

The Lawyer as Counselor Representing the Impaired Client

By Timothy David Edwards

Drug addiction is a powerful disorder with serious consequences for our clients, their families, and the environment that surrounds them. When a client is addicted to drugs, including alcohol, the lawyer is faced with a number of challenges. The client may be unable to realistically participate in communication necessary for a productive attorney-client relationship. This is sadly ironic, for in many cases it is the client's addiction that led to the very legal issues we have been retained to address. The addiction also may be masking an undiagnosed psychiatric disorder, such as depression. When this happens, the underlying impairment may further affect the course of the representation.

Clients facing criminal charges often suffer from untreated addiction issues. Experienced family law attorneys regularly report that untreated addiction is the underlying cause of a broken family. For such clients, the attorney must carefully consider the legal consequences that can follow if the addiction remains untreated. In criminal cases, participation in treatment may enhance an offender's position during plea negotiations, or even serve as a mitigating factor at sentencing. Drug treatment may be required as a condition of supervised probation, often in lieu of incarceration. When the client is unable to successfully navigate treatment in this context, the consequences can be significant. Without question, drug addiction and drug treatment are firmly entrenched in the landscape of factors that must be evaluated by the general practitioner.

Despite the prevalence of addiction among clients, many practitioners are understandably confused about addiction and the range of treatment options that are available to their clients. Confusion reigns as to the definition of addiction, its causes, and its proper treatment—even among mental health professionals who study and treat addicted populations. These dynamics become more confusing when a client is required to participate in treatment under the watchful eye of the judicial system.

Many lawyers believe that their only obligation is to defend clients' *legal* interests. After all, we are not social workers, and it is not our job to provide therapy for our clients. This is a job for mental health professionals, not lawyers. In the prevailing ethical rules, however, the lawyer is defined as a *counselor*. What is the counseling role of the attorney when the client is impaired?

In my view, this role is significant. A lawyer who represents clients with addiction problems must have a general understanding of addiction, its causes, and its proper treatment, just as a tax attorney must understand accounting principles or a medical malpractice attorney must have a working knowledge of basic surgical terms. It's an issue of competence. To idly stand by and assume that this is not our role is to miss an important opportunity to assist the client and improve the dynamics of the representation.

So what should we do? Understanding addiction is not an easy task. To compound the problem, there is a great deal of rhetoric and confusion surrounding this topic. While many treatment professionals proclaim that addiction is a “disease,” there are many who strongly disagree with this assertion, and for good reason. America’s treatment industry is heavily influenced by a philosophy that is based, almost exclusively, on the Twelve Steps of Alcoholics Anonymous. For many clients, this translates into a heavy-handed and paternalistic approach to addiction in which the client must admit “powerlessness” and surrender to a “higher power” to find lasting recovery. Many people are offended by this approach, and there are volumes of research demonstrating that this treatment philosophy is ineffective for a significant number of clients. When a client is required to participate in such a program under the supervision of a judge or probation officer, the results of noncompliance can be disastrous, even when the client truly wants to recover.

In the final analysis, an honest treatment provider will tell you that addiction is a very personal experience and that recovery from addiction is just as personal. Many people respond favorably to Alcoholics Anonymous—a tight-knit fellowship that relies heavily on spiritual teachings. Just as many people find recovery through other methods, including psycho-therapy, church involvement, and, yes, willpower. In short, there is not a simple, easy answer to addiction for every client. The proper treatment will necessarily result from a clear understanding of the client, her background, and values. Assuming this is true, there are some basic guidelines that can assist the attorney dealing with an impaired client.

Knowing Your Client

Obviously, each client presents a different set of challenges. Gender and cultural distinctions are vital. Understanding what is important to the client is critical to understanding the options that are available to him. There is a vast difference between a teenager who is smoking marijuana and a widow abusing alcohol to overcome grief about the death of her husband. If the lawyer knows that the client is angry and unlikely to respond favorably to authority figures, participation in a structured treatment program might be a mistake. If the client has a history of depression or bipolar illness, a qualified psychiatrist should be involved. Ultimately, it is critical to abandon the one-size-fits-all approach to treatment and to understand that treatment, however defined, must be tailored to the individual.

