



Program Title _____
 Date Presented _____ Inn Year _____
 Presenting Inn _____ Inn Number _____
 Inn City _____ Inn State _____
 Contact Person _____ Phone _____
 E-mail Address _____

Please consider this program for the Program Awards: Yes No This program is being submitted for Achieving Excellence: Yes No
 (Submit within 60 days of presentation.)

Program Summary:

Be concise and detailed in summarizing the content, structure, and legal focus of your program. Please attach additional sheets if necessary.

Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office. **Please check all that apply and include a copy of any of the existing materials with your program submission:**

Script	Articles	Citations of Law	Legal Documents	Fact Pattern	List of Questions	Handouts
PowerPoint Presentation	CD	DVD	Other Media (Please specify) _____			

Specific Information Regarding the Program:

Number of participants required for the program _____ Has this program been approved for CLE? Yes No
 Which state's CLE? _____ How many hours? _____ Pending Approved

Recommended Physical Setup and Special Equipment:

i.e., DVD and TV, black board with chalk, easel for diagrams, etc.

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on Inn members' response regarding the demonstration.

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each item took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

Program Awards: *Please complete this section **only** if the program is being submitted for consideration in the Program Awards.*

Describe how your program fits the Program Awards Criteria:

Relevance: How did the program promote or incorporate elements of our mission? *(To Foster Excellence in Professionalism, Ethics, Civility, and Legal Skills)*

Entertaining: How was the program captivating or fun? _____

Creative and Innovative: How did the program present legal issues in a unique way? _____

Educational: How was the program interesting and challenging to all members? _____

Easily Replicated: Can the program be replicated easily by another Inn? Yes No This program is: Original Replicated

Questions:

Please contact program library staff at (703) 684-3590 or by e-mail at programlibrary@innsofcourt.org.

Please include ALL program materials. The committee will not evaluate incomplete program submissions.

THE BOOK OF WARREN

Characters at Opening Scene:

1. Lawyer Price (Corrine)
2. Lawyer Grant (Rachel)
3. Lawyer Green (Dennis)
4. Lawyer Young (Louis)
5. Lawyer Harris (Norah)
6. Lawyer White (Casey)
7. Lawyer Smith (Blake)
8. Lawyer Cunningham (Gina)

SCENE I – OPENING ACT - EARL WARREN COLLEGE OF LAW

All lawyers are peppy and competent except for our protagonist, the lawyer who comes in late, Lawyer Cunningham.

Stage directions: lawyers in a long line across the front of the stage, split between “one half” and “the other half.” Lawyer Cunningham waits offstage until her entrance.

Lawyer Price:

Hello!

My name is Lawyer Price
and I would like to share with you
the most amazing book.

(Lawyer Grant pretends to ring a door bell (DING DONG))

Lawyer Grant:

Hello!

My name is Lawyer Grant
It's a book about Ethics
A long, long time ago

(DING DONG)

Lawyer Price:

It has so many awesome parts

(DING DONG)

Lawyer Price:

You simply won't believe
How much this book
Can change your life

(DING DONG, DING DONG, DING DONG)

Lawyer Green:

Hello!

My name is Lawyer Green.

And I would like to share with you

This book of responsibility

(DING DONG)

Lawyer Young:

Hello!

My name is Lawyer Young

Lawyer Harris:

Hello!

Lawyer Young:

Did you know that lawyers here

Are governed by the state?

Lawyer Grant:

You can read all about it now!

Lawyer White:

Hello!

Lawyer Grant:

In this nifty book, it's free!

No, you don't have to pay.

Lawyer Young:

Hello!

Lawyer Smith:

Hello!

My name is Lawyer Smith!

And can I leave this book with you?

For you to just peruse?

Lawyer Green:

Hello!

Lawyer White:

Hello!

Lawyer Harris:
Hello!

Lawyer Smith:
I'll just leave it here.
It has a lot of information you can really use!

Lawyer Price:
Hello!

Lawyer Harris:
Hi!

Lawyer Price:
My name is-

Lawyer Green:
Rules of ethics!

Lawyer Grant:
Good for clients too.

Lawyer White:
Your Honor?

Lawyer Young:
It's an amazing book!

Lawyer Green:
Bonjour

Lawyer White:
Nihao

Lawyer Harris:
Hola

Lawyer White:
May I please be heard?

Lawyer Grant:
Is that your Clerk?

Lawyer Green:
This book helps you with being competent and well!

All:

Sound good?

Lawyer Grant:

Your mental health

Lawyer Smith:

Is key!

All:

All the clients win!

Lawyer Grant:

So you can be the lawyer you were always meant to be!

Lawyer Green:

The rules of ethics

All:

Are really cool to practice.

[Music stops close to bottom of Music page 10-5 and skips to Lawyer Cunningham's entrance on page 10-6. Cunningham runs in to center stage!]

Lawyer Cunningham (Ding Dong with a weird doorbell tone)

Hello! Would you like to change your ethics? I have a free book from the Earl Warren Inn of Court.

Narrator:

No, no, no, Lawyer Cunningham. That's not how we do it. You're making things up again. Just stick to the approved dialogue.

All:

Hello

Lawyer Cunningham:

Hello

All:

My name is

Lawyer Cunningham:

Lawyer Cunningham

All:

And we would like to share with you this book of ethics

Lawyer Smith:
Hello

Lawyer Grant:
Hello

Lawyer Harris:
Ding dong

Lawyer Smith:
Just take this book

Lawyer Grant:
This book is free

Lawyer Harris:
For you

Half of everyone:
You won't believe how much this book will change your life

The other half:
This book will change your life

Lawyer White:
So you won't burn it.

Lawyer Smith:
Hellooooooooooooooooo

Half of everyone:
This book will change your life

The other half:
This book will change your life

Half of everyone:
This book will change your life

The other half:
This book will change your life

Half of everyone:
This book will change your life

The other half:

This book will change your life

All:

The Book of Warren!!!!!!!!

Phil plays [Ding Dong]

All:

Hello!

SCENE II – LAW SCHOOL RECRUITMENT OFFICE

- Lawyer Price (Corrine)
- Lawyer Grant (Rachel)
- Lawyer Green (Phil)
- Lawyer Young (Louis)
- Lawyer Harris (Norah)
- Lawyer White (Casey)
- Lawyer Smith (Blake)
- Lawyer Cunningham (Gina)
- Recruitment Director (Dennis)

[Staging: All stand in a straight line across the front and leave as their name is called.]

Recruitment Director (Mr. Pect who also happens to be a partner of Norris Pect LLP):

And it came to be that the Board of Governors created the Book of Warren at a series of committee meetings. But what exactly is the Book of Warren about? It tells of the rules of competency that lawyers must follow.

Barristers, our law school has produced some of the finest lawyers in the country. Our graduates are recruited by the best law firms and institutions. I will now announce who has recruited you.

Lawyer Grant, You have been recruited by the law firm of Bonjour, Thorman and Burns

Lawyer Grant:

OMG! I have always wanted to work for Jules Bonjour. He practices criminal defense and personal injury. When I join the Inn of Court, I want to be on his team.

Recruitment Director:

Lawyer Green, you will be going to the Alameda County District Attorney's Office.

Lawyer Green:

That is a dream come true. I have heard great things about Kim Hunter, LD Louis and Keydon Levy, and look forward to working with them.

Recruitment Director:

Lawyer Young, you will be clerking for Judge Kandis Westmore of the US District Court for the Northern District of California.

Lawyer Young:

Yes!!!! I hear from Dennis Chin that she loves Hometown Buffet, and I can't wait for her to take me out.

Recruitment Director:

Lawyer Harris, you have been recruited by the Oakland City Attorney's Office.

Lawyer Harris:

So cool!!! They have so many wonderful attorneys there. I have always wanted to work with Pelayo Llamas, Eli Ferran and Maria Bee!

Recruitment Director:

Lawyer White, you will be a pro se law clerk at the U.S. District Court, Northern District of California, supervised by Gina Ramos Campbell.

Lawyer White:

Yay!!! I can't wait to work with Gina Ramos Campbell. I hope she can bring me to a Taylor Swift concert.

Recruitment Director:

Lawyer Smith, you will be working for the Law Offices of David Roth.

Lawyer Smith:

Totally Cool!!! Can't wait to work on real estate law, easements, and rules against perpetuities against octogenarians.

Recruitment Director:

Congratulations to all!!!! I wish you the best of luck!!!

Lawyer Price:

What about me?

Lawyer Cunningham:

Me too. Mr. Pect, you must have missed a page .

Recruitment Director:

Well, I don't see either of your names here. But my old firm of Norris Pect, LLP has a couple of openings and we could sure use your help - young grads like you who are fresh out of law school and have studied the Book of Warren and passed the MPRE. We pay very well too.

Lawyer Cunningham:

No, not Norris Pect. I have always wanted to work at the Alameda County Superior Court for Judges Victoria Kolakowski, James Cramer, and Commissioner Tamiza Hockenhull, and even Judge Stuart Hing.

Recruitment Director:

Too late. Judges Kolakowski, Cramer and Hockenhull already have clerks this year.

Lawyer Price:

Norris Pect?! But, I wanted to work at Morrison Foerster with Jim Brosnahan and Raj Chatterjee.

Lawyer Cunningham:

Oh please, of all places not Norris Pect. [sighs]
But, I do have \$200,000 in student loans to pay. And at least Norris Pect pays well. And since Judge Stuart Hing is not with the Inn of Court this year, I can forget about working for him anyway. Let's go Lawyer Price.

Lawyer Price:

No, Lawyer Cunningham. We can't. Norris Pect is the worst firm ever.
Who wants to work there? The lawyers there are so incompetent. They have serious problems.

Lawyer Cunningham (looking super excited to work with Lawyer Price)

But we can make a difference there!
Just believe in yourself, it won't be that bad.

Lawyer Price not so excited

Believe? [sighs] I'll try.

SCENE III – LAW FIRM OF NORRIS PECT, LLP [Substance Abuse scene]

Lawyer Price – Corrine

Lawyer Cunningham – Gina

Partner Archer – Louis

Partner Norris - Rachel

PART 1 - MR. ARCHER'S OFFICE. AT HIS DESK. PAPERS AROUND. GLASS/CUP NEARBY

LAWYER CUNNINGHAM (LC):

Ding Dong!

Hello, Partner Archer, I would like to share with you the most amazing book.

LAWYER PRICE (LP):

It has some very useful info that might be helpful for your case.

MR. ARCHER (MR. A)

Sure, C'mon in Boys. I'm just working up some questions for my big trial cross-examination.

LAWYER CUNNINGHAM:

Isn't that TV a little distracting?

Mr. Archer:

What TV, that's not TV, that's the World Series, gotta know the score if you know what I mean?

LAWYER PRICE:

What do you mean?

Mr. Archer:

What I mean is ya gotta have the common touch trying cases, if the ball game is what everyone's talking about ya gotta know about the ball game. Otherwise you're just some stiff in a suit.

Speaking of stiff, you fellas want a drink? (**Archer takes out a can of beer**).

LAWYER CUNNINGHAM

A drink Mr. Archer? What kind of drink? The Book of Warren says...

Mr. Archer

Book? How many cross-examinations has that book done? Let me tell you something about trial and trial prep, ya gotta be loose – Holy Smokes, did you see that play, don't worry we'll get the replay.-

Now where was I? Oh yeah trial prep. (Takes a sip) See, you gotta get the creative juices flowing. Can't just rely on some Book of Evidence, or Book of whatever you got there. Try the cocktail cross.

LAWYER PRICE

Well the Book of Warren, please just take a look. It's about competency, it takes a dim view of drinking on the job, and so does the State Bar.

Mr. Archer

Bar? I'm not talking about going to a bar, we're working on trial prep right here. Have a drink, it'll help you see more clearly. (**Archer takes out some beer for Cunningham and Price**) Me, I like Stoli, very clear. Jesus! When is he going to get his fastball over the plate?

LAWYER CUNNINGHAM

We also went to the Inn of Court training on competency yesterday and...

Mr. Archer

Listen, why do you guys belong to that outfit anyway? Trying to jump start your career? Meet some judges? Get the inside scoop? Tell ya how I got my start. Passed the bar, working some dead end clerical gig downtown, got sworn in, two days later I'm having a couple of beers at the bar at the Fat Lady, watching the game, some suit, half in the bag, starts talking to me about his overloaded practice, next thing you know he's offering me a job.

LAWYER CUNNINGHAM

What kind of job?

Mr. Archer

My first billable hour consisted of me driving him home. Said he didn't need another DUI, already had two. I was headed toward the limit myself, but I've always avoided actually getting arrested. I digress, but if it hadn't been for that –son of a bitch, when will he ever get that ball over the plate? Well, short point of long story, if I hadn't been drinking, never would have gotten that job. Don't think having a few cocktails doesn't have some advantages. And look where I am today. (Takes a big swig)

LAWYER PRICE

Could we just talk a little about competency, and impaired practicing, and some of the other things in the Book of Warren?

LAWYER CUNNINGHAM

It could change your life. For the better!

Mr. Archer

How could my life possibly be better, I'm billing it out in six minute segments, getting clarity with Stoli, watching the game, having a great talk with you guys. Practicing law: It's a slice of heaven on earth.

LAWYER PRICE

What about those cross-examination questions you were working on, maybe we should leave you to your prep?

Mr. Archer

Nah, don't worry about that boys. I'll just take it down the hall, drop it on DePress's desk. She's a workaholic, loves bragging about having too much to do, needs all the billables she can get. She's trying to impress the partners, so I'll help her out as best I can. Let's have that drink. Maybe finish up the game down at the Fat Lady? And then maybe one of you could drive me home? **(looks at TV screen)** Damn it! Can't believe it. Other team got the game winning home run. **(Archer take out a bottle of whisky and gulps it from the bottle – be sure to take a long 15 second gulp)**

LAWYER PRICE

Partner Archer, how much have you had to drink today?

Mr. Archer (raising his voice)

Hey, you're the new kid on the block. Don't even think about asking me how much I had to drink.

