

# Ethical Problems When Representing Impaired Professionals

Presented to:  
13<sup>th</sup> Annual University of Texas Advanced Administrative Law Seminar  
Austin, Texas  
August 17, 2018

Louis Leichter  
Dan Lype  
Leichter Law Firm  
1602 E. 7<sup>th</sup> Street  
Austin, TX 78702  
512-495-9995  
[louis@leichterlaw.com](mailto:louis@leichterlaw.com)  
[dan@leichterlaw.com](mailto:dan@leichterlaw.com)

## Introduction

- What is meant by Impaired?:

Presence of serious mental illness and/or substance use disorder.

- Are frequently co-occurring, chronic, and relapsing illnesses characterized by significant dysfunction in the client's social and occupational functioning.
- In 2016 SAMSHA estimated 26.7 million Americans suffered from either serious mental illness and/or a substance use disorder within the past year.
- Representing impaired professionals can be both a highly rewarding and highly frustrating endeavor.
- This type of client presents its own ethical challenges. These challenges are typically intertwined with the client's underlying disease process, ie denial, dishonesty, relapse, and general dysfunction.

## Initial Considerations

- Most ethical dilemmas that routinely occur while representing impaired professionals can be avoided by using the same good practices that are beneficial in any area of law .
- These include:
  - 1) Know your subject matter;
  - 2) Conduct a thorough client interview;
  - 3) Agree on a strategy and goals;
  - 4) Build trust;
  - 5) Keep the client's total well-being in mind;

## Know Your Subject Matter

- Know your subject. Be familiar with the symptoms, diagnosis, and treatment of substance use disorder and common mental illnesses.
- The Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-V). Considered the bible when dealing with mental illnesses or substance use disorders.
- Philosophy and methods followed by Alcoholics Anonymous, Narcotics Anonymous, and other twelve-step groups.
- Be aware of the different treatment options available to your client. Know if the client's licensing board has an official peer assistance program.

## Initial Interview of Potentially Impaired Client

- Need to be thorough in your first meeting with potential client. Don't avoid difficult questions.
- Give them space to talk but also be prepared to ask direct questions related to their possible impairment, its extent, and its impact on their life and work.
- If possible, try to form a reasoned opinion on whether client is impaired. But know your limitations... we are not licensed clinicians.
- Also keep in mind the information initially available to you may be limited. Plus it is the nature of impairment that the client can be dishonest about the facts and/or lack the self-perspective necessary to provide an honest picture.

## Agree on a Strategy and Goals

- Vital to agree on a clear strategy and goals prior to accepting the representation.
- Disagreement on this is a strong signal you should not take the case.
- Waiting to have this discussion until later can be disastrous.
- At the outset it is ok to agree to a limited strategy. This could include an agreement that the client will be evaluated by an appropriate expert with the subsequent strategy and goals to depend on the outcome. But make sure client understands this.
- Realize impaired clients can be coming to you at various stages of self-realization and professional treatment (or lack thereof).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Ethical Implications When Representing Impaired Professionals

Also available as part of the eCourse

[2018 Advanced Texas Administrative Law eConference](#)

First appeared as part of the conference materials for the  
13<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Ethical Implications When Representing Impaired Professionals"