”⁴

A lawyer has a duty to provide competent representation, and part of competent representation is not allowing a mental condition to become a material impairment of the lawyer’s ability. While ensuring a competent mental condition is not always possible, it is a goal for which a lawyer should strive to accomplish. The Preamble of the Model Rules reveals a lawyer should “strive to attain the highest level of skill . . . and to exemplify the legal profession’s ideals of public service.”⁵

The duty should be taken seriously by members of the profession, given the legal field is highly vulnerable to factors that can decrease wellness, such as stress, depression, and anxiety. Lawyers have historically tended to show signs of depression, anxiety, and high stress, and an estimated twenty percent of lawyers engage in drinking at a hazardous level.⁶ Treating a declining wellness level with some type of substance abuse proves destructive to the lawyer’s decision making and health. Just because a lawyer has a substance use disorder or major mental health disorder does not mean that the lawyer should immediately withdraw from representing a client, but it is something that the lawyer must scrutinize. Studies in the United States and Canada have shown that alcoholism is a factor in an estimated 50% of discipline prosecutions and 60% of malpractice claims.⁷

SIMPLE PROACTIVE WELLNESS ENHANCING TOOLS

As Professor Weldon noted, all lawyers strive to be ethical but are sometimes ignorant of the rules and methods that can help ensure their compliance. Some lawyers inevitably will not recognize the importance of maintaining their wellness, and others will be unaware of effective tools. Lawyers need education on healthy alternatives to substance abuse that

³ MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020).

⁴ *Id.* r. 1.16(a)(2).

⁵ *Id.* at Preamble ¶ 7.

⁶ *The Alarming Alcoholism Rates for Lawyers*, THE RECOVERY VILLAGE, <https://www.therecoveryvillage.com/alcohol-abuse/alarming-alcoholism-rate-lawyers/#gref>, (last updated Aug. 13, 2021).

⁷ Anne Chambers & Anne McDonald, *Substance and Other Addictions in the Legal Profession*, MO. BAR, <https://mobar.org/site/content/Articles/Addiction/Addictions.aspx>, (last visited Feb. 13, 2022).

enhance their wellness. The following suggested alternatives are simple and do not require substantial time to implement.

One way that lawyers can enhance their wellness is by gratitude journaling. This type of journaling consists of recording in specific detail three occurrences from one's day that went well.⁸ Writing in the journal helps to remind the recorder of the positive occasions from the prior weeks. Studies have shown a nightly gratitude journal can be as effective as commonly prescribed antidepressants after making it a regular practice for twenty-one days.⁹ Other ways that lawyers can enhance their wellness include regular exercise and daily meditations.¹⁰ Exercise helps minimize the ever-present stress in the legal profession, and daily meditation helps center one's mind on upcoming tasks and goals. If a lawyer combined all three suggested methods, it would likely take little more than an hour, an amount of time that even the busiest lawyer could squeeze into a day.

FALLBACK MEASURES THAT HELP ENSURE THE PROFESSION'S WELL-BEING

If Tennessee lawyers fail to maintain their wellness, hope is not lost. The Tennessee Supreme Court established the Tennessee Lawyers Assistance Program ("TLAP") in 1999.¹¹ TLAP is a free and confidential organization that helps lawyers, judges, bar applicants, and law students struggling with mental health, stress, and substance abuse.¹² Assisting a lawyer affected by mental health, stress, or substance abuse, often prevents future ethical violations, reducing the number of disciplinary actions.¹³ Therefore, lawyers need to be aware of other lawyers surrounding them and try to ensure each receives the help needed.

The legal field has also begun to prioritize mentoring to help educate and lead members in the profession. Mentoring provides a unique opportunity to allow a partner to offer advice and implement accountability in the life of a lawyer. This has been a step in the right direction, as it allows lawyers to consult with other lawyers that have been in similar situations, which can help prevent future ethical violations. The mentors can help suggest when the mentee lawyer should withdraw from

⁸ Joseph P. Beckman, *The Genius of Gratitude*, HELLMUTH & JOHNSON (Sept. 18, 2018), <https://hjlawfirm.com/the-genius-of-gratitude>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ TENN. LAWYER ASSISTANCE PROGRAM, tlap.org, (last visited Feb. 13, 2022).

¹² *Id.*

¹³ *Id.*

representing a client and know the mentee lawyer well enough to know when reporting is necessary.

CONCLUSION

Lawyers have long strived to ensure the quality of care for clients, but it appears that an important way of furthering this idea is to prioritize the wellness of individual lawyers. Lawyers should make sure to heed the warnings from Professor Weldon and Professor Long and not fall into the ethical traps that have been laid out in front of them.