THEODORE ROOSEVELT AMERICAN INN OF COURT PRESENTS:

ETHICS MOVIE NIGHT: A CINEMATIC REVIEW OF THE RULES OF PROFESSIONAL CONDUCT

(Pandemic Version)

April 22, 2020, 5:30 p.m.

2 Ethics CLE Credits

I.	Introduction (Matt Flanagan)	5:30-5:35
II.	My Cousin Vinny and RPC 1.1 (Omid Zareh)	5:35-5:50
III.	Lincoln Lawyer and RPC 1.6 (Matt Flanagan)	5:50-6:05
IV.	The Verdict and RPC 1.2 and 1.4 (Debora Nobel)	6:05-6:20
V.	Liar, Liar and RPC 4.1 and 3.3 (Matt Flanagan)	6:20-6:40
VI.	To Kill a Mockingbird and RPC 3.3 (Judge Warshawsky)	6:40-7:00
VII.	And Justice for All and RPC 3.3 (Judge Warshawsky)	7:00-7:20
VIII.	Questions and Answers	7:20-7:30

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A great actress once said, "Everything I learned, I learned from the movies." Fortunately, she was not a lawyer.

Some of our favorite and unforgettable movie characters over the years have been lawyers. These characters have made us laugh, cry, and inspired us to do great things. But sometimes what we learn from the big screen may not fly in the real-world where the Rules of Professional Conduct govern lawyers' conduct. So take off your face mask and gloves, and join us (remotely, of course!) for a fun-filled evening where we will explore some of the ethics issues that arise in lawyer movies.

My Cousin Vinny

https://www.youtube.com/watch?v=3nGQLQF1b6I

https://www.youtube.com/watch?v=K6qGwmXZtsE

In the movie My Cousin Vinny, Vincent LaGuardia Gambini (Joe Pesci) is a lawyer who has never tried a case. Instead, he had spent the past six years "studying for the bar," which took him six times to pass. Vinny's cousin, William Gambini (Ralph Macchio), and his friend Stan Rothenstein (Mitchell Whitfield), were driving through Alabama on their way to college and made the mistake of stopping at a convenience store. The clerk at the store was murdered, and Bill and Stan were charged with the murder. Vinny and his girlfriend, Mona Lisa Vito (academy award winner Marisa Tomei) drive down from New York so that the inexperienced Vinny can defend the young men. Vinny's lack of knowledge, and the cultural divide, land him in "hot water" with the judge and his girlfriend, who bails him out, on more than one occasion.

Ultimately, Vinny uncovers who really killed the clerk and gets the case dismissed, but he commits flagrant, yet hysterical, ethical violations along the way. The first, and perhaps the most serious violation of the Rules of Professional Responsibility lies in Vinny's agreeing to take the case in the first place, as he has never tried any case before, much less one where his clients could receive the death penalty. In the real legal world, this would be prohibited. Competent representation is of utmost importance in assistance of counsel; especially where, as here, the defendant's life is in the attorney's hands. This rule was labeled as one of the "Ten ... Easiest Ethical Violations for Honest Lawyers", and failure to comply with this rule has carried a ninety day suspension from the practice of law.

When faced with a situation such as the one presented to Vinny, an attorney is to consider "the relative complexity and specialized nature of the matter, the attorneys general experience, the attorneys training and experience in the field in question," among other factors. Otherwise, the attorney is to withdraw as counsel, decline to take the case, or associate with another attorney who is competent to handle the particular case. When an attorney is shown, as in My Cousin Vinny, as being inexperienced

and wholly lacking in competence to handle a case, and further "associating" with his unemployed hairdresser girlfriend to win a murder trial, it does create some pessimistic views of lawyers and how well they handle representation of a client.

Even more disconcerting is that there are complaints filed more often than the public may think concerning ineffective assistance of counsel, and these are based upon the actions of real lawyers. If lawyers bite off more than they should professionally chew, perhaps they have caused a disapproving self image, not popular culture.

However, My Cousin Vinny is a comedy, and is far less likely to be taken as truth by its viewing audience. Although the public perception of lawyers may be that they are incompetent in handling cases, no reasonable person would believe that such incompetence would ever rise to the level of Vinny's behavior. It is, therefore, not likely to devastate the public's opinion of lawyers; to think otherwise would undermine the intelligence of most Americans and assume that an audience cannot differentiate between humorous fiction and reality.

Vinny's unprofessional conduct progresses as he decides to lie to the austere Judge Chamberlain Hailer (Fred Gwynne) about his courtroom experience: none. Vinny knows he would not be permitted to stay on the case as a neophyte, so he gives the judge the name of another lawyer in New York, not his own, thinking that when the judge checks his credentials he will be impressed and allow him to appear before the court and defend his clients. Lying to a judge is not taken lightly by the Bar. Although this issue generally arises where the attorney would be putting on false testimony from a witness, offering inaccurate or deceptive information to the court is strictly prohibited, and this includes statements made directly to the judge. Vinny's statements to Judge Hailer concerning his vast trial experience, and even his name, were blatant untruths. Attorneys often have to attest to their credentials, their compliance with court rules and education requirements, and even have to attest to compliance with child support requirements. All too often, attorneys (and prospective attorneys) are untruthful. An attorney might also be tempted to engage in what might be thought of as puffery of credentials to clients or potential clients, not to a judge. This too is prohibited. Vinny, in a rare display of ethics, tells his clients of his lack of experience in the courtroom setting before proceeding with the case.

Finally, the most precarious, yet humorous, action taken by Vinny is having his hairdresser girlfriend, Mona Lisa, declared as a hostile expert witness in auto mechanics. She ultimately saves the day, but this lies on the verge of being absurd. She is unprepared, and Vinne has to rely upon the State's witnesses to prove his case. An expert is presumed to be trained and have vast experience in a particular area, and perhaps an out of work hairdresser who has previously worked as an auto mechanic could be an expert, but Vinny should have, nevertheless, discussed Mona Lisa's "expert" opinion with her before putting her on the stand. This brings up another basic rule of trial advocacy: never ask a question to a witness in court when you do not know the answer. In reality, it is possible that a lawyer who put an expert witness on the stand without discerning his or her opinion beforehand could wind up with a witness who not only disagrees with the defense's case, but also considerably damages the defendant's chances for a favorable outcome. This could subject a lawyer to a complaint to the bar for incompetence, as well as lack of diligence. This rogue act by Vinny, however, "saves the day," and likely improves the image of

lawyers in the minds of the audience, as it allowed justice to prevail. Moreover, it is not realistic that this feat, or any of the antics committed by Vinny would ever happen in a court of law, although some come uncomfortably close. In sum, My Cousin Vinny is not likely viewed by an audience as a realistic representation of a murder trial any more than The Naked Gun movies are an accurate depiction of a metropolitan police department.

Lincoln Lawyer

This movie features a criminal lawyer who robustly defends his clients. But, he sometimes puts money, and more importantly, the truth, above his own ethical obligations. The uncomfortable truth is that sometimes the ethical course of conduct is to stay silent. The Attorney-Client Privilege and the Duty of Confidentiality are two significant violations that are committed in this film. The film is correct in stating that the privilege is held by the client, not the attorney, and that an attorney has an obligation to keep a client's confidences.

https://www.youtube.com/watch?v=lfCVS3HWdjg&list=PLZbXA4lyCtqpUm2NJdLdj8GXZg22OtsBc&index=8&t=0s

https://www.youtube.com/watch?v=NCqhkbAkzug

The Verdict

https://www.youtube.com/watch?v=Asm-9UXAOog

https://www.youtube.com/watch?v=ME2S71b553U&list=PLZbXA4lyCtqged-3HWVqhyl5I_VtWHe_U&index=4&t=0s

https://www.youtube.com/watch?v=u-2jqTXKQyU&feature=youtu.be

Boston lawyer, Frank Galvin (Paul Newman) takes his face out of the shot glass for one last shot at redemption, taking a medical negligence case against powerful attorney, Edward Concannon.

There is a moment in “The Verdict” when Galvin walks into a room, shuts the door and trembles with anxiety and with the inner scream that people should get off his back. No one who has ever been seriously hung over or needed a drink will fail to recognize the moment. It is the key to his character in

“The Verdict,” a movie about an alcoholic who tries to pull himself together for one last step at salvaging his self-esteem.

Frank Galvin has had his problems over the years – a lost job, a messy divorce, a disbarment hearing, all of them traceable in one way or another to his alcoholism. He has a “drinking problem,” as an attorney for the archdiocese delicately phrases it. That means that he makes an occasional guest appearance at his office, and spends the rest of his day playing pinball and drinking beer.

Galvin’s pal, a lawyer named Mickey Morrissey, has drummed up a little work for him -- an open-and-shut malpractice suit against a Catholic hospital in Boston, where a young woman was carelessly turned into a vegetable because of a medical oversight. The deal is pretty simple. Galvin can expect to settle out of court and pocket a third of the settlement – enough to drink on for whatever future he is likely to enjoy.

When Galvin goes to see the young victim in the hospital where she lies in a coma, he determines to try this case and to prove that the doctors who took her mind away were guilty of incompetence and medical malpractice. In Galvin’s mind, bringing this case to court is one and the same thing with regaining his self-respect – with emerging from his own alcoholic coma. In the process, however, he overlooks the cardinal rule of informing the client that he has unilaterally rejected the settlement offer. His decision to try the case is complicated by a trial judge who is biased towards the defendant. Furthermore, his good intentions to obtain the best possible result for his client are undermined by dirty tricks and underhanded spying tactics of the defense firm. During his trial investigation, Galvin learns that the medical record was altered at the direction of the treating doctor to cover up the negligence. These situations raise serious ethical issues and trial dilemmas.

Galvin’s redemption takes place within the framework of this intriguing courtroom drama.

Liar, Liar

https://www.youtube.com/watch?v=geiS49_p84Q

https://www.youtube.com/watch?v=1jQP0Y2T2OQ&list=PLZbXA4lyCtqqDreU3xwmgOjpbwR4RoU19&index=10&t=0s

In Liar Liar, Fletcher Reede (Jim Carrey) is an attorney whose ethics are loose, to say the least. In the opening scene, his son, Max's (Justin Cooper) kindergarten class is discussing what parents does for a living. Max stands up and says, "[m]y dad's a liar." The teacher states, "1[1]m sure you don't mean that your dad's a liar. ' Max responds, "[w]ell, he wears a suit, goes to court, and talks to the judge.' The teacher breathes a sigh of relief and says, "[o]h, you mean a lawyer, ' ɾand Max just shrugs.

Reede's unscrupulous behavior (both his untruthfulness and his workaholism)has affected his family to such a point that when Reede misses his son's .birthday party (because he is having sexual relations with a partner in his firm), Max blows out his birthday candles and wishes that his father would not be able to tell a lie.

Max's wish comes true, and Reede cannot function as he has in the pst, lying his way through life at home and at work. He appears in court for the Cole divorce trial and asks the Judge for a continuance. The Judge asks him why he needs a continuance, and Reede responds, "I can't lie!"

He goes so far as to beat himself up in the bathroom to get a continuance, but the trial commences nonetheless. Ultimately, Reede wins by finding the truth, namely that his client was underage when she entered into her marriage and thus the prenuptial agreement she signed was void. He likely would have never discovered the truth had he been able to lie because he would have never bothered investigating the facts. Instead, he would have put on perjured testimony, as he had originally planned. Although this movie allows "justice" to prevail, it nevertheless raises grave ethical issues which are not so readily apparent. This comedy, unlike My Cousin Vinny and Trial and Error, portrays a blatantly unethical Imˈyer. Not only is Fletcher Reede proud of his unethical ways, others are aware of them, and hire him as a lawyer because of them. He fails to return phone calls, lies to opposing counsel and judges, and smiles about it. His arrogance and nonchalance, coupled with his feigned amiability toward those whom he thinks can get him ahead, are far closer to what most people perceive lawyers to be like than any other lawyer character in a comedy. This movie, although a comedy, takes a stab at lawyers that leaves a sting. Far too often, it also leaves a lot of heads in the audience nodding affirmatively.

To Kill A Mockingbird

An inspiration to attorneys for generations, Atticus Finch speaks for the underdog, restoring justice to a scene where none may otherwise be expected. He defends an African American in a racially charged trial. He is the epitome of the attorney we all aspire to be: compassionate, objective, and pursuing the truth in defending his client. By making us face our own ugly truths, he allows us to see the innocence of his client.

https://www.youtube.com/watch?v=44TG_H_oY2E&list=PLZbXA4lyCtqrcLU-2Um-Oc0gzfNadC_dO&index=5&t=0s

https://www.youtube.com/watch?v=8MmtVx1A8BA&list=PLZbXA4lyCtqrcLU-2Um-Oc0gzfNadC_dO&index=7

And Justice for All

https://vimeo.com/25714112

What is an ethical lawyer to do when the courtroom / system is out of order? Is it ever acceptable to scuttle the proceedings in advocating for one's client?

Al Pacino stars as Arthur Kirkland, a criminal defense attorney with a passion for provoking the system in the name of "Justice." Kirkland fights the good fight and defends those he believes innocent against those who would trifle their plights—even taking a swing at a judge. But once Pacino is blackmailed into representing a judge he publicly despises (who just so happens to be accused of rape), the defense attorney trades in a "forgotten" instance of a violation of attorney-client confidentiality for a very publicly displayed breach of his ethical obligations.

Scene: As Kirkland begins his opening statement, he explains to the jury that—even though there is a hotshot prosecutor on the other end of the argument just itching to make a name for himself by convicting a judge—"these proceedings are not about that. These proceedings are here to see that justice is done. . . . And justice is, as any reasonable person would tell ya, the finding of the truth."

Kirkland continues to lay the foundation for his momentous meltdown by explaining that "the intention of justice is to see that the guilty people are proven guilty and that the innocent are freed. . . . However, it is the defense counselor's duty to protect the rights of the individual. . . .Justice for all. Only we have a problem here. Both sides want to win regardless of the truth."

Ultimately, the real problem is revealed to be Kirkland himself. During his opening, Kirkland does everything he can to compromise the trial—and his ethical obligations—by explaining to the jury that his client took a polygraph test (twice), and that he has to "get" his client because the prosecution won't be able to prove its case, and his client "should go right to fucking jail!"

When the judge tells Kirkland he is out of order, Kirkland is all too quick to answer: "You're out of order! You're out of order! The whole trial is out of order! They're out of order! That man— that sick, crazy, depraved man—raped and beat that woman there, and he'd like to do it again! He told me so! It's just a show! It's a show!"

Lesson for lawyers: Kirkland is a tough man stuck in the middle of a tough case, just like many criminal attorneys of cinematic lore. Kirkland is blackmailed into taking the case because the judge knows of a previous breach of confidentiality he has committed. However, in the name of justice, Kirkland continues to compromise one of the most sacred aspects of the legal profession: the obligation of attorney-client confidentiality.

Not every client is innocent, of course, and sometimes the client's admission of guilt to his or her attorney can go a long way toward preparing and presenting a defense. It is not the attorney's job to decide innocence or guilt; it is the attorney's job to zealously represent his or her client. In the criminal

field, that means protecting the client's constitutional rights and making certain the prosecution has proven their case.

Though it provides a great deal of drama and entertainment value, this scene underscores the difficult disconnect some attorneys face between the ethical obligations they owe to their defendant-clients and the internal morality they personally feel. Kirkland knows the system should provide justice for all. That includes the guilty client.

Substance Abuse, Stress, Mental Health and the Legal Profession

PREPARED FOR THE

NEW YORK STATE LAWYER ASSISTANCE TRUST

PROFESSOR MARJORIE A. SILVER

TOURO LAW CENTER

SUBSTANCE ABUSE, STRESS, MENTAL HEALTH AND THE LEGAL PROFESSION[1]

Lawyers work high stress jobs in a high stress world. The rewards of the profession can be great, but so are the pressures. The incidence of lawyer drug abuse—all drugs, but most particularly alcohol, is high: higher than for other professions. And when a lawyer loses control to addiction, be it to alcohol, drugs, or something else, the lawyer's colleagues—and clients—often suffer as well.

A Lawyer in Trouble and His Friends on the Spot

Bill "Rabbit" Worthington is a partner at the firm of Dill, Straight & Smith, one of the oldest and most prestigious law firms in town. Worthington has been with the firm for over 30 years. His colleagues call him "Rabbit" because of his creativity in facing and solving new legal problems. They used to say at Dill, Straight that he could take an impossible case and pull a rabbit out of his hat to win it, hence his nickname.

I. Recently, things have changed for Worthington. At first he seemed simply less efficient and energetic. Everyone thought he was just going through a "lazy spell." But there began to be other telltale signs. He seemed to get little done after lunch, and those who ate with him noted that his lunchtime "glass" of wine had become three or four. "Rabbit" had long had an "open door" policy, encouraging late afternoon "schmoozing" with young associates who wanted the benefit of his counsel; his office had been dubbed "the Rabbit warren" because of all the traffic and activity centered there. In the past several months, though, Rabbit's door has stayed closed most afternoons, and he often doesn't emerge at all until he heads for home.

Chuck Chenier is the firm's managing partner and a friend of Rabbit's since law school. He has begun noticing a strong smell of alcohol on Rabbit's breath in the afternoons. He has also observed that Worthington just doesn't seem like "the old Rabbit." What, if anything, should he do about this?

II. Another year has gone by. Chuck Chenier talked to Rabbit, who promised to "get myself under control," but otherwise Chuck has taken no action. In the past several months, the associates who work with Rabbit have noticed problems with his work. He lost one client's original documents, only to find them months later in another client's file. One late afternoon, as the deadline for filing neared, his draft memo of a key motion was nowhere to be found, and no one knew where Rabbit was either. His secretary rummaged through his briefcase until she found a tape and retranscribed it. He now loses paperwork so often that his secretary has begun to open his mail and keep a copy of everything in a cabinet known as "Rabbit's file."

Jane Diaz is a second year associate at the firm. She was originally thrilled that one of the partners she was assigned to work with was Worthington. Jane had heard of him, and at first found him to be just like she imagined, but she increasingly became aware of Rabbit's work sloppiness and found herself having to "cover" for him more and more. Last week, she and Worthington were with a major client who was being deposed by opposing counsel. It was Jane's first "big" case, and she was excited. Rabbit "defended" the deposition, but to Jane he just didn't seem to be paying attention. He failed to object several times to questions which Jane thought were obviously irrelevant and prejudicial. His breath smelled like alcohol, though Jane wasn't sure anyone else could detect it.

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[1] The following is adapted from Richard A. Zitrin & Carol M. Langford, *Legal Ethics in the Practice Law* 2d ed., Chapter 11, Mental Health, Substance Abuse and the Realities of Modern Practice 719-42 (Lexis-Nexis 2002). Reprinted by permission. Under the auspices of the New York State Lawyer Assistance Trust, and with the gracious permission of the authors and their publisher, Professor Marjorie A. Silver, Touro College of Law, has augmented the readings and questions posed specifically for law students at law schools in New York State. Professor Silver gratefully acknowledges the assistance of her excellent research assistants: Rachel Maida, Mili Makhijani, Stacy Meisner and Patricia Pastor. She also wishes to thank Ken Rosenblum, Barbara Smith and Eileen Travis for their expert advice and assistance, and Professors Lawrence Krieger and Andrew Benjamin for their wise counsel and feedback on an earlier draft.

QUESTIONS

1. What should Jane do? Should she discuss the matter with Chuck Chenier? Should she talk directly to Worthington? Or is the matter simply not something she should tackle herself?

2. What, if anything, should Chenier do?

3. What, if anything, should be done about Rabbit's clients? Should they be told anything, and if so, what should they be told?

III. Think about what you would do if you discovered that a good friend and colleague, your fellow law student or associate, had developed a substance abuse problem. Is there anything that you feel you *must* do?

READINGS

1. Alcoholism: What's the Cause? There are several theories about the cause of alcoholism. Historically, it was seen as an indication of personal weakness, a moral failing. Read the following essay by a psychologist who is also a lawyer which discusses the symptoms, as well as current scientific thought about the causes of alcoholism.

ALCOHOLISM: SYMPTOMS, CAUSES & TREATMENTS

Douglas B. Marlowe, Ph.D., J.D.[2]

Alcoholism exacts an exorbitant toll on lawyers, the legal system, and consumers of legal services. In a 1990 study conducted by the North Carolina Bar Association, a staggering 17% of the 2,600 attorneys surveyed admitted to drinking 3-5 alcoholic beverages per day. In the state of Washington, another study found that 18% of the 801 lawyers surveyed were problem drinkers. It is estimated that the number of lawyers in the United States actively abusing alcohol and drugs is twice that of the general population. Approximately 40% to 70% of attorney discipline proceedings and malpractice actions are linked to alcohol abuse or a mental illness.

Yet, despite this high incidence, lawyers suffering from alcoholism often feel painfully alone. Fearing discovery or retribution, they are reticent to ask questions or to attempt to learn more about their problem. Very often, they fail to seek help before the problem has escalated to serious proportions. The purpose of this chapter is to introduce the impaired lawyer to the symptoms and causes of alcohol dependence and to the large menu of treatment options that now exist. . . .

THE SYMPTOMS

"Denial" is a common feature of alcoholism. There are widely differing opinions about whether denial is an unconscious psychological defense mechanism, a misguided effort to conceal the shame of addiction, or simply a reaction to accusations or punitive actions by other people. Regardless, it is clear that those who are addicted to alcohol are often the last ones to recognize or acknowledge the existence of a problem. As a result, they unfortunately may not seek help until they are faced with serious medical, legal, financial, or social repercussions.

Official diagnostic criteria for "alcoholism" or "alcohol dependence" focus on the compulsive use of alcohol despite the significant negative consequences of that use. Some alcoholics will exhibit symptoms of physical dependence, including a need for significantly increasing amounts of alcohol to achieve the desired effect ("tolerance"), or withdrawal symptoms (e.g., nausea, tremor, insomnia) when levels of alcohol in the blood decline.

For a substantial proportion of alcoholics, however, dependence is manifested solely by a behavioral or psychological compulsion to use alcohol, without any recurrent episodes of binge drinking; frequent intoxication under dangerous or inappropriate circumstances (e.g. while driving); multiple, unsuccessful efforts to quit or reduce the use of alcohol; excessive involvement in alcohol-related activities; reduced involvement in adaptive or productive social and occupational activities; or the continued use of alcohol despite significant physical or psychological ill-effects.

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[2] Reprinted with permission from Amiram Elwork, Ph.D., STRESS MANAGEMENT FOR LAWYERS. pp. 104-130 (1997). Citations omitted.

Rather than focusing on these direct symptoms of addiction, however, it is often more instructive or productive to focus on the loss of functions or competencies that typically accompany the addiction. Efforts to confront an alcoholic with positive evidence of his or her addiction (e.g. black-outs, binges, or the smell of liquor on the breath) typically invoke excuses, manipulations, or angry counter-attacks. It is much harder, however, to deny the existence of a problem when one's accomplishments have fallen far short of one's goals and abilities.

THEORIES OF CAUSATION

Theories about the causes and treatment of alcoholism are generally more reflective of personal philosophies and belief systems than of scientific or clinical evidence. Historically, the "Moral Model" of addiction viewed alcoholism as a sign of characterological weakness or moral turpitude. As such, treatment, if any, was designed to confront the alcoholic with the consequences of his or her behaviors and to force or shame him or her into making improvements.

The "Disease Model" of addiction assumed prominence in the middle part of the century. This model, which views alcoholism as fundamentally a medical illness, has found some support from recent discoveries about the genetic, biochemical, and pharmacological aspects of addiction. Treatments based upon the Disease Model sometimes emphasize the individual's relative powerlessness over the illness. This philosophy has attracted a great deal of support from the "self-help" movement because of its deemphasis on issues of blame and morality.

Most recently, a "Habit Model" or "Behavioral Model" of addiction has achieved relative prominence, particularly in the fields of psychology and education. This model views addiction as essentially a learned behavior, resulting from faulty problem solving, ineffective role modeling, or a complicated system of rewards and punishments which sustains the alcohol usage. Rather than viewing the individual as powerless in the face of a disease process, the Behavioral Model seeks to increase the individual's sense of efficacy and potential control over the problem. A distinction is made between moral blameworthiness regarding the past and behavioral accountability in the future. People may not "choose" to be addicted, but it is assumed that they have ultimate control over changing their behavioral patterns.