You should go. I got to work on that cross-examination now, but I got this big headache. Maybe I'll just get some sleep.

[Cunningham and Price leave. Archer and Norris trade out his office for hers]

LAWYER CUNNINGHAM

That was weird. We were supposed to work with him for the rest of the day. Price, what do you think we should do now?

LAWYER PRICE

I think we should go tell Managing Partner Norris about Archer's alcohol problem. It's affecting his work.

LAWYER CUNNINGHAM

No, we can't. We just got hired. If Archer finds out, he'll take revenge on us.

LAWYER PRICE

Cunningham I'm going to do it.

LAWYER CUNNINGHAM

You really shouldn't.

LAWYER PRICE

I'm gonna march right into Partner Norris's office and tell her what's been happening with Archer. And you're coming with me.

LAWYER CUNNINGHAM

Wait, what? No I'm not. I'm gonna wait right here. In the waiting room. And wait for you to get fired.

(Price walks away)

Part 2 – Partner Norris's Office

LAWYER PRICE

Partner Norris, I have something to say to you.

Ever since I was a child, I tried to be the best
So what happened?
I studied my butt off, and I aced the test
So what happened?

It was supposed to be all so exciting
To be practicing law like I dreamed
But I ended up here at Norris Pect
Oh what's the matter with me?
I've always longed to help my clients,
To do the things I never dared
This is the time for me to step up,
so then why am I so scared?

A partner who yells at me in public – what's so scary about that?
I must trust the State Bar is mightier and always has my back

Now I must refer to my tools, for the State Bar gave me these rules

I believe that the State Bar created a rulebook
I believe that the Bar helps people decide what they should do
And I believe that you shouldn't get wasted before starting a deposition
I am a lawyer
And a lawyer just believes.

You cannot follow them part-way, you have to follow them all
Discharging your duties faithfully; when you're attorneys at law
I can't allow myself to have any doubt, it's time to set my knowledge free
Time to show the firm what Lawyer Price is about, and share the number for L-A-P!

I believe that competent attorneys never drink
I believe that competent attorneys don't do drugs as well
And I believe that the current partners don't know problem drinking can start when you're an associate!
I am a lawyer
And, dang it, a lawyer just believes!

Partner Norris: [*Wait for applause to start dying down*]

Stop! Stop! Associate.... why are you singing? Never mind, I don't care.

Look – I like your enthusiasm, but you have nothing to worry about. A partner will not yell at you, in public or in private. Members of the firm are not getting wasted on the job. Thank you for raising your concerns, but (*sarcastic mock singing*;) I believe Norris Pect is the most respected firm in the country, and I believe we will act accordingly. Now go back to work.

(Price leaves)

Casey to Audience: What should we do?

[While Casey teaches – Rachel changes into Adele costume & Blake sets up Mentia conference room]

[SLIDE]

Raise your hand if you think competent attorney do not get drunk before taking a deposition?

Raise your hands if you think competent attorney's never drink?

Raise your hands if you think the rules of competency are more complex, and that the right answer is somewhere in between? That's right, like all good lawyers, you know that the answer is "It depends."

[SLIDE] Let's start by defining competency – "competent" legal representation means applying the diligence, learning, skill, and mental, emotional, and physical ability reasonably necessary for the performance of such service.

[SLIDE] Members of this profession have an express duty to provide competent service. And that express duty is stated in numerous places – The State Bar Act, the Rules of Professional Conduct, and arguably for criminal attorneys, in the Constitution.

And while it may seem sort of self-evident, problematic alcohol use like that of Partner Archer's makes it impossible to meet that express duty to provide competent representation. On the extreme end, drugs and alcohol abuse can lead to desperate conditions, creating grave trust issues and dire health and safety problems. But, even on the less extreme end of things, competency issues are still rife. The use of drugs and alcohol, by their very nature, impairs our judgment and cognitive functions, making it difficult to remember and evaluate all the details, deadlines, facts, and laws. It literally makes it harder to have the mental, emotional, and physical capacity necessary to perform legal services.

And for years, it has sort of seemed self-evident, that despite all the problems that drugs and alcohol can cause, lawyers have disproportionate rates of problem substance use.

This year however, a statistical analysis of 12,000 practitioners, published in the American Society of Addiction Medicine, backed that assumption up. The [SLIDE]. The study was published in a paper titled -- *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys* –

- That 20% of the study's participants screened positive for hazardous, harmful, and potentially alcohol-dependent drinking, as compared to rates of 11% among highly educated professionals, such as doctors.
- Rates of problem drinking were higher among men.
- And the highest rates were among practitioners in the 30s, in first years of practice, working for private firms.

The authors made three interesting recommendations of sort

1. That attorneys who sought treatment specifically tailored to legal professionals, had lower rates of problematic drinking as compared to respondents who sought treatment not tailored to the legal professionals;
2. That the most common barriers to treatment were not wanting others to know and concerns confidentiality.
3. There was a need for more education about attorney-specific resources, aimed at overcoming the pervasive stigma surrounding substance use disorders.

So lets do that.

Those of you who carry your bar card, I'd like you to open up your wallet or purse and pull it out for a second. And read with me the telephone number for the lawyer's assistance program – 1-877 LAP4HELP.

[**SLIDE**] Through its Lawyer Assistance Program (LAP), the State Bar of California is a dues funded service available to all members to help members with mental health issues. This phone number is for a confidential line staffed by trained counselors who will introduce callers to LAP's programs services. Attorneys can receive a free professional mental-health assessment and speak with a counselor to find out what services they may need and where they can get those services in their communities.

[**SLIDE**] In addition to the hotline, LAP also has a monitored treatment program and a support program. The monitored program includes attorneys with verification requirement imposed by any disciplinary authority, but legal professionals can also participate in that program voluntarily. The monitored program provides more long-term structure and the support of a professional case manager, who helps track and assists a person with their treatment and recovery. There is also the Support Program, which involves weekly group meeting with other lawyers and support from qualified mental-health professional. In addition, LAP also provides free short term counseling. All of these services are tailored to legal professionals, and are premised on the concept that dependency issues are not moral or ethical failings, but health problems, that should be treated and monitored like any other health problem.

[**SLIDE**] Also, voluntary involvement in LAP is statutorily confidential – B&P Code § 6232(d)

[**SLIDE**] Other resources: AA, Refuge Recovery, CDRP, talk therapy, prescription drugs, and the self-assessment tool.

So, now let's return to Lawyer's Price and Cunningham and see what other competency issues exist in the Book of Warren.

SCENE IV – LAW FIRM OF NORRIS PECT, LLP - Older lawyer with increasingly difficult health conditions

Lawyer Price – Corrine
Lawyer Cunningham – Gina
Partner Arnold Mentia – Blake
Adele – Rachel

SETTING – CONFERENCE ROOM IN MR. MENTIA’S OFFICE

Arnold Mentia is in place. Price and Cunningham walk in during skit, with Adele following later.

LAWYER CUNNINGHAM:

That situation with Partner Archer was challenging, wouldn’t you say? But at least you didn’t get fired.

LAWYER PRICE:

I still believe in the Book of Warren and disagree with the partner. Let me handle the next one. I hear that Partner Arnold is working on negotiating a contract with a famous star.

Ding Dong!

Hello, Mr. Mentia, I would like to share with you the most amazing book.

LAWYER CUNNINGHAM:

It has some very useful information that might be helpful to your contract.

ARNOLD:

Oh yes, come on in. It’s nice to have you with the firm. (Shaking hands with Cunningham and Price).

(looks at Cunningham’s name tag)

Have we met recently? Richie, right?

LAWYER CUNNINGHAM:

Huh? (confused - doesn’t get it...)

ARNOLD:

Yeah... Thursday? Friday? No? Oh well, maybe it was back in the Happy Days!

LAWYER PRICE:

I’m really looking forward to working with you, Mr. Mentia!

LAWYER CUNNINGHAM:

I’ve never worked with an attorney whose bar number has only 4 digits!

ARNOLD:

Please guys, call me ARNOLD! You came at just the right time. My client Odell is about to come in to sign this huge upcoming deal!

ADELE (enters the room):

Hello,
it's me.
I was wondering if after all these months you'd like to meet.
To go over
everything
They say the record deal is ready
but I ain't heard from you
(abrupt stop)

ARNOLD:

I am so sorry Odell. (A bit confused, as Adele does not appear to be a football player...)

LAWYER CUNNINGHAM:

(whispers to Mr. Mentia): It's Adele.

ARNOLD (whispers to LAWYER CUNNINGHAM and LAWYER PRICE):

It's not Odell Beckham Jr.?

LAWYER PRICE:

No, Adele. She's a singer remember? She's not a football player.

ARNOLD:

Oh, I am so sorry about mispronouncing your name, Adele! Where I'm from, way up in Modoc County, we have this funny accent that makes "O's" and "A's" sound the same! (This is not true) A-dele...
Anyway, here's the contract for you to look over...

ARNOLD:

I just told a lie.
No, wait, I didn't LIE...
I just used my imagination...
And it worked!

LAWYER CHORUS:

You're making things up again, Arnold

ARNOLD:

But it worked, guys!

LAWYER CHORUS:

You're stretching the truth again,

And you know it-

LAWYER CUNNINGHAM:

Don't be a Fibbing Fran, Arnold.

ARNOLD:

What's the harm...?

LAWYER PRICE:

Because a lie is a lie.

ARNOLD:

It's not a lie!

LAWYER CHORUS:

You're making things up again, Arnold!

ARNOLD:

Oh, come on...!

LAWYER CHORUS:

You're taking the truth

And you're adding fiction!

Be careful how you proceed, Arnold.

When you fib, there's a price.

ADELE:

Mmmm... this contract looks odd!

What's this clause about touchdowns? Isn't that something from American Football? I know we had talked about getting paid for downloads of my songs, and I don't see anything about that...

ARNOLD:

Downloads? Yeah, that's what that clause is about?

[Aside to Price and Cunninham]

What are downloads?

LAWYER CUNNINGHAM:

You know... like when you download a song from the internet onto your phone... (ARNOLD looks at the old-timey phone on his desk and doesn't understand...)

[ARNOLD turns back to address ADELE]

ARNOLD:

[fast-talking] Look, I get that it might seem confusing. Here in the States we use the terms download and touchdown interchangeably. But yes, that would be funny to think that you would be catching a pass for a touchdown. It's like when you're on the internet, and you want to get something, so you reach into the internet and touch it, then it comes down from the internet onto your phone... (looking without much confidence at the old-timey phone...)

No. You see, right here in the contract... you're getting bonuses based on the number of downloads... or "touchdowns" as we lawyers call them.

ADELE:

...really?

ARNOLD:

Yes! Absolutely!

ADELE:

Oh.... [not quite believing]

LAWYER CHORUS:

You're making things up again, Arnold.
You're recklessly warping
The contract's meaning!

LAWYER CUNNINGHAM:

You can't say what you want, Arnold!

ARNOLD:

Come on, Richie!

LAWYER CHORUS:

You're digging yourself a deep hole!

ARNOLD:

I'm making things up again...kind of.
But I'm just trying
To get this deal done
It's nothing so bad, because this time,
I'm not crossing the line,
Just by fudging some words again, right?!

ALL:

WRONG! [Abrupt end of song]

ADELE:

Well... it looks a little funny, but if this is how you Yanks do contracts, I suppose I'll sign it. YOU ARE the solicitor, after all...

ARNOLD:

Great. Just sign there on the dotted line and we'll have you touchdowning in no time.
Richie – you get this over to Lawyer DePress for her to finish up, okay.

LAWYER CUNNINGHAM:

Will do!

LAWYER PRICE: [TO CUNNINGHAM]

Dude. Isn't this a huge problem, right here?

LAWYER CUNNINGHAM: [To PRICE]

I know, right? But what are we supposed to do about it?

LAWYER PRICE:

Maybe I should go talk to Managing Partner Norris about it? I believe ...

LAWYER CUNNINGHAM: [Interrupting PRICE]

No!

[While Casey comes on stage, Blake & Norah switch out desks. Rachel changes back into Norris outfit.]

So Brothers and Sisters, followers of the Book of Warren, let's start first with identifying the problem.

[**SLIDE**] The story of Attorney Mentia teaches us that competency issues are not just about drugs and alcohol. They arise whenever there is a mental, emotional, or physical issue that prevents a member of the bar from providing competent services – including when there is an issue of diminishing cognitive capacity.

What is cognitive impairment [SLIDE]? Mild Cognitive Impairment for example, is an intermediate state of cognitive decline between normal aging and more-serious issues such as dementia or alzheimers. It causes problems with memory, language, thinking and judgment that are greater than normal age-related concerns – and these are of course, all cognitive functions at the heart of any legal professional’s work.

[SLIDE] Also like drugs and alcohol, this is a big problem, the American Academy of Neurology estimates that 10 percent of persons over the age of 65 have some form of dementia and that up to 50 percent over the age of 85 experience dementia. In the meantime, the Bureau of Labor Statistics estimates that individuals over the age of 55 will make up an increasingly larger proportion of the workforce, with those over 55 currently making up 20% of the workforce and increasing to 25% at the end of this decade. Accordingly, this is a real and growing issue.

[SLIDE] So what then does the Book of Warren instruct Attorneys Price and Cunningham to do when they suspect that a fellow member of the bar may be experiencing diminishing cognitive capacity issues? Raise your hands if you think they have an express obligation to “butt in”? While, again, the answer is it depends.

[SLIDE] – In California’s rules of professional conduct, there is no express duty to report the misconduct of another member of the bar. The drafters of the rule, considered including one, but rejected the idea out of concerns about enforcement and conflicts with client interests.

[SLIDE] – The ABA’s Model Rules do include an affirmative duty to report misconduct, which would include failing to provide competent representation. The Model Rules address the enforcement concerns by including limiting language. We do not have to report every violation, just those that raise a “substantial questions” about violations that the profession vigorously endeavors to prevent are included. So under the ABA, whether you should Butt In, is a judgment call. What’s at risk, how severe is the problem, will it hurt my client’s interest?