Understanding Addiction

There are many excellent resources on this topic, and a full discussion is beyond the scope of this article. However, a few points are in order. First, it is often easy to identify addiction by examining its objective consequences. Many checklists for assessing addiction will present questions that identify these consequences in some detail. Lost jobs, trouble with the law, broken marriages, and even more minor consequences, such as loss of interest in other activities, all are telltale signs of addiction. Even if these factors are present, many addicted clients will *deny* that they have a problem with drugs or alcohol in the face of overwhelming evidence to the contrary. Others will *blame* their problems on outside factors, such as their marriage or job.

There is a reason for this. In my view, the identification of the objective manifestations of addiction is merely a starting point. There is much more to the picture. In the simplest terms,

addiction is a *relationship* that a person has with a chemical at the exclusion of other important priorities. Often, this relationship is defended at all costs through a cognitive defense system that seems impossible to penetrate. Many addicted clients will employ this defense system to protect their relationship with chemicals because it is producing a tangible payoff that is important to them. Some people use drugs or alcohol to medicate an underlying psychiatric disorder, such as depression. Others may resort to drugs or alcohol to blunt childhood trauma. During the course of treatment, it is crucial for the therapist to understand the client's subjective payoff from this relationship. The client is always using drugs for a reason that is *important to him* .

Providing the Critical Mirror

Many attorneys do not or will not confront clients regarding addiction. In my practice, I will inquire. If the client gives me permission, I will speak to family members and gather more information. You would be amazed at the difference in perspective that is provided through family members.

Obviously, treatment professionals should be the ones to provide treatment. The difficulty is getting the client to admit that he or she has a problem. At times, I have felt obligated to tell a client that I see their addiction as a true problem that requires treatment. In cases where I cannot tie this to a direct legal benefit, I will make this point when my ability to communicate with the client is being undermined by the impairment. In situations where the problem is obvious, I will not hesitate to involve a trained mental health professional and the family in an *intervention* . A defensive client will often respond to the truth when it is coming from people who love him.

With understanding and tact, it *is* possible to have a frank discussion with your client about addiction without alienating the client or jeopardizing the representation. In my view, the mere possibility that I can make a difference justifies this conversation.

Knowing When to Refer

Knowing what you know means knowing what you don't know. It is true that we are not social workers or treatment professionals. Once a problem is identified, it is imperative to refer the client to a competent mental health professional who is willing to take the time to understand the client, consider all available options, and provide treatment on an individualized basis. In my practice, I refer the client to a psychiatrist first so that an underlying psychiatric disorder can be addressed or ruled out. If participation in a formal program seems necessary, I will contact the facility and learn about its treatment philosophy and the alternatives that it provides. A blind referral to a treatment program that boasts statistical success is most certainly a mistake. An honest treatment provider will admit that it is difficult, if not impossible, to reliably track the success of clients who complete the program.

Staying Involved

At times, a client will be referred to a treatment program as a condition of probation or as a prerequisite to a future legal benefit. The representation should not stop there. Here, it is useful to obtain a release that authorizes contact with the counselor who is treating the client. I will send

that person a letter asking him or her to contact me before they terminate treatment, as termination may give rise to legal consequences for the client. If possible, I will meet with the client and intervene or, if necessary, advocate for a different treatment approach that is more consistent with the client's background. If done correctly, this can save the client from a counterproductive treatment relationship and avoid unnecessary consequences that can follow when the client is perceived as noncompliant.

As lawyers, we are in a position to help people who trust us and seek us out for advice. If we come to understand our client, the nature of addiction, and the appropriate sources of treatment, we are in a better position to provide useful guidance that the client is more likely to accept. By staying involved and providing a compassionate, critical mirror, we can truly make a difference. This is a daunting responsibility, but it can provide lasting benefits to the impaired client.

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