Philosophies aside, no one really knows for certain what causes alcoholism and it is highly unlikely that any single causal agent will ever be identified. Alcoholism appears to be a result of many different processes. For any particular individual, it may stem from a genetic predisposition, from environmental stress or trauma, from learning history, or from a complex combination of any of these.

It is useful to think about alcoholism in light of the "diathesis-stress" model of illness. Some individuals have a strong genetic loading ("diathesis") for a particular disease, which may be activated with minimal environmental influence. For example, some people are genetically predisposed to develop cancer, which may manifest itself almost irrespective of diet, exercise, or other habits. Other individuals, in contrast, are genetically heartier and do not develop the disease unless they are exposed to potent environmental carcinogens. In a similar vein, individuals appear to vary in their genetic vulnerability to alcoholism. Some people can apparently drink steadily without developing dependence or becoming socially maladapted. Others are less fortunate.

Given the current state of medical science, it is difficult to know in advance who is or is not vulnerable to developing alcoholism. However, a look at your family tree may shed light on your own risk liability. Rates of alcoholism are significantly higher within some families than in the general population. It is uncertain whether this is due to an inherited familial vulnerability to alcoholism, or whether it results from role modeling or social learning. Children of alcoholics may simply be exposed to alcohol at a younger age, or they may be negatively affected by concomitant family dysfunction. Most likely, a positive family history reflects both learned and genetic factors, in which biological and environmental forces combine to increase one's risk exponentially.

Compared to the general population, alcoholics suffer from significantly higher rates of psychiatric disorders such as depression and anxiety. This has led to some speculation that alcoholics might be "self-medicating" some uncomfortable emotional state. In fact, part of the chemical effect of alcohol is to dull the emotions. It is difficult, however, to disentangle cause and effect because of the alcohol's depressant influence on the central nervous system. Chronic alcohol use may bring about long-term brain changes, leading to the development of depressive or anxiety states. It is also possible that some individuals have a generalized vulnerability to stress which, depending on the specific circumstances, may manifest itself as alcoholism, depression, anxiety, or some other emotional disturbance.

* * *

. . .[N]ot all treatments are appropriate for all people. It is essential to find a good match between your own personal needs and the functional components of a particular program. Importantly, most programs share common core ingredients that appear to be essential for recovery. These include an opportunity to share feelings with others, to be heard, to be reinforced for abstinence, to reduce resistance in an atmosphere of trust, and to realize that you are not alone with the problem of alcoholism. Regardless of the specific program you choose, you are highly likely to receive some symptom relief simply by taking a measurable first step.

2. A Case History of a Lawyer in Trouble. What happens when a lawyer uses drugs or alcohol to excess? When no one intervenes to prevent such behavior, the consequences can be a swift slide down a slope towards legal oblivion. At first, the consequences may be personal to the attorney, but over time, the clients of that lawyer and the lawyer's firm will likely begin to feel the effects. Read what happened to one fallen lawyer and how his misfortune affected his life, both negatively and positively.

BARBARA MAHAN, DISBARRED

California Lawyer (July 1992)[3]

Most lawyers expect a lot from their careers. They endure three rough years of law school, a grueling bar exam and the long hours necessary to establish a practice. In return they hope for such benefits as a high salary, respected status and the satisfaction of helping clients.

Sometimes it works out that way; sometimes it doesn't. . . . Lawyers become disenchanted with what they do, or how they do it, or what it brings them. They make mistakes—little ones at first, then bigger and bigger ones. The system they swore to uphold doesn't seem worth the effort anymore. They violate the standards of the profession or the law itself. Stories about these lawyers we hear only in whispers, or read in the stilted prose of a State Bar disciplinary report.

The accounts below come from . . . former lawyers who were either disbarred or resigned because they were certain they would be disbarred. Banished from the profession, they testify here from the legal underground. They agreed to be interviewed . . . [because] they believed either that telling their stories would help others or that it would help them face and accept their pasts. . . . Two of the former lawyers who speak here . . . abused alcohol or drugs. That is not a coincidence. The State Bar estimates that 30 to 50 percent of discipline cases are related to substance abuse.

From their vantage outside the profession, these men touch on several common themes. One is the economic and social cost of being forced from their work. Disbarred lawyers not only lose their ticket to practice law; they lose their financial security. Many go bankrupt. Their marriages or relationships fail, their friends drift away, their colleagues don't call, their health begins to falter.

Another theme is the depth of their personal loss. Cast from legal society, they question their identities and self-worth. They agonize at failing their fathers and their own children. Some wonder if there is any point in going on; they contemplate escape or suicide.

A third is the difficulty of starting over. Educated for the law, former practitioners can't or don't want to find a new career. Many become paralegals, doing much of the same work they performed as lawyers at substantially less pay. Those who attempt new kinds of work usually struggle for a period after making the switch.

A final, unexpected theme is a growing sense of social responsibility. Two lawyers who once were consumed by addictions now help others stop abusing drugs and alcohol. . . .

After they resigned or were disbarred, some of these men became better fathers, sons, husbands and friends. They saw clearly some things that had been clouded or hidden. Their failures, in varying degrees, appear to have led

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to redemption. Deprived of their profession, they gave more of themselves to other people than they ever had before.

In reviewing their stories, one cannot help wondering whether these former lawyers would have achieved the same advances in self-awareness and social commitment had they not suffered the loss of their profession. Perhaps what brought about their disbarment was more than simply an urge toward self-destruction. Perhaps on a level we can barely see they were waging a fight to establish and protect something in themselves more important than the right to practice law.

David K. Demergian

By his second year out of law school, David Demergian had reached a level of success that many young lawyers dream of. He had established his own practice in San Diego, landed some top real estate clients and was making well into six figures a year. He had an expensive home, a pretty wife, a Mercedes and a baby daughter. But for Demergian, it wasn't enough.

In 1983 he started pulling this dream life apart. He fell in love with his secretary and left his wife and child. Single for the first time in years, he threw himself into a fast lane of parties and women. He began representing topless and bottomless clubs, dancers and drug defendants. It made him feel good to walk into exotic bars and be treated like a big shot.

In late 1984 his secretary introduced him to freebase cocaine, and within a short time he was hooked. His addiction, which lasted only seven months, cost him his profession, his financial solvency and his self-respect. He believes it also cost him his father's life.

Demergian, 39, has turned his life around since his disbarment. Once concerned chiefly with the power, prestige and trappings of the law, he now works as a law clerk, drafting documents to which he cannot sign his name. He has married again, has another daughter and spends a lot of time with his girls. . . .

In his spare time Demergian works with lawyers and judges who are alcoholics and addicts. A consultant for The Other Bar [a rehabilitation program sponsored by the California State Bar], Demergian gets up to 40 calls a month for help, from people in trouble and from their families, colleagues, and friends. He tells them his story of catastrophe and hope, and attempts to offer others what he wishes he could have found: a way off the path toward self-destruction before everything was lost.

Until I got hooked on freebase cocaine around December 1984, my law practice had been exemplary. But by January or February 1985, I no longer went into the office. I stayed home every day, calling in for trials, saying I was sick. All day long I smoked cocaine. The high ends quickly, and the crash is lower than anything you can imagine. So every 10 or 15 minutes I would take another hit. Then I would clean my place. I had all this energy. I arranged my shirts in my closet alphabetically by color. I recorded oldies from the radio, 20 cassettes of them, and cross-indexed the songs. I only went to the office late at night to use the computer for my oldies index and to pick up any money that came in.

In seven months I went through $80,000. Unfortunately, only $60,000 of it was mine. In April or May 1985 I took $20,000 from a client trust fund, the proceeds of the sale of a client's house in a divorce settlement. I had run out of money. . . . I told myself I would pay it back. The denial involved in my addiction was frightening and extreme. . . .

On Father's Day 1985 around 3 a.m. my doorbell rang. I had been up all night having a party, and there were half-naked girls and drugs all around. I opened the door and there on the doorstep was my father, who was a doctor. He had flown out from Wisconsin because Stephanie, the woman who is now my wife, called him and said, "Your son is killing himself with drugs." My father and I had always been close. But I wouldn't let him in. The tears were streaming down his face when I slammed the door.

My father and Stephanie began conspiring to get me into treatment. I went into a drug treatment center, but I was not committed to it and I left. Over the next three days I went through a lot of cocaine. At the end I was as

pitiful and incomprehensibly demoralized as a human can be. . . . An old friend showed up at my place and stayed with me until he found a hospital that would take me. I went back into treatment June 28, 1985, and I have been clean ever since.

In the program I learned rigorous honesty. After I was in the hospital three days, I borrowed the money from my parents and paid back my client. When I got out, I called all my clients and told them everything. They all stayed with me except the drug dealers.

Ironically, after I got well . . . I got a notice of my interim suspension from the State Bar effective January 1987.

The stress of helping me get into treatment killed my father. He had a stroke a year and a half after I recovered and passed away about the time I was sending out the . . . notices to close out my practice. He was only 57. He got me through as much as he could and then he died.

After my suspension, I got a job as a law clerk for a small firm starting out at $800 a month. Then the State Bar hearings began. No one except me thought it would result in disbarment, because I had no prior discipline [record] and I had more than 70 letters of support from lawyers and judges. But deep in my heart I knew I should be disbarred.

About a year after my sobriety I got involved with The Other Bar. At first I thought it would look good for my discipline case. Then it became something I really believed in. As it started to get inside me, I thought maybe I could help other people avoid what happened to me. In the last three years I have helped maybe 100 people. It's one of the things that lets me sleep at night. I lie there and see dozens of faces of lawyers who are still practicing and alive because of me.

I make $4,600 a month as a law clerk doing general civil litigation research and writing. . . . I was eligible to apply for reinstatement in January 1992, but I was not sure I would do it right away. It's real important to me to get my license back because they took it away. But being a lawyer isn't so important anymore. I used to care about the power, the prestige, the money. Now I want to preserve the happiness I have . . . .

3. Identifying the Problem and Doing Something About It. The effect on the clients of a lawyer who abuses drugs or alcohol is not always as graphic as in the case history described above. But the abilities of lawyers to perform their fiduciary duties to their clients—to put the causes and needs of their clients first—often become seriously impaired when lawyers are more concerned with their substance addictions. Deadlines are missed, responses are not filed, and more subtle lapses—some of which the client may not be able to discover—occur with increasing regularity.

Psychologists, management consultants, and other experts in the field offer a great deal of advice about how to deal with the problem attorney. Some of that advice includes the following:

Watch for early warning signs, such as declining hours, little work accomplished after lunch, or sharply reduced revenue production; have a managing partner or management committee sufficiently strong and autonomous to deal with the problem without putting it to a vote of the whole firm; consult the services of a psychologist, psychiatrist, or other trained professional.

But most experts would tell us that the most important advice they can give is the following: Don't ignore the problem, or even worse, participate in the cover-up. Take action, because inaction will be viewed as tacit acceptance of the situation. The more difficult it is to take action, because of friendship or close long-term business relationships with your colleague, the more important taking action becomes.

The following article expands on these ideas. . . . and [discusses] the extent to which such addictions should be considered "mitigating" factors.

MICHAEL A. BLOOM & CAROL LYNN WALLINGER, LAWYERS AND ALCOHOLISM: IS IT TIME FOR A NEW APPROACH?

61 Temple Law Review 1409 (1988)[4]

Lawyers generally are terrible resources for each other. Perhaps it is a function of a lawyer's training and the independent nature of the profession. While viewed as a virtue, independence frequently can wear another face. The intense pressures of competition, the meeting of continuous deadlines, and the anxieties associated with earning a decent living lead many lawyers to feel isolated and without resources. . . .

The most difficult problem for the troubled lawyer is to identify that a problem exists, and to recognize that help is needed. The troubled lawyer is plagued by fear and impaled by denial; in combination, the two can be deadly.

. . . .

About ninety-five million Americans drink alcohol in one form or another. About ten to thirteen percent of the general population is alcoholic, but estimates for professionals, including lawyers, range from three to thirty times the average for lay people.

Even more striking is the percentage of lawyer disciplinary cases that involve alcoholism. Oregon's Professional Liability Fund has determined that more than one-half the attorneys admitted to its alcoholism treatment program already have been sued for malpractice. Surveys taken in New York and in California reveal that as many as fifty to seventy percent of all disciplinary cases involve alcoholism. . . .

*** * ***

The process of healing oneself begins when the person admits to being an addict. This is the most crucial part in recovery of an addict because denial is the cornerstone of addiction. Breaking through this denial is the most important step in the recovery process and often is the most difficult task if treatment is to be successful.

An excellent example of denial is the reluctance of most lawyers to report incompetent or impaired work. Although technically obligated to do so under the Model Code and the Model Rules, this "conspiracy of silence" has been cited as the "greatest obstacle to better regulation of the legal profession."

Most reports from attorneys concern violation of the advertising or solicitation rules rather than real crimes. Reported cases in which discipline has been imposed for a lawyer's failure to report another lawyer's misconduct are extremely rare.

This is a classic example of the psychological concept of "enabling," whereby we consciously or "unconsciously help alcoholics block their perception of their illness." There often are signals, other than obvious drunkenness, that point to a potential drinking problem. Some of these signals include long weekends and/or frequent late arrivals and early departures from work; failure to file court papers; forgetting to show up for scheduled court appearances and appointments; neglecting correspondence and phone messages; "borrowing" from client trust funds; and often missing deadlines. As the disease progresses, the alcoholic increasingly requires the help of others to cover his or her decreasingly effective performance of life's daily responsibilities. Colleagues in the legal community (secretaries, associates, partners, even judges) often are recruited, to participate in the "cover-up." When colleagues allow this behavior to continue unchecked, the alcoholic lawyer is enabled to progress deeper and deeper into alcoholism. The resulting harm to clients is not something from which these colleagues should hold themselves (or be permitted to hold themselves) entirely blameless. Nor should they be permitted to escape liability to clients for a risk they knew existed, but took no steps to prevent.

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Effect of Alcoholism on Disciplinary Proceedings

The model of alcoholism as a disease views the alcoholic as a person with an illness which is outside his or her control, or involuntary. Although the behavior of drinking is involuntary, it is often difficult to determine what other behaviors of the alcoholic also are involuntary. The issue of voluntariness must be addressed when designing any policy concerning alcoholism. The complexity of defining what is "voluntary" action by an alcoholic lawyer involved in disciplinary proceedings is demonstrated by the following cases, where the courts of New Jersey and Washington, D.C. struggled with terms such as "intent" and "but for," while attempting to balance protection of the public interest with appropriate disciplinary sanctions for attorney misconduct.

A. *Non-Mitigating Factor Approach*

New Jersey has steadfastly resisted consideration of alcoholism as a mitigating factor in determining attorney discipline. Disbarment always is the result when the lawyer's conduct involves misappropriation of client funds. Maintenance of public confidence in the bar is viewed as controlling in these cases; rarely will mitigating factors be considered. Two recent cases illustrate the view of the New Jersey Supreme Court on this issue.

. . . .

In re Crowley [105 N.J. 89, 519 A.2d 361 (1987)] concerned an attorney who was admitted to the bar in 1957 and maintained a solo practice concentrating in real estate, matrimonial, and estate matters. In 1978, his alcohol consumption and dependence began to increase and his practice began to decline.

Crowley began taking extended lunches and not returning phone calls. In 1981, he undertook a real estate closing on behalf of a client, but failed to satisfy an outstanding mortgage of $11,500 from the closing proceedings. A complaint was filed and eventually it was conceded that Crowley had diverted, for payment of his own office expenses, a total of $17,684 from five different clients.

In this case, the DRB [Disciplinary Review Board] had the benefit of a report from the Alcohol Advisory Committee, which determined that alcoholism was a contributing factor in Crowley's behavior, and that he was now a recovering alcoholic. The DRB recommended indefinite suspension until recovery was demonstrated, and also required restitution of losses.

The New Jersey Supreme Court rejected the recommendations of the DRB and voted 7-0 for disbarment. The court noted . . . the probable direct relationship between Crowley's unethical behavior and his alcoholism. The court, however, was not impressed with this connection, and observed that the same causal relationship could occur from severe financial reversals or other family hardships. Declining to use this case to create a new exception, the court instead elected to continue its ironclad policy of disbarring attorneys who misappropriate client funds.

B. *Mitigating Factor Approach*

In *In re Kersey*, [520 A.2d 321 (D.C. 1987)] the District of Columbia Board of Professional Responsibility found Kersey guilty of twenty-four Code violations and concluded that Kersey's "pattern of dishonesty and deceit was so pervasive that disbarment was the only appropriate sanction."

Facing disbarment, Kersey, whose drinking problems had begun in high school, reluctantly entered and completed an alcohol detoxification program. Together with the D.C. Bar Special Committee on Alcohol Abuse, Kersey then petitioned the District of Columbia Court of Appeals to stay his disbarment, and asked for reconsideration of his discipline in light of his alcoholism and his prognosis for recovery.

The court acknowledged that alcoholism is treated as a mitigating factor by many jurisdictions in determining lawyer discipline and held that the "but for" standard "must be met in order to prove causation in disciplinary cases involving alcoholism." The court stated its belief that but for Kersey's alcoholism, his misconduct would not have occurred.

In discussing the appropriate discipline to be imposed, the court considered the likely result that due to the "pre-treatment alcoholic's persistent and virtually unshakable denial of his alcoholism," other alcoholic attorneys would

fail to make any connection between Kersey's case and their own situations. Reasoning that suspending Kersey would not alter the behavior of other alcoholic attorneys, the court ordered that Kersey be placed on probation for five years, under supervision of a sobriety monitor, a practice monitor, and a financial monitor.

These two jurisdictions could not be more inconsistent. . . . [O]bvious from these cases is that neither of these approaches protects the public from impaired lawyers before harm to clients occurs. Given a choice between the two approaches, it is not hard to imagine which result the general public endorses. The public has no choice but to see the results in Kersey's case as a "protection of one's own" and to view the New Jersey approach as "rough justice" at work. Viewed in context, is this the message that the legal profession wishes to send?

C. *Rehabilitation and Recovery*

Among those jurisdictions that have accepted the mitigating factor approach, it is evident that efforts by the alcoholic attorney to rehabilitate himself figure prominently in decisions to impose less severe discipline. [South Dakota, Illinois and Oregon cases cited.]

. . . .

It should be noted that in jurisdictions that have accepted the mitigating factor approach, "rehabilitation" and "abstinence" neither have been defined nor quantified. Failure to have done so in these jurisdictions gives rise to criticism that such factors are highly subjective and result in imposition of greatly varying sanctions for lawyers who have committed similar offenses.

. . . .

Conclusion

At first glance, it may appear to be time for a new Model Rule that specifically deals with impaired lawyers. It could include, for example, providing ethical penalties for failure to report an impaired colleague to a LAP [Lawyer Assistance Program]. The fact is, however, that most of the provisions necessary to achieve these goals already are in place. What is lacking is a major commitment on the part of the entire bar to effectively self-regulate. A new approach is needed that is directed at changing the way that lawyers view their duty to report misconduct. At this point, it is unclear how long the public will tolerate such an unprofessional and potentially dangerous state of affairs. Not to act exposes lawyers to the risk that they may one day find themselves without a voice in regulation of their own profession.

In writing about *In re Kersey* for the ABA publication *Litigation*, associate editor Howard Gutman commented:

> The court also ignored the major villain: a local bar committed more to a skewered notion of friendship than to its oath and profession. How could lawyers and judges pretend for seven years not to notice the bloodshot eyes, peppermint breath, lost paperwork blackouts, and missed court dates?

Once Kersey could not control himself, others should have stopped him. The Board of Professional Responsibility should have sanctioned Kersey's so-called friends at the bar for choosing not to do so.

Why did not Kersey's so-called friends help? It is easy to place the blame on them. It is too easy, perhaps because experience demonstrates that people generally are willing to help a friend with a problem. That is how friends and colleagues become trapped in the dilemma of "enabling" to begin with. Gutman's "skewered notion of friendship" demonstrates the insidious nature of alcoholism. . . .

The current informal system of underfunded state and local bar organization programs is inadequate to confront a disease that affects more than ten percent of the bar (and perhaps as high as one in every five lawyers or more). The cost of identifying and offering help to lawyers afflicted with alcoholism cannot be viewed as a luxury. At the very least, lawyers are paying for their lack of concern with increased malpractice insurance premiums. An additional cost is the continual erosion of public confidence in the integrity of the bar. Even more important is the human cost, the damage to clients, the needless destruction of lawyers, their careers, and their families.

The conspiracy of silence surrounding lawyers and alcoholism must be broken. The time has come for a national policy which goes beyond acknowledging that alcoholism is a disease. The policy must advocate that the duty to report impaired lawyers is a critical element in self-regulation of the profession. Furthermore, it must advocate the use of sanctions against lawyers who knowingly fail to meet this obligation of self-regulation.

. . . .

Availability of alcoholism as a mitigating factor in lawyer disciplinary proceedings does not protect the public from impaired lawyers. . . . As each state develops effective Lawyers' Assistance Programs, they contemporaneously should prohibit the availability of alcoholism as a mitigating factor in lawyer disciplinary proceedings. Friends and colleagues of impaired lawyers then could direct their energies towards encouraging treatment before harm has occurred.

In purely human terms, we owe it to ourselves, as individuals and as a profession to take care of our own.

*** ***In New York:***

The preceding article raises the question of whether substance dependency or abuse should be treated as a mitigating factor in disciplinary proceedings. As the Bloom and Wallinger article makes clear, jurisdictions differ on their positions with respect to mitigation, with New Jersey among the most stringent and the state of Washington among the least.

In 1992, the ABA promulgated ***Standards for Imposing Lawyer Sanctions***, which provided as follows with respect to mitigation:

> 9.32 Factors which may be considered in mitigation.
>
> * * *
>
> (i) mental disability or chemical dependency including alcoholism or drug abuse when:
>
> (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
>
> (2) the chemical dependency or mental disability caused the misconduct;
>
> (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
>
> (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

New York courts, along with those of many other jurisdictions, incline towards considering chemical dependency a mitigating factor, depending on the circumstances. First, the court must find a causal connection between the chemical dependency and the transgression. Second, the court is less likely to be lenient in cases where (1) the attorney has previously been sanctioned or (2) where the transgression is grave. Third, mitigation is most likely in instances in which the attorney has become involved in helping others, for example serving as a peer counselor. Frequently, the court will condition a lenient sanction on continuing sobriety and participation in a treatment program.

- *Should disciplinary authorities ever consider addiction a mitigating factor? What if the addicted attorney has converted client funds? Neglected client matters? Committed perjury?*

- *Is monitoring or supervising an attorney's practice in lieu of suspension appropriate in circumstances where the attorney has neglected clients' cases due to alcoholism or other addiction?*
- *Should the answer depend on whether the addiction is to a legal as opposed to illegal substance? Should addiction to illegal drugs be treated the same way by the courts as alcoholism?*
- *What is the purpose of the disciplinary system? To punish the attorney, or to protect the public?*
- *Does your answer to the above question affect your position on mitigation?*

4. Defining the Ethical Requirements. As the [Bloom & Wallinger] article suggests, the Model Code and Model Rules do not provide much help in dealing with this situation. The "technical" requirement that incompetence or "impaired work" be reported[5] is more often ignored than acted on. Rules describing the responsibilities of supervising and subordinate lawyers are largely silent on the issue of what to do about an impaired colleague. Even in Illinois, where *Himmel* [6] gives lawyers an "absolute duty" to report, rates of reporting lawyer impairment have hardly skyrocketed.

What, then, do the rules of ethics require? Where the client is being hurt, does another law firm member have an obligation to protect that client's interests? If the lawyer's individual fiduciary duty is imputed to each member of the law firm, is "whistleblowing" to the client necessary? Must other firm members step in and act to protect client interests? Even if an ethics complaint doesn't follow for the impaired lawyer, could a law firm be liable for malpractice and breach of fiduciary duty if a client later learns that the firm failed to advise about a partner's impairment?

Finally, how else other than "whistleblowing" might the goal of client protection be accomplished?

5. Reporting Substance Abuse Problems. What if any obligation does an attorney or judge have to report another attorney with a substance abuse problem? And to whom would such a report be made?