[SLIDE] There is a little more guidance from the ABA, when dealing with a colleague or subordinate in a firm setting. – ABA Formal Opinion 03-429, provides good detail and suggestions about what to do when a subordinate or colleague in a firm is experience a mental health problem, which can be applied also in the case of problematic drug or alcohol use

- One, if the problem is known, the individual’s job duties should be restructured to avoid a violation of the rules of conduct, this might include less stressful assignments, drafting contracts over responding to TROs, or a leave of absence.
- If the impairment has resulted in a violation of the rules of ethics, the firm may have a duty to report the impaired attorney to the appropriate professional authority; and
- If the firm removes the impaired attorney, it may have an obligation to discuss the with a client the circumstances surrounding the change of responsibility.

Additionally, if you’re having trouble with this kind of – should we Butt In – decision, you can always call the

- **[SLIDE]** The Ethics Hotline – (800) 238-4427 – which like LAP, is a state bars sponsored program, and in case you forget the number, it's also on the back of your bar card.
- **[SLIDE]** And speaking of LAP – you can also call them and ask about what resources are available for individuals experience cognitive capacity issues.
- **[SLIDE]** The state bar's website has an entire section under Member Services with resources for Senior Lawyers, including publications and guides on closing or selling a practice and Wellness Guide for lawyers, their families, friends and colleagues, with detailed thoughtful information about cognitive impairment.
- Non attorney specific places for information include, of the National Institute on Aging, which conducts research and trainings for the Department of Health and Human Services, and has a lot of helpful information on its website, and the Alzheimer's Association's website, which is a gem of an organization.

[SLIDE] And with that, let's return to the action and see what our Young Lawyers are running into next at Norris Pect.

SCENE V – LAW FIRM OF NORRIS PECT, LLP - Lawyer with mental/ emotional/ depression/ anxiety issues

Lawyer Price – Corrine
 Lawyer Cunningham – Gina
 Ms. DePress – Norah
 Mr. Archer – Louis
 Mr. Mentia – Blake
 Partner Norris – Rachel

SETTING - In Ms. DePress Office: Ms. DePress is at her desk/table surrounded by files and used coffee cups/mugs. It's a mess and she is flustered or totally spaced out and depressed in the chaos.

DePress is seated, Cunningham and Price enter, speak, Archer sings and leaves, C&P finish speaking and leave, Archer & Mentia enter together, Norris enters.

LAWYER CUNNINGHAM (LAWYER CUNNINGHAM):

Hello, Lawyer DePress, I would like to share with you the most amazing book.

LAWYER PRICE (LP):

It has some very useful information that might be helpful to your circumstances.

Ms. DePress: Sure, why not. It's just one more thing to add to my endless pile of work.

Cunningham: That's what you get for being the best attorney here. You will be a partner in no time!

Ms. DePress: [makes some noncommittal noise]

Price: Cunningham is right. You are the best attorney here. Partner Archer spends his afternoons at the sports bar, and Partner Mentia, well, he was a great litigator once, but he should have stopped practicing about five years ago.

Cunningham: Yeah, I'm surprised neither of them have been disbarred yet. How do they even get their work done?

Ms. DePress: You want to know why? Do you want to know the firm's big secret? Get closer. [They do.] It's because I do it all. It's all me. Every judge who continues a case after a blown discovery deadline, every client who doesn't sue us, it's all because of me. And I am tired of it. I think I may be at a breaking point.

Cunningham: If you're feeling stressed, maybe you should take a page out of Mr. Archer's book.

Price: That's horrible advice.

Cunningham: No it's not. Hear me out.

Keep it Up – Verse 1 – Cunningham then Archer

VERSE 1 - Cunningham

When he was under stress,
And his life looked a mess,
He found a way to blow off some steam
He'd start a' drinkin',
instead of a' thinkin',
and all his clients' problems faded like a dream

Mr. Archer:

I have court in the morning and I ought to prepare
But one more drink and it's hard to care

ALL - CHORUS (Version 1)

Have a drink! (and another - just go clink!)
(It's our nifty little lawyer trick!)
Have a drink! (Have a drink!)

Price: Like I said - that is horrible advice. You need to stop hanging out with Mr. Archer, Cunningham.

[Cunningham shrugs noncommittally]

Ms. DePress: Getting drunk isn't going to help. Although sometimes I am tempted... However, it's not going to stop Mr. Archer passing all of his work on to me when he moseys down the hall at 3 in the afternoon to go and watch a baseball game.

Cunningham: So just close your door and get some curtains. If he can't see you, maybe he won't give you work to do.

Price: Besides, look at how much everyone depends on you. I would love to be in your shoes.

Cunningham: Yeah, everyone pretty much just thinks Price is no fun, a killjoy out to ruin their good time. ... I mean, everyone but me, of course.

Price: I have fun! The law is fun!

Ms. DePress: No it's not, Price. Poor, poor, Price. I thought law was fun once, but now, now I realize the law is just miles of paperwork and praying you don't blow another deadline. It's missing your two year anniversary dinner with your husband, because of an emergency TRO that someone else dropped the ball on that gets thrown on your desk at 4PM, the day before its due, and you had already packed up for the day in order to get your child from day care and to the babysitter on time so you will actually have enough time to get yourself ready for a night out with your husband, who has been growing ever more distant because he says I work too much and have failed to prioritize my family...[almost screaming by this point]

Ms. DePress, Price, and Cunningham: Verse 2 of Turn It Off

VERSE 2: Price

I do understand, it's not what I planned
To be working here at old Norris Pect
Twelve hour days, my life is a haze,
and you're the only one worth my respect

But you should be happy, cuz it's not forever
At least the three of us are in it together

ALL – CHORUS (Version 2)

Keep it up (and stay quiet, just don't tell)
(It's our nifty little lawyer Hell)
Keep it up (Keep it up!)

Ms. DePress: Thanks for trying guys, but being cheerful about it isn't going to stop Mr. Mentia from passing off his shoddy cases to me. I really worry about his memory problems and how they are affecting his work, but do not feel as though I am in a position to speak up about it. But, that's my problem, not yours. Was there anything else?

Price: If you need any help, we're here for you.

Cunningham: Really, we are.

Price: If you want to talk about it with management, I can go with you to Managing Partner Norris. She doesn't like me very much, but ...

Ms. DePress: That's not necessary Price. I can handle it. I have no other choice.

[Price and Cunningham leave the scene]

Ms. DePress: I can do this. Who cares if I haven't slept in two days. That's what coffee is for. [She pulls out a file.]

VERSE 3: DePress

I've been working late, I missed another date
I'm feeling kind of helpless and hopeless now
My life feels so grey, how did it get this way?
I really need to find my old spunk somehow.

You say I'm depressed, but it feels realistic
I know what's behind that Johns Hopkins statistic

ALL – CHORUS (Version 2)

Keep it up (and stay quiet, just don't tell)
(It's our nifty little lawyer Hell)
Keep it up (Keep it up!)

[**Mr. Archer and Mr. Mentia enter**]

Mr. Archer: Look at our favorite senior associate, hard at work. Did you get those interrogatories answered yet? I told opposing counsel I'd have them to her this afternoon.

Mr. Mentia: And the complaint on the car thing, with, you know, the robot or whatever.

Ms. DePress: No.

Mr. Archer: What do you mean no?

Mr. Mentia: I gave that to you yesterday.

Mr. Archer: It's just a few questions. You should have finished it by now.

Ms. DePress: No. No I shouldn't have. And how dare you give me such ridiculous deadlines in the first place! I am exhausted, overworked, and underpaid!

Mr. Mentia: You listen here Miss, uhh, uhhh. [snaps his fingers]

[Partner Norris comes in]

Norris: Is everything okay here? I thought I heard raised voices.

Mr. Archer: It's fine.

Ms. DePress: No, no it's really not. I've been covering for them for way too long, and you know what, I can't do this anymore. I can't do three jobs at once. I don't care if it costs me being made partner. Here are your cases back [hands the files to the other attorneys]. If you need any help, Price and Cunningham already volunteered. I'm going home sick.

[Ms. DePress gathers her things]

Mr. Archer: You can't just leave.

Mr. Mentia: You still have work to do.

[Ms. DePress leaves.]

Partner Norris: Gentlemen, what did she mean when she said she'd been covering for you?

TEACHING MOMENT

Brothers, Sisters, followers of the Book of Warren, it seems we have one last competency problem. **[SLIDE]**

That lovely study we discussed during our first act, published in the American journal of addiction medicine, also concluded that lawyers have disproportionate rates of mental health problems. **[SLIDE]** Of the 12,000 participants in the study, levels of depression, anxiety, and stress were significant with 28%, 19%, and 23% experience high levels of depression, anxiety, and stress, respectively.

[SLIDE] This is consistent with a 1990 study on occupational mental health issues. That study of 12,000 adults by a team at Johns Hopkins University research team indicated that among all the occupational groups represented in that sample, attorneys showed the highest frequency of symptoms of clinical depression. Attorneys were 3.6 times more likely to show signs of depression than those in all other occupations studied

Why are rates of mental health problems so high among attorneys? Scholars theorize that in addition to biochemical and hereditary causes, certain personality traits that make people good attorneys are also strongly correlated with depression. **[SLIDE]**

- Perfectionists – Perfectionism is rewarded in the profession and law school. That person who can identify every case, every fact, and turn in the spotless brief, will excel. But perfectionism also produces feelings of inadequacy, that chronic feelings like nothing is quite good enough.

- Pessimists – The John Hopkins study in 1990 showed that in all graduate school programs except one, optimist outperformed pessimists. The one exception, law school. Pessimism helps lawyers, it makes us skeptical of our clients, witnesses, opposing counsel. It helps us anticipate and prepare for the worst, but it also leads to stress and disillusionment, which makes us vulnerable to depression.
- Practical – Lawyers are not overly driven by emotion. Which helps for keeping cool and focused in the face of rogue witness or a difficult client. But, that also creates a resistance to appearing weak, admitting when we need help, and seeing when colleagues and others are struggling with mental health issues.

[**SLIDE**] The job itself is also pretty hard: there are always deadlines looming, multiple competing demands, and the changes in technology over the last few decades have substantially increased the expectations and pace of legal practice.

All these mental health issues of course pose competency issues – attorneys with mental health problems, or working under extended periods of stress, are less able to concentrate and make decisions. Chronic stress can manifest itself in inappropriate anger or impatience, overreaction to minor problems, and resentment, which makes compromise and working to resolve a client's problem difficult.

So where can we turn for help with this problem [**SLIDE**]

- That's right, the Lawyers Assistance Program – an LAP counselor can assist not just with substance abuse problems, but with mental health problems generally.

[**SLIDE**] In addition to LAP, Medication and talk therapy are also proven treatment options that should be approached with an open and encouraging attitude. Despite substantial progress in this area, many people still see mental health issues as a moral, ethical, or professional failing. They are not. They are chronic health problems. Just like we would encourage a colleague with diabetes or high cholesterol – both chronic health problems that can be fatal if not medically treated – we should encourage our colleagues and ourselves to seek medical treatment for mental health problems.

For stress and anxiety, I have found Mindfulness Meditation very helpful. It's a meditation concept that focuses on thinking about the present, being in the moment, rather than engaging in pessimistic perfectionist thinking about controlling the 100s of things that may or may not happen in the future. The East Bay Meditation Center is a fantastic local nonprofit that has great programming if you're looking to learn more about mindfulness.

And finally, as a profession – we need to think hard about expectations that we set for each other and ourselves, engaging in a conversation about what work-life balance truly means, and whether the standards we set for ourselves benefit our clients and the public, or whether they create competency issues that actually undermine the public's protection.

And to assist us in that conversation, my brothers and sisters, there is of course, the Book of Warren [**SLIDE**]

SCENE VI – CLOSING WITH GROUP SINGING “HELLO” REPRISE

- Lawyer Price (Corrine)
- Lawyer Grant (Rachel)
- Lawyer Green (Dennis)
- Lawyer Archer (Louis)
- Lawyer Harris / DePress (Norah)
- Lawyer White (Casey)
- Lawyer Mentia (Blake)
- Lawyer Cunningham (Gina)

Lawyer Archer:

Hello!

My name is Lawyer Archer
and I would like to share with you
the most amazing book.

(DING DONG)

Lawyer Mentia:

Hello!

My name is Lawyer Arnold
It's a book about the rules
That we have learned tonight

(DING DONG) *Yet another lawyer at a different area of the stage*

Lawyer Cunningham:

It has so many awesome parts

(DING DONG) *A new lawyer rings, but no answer.*

You simply won't believe
How much this book
Can change your life

(DING DONG, DING DONG, DING DONG)

Lawyer Green:

Hello!

My name is Lawyer Green.
And I would like to share with you
This book of competence!

(DING DONG)

Lawyer Price:

Hello!

My name is Lawyer Price

Lawyer Harris:

Hello!

Lawyer Price:

We have learned that lawyers here
Are governed by the state!

Lawyer Mentia:

You can read all about it now!

Lawyer White:

Hello!

Lawyer Mentia:

In this nifty book, it's free!
No, you don't have to pay.

Lawyer Price:

Hello!

Lawyer Grant:

Hello!

My name is Lawyer Grant!
And can I leave this book with you?
For you to just peruse?

Lawyer Green:

Hello!

Lawyer White:

Hello!

Lawyer Harris:

Hello!

Lawyer Grant:

I'll just leave it here.
It has a lot of information you can really use!

Lawyer Cunningham:

Hello!

Lawyer Harris:

Hi!

Lawyer Price:

My name is-

Lawyer Green:

Rules of ethics!

Lawyer Cunningham:

Good for clients too.

Lawyer White:

Your Honor?

Lawyer Price:

It's an amazing book!

Lawyer Green:

Bonjour

Lawyer White:

Nihao

Lawyer Harris:

Hola

Lawyer White:

Here please take this book!

Lawyer Mentia:

This book is great!

Lawyer Green:

This book helps you with being competent and well!

All:

Sound good?

Lawyer Mentia:

Your mental health

Lawyer Grant:

Is key!

All:

All the clients win!

Lawyer Mentia:

So you can be the lawyer you were always meant to be!

Half of everyone:

This book will change your life

The other half:

This book will change your life

Half of everyone:

This book will change your life

The other half:

This book will change your life

Half of everyone:

This book will change your life

The other half:

This book will change your life

All:

The Book of Warren!!!!!!!!

Phil plays [Ding Dong]

All:

Hello!

[Wait for applause to quiet and introduce Team 2, including any special helpers.

Team cleans up while Corrine does announcements, reminder re: dues, introduces guests, etc.]



THE BOOK OF WARREN



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SF 0

▲ 1ST

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SFGIANTS.COM



Hanwha

#VXGIANTS

COGNAC
COGNAC





THE BOOK OF WARREN

A Book About
Competency

Sources of the Rule of Competency

State Bar Act – “Every person on his admission shall take an oath to . . . discharge the duties of any attorney at law to the best of his knowledge and ability.” Bus. & Prof. Code, § 6067

California Rules of Professional Conduct – “A member shall not *intentionally, recklessly, or repeatedly* fail to perform legal services *with competence*.” CRPC 3-110(A)

ABA Model Rules – “A lawyer shall provide competent representation to a client.” ABA Model Rule 1.1.

Constitutions – A defendant is entitled to a reasonably competent attorney People v. Diggs (1986) 177 Cal.App.3d 958



Substance Abuse in the Legal Profession



Rule 3-110 (B)

"competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.



The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

- 20% of attorneys experience problematic drinking
- Higher rates among men
- Highest rates among new attorneys under 30



Stressed? Depressed? Drinking too much?

The confidential Lawyer Assistance Program is here for you.

Call **877-LAP-4-HELP** (527-4435)

or email **LAP@calbar.ca.gov**

- Free Assessment & Counseling
- Lawyer Support Group meetings

Lawyer Assistance Program

- Monitored Program – long term support structure
- Support Program – weekly meetings and
- Short Term Counseling – 2 no-cost sessions for any member
- Career Counseling – 2 no cost sessions for any member
- Case Management Model

Confidential

Business & Professions Code §6232(d)
states that

“...(A)n attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis. Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney (emphasis added).”



Other Resources

- The Other Bar
- Alcoholics Anonymous
- Refuge Recovery
- Kaiser's CDRP
- One-on-one therapy
- Prescription medications
- Self assessment tools (Bar Website)



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Diminishing & Impaired Cognitive Capacity



Rule 3-110 (B)

"competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

Signs of Mild Cognitive Impairment

- Confusion
- Poor motor coordination
- Loss of short-term memory
- Identity confusion
- Impaired judgment



The American Academy of Neurology estimates that 10 percent of persons over age 65 have some form of dementia and up to 50 percent over the age of 85 experience dementia.



What is the
obligation to
“butt in.”



There is no express duty in the California Rules of Professional Conduct to report the misconduct of other attorneys. The act of reporting such misconduct however, may be privileged.

*See San Diego Bar Ass'n
Form.Opn. 1992-2*



ABA Model Rule 8.3(a)

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.



ABA Formal Opinion 03-429

Mentally Impaired Lawyer in the Firm

If a lawyer's mental impairment is known to partners in a law firm or a lawyer having direct supervisory authority over the impaired lawyer, steps must be taken that are designed to give reasonable assurance that such impairment will not result in breaches of the Model Rules.

If the mental impairment of a lawyer has resulted in a violation of the Model Rules, an obligation may exist to report the violation to the appropriate professional authority.

If the firm removes the impaired lawyer in a matter, it may have an obligation to discuss with the client the circumstances surrounding the change of responsibility.



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or email **LAP@calbar.ca.gov**

- Free Assessment & Counseling
- Lawyer Support Group meetings

The Ethics Hotline



1-800-238-4427

Other Resources

- Member Services & Resources for Senior Lawyers
 - State Bar Publication – “A Wellness Guide for Senior Lawyers and their Families, Friends, and Colleagues.”
- National Institute on Aging
- Alzheimer’s Association – www.alz.org



THE BOOK OF WARREN



Stress, Depression, & Anxiety



The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

- 28% - depression
- 19% - anxiety
- 23% - stress



Lawyers are 3.6
times more likely
than the general
population to
have depression



Why are stress
and anxiety
more prevalent
in the legal
profession?



What Kind of People Excel as Lawyers

- Perfectionists;
- Pessimists; and
- Practical minded folks.



The Job is Hard

- Deadlines;
- Multiple competing demands;
- Ever increasing expectations and pace.



Stressed? Depressed? Drinking too much?

The confidential Lawyer Assistance Program is here for you.

Call **877-LAP-4-HELP** (527-4435)

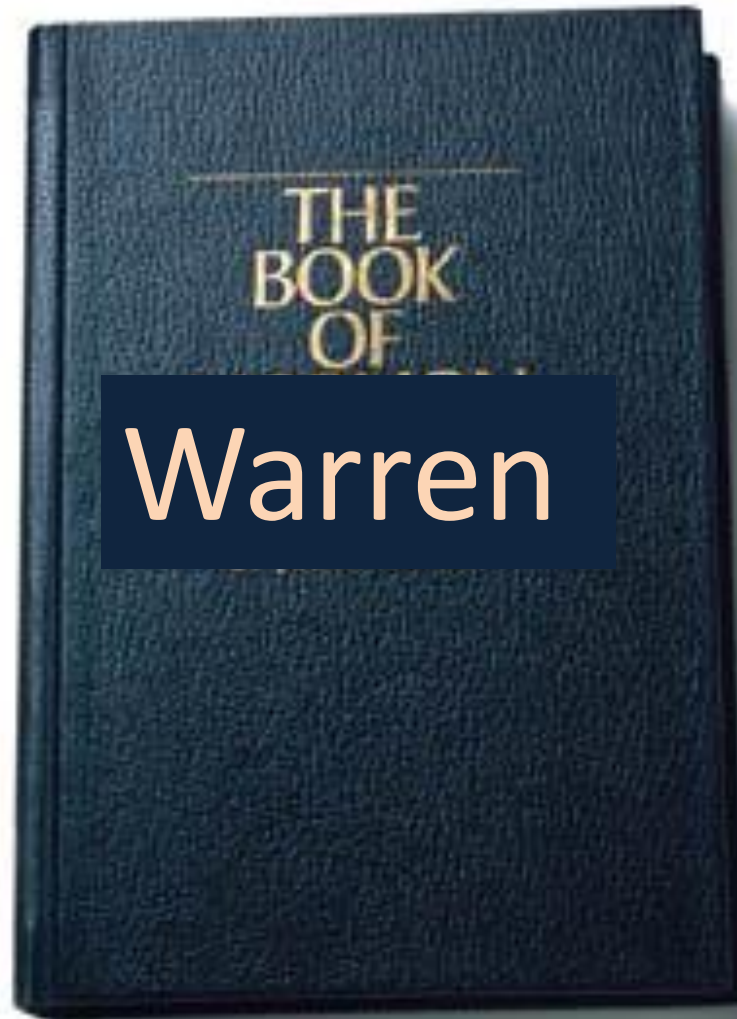
or email **LAP@calbar.ca.gov**

- Free Assessment & Counseling
- Lawyer Support Group meetings

Other Resources & Actions

- Medication & Talk Therapy
- Mindfulness Meditation
 - East Bay Meditation Center
- Talking About the Problem as a Profession and Changing Expectations.

Other Resources



THE
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OPEN

The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW

Objectives: Rates of substance use and other mental health concerns among attorneys are relatively unknown, despite the potential for harm that attorney impairment poses to the struggling individuals themselves, and to our communities, government, economy, and society. This study measured the prevalence of these concerns among licensed attorneys, their utilization of treatment services, and what barriers existed between them and the services they may need.

Methods: A sample of 12,825 licensed, employed attorneys completed surveys, assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress.

Results: Substantial rates of behavioral health problems were found, with 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking. Men had a higher proportion of positive screens, and also younger participants and those working in the field for a shorter duration ($P < 0.001$). Age group predicted Alcohol Use Disorders Identification Test scores; respondents 30 years of age or younger were more likely to have a higher score than their older peers ($P < 0.001$). Levels of depression, anxiety, and stress among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively.

Conclusions: Attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations. Mental health distress is also significant. These data underscore the need for greater resources for lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions.

Key Words: attorneys, mental health, prevalence, substance use

(*J Addict Med* 2016;10: 46–52)

From the Hazelden Betty Ford Foundation (PRK, RJ); Wisconsin Lawyers Assistance Program (LA).

Received for publication June 26, 2015; accepted October 25, 2015.

Funding: The study was funded by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs.

Conflicts of interest: Linda Albert is an employee of the State Bar of Wisconsin. Remaining authors are employees of the Hazelden Betty Ford Foundation. No conflicts of interest are identified.

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ISSN: 1932-0620/15/0901-0031

DOI: 10.1097/ADM.0000000000000182

Little is known about the current behavioral health climate in the legal profession. Despite a widespread belief that attorneys experience substance use disorders and other mental health concerns at a high rate, few studies have been undertaken to validate these beliefs empirically or statistically. Although previous research had indicated that those in the legal profession struggle with problematic alcohol use, depression, and anxiety more so than the general population, the issues have largely gone unexamined for decades (Benjamin et al., 1990; Eaton et al., 1990; Beck et al., 1995). The most recent and also the most widely cited research on these issues comes from a 1990 study involving approximately 1200 attorneys in Washington State (Benjamin et al., 1990). Researchers found 18% of attorneys were problem drinkers, which they stated was almost twice the 10% estimated prevalence of alcohol abuse and dependence among American adults at that time. They further found that 19% of the Washington lawyers suffered from statistically significant elevated levels of depression, which they contrasted with the then-current depression estimates of 3% to 9% of individuals in Western industrialized countries.

While the authors of the 1990 study called for additional research about the prevalence of alcoholism and depression among practicing US attorneys, a quarter century has passed with no such data emerging. In contrast, behavioral health issues have been regularly studied among physicians, providing a firmer understanding of the needs of that population (Oreskovich et al., 2012). Although physicians experience substance use disorders at a rate similar to the general population, the public health and safety issues associated with physician impairment have led to intense public and professional interest in the matter (DuPont et al., 2009).

Although the consequences of attorney impairment may seem less direct or urgent than the threat posed by impaired physicians, they are nonetheless profound and far-reaching. As a licensed profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated (Rothstein, 2008). A scarcity of data on the current rates of substance use and mental health concerns among lawyers, therefore, has substantial implications and must be addressed. Although many in the profession have long understood the need for greater resources and support for attorneys struggling with addiction or other mental health concerns, the formulation of cohesive and informed strategies for addressing those issues has been handicapped by the

outdated and poorly defined scope of the problem (Association of American Law Schools, 1994).

Recognizing this need, we set out to measure the prevalence of substance use and mental health concerns among licensed attorneys, their awareness and utilization of treatment services, and what, if any, barriers exist between them and the services they may need. We report those findings here.

METHODS

Procedures

Before recruiting participants to the study, approval was granted by an institutional review board. To obtain a representative sample of attorneys within the United States, recruitment was coordinated through 19 states. Among them, 15 state bar associations and the 2 largest counties of 1 additional state e-mailed the survey to their members. Those bar associations were instructed to send 3 recruitment e-mails over a 1-month period to all members who were currently licensed attorneys. Three additional states posted the recruitment announcement to their bar association web sites. The recruitment announcements provided a brief synopsis of the study and past research in this area, described the goals of the study, and provided a URL directing people to the consent form and electronic survey. Participants completed measures assessing alcohol use, drug use, and mental health symptoms. Participants were not asked for identifying information, thus allowing them to complete the survey anonymously. Because of concerns regarding potential identification of individual bar members, IP addresses and geo-location data were not tracked.

Participants

A total of 14,895 individuals completed the survey. Participants were included in the analyses if they were currently employed, and employed in the legal profession, resulting in a final sample of 12,825. Due to the nature of recruitment (eg, e-mail blasts, web postings), and that recruitment mailing lists were controlled by the participating bar associations, it is not possible to calculate a participation rate among the entire population. Demographic characteristics are presented in Table 1. Fairly equal numbers of men (53.4%) and women (46.5%) participated in the study. Age was measured in 6 categories from 30 years or younger, and increasing in 10-year increments to 71 years or older; the most commonly reported age group was 31 to 40 years old. The majority of the participants were identified as Caucasian/White (91.3%).

As shown in Table 2, the most commonly reported legal professional career length was 10 years or less (34.8%), followed by 11 to 20 years (22.7%) and 21 to 30 years (20.5%). The most common work environment reported was in private firms (40.9%), among whom the most common positions were Senior Partner (25.0%), Junior Associate (20.5%), and Senior Associate (20.3%). Over two-thirds (67.2%) of the sample reported working 41 hours or more per week.

TABLE 1. Participant Characteristics

	n (%)
Total sample	12825 (100)
Sex	
Men	6824 (53.4)
Women	5941 (46.5)
Age category	
30 or younger	1513 (11.9)
31–40	3205 (25.2)
41–50	2674 (21.0)
51–60	2953 (23.2)
61–70	2050 (16.1)
71 or older	348 (2.7)
Race/ethnicity	
Caucasian/White	11653 (91.3)
Latino/Hispanic	330 (2.6)
Black/African American (non-Hispanic)	317 (2.5)
Multiracial	189 (1.5)
Asian or Pacific Islander	150 (1.2)
Other	84 (0.7)
Native American	35 (0.3)
Marital status	
Married	8985 (70.2)
Single, never married	1790 (14.0)
Divorced	1107 (8.7)
Cohabiting	462 (3.6)
Life partner	184 (1.4)
Widowed	144 (1.1)
Separated	123 (1.0)
Have children	
Yes	8420 (65.8)
No	4384 (34.2)
Substance use in the past 12 mos*	
Alcohol	10874 (84.1)
Tobacco	2163 (16.9)
Sedatives	2015 (15.7)
Marijuana	1307 (10.2)
Opioids	722 (5.6)
Stimulants	612 (4.8)
Cocaine	107 (0.8)

*Substance use includes both illicit and prescribed usage.