The New York Code of Professional Responsibility, **§ 1200.4 [DR 1-103],** provides:

> (a) A lawyer possessing knowledge, (1) not protected as a confidence or secret, of a violation, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of Section 1200.3 of this Part [DR 1-102] [Misconduct] that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

- *If the misconduct is related to alcohol or drug abuse, can a lawyer fulfill this obligation by reporting to the relevant Lawyers Assistance Program (LAP)? Is that "a tribunal or other authority empowered to investigate or act upon such violation"?*

Note the comparable rule in Texas:

> **8.03 Reporting Professional Misconduct**
>
> (a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyers honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.
>
> (b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges fitness for office shall inform the appropriate authority.

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5 See MR 8.3 and DR 1-103(A).

6 112 Ill. 2d 531, 533 N.E.2d 790 (1988).

(c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyers report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).

(d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information:

(1) by Rule 1.05 or

(2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

In 2003, the ABA's Ethics Committee issued a formal opinion interpreting Model Rule 8.3 that concluded that an attorney who knows that another attorney has a mental condition that materially impairs that attorney's ability to practice law, must report that to the appropriate disciplinary authority. The impairment may be the result of "senility or dementia due to age or illness or because of alcoholism, drug addiction, substance abuse, chemical dependency, or mental illness."[7] The Committee suggested that the reporting attorney may want to notify the relevant LAP, but that notifying the LAP was "not a substitute for reporting to a disciplinary authority with responsibility for assessing the fitness of lawyers licensed to practice in the jurisdiction."[8]

- *Do you agree with the ABA Committee's opinion?*
- *Should New York's rule be amended similarly to that of Texas?*
- *Take a look at the Bloom & Wallinger article again. The authors suggest that perhaps the Model Rules should be amended to impose penalties on a lawyer who fails to report an impaired colleague to a LAP. They argue that the public will be adequately protected only if there is an intervention* before *the impaired attorney breaches the rules of professional conduct. In May 2004, the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct, along with other proposals, published the following for comment:*

  2.19 Disability and Impairment. A judge having knowledge that the performance of a lawyer or another judge is impaired by drugs or alcohol or other mental, emotional or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.[9]

- *What do you think of these approaches? Would you recommend that New York adopt similar rules?*

6. Intervention. Intervention programs such as Chicago's Lawyer Assistance Program have become an increasingly common way to deal with addiction issues. Such intervention programs often have the same message conveyed by psychologists—the need to be tough, especially with those with whom we are close. But some discipline counsel feel that treating alcoholism as a disease may be letting lawyers off the disciplinary hook. How would you balance these considerations in the case of "Rabbit" Worthington?

[7] ABA Formal Op. 03-431 (Aug 8, 2003).
[8] *Id.*
[9] ABA Joint Commission to Evaluate the Model Code of Judicial Conduct, Posting of First (Partial) Draft Proposals for Public Consideration and Comment, May 11, 2004 (www.abanet.org/judicialethics).

TRIPP BALTZ, PRESENTING THE HARD FACTS OF A LIQUID HABIT TO IMPAIRED LAWYERS

Chicago Lawyer (December 1991)[10]

She glares across the circle of people at her sister, the alcoholic lawyer, and begins.

"For a long as I remember, you've been tearing up every family gathering and ruining every holiday," she says, her voice quaking.

"At my house you get drunk and pass out," she continues. "We could go to your house; you get drunk and pass out. At a restaurant, you get drunk and embarrass everybody. You throw up in the bathroom, and you fall down. . . ."

Cook County Circuit Judge Warren D. Wolfson breaks in. "Lemme stop it at this point," he says. "This would not happen."

Lawyer's Assistance Program interventions are no place for emotional outbursts, Wolfson explains. Participants must stick to retelling specific events of what they have seen and heard and how they felt about it. Things like always tearing up family gatherings "are throw-aways. You can't have it," he says.

Wolfson and other LAP intervention veterans were conducting a training session for about 40 lawyers and judges who volunteered to be intervenors—people who confront attorneys with substance abuse problems in hopes of creating change. Intervenors also inform people about alcoholism and act as resources within firms.

. . . .

Through LAP, intervenors confront lawyers or judges addicted to alcohol or other drugs with their problem to try to breach the impaired attorney's denial and encourage him or her to seek treatment. Intervenors work in teams of three, including a judge and at least one recovering alcoholic.

Intervenors surround alcoholics with reality, [Former LAP President Michael J.] Howlett explained prior to the training session. They encourage family, friends and co-workers—the witnesses and victims of the chaos of alcoholism—to present hard facts of drinking to the impaired attorney.

LAP intervenors must attend at least one training session; be licensed attorneys and, if they are recovering alcoholics, have one year's sobriety behind them. . . .

They come from all parts of the legal community: a large firm associate, a name partner in a three-lawyer shop, assistant state's attorneys from two counties, an attorney from a law school legal clinic and two lawyers who are also clinical psychologists.

There are also three sitting judges, one retired judge and a smattering of solo practitioners, corporate counsel and government agency attorneys. The group is a mix of women and men, jackets and suits, tight-knotted ties and open collars, thin gray hairs and long curly locks.

. . . .

Based on intervention services, LAP is not a disciplinary organization, a temperance society or a recovery program.

"We don't shake tambourines and beat drums," Wolfson says. "We treat alcoholism as a treatable disease. We share the common conviction that we care about chemical abuse victims and their families, friends, co-workers, partners and associates. We try to get all parts of the person's life."

The relationship between trained intervenors and the judges and attorneys who receive assistance through LAP is privileged under Rule 1.6 of the Illinois Supreme Court's Code of Professional Conduct, Howlett says.

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[10] Reprinted by permission.

"What is said at an intervention never goes out," he says. To retain the LAP privilege and the right to participate in an intervention, one has to stay for the entire training program, he says. During the next four hours, no one will leave.

Assisting Howlett and Wolfson are Cook County Circuit Court Associate Judge Michael Murphy, vice president of LAP; and Barbara J. Sereda, president of LAP and assistant corporation counsel in the litigation division of Allstate Insurance Co.

Providing the professional perspective on alcoholism and interventions are Carl Anderson and Betty Reddy from Parkside Medical Services, an addictions treatment facility at Lutheran General Hospital in Park Ridge. LAP works closely with Parkside, which handles most of LAP's referrals.

Wolfson describes how a team prepares for an intervention. The team interviews the addicted lawyer's family, friends and co-workers who are willing to participate as if they were preparing witnesses. Some of those interviewed will accompany the LAP team when it confronts the addicted person.

Intervenors plumb for solid evidence and specific events.

"We're lawyers," Wolfson says. "We know how to ask the question; we know how to get the information. We need information that will stand up. It can't be hearsay. It can't be gossip or rumor.

"It has to be specific, and you will need to lay the same kind of foundation you would need to get a conversation into evidence: who was there, when was it, what happened."

Intervenors advise participants to write down on yellow legal pads the facts and incidents that will be useful later, Wolfson says.

. . . .

"If the alcoholic senses a weak point, he'll go after it like a dog after a rabbit," he says.

So if a participant falters or loses heart, Howlett says, the intervention team is there to gently nudge him or her back to the purpose by reminding them of something they wrote down.

"If a partner talks in terms of, 'Well, I'm not so sure that George has a problem,' then an associate can remind him, "Well, we did find him walking down the center of the L tracks twice. And we know that he's talked his way out of the last three DUI tickets.'"

"Or the last time we entertained a client, he put his face in the salad," Howlett says. "We engage in what I call the duck school of diagnosis. Walks like a duck, talks like a duck, hangs around with ducks, acts like a duck—it's a drunk. . . ."

"It's an equal opportunity disease: men and women, all races, makes no difference. We take the position that this is a disease that doesn't recognize any barriers," he says.

Throughout the session, the trainers used the term "alcoholic" to refer to any person impaired by substance abuse or addiction.

. . . .

Wolfson . . . explains the importance of setting limits: Having a person deliver the message that the lawyer's job is in peril if they fail to seek treatment.

"There is no more powerful motivator" than the prospect of losing your job, Wolfson says. "The limit-setter will often be the last person to speak at an intervention, designated as the clean-up hitter," he says.

Murphy adds, "You gotta make sure they mean it, and you make sure they're gonna say it." Partners sometimes back down. "It's like impeachment," he groans. The trainees laugh.

Howlett gives an example: "We'll ask, 'What are you going to do if he doesn't get help?' and the supervisor will say, 'I'm going to feel terrible.'

"We had a head of public office say they were going to fire this person if they didn't get help," he continues. When we got to the point where the hammer was supposed to fall, and we turned to the supervisor and said, 'Is there anything you want to say to him now?' he said, "Get help, or I'm going to be disappointed.'

"You have nothing further to say? 'Get help or I'm really going to be disappointed.' Wasn't there something you wanted to say about his job? "Yeah, if he doesn't get help, he's not going to be very good at his job.'"

Howlett, like an entertainer on stage, relates the ironic humor of the story. But he follows through with its seriousness: "It was sad because it takes a lot of courage to do what we ask these people to do. You have to prepare them well enough and give them the support that will carry them through it." The alcoholic cannot argue with the participants' feelings, Murphy says. "We're going to hit them with facts, but we're going to tell them how that made you feel," he says. "And we want them to know that the feeling hurts that person.

"The alcoholic can do all kinds of bad things, and he thinks he's only hurting himself. We want to now let him know he's hurting these people. We want to get all these people to give them that message."

If the intervention team and participants are not ready, Howlett says, another information-seeking session will be held. . . .

"You get your bluff called and it strengthens the denial, and it goes on, and it's much tougher to attack. You get that shock once. The last thing you want to do is get them used to all that."

When everyone is prepared, the judge on the team calls the subject and invites him to a meeting in the judge's chambers, saying there are a number of people concerned about him, Howlett says. The alcoholic usually knows the reason for the call, he says.

. . . .

Howlett instructs Wolfson to start the mock intervention. Trainees playing the concerned people in the alcoholic lawyer's life sit in a circle in Wolfson's chambers. The judge greets Sue, who takes her seat at the center of the circle. After Sue's sister has spoken, an associate tells her story.

"First of all, I'm glad I can work for you," she says. "You were the prime reason I joined this firm. You have an excellent reputation, and I have learned a lot. Over the last couple of years, though things have gone downhill. . . .

Howlett interrupts. "Get to the drink," he says.

Wolfson backs him up: "Here again, it's much too general. . . . You can't just say her work's getting worse.

"You have to say, 'Last Tuesday, there was a client waiting in the office, a Mr. Jones; and when you didn't come back [to] work, I had to meet with him. When you came back later that day, you smelled of alcohol and I had to lie to a partner about where you were."'

. . . .

A recovering alcoholic rises to describe the role he plays at an intervention. "You won't find this on my resume," he begins.

"The intervention I was most successful in was the one where I really related to the subject," he says. "I was able to talk to him about his drinking habits and mine.

"One of the big things I always say to them is that the other people in this room talk about how hard it is and how difficult it is for them to be here and for you to be here.

"They don't know how difficult it is. There are only two people in the room who know how difficult it is for you to be here." Now only his voice and the low rattle of the air conditioning can be heard in the room.

"I've been there," he continues. "I sat in that chair; I walked down the same road as you. I sat in the same bars. I ruined my life. I, too, had a drinking problem."

. . . .

The intervention should last less than an hour, Wolfson says.

. . . .

[B]efore the intervention, a member of the team will have arranged for a bed for the subject at a treatment facility, most likely Parkside.

Treatment usually starts with the alcoholic entering an in-patient program that lasts 28 days and exposes him to the medical and academic side of the disease, Howlett says. But it also begins his relationship with Alcoholics Anonymous, Howlett says, one he will most likely continue for the rest of his life as long as he stays in recovery.

"I welcome you to all this," Howlett says as the session comes to an end.

"I have found that it is, next to what I do as a husband and a father, the most significant thing I do with my time."

. . . .

Shields: "I never have placed any restrictions on people coming to see me in my chambers. I think a judge has to be humanized. . . ."

Wolfson: "When a 6-or 7-year-old child turns to her father and says, 'I want my daddy back, please get help,' there isn't a dry eye in the room."

NOTES

Note the idea of setting clear limits and sticking with them. The emphasis on not "changing the finish line" by giving second chances again and again is central to the intervention's success. Other, pre-emptive approaches are being proposed as ways to address a lawyer's substance abuse problem *before* it leads to severe discipline. See Rick Allan's proposals in the following article.

After discussing the problem of alcoholism and substance abuse among lawyers and the approach adopted by *In re Kersey*, Allan, director of the Nebraska Lawyer Assistance Program, describes the travails of the unfortunate lawyer in a Nebraska case,[11] who was disbarred after relapsing with alcohol while on probation for earlier disciplinary violations. He then comes up with a series of recommendations, which form the bulk of the brief excerpt below.

RICK B. ALLAN, ALCOHOLISM, DRUG ABUSE AND LAWYERS: ARE WE READY TO ADDRESS THE DENIAL?

31 Creighton L. Rev. 265 (December 1997)[12]

The saga of this alcoholic lawyer in Nebraska raises two issues. First, if probation is appropriate in a disciplinary proceeding, how can the bar better serve the Nebraska Court and Counsel for discipline in an effort to

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[11] *Nebraska ex rel. Nebraska State Bar Assoc. v. Barnett*, 248 Neb. 601, 537 N.W.2d 633 (1995).

[12]

promote compliance by the lawyer placed on probation? Second, whether alcoholism is accepted or not as mitigation in a lawyer disciplinary proceeding, neither approach protects the public from alcoholic lawyers. The obvious reason is that no formal action will be sanctioned against the alcoholic lawyer until the harm has occurred.

. . . .

Recommendations: Monitoring and Diversion

The most important factor in successful treatment of alcoholism is early detection. Lawyer Assistance Programs are in part designed to protect the public from lawyer misconduct. Protection of the public is accomplished by assisting alcoholic lawyers in their recovery and providing education concerning recognition of the problem and the treatment options available. The Nebraska State Bar Association has acknowledged the problem of the alcoholic lawyer and has taken positive steps in the creation of the [Nebraska Lawyers Assistance Program].

In addition to starting Lawyers Assistance Programs, other states have instituted monitoring and diversion programs in response to the problems of chemical dependency in the profession. . . . Monitoring programs have been shown to be highly effective in satisfying the dual goals of protection of the public and rehabilitation of the impaired practitioner. . . .

Monitoring programs are really in their infancy and vary from state to state. Highly trained probation monitors may be assigned to disciplinary cases when disbarment is not mandated, but public protection must be insured. Disciplined lawyers are assigned highly skilled probation monitors who evaluate their law practices, finances, and sobriety, filing regular reports as may be required.

While disciplinary-probation monitoring generally follows serious misconduct, diversion programs are designed to "divert" the impaired lawyer before serious disciplinary violations have occurred. Lawyers in need of help are referred to professionals, groups or agencies for treatment and education in order to address the problems that lead to misconduct.

NOTES

One of the major aspects of diversion programs is that because they are implemented before official disciplinary charges are filed against the lawyer, the information given to the regulating agency is considered to be confidential. If the lawyer successfully completes the diversionary program, no one besides the law firm, the lawyer, the program, and the lawyer's immediate family need know about the lawyer's participation in the program or any of the information that resulted in his participation.

Public knowledge can deter lawyers from coming forth and admitting that they have a problem; therefore, confidential diversion programs are a way to encourage lawyers to obtain early treatment before the disease leads to publicly-announced misconduct. But what of the public's right to know of a lawyer's addiction? Is the trade-off preemptive treatment worth keeping the public in the dark? The answer may lie in how successfully these diversion monitoring programs provide long-term success.

**** **In New York:***

Recent years have shown an increase in diversion programs for chemically dependent attorneys in lieu of formal discipline. Such programs exist in some form in each of the four appellate departments, although to date only the Third and Fourth Departments have formalized their programs. Following are the Fourth Department rules, which went into effect in January 2003:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 22. JUDICIARY
SUBTITLE B. COURTS
CHAPTER IV. SUPREME COURT
SUBCHAPTER D. FOURTH JUDICIAL DEPARTMENT
ARTICLE 1. APPELLATE DIVISION
SUBARTICLE B. SPECIAL RULES
PART 1022. ATTORNEYS

Text is current through December 31, 2003.

Section 1022.20 Formal disciplinary proceedings.

* * *

(d) Disposition by the Appellate Division. . . .

(3) (a) When an attorney who is the subject of a disciplinary investigation or proceeding raises in defense of the charges or as a mitigating factor alcohol or substance abuse, or, upon the recommendation of chief counsel or a designated staff attorney pursuant to section 1022.19(d)(2)(iii) of this Part, the Appellate Division may stay the matter under investigation or the determination of the charges and direct that the attorney complete a monitoring program sponsored by a lawyers' assistance program approved by the Appellate Division upon a finding that:

(i) the alleged misconduct occurred during a time period when the attorney suffered from alcohol or other substance abuse or dependency;

(ii) the alleged misconduct is not such that disbarment from the practice of law would be an appropriate sanction; and

(iii) diverting the attorney to a monitoring program is in the public interest.

(b) Upon submission of written proof of successful completion of the monitoring program, the Appellate Division may dismiss the disciplinary charges. In the event of an attorney's failure to successfully complete a court ordered monitoring program, or, the commission of additional misconduct by the attorney during the pendency of the proceeding, the Appellate Division may, upon notice to the attorney and after affording the attorney an opportunity to be heard, rescind the order diverting the attorney to the monitoring program and reinstate the disciplinary charges or investigation.

(c) Any costs associated with the attorney's participation in a monitoring program pursuant to this section shall be the responsibility of the attorney.

The Third Department's rules went into effect in September of 2004. Formalization of programs is under consideration in the other two departments.[13] However, in a recently released report, a committee appointed by the Appellate Division of the Second Judicial Department and chaired by the Honorable Gabriel Krausman**,** recommended against adopting a court-sponsored monitoring program.[14] The Krausman Committee report, without explanation, disapproved the recommendation of its Reinstatement Subcommittee that the Second Department adopt the "Bellacosa Rule" which would have authorized the deferral of a disciplinary investigation or proceeding in order

[13] Statement of Hon. Sarah L. Krauss, Member, NYS Lawyer Assistance Trust before the ABA Joint Commission to Evaluate the ABA Model Code of Judicial Conduct, May 7, 2004.

[14] COMMITTEE TO REVIEW THE PROCEDURES OF THE COMMITTEES ON CHARACTER AND FITNESS AND THE GRIEVANCE COMMITTEES OF THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT, REPORT AND RECOMMENDATIONS 28 (2004) (*hereinafter* "THE KRAUSMAN COMMITTEE REPORT").

to enable an attorney to enter a monitoring program if he or she claims a disability due to alcohol or substance abuse.[15] In another portion of the report, the Discipline Subcommittee (possibly confusing "monitoring" with "mentoring") offered the following perspective:

> The problem envisioned with court-sponsored mentoring is that the court would be perceived as holding out as competent to practice law an attorney who suffers from clinical depression or who is a substance abuser when, in fact, there is some doubt as to that attorney's competence. The consensus was that mentoring is a very valuable tool which should be encouraged through bar associations but which should not be court-sponsored or administered by the Grievance Committees.[16]

At the time these materials went to press, the Krausman Committee recommendations were open for public comment.[17]

- *Is diversion and monitoring an appropriate response generally?*
- *Does it adequately achieve the goal of protecting the public?*
- *Was the Krausman Committee correct in recommending* against *court sponsorship of diversion and monitoring programs?*
- *What is your view of the Fourth Department's program?*
- *Should it exclude, as it does, cases in which "the alleged misconduct is . . . such that disbarment from the practice of law would be an appropriate sanction," even when the misconduct is directly related to chemical dependency?*

7. Law Students, Substance Abuse and Licensing. So far, we have considered the ramifications of alcohol and substance abuse on lawyers and their clients. What about law students who abuse alcohol or use illegal substances? What effect will—or should—substance abuse have on their admission to the bar? Is there a real risk that students who use alcohol to relieve the stress of law school might become alcoholic lawyers? The following article addresses some of these questions.

UNDER THE INFLUENCE

CYNTHIA L. COOPER

Student Lawyer Volume 32, No. 4, December 2003[18]

Law school without liquor poses a serious problem for Jana Pritchard. The 29-year-old law student in Chicago, who's halfway through her J.D. program, is a self-confessed binge drinker-"wine, beer, mixed drinks, shots on occasion, pretty much anything," she says. She tried giving up alcohol for a while in law school, but, within months, she started again.

"The thought of making it through law school without drinking is stultifying," says Pritchard (who, like some other students interviewed for this article, chose a pseudonym for herself). "'Celebrate your victories and drown your defeats.' The law school culture supports that." She notes an irony of law school orientation: A talk on substance abuse is followed by an event at which everyone goes out and gets drunk.

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[15] *Id.* at 18.
[16] *Id.* at 10.
[17] Press Release, *Appellate Division, Second Judicial Department, Makes Report on Attorney Admission and Discipline Available to Public*, Oct. 5, 2004 (www.nycourts.gov/courts/ad2/).
[18]

The pause in Pritchard's intake came after she drank too much at a law school function during her second semester. "Everybody was wasted," she says. "Nobody thought much about it." The next morning, still intoxicated and feeling miserable, Pritchard ran a red light and was pulled over. Although she avoided a drunk-driving charge, she decided her drinking was out of control and began attending Alcoholics Anonymous. But staying sober seemed more than she could bear, so she went back to her drinking ways.

Pritchard's condition, and even her critique of the law school culture, is commanding new attention in legal circles. The issue has ramifications ranging from the health of law students and lawyers to the prospects of bar admission for applicants who struggle with addiction. American Bar Association leaders are among those who say it's time to deal with the problem directly.

"Are law schools doing all they can to prevent the problem of substance abuse? Or, in fact, are law schools, in some way, encouraging the use and abuse of alcohol and other drugs?" asks ABA executive director Robert Stein. Stein and others raised pointed questions to deans at the first-ever conference on the topic, "Meeting Our Responsibilities: Substance Abuse and Law Schools," held in New York City in June [2003]. . . .

The familiar celebrations with abundant carafes of wine and kegs of beer are only the tip of the problem, says Stein, a former law school dean who 10 years ago sat on a committee of the Association of American Law Schools that studied chemical dependency in law schools. Avoidance at law schools is the bigger concern, he told the 150 conference participants from 35 law schools.

"We experienced a lot of denial by deans of law schools at the time," Stein says. "They said, 'It may be a problem somewhere, but not in my law school, I can assure you.'"

The numbers appear to suggest otherwise. The 1993 AALS survey of 3,400 law students at 19 schools found that 3.3 percent of law students said they needed help to control their substance abuse, and approximately 12 percent said they abused alcohol during law school. That amounts to 15,000 law students nationwide who acknowledge problem drinking. Uncalculated are the number who get into trouble when they inhale, shoot, snort, or pop their substances. . . .

During the last decade, the legal profession began facing up to a crisis of chemical dependency problems. Studies indicate that lawyers engage in higher-than-average drug and alcohol abuse, affecting from 15 percent to 18 percent of the profession, compared with 10 percent of the general population. The impact on clients can be devastating when lawyers miss filing deadlines, spend money held in trust, or are asleep at the switch in trial.

Disciplinary bodies discover that chemical dependency problems are at the root of 40 percent to 70 percent of complaints about lawyers, says New York State Chief Judge Judith Kaye, president of the Conference of Chief Justices. "Some of the stories of clients who lost their life savings are heartbreaking," Kaye told participants at the "Meeting Our Responsibilities" conference. "I believe the court system owes it to the public to do all we can."

Every state now operates a "lawyer assistance program," or LAP, to help lawyers and judges with addiction problems confidentially. Last year, members of the ABA Commission on Lawyer Assistance Programs (commonly called CoLAP) started reaching out to law schools. "We need to help lawyers at the earliest possible stage-we need to help law students," says Tennessee Circuit Court Judge Robert Childers, who co-chairs CoLAP's law school outreach committee, formed a year ago. Childers traces his urgency on the subject to the suicide of a colleague in Memphis in 1987.

"People are suffering from these issues," Childers says. "Rather than sit around at a wake, I thought there ought to be some way to help."

The ABA is urging law schools and state LAPs to step up their efforts to reach out to students before they crash. And it's not just students—professors are a concern, as well. The 1993 AALS commission [study] noted that law school faculty are not immune from the problems of substance abuse. It recommended a clear, written policy for faculty and a plan for "early, informal intervention." . . .