Materials

Alcohol Use Disorders Identification Test

The Alcohol Use Disorders Identification Test (AUDIT) (Babor et al., 2001) is a 10-item self-report instrument developed by the World Health Organization (WHO) to screen for hazardous use, harmful use, and the potential for alcohol dependence. The AUDIT generates scores ranging from 0 to 40. Scores of 8 or higher indicate hazardous or harmful alcohol intake, and also possible dependence (Babor et al., 2001). Scores are categorized into zones to reflect increasing severity with zone II reflective of hazardous use, zone III indicative of harmful use, and zone IV warranting full diagnostic evaluation for alcohol use disorder. For the purposes of this study, we use the phrase “problematic use” to capture all 3 of the zones related to a positive AUDIT screen.

The AUDIT is a widely used instrument, with well established validity and reliability across a multitude of populations (Meneses-Gaya et al., 2009). To compare current rates of problem drinking with those found in other populations, AUDIT-C scores were also calculated. The AUDIT-C is a subscale comprised of the first 3 questions of the AUDIT

TABLE 2. Professional Characteristics

	n (%)
Total sample	12825 (100)
Years in field (yrs)	
0–10	4455 (34.8)
11–20	2905 (22.7)
21–30	2623 (20.5)
31–40	2204 (17.2)
41 or more	607 (4.7)
Work environment	
Private firm	5226 (40.9)
Sole practitioner, private practice	2678 (21.0)
In-house government, public, or nonprofit	2500 (19.6)
In-house: corporation or for-profit institution	937 (7.3)
Judicial chambers	750 (7.3)
Other law practice setting	289 (2.3)
College or law school	191 (1.5)
Other setting (not law practice)	144 (1.1)
Bar Administration or Lawyers Assistance Program	55 (0.4)
Firm position	
Clerk or paralegal	128 (2.5)
Junior associate	1063 (20.5)
Senior associate	1052 (20.3)
Junior partner	608 (11.7)
Managing partner	738 (14.2)
Senior partner	1294 (25.0)
Hours per wk	
Under 10 h	238 (1.9)
11–20 h	401 (3.2)
21–30 h	595 (4.7)
31–40 h	2946 (23.2)
41–50 h	5624 (44.2)
51–60 h	2310 (18.2)
61–70 h	474 (3.7)
71 h or more	136 (1.1)
Any litigation	
Yes	9611 (75.0)
No	3197 (25.0)

focused on the quantity and frequency of use, yielding a range of scores from 0 to 12. The results were analyzed using a cut-off score of 5 for men and 4 for women, which have been interpreted as a positive screen for alcohol abuse or possible alcohol dependence (Bradley et al., 1998; Bush et al., 1998). Two other subscales focus on dependence symptoms (eg, impaired control, morning drinking) and harmful use (eg, blackouts, alcohol-related injuries).

Depression Anxiety Stress Scales-21 item version

The Depression Anxiety Stress Scales-21 (DASS-21) is a self-report instrument consisting of three 7-item subscales assessing symptoms of depression, anxiety, and stress. Individual items are scored on a 4-point scale (0–3), allowing for subscale scores ranging from 0 to 21 (Lovibond and Lovibond, 1995). Past studies have shown adequate construct validity and high internal consistency reliability (Antony et al., 1998; Clara et al., 2001; Crawford and Henry, 2003; Henry and Crawford, 2005).

Drug Abuse Screening Test-10 item version

The short-form Drug Abuse Screening Test-10 (DAST) is a 10-item, self-report instrument designed to screen and quantify consequences of drug use in both a clinical and

research setting. The DAST scores range from 0 to 10 and are categorized into low, intermediate, substantial, and severe-concern categories. The DAST-10 correlates highly with both 20-item and full 28-item versions, and has demonstrated reliability and validity (Yudko et al., 2007).

RESULTS

Descriptive statistics were used to outline personal and professional characteristics of the sample. Relationships between variables were measured through χ^2 tests for independence, and comparisons between groups were tested using Mann-Whitney *U* tests and Kruskal-Wallis tests.

Alcohol Use

Of the 12,825 participants included in the analysis, 11,278 completed all 10 questions on the AUDIT, with 20.6% of those participants scoring at a level consistent with problematic drinking. The relationships between demographic and professional characteristics and problematic drinking are summarized in Table 3. Men had a significantly higher proportion of positive screens for problematic use compared with women (χ^2 [1, *N* = 11,229] = 154.57, *P* < 0.001); younger participants had a significantly higher proportion compared with the older age groups (χ^2 [6, *N* = 11,213] = 232.15, *P* < 0.001); and those working in the field for a shorter duration had a significantly higher proportion compared with those who had worked in the field for longer (χ^2 [4, *N* = 11,252] = 230.01, *P* < 0.001). Relative to work environment and position, attorneys working in private firms or for the bar association had higher proportions than those in other environments (χ^2 [8, *N* = 11,244] = 43.75, *P* < 0.001), and higher proportions were also found for those at the junior or senior associate level compared with other positions (χ^2 [6, *N* = 4671] = 61.70, *P* < 0.001).

Of the 12,825 participants, 11,489 completed the first 3 AUDIT questions, allowing an AUDIT-C score to be calculated. Among these participants, 36.4% had an AUDIT-C score consistent with hazardous drinking or possible alcohol abuse or dependence. A significantly higher proportion of women (39.5%) had AUDIT-C scores consistent with problematic use compared with men (33.7%) (χ^2 [1, *N* = 11,440] = 41.93, *P* < 0.001).

A total of 2901 participants (22.6%) reported that they have felt their use of alcohol or other substances was problematic at some point in their lives; of those that felt their use has been a problem, 27.6% reported problematic use manifested before law school, 14.2% during law school, 43.7% within 15 years of completing law school, and 14.6% more than 15 years after completing law school.

An ordinal regression was used to determine the predictive validity of age, position, and number of years in the legal field on problematic drinking behaviors, as measured by the AUDIT. Initial analyses included all 3 factors in a model to predict whether or not respondents would have a clinically significant total AUDIT score of 8 or higher. Age group predicted clinically significant AUDIT scores; respondents 30 years of age or younger were significantly more likely to have a higher score than their older peers (β = 0.52, Wald [*df* = 1] = 4.12, *P* < 0.001). Number of years in the field

TABLE 3. Summary Statistics for Alcohol Use Disorders Identification Test (AUDIT)

	AUDIT Statistics			Problematic %*	P**
	n	M	SD		
Total sample	11,278	5.18	4.53	20.6%	
Sex					
Men	6012	5.75	4.88	25.1%	<0.001
Women	5217	4.52	4.00	15.5%	
Age category (yrs)					
30 or younger	1393	6.43	4.56	31.9%	<0.001
31–40	2877	5.84	4.86	25.1%	
41–50	2345	4.99	4.65	19.1%	
51–60	2548	4.63	4.38	16.2%	
61–70	1753	4.33	3.80	14.4%	
71 or older	297	4.22	3.28	12.1%	
Years in field (yrs)					
0–10	3995	6.08	4.78	28.1%	<0.001
11–20	2523	5.02	4.66	19.2%	
21–30	2272	4.65	4.43	15.6%	
31–40	1938	4.39	3.87	15.0%	
41 or more	524	4.18	3.29	13.2%	
Work environment					
Private firm	4712	5.57	4.59	23.4%	<0.001
Sole practitioner, private practice	2262	4.94	4.72	19.0%	
In-house: government, public, or nonprofit	2198	4.94	4.45	19.2%	
In-house: corporation or for-profit institution	828	4.91	4.15	17.8%	
Judicial chambers	653	4.46	3.83	16.1%	
College or law school	163	4.90	4.66	17.2%	
Bar Administration or Lawyers Assistance Program	50	5.32	4.62	24.0%	
Firm position					
Clerk or paralegal	115	5.05	4.13	16.5%	<0.001
Junior associate	964	6.42	4.57	31.1%	
Senior associate	938	5.89	5.05	26.1%	
Junior partner	552	5.76	4.85	23.6%	
Managing partner	671	5.22	4.53	21.0%	
Senior partner	1159	4.99	4.26	18.5%	

*The AUDIT cut-off for hazardous, harmful, or potential alcohol dependence was set at a score of 8.

**Comparisons were analyzed using Mann-Whitney *U* tests and Kruskal-Wallis tests.

approached significance, with higher AUDIT scores predicted for those just starting out in the legal profession (0–10 yrs of experience) ($\beta = 0.46$, Wald [$df = 1$] = 3.808, $P = 0.051$). Model-based calculated probabilities for respondents aged 30 or younger indicated that they had a mean probability of 0.35 (standard deviation [SD] = 0.01), or a 35% chance for scoring an 8 or higher on the AUDIT; in comparison, those respondents who were 61 or older had a mean probability of 0.17 (SD = 0.01), or a 17% chance of scoring an 8 or higher.

Each of the 3 subscales of the AUDIT was also investigated. For the AUDIT-C, which measures frequency and quantity of alcohol consumed, age was a strong predictor of subscore, with younger respondents demonstrating significantly higher AUDIT-C scores. Respondents who were 30 years old or younger, 31 to 40 years old, and 41 to 50 years old all had significantly higher AUDIT-C scores than their older peers, respectively ($\beta = 1.16$, Wald [$df = 1$] = 24.56, $P < 0.001$; $\beta = 0.86$, Wald [$df = 1$] = 16.08, $P < 0.001$; and $\beta = 0.48$, Wald [$df = 1$] = 6.237, $P = 0.013$), indicating that younger age predicted higher frequencies of drinking and quantity of alcohol consumed. No other factors were significant predictors of AUDIT-C scores. Neither the predictive model for the dependence subscale nor the harmful use subscale indicated significant predictive ability for the 3 included factors.

Drug Use

Participants were questioned regarding their use of various classes of both licit and illicit substances to provide a basis for further study. Participant use of substances is displayed in Table 1. Of participants who endorsed use of a specific substance class in the past 12 months, those using stimulants had the highest rate of weekly usage (74.1%), followed by sedatives (51.3%), tobacco (46.8%), marijuana (31.0%), and opioids (21.6%). Among the entire sample, 26.7% ($n = 3419$) completed the DAST, with a mean score of 1.97 (SD = 1.36). Rates of low, intermediate, substantial, and severe concern were 76.0%, 20.9%, 3.0%, and 0.1%, respectively. Data collected from the DAST were found to not meet the assumptions for more advanced statistical procedures. As a result, no inferences about these data could be made.

Mental Health

Among the sample, 11,516 participants (89.8%) completed all questions on the DASS-21. Relationships between demographic and professional characteristics and depression, anxiety, and stress subscale scores are summarized in Table 4. While men had significantly higher levels of depression ($P < 0.05$) on the DASS-21, women had higher levels of anxiety ($P < 0.001$) and stress ($P < 0.001$). DASS-21 anxiety,

TABLE 4. Summary Statistics for Depression Anxiety Stress Scale (DASS-21)

	DASS Depression				DASS Anxiety				DASS Stress			
	n	M	SD	P*	n	M	SD	P*	n	M	SD	P*
Total sample	12300	3.51	4.29		12277	1.96	2.82		12271	4.97	4.07	
Sex												
Men	6518	3.67	4.46	<0.05	6515	1.84	2.79	<0.001	6514	4.75	4.08	<0.001
Women	5726	3.34	4.08		5705	2.10	2.86		5705	5.22	4.03	
Age category (yrs)												
30 or younger	1476	3.71	4.15	<0.001	1472	2.62	3.18	<0.001	1472	5.54	4.61	<0.001
31–40	3112	3.96	4.50		3113	2.43	3.15		3107	5.99	4.31	
41–50	2572	3.83	4.54		2565	2.03	2.92		2559	5.36	4.12	
51–60	2808	3.41	4.27		2801	1.64	2.50		2802	4.47	3.78	
61–70	1927	2.63	3.65		1933	1.20	2.06		1929	3.46	3.27	
71 or older	326	2.03	3.16		316	0.95	1.73		325	2.72	3.21	
Years in field												
0–10 yrs	4330	3.93	4.45	<0.001	4314	2.51	3.13	<0.001	4322	5.82	4.24	<0.001
11–20 yrs	2800	3.81	4.48		2800	2.09	3.01		2777	5.45	4.20	
21–30 yrs	2499	3.37	4.21		2509	1.67	2.59		2498	4.46	3.79	
31–40 yrs	2069	2.81	3.84		2063	1.22	1.98		2084	3.74	3.43	
41 or more yrs	575	1.95	3.02		564	1.01	1.94		562	2.81	3.01	
Work environment												
Private firm	5028	3.47	4.17	<0.001	5029	2.01	2.85	<0.001	5027	5.11	4.06	<0.001
Sole practitioner, private practice	2568	4.27	4.84		2563	2.18	3.08		2567	5.22	4.34	
In-house: government, public, or nonprofit	2391	3.45	4.26		2378	1.91	2.69		2382	4.91	3.97	
In-house: corporation or for-profit institution	900	2.96	3.66		901	1.84	2.80		898	4.74	3.97	
Judicial chambers	717	2.39	3.50		710	1.31	2.19		712	3.80	3.44	
College or law school	182	2.90	3.72		188	1.43	2.09		183	4.48	3.61	
Bar Administration or Lawyers Assistance Program	55	2.96	3.65		52	1.40	1.94		53	4.74	3.55	
Firm position												
Clerk or paralegal	120	3.98	4.97	<0.001	121	2.10	2.88	<0.001	121	4.68	3.81	<0.001
Junior associate	1034	3.93	4.25		1031	2.73	3.31		1033	5.78	4.16	
Senior associate	1021	4.20	4.60		1020	2.37	2.95		1020	5.91	4.33	
Junior partner	590	3.88	4.22		592	2.16	2.78		586	5.68	4.15	
Managing partner	713	2.77	3.58		706	1.62	2.50		709	4.73	3.84	
Senior partner	1219	2.70	3.61		1230	1.37	2.43		1228	4.08	3.57	
DASS-21 category frequencies	n	%			n	%			n	%		
Normal	8816	71.7			9908	80.7			9485	77.3		
Mild	1172	9.5			1059	8.6			1081	8.8		
Moderate	1278	10.4			615	5.0			1001	8.2		
Severe	496	4.0			310	2.5			546	4.4		
Extremely severe	538	4.4			385	3.1			158	1.3		

*Comparisons were analyzed using Mann-Whitney *U* tests and Kruskal-Wallis tests.

depression, and stress scores decreased as participants' age or years worked in the field increased ($P < 0.001$). When comparing positions within private firms, more senior positions were generally associated with lower DASS-21 subscale scores ($P < 0.001$). Participants classified as nonproblematic drinkers on the AUDIT had lower levels of depression, anxiety, and stress ($P < 0.001$), as measured by the DASS-21. Comparisons of DASS-21 scores by AUDIT drinking classification are outlined in Table 5.

Participants were questioned regarding any past mental health concerns over the course of their legal career, and provided self-report endorsement of any specific mental health concerns they had experienced. The most common mental health conditions reported were anxiety (61.1%), followed by depression (45.7%), social anxiety (16.1%), attention deficit hyperactivity disorder (12.5%), panic disorder (8.0%), and bipolar disorder (2.4%). In addition, 11.5% of the participants reported suicidal thoughts at some point during their career, 2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.

Treatment Utilization and Barriers to Treatment

Of the 6.8% of the participants who reported past treatment for alcohol or drug use ($n = 807$), 21.8% ($n = 174$) reported utilizing treatment programs specifically tailored to legal professionals. Participants who had reported prior treatment tailored to legal professionals had significantly lower mean AUDIT scores ($M = 5.84$, $SD = 6.39$) than participants who attended a treatment program not tailored to legal professionals ($M = 7.80$, $SD = 7.09$, $P < 0.001$).

Participants who reported prior treatment for substance use were questioned regarding barriers that impacted their ability to obtain treatment services. Those reporting no prior treatment were questioned regarding hypothetical barriers in the event they were to need future treatment or services. The 2 most common barriers were the same for both groups: not wanting others to find out they needed help (50.6% and 25.7% for the treatment and nontreatment groups, respectively), and concerns regarding privacy or confidentiality (44.2% and 23.4% for the groups, respectively).

TABLE 5. Relationship AUDIT Drinking Classification and DASS-21 Mean Scores

		Nonproblematic	Problematic*	P**
		M (SD)	M (SD)	
DASS-21 total score		9.36 (8.98)	14.77 (11.06)	<0.001
DASS-21 subscale scores	Depression	3.08 (3.93)	5.22 (4.97)	<0.001
	Anxiety	1.71 (2.59)	2.98 (3.41)	<0.001
	Stress	4.59 (3.87)	6.57 (4.38)	<0.001

AUDIT, Alcohol Use Disorders Identification Test; DASS-21, Depression Anxiety Stress Scales-21.

*The AUDIT cut-off for hazardous, harmful, or potential alcohol dependence was set at a score of 8.

**Means were analyzed using Mann-Whitney *U* tests.

DISCUSSION

Our research reveals a concerning amount of behavioral health problems among attorneys in the United States. Our most significant findings are the rates of hazardous, harmful, and potentially alcohol dependent drinking and high rates of depression and anxiety symptoms. We found positive AUDIT screens for 20.6% of our sample; in comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure (Matano et al., 2003). Among physicians and surgeons, Oreskovich et al. (2012) found that 15% screened positive on the AUDIT-C subscale focused on the quantity and frequency of use, whereas 36.4% of our sample screened positive on the same subscale. While rates of problematic drinking in our sample are generally consistent with those reported by Benjamin et al. (1990) in their study of attorneys (18%), we found considerably higher rates of mental health distress.

We also found interesting differences among attorneys at different stages of their careers. Previous research had demonstrated a positive association between the increased prevalence of problematic drinking and an increased amount of years spent in the profession (Benjamin et al., 1990). Our findings represent a direct reversal of that association, with attorneys in the first 10 years of their practice now experiencing the highest rates of problematic use (28.9%), followed by attorneys practicing for 11 to 20 years (20.6%), and continuing to decrease slightly from 21 years or more. These percentages correspond with our findings regarding position within a law firm, with junior associates having the highest rates of problematic use, followed by senior associates, junior partners, and senior partners. This trend is further reinforced by the fact that of the respondents who stated that they believe their alcohol use has been a problem (23%), the majority (44%) indicated that the problem began within the first 15 years of practice, as opposed to those who indicated the problem started before law school (26.7%) or after more than 15 years in the profession (14.5%). Taken together, it is reasonable to surmise from these findings that being in the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder. Working from the assumption that a majority of new attorneys will be under the age of 40, that conclusion is further supported by the fact that the highest rates of problematic drinking were present among attorneys under the age of 30 (32.3%), followed by

attorneys aged 31 to 40 (26.1%), with declining rates reported thereafter.

Levels of depression, anxiety, and stress among attorneys reported here are significant, with 28%, 19%, and 23% experiencing mild or higher levels of depression, anxiety, and stress, respectively. In terms of career prevalence, 61% reported concerns with anxiety at some point in their career and 46% reported concerns with depression. Mental health concerns often co-occur with alcohol use disorders (Gianoli and Petrakis, 2013), and our study reveals significantly higher levels of depression, anxiety, and stress among those screening positive for problematic alcohol use. Furthermore, these mental health concerns manifested on a similar trajectory to alcohol use disorders, in that they generally decreased as both age and years in the field increased. At the same time, those with depression, anxiety, and stress scores within the normal range endorsed significantly fewer behaviors associated with problematic alcohol use.

While some individuals may drink to cope with their psychological or emotional problems, others may experience those same problems as a result of their drinking. It is not clear which scenario is more prevalent or likely in this population, though the ubiquity of alcohol in the legal professional culture certainly demonstrates both its ready availability and social acceptability, should one choose to cope with their mental health problems in that manner. Attorneys working in private firms experience some of the highest levels of problematic alcohol use compared with other work environments, which may underscore a relationship between professional culture and drinking. Irrespective of causation, we know that co-occurring disorders are more likely to remit when addressed concurrently (Gianoli and Petrakis, 2013). Targeted interventions and strategies to simultaneously address both the alcohol use and mental health of newer attorneys warrant serious consideration and development if we hope to increase overall well being, longevity, and career satisfaction.

Encouragingly, many of the same attorneys who seem to be at risk for alcohol use disorders are also those who should theoretically have the greatest access to, and resources for, therapy, treatment, and other support. Whether through employer-provided health plans or increased personal financial means, attorneys in private firms could have more options for care at their disposal. However, in light of the pervasive fears surrounding their reputation that many identify as a barrier to treatment, it is not at all clear that these individuals would avail themselves of the resources at their disposal while working in the competitive, high-stakes environment found in many private firms.

Compared with other populations, we find the significantly higher prevalence of problematic alcohol use among attorneys to be compelling and suggestive of the need for tailored, profession-informed services. Specialized treatment services and profession-specific guidelines for recovery management have demonstrated efficacy in the physician population, amounting to a level of care that is quantitatively and qualitatively different and more effective than that available to the general public (DuPont et al., 2009).

Our study is subject to limitations. The participants represent a convenience sample recruited through e-mails and

news postings to state bar mailing lists and web sites. Because the participants were not randomly selected, there may be a voluntary response bias, over-representing individuals that have a strong opinion on the issue. Additionally, some of those that may be currently struggling with mental health or substance use issues may have not noticed or declined the invitation to participate. Because the questions in the survey asked about intimate issues, including issues that could jeopardize participants' legal careers if asked in other contexts (eg, illicit drug use), the participants may have withheld information or responded in a way that made them seem more favorable. Participating bar associations voiced a concern over individual members being identified based on responses to questions; therefore no IP addresses or geo-location data were gathered. However, this also raises the possibility that a participant took the survey more than once, although there was no evidence in the data of duplicate responses. Finally, and most importantly, it must be emphasized that estimations of problematic use are not meant to imply that all participants in this study deemed to demonstrate symptoms of alcohol use or other mental health disorders would individually meet diagnostic criteria for such disorders in the context of a structured clinical assessment.

CONCLUSIONS

Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations. These levels of problematic drinking have a strong association with both personal and professional characteristics, most notably sex, age, years in practice, position within firm, and work environment. Depression, anxiety, and stress are also significant problems for this population and most notably associated with the same personal and professional characteristics. The data reported here contribute to the fund of knowledge related to behavioral health concerns among practicing attorneys and serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at prevention is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The confidential nature of lawyer-assistance programs should be more widely publicized in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need.

ACKNOWLEDGMENTS

The authors thank Bethany Ranes, PhD, and Valerie Slaymaker, PhD, of the Hazelden Betty Ford Foundation for their contributions to the analyses (BR) and overall manuscript (VS).

The authors also thank the Hazelden Betty Ford Foundation and The American Bar Association for their support of this project.

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**The State Bar of California
Lawyer Assistance Program (LAP)
877-LAP 4 HELP (877-527-4435)**

THE TWENTY QUESTIONS
Of Alcohol/Drug Abuse

- ☐ YES 1. Do you lose time from work due to drinking/using?
☐ NO

- ☐ YES 2. Is drinking/using making your home life unhappy?
☐ NO

- ☐ YES 3. Do you drink/use because you are shy with other people?
☐ NO

- ☐ YES 4. Is drinking/using affecting your reputation?
☐ NO

- ☐ YES 5. Have you ever felt remorse after drinking/using?
☐ NO

- ☐ YES 6. Have you had financial difficulties as a result of drinking/using?
☐ NO

- ☐ YES 7. Do you turn to inferior companions and environments when drinking/using?
☐ NO

- ☐ YES 8. Does your drinking/using make you careless of your family's welfare?
☐ NO

- ☐ YES 9. Has your ambition decreased since drinking/using?
☐ NO

- ☐ YES 10. Do you crave a drink/drug at a definite time of day?
☐ NO

- ☐ YES 11. Do you want a drink/drug the next morning?
☐ NO

- ☐ YES 12. Does drinking/using cause you to have difficulty sleeping?
☐ NO

- ☐ YES 13. Has your efficiency decreased since drinking/using?
☐ NO

- ☐ YES 14. Is drinking/using jeopardizing your job or business?
☐ NO

- ☐ YES 15. Do you drink/use to escape worries or trouble?
☐ NO
- ☐ YES 16. Do you drink/use alone?
☐ NO
- ☐ YES 17. Have you ever had a loss of memory as a result of drinking/using?
☐ NO
- ☐ YES 18. Has your physician ever treated you for drinking/using?
☐ NO
- ☐ YES 19. Do you drink/use to build up self-confidence?
☐ NO
- ☐ YES 20. Have you ever been to a hospital or institution (jail, etc.) because of drinking/using?
☐ NO

If you answered YES to any one of these questions, there is a DEFINITE WARNING that you have a problem with alcohol/drugs.

If you answered YES to any two of these questions, the CHANCES ARE that you have a problem with alcohol/drugs.

If you answered YES to three or more of these questions, you DEFINITELY have a problem with alcohol/drugs.

CALL THE LAP FOR MORE INFORMATION OR ASSISTANCE

ALL CALLS ARE CONFIDENTIAL

(877) LAP-4-HELP

> DON'T WAIT <

Disclaimer – *This self-assessment is not intended to take the place of a professional evaluation. If you have any questions or concerns, you should talk to a mental health professional.*

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Lawyer Assistance Program (LAP)
877-LAP 4 HELP (877-527-4435)**

DEPRESSION Self-Assessment Test

One out of five Americans will experience a major depressive episode at least once during his/her lifetime. The rate for lawyers is 3-4 times that rate.

If you are experiencing any of the following, please consult the LAP for confidential help.

Has there been at least a 2-week period of time in which you experienced either depressed mood, or loss of interest or pleasure?

Are you:

- ☐ feeling sad, empty and/or irritable?
- ☐ feeling a loss of interest or pleasure in activities or work you once enjoyed?
- ☐ experiencing changes in weight and/or appetite?
- ☐ having increased difficulty sleeping, or sleeping more than usual?
- ☐ experiencing increased restlessness?
- ☐ experiencing a decrease in level of activity noticeable to others?
- ☐ feeling more fatigued or less energetic?
- ☐ having difficulty concentrating, remembering or making decisions?
- ☐ feeling overwhelming guilt, hopelessness or worthlessness?
- ☐ thinking of suicide or death?

If you answered YES to the last item, you should seek help IMMEDIATELY (regardless of your answer to any other questions).

If you answered YES to even a few of these questions, you may suffer from depression.
You should get a professional assessment.
The LAP will help.

CALL THE LAP * ALL CALLS ARE CONFIDENTIAL * (877) LAP-4-HELP * DON'T WAIT

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**The State Bar of California
Lawyer Assistance Program (LAP)
877-LAP 4 HELP (877-527-4435)**

ANXIETY ASSESSMENT

According to the National Institute of Mental Health, “anxiety disorders, as a group, are the most common mental illnesses in America.” Anxiety is also one of the most successfully treatable mental health problems.

If you are experiencing any of the following, please consult the Lawyer Assistance Program for confidential help.

- ☐ Have you had at least a six-month period in which you experienced constant, exaggerated, worrisome thoughts and tension about everyday routine life events and activities?
- ☐ Have you been trapped in a distressful and time-consuming pattern of unwanted thoughts or compulsive behaviors?
- ☐ Have you experienced or witnessed a traumatic event such as a criminal assault, child abuse, natural or human-caused disasters; after which you have had persistent nightmares, flashbacks, feelings of depression or irritability?
- ☐ Have you become distractible or easily startled?
- ☐ Have you experienced repeated episodes of intense fear that strike often and without warning? Physical symptoms can include chest pain, heart palpitations, shortness of breath, dizziness or abdominal distress.