John Sebert, the ABA's consultant on legal education and former dean of the University of Baltimore School of Law, recalls sending a substance-abusing faculty member to treatment as one of the hardest things he encountered in his tenure. "I didn't have a choice," Sebert says. "I had a duty to my students."

Lawyer assistance programs aim to heighten awareness of the problem in law schools by going on the road, although some schools don't cooperate and some students "laugh it off," says William Hammond, chair of the New York City LAP. But Meloney Crawford Chadwick, a lawyer on the staff of the Oregon Attorney Assistance Program who frequently speaks at law schools, persists anyway.

"I'd rather talk to a law student today who might have some issues than talk to a lawyer who is in deep trouble and says his problems began in law school," Chadwick says.

Chadwick is a recovering alcoholic who became sober in 1988 when she experienced embarrassing blackouts, seven years after her graduation from Temple University School of Law.

"I started to cross the line in law school," she says. "My attitude was, 'I'm working hard, I'm going to play hard.' I would have said, 'Everybody does this,' but, in retrospect, I don't think everybody did do it.

"You can tell yourself a lot of things that seem to make sense. No one starts out thinking 'I'm going to be an alcoholic' or 'I'll have a drug problem.' You think, 'I'm having a bad day,' and this is the answer. You can be really intelligent in some ways and have a blind spot when it comes to your own impairment." . . .

To encourage law school deans to take action on chemical dependency, the ABA outreach committee opened a hotline, printed stickers and advertisements, and is developing an informational kit. CoLAP operates a closed online forum for law students dealing with alcoholism and substance abuse. Approximately two dozen students nationwide participate in the e-mail list, according to commission director Donna Spilis.

James Moore, chair of the New York State Lawyer Assistance Trust, says schools should have a written policy to address alcohol and drug use, serve less alcohol at student functions, create relationships with LAPs in order to help students confidentially, warn students that an unaddressed problem may affect their ability to be admitted to practice, and enlist someone as a designated person for student assistance. . . .

But if the designee is on the faculty, few students are likely to pour out their problems, says Natasha Woodland, a 2003 graduate of the University of Maine School of Law who served as the only student member on the ABA law school outreach committee.

"I would hear the deans say, 'Our doors are always open, you can talk to us,'" Woodland says. "My response was, 'Excuse me, do you really think they are going to talk to you?' Students see how they deal with someone who is late to class. How are they going to deal with someone who is drunk in class?" As a solution, Woodland urges that student representatives be identified to meet confidentially with their peers.

At Touro Law Center in Huntington, N.Y., associate dean Kenneth Rosenblum recruited first-year student Edwin Grasmann to act as an on-campus representative on substance abuse, in conjunction with the state's LAP.

"Students come to me. I proceed gingerly and carefully because they are all scared," says Grasmann, 47, a medical doctor who himself is in recovery for substance abuse. One Touro student, troubled by his alcohol intake, now attends recovery meetings; a half-dozen others sought advice. "You're not going to help a person unless they are ready for help," Grasmann says. "I'm there, and I'm available."

For some law students, law school is recovery, and they want to keep it that way. At South Texas College of Law in Houston, Alfred "Cal" Baker, a second-year student, founded Law Students Anonymous, which began meeting this fall. Baker, 42, is now a licensed chemical dependency counselor. But in his earlier years, he found his way to a cornucopia of substances-alcohol, marijuana, LSD, mushrooms, cocaine, methamphetamines.

"I kept saying I was going to stop, but I could not," Baker says. "I had pretty much lost everything-my job, my apartment, my transportation. I traded my motorcycle for a pound of pot."

Twelve years ago, Baker entered a 30-day residential treatment program. He has been clean and sober since. At night, he counsels teenagers with substance abuse problems.

"I tried to be part of student activities in law school," Baker says. "Everything the student bar promotes is in the form of 'let's go blow off stress' and involves alcohol. I don't have any interest in it."

Baker secured support of assistant dean Gena Lewis Singleton to start a peer assistance group with a hotline and regular meetings at the school. "When we talk with peers, we're helping other students cope with the stress-rather than [being] a legal fraternity with another of their parties," he says. "These are people who understand the pressures of law school and don't want to deal with them in a bad way."

An issue of great concern to law students in recovery is bar admission. For the bar application process, most states require disclosure of legal infractions related to substance abuse, such as drunk-driving arrests; others inquire into substance abuse or treatment. Some establish a period of probation or other conditions to admission; others do not. . . .

Early on in law school, Adam Walton (a pseudonym he chose for this article) contacted the character and fitness committee of his state's bar. A second-year student at a southeastern law school, Walton cleaned up six years ago, leaving behind a "colorful" history, he says. He is monitored by monthly reports and participates in a random drug-screening program. Three to four nights a week he meets with lawyers and law students in recovery-oriented meetings. ("It gets people on the right track, and it's also great networking," Walton says.) In August, the character and fitness committee announced that he will be permitted to apply for admission.

"If you do have a DUI on your record [and will be seeking admission to the bar], you want to talk to us," says Betty Daugherty, director of the Lawyers and Judges Assistance Program of the Mississippi Bar. "Offenses that have to do with drinking are red flags. If you have gone to treatment, we are able to work with the bar admission committee."

New York lawyer Kathleen Kettles-Russotti, who entered law school after five years in sobriety, worried about how the bar admissions committee would respond to a drunk-driving conviction. She explained on her application that the conviction was a decade old, she had no further infractions, and she participates in recovery meetings. At an in-person interview, the examiner commended her recovery program.

Even with the positive experiences of applicants like Walton and. . . . Kettles-Russotti, many with substance abuse problems are concerned. Some law students say their colleagues avoid treatment because they fear that getting help would send the wrong signals to bar examiners and result in denial of bar admission.

"Students think once they get treatment, they are on a blacklist. That's a real bad dynamic to have out there," says Colin Wellenkamp, a 2003 graduate of Creighton University School of Law in Omaha, Neb., and a former student delegate to the ABA House of Delegates. The ABA Law Student Division is helping to research and promote a "best practices" standard on recovery and bar admission, Wellenkamp says. . . .

The topic is said to offer a fiery educational tool. "You want to get a group of law students interested in the subject of substance abuse? Talk to them about whether they deserve to be admitted to the bar or not," says Aviva Orenstein, a professor at Indiana University School of Law in Bloomington, now visiting at Benjamin N. Cardozo School of Law in New York. . . .

Enhanced policies also are working their way into law school handbooks. St. John's University School of Law in Jamaica, N.Y., says consumption of alcoholic beverages "should never be the primary focus of any student

activity." Cornell University policies, which extend to the law school, prohibit "all-you-can-drink" events and require that non-alcoholic beverages be served when alcohol is. . . .

Law Grad Finds 'The Other Bar'

Years of cocaine addiction finally caught up with Sara St. Phalle, a 1999 California law school graduate. Even though she passed California's demanding bar exam, St. Phalle can't practice. It's the other part of the bar admission process-demonstrating good character and fitness-that's the stumbling block.

Addiction "took away every potential that I had," says the 32-year-old (who chose a pseudonym for herself for this article).

During her years in law school, St. Phalle did cocaine daily in the school's restroom. She was especially adept at hiding her addiction, she says. "I plowed through law school and did really well," she says. "I didn't consider myself a junkie. To me, it was 'why wouldn't you do this?' It gave me a fake sense of self-confidence."

At the same time, her drug use outgrew her wallet, so St. Phalle began writing herself "loans" on her employer's account. The scheme unraveled after she had received her J.D., and St. Phalle was slapped with felony charges for fraud. Even then, she clung to her drugs until, while awaiting sentencing, the police stopped a car in which she was riding with 3 grams of cocaine in her bag. The officer didn't conduct a search, but, she says, "It was a wake-up call. I was so fearful that night. It wasn't fun any more. I said, 'This is it.'"

A lawyer helped St. Phalle connect with a self-help group. She served a year incarcerated in a halfway house on the fraud conviction. Now released, she's studying drug counseling and participating in a group of legal professionals who are recovering from substance abuse - "The Other Bar."

Down the road, St. Phalle hopes to prove she can be trusted to practice law. "I'm in a repair mode," she says. "It's tragic, but it's changed my life for the better."

NOTES

The Drug-Free Schools and Communities Act Amendments of 1989[19] imposes an obligation on all institutions of higher education to develop, implement and publicize their policies concerning substance and alcohol abuse. Schools are also required to disseminate: (1) their disciplinary standards for conduct violating their policies; (2) an outline of state and federal criminal sanctions for unlawful possession or distribution of illicit drugs and alcohol; (3) a description of the health risks of use of illegal drugs and abuse of alcohol, and (4) a description of counseling, treatment and rehabilitation programs available to employees and students with alcohol or substance abuse issues.

- *Has your school provided this information? If so, have you read it carefully? If you don't recall receiving such information, now might be a good time to request a copy from your school's administration.*

***** *In New York*:**

The New York State Lawyer Assistance Trust has urged each law school to recruit a student to serve as an on-campus LAP representative. As agents of the New York State Bar Association Committee on Lawyer Alcohol and Drug Abuse, these students are covered by Judiciary Law Section 499, which insures confidentiality and immunity from prosecution.[20]

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[19] Pub. L. 101-226; 20 U. S.C. § 1213 as amended 20 U.S.C. § 1145g (1989).

[20] LAT News, Vol. 3, No. 2 (Summer 2004), p 14. See N.Y. JUDICIARY LAW S. 499 (1) (McKinney's 2003). Lawyer Assistance Committees:

1. Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar

- *Do you know whether your school has a student LAP representative and, if so, who that person is?*

As suggested in the above article, the consequences for abusing alcohol or using illegal substances may threaten a lot more than one's health. Law students discovered to be using controlled substances risk expulsion. Even if less dire sanctions are imposed, an incident involving drugs or alcohol may be reported to the Character & Fitness Committee. Possession and distribution of illegal drugs may result in criminal prosecution by the state or federal government. For example, in New York, possession of more than 25 grams of Marijuana is a class B misdemeanor punishable by up to three months in jail or a $500 fine. Possession of any amount of cocaine is a class A misdemeanor punishable by up to a year in jail or a $1000 fine, while possession of as little as a third of an ounce of cocaine is a Class C felony, punishable with up to fifteen years in prison. While there is no automatic disqualification of an applicant with a substance abuse conviction, it is certainly something the applicant will have to explain to the Character & Fitness Committee.

Licensing Issues in New York

The only questions relating to alcohol or substance abuse on the New York Bar application are as follows:

> 13. *State whether you have . . .(c) any mental or emotional condition or substance abuse problem that could adversely affect your capability to practice law? _____ Are you currently using any illegal drugs? ____.*

In addition, any arrests involving alcohol or substance abuse would also have to be disclosed. Question 13 also asks the applicant whether he or she has

> *(e) ever been* a *party to or otherwise involved in any civil or criminal action, proceeding or investigation not covered by answers to the foregoing subdivisions of this question.*[21]

If the answers to any parts of question 13 are affirmative, the applicant is required to "state the facts as fully as possible."

Some states have explicit policies as to how an affirmative answer might affect bar admission. The Georgia Supreme Court website, for example, contains extensive information about the character and fitness process and policies.[22] A new rule provides that if a student has a DUI (Driving Under the Influence) conviction in the last year of law school, she is automatically barred from sitting for the July bar exam.[23]

New York, along with the majority of jurisdictions including Georgia, does not treat a felony conviction as an absolute bar to admission.[24] Also, like most jurisdictions, New York has no provision for conditional

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association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation which has furnished information to the committee.

2. Immunity from liability. Any person, firm or corporation in good faith providing information to, or in any other way participating in the affairs of any of the committees referred to in subdivision one of this section shall be immune from civil liability that might otherwise result by reason of such conduct. For the purpose of any proceeding, the good faith of any such person, firm or corporation shall be presumed.

[21] Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York, New York Supreme Court Appellate Division (Revised Oct. 2002).

[22] http://www.gabaradmissions.org.

[23] http://www2.state.ga.us/courts/bar/pages/duiamendment.html.

[24] States that do automatically bar convicted felons from admission include Indiana, Mississippi, Missouri, Oregon, and Texas. Comprehensive Guide to Bar Admission Requirements 2003; National Conference of Bar Examiners and ABA Section of Legal Education and Admission to the Bar 6-7.

admissions.[25] Compare Texas, where although a felony conviction is an automatic bar, the Board of Law Examiners may issue a two-year probationary license upon a finding, after hearing, that the applicant suffers from chemical dependency.[26] The ABA's Commission on Lawyer Assistance Programs (CoLAP) has undertaken the development of a model conditional admission policy.[27]

Both applicants and law schools—in New York and elsewhere—often lack sufficient information as to what effect a history of substance abuse will have on an applicant's admission to the bar in each state.[28] New York has no published character and fitness standards. Thus it is difficult to predict what effect, for example, the existence of a substance abuse problem or a DWI (Driving While Intoxicated) conviction will have on an applicant's admission to the New York State bar; the interviewer has tremendous discretion.[29] If a law student or law school applicant has a previous conviction, has been dismissed or suspended from public office or employment, or has been dishonorably discharged from the armed forces, he or she may petition the Character and Fitness Committee for an advanced ruling.[30]

In 1993, a special committee of the Association of American Law Schools (AALS) issued a major report on the problems of substance abuse in law schools. One of the committee's 21 recommendations was as follows:

> **Recommendation 11**: Law schools should endeavor to persuade the relevant state bar admission authorities to agree that:
>
> - the authorities will maintain the general confidentiality of substance abuse information divulged to them;
> - any inquiries that bar admission authorities make concerning an applicant's history of substance abuse or treatment for substance abuse will be limited to reasonably recent events (such as over the past five years); and
> - otherwise qualified applicants who are recovering from substance abuse will be admitted to practice.

Read the following excerpt from that report:

REPORT of the AALS SPECIAL COMMITTEE ON PROBLEMS OF SUBSTANCE ABUSE IN THE LAW SCHOOLS

44 J. LEGAL EDUC. 35, 77-78 (1994)[31]

Since bar admission authorities have a legitimate interest in protecting the public from the risk of attorneys impaired by the effects of substance abuse, law schools are in a dilemma: on one hand is the authorities' legitimate need for information, and on the other is the risk that the student's fear of disclosure will create a serious barrier to seeking counseling and treatment for substance abuse.

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[25] States that do have provisions for conditional admissions include Arizona, Connecticut, Florida, Idaho, Indiana, Kentucky, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, Texas, and West Virginia.

[26] Heil, Tricia S., Chemical Dependency and Mental Health Issues in Licensing and Discipline. Texas Bar Journal. Feb 2001, p. 159.

[27] LAT News, Vol. 3, No. 2 (Summer 2004), p 10.

[28] *Id*.

[29] Information from July 14, 2004 telephone conversation between Dorothy Beard, Principal Appellate Court Clerk, First Department and Mili Makhijani.

[30] *See* 22 NY ADC 602.1(o) (1st Dep't); 22 NY ADC 690.19 (2nd Dep't); 22 NY ADC 805.1(o) (3rd Dep't); 22 NY ADC 1022.34(o) (4th Dep't).

[31] Reprinted by permission of the Association of American Law Schools.

In attempting to resolve this dilemma, the law schools can benefit from the experience of the medical schools, which have worked closely with their state licensing agencies. The medical schools disclose information about their graduates' substance abuse problems to state programs for impaired physicians. But these programs maintain the confidentiality of the information, and licensing agencies have assured the medical colleges that an otherwise qualified graduate who has successfully completed a rehabilitation program and is in recovery will obtain licensure.

- *Do you agree with the AALS Committee's recommendations?*

No one, for sure, wants to endure three or four years of law school and the bar exam only to encounter the fate of MEF:

In the Matter of [MEF], an Applicant for Admission to the Bar.

[MEF], Petitioner.

MEMORANDUM AND ORDER

Calendar Date: March 17, 2003

Before: Cardona, P.J., Mercure, Spain, Carpinello and Kane, JJ.

Per Curiam.

Petitioner passed the New York State Bar exam and has been certified for admission to this Court by the New York State Board of Law Examiners (*see* 22 NYCRR 520.7 [a]).

After holding a formal hearing on the application, the Committee on Character and Fitness issued a decision concluding that petitioner should be denied admission. Petitioner seeks an order granting his application for admission to practice notwithstanding the Committee's decision (*see* 22 NYCRR 805.1 [m]).

The petition is denied. Our review of the record indicates that the Committee's decision fully and reasonably assessed the character and fitness concerns raised by the application, as well as the mitigating circumstances proffered by petitioner. The character and fitness concerns included petitioner's misconduct in college, history of substance abuse, criminal record and lack of candor since college concerning such matters. We are not satisfied that petitioner presently possesses the character and general fitness requisite for an attorney and counselor-at-law (*see* Judiciary Law § 90 [1] [a]).

In New York—and likely most other places as well—students with concerns about bar admission can have a confidential conversation about their concerns with a LAP representative. LAP is also available to Character and Fitness Committees to perform assessments of law graduates who have reported a history of alcohol or substance abuse on their bar applications.[32]

8. Stress and Its Avoidance. If there were better ways to avoid stress in the first place, perhaps fewer people would get to the point of needing intervention. From time to time, various surveys have attempted to measure lawyer's stress. In 1990, an ABA study involving responses from over 3,000 lawyers found widespread professional dissatisfaction and a significant level of destructive behavior. For example, 13% of the lawyers responding admitted having six or more drinks a day, a rise from a .5% level in 1984. Astonishingly, fully 20% of the woman lawyers interviewed reported having six or more drinks a day.

The article below documents some other arguably more healthy methods of stress avoidance, and some which may be decidedly unhealthy. As you read this article, consider your own life as you approach the beginning of your career as a lawyer—a career which is likely to have more than a desirable amount of stress. What have you done to

[32] LAT News, Vol. 3, No. 2 (Summer 2004), p 10.

prepare yourself to meet and deal with this stress? The best time to put a workable plan in place is now, before the reality of the daily practice of law has begun to take its toll

MARY MEDLAND, THEATER, HANDGUNS SERVE AS STRESS REDUCERS FOR LAWYERS

The Daily Record (January 9, 1993)[33]

Layoffs. Law firms imploding. Long-term clients defecting. Draws chopped. Receivables skyrocketing.

Being a lawyer has always been stressful. But trying to build or maintain a civil or criminal defense practice in a staggering economy has pushed most attorneys' stress levels off the chart.

To vent the extra pressures Maryland lawyers employ a variety of coping techniques which range from meditation to Shakespeare to packing a .357 Magnum to seriously abusing drugs or alcohol.

For criminal defense specialist Craig Gendler, economics is not the cause of most of his sleepless nights these days. It's the thought that an innocent client might wind up in jail.

. . . .

So far, Gendler says he's been able to avoid letting the pressures of juggling a heavy criminal practice get to him—at least not to the point of taking things out on his family.

But other lawyers aren't so lucky.

New York criminal defense specialist Seymour Wishman notes in a New York Times article that "this 'professionalism' that makes a virtue out of noninvolvement with client fosters an attitude of dissociation that can distort other parts of your life."

Wishman contends that the stress that comes with having criminal clients routinely and automatically lie about their cases prompts defense counsel to start mistrusting everyone—including his or her own family.

Packing Heat

And that mistrust can cause you to do some strange things. Consider the case of a former Baltimore City prosecutor who was so stressed out by prosecuting violent drug gangs that he started packing a .357 Magnum to work every day in a shoulder holster.

"Having it made me feel more secure, like I could handle any threat that came at me," says the prosecutor, who has since left the office and gone into private practice. He also has started leaving the gun at home.

"What's even more weird is that I never was a big gun person before getting assigned to these drug cases. I'd never owned one before and my family didn't keep guns around," recalls the ex-prosecutor, who spoke on the condition he not be named. "The thought of having a gun scared me at first. But as I got deeper into these cases, the thought of not having a gun scared me even more."

David Irwin, who served as both a federal and state prosecutor before moving into defense work, says he considered carrying a gun, but gave up on the idea "because I'd probably shoot myself in the foot."

. . . .

Billable-Hour Stress

Unlike their colleagues in the criminal defense and prosecution bar, civil lawyers don't have to face the day-to-day horrors of street crime. . . .

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[33] Copyright © 1993 by The Daily Record Company. Reprinted by permission.

But the stress of living life in 10-or 15-minute increments, having to constantly stroke prospective clients, meeting new deadlines every day with millions of dollars on the line can be just as debilitating.

For example, a fifth-year associate at a large downtown Baltimore law firm says he's gotten so conditioned to billing out his time in bite-sized chunks that he catches himself doing it at home on the weekends.

"I'll be watching TV and catch myself looking at the clock or my watch every 5 minutes," says the associate, who requested anonymity to avoid ribbing from his colleagues. "It really started freaking me out, so I started making an effort to only ask my wife what time it was and not look at the clock."

Glenn L. Klavans, a senior associate in Baltimore's Polovoy & McCoy, has taken a more theatrical approach to job stress. He acts out his problems doing Shakespeare as part of a community theater troupe.

"It's something completely different from the law and that provides a release for me," says Klavans.

A veteran plaintiffs' lawyer in Towson who has "pulled out three or four heads of hair" over some of the abusive discovery tactics of his opponents, decided to deal with his work stress through meditation.

Instead of hyperventilating when a defense attorney faxes over a 17-page request for admissions motion at 5 p.m. on a Friday afternoon with a hearing scheduled Monday morning, the plaintiffs' lawyer shuts the door to his office and sits in the lotus position for 15 minutes.

"If I do that, I can get myself calmed down and centered and figure out how to make the deadline without killing my whole weekend," says the partner, who spoke only on the condition he not be identified.

. . . .

One of the biggest stresses in any young lawyer's worklife is the climb to partnership in their law firm.

That climb has become Mount Everest-like recently as the number of seats around the partners' table has been steadily reduced by the recession and competition for them has become razor sharp.

To make the climb less taxing, younger lawyers are scaling back their career and financial expectations, spurning offers to become equity partners and seeking limited, or salaried, partnerships that don't require as many hours or marketing time. . . . Predictably, the increased stress also has more lawyers than ever headed to the bar or open-air drug market to wash away the frustrations of the workday. . . .

9. Distress Among Law Students and Lawyers—It Starts in Law School! It is no revelation that law students, like lawyers, often feel "stressed out." Yet the extent of *distress* within the profession may come as an unwelcome surprise. For more than two decades, empirical research has demonstrated that law schools have failed to prepare as many as 40% of law students to cope effectively with the demands of the educational process as well as with the demands of life after law school.[34] Law students experience clinical depression to a significantly higher degree than other populations. Depression is characterized by "a depressed mood or loss of interest or pleasure in usual activities and relationships," plus at least five of the following symptoms:

- Poor appetite and weight loss, or the opposite, increased appetite and weight gain;
- Sleep disturbance: sleeping too little, or sleeping too much in an irregular pattern, for instance early morning awakenings;
- Loss of energy;

[34] *See* G. Andrew H. Benjamin, et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, AM. B. FOUND. RES. J. 225 (1986). This study found that thirty-two percent of law students suffered from depression by late spring of the first year of law school, and that the percentage increased to forty percent by late spring of the third year.