CALL THE LAP FOR MORE INFORMATION

**ALL CALLS ARE CONFIDENTIAL
(877) LAP-4-HELP**

➤ DON'T WAIT <

Disclaimer – *This self-assessment is not intended to take the place of a professional evaluation. If you have any questions or concerns, you should talk to a mental health professional.*

**“Knowing When to Hold’Em
And
Knowing When to Fold’Em”**

**Will Your Retirement be a Rebirth
Or a Death Sentence?**

Presented by Jay G Foonberg

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JAY G FOONBERG,BEVERLY HILLS

CALIFORNIA

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Mar. 26, 13

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ABOUT THE SPEAKER

Jay Foonberg is often introduced as the man who needs no introduction.

He is an internationally known author of books and articles and speaks to bar associations and Continuing Legal Education organizations throughout the world, having spoken in every one of the 50 states, all 6 US territories every one of the 10 Canadian Provinces, and on every continent including Antarctica and several foreign countries in English, Spanish and Portuguese. He also facilitates firm marketing retreats and seminars.

Mr. Foonberg is the recipient of the Donald Rikli Lifetime Achievement Award of The American Bar Association's General Practice, Solo and Small Firms Section, as well as the recipient of the Lifetime Achievement Award of The American Bar Association's Law Student Division.

He is the recipient of the prestigious Harrison Tweed Award as the Most Outstanding CLE Educator in the United States.

Mr. Foonberg is the recipient of the Louis Goldberg award as the Most Outstanding Attorney-Certified Public Accountant in the United States. He has been decorated by the governments of Brazil and Argentina for his work in international trade.

Mr. Foonberg is and has been an active member of the House of Delegates of the American Bar Association and of many State Bar of California and American Bar Association committees, sections, divisions, etc. He is past Chair of the Senior Lawyers of The State Bar of California and a Council Member of The American Bar Association's Senior Lawyers Division. He was a founder of both the California and American Bar's Law Practice Management Sections.

His published books include: *How to Start and Build a Law Practice (5th Edition)*, *How to Get and Keep Good Clients (2nd Edition)*, *Finding the Right Lawyer*, *The ABA Guide to Lawyer Trust Accounts*, and *How to Draft Bills Clients Rush to Pay (2nd Edition)*. All are available from The American Bar Association. He is now completing his work on *How to Close or Sell a Law Practice and Successfully Retire*. He received his law degree from UCLA Law and has studied at Harvard Law School, Cambridge University England and Duke University School of Law.

Mr. Foonberg keeps physically active by running marathons, having run his first marathon at age 56, and has completed 36 marathons as of January, 2010 and innumerable half marathon. He has completed at least one marathon or half marathon on every one of the 7 continents, including Singapore, Kenya, and in Antarctica.

He welcomes your comments on the materials and your suggestions for improving them. He also responds to email requests for help.

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KNOWING WHEN TO HOLD'EM

AND KNOWING WHEN TO FOLD'EM

SOME SIGNS OF WHEN IT IS TIME TO START THINKING

ABOUT SLOWING DOWN OR RETIRING

(TEST YOURSELF FOR GIVE THIS TO A FRIEND

AS A HINT THAT HE OR SHE SHOULD DO A SELF TEST)

No single event is likely to cause a lawyer to recognize the need to slow down or the desire to slow down. Typically, it takes a multiplicity of signs to recognize the need or the desire. Unfortunately we cannot see ourselves as clearly as others see us. It often takes a combination of how others see us and how we see ourselves and feel about ourselves to recognize when it is time to begin "folding'em" and to transition out of the full time practice of law.

Sometimes there is a triggering event such as a death, disability, medical emergency, or the merger or dissolution of a firm to cause an honest appraisal of ones self. Sometimes like paint aging and peeling there is no sudden event.

Typically there will be a number of signs, no one of which is significant, but when taken all together lead you to recognize that the time has arrived for you or for another to begin the transition.

1. Little old ladies offer you their seat on a bus or in an airport.
2. You are constantly asked if you want your senior discount.
3. You are given a senior citizen discount without being asked.
4. Cab drivers or doormen offer to help you leave a vehicle.
5. You instinctively grab the handrail on stairs instead of going down the middle

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6. You only carry packages in one hand at a time.
7. You don't want to drive at night or on a freeway or to park your car. You welcome someone else doing the driving.
8. You are going to the doctor for more than an annual check-up.
9. You consistently need stronger glasses or stronger light to read.
10. You need a flashlight to read a restaurant menu.
11. You read the obituaries looking for recognizable names before you read other sections of the newspaper. It is a good day when there are no recognizable names and a bad day when you recognize several names.
12. When you read that someone died at 66 you don't think they were "old".
13. You are now grateful for help instead of resentful when offered help on entering or leaving an automobile.
14. Others in the office no longer ask you for your advice or suggestions.
15. You are no longer asked to be on any significant committees.
16. Others turn away when they see you coming.
17. You obsess on minor inconveniences or problems that you used to ignore.
18. You have fallen asleep during a conference call.
19. You have stopped exercising.
20. You have given up long standing sports or hobbies.
21. 16 hour days during trials or negotiations used to exhilarate you, now they tire you.
22. You avoid reunions because everyone looks so tired and old or decrepit.
23. You avoid reunions because so many of your classmates have passed away.
24. At a cocktail party, you instinctively look for a seat rather than join people who are standing even though you want to talk to those people standing.

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25. Conversations with your friends turn into organ recitals and discussions of body fluids.
26. The idea of not going into the office becomes more and more appealing. There are so many other things you would rather be doing.
27. When you are in the office, you find yourself daydreaming about things you'd rather be doing.
28. Your sleeping habits have changed. You get-up with the chickens and go to sleep with the chickens. You cannot stay-up late.
29. You avoid all projects that are medium to long range.
30. You become pessimistic to the point that you won't buy green bananas.
31. You find yourself unable to follow the same advice you give to your clients concerning their personal and business matters.
32. When you go to meetings or to a social event or reception, you become aware that you are probably the oldest person there.
33. People tell you that you are repeating what you previously told them and you don't remember having previously told them.
34. You are tired of clients coming to you again and again with the same stupid questions (stupid to you).
35. You lack patience when you want food or drink.
36. You don't have the patience to read or analyze long documents.
37. You have lost the desire to follow up on new client leads and are content to leave a voice-mail message hoping the prospective client won't return the call.
38. Crowds frighten you.
39. Any change in your routine frightens you.
40. You need more time to remember names and places. The name of a secretary, partner or associate escapes you.

41. You open the letters you get from AARP instead of trashing them unread.
42. Your hearing is impaired, but you refuse to use a hearing aid. Instead, you smile in order to hide the words you don't understand.
43. You don't recognize the names or faces of anyone in films or on television who is under the age of 50.
44. You don't know the names of the singers or groups in the top ten music hits.
45. MTV is totally incomprehensible to you.
46. Your practice is slowing down. Your contemporaries who used to send you work are retired or dead. Their replacements are calling younger lawyers.
47. Practicing law just isn't fun any more. You can do the work, but it's no longer fun.
48. You are the only person in the office who insists on long 14" legal pads.
49. You worry about how you will return home before you get to where you are going.
50. You raise your hand to ask a question and then forget the question.
51. Your favorite pet is the early bird special.
52. The word, free, becomes an irresistible magnet.
53. You put the sound level on television at a point where others complain about the sound level being too high.
54. You used to get up looking forward to getting to the office or court and starting your day. You just don't feel that way any more or you feel that way with less and less frequency.
55. The thought of going to the office upsets you and the thought of not going upsets you even more.
56. Work tasks that used to take one or two hours to start and finish now take 3 to 5 hours and sometimes you feel you can't finish what you started.

57. You lack the patience to thoroughly read a document word by word. You skim the document or ask someone to summarize it for you.
58. You realize that all the great things you did as a lawyer in court, or in deal negotiations happened 20 years ago
59. You can't preset the VCR or the flashing clock on the microwave.
60. You think DVDs are a kind of underwear.
61. You can't find the tape deck on a new car.
62. Your name escapes you.
63. You look for a hammer or pliers to open childproof caps.
64. Your doctors and dentists look more & more like teenagers.
65. You wonder since when have they allowed teenagers to be police officers.
66. Clutter begins to enter your life.
67. You are increasingly unable to throw things away.
68. Even though you can use a computer for e-mail you still can't make a 3 party telephone call.
69. You haven't bought new clothes for 5 years.
70. Your clothes are becoming too big and you don't understand you are shrinking due to bone loss.
71. You go into a room and can't remember why you went to the room.
72. Pregnant women offer you their seat on a bus or in an airport.
73. Paint is peeling and chipping on your outside doors and windows and interior baseboards.
74. The printing on telephone books is so small and faint you can't read the information without glasses.

- 75. You feel unease when you get to the office.
- 76. You look at your telephone message call slips and really don't want to return calls anymore.
- 77. The fire has gone out. The passion for practicing law just isn't there anymore.
- 78. You have lost the desire or the ability to do work for several hours straight.
- 79. You find yourself getting to the office later and later each day as you sleep later, take longer to read the morning paper (including obituaries) and linger over breakfast.
- 80. You feel you are doing your work in a mechanically competent manner, but you are not getting any real satisfaction from what you are doing.
- 81. You feel you are being compelled by colleagues and clients to practice law in ways that are not consistent with your concepts of ethics and professionalism.
- 82. When you go to the office, your first fear is that the phone won't ring. The second fear is that the phone will ring.
- 83. The death or disability of another person reminds you that there are several things you want to do before you die or are physically unable.
- 84. People you think of as young are themselves grandparents.
- 85. You are not embarrassed to order decaf coffee.
- 86. You don't know if you are more concerned that no one will want your help or that someone will want your help.
- 87. People are shocked when you use a swear word.
- 88. People don't even bother to tell you the left turn signal has been flashing for 10 minutes.
- 89. A little sex goes long way.
- 90. When asked the question, "Are you sexually active?" - you respond, "No I just lie there."
- 91. People rush over to pick up the things you drop.

92. You don't try to use chopsticks in a Chinese restaurant.
93. You look at undone housework and don't feel guilty.
94. Every new person you meet reminds you of someone you once knew.
95. Years seem like toilet paper, going fast as you reach the end.
96. If you get a flat tire people aren't afraid to stop and help you.
97. The credit card companies give you more and more credit limits for less and less purchases.
98. Fueling station attendants come over to pump your gas.
99. You realize that half the names in your personal phone book have the letters to MD after them.
100. People tell you you forgot to pull your zipper up then they tell you you forgot to pull your zipper down.
101. You don't have peer pressure because you don't have any more peers.
102. You tell the truth about your weight on a driver's license application.
103. You get bad service because often old people don't tip well.
104. People ask you to play golf during the week.
105. You can get rid of loud noises by tuning down your hearing aid.
106. Your spouse doesn't complain about your snoring because he or she can't hear you.
107. Your secretary walks in on you and catches you napping when you hadn't planned to nap.
108. You write letters to the editors.
109. You put a chair in the shower.
110. Your doctor tells you to gain weight.
111. The gate agent offers you pre boarding.

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112. People frequently ask you to deliver eulogies and write condolences notes.
113. Your 30 year old neck ties are back in style.
114. You look for handicapped parking.
115. You drive the minimum speed on freeways.
116. People ask you to contribute information for 50th anniversary events.
117. You are asked to participate in "Living History" projects.
118. One of your children says you are right about something.
119. You always get the front seat.
120. You remember test patterns on television.
121. You have gone from Chief of Staff to Chief of Stuff.
122. You have gone from Who's Who to Who's He.?
123. When you know you really don't want to do what you are doing anymore, even though you don't know what you do want to do.
124. When you get away for a vacation, and on your first day back you feel worse than before you left.
125. When someone asks you whether they should become a lawyer, and you spend the next half hour telling them everything that's wrong with being a lawyer.
126. When you look ahead and see no opportunity to do what you really want to do.
127. When you've considered options such as working at a fast-food restaurant, being a greeter, or wrapping package at a department stores- and they don't sound too bad.

SOME MISCELLANEOUS QUESTIONS TO ASK YOURSELF

1. How do you see yourself?
2. How do you think others see you?
3. Do you feel getting older is a positive or a negative? *Euphemisms* for the aging process: maturing, getting older, golden years, senior citizen.
4. Why do lawyers continue to practice?
 - (a) They want to.
 - (b) They have to.
 - (c) Combination of (a) and (b).
5. Do you think lawyers should continue to practice longer than others? Soldiers, athletes, professors, physicians?
 - (a) Why?
 - (b) Why not?
6. Why do you think some clients do not want an older wiser lawyer and some do?
7. Do people gravitate toward others like themselves and away from those not like themselves? Would a senior lawyer choose a new lawyer or a young person choose a senior lawyer?
8. What does the word, *retirement*, meant to you?
 - (a) Uselessness as a contributing member of society.
 - (b) A well earned change
 - (c) Doing what you want to do instead of what you have to do .
 - (d) A change to do many of the things you have now the time to do. (travel time with family, etc.).
 - (e) No obligation to anyone.

9. Are you afraid of aging?
10. Will your retirement be a rebirth or a death sentence? Do you have an exit plan?
11. Have you, or will you discuss respective roles with your spouse or others with whom you live?

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 03-429

June 11, 2003

Obligations with Respect to Mentally Impaired Lawyer in the Firm

If a lawyer's mental impairment is known to partners in a law firm or a lawyer having direct supervisory authority over the impaired lawyer, steps must be taken that are designed to give reasonable assurance that such impairment will not result in breaches of the Model Rules. If the mental impairment of a lawyer has resulted in a violation of the Model Rules, an obligation may exist to report the violation to the appropriate professional authority. If the firm removes the impaired lawyer in a matter, it may have an obligation to discuss with the client the circumstances surrounding the change of responsibility. If the impaired lawyer resigns or is removed from the firm, the firm may have disclosure obligations to clients who are considering whether to continue to use the firm or shift their relationship to the departed lawyer, but must be careful to limit any statements made to ones for which there is a factual foundation. The obligation to report a violation of the Model Rules by an impaired lawyer is not eliminated by departure of the impaired lawyer.

This opinion addresses three sets of obligations arising under the Model Rules of Professional Conduct¹ with respect to mentally impaired lawyers.² First, it considers the obligations of partners in a law firm³ or a lawyer super-

1. This opinion is based on the Model Rules of Professional Conduct as amended by the ABA House of Delegates in February 2002 and, to the extent indicated, the predecessor Model Code of Professional Responsibility of the American Bar Association. The laws, court rules, regulations, rules of professional responsibility, and opinions promulgated in the individual jurisdictions are controlling.

2. This opinion deals only with mental impairment, which may be either temporary or permanent. Physical impairments are beyond the scope of this opinion unless they also result in the impairment of mental faculties. In addition to Alzheimer's Disease and other mental conditions that are age-related and can affect anyone, mental impairment can result from alcoholism and substance abuse, which lawyers have been found to suffer from at a rate at least twice as high as the general population. George Edward Bailly, *Impairment, The Profession and Your Law Partner*, 11 No. 1 PROF. LAW. 2 (1999).

3. The term "partners in the firm" includes every partner of a legal partnership and every shareholder of a law firm organized as a professional corporation, not just members of the firm's executive or management committee. Rule 5.1 cmt. 1.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, 541 North Fairbanks Court, 14th Floor, Chicago, Illinois 60611-3314 Telephone (312)988-5300
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vising another lawyer to take steps designed to prevent lawyers in the firm who may be impaired from violating the Rules of Professional Conduct. Second, it addresses the duty of a lawyer who knows⁴ that another lawyer in the same firm has, due to mental impairment, failed to represent a client in the manner required by the Model Rules to inform the appropriate professional authority or to communicate knowledge of such violation to clients or prospective clients of the impaired lawyer.⁵ Third, it considers the obligations of lawyers in the firm when an impaired lawyer leaves the firm.⁶

Impaired lawyers have the same obligations under the Model Rules as other lawyers. Simply stated, mental impairment does not lessen a lawyer's obligation to provide clients with competent representation. Thus, for example, the lawyer who has failed to act with diligence and promptness in representing a client,⁷ or has failed to communicate with the client in an appropriate manner,⁸ has violated the Model Rules even if that failure is the result of mental impairment.⁹ The matter of a lawyer's impairment is most directly addressed under the Model Rules of Professional Conduct under Rule 1.16,

4. "Knows" denotes actual knowledge, which may be inferred from the circumstances. Rule 1.0(f).

5. This opinion does not deal with the issues that could arise for the firm vis-a-vis its responsibilities to accommodate an impaired lawyer under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (2003) (the "ADA"), or a state law equivalent, which protects disabled employees. Such statutes, although generally not applicable to equity partners in law firms, *see, e.g., Simpson v. Ernst & Young*, 100 F.3d 436, 443-44 (6th Cir. 1996), *cert. denied*, 520 U.S. 1248 (1997) (partners not protected as employees under federal antidiscrimination laws), may apply to non-equity partners, associates, in-house counsel, and of counsel. Thus, if a lawyer/employee is able to provide competent representation to a client if the firm provides the lawyer with a reasonable accommodation, the firm may have an obligation to maintain that lawyer's employment. For a discussion of an employer's obligations under the ADA, *see* HENRY H. PERRITT, JR., *Employer Obligations*, in *AMERICANS WITH DISABILITIES ACT HANDBOOK* § 4 (3rd ed. 1997). A number of documents discussing employers' obligations under the ADA are available on the Equal Employment Opportunity Commission website, <http://www.eeoc.gov/publications.html>.

6. This opinion does not deal with the potential fiduciary obligations or civil liability to clients of a firm with which the impaired lawyer is associated or with the issues that arise under a firm's partnership agreement if a lawyer is impaired. For a discussion of these issues, *see* Bailly, *supra*, note 2.

7. Rule 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

8. Rule 1.4, which requires a lawyer to reasonably consult with the client and keep the client reasonably informed about the status of the matter, contains numerous obligations that the impaired lawyer may have difficulty satisfying.

9. Although mental impairment is most likely to cause Rules 1.1, 1.3, and 1.4 to be violated, it also may result in violations of other Model Rules. This opinion assumes that, but for his mental impairment, the lawyer would be able to comply with the requirements of all of the Model Rules.

which specifically prohibits a lawyer from undertaking or continuing to represent a client if the lawyer's mental impairment materially impairs the ability to represent the client.¹⁰ Unfortunately, the lawyer who suffers from an impairment may be unaware of, or in denial of, the fact that the impairment has affected his ability to represent clients.¹¹ When the impaired lawyer is unable or unwilling to deal with the consequences of his impairment, the firm's partners and the impaired lawyer's supervisors have an obligation to take steps to assure the impaired lawyer's compliance with the Model Rules.

An impaired lawyer's mental condition may fluctuate over time. Certain dementias or psychoses may impair a lawyer's performance on "bad days," but not on "good days" during which the lawyer behaves normally. Substance abusers may be able to provide competent and diligent representation during sober or clean interludes, but may be unable to do so during short or extended periods in which the abuse recurs. If such episodes of impairment have an appreciable likelihood of recurring, lawyers who manage or supervise the impaired lawyer may have to conclude that the lawyer's ability to represent clients is materially impaired.

It also is important to understand that some disorders that may appear to be mental impairment (for example, Tourette's Syndrome), while causing overt conduct that appears highly erratic, may not interfere with competent, diligent legal representation such that they "materially impair" a lawyer's ability to represent his clients.

When considering what must be done when confronted with evidence of a lawyer's apparent mental disorder or substance abuse, it may be helpful for partners or supervising lawyers to consult with an experienced psychiatrist, psychologist, or other appropriately trained mental health professional.¹²

I. Obligations to Adopt Measures to Prevent Impaired Lawyers in the Firm from Violating the Model Rules

Although there is no explicit requirement under the Model Rules that a lawyer prevent another lawyer who is impaired from violating the Model Rules, Rule 5.1(a) requires that all partners in the firm and lawyers with comparable managerial authority in professional corporations, legal departments, and other organizations deemed to be a law firm¹³ make "reasonable efforts" to establish internal policies and procedures¹⁴ designed to provide "reasonable assurance" that all lawyers in the firm, not just lawyers known to be impaired, fulfill the requirements of the Model Rules. The measures required depend

10. Rule 1.16(a)(2).

11. Bailly, *supra* note 2 at 12.

12. The extent to which information concerning the impaired lawyer may be communicated without his consent may be limited by the Americans with Disabilities Act, *supra* note 5.

13. Rule 1.0(c)

14. Rule 5.1, cmt. 2.

on the firm's size and structure and the nature of its practice.¹⁵

In addition to the requirement that the firm establish appropriate preventive policies and procedures, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the supervised lawyer conforms to the Model Rules. When a supervising lawyer knows that a supervised lawyer is impaired, close scrutiny is warranted because of the risk that the impairment will result in violations.

The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.¹⁶

Some impairments may be accommodated. A lawyer who, because of his mental impairment is unable to perform tasks under strict deadlines or other pressures, might be able to function in compliance with the Model Rules if he can work in an unpressured environment. In addition, the type of work involved, as opposed to the circumstances under which the work occurs, might need to be examined when considering the effect that an impairment might have on a lawyer's performance. For example, an impairment may make it impossible for a lawyer to handle a jury trial or hostile takeover competently, but not interfere at all with his performing legal research or drafting transaction documents. Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, management of the firm has an obligation to supervise the legal services performed by the lawyer and, in an appropriate case, prevent the lawyer from rendering legal services to clients of the firm.

If reasonable efforts have been made to institute procedures designed to assure compliance with the Model Rules, neither the partners in the firm nor the lawyer with direct supervisory authority are responsible for the impaired lawyer's violation of the rules unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action.¹⁷

15. The black letter of Rule 5.1(a) does not identify what constitutes a reasonable effort or reasonable assurance, but some examples of appropriate measures appear in Comment [3] of the Rule.

16. Rule 1.16(a)(2).

17. Rule 5.1(c). Failure to intervene to prevent avoidable consequences of a violation also may violate Rule 8.4(a), which provides that it is professional misconduct for a lawyer to knowingly assist another to violate the Model Rules.

II. Obligations When an Impaired Lawyer in the Firm has Violated the Model Rules

The partners in the firm or supervising lawyer may have an obligation under Rule 8.3(a) to report violations of the ethics rules by an impaired lawyer to the appropriate professional authority.¹⁸ Only violations of the Model Rules that raise a substantial question as to the violator's honesty, trustworthiness, or fitness as a lawyer must be reported.¹⁹ If the mental condition that caused the violation has ended, no report is required. Thus, if partners in the firm and the supervising lawyer reasonably believe that the previously impaired lawyer has resolved a short-term psychiatric problem that made the lawyer unable to represent clients competently and diligently, there is nothing to report.²⁰ Similarly, if the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the Model Rules through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation.²¹ If, on the other hand, a lawyer's mental impairment renders the lawyer unable to represent clients competently, diligently, and otherwise as required by the Model Rules and he nevertheless continues to practice, partners in the firm or the supervising lawyer must report that violation.

If the matter in which the impaired lawyer violated his duty to act competently or with reasonable diligence and promptness still is pending, the firm may not simply remove the impaired lawyer and select a new lawyer to handle the matter. Under Rule 1.4(b), there may be a responsibility to discuss with the client the circumstances surrounding the change of responsibility. In

18. Rule 8.3(a) requires a lawyer who knows that another lawyer has committed a violation of the Model Rules that raises a substantial question as to that lawyer's fitness as a lawyer to inform the appropriate professional authority. Although a lawyer may satisfy her obligation under Rule 8.3 by disclosing the violation without identifying the impairment that caused the violation, in most cases, disclosure of the impairment will be appropriate. However, in doing so, the lawyer must be careful to avoid potential violations of the Americans With Disabilities Act.

19. Not every violation must be reported. Only those violations "that a self-regulatory profession must vigorously endeavor to prevent" must be reported, and judgment must be exercised in deciding whether prior violations fall into this category. Rule 8.3, cmt. 3.

20. N.Y.C. Opinion 1995-5 (April 5, 1995), in *ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT* § 1001:6404 (ABA/BNA 1998).

21. If such supervision exceeds that which would be required in the case of a lawyer who is not impaired, it would not be proper for the firm to charge the client for the additional level of supervision. Although it is appropriate to charge a client for normal supervisory activities related to the quality of the client work product, fees for additional steps taken by the supervising lawyer because of the firm's fear that an impaired lawyer's work would not be competent would not be reasonable under Rule 1.5(a) unless the necessity for supervision and the fact that the client would be charged for it is communicated to, and agreed to by, the client. Rule 1.5(b).

discussions with the client, the lawyer must act with candor and avoid material omissions, but to the extent possible, should be conscious of the privacy rights of the impaired lawyer. Even if the matter in which the impaired lawyer violated the Model Rules no longer is pending, partners and lawyers in the firm with comparable managerial authority and lawyers with direct supervisory authority over the impaired lawyer may have obligations to mitigate any adverse consequences of the violation.²²

III. Obligations When an Impaired Lawyer No Longer is in the Firm

The responsibility of the firm to the client does not end with the resignation from the firm, or the firm's termination of, the impaired lawyer. If the impaired lawyer resigns or is removed from the firm, clients of the firm may be faced with the decision whether to continue to use the firm or shift their relationship to the departed lawyer. Rule 1.4 requires the firm to advise existing clients of the facts surrounding the withdrawal to the extent disclosure is reasonably necessary for those clients to make an informed decision about the selection of counsel. In doing so, the firm must be careful to limit any statements made to ones for which there is a reasonable factual foundation.²³

The firm has no obligation under the Model Rules to inform former clients who already have shifted their relationship to the departed lawyer that it believes the departed lawyer is impaired and consequently is unable to personally handle their matters competently.²⁴ However, the firm should avoid any communication with former clients who have transferred their representation to the departed lawyer that can be interpreted as an endorsement of the ability of the departed lawyer to handle the matter. For example, a joint letter from the firm and the departed lawyer regarding the transition could be seen as an implicit endorsement by the firm of the departed lawyer's competence.

In addition to considering what the firm may or must communicate to clients who are considering whether to take their representation to the departed lawyer, the firm must consider whether it has an obligation to report the

22. Rule 5.1(c)(2).

23. If such a communication also is designed to convince the client to remain with the firm rather than follow the impaired lawyer who continues to practice, it must be drafted in such a manner that it does not violate either the prohibition of false and misleading communications about the firm's services under Rule 7.1 or the prohibition of deceit or misrepresentation under Rule 8.4(c). In addition, the potential for claims of tortious interference with contractual relationships and unfair competition should be considered.

24. See Philadelphia Bar Ass'n Prof. Guidance Committee Op. 00-12, 2000 WL 33173008 (Dec. 2000).

25. The "appropriate professional authority" need not be the state disciplinary authority. If available in the jurisdiction, a peer review agency may be more appropriate under the circumstances. Rule 8.3, cmt. 3.

impaired lawyer's condition to the appropriate disciplinary authority.²⁵

No obligation to report exists under Rule 8.3(a) if the impairment has not resulted in a violation of the Model Rules. Thus, if the firm reasonably believes that it has succeeded in preventing the lawyer's impairment from causing a violation of a duty to the client by supplying the necessary support and supervision,²⁶ there would be no duty to report under Rule 8.3(a).²⁷

Subject to the prohibition against disclosure of information protected by Rule 1.6, however, partners in the firm may voluntarily report to the appropriate authority its concern that the withdrawing lawyer will not be able to function without the ongoing supervision and support the firm has been providing.²⁸

26. An obligation exists under Rule 5.1 to take reasonable efforts to prevent violations of the Model Rules by the impaired lawyer if firm management or a direct supervisor of the impaired lawyer is aware of the risk of violation posed by the impairment.

27. As noted in Bailly, *supra*, note 2 at 15: "It would be the ultimate irony if a partner were suspended for not reporting his impaired partner, while the impaired partner was able to use mitigating circumstances in any disciplinary hearing against him."

28. Pennsylvania Bar Ass'n Committee on Legal Eth. Op. 98-124, 1998 WL 988111 (Dec. 7, 1988).