- Change in activity level, either increased or decreased;
- Decreased sexual drive;
- Diminished capacity to think or concentrate;
- Feelings of worthlessness or excessive guilt that may reach grossly unreasonable or delusional proportions;
- Recurrent thoughts of death or self-harm, wishing to be dead or contemplating suicide.[35]

A recent study by law professor Lawrence Krieger and psychology professor Kennon Sheldon has confirmed the results of earlier studies and demonstrated that while students who enter law school are as emotionally healthy as the general population, their sense of well-being and satisfaction with their lives declines precipitously within a few months.[36] In addition, students move away from *intrinsic* motivators—such as intimacy, community and personal growth—which have been shown to correlate with well-being—and towards *extrinsic* motivators—such as money, image and fame. Students tended to lose interest in the values they brought to law school, becoming more self-absorbed, and less interested in community. The Sheldon and Krieger study demonstrates that something happens *during law school* that creates this distress, and it doesn't seem to diminish over the course of the next three to four years. Although this and other studies have not yet demonstrated empirically *what* about law school causes this to happen, the knowledge that many students suffer significant loss of healthy values and motivation may help us focus on what could be done to prevent or reverse the pervasive effects of this distress. Many have speculated about the causes of distress in legal education. Here's the list that Sheldon and Krieger culled from their research:

> Many researchers and commentators have proposed that legal education may be the common source of some of the problems among both students and lawyers. Potential negative aspects of legal education include excessive workloads, stress, and competition for academic superiority; institutional emphasis on comparative grading, status-seeking placement practices, and other hierarchical markers of worth; lack of clear and timely feedback; excessive faculty emphasis on analysis and linear thinking ["thinking like a lawyer"], causing loss of connection with feelings, personal morals, values, and sense of self; teaching practices that are isolating or intimidating, and content that is excessively abstract or unrelated to the actual practice of law; and conceptions of law that suppress moral reasoning and creativity.[37]

Empirical research has also shown that the negative effects of the law school process increase during the three years of law school and continue on to afflict a substantial number of law school graduates.[38] Research demonstrates that as many as one third of the practicing bar are impaired by depression, problem-drinking or cocaine abuse at any given time.[39] It is likely that the dysfunction that begins in law school contributes to depression, alcoholism and drug abuse as the individual graduates law school and moves on into the practice of law.[40] A 1990 Johns Hopkins study found that lawyers had the highest incidence of depression among 104 occupational groups.[41] Another study of Washington lawyers suggested "that nearly 70% of lawyers are likely candidates for alcohol-related problems at some time within the duration of their legal careers.[42]

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[35] G. Andrew H. Benjamin, et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*. 13 INT'L J. L. & PSYCHIATRY 233, 233-34 (1990) (*citing* AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 222-23 (3d ed. rev.1980).

[36] Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004).

[37] *Id*. at 262 (citations omitted).

[38] *See* Benjamin et al., *Prevalence of Depression*, *supra* note 35.

[39] *Id.* at 242.

[40] *See* Connie J. A. Beck et al., *Lawyer Distress: Alcohol-related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers.* 10 J. L. & HEALTH 1, 2 (1995).

[41] Sheldon & Krieger, *supra* note 36, at 262 (*citing* William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MEDICINE 1079 (1990)).

[42] Beck et al., *supra* note 40, at 3.

The worst aspect of a law student's development of one or more psychological, alcohol, and drug abuse symptoms appears to be the establishment of long-term dysfunctional patterns of behavior. Among these behaviors are work overload, time famine, poor relationships skills (that eventually lead to greater career dissatisfaction) and an abandonment of intrinsic motivation and personal values. Although these patterns of dysfunctional behavior exist in a number of professions, lawyers suffer in much greater percentages than any other professional group including physicians, nurses, and teachers. These patterns of behavior leave many law students and lawyers suffering not only from clinically high levels of depression and alcohol abuse but also from chronically elevated levels of hostility, cynicism and aggression, which in turn can lead to a lower survival rate over the course of a life in practice. One research study that followed University of North Carolina law students over a 30-year period suggested that lawyers with significantly elevated levels of hostility are far more likely to die prematurely due to cardiovascular disease.[43]

These studies raise many questions and concerns. Is legal education in general, and the competitive atmosphere in particular, *unhealthy*? Or are the problems that cause impairment more discrete? What if anything should law schools be doing differently? And given that legal education is what it is today, what can any individual law student do to minimize the chances that he or she will be among the statistics cited? What can *you* do to maximize your health and well-being, and minimize the possibility that you will suffer from problem drinking, drugging, depression or other emotional or psychological distress?

NOTES

In 1999, a group of forward-thinking law professors led by Larry Krieger of Florida State University began an on-line discussion group on "humanizing" legal education. By 2001, the discussion group had led to workshops and a conference that focused, as one of the group's coordinators, [Florida Coastal] law professor Susan Daicoff put it, on "ways of practicing law and resolving legal disputes that are positive, healing, and humanistic." In addition to more traditional views, the group looked well beyond the legal profession itself, examined holistic solutions, and made a conscious effort to begin searching for better ways of protecting the health of the minds and bodies of lawyers and law students alike. Increasingly, practitioners are discovering ways to practice law that are healthy, healing and rewarding.[44] In April 2003, for example, Touro Law Center sponsored a CLE Conference on *Lawyering and its Discontents: Reclaiming Meaning in the Practice of Law*, which brought together academics, psychologists and practitioners exploring individual and institutional strategies for transforming the practice of law into a healthy and healing profession.

10. Stress, Drug Use, and the Reality of Law Practice. Many lawyers, competitive and driven people, find satisfaction and stress reduction in physical activity, be it aerobics, jogging, mountain biking, basketball, or a myriad of other activities. Many argue that there is nothing like an hour on the stairmaster—or the basketball court—to get stress out of your system. Others choose a more sedentary route: they write, or read voraciously. There are as many healthy ways to reduce stress as there are attorneys who need to do it. The key for all practitioners is finding out the best way for ourselves. Still, it would be simplistic to ignore the reality of a law firm practice, and both the peer pressure and professional pressure it creates. The peer pressure to go out drinking, for example, can be substantial at certain firms, where it can become a way of life for most of the lawyers who practice there. Young associates who do not carefully consider these issues can get swept up into a lifestyle they did not affirmatively choose. Those who are prepared to deal with these questions may fare the best. Still, it is difficult at best to resist the expectations of one's own law firm. Retreats at some firms can turn into late night parties, where it is hard to "just say no" without standing out among your friends and colleagues, or, perhaps worse, your superiors. Many associates report that partners expect them to go out drinking with clients, reminding them that "wining and dining" is what the client wants and expects. Thus, doing this becomes a matter of economic survival rather than strictly a matter of choice.

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[43] John C. Barefoot et al., *The Cook-Medley Hostility Scale: Item Content and Ability to Predict Survival*. 51 PSYCHOSOMATIC MED. 46 (1989). Initially 15.8% of the students scored one standard deviation above the mean score on a hostility measure. When compared to those who scored one standard deviation below the mean, the 15.8% group was 4.19 times more likely to die prematurely of cardiovascular disease.

[44] See, for example, Steven Keeva's excellent book, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (ABA Press 2002). Other related resources, including websites for Therapeutic Jurisprudence and the Renaissance Law Society, can be found in the list of resources at the end of these readings.

It would also be simplistic to say that merely joining the local athletic club or finding a good book will protect all of us from using—and sometimes abusing—drugs or alcohol. First, many lawyers, particularly young associates faced with seemingly insurmountable billable hours requirements, may be too tired, too overworked, or too burned out to always keep their stress-reduction programs in place. Second, many lawyers *like* to have a drink or two when they socialize, and feel, correctly, that it never negatively affects their performance.

Lawyers have at times used illegal drugs as well. Does drug use necessarily impair performance? It's hard to know the answer, at least in the short run. A few years ago, a story circulated in legal circles about a west Coast public defender who on occasion gave herself a "treat" of heroin. She was discovered only when arrested making a drug purchase. Neither her superiors nor the judges before whom she appeared could point to anything negative in her performance as a lawyer. . . .

11. How Should We Treat the Mentally Ill Lawyer? Sometimes the stress of life manifests itself in something even worse than alcoholism or drug addiction. Robert Rowe came back from the abyss—almost literally back from the dead—and tried to regain a place in his former profession. Should he be afforded that opportunity?

DAVID MARGOLICK, AT THE BAR: 15 YEARS LATER, DISBARRED LAWYER CAN'T ERASE HORROR'S STIGMA

The New York Times (May 15, 1993)[45]

One winter morning 15 years ago, a 48-year-old lawyer named Robert T. Rowe simply snapped. As his eldest son lay sleeping, Mr. Rowe killed him with a baseball bat. Then he killed his daughter, and then his second son, in the same grisly way. When his wife returned from work, he bludgeoned her to death as well.

Unable to turn the bat on himself, Mr. Rowe instead turned on the gas stove at his home in Mill Basin, Brooklyn. He was saved from suicide only when neighbors smelled the fumes and called the police.

For Mr. Rowe, a veteran of the Korean War and a graduate of St. John's University Law School, the carnage culminated years of psychological turmoil, brought on primarily by the strain of caring for one son who was deaf and blind and another who suffered from asthma, a congenital hip disease, and other ailments. Having lost his job with an insurance company, failed as a cabdriver and seen his wife reduced to working 16 hours a day, he apparently saw the killings as an act of love, a way to spare his family the humiliation of poverty.

Society first pronounced Mr. Rowe blameless in the killings; in the language of the law, not guilty by reason of mental disease or effect. Then after institutionalizing him for two years and providing him psychotherapy for eight more, it pronounced him cured. But despite an eight-year legal struggle by Mr. Rowe, it will not let him practice law again, as he did for 22 years before what he calls "the incident" or "the tragedy" occurred.

For those who can get past its horrific facts, Mr. Rowe's case raises profound questions about mental illness, punishment and the legal profession. How high a price must someone pay for conduct for which he is found not culpable? When psychiatrists vouch for a patient's recovery, does anyone really believe it? And should public perceptions of insanity—and the courts' fear of those perceptions—govern who is deemed fit to practice law?

In 1978, three months after he was institutionalized, the Appellate Division of the State Supreme Court in Brooklyn suspended Mr. Rowe's law license "for an indefinite period." Twelve years later, a psychiatrist appointed by the same court to examine Mr. Rowe concluded that he made a "complete recovery" and that any risk of recurrence was minor.

"Mr. Rowe is, from the psychiatric point of view, fully able to practice his profession," the psychiatrist, Dr. Henry Pinsker, concluded in 1990.

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[45]

But when Mr. Rowe tried to retrieve his license, the Appellate Division disbarred him instead. "We have taken into consideration the mitigating circumstances advanced by the respondent," it ruled in January 1992, referring to Mr. Rowe. "Nevertheless, the respondent is guilty of serious professional misconduct. Accordingly, the respondent is disbarred forthwith."

Mr. Rowe then took his case to the New York Court of Appeals, the state's highest. Between hearing arguments in the case in October 1992 and deciding it the following month, its own Chief Judge, Sol Wachtler, suffered a mental breakdown of his own and resigned. Still, the court upheld Mr. Rowe's disbarment. Though Mr. Rowe's conduct was not criminal, it held, what mattered was whether it "tended to undermine public confidence" in the bar. "Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society," Richard D. Simmons, then acting Chief Judge, wrote for the court. Now, Mr. Rowe is down to his court of last resort: the United States Supreme Court.

Mr. Rowe, who remarried in 1989, has spent the past 13 years mostly doing volunteer work, teaching children and illiterate adults, working at a hospice in Queens, and studying history and Asian studies at St. John's University. As he recuperates from heart surgery, he paints and earns pocket money doing investigations for lawyers.

Practicing law again, Mr. Rowe said, would mean more than another chance to do what he does best. It would allow him to add another, happier last chapter to his life, to ease things for his 2-year-old daughter when she learns of his past. It would afford him an opportunity to help people in the mental health system, something he has come to appreciate from the inside.

A Blow Against Ignorance

More than anything else, he said, it would strike a blow against what he considers the nation's ignorance—and the bar's hypocrisy—on the subject of mental illness. Mr. Rowe, who has heretofore declined to speak with reporters and still refuses to be photographed, said the legal establishment was unable to acknowledge mental illness in its midst, and was sacrificing him to protect its own battered reputation.

"I had been a lawyer in good standing before the tragedy, and it seemed terribly logical to me that if you become unmentally ill, you'd be reinstated," he said. "But instead of pointing to me, and saying 'One of our own came back,' they went after me as though I were a criminal."

"What is the matter with me?" he said. "What is the matter with me? This thing happened 15 years ago. You can live three lifetimes in 15 years."

. . . .

Mr. Rowe recounts his story matter-of-factly until the topic turned to the killings. "I'm going to start bawling," he said quietly. "Let's not even talk about it. That's four people who aren't here."

Were he reinstated, he said, he would represent clients in the mental health system. "I've been inside some very strange places," he said. "I'd tell them, 'I was there and you can come out of it."'

"I don't know what I'd be taking away from the profession," he said. "The reputation of lawyers is really at the bottom of the pile."

Robert Rowe's story is compassionately portrayed in Julie Salamon's book, *Facing the Wind: A True Story of Tragedy and Reconciliation.*[46] Rowe, who subsequently remarried and had another child, died of cancer in 1997, at the age of 68.

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[46] Random House (2001).

NOTES

If we allow alcoholism to be used as a mitigating circumstance, should we not be more lenient in readmitting an attorney who acted through a mental illness of which he has not been effectively cured? Or is the horror of the act, coupled with the need for the organized bar to maintain the public's trust, sufficient to cause this lawyer's lifetime expulsion?

Some courts have concluded that bipolar (manic depressive) disorder is *not* a mitigating factor warranting relief from disbarment, even though it is a recognized disability under the Americans With Disabilities Act. (See, *e.g.*, *Florida Bar v. Peter Charles Clement*, 662 So.2d 690 (Fla. 1995).) The *Clement* court reached its decision in part on the fact that no doctor could guarantee that Clement wouldn't suffer a relapse.

SUPPLEMENTAL READINGS

1. Patricia Sue Heil, *Tending the Bar in Texas: Alcoholism as a Mitigating Factor in Attorney Discipline*, 24 ST. MARY'S L.J. 1263 (1993), is an extensive evaluation of how and in what ways alcoholism is or is not accepted as a mitigating factor in bar disciplinary proceedings.

2. Nathaniel S. Currall, *Cirrhosis of the Legal Profession—Alcoholism as an Ethical Violation or Disease Within the Profession*, 12 GEO. J. LEG. ETHICS 739 (1999). This excellent law student note argues strongly for treating alcoholism as a disease—and allowing it to be considered a mitigating factor in discipline. For additional articles on whether and to what extent chemical dependency should be considered a mitigating factor in lawyer disciplinary proceedings, see Blane Workie, Note, *Chemical Dependency and the Legal Profession: Should Drugs and Alcohol Ward off Heavy Discipline?* 9 GEO. J. LEG. ETHICS 1357 (1996). (arguing that abuse of alcohol or legal drugs should only be considered a mitigating factor in less serious offenses, such as client neglect, and that illegal substance use should never be considered a mitigating factor.) and Janine C. Ogando, Note, *Sanctioning Unfit Lawyers: The Need for Public Protection*, 5 GEO. J. LEG. ETHICS 459 (1991) (arguing that using mitigating factors fails to adequately protect the public).

3. In *Matter of Schunk*, 126 A.D. 2d 772 (3rd Dept. 1987), the Appellate Division reversed a default judgment suspending attorney Philip Schunk, and, in light of mitigating factors including Schunk's participation in Alcoholics Anonymous and submission to monitoring, imposed a censure. It might be interesting to look at the following related cites; they trace the pattern of misconduct and disciplinary proceedings involving Schunk, resulting from his alcoholism, beginning in 1986 and "ending" with his reinstatement to practice in 1998: *Matter of Schunk*, 123 A.D.2d 480 (3d Dept. 1986); *Matter of Schunk*, 124 A.D.2d 928 (3d Dept. 1986); *Matter of Schunk*, 142 A.D.2d 840 (3d Dept. 1988); *Matter of Schunk*, 148 A.D.2d 877 (3d Dept. 1989); *Matter of Schunk*, 247 A.D.2d 756 (3d Dept. 1998).

4. *In re Solymosy*, 683 N.Y.S. 2d 251, N.Y.A.D. (1st Dept. 1999). The court overruled a hearing panel's recommendation of disbarment of a lawyer who had engaged in client neglect and misrepresentations, and, instead, imposed a four year suspension in light of mitigating factors, including psychiatric evidence.

5. George Edward Bailey, *Impairment, the Profession and Your Law Partner*, 11 THE [ABA] PROFESSIONAL LAWYER, No. 1, p.2 (Fall 1999) presents an excellent overview of the subject, discussing impairment, discipline, mitigation, and the *Kersey* case, the New Jersey no-mitigation rule, and—at some length—how to cope with the impaired lawyer in the law firm setting.

6. For additional empirical work on alcoholism, substance abuse, mental health and legal education, see Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002).

7. *Willner v. Thornburgh*, 738 F. Supp. 1 (D.D.C. 1990). Willner, an attorney who had been offered a job in the Antitrust Division of the Justice Department, objected to the department policy of requiring a drug test for each new employee. The federal district court agreed, and barred the testing.

8. Randall Samborn, *Firms Slowly Come to Grips with Addiction*, NATIONAL LAW JOURNAL, December 10, 1990, describes emerging efforts in the law firm community to deal with the problems of addiction among its own.

9. Does a lawyer have an obligation to help a *client* who is suffering from a drug or alcohol problem? Two practicing attorneys came to opposite conclusions in two 1992 articles. John A. Wasowicz, in the January 1992 VIRGINIA LAWYER, writes that "a lawyer has done a less than adequate job . . . if the problem of addiction is not addressed in the context of the attorney-client relationship." Francis D. Doucette evaluates Wasowicz's reasoning and respectfully disagrees in his article in the May 4, 1992 MASSACHUSETTS LAWYERS WEEKLY, *Advocacy, Ethics and the addicted Client*.

Resources

Where do you turn? Friends, family members and colleagues can play a role in identification and treatment of an addict by becoming familiar with the symptoms of the disease. The organized bar has several alternatives for obtaining assistance.

The New York State Bar Association has a full-time Director of the Lawyer Assistance Program, **Ray López**. He may be reached at: 800-255-0569. **Eileen Travis** is the Director of the Association of the Bar of the City of New York's Lawyer Assistance Program. William Hammond is the Chair of the ABCNY LAP Committee. Both may be reached at (212) 302-5787.

You need not be a bar association member to receive their Free, Confidential advice. All LAP services are confidential under Judiciary Law §499.

Eleven local bar associations have volunteer committees who can provide advice and support to lawyers suffering from alcohol and substance dependency:

Brooklyn Bar Association
Lawyers Helping Lawyers Committee
Sarah Krauss (718) 643-3700

Bar Association of **Erie** County
Lawyers Helping Lawyers Committee
Katherine S. Bifaro (716) 852-8687

Monroe County Bar Association
Lawyers Concerned for Lawyers Committee
John Crowe (585) 234-1950

Nassau County Bar Association
Lawyer Assistance Program Committee
Henry Kruman (516) 599-6420
Kathy Devine 24 hour crisis hotline (888) 408-6222

New York County Lawyers Association
Committee on Substance Abuse
Andral Bratton (212) 401-0748

Oneida County Bar Association
Lawyer Assistance Committee
Tim Foley (315) 733-7549

Onondaga County Bar Association
Lawyer to Lawyer Committee
Kenneth Ackerman (315) 233-8203
or Noreen Shea (315) 476-3101
Family Service Associates (315) 451-3886

Queens County Bar Association
Committee on Alcohol and Substance Abuse
David Dorfman (917) 256-0355
or Lori Zeno 718-261-3047 ext. 517

Schenectady County Bar Association
Lawyer Assistance Program Committee
Vincent Reilly (518) 388-4350

Suffolk County Bar Association
Committee on Alcohol and Substance Abuse
Richard Reid (631) 286-3560
24 hour crisis hotline (631) 697-2499

Westchester County Bar Association
Committee on Alcohol and Substance Abuse
John Keegan, Jr. (914) 949-7227

On-line Resources

General:

http://www.abanet.org/legalservices/colap

Website for ABA Commission on Lawyer Assistance Programs. Contains links to LAP programs nationwide.

http://www.alcoholics-anonymous.org/

Headquarters website for Alcoholics Anonymous (AA). Offers information about their methods for recovery and how their meetings work. The site also includes a scored test with signs that may indicate an addiction problem.

http://www.marijuana-anonymous.org/

Marijuana Anonymous world services page. Describes the twelve steps of the program. Twelve questions to determine a problem. Includes listing of online and in person meetings.

http://www.wsoinc.com/

Narcotics Anonymous world services site. Basic information about the program. Links to local service websites.

http://www.ca.org/

Cocaine Anonymous world services website. Group is for users of all types of cocaine as well as other mind-altering substances such as alcohol, marijuana, and heroine. Includes a self-test for cocaine addiction.

http://www.crystalmeth.org/

Crystal Meth Anonymous. Recovery group specifically for users of crystal meth. Uses AA type twelve-step program.

http://www.draonline.org/

Dual Recovery Anonymous. Twelve step program for people with chemical dependency and emotional or psychiatric illness. Frequently asked question section with information dual recovery in general.

http://www.ilaa.org/

International Lawyers in Alcoholics Anonymous. Includes a listing of some open meetings in New York State.

http://www.hazelden.org

Website of the Hazelden center, a drug and alcohol treatment facility. Started in Minnesota currently with five treatment locations around the country. Information on assessment of a problem, including a four question self test. One section gives good information, unspecific to Hazelden center, about breaking through denial, what happens in treatment, alcohol poisoning and the risks of liver disease. Under resources there is also a section for those who need immediate help. This links to various hotlines such as the Hazelden information specialist hotline, suicide hotlines, and state crisis hotlines.

http://www.al-anon.alateen.org/

Al-Anon/Alateen headquarters site. Recovery for adults and young adults who have been affected by a family member's addiction. Self-quizzes to decide if the organization is right for you. Includes explanation of the twelve step method and meeting locator.

http://www.therapeuticjurisprudence.org/

Website for International Network on Therapeutic Jurisprudence (TJ). TJ is an approach that concentrates on the law's impact on emotional health and psychological well-being. Contains numerous resources and links to related cites that focus on law as a healthy, healing profession.

http://www.renaissancelawyer.com

Renaissance Lawyer Society promotes law as an instrument of innovation and transformation. Links to numerous related organizations, and publishes an on-line newsletter of announcements, events and training sponsored by these organizations.

New York Specific Resources:

http://www.nylat.org

Website for New York State Lawyer Assistance Trust. Contains links to LAP programs and resources throughout the state.

http://www.ma-newyork.org

Marijuana Anonymous of New York. General information about the twelve-step program as well as listings of meetings in the New York area. Also includes other marijuana anonymous links.

http://www.theagapecenter.com/AAinUSA/New-York.htm

Extensive list of links to New York Area AA groups.

http://www.nynaranon.org/

New York area Nar-Anon for families of addicts. Includes meeting times and places in the New York area as well as information on the group's twelve step program and question to determine if the group is right for you.

Preparation of this material was supported by a grant from the New York State Lawyer Assistance Trust

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 ($\beta = 0.52$, 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				
	n	M	SD	Problematic %*	P**
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%	
31–40	2877	5.84	4.86	25.1%	
41–50	2345	4.99	4.65	19.1%	<0.001
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%	
11–20	2523	5.02	4.66	19.2%	
21–30	2272	4.65	4.43	15.6%	<0.001
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%	
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%	<0.001
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%	
Junior associate	964	6.42	4.57	31.1%	
Senior associate	938	5.89	5.05	26.1%	<0.001
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		1472	2.62	3.18		1472	5.54	4.61	
31–40	3112	3.96	4.50		3113	2.43	3.15		3107	5.99	4.31	
41–50	2572	3.83	4.54	<0.001	2565	2.03	2.92	<0.001	2559	5.36	4.12	<0.001
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		4314	2.51	3.13		4322	5.82	4.24	
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	<0.001	2509	1.67	2.59	<0.001	2498	4.46	3.79	<0.001
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		5029	2.01	2.85		5027	5.11	4.06	
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	<0.001	901	1.84	2.80	<0.001	898	4.74	3.97	<0.001
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		121	2.10	2.88		121	4.68	3.81	
Junior associate	1034	3.93	4.25		1031	2.73	3.31		1033	5.78	4.16	
Senior associate	1021	4.20	4.60	<0.001	1020	2.37	2.95	<0.001	1020	5.91	4.33	<0.001
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 M (SD)	Problematic* M (SD)	P**
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 geolocation 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 New York State Lawyer Assistance Program
Volunteer Manual

2017

LAP VOLUNTEER MANUAL RESOURCE PAGE

This is an area for volunteers to centrally locate their frequent and useful contacts.

My LAP Contact: _____

_____

_____

My local Bar Association: _____

_____

_____

My LHL Contact(s): _____

_____

_____

_____

_____

My Grievance Contact (s): _____

_____

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Foreword

This manual has been written for use by the programs and committees that make up the Lawyer Assistance effort in New York State – helping lawyers, judges, law school students who are affected by the problems of substance abuse, gambling and other addictions, as well as depression, anxiety and other mental health conditions. Through prevention, early identification, and intervention, problems that can affect the professional conduct of judges and the quality of life of lawyers, students and can be addressed. The users of this manual include lawyers in recovery and others who form the front lines of the Lawyer Assistance Program (LAP) effort, the numerous local bar association lawyer assistance or lawyer-helping-lawyer committees, LAP staff, and those members of the legal community who seek to support the important work of LAPs.

It is imperative that LAP service delivery throughout New York State be consistent. New York State is geographically large-spanning four Judicial Departments, thirteen judicial districts, and sixty-two counties over 54,000 square miles. The state is also a mix of very urban to very rural where the attorney population of a single urban firm can surpass that of several rural counties combined. New York ranks first in the nation in terms of the number of licensed lawyers (2015). In addition, the 2016 uniform Rules for Attorney Disciplinary Matters recognize the option for referring attorneys for treatment and monitoring by a court-approved program.

This manual contains information regarding LAPs and committee structures, LAP staff and member/volunteer qualifications and attributes, volunteer training programs, confidentiality, HIPAA consent forms, and subpoenas. It also includes overviews of Diversion and Monitoring and LAP history, as well as references for such resources as educational presentations to the bar and bench, including Continuing Legal Education (CLE) programs and modules.

In 2014, The Office of Court Administration provided a grant to the New York State Bar Association's LAP to support the development of this project. Those with a historical perspective may see this work as following in the wake of the New York Lawyer Assistance Trust, an initiative of the Unified Court System in place from 2001-2011, which worked to bring statewide resources and awareness to the prevention and treatment of substance abuse, and mental health problems among members of the legal profession. The Trust itself was the primary recommendation of the Bellacosa Commission.

Table of Contents

CHAPTER 1: Lawyer Assistance Program Goals and Guiding Principles

LAP goals are:

- To assist in the identification of lawyers who may benefit from LAP services.
- To assist those individuals in their personal recovery from addiction disorders and/or mental health conditions that impact competent practice of their profession and/or their quality of life.
- To educate the legal community on the identification, assessment, referral, treatment and community-based resources available to meet the needs of affected judges, lawyers and law students.
- To provide a network of trained volunteers who are available to respond to the needs of New York State lawyers, judges and law students through peer assistance.
- To provide monitoring for lawyers when indicated.
- To maintain a cooperative relationship with the Office of Court Administration, the Board of Bar Examiners, Disciplinary Committee staff, and Law School Student Services personnel, along with the legal community at large, to raise awareness and facilitate the implementation of LAP goals.

LAPs guiding principles are:

- The program is motivated by a humanitarian concern for and commitment to the legal community and protection of the public.
- Substance abuse and other addictions, and mental health problems are treatable conditions that should not be ignored.
- Impaired lawyers and judges are obligated to seek assistance and to participate in services necessary to renew their effectiveness as a lawyer or judge.
- All lawyers and judges should be able to recognize the signs and symptoms of a colleague who may be impaired, should have a willingness to act, and to be able to assist the colleague in accessing appropriate services.

At the LAP, the Director and Committee members are available to support legal professionals in achieving their optimum level of professional ability, while enhancing public protection and helping to maintain the integrity of the profession. Recognizing that it is often difficult to reach out for help during difficult times, especially about a very private matter, the LAP Director and Committee members promise confidentiality – no information about an individual's participation in the Lawyer Assistance Program is released without the individual's consent. Participation is confidential as mandated by Judiciary Law §499.

The LAP Director and staff provide assessments to determine the nature and severity of an individual's presenting problems and develop a plan to help that individual get the most appropriate help available, whether it is for substance abuse, gambling or other addictive disorders, or depression, anxiety or other mental health problems.

The LAP also offers educational programs and CLE presentations which include information about substance abuse, depression, stress, other issues lawyers face and the services of the LAP to local, statewide and specialty bar associations as well as to law firms, and the judiciary.

Individuals may contact the LAP for more information about available services or to arrange for a presentation at a law firm, government agency, law school, local or specialty bar association, or to the judiciary.

Contact information:

For the State Bar Association LAP call 800-255-0569 or send a message to lap@nysba.org. Catchment area: All counties North of Westchester.

For the NYC Bar Association LAP call 212-302-5787. Catchment area: The Burroughs and Westchester County.

For the Nassau County Bar Association LAP call 888-408-6222. Catchment area: Suffolk and Nassau Counties.

CHAPTER 2: The Program and Committee Structure

Not surprisingly, New York is not typical in regards to Lawyers Assistance. Many states have a single entity that licenses attorneys, oversees discipline, and supports lawyer assistance efforts. However, in New York State, the Office of Court Administration serves as the licensing entity and The Grievance Committee attends to disciplinary matters. Several county Bar Associations have provided financial and committee support for lawyer assistance staff and committee efforts.

The New York State Bar Association (NYSBA) and the New York City Bar Association (NYC Bar) both have full-time staff Directors, and the Nassau County Bar Association has a part-time LAP Director. As funding has been available periodically via grants, NYSBA and the NYC Bar have retained additional staff to enhance LAP services.

NYSBA, NYC Bar and the Nassau County Bar each have Lawyer Assistance Committees that support, facilitate and implement the LAP work. Lawyer Helping Lawyer Committees have been organized by bar associations in these boroughs, counties or regions: Brooklyn, Capital District (covering Albany, Rensselaer, Saratoga, and Schenectady); Duchess, Erie, Jefferson, Monroe, Oneida, Onondaga, Queens, Richmond, Rockland, Suffolk, Southern Tier (covering Broome and Tompkins), and Westchester. While there are numerous specialty bars, they have not established Lawyer Helping Lawyer (LHL) Committees, although many specialty bar associations have sponsored LAP-related educational and CLE programs.

For a local bar association seeking to sponsor an active LHL Committee, the following support system is most useful:

- A local bar association staff presence to provide support to the Committee.
- A supportive bar association executive committee.
- A threshold population from which to draw volunteers.
- A group of interested lawyers in recovery to spark the formation of the committee and assist in attracting members.

Funding for Local Committees:

Expenses for a local bar association's proposed LHL Committee are limited, although member dues may cover some costs, for example. A few counties (Erie, Nassau, and Suffolk) have foundations affiliated with the bar associations that conduct fundraising through various means, and a portion of their funds are designated for LHL purposes.

American Bar Association:

The American Bar Association has a "Commission on Lawyer Assistance Programs" (known as CoLAP), which serves as a clearing house for information, best practices, and collegiality for lawyers and LAP staff involved in the lawyer assistance effort nationwide. See the directory at the ABA link below for additional information regarding the "Model LAP," other states' (and

Canadian) programs, and contact information. CoLAP meets periodically and hosts an annual conference at venues around the United States and Canada.

ABA LAP Directory
ABA Model LAP

International Lawyers in Alcoholics Anonymous (ILAA)

International Lawyers in Alcoholics Anonymous is a group of recovered lawyers and judges carrying the message of recovery within the legal profession. Their purpose is to act as a bridge between reluctant (in denial) lawyers/judges and Alcoholics Anonymous. ILAA annual meetings often coincide with CoLAP Conferences.

CHAPTER 3: Staff and Committee Member/Volunteer Qualifications and Roles

Staff:

When NYSBA, the NYC Bar, and the Nassau County Bar hired its Directors, it sought individuals with addiction and mental health qualifications. The ABA Model LAP suggests that a lawyer or person in recovery might provide special insights to the Director role however; this is not required to fulfill the duties of this position. Each bar association may use their discretion and determination of programmatic needs when hiring for this position.

Committee Members and Volunteers

Beyond professional staff, individuals involved in the Lawyer Helping Lawyer movement may be referred to as Committee members, volunteers, or peer assistants. Many individuals on regional Lawyer Helping Lawyer (LHL) Committees prefer not to be considered "volunteers" in this worthy cause, but rather, as "members." For ease of drafting, these guidelines will more often use "volunteer" as that is the more typical characterization used by LAPs throughout the United States.

Most LHL volunteers are attorneys and judges and, occasionally, law students, who may share their personal experience of recovery from addiction or mental health treatment to provide support for their peers to get help. Other volunteers are attorneys and/or judges who are not in recovery, but simply want to help in whatever way they can to make a positive contribution to their profession. Many volunteers find that sharing their own experiences results in the enhancement of their own recovery, whether from an addiction, mental illness or some other struggle. Volunteers support the efforts of the professionally staffed LAPS and the LHL Committees.

Such support is appropriate to help a person who recognizes that he/she has a problem and requests help. LAP staff tries to match, when possible, attorneys seeking assistance with trained volunteers who share similar demographic or other characteristics.

Volunteers as Educators

LAP staff and volunteers provide education to the legal profession on a variety of issues, including: addiction, mental health, stress management, the work/life balance, and the role of the law firm or judiciary in addressing such issues. LAP offers presentations for CLE credit or no credit to county and specialty bar associations, law schools, legal organizations, and the judiciary.

Volunteers as NYSBA Lawyer Assistance Committee Members

The NYSBA Lawyer Assistance Committee consists of NYSBA members who are knowledgeable and interested in the goals and objectives of the Committee and the LAP.

The Committee makes recommendations regarding LAP policy and assists in implementing important aspects of the program throughout the state. Committee members assist in developing a state-wide network of trained volunteers and professionals who provide support to attorneys in need of assistance. The LAP can also address operational and marketing aspects of all LAP programs, and develop and participate in educational programs and CLE presentations. The NYSBA Lawyer Assistance Committee meets quarterly and organizes sporadic regional meetings.

Volunteers as a LAP Monitor

The Supreme Court's Appellate Divisions, the Committees on Character and Fitness, and the Commission on Judicial Conduct refer individuals to the LAPs with the understanding he/she will enter into a Monitoring Agreement with the LAP as part of an Order, Consent Decree or Consent Agreement with the discipline or bar admission body. The Monitor's primary role is to have regular contact with the monitored attorney, determine the person's compliance with the conditions of the Monitoring Agreement, and complete and submit a monthly progress report to the LAP Director. The Monitor is not a friend or sponsor and is not expected to ensure the person complies with the conditions. If the Monitor learns of a breach of any of the Monitoring Agreement requirements, the Monitor is expected to immediately report the breach to the LAP Director who will inform the appropriate disciplining or bar admission body. See Chapter 9 for more details.

Volunteer Training Required

NYSBA's LAP, NYC Bar's LAP, and the Nassau Bar's LAP offer volunteer training programs, so that LHL groups, the LAC and Monitors will understand the services to be provided.

What training topics include: applicable court rules and statutes, confidentiality, the disciplinary and bar admission processes, as well as information regarding the identification of addiction and mental health disorders-including suicide. In addition, there is training regarding appropriate boundaries for volunteers and monitors, specific protocols for drug testing, attendance at self-help groups, and treatment programs and/or professionals and the importance of ongoing communication with the LAP Directors.

Volunteers are expected:

- To fully understand the LAP, its protocols and guidelines.
- To acquire a foundation of knowledge regarding the philosophy and concepts which form the basis for peer assistance.
- To develop the capability for providing peer assistance to legal colleagues and their families.
- To be familiar with the signs and symptoms of addiction and mental health problems.
- To be familiar with a risk and harm assessment and reduction.

Guidelines for Volunteers

Volunteers are expected to be aware of the following possible problem areas:

Boundaries: Volunteers may get confused regarding the boundaries of being a volunteer as their relationship with a lawyer seeking assistance begins to develop. Lawyers seeking help may want to engage in other forms of relationships with their lawyer volunteer other than the LAP peer support role. This can cause confusion for lawyers seeking help who may need continuing assistance. In short, a LAP volunteer is a mentor and a support, *NOT* a friend and it is important to make that distinction.

Confusion of Roles: Sometimes volunteers themselves are doing twelve step work as well as volunteering within the LAP. Volunteers need to be vigilant to keep the roles separate, as the programs are separate and not meant to be integrated.

Feelings of Failure: Misplaced self-criticism and blame can occur when a conversation or intervention does not succeed, or when a peer assistance assignment does not work out as well as intended. LAP Volunteers are not responsible for the behaviors and choices of the attorney they are mentoring.

De-focusing and Projection: Sometimes being overly involved in the lives and problems of others is a way of avoiding your own issues. This can result in placing your own values and beliefs about stability or recovery upon another person. It is important to be mindful of this.

Burnout and Compassion Fatigue: Lethargy and/or disillusionment that can result from too much helping, or from having unrealistic expectations.

To maintain a healthy balance, volunteers may:

LAP strives to help each lawyer seeking assistance to make healthy decisions, which may result in increased stability, increased quality of life, and continued well-being. Trust your own thoughts and feelings about your LAP work, discuss them with other volunteers and LAP staff as a way to stay balanced and gain alternative perspectives. Remember, self-awareness is your greatest tool when assisting others. Be vigilant and comfortable with the differences between the LAP Volunteer Assistance role and the role of the twelve step sponsor or someone doing twelve step work within a recovery environment.

A volunteer should never accept a LAP assignment that he or she is not comfortable with, or with an individual they are in a personal relationship with, or have a current legal case involving the lawyer who is seeking assistance. If any of these circumstances arise, the volunteer must immediately bring the matter to the attention of the LAP Director.

The effectiveness of any volunteer work for LAP is never to be gauged by whether a particular peer consultation or critical conversation results in the lawyer in need of assistance obtaining an assessment, entering treatment, "getting or staying clean and sober," or otherwise stabilizing. Volunteer work is deemed to be effective whenever a lawyer in need of assistance has been shown, through the caring, personal concern of a LAP volunteer, family member or colleague, that they are never alone in combating an illness or trouble in their life. Even in the case where assistance is rejected outright by the lawyer in need of assistance, the most frequent result is that a "seed" of hope for not having to do it alone has been "planted"; that person may later seek help through LAP or through some alternative resource.

Furthermore, the assistance LAP provides to the family members and colleagues of an attorney is deemed to have been successful even if LAP efforts have merely instilled some confidence in those concerned individuals, and illustrated they have made their best efforts to do what they could to help themselves and/or the troubled attorney.

<u>AA Sponsorship and LAP Volunteer Services: What are the differences?</u>

- **The AA Sponsor**

The role of the AA sponsor is to pass on the program of Alcoholics Anonymous, which they have personally experienced, by following the guidance found in the book, ALCOHOLICS ANONYMOUS: The Story of How Many Thousands of Men and Women Have Recovered from Alcoholism (generally known as The Big Book.) They follow the ideas, techniques, methods and suggestions that are those of Alcoholics Anonymous. In AA, it is up to the newcomer to seek a sponsor.

A sponsor is someone whose quality of recovery is appealing and who a newcomer may want to emulate.

How does an AA sponsor present the AA plan to a newcomer?

- Qualifies him/herself as an alcoholic who has found happiness, contentment, and peace of mind through AA.
- Tells his/her personal story.
- Inspires confidence in AA and the application of AA principles.
- Explains the necessity of reading *The Big Book.*
- Introduces belief in a Higher Power, described as being a force greater than oneself.
- Listens to the newcomer's story.
- Takes the newcomer to meetings and allows him/her to choose a group to join.
- If appropriate, explains AA to the newcomer's family. (*Snyder, Clarence, AA Sponsorship Pamphlet (1944))*

- **The LAP Volunteer**

LAP recognizes that a wide range of concerns can detrimentally influence a lawyer's performance. These may include problems with alcohol and or drugs, physical illness, emotional problems, grief, lack of career success, personal/professional life balance, or caregiving. A volunteer's primary goal is to provide support-which varies from person-to-person. LAP staff is always available to facilitate the peer support relationship and assist/support the volunteer.

The role of the substance abuse volunteer and that of the mental health volunteer are likely to differ. Those who are providing support to an attorney who is entering recovery or in need of additional care in the midst of recovery may accompany said individual to AA meetings, suggest readings and other recovery tools. Those providing assistance to the attorney who is struggling with depression or other mood issues may encourage the person in need to engage in, or accompany them to, activities that promote socialization and community reintegration. Also recommended is encouraging them to discuss their feelings and thoughts with their clinician and/or prescriber. Individual cases can be discussed with LAP for guidance.

Volunteer Process and Tips:

- When LAP staff receives the initial call from an attorney seeking assistance, the staff person will do an assessment of issues presented and a risk assessment for harm to the individual or others, and explore legal problems and/or disciplinary problems. The LAP staff will make referrals to volunteers, along with recommendations.

- The LAP volunteer calls the lawyer in need of assistance. When leaving a voicemail, the volunteer identifies him or herself by name with a message they are returning a call. For purposes of confidentiality, the volunteer should not state on voicemail that he/she is a LAP volunteer. Inform the lawyer in need of assistance why you are contacting them and remind them of the privileged confidentiality of all LAP communications. Do not disclose the source of the referral unless you have permission to do so. Emphasize that your only purpose is to be of assistance to them.

- LAP volunteers may communicate with lawyers in need of n to offer support, guidance and resources. The program recommends that volunteers meet in a safe environment such as the LAP office or a public setting (restaurant, library, etc.) Volunteers are discouraged from going to the home of the lawyer needing assistance, or to an isolated area where safety cannot be insured. Volunteer safety is given equal weight within the program to client safety. Always keep the LAP office appraised of the outcome of your contacts.

- When engaging a lawyer in need, focus on what the lawyer sees as the problem and what

they would like to change. Actively listen and share your own experience (if/when appropriate), along with strength and hope. If you believe your objectivity is lost, or the experience is too draining, contact the LAP office for assistance.

- Avoid discussions pertaining to diagnoses and if this does arises, remind the person in need that you are not a diagnostic professional. Instead, offer a specific solution such as: being assessed by a treatment professional, attending a meeting, seeing a primary care physician, or changing a behavior.

- Be consistent. Always follow through with resources you offer or meetings you agree to attend. Do not make promises you cannot fulfill.

- LAP volunteers do not engage in romantic and/or sexual relationships with lawyers in need of assistance.

- LAP volunteers do not engage in business relationships with lawyers in need of assistance.

- The LAP volunteer **always** notifies and consults with the LAP Director for (but not limited to) the following situation: when the lawyer in need of assistance is a danger to self or others (suicidal, homicidal) or exhibits difficult or problematic behaviors. Also, the volunteer should consult with the LAP Director when the lawyer's problems are outside the scope of the volunteer's training or comfort level; when there is a conflict of interest with the lawyer; or when a critical conversation/ intervention is requested or recommended.

CHAPTER 4: LAP SERVICES

LAP referrals come from such sources as:

- Self-referrals, family and colleague referrals through a toll-free phone line, the LAP business line, the website or through LAP Volunteers.
- Formal referrals from the Committees on Character and Fitness or the Disciplinary Committees of the four departments.
- Attorneys representing bar applicants or attorneys in character and fitness or disciplinary matters.
- Judges concerned about an attorney appearing before them or another judge.
- Treatment professionals and treatment programs seeking additional support for lawyers in their care.

LAP services are provided by LAP staff and trained volunteers. Services include:

Consultation and Assessment: Consultation and assessment by LAP staff to determine the nature and severity of the presenting problem(s).

Short Term Supportive Counseling: LAP staff may provide support and guidance that bridge between the initial call and meeting with a treatment provider. The LAP staff may help identify affordable treatment options, discuss payment options, and other logistical issues.

Information and Referrals: LAP provides information on substance abuse issues, mental health problems and other social problems that may impact functioning in an attorney's personal and professional life. Referral options and recommendations are discussed with clients regarding appropriate treatment practitioners and organizations and self-help groups.

Volunteer Assistance: LAP staff attempt to match clients with trained volunteers who share similar demographic or other characteristics. These LAP volunteers provide confidential peer support to clients who identify a problem and request to meet with a colleague who has successfully managed a similar problem and can offer support and guidance. Peer assistance is also available to colleagues and family members.

Interventions/Critical Conversations: This group process is initiated by family, friends or colleagues with the objective of reaching out to their colleague or loved one. The goal is to express current, objective concerns and encourage the person to seek an assessment or other form of help. LAP has a well-defined protocol for participating in these critical conversations, which are conducted with clinical oversight from the LAP Director.

Educational Presentations: LAP staff and volunteers provide education to the legal profession on issues of addiction, mental health, work/life balance and a variety of other topics. The program does presentations for CLE credit or no credit to county bar associations, law schools, legal organizations, and the judiciary at conferences and other venues.

Initial, Direct Calls to LAP Volunteers: LAP Volunteers are to report to the LAP Director all calls received directly from attorneys, judges or family members seeking LAP help. Volunteers may handle these calls themselves, as appropriate, providing peer assistance, or the LAP Director may assign these matters to other volunteers.

Interventions/Critical Conversations**:** The LAP Director will determine whether the LAP will participate in the intervention or refer it to another resource. If LAP is considered appropriate and available to coordinate the intervention, the LAP Director serves as the chairperson for the intervention or consults with an appropriate LAP intervener who agrees to coordinate the intervention process. Interveners are matched for effectiveness and similar demographic characteristics. An effort is made to have experienced interveners work with those who are less experienced, to provide a learning environment for our newer volunteers.

Reports: The leader of each intervention team should maintain informal contact with the LAP Director regarding any need for additional help or consultation, the progress of the intervention preparations, in general, and assessment/treatment referrals for the family/colleagues or person of concern.

Follow-up: The LAP Director will be available to all clients, when appropriate, following an intervention. LAP will offer services to the person of concern or LAP may continue to work with the family and/or colleagues.

CHAPTER 5: Confidentiality, HIPAA, and Subpoenas

This chapter will address what records, if any, that LAP committees should keep, what information LAP volunteers should share with others, and confidentiality or immunity protections there are for LAP volunteers.

The New York Judiciary Law - Section 499

> 1. **Confidential information privileged**. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privilege may be waived only by the person, firm or corporation, which has furnished information to the committee.
>
> 2.**Immunity from liability**. Any person, firm or corporation in good faith providing information to, or in any other way participating in the affairs of, any of the committees referred to in subdivision one of this section shall be immune from civil liability that might otherwise result by reason of such conduct. For the purpose of any proceeding, the good faith of any such person, firm or corporation shall be presumed. (Added L. 1993, c. 327, §1)

Confidentiality of LAP Communications: Immunity in the course of official duties

All communications with an assistance committee, LAP staff, or volunteer, and all records of LAP assistance to a person are to be kept confidential and shall not be disclosed, except:

- With the consent of the person provided assistance.
- When required as a condition for monitoring.
- In circumstances where the client may be suicidal or homicidal. This may also result in a NYS Safe Act report.
- If the client discloses information pertaining to the abuse or potential abuse of a child.
- When reporting is mandated by other law.

LAP communications are privileged and the program has immunity according to Judiciary Law §499, noted above.

LAP keeps no long-term records on individuals seeking assistance, although demographic data is collected, which remains anonymous. LAP volunteers are asked to keep track of the number of contacts and time spent in delivering services to clients.

LAP Resources:
LAP maintains a list of LHL Committees that includes contact information for LAP volunteers

and committee members. In addition, LAP compiles information regarding treatment resources, representatives of bar associations and legal organizations. This information is not shared within the LAP, NYSBA or with any other organization.

Internal Process:

Office Calls and Helpline Calls: The NYSBA LAP Director responds to calls received through the office line or helpline Monday through Friday from 8:00 am through 4:00 pm. Messages and emails are also monitoring on weekends and holidays.

The NYC Bar and the Nassau County Bar LAP Directors provide 24/7 helplines.

CHAPTER 6: Law Firm Model Policy regarding LAP Matters

In 2010, the New York State Bar Association House of Delegates adopted a resolution regarding addressing the issue of impairment among legal professionals, as follows:

> WHEREAS, the New York State Bar Association is committed to assisting persons in the legal profession who are dealing with impairment issues that affect job performance; and
>
> WHEREAS, practice management studies have demonstrated that early intervention and treatment of law firm or legal department professionals can assist a firm or department to avoid negative consequences that can result from a failure to deal with impairment and to protect the interests of the clients; and
>
> WHEREAS, the New York State Bar Association's Lawyer Assistance Committee has developed a "Model Policy for Law Firms/Legal Departments Addressing Impairment" ("Model Policy") to assist law firms and legal departments in addressing impairment issues;
>
> NOW, THEREFORE, IT IS
>
> RESOLVED, that the New York State Bar Association encourages law firms and legal departments to develop appropriate policies, tailored to their own needs and purposes and the needs and interests of the clients, to address impairment issues; and it is further
>
> RESOLVED, that the Association hereby approves the Model Policy as a voluntary guide for law firms and legal departments to use in developing their own specific policies for legal professionals, and to encourage development of policies with respect to other employees; and it is further
>
> RESOLVED, that the officers of the Association and the Lawyer Assistance Committee are hereby authorized to distribute and promote the Model Policy and to take such other and further action as they may deem appropriate to implement this resolution.

CHAPTER 7: Diversion and Monitoring

In December 2015, then Chief Judge Jonathan Lippman announced the adoption by the four Departments of the New York State Supreme Court, Appellate Division, of new uniform statewide rules to govern New York's attorney disciplinary process, to take effect in 2016. The new rules, which provide for a harmonized approach to the investigation, adjudication and post-proceeding administration of attorney disciplinary matters were approved following public comment and upon recommendation of the Administrative Board of the Courts. They are promulgated as Part 1240 of the Rules of the Appellate Division (22 NYCRR Part 1240).

Pertinent to the discussion on diversion and monitoring is the following subsection:

§1240.11 Diversion to a Monitoring Program

"(a) When in defense or as a mitigating factor in an investigation or formal disciplinary charges, the respondent raises a claim of impairment based on alcohol or substance abuse, or other mental or physical health issues, the Court, upon application of any person or on its own motion, may stay the investigation or proceeding and direct the respondent to complete an appropriate treatment and monitoring program approved by the Court. In making such a determination, the Court shall consider:

(1) the nature of the alleged misconduct;

(2) whether the alleged misconduct occurred during a time period when the respondent suffered from the claimed impairment; and

(3) whether diverting the respondent to a monitoring program is in the public interest.

(b) Upon submission of written proof of successful completion of the monitoring program, the Court may direct the discontinuance or resumption of the investigation, charges or proceeding, or take other appropriate action. In the event the respondent fails to comply with the terms of a Court-ordered monitoring program, or the respondent commits additional misconduct during the pendency of the investigation or proceeding, the Court may, after affording the parties an opportunity to be heard, rescind the order of diversion and direct resumption of the disciplinary charges or investigation.

(c) All aspects of a diversion application or a respondent's participation in a monitoring program pursuant to this rule and any records related thereto are confidential or privileged pursuant to Judiciary Law §§90(10) and 499.

(d) Any costs associated with a respondent's participation in a monitoring program pursuant to this section shall be the responsibility of the respondent."

Monitoring as part of LAP:

LAP works with trained volunteers to monitor these agreements, and thereby advance not only the system of discipline in our profession, but also help individuals find recovery. To apply to become a LAP Monitor, contact the LAP Director in your area. LAP and LHL Committee members/volunteers may be trained as Monitors if they desire to do so, however, it is not a requirement.

For those who are interested in performing the monitoring function as contemplated in the Diversion rules, know that participation in Monitor Training is a minimum requirement to serve in this capacity. Monitors serve a specialized role as they report progress of the attorney who has agreed to have information released to others regarding their rehabilitation. Monitors need to be willing to reveal noncompliance, as well as compliance, as monitored attorneys are often under strict provisions to achieve reinstatement, maintain or obtain their license to practice law.

CHAPTER 8: History of Lawyer Assistance in New York State

Adapted from "Going Up River: Lawyer Discipline, Lawyer Assistance and the Legal Profession's Response to Lawyer Alcoholism" by Barbara F. Smith, then NYLAT Director; published in NYSBA *Government, Law and Policy Journal* Fall 2010 Vol. 12 No. 2; Note, NYLAT was not funded in 2011, and it closed. This article's references to NYLAT as an ongoing program were accurate at the time written; certain amendments have been made to reflect circumstances as of 2016.

The history of the lawyer assistance movement necessarily is linked to the creation and expansion of the Alcoholics Anonymous movement in the United States. Alcoholics Anonymous— "AA"—as it is known, began in 1935 in Ohio, with the meeting of two alcoholics – Bill W. and Doctor Bob S. Dr. Bob, responding to Bill's concept that "alcoholism was a malady of mind, emotions and body," had not known alcoholism to be a disease, but responding to Bill's ideas, he pursued sobriety. By 1939, the three founding groups, in Akron, Cleveland and New York, had approximately 100 sober alcoholic members.

In 1939, the basic textbook, *Alcoholics Anonymous*, commonly referred to as the "Big Book," was published, explaining AA's philosophy and methods, the core of which was the now well-known Twelve Steps of recovery. Thanks to the circulation of the Big Book, publication of articles about AA, and the proliferation of AA groups, by 1950, 100,000 recovered alcoholics could be found. Seventy-five years after AA's founding, in 2010, the AA General Services Office reports more than 1.2 million AA members in the United States, participating in more than 56,000 groups; and, worldwide membership totaling more than 2.1 million, in more than 115,000 groups. By sharing their "experience, strength and hope," this fellowship of individuals has as its primary purpose "to stay sober and help other alcoholics achieve sobriety."

The early history of "lawyer assistance" in the United States is largely the story of individual attorneys, themselves in recovery, who brought the message to other lawyers needing help. These charismatic leaders played a vital role in the founding of Lawyer Helping Lawyer Committees, which first developed in New York State's metropolitan areas where sufficient lawyers in recovery supported their founding. By 1976, New York and Canadian attorneys in recovery met in Niagara Falls, Canada at an event that has since become known as International Lawyers in Alcoholics Anonymous (ILAA); they continue to hold annual meetings throughout the U.S. and Canada. In 1978, Ray O'K, an attorney from Westchester County, was appointed by the NYSBA as Chair of a Special Committee created to address the problem of lawyer alcoholism and drug abuse. He wrote to the president of the sixty-two county bar associations to form local Lawyer Helping Lawyer Committees.

In the late 1980's, as the Special Committee's visibility increased, and the numbers of lawyers seeking assistance continued to grow, the Committee petitioned NYSBA to hire an individual to direct the program and provide initial assessments and referrals for treatment. Ray Lopez, the first NYSBA Lawyer Assistance Program Director, came on board in 1990, and a major early success for the Program and Committee was the enactment of section 499 of the Judiciary Law, which grants confidentiality to communications between Lawyer Assistance Committee

members or its agents and lawyers or other persons. In 1999, the Association of the Bar of the City of New York created its own Lawyer Assistance Program and hired Eileen Travis as its Director. The Nassau County Bar Association has had part-time LAP Directors for the last two decades;(name of first director should be included and next was Kathy Devine, prior to Peter) in 2010* the Director was Peter Schweitzer (succeeded by Beth Eckhardt in 2015). In 2005, Patricia Spataro became the staff Director of the NYSBA Lawyer Assistance Program, now succeeded by Susan Klemme in January 2017.

Institutionally latest on the scene was the New York Lawyer Assistance Trust, created in 2001 as an initiative of the Unified Court System, following the recommendation of the Commission on Alcohol and Substance Abuse in the Legal Profession. The Trust [or "NYLAT"] mission was to bring statewide resources and awareness to the prevention and treatment of alcohol and substance abuse among members of the legal profession. Its mission was later expanded to include mental health issues as well. Responsibility for the administration and management of the Trust was vested in a twenty one-member board of trustees appointed by the Chief Judge, and the Trust worked to enhance the efforts of the bar associations' LAPs and committees. With the advent of the Trust and its grant program, additional part-time mental health professionals were added to enhance LAP staffs. Through its website and quarterly newsletters, NYLAT raised the conversation regarding impairment issues in the profession to new levels of "normalcy" and awareness was high.

NYLAT sponsored several conferences to raise awareness of LAP issues targeted to a particular segment of the profession. For example, the Law School Program targeted the need for education on LAP matters, early identification, and information regarding admission to the practice of law, when applicants may have a history of infractions relating to impairments. Yet another event focused on gender-based issues; and a third, on reaching lawyers of color. Staff participated with the NYSBA Committee on Law Practice Continuity, in the development of "Planning Ahead Guide," which encouraged lawyers to prepare a strategy for facing disability, or exiting their practice. The NYLAT Judge Advisory Council convened to consider how best to reach out to those judges who faced impairment issues, and their work continues in the Judicial Wellness Committee of the New York State Bar Association.

In 2011, with the Office of Court Administration facing dramatic budget cuts in a year of fiscal cutbacks, the Trust's funding was discontinued. The domino effect occasioned by discontinuance of the Trust's funding resulted in the elimination of some part-time LAP staff and a reduction in the outreach efforts made to the profession on LAP topics.

However, as of 2016, there are numerous Lawyer Helping Lawyer Committees throughout the state, performing outreach and personal visits with attorneys as appropriate, informing them of the availability of resources for help.

Lawyer Assistance Programs are now found in all 50 states, and the American Bar Association has a standing Commission on Lawyer Assistance Programs (CoLAP). CoLAP has the mandate to educate the legal profession concerning alcoholism, chemical dependencies, stress, depression

and other emotional health issues, and to assist and support all bar associations and lawyer assistance programs in developing and maintaining methods of providing effective solutions for recovery.

Appendix A: LISTENING SKILLS

Listening to someone as a LAP volunteer is quite different from listening as a lawyer. As a lawyer, one is trained to take a directive or confrontational approach. Active listening is used when we want to help someone try to do something to address a problem in their life. LAP's primary purpose is to support attorneys with their troubles and connect them to appropriate resources.

Characteristics of Unhelpful Listening:	**Characteristics of Helpful Listening:**
Seeming impatient or annoyed Giving advice or providing solutions Using logic, arguing, or lecturing Interpreting, analyzing, diagnosing, or providing explanations Moralizing, preaching, or being judgmental or angry	Being alert, present, and engaged Being empathetic, acknowledging their feelings and struggles The person in need does the majority of the speaking Ask clear, open ended questions and wait for answers. Reflect what the person says back to them and ask for accuracy of your statement.

Remember, your job is not to tell someone what they need. Rather, it is to help that person determine what they think they need and help them get there.

Ambivalence and change

Ambivalence usually means a person's values and behaviors are at odds. If you argue for one side, the ambivalent person is likely to argue for the other. Resist the "righting reflex" to straighten out the ambivalence.

Motivating Change

Trying to talk someone into change does not work – it increases resistance. Instead, **get someone to say out loud what or why they want to change** – this offers the greatest likelihood of motivating change. The person needs to present the arguments for change. The person needs to appreciate that there are discrepancies between present behavior and personal values.

B. Cultural Competence in Service Delivery

By Project Liberty, New York State Department of Mental Health

Cultural competence is the ability of counselors, educators and outreach workers to understand and respond effectively to the cultural and linguistic needs of individuals and families affected by mental, emotional and physical traumas and conditions. According to the Department of Health and Human Services, "culture bears upon whether people even seek help in the first place, what types of help they seek, what coping styles and social supports they have and how much stigma they attach to mental illness".

Culture influences how individuals perceive and interpret traumatic and other life changing events. It influences how they, their families and their communities respond as well. Access to and acceptance of help may be affected by a number of important factors including:

- Diversity of cultural values and beliefs about illness, healing and help seeking
- Differences in language and the use of English
- Socio-economic conditions
- Suspicion of governmental programs or other agency programs
- Rejection of outside assistance
- Reluctance to seek help due to stigma
- Variations in response to loss and expressions of grief
- Lack of information about available services
- Immigration status
- Physical limitations, disabilities or other stressors
- Location of service delivery
- History of previous abuse or trauma, mental illness or addiction within their family

The following are significant cultural considerations:

Ethnicity
Race
Country of origin
Gender
Socio-economic status
Education
Primary language
Spirituality/religion
English proficiency
Immigration status
Literacy level
Employment
Sexual orientation
Geographic location
Physical disability or limitations

The following is important for counselors, educators and outreach workers to do:

- Be conscious of personal cultural biases and how they may influence cross cultural interactions.

- Rely on the people served to be the best source of information about their experience with mental, emotional or physical problems.
- Understand cultural uniqueness in expressions of distress.
- Become educated about behaviors shaped by culture.
- Maintain respect for beliefs and values that are important to people coping with stress.
- Appreciate that there is a large variation across cultures in how people respond to death and loss
- Guard against stereotyping based on knowledge of general characteristics of a group.
- Learn about the extent of alcohol and substance abuse in community cultural groups and relay on providing assistance that is tailored to the groups that promote healthy coping.
- Be attentive to aspects of non-verbal communication (e.g., knowledge of personal space, body language).
- Acknowledge your limitations in understanding aspects of culture and language and encourage the people you are working with to let you know if you unknowingly upset them.
- Be respectful, well informed and follow through with what you say you will do.

Appendix C: NEW YORK STATE BAR ASSOCIATION: LAWYER ASSISTANCE COMMITTEE MODEL POLICY

PREAMBLE

The New York State Bar Association is committed to assisting individuals in the legal profession who are dealing with impairment issues that affect performance on the job, whether caused by substance abuse or other addictive behaviors, depression or other mental health conditions.

The NYSBA Lawyer Assistance Committee has drafted the following Model Policy for adoption by law firms/legal departments throughout New York State, with the following assumptions: that early intervention and treatment are fundamental goals, and that adoption of the policy will help to maintain the integrity of the legal profession and the viability of the [law firm/legal department], while protecting clients.

Each law firm/legal department may tailor the policy for its purposes, taking into consideration such factors as size, resources and practice setting. The policy is best used to augment broader policies that cover work conduct, disciplinary procedures, paid leave and health insurance benefits. It should be adopted subject to the regulations of the Family Medical Leave Act, ABA, New York State Human Rights Law, and applicable collective bargaining agreements.

MODEL POLICY for LAW FIRMS/LEGAL DEPARTMENTS ADDRESSING IMPAIRMENT

I. DEFINING THE PROBLEM

Impairment of a legal professional adversely affects not only that the individual's well-being, but it also directly and adversely affects the [law firm's/legal department's] ability to provide the highest quality legal services to its clients and may lead to professional liability, violations of ethical obligations, professional discipline, a loss of public reputation and criminal prosecution. The chief contributors to impairment of legal professionals are clinical depression and other mental health conditions, dependency on drugs and alcohol, and other addictive behaviors.

II. POLICY STATEMENT

It is the policy of this [firm/legal department] that impairment of [law firm/legal department] legal professionals is inconsistent with its mission.

Further, it is the policy of this [law firm/legal department] that impaired legal professionals are in need of assistance and treatment, and that early identification and intervention will provide the greatest hope of overcoming such impairment. This [law firm/legal department] recognizes that impairment is not a moral failing.

The purpose of this policy is to encourage self-identification, self-referral, referral, treatment and recovery. The [law firm/legal department], consistent with applicable law and the Rules of Professional Conduct, will not tolerate unlawful discrimination against a legal professional who has availed himself or herself of the [law firm's/legal department's] resources, as further set forth in this policy.

The [law firm/legal department] shall provide a copy of this policy to all employees and legal professionals.

III. WHO IS COVERED

This policy applies to all [law firm/legal department] legal professionals, including, but not limited to, partners and managing attorneys, associates, and paralegals, subject to any applicable collective bargaining agreement.

The [law firm/legal department] will assist and support legal professionals who voluntarily seek help for impairment or who are directed, as a result of a work performance evaluation, to seek help for impairment. The [law firm/legal department] will permit impaired legal professionals to use paid time off, be placed on a leave of absence, be referred for treatment or otherwise provide accommodations as required by law and permitted consistent with [law firm/legal department] leave policies.

IV. PROFESSIONAL RESPONSIBILITY

It is the responsibility of all legal professionals of this [law firm/legal department] to provide the highest quality legal services to its clients. Impairment due to the use of alcohol or drugs or due to mental health conditions can lead to potential incompetence and/or misconduct which compromises the [law firm/legal department]'s ability to service its clients in accordance with this responsibility.

Attendance and work performance of legal professionals of this [law firm/legal department] will be evaluated.

- Frequent lateness, absenteeism, failure to be on time for meetings and other attendance issues will not be tolerated.
- Failure to meet deadlines, failure to timely return phone calls will not be tolerated
- Disrespect for, or mistreatment of, staff or colleagues will not be tolerated.

If attendance or work performance issues or behaviors are being caused by impairment, this [law firm/legal department] encourages self-referral or referral to its EAP (employee

assistance program) or to the New York State Bar Association Lawyer Assistance Program (See, Article VII, below), as appropriate, prior to the initiation of [law firm/legal department] disciplinary action if possible and appropriate. Legal professionals of the [law firm/legal department] who fail or refuse to avail themselves of the opportunity to seek and follow through on treatment will be subject to internal discipline, up to and, including possible termination.

While a legal professional may have a desire to assist another legal professional with an impairment avoid the consequences of his or her conduct, an attorney is nonetheless obligated under appropriate circumstances to report wrongful conduct of fellow attorneys pursuant to Rule 8.3 of the NY Rules of Professional Conduct (effective April 1, 2009), a portion of which is attached for reference. (*See*, also, N.Y. State 822.)

V. CONFIDENTIALITY

To the extent possible, this [law firm/legal department] will endeavor to maintain the confidentiality of a legal professional who has self-referred, or who has been referred, to available resources for evaluation and treatment. Please be advised that certain matters may not remain confidential (*e.g.*, a threat to harm yourself or others, future criminal conduct, child abuse), but every attempt will be made to keep a legal professional's personal issues confidential.

The [law firm/legal department] will designate an appropriate person or persons to assist the impaired legal professional with issues of insurance coverage, payment for treatment and covering client matters during treatment, as necessary, and compliance with Return to Work agreements. (See, Article IX, below). Cooperation in all such matters is required, and failure to cooperate may result in [law firm/legal department] discipline, up to and including possible termination.

VI. EDUCATION

The [law firm/legal department] is dedicated to providing continuing education and training to all legal professionals in relation to implementation of this and all policies as well as education related to work/life balance, stress reduction and other such topics that can support outstanding work performance and continuing success of the [law firm/legal department]'s mission.

VII. AVAILABLE RESOURCES

<u>[Law firm/legal department]</u>

Contact: Call (e.g. NAME at x 6021) for information about this policy, its administration and for a confidential referral if appropriate.

Referral or Self-referral to Employee Assistance Program: if applicable, insert information about the [law firm/legal department]'s health insurance carrier's Employee Assistance Program -- *e.g.*

> *Our law firm health insurance policy includes access to an Employee Assistance Program for the purpose of self-referral or referral of individuals and their co-workers who are impaired, their families. We encourage you to contact the EAP. EAP is a confidential service provided at no cost to covered employees and others who are affected by impairment.*

Referral or Self-referral to Lawyer Assistance Program: The New York State Bar Association maintains a statewide confidential Helpline at 1-800-255-0569. The NYSBA LAP provides confidential assistance, including but not limited to, relevant information about impairment, identification of appropriate assessment providers, and assistance in intervention planning, assistance in identifying potential treatment providers and resources for impaired attorneys and CLE.

Confidential communications between a legal professional and a Lawyer Assistance Program are deemed privileged. Section 499 of the Judiciary Law (as amended by Chapter 327 of the Laws of 1993 and as amended thereafter) provides the following:

1. Confidential Information Privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation that has furnished the information to the committee.

2. Immunity from Liability. Any person, firm or corporation in good faith providing information to, or in any other way participating in the affairs of, any of the committees referred to in subdivision one of this section shall be immune from civil liability that might otherwise result by reason of such conduct. For the purpose of any proceeding, the good faith of any such person, firm or corporation shall be presumed.

VIII. PROHIBITIONS/CONSEQUENCES

Legal professionals are prohibited from on-the-job impairment from alcohol or controlled substances. Any individual who distributes, sells, attempts to sell, transfer, possess or purchase any illegal substance while at work or while performing in a work-related capacity may be subjected to internal [law firm\legal department] disciplinary action including termination, and/or civil penalties and criminal penalties if appropriate.

[The law firm/legal department can add to this paragraph particular items relevant to the law firm/legal department]

IX. RETURN TO WORK AGREEMENTS

The [law firm/legal department] may require a legal professional (who has self-referred or who has been referred for treatment) to execute a Return to Work agreement.

If a legal professional -- prior to being subjected to professional disciplinary action or where internal disciplinary action has been held in abeyance during the pendency of treatment -- engages in appropriate treatment, he or she may be required to execute a Return to Work Agreement prior to returning to work.

Such Return to Work Agreement will include: (A sample agreement is attached. Appendix E).

- verification of the legal professional's participation in a treatment program,
- the legal professional's commitment to maintain the prescribed regimen for continued wellness, to adhere to the firm's code of conduct and professional responsibility, and to participate in aftercare,
- a commitment to undergo drug or alcohol testing if appropriate,
- authorization by the legal professional to appropriate firm representatives to discuss compliance with the foregoing requirement, but limited to a need-to-know basis [and] while maintaining privacy particularly with respect to medical records,
- an acknowledgement that a violation of the Return to Work Agreement will result in immediate sanctions.

Appendix D: 22 NYCRR Part 1200 – NY Rules of Professional Conduct (effective April 1, 2009)

Rule 8.3 Reporting Professional Misconduct

(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 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.

(c) This Rules does not require disclosure of:

(1) Information otherwise protected by Rule 1.6; or

(2) Information gained by a lawyer or judge while participating in a bona fide lawyer assistance program.

Rule 8.4 Misconduct

A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability:

(1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or

(2) to achieve results using means that violate these Rules or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Department Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or

(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

Appendix E. SAMPLE: TREATMENT AND RETURN TO WORK AGREEMENT

By signing this agreement I accept and agree to the following terms and conditions which will govern my [continued employment with/association with] and my return to work with [law firm/law department].

I. TREATMENT

I acknowledge that my work performance and/or behavior have resulted in the need for intervention and have provided a basis for disciplinary action, up to and including the termination of my employment (or: define nature of relationship with the [law firm/legal department]. As a consequence, and in order to avoid the termination of my employment/expulsion from the [law firm/legal department]), I voluntarily accept the terms of this agreement.

1. I agree to submit to an immediate evaluation by a health care professional of the [law firm/legal department]'s selection or approval.
2. I agree to follow all treatment and aftercare recommendations by that health care professional or treatment program.
3. I understand that I am responsible for all costs associated with the treatment program to the extent they are not covered by insurance.
4. I will authorize regular progress reports to be made to the [law firm/legal department] during treatment (tailor to specific consent).

RETURN TO WORK

Clearance for my return to work will be determined by my health care provider and the employer.

Upon my return to work, I agree to abide by the [law firm/legal department]'s policy regarding attendance and work performance, and I agree that my failure to do so may result in disciplinary action up to and including termination/expulsion from the [law firm/legal department].

Upon my return to work, I agree to review treatment and/or aftercare requirements with the designated [law firm/legal department] representative [on a need to know basis], and I agree to strictly comply with such treatment and aftercare requirements. My failure to do so may result in disciplinary action up to and including termination/expulsion for the [law firm/legal department].

I will ensure that, within an established time frame, my health care provider will submit regular progress reports to the designated representative at [law firm/legal department] until my treatment is complete, upon which the health care provider will submit a summary report.

I agree to abide by all standards of professionalism, behavior and performance required of legal professionals at the [law firm/legal department], including but not limited to, those set out in its policy and procedure manual.

I agree that this agreement does not guarantee my employment, position or compensation for any period of time. I understand and acknowledge that strict adherence to these terms and conditions are a requirement of my continued work with the [law firm/legal department] and that any violation of the terms of this agreement (including its incorporated standards) may result in [law firm/legal department] disciplinary action, up to and including my immediate termination/expulsion.

By my signature below I confirm that I have reviewed and considered these terms and accept them voluntarily as a constructive part of my recovery. I also acknowledge that these terms are being provided to me as an alternate to the termination of my employment/affiliation. I understand that I may withdraw my consent at any time during the term of this agreement, but acknowledge that withdrawing my consent is a voluntary termination of my employment (consent to my expulsion from the firm).

Signature #1 and date (at the time of intervention):

Signature #2 and date (upon return to work, and incorporating aftercare recommendations)

NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200

RULES OF PROFESSIONAL CONDUCT

Dated: January 1, 2017

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

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RULE 1.0.

Terminology

(a) "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

(b) "Belief" or "believes" denotes that the person involved actually believes the fact in question to be true. A person's belief may be inferred from circumstances.

(c) "Computer-accessed communication" means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

(d) "Confidential information" is defined in Rule 1.6.

(e) "Confirmed in writing" denotes (i) a writing from the person to the lawyer confirming that the person has given consent, (ii) a writing that the lawyer promptly transmits to the person confirming the person's oral consent, or (iii) a statement by the person made on the record of any proceeding before a tribunal. If it is not feasible to obtain or transmit the writing at the time the person gives oral consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(f) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(g) "Domestic relations matter" denotes representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support or alimony, or to enforce or modify a judgment or order in connection with any such claim, action or proceeding.

(h) "Firm" or "law firm" includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other

association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.

(l) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction or has a purpose to deceive, provided that it does not include conduct that, although characterized as fraudulent by statute or administrative rule, lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations that can be reasonably expected to induce detrimental reliance by another.

(j) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.

(k) "Knowingly," "known," "know," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(l) "Matter" includes any litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, negotiation, arbitration, mediation or any other representation involving a specific party or parties.

(m) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional legal corporation or a member of an association authorized to practice law.

(n) "Person" includes an individual, a corporation, an association, a trust, a partnership, and any other organization or entity.

(o) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(p) "Qualified legal assistance organization" means an office or organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof.

(q) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer. When used in the context of conflict of interest determinations, "reasonable lawyer" denotes a lawyer acting from the perspective of a reasonably prudent and

competent lawyer who is personally disinterested in commencing or continuing the representation.

(r) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(s) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(t) "Screened" or "screening" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or the firm is obligated to protect under these Rules or other law.

(u) "Sexual relations" denotes sexual intercourse or the touching of an intimate part of the lawyer or another person for the purpose of sexual arousal, sexual gratification or sexual abuse.

(v) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(w) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(x) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, e-mail or other electronic communication or any other form of recorded communication or recorded representation. A "signed" writing includes an electric sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

RULE 1.1.

Competence

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(c) lawyer shall not intentionally:

(1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or

(2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules.

RULE 1.2.

Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.

(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.

(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

(g) A lawyer does not violate these Rules by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process.

RULE 1.3.

Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not neglect a legal matter entrusted to the lawyer.

(c) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules.

RULE 1.4.

Communication

(a) A lawyer shall:

(1) promptly inform the client of:

(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;

(ii) any information required by court rule or other law to be communicated to a client; and

(iii) material developments in the matter including settlement or plea offers.

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with a client's reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5.

Fees and Division of Fees

(a) A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule. This provision shall not apply when the lawyer will charge a regularly represented client on the same basis or rate and perform services that are of the same general kind as previously rendered to and paid for by the client. Any changes in the scope of the representation or the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a writing stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge or collect:

(1) a contingent fee for representing a defendant in a criminal matter;

(2) a fee prohibited by law or rule of court;

(3) fee based on fraudulent billing;

(4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated; or

(5) any fee in a domestic relations matter if:

(i) the payment or amount of the fee is contingent upon the securing of a divorce or of obtaining child custody or visitation or is in any way determined by reference to the amount of maintenance, support, equitable distribution, or property settlement;

(ii) a written retainer agreement has not been signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement; or

(iii) the written retainer agreement includes a security interest, confession of judgment or other lien without prior notice being provided to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

(e) In domestic relations matters, a lawyer shall provide a prospective client with a statement of client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement.

(f) Where applicable, a lawyer shall resolve fee disputes by arbitration at the election of the client pursuant to a fee arbitration program established by the Chief Administrator of the Courts and approved by the Administrative Board of the Courts.

(g) A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless:

(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and

(3) the total fee is not excessive.

(h) Rule 1.5(g) does not prohibit payment to a lawyer formerly associated in a law firm pursuant to a separation or retirement agreement.

RULE 1.6.

Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

"Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime;

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;

(4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;

(5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or

(ii) to establish or collect a fee; or

(6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).

RULE 1.7.

Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

(1) the representation will involve the lawyer in representing differing interests; or

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

RULE 1.8.

Current Clients: Specific Conflict of Interest Rules

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including

whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not:

(1) solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or

(2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable.

For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

(1) a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or

(2) any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and

(3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j) *(1)* A lawyer shall not:

(i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person;

(ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or

(iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

(2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

RULE 1.9.

Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in

which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or

(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

RULE 1.10.

Imputation of Conflicts of Interest

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

(b) When a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that the firm knows or reasonably should know are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or Rule 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client or former client under the conditions stated in Rule 1.7.

(e) A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which proposed engagements are checked against current and previous engagements when:

(1) the firm agrees to represent a new client;

(2) the firm agrees to represent an existing client in a new matter;

(3) the firm hires or associates with another lawyer; or

(4) an additional party is named or appears in a pending matter.

(f) Substantial failure to keep records or to implement or maintain a conflict-checking system that complies with paragraph (e) shall be a violation thereof regardless of whether there is another violation of these Rules.

(g) Where a violation of paragraph (e) by a law firm is a substantial factor in causing a violation of paragraph (a) by a lawyer, the law firm, as well as the individual lawyer, shall be responsible for the violation of paragraph (a).

(h) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

RULE 1.11.

Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly provide, a lawyer who has formerly served as a public officer or employee of the government:

(1) shall comply with Rule 1.9(c); and

(2) shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. This provision shall not apply to matters governed by Rule 1.12(a).

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(c) Except as law may otherwise expressly provide, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely and effectively screened from any participation in the matter in accordance with the provisions of paragraph (b).

(d) Except as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially.

(e) As used in this Rule, the term "matter" as defined in Rule 1.0(l) does not include or apply to agency rulemaking functions.

(f) A lawyer who holds public office shall not:

(1) use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest;

(2) use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client; or

(3) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

RULE 1.12.

Specific Conflicts of Interest for Former Judges, Arbitrators, Mediators or Other Third-Party Neutrals

(a) A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

(b) Except as stated in paragraph (e), and unless all parties to the proceeding give informed consent, confirmed in writing, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as:

(1) an arbitrator, mediator or other third-party neutral; or

(2) a law clerk to a judge or other adjudicative officer or an arbitrator, mediator or other third-party neutral.

(c) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral.

(d) When a lawyer is disqualified from representation under this Rule, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(e) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13.

Organization As Client

(a) When a lawyer employed or retained by an organization is dealing with the organization's directors, officers, employees, members, shareholders or other constituents, and it appears that the organization's interests may differ from those of the constituents with whom the lawyer is dealing, the lawyer shall explain that the lawyer is the lawyer for the organization and not for any of the constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action or intends to act or refuses to act in a matter related to the representation that (i) is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization, and (ii) is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and

the risk of revealing information relating to the representation to persons outside the organization. Such measures may include, among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly in violation of law and is likely to result in a substantial injury to the organization, the lawyer may reveal confidential information only if permitted by Rule 1.6, and may resign in accordance with Rule 1.16.

(d) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the concurrent representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

RULE 1.14.

Client With Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a conventional relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15.

Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

> A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

> *(1)* A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such

banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.

(2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by Rule 1.15(b)(1) as an "Attorney Special Account," "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate, provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or the lawyer's firm.

(3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.

(4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

(1) promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest;

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them

in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them; and

(4) promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.

(d) Required Bookkeeping Records.

(1) A lawyer shall maintain for seven years after the events that they record:

(i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;

(ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;

(iii) copies of all retainer and compensation agreements with clients;

(iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;

(v) copies of all bills rendered to clients;

(vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed;

(vii) copies of all retainer and closing statements filed with the Office of Court Administration; and

(viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.

(2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an

office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance, by one of them or by a successor firm, of the records specified in Rule 1.15(d).

(i) Availability of Bookkeeping Records: Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto, and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this Rule shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the attorney-client privilege.

(j) Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

RULE 1.16.

Declining or Terminating Representation

(a) A lawyer shall not accept employment on behalf of a person if the lawyer knows or reasonably should know that such person wishes to:

(1) bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken for such person, merely for the purpose of harassing or maliciously injuring any person; or

(2) present a claim or defense in a matter that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law.

(b) Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when:

(1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the lawyer knows or reasonably should know that the client is bringing the legal action, conducting the defense, or asserting a position in the matter, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.

(c) Except as stated in paragraph (d), a lawyer may withdraw from representing a client when:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action with which the lawyer has a fundamental disagreement;

(5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;

(6) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively;

(8) the lawyer's inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal;

(9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;

(10) the client knowingly and freely assents to termination of the employment;

(11) withdrawal is permitted under Rule 1.13(c) or other law;

(12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal; or

(13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

(d) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a matter before that tribunal without its permission. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(e) Even when withdrawal is otherwise permitted or required, upon termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.

RULE 1.17.

Sale of Law Practice

(a) A lawyer retiring from a private practice of law; a law firm, one or more members of which are retiring from the private practice of law with the firm; or the personal representative of a deceased, disabled or missing lawyer, may sell a law practice, including goodwill, to one or more lawyers or law firms, who may purchase the practice. The seller and the buyer may agree on reasonable restrictions on the seller's private practice of law, notwithstanding any other provision of these Rules. Retirement shall include the cessation of the private

practice of law in the geographic area, that is, the county and city and any county or city contiguous thereto, in which the practice to be sold has been conducted.

(b) Confidential information.

(1) With respect to each matter subject to the contemplated sale, the seller may provide prospective buyers with any information not protected as confidential information under Rule 1.6.

(2) Notwithstanding Rule 1.6, the seller may provide the prospective buyer with information as to individual clients:

(i) concerning the identity of the client, except as provided in paragraph (b)(6);

(ii) concerning the status and general nature of the matter;

(iii) available in public court files; and

(iv) concerning the financial terms of the client-lawyer relationship and the payment status of the client's account.

(3) Prior to making any disclosure of confidential information that may be permitted under paragraph (b)(2), the seller shall provide the prospective buyer with information regarding the matters involved in the proposed sale sufficient to enable the prospective buyer to determine whether any conflicts of interest exist. Where sufficient information cannot be disclosed without revealing client confidential information, the seller may make the disclosures necessary for the prospective buyer to determine whether any conflict of interest exists, subject to paragraph (b)(6). If the prospective buyer determines that conflicts of interest exist prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the prospective buyer shall not review or continue to review the information unless the seller shall have

obtained the consent of the client in accordance with Rule 1.6(a)(1).

(4) Prospective buyers shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the prospective buyers represented the client.

(5) Absent the consent of the client after full disclosure, a seller shall not provide a prospective buyer with information if doing so would cause a violation of the attorney-client privilege.

(6) If the seller has reason to believe that the identity of the client or the fact of the representation itself constitutes confidential information in the circumstances, the seller may not provide such information to a prospective buyer without first advising the client of the identity of the prospective buyer and obtaining the client's consent to the proposed disclosure.

(c) Written notice of the sale shall be given jointly by the seller and the buyer to each of the seller's clients and shall include information regarding:

(1) the client's right to retain other counsel or to take possession of the file;

(2) the fact that the client's consent to the transfer of the client's file or matter to the buyer will be presumed if the client does not take any action or otherwise object within 90 days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;

(3) the fact that agreements between the seller and the seller's clients as to fees will be honored by the buyer;

(4) proposed fee increases, if any, permitted under paragraph (e); and

(5) the identity and background of the buyer or buyers, including principal office address, bar admissions,

number of years in practice in New York State, whether the buyer has ever been disciplined for professional misconduct or convicted of a crime, and whether the buyer currently intends to resell the practice.

(d) When the buyer's representation of a client of the seller would give rise to a waivable conflict of interest, the buyer shall not undertake such representation unless the necessary waiver or waivers have been obtained in writing.

(e) The fee charged a client by the buyer shall not be increased by reason of the sale, unless permitted by a retainer agreement with the client or otherwise specifically agreed to by the client.

RULE 1.18.

Duties to Prospective Clients

(a) Except as provided in Rule l.18(e), a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more

disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the firm acts promptly and reasonably to notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;

(iii) the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) written notice is promptly given to the prospective client; and

(3) a reasonable lawyer would conclude that the law firm will be able to provide competent and diligent representation in the matter.

(e) A person is not a prospective client within the meaning of paragraph (a) if the person:

(1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or

(2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter.

RULE 2.1.

Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors that may be relevant to the client's situation.

RULE 2.2.

[Reserved]

RULE 2.3.

Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Unless disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is protected by Rule 1.6.

RULE 2.4.

Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a "third-party neutral" when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or

reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

RULE 3.1.

Non-Meritorious Claims and Contentions

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. A lawyer for the defendant in a criminal proceeding or for the respondent in a proceeding that could result in incarceration may nevertheless so defend the proceeding as to require that every element of the case be established.

(b) A lawyer's conduct is "frivolous" for purposes of this Rule if:

(1) the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) the conduct has no reasonable purpose other than to delay or prolong the resolution of litigation, in violation of Rule 3.2, or serves merely to harass or maliciously injure another; or

(3) the lawyer knowingly asserts material factual statements that are false.

RULE 3.2.

Delay of Litigation

In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense.

RULE 3.3.

Conduct Before a Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) In presenting a matter to a tribunal, a lawyer shall disclose, unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

(f) In appearing as a lawyer before a tribunal, a lawyer shall not:

(1) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply;

(2) engage in undignified or discourteous conduct;

(3) intentionally or habitually violate any established rule of procedure or of evidence; or

(4) engage in conduct intended to disrupt the tribunal.

RULE 3.4.

Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) *(1)* suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce;

(2) advise or cause a person to hide or leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein;

(3) conceal or knowingly fail to disclose that which the lawyer is required by law to reveal;

(4) knowingly use perjured testimony or false evidence;

(5) participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false; or

(6) knowingly engage in other illegal conduct or conduct contrary to these Rules;

(b) offer an inducement to a witness that is prohibited by law or pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the matter. A lawyer may advance, guarantee or acquiesce in the payment of:

(1) reasonable compensation to a witness for the loss of time in attending, testifying, preparing to testify or otherwise assisting counsel, and reasonable related expenses; or

(2) a reasonable fee for the professional services of an expert witness and reasonable related expenses;

(c) disregard or advise the client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling;

(d) in appearing before a tribunal on behalf of a client:

(1) state or allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence;

(2) assert personal knowledge of facts in issue except when testifying as a witness;

(3) assert a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein; or

(4) ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person; or

(e) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

RULE 3.5.

Maintaining and Preserving the Impartiality of Tribunals and Jurors

(a) A lawyer shall not:

(1) seek to or cause another person to influence a judge, official or employee of a tribunal by means prohibited by law or give or lend anything of value to such judge, official, or employee of a tribunal when the recipient is prohibited from accepting the gift or loan but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Part 100 of the Rules of the Chief Administrator of the Courts;

(2) in an adversarial proceeding communicate or cause another person to do so on the lawyer's behalf, as to the merits of the matter with a judge or official of a tribunal or an employee thereof before whom the matter is pending, except:

(i) in the course of official proceedings in the matter;

(ii) in writing, if the lawyer promptly delivers a copy of the writing to counsel for other parties and to a party who is not represented by a lawyer;

(iii) orally, upon adequate notice to counsel for the other parties and to any party who is not represented by a lawyer; or

(iv) as otherwise authorized by law, or by Part 100 of the Rules of the Chief Administrator of the Courts;

(3) seek to or cause another person to influence a juror or prospective juror by means prohibited by law;

(4) communicate or cause another to communicate with a member of the jury venire from which the jury will be selected for the trial of a case or, during the trial of a case, with any member of the jury unless authorized to do so by law or court order;

(5) communicate with a juror or prospective juror after discharge of the jury if:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the lawyer a desire not to communicate;

(iii) the communication involves misrepresentation, coercion, duress or harassment; or

(iv) the communication is an attempt to influence the juror's actions in future jury service; or

(6) conduct a vexatious or harassing investigation of either a member of the venire or a juror or, by financial support or otherwise, cause another to do so.

(b) During the trial of a case a lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(c) All restrictions imposed by this Rule also apply to communications with or investigations of members of a family of a member of the venire or a juror.

(d) A lawyer shall reveal promptly to the court improper conduct by a member of the venire or a juror, or by another toward a member of the venire or a juror or a member of his or her family of which the lawyer has knowledge.

RULE 3.6.

Trial Publicity

(a) A lawyer who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) A statement ordinarily is likely to prejudice materially an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness or the expected testimony of a party or witness;

(2) in a criminal matter that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Provided that the statement complies with paragraph (a), a lawyer may state the following without elaboration:

(1) the claim, offense or defense and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal matter:

(i) the identity, age, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the identity of investigating and arresting officers or agencies and the length of the investigation; and

(iv) the fact, time and place of arrest, resistance, pursuit and use of weapons, and a description of physical evidence seized, other than as contained only in a confession, admission or statement.

(d) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(e) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

RULE 3.7.

Lawyer As Witness

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:

(1) the testimony relates solely to an uncontested issue;

(2) the testimony relates solely to the nature and value of legal services rendered in the matter;

(3) disqualification of the lawyer would work substantial hardship on the client;

(4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or

(5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if:

(1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or

(2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

RULE 3.8.

Special Responsibilities of Prosecutors and Other Government Lawyers

(a) A prosecutor or other government lawyer shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor or other government lawyer knows or it is obvious that the charge is not supported by probable cause.

(b) A prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant or to a defendant who has no counsel of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence, except when relieved of this responsibility by a protective order of a tribunal.

(c) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court or prosecutor's office; or

(2) if the conviction was obtained by that prosecutor's office,

(A) notify the appropriate court and the defendant that the prosecutor's office possesses such evidence unless a court authorizes delay for good cause shown;

(B) disclose that evidence to the defendant unless the disclosure would interfere with an ongoing investigation or endanger the safety of a witness or other person, and a court authorizes delay for good cause shown; and

(C) undertake or make reasonable efforts to cause to be undertaken such further inquiry or investigation as may be necessary to provide a reasonable belief that the conviction should or should not be set aside.

(d) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted, in a prosecution by the prosecutor's office, of an offense that the defendant did not commit, the prosecutor shall seek a remedy consistent with justice, applicable law, and the circumstances of the case.

(e) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (c) and (d), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

RULE 3.9.

Advocate In Non-Adjudicative Matters

A lawyer communicating in a representative capacity with a legislative body or administrative agency in connection with a pending non-adjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the lawyer seeks information from an agency that is available to the public.

RULE 4.1.

Truthfulness In Statements To Others

In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

RULE 4.2.

Communication With Person Represented By Counsel

(a) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law.

(b) Notwithstanding the prohibitions of paragraph (a), and unless otherwise prohibited by law, a lawyer may cause a client to communicate with a represented person unless the represented person is not legally competent, and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

(c) A lawyer who is acting *pro se* or is represented by counsel in a matter is subject to paragraph (a), but may communicate with a represented person, unless otherwise prohibited by law and unless the represented person is not legally competent, provided the lawyer or the lawyer's counsel gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

RULE 4.3.

Communicating With Unrepresented Persons

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

RULE 4.4.

Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass or harm a third person or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document, electronically stored information, or other writing relating to the representation of the lawyer's client and knows or reasonably should know that it was inadvertently sent shall promptly notify the sender.

RULE 4.5.

Communication After Incidents Involving Personal Injury or Wrongful Death

(a) In the event of a specific incident involving potential claims for personal injury or wrongful death, no unsolicited communication shall be made to an individual injured in the incident or to a family member or legal representative of such an individual, by a lawyer or law firm, or by any associate, agent, employee or other representative of a lawyer or law firm representing actual or potential defendants or entities that may defend and/or indemnify said defendants, before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.

(b) An unsolicited communication by a lawyer or law firm, seeking to represent an injured individual or the legal representative thereof under the circumstance described in paragraph (a) shall comply with Rule 7.3(e).

RULE 5.1.

Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers

(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b) *(1)* A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.2.

Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3.

Lawyer's Responsibility for Conduct of Nonlawyers

(a) A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter and the likelihood that ethical problems might arise in the course of working on the matter.

(b) A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed or is a

lawyer who has supervisory authority over the nonlawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.4.

Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or another lawyer associated in the firm may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation that fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may compensate a nonlawyer employee or include a nonlawyer employee in a retirement plan based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) Unless authorized by law, a lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal service for another to

direct or regulate the lawyer's professional judgment in rendering such legal services or to cause the lawyer to compromise the lawyer's duty to maintain the confidential information of the client under Rule 1.6.

(d) A lawyer shall not practice with or in the form of an entity authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a member, corporate director or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

RULE 5.5.

Unauthorized Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

RULE 5.6.

Restrictions On Right To Practice

(a) A lawyer shall not participate in offering or making:

(1) a partnership, shareholder, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a client controversy.

(b) This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

RULE 5.7.

Responsibilities Regarding Nonlegal Services

(a) With respect to lawyers or law firms providing nonlegal services to clients or other persons:

(1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the provision of both legal and nonlegal services.

(2) A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(3) A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(4) For purposes of paragraphs (a)(2) and (a)(3), it will be presumed that the person receiving nonlegal services believes the services to be the subject of a client-lawyer relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is de minimis.

(b) Notwithstanding the provisions of paragraph (a), a lawyer or law firm that is an owner, controlling party, agent, or is otherwise affiliated with an entity that the lawyer or law firm knows is providing nonlegal services to a person shall not permit any nonlawyer providing such services or affiliated with that entity to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person, or to cause the lawyer or law firm to compromise its duty under Rule 1.6(a) and (c) with respect to the confidential information of a client receiving legal services.

(c) For purposes of this Rule, "nonlegal services" shall mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.

RULE 5.8.

Contractual Relationship Between Lawyers and Nonlegal Professionals

(a) The practice of law has an essential tradition of complete independence and uncompromised loyalty to those it serves. Recognizing this tradition, clients of lawyers practicing in New York State are guaranteed "independent professional judgment and undivided loyalty uncompromised by conflicts of interest." Indeed, these guarantees represent the very foundation of the profession and allow and foster its continued role as a protector of the system of law. Therefore, a lawyer must remain completely responsible for his or her own independent professional judgment, maintain the confidences and secrets of clients, preserve funds of clients and third parties in his or her control, and otherwise comply with the legal and ethical principles governing lawyers in New York State.

Multi-disciplinary practice between lawyers and nonlawyers is incompatible with the core values of the legal profession and therefore, a strict division between services provided by lawyers and those provided by nonlawyers is essential to protect those values. However, a lawyer or law firm may enter into and maintain a contractual relationship with a nonlegal professional or nonlegal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm as well as other nonlegal professional services, notwithstanding the provisions of Rule 1.7(a), provided that:

(1) the profession of the nonlegal professional or nonlegal professional service firm is included in a list jointly established and maintained by the Appellate Divisions pursuant to Section 1205.3 of the Joint Appellate Division Rules;

(2) the lawyer or law firm neither grants to the nonlegal professional or nonlegal professional service firm, nor permits such person or firm to obtain, hold or exercise, directly or indirectly, any ownership or investment interest in, or managerial or supervisory right, power or position in connection with the practice of law by the lawyer or law firm, nor, as provided in Rule 7.2(a)(1), shares legal fees with a nonlawyer or receives or gives any monetary or other tangible benefit for giving or receiving a referral; and

(3) the fact that the contractual relationship exists is disclosed by the lawyer or law firm to any client of the lawyer or law firm before the client is referred to the nonlegal professional service firm, or to any client of the nonlegal professional service firm before that client receives legal services from the lawyer or law firm; and the client has given informed written consent and has been provided with a copy of the "Statement of Client's Rights In Cooperative Business Arrangements" pursuant to section 1205.4 of the Joint Appellate Divisions Rules.

(b) For purposes of paragraph (a):

(1) each profession on the list maintained pursuant to a Joint Rule of the Appellate Divisions shall have been designated sua sponte, or approved by the Appellate Divisions upon application of a member of a nonlegal profession or nonlegal professional service firm, upon a determination that the profession is composed of individuals who, with respect to their profession:

(i) have been awarded a bachelor's degree or its equivalent from an accredited college or university, or have attained an equivalent combination of educational credit from such a college or university and work experience;

(ii) are licensed to practice the profession by an agency of the State of New York or the United States Government; and

(iii) are required under penalty of suspension or revocation of license to adhere to a code of ethical conduct that is reasonably comparable to that of the legal profession;

(2) the term "ownership or investment interest" shall mean any such interest in any form of debt or equity, and shall include any interest commonly considered to be an interest accruing to or enjoyed by an owner or investor.

(c) This Rule shall not apply to relationships consisting solely of non-exclusive reciprocal referral agreements or understandings between a lawyer or law firm and a nonlegal professional or nonlegal professional service firm.

RULE 6.1.

Voluntary Pro Bono Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

(1) provide at least 50 hours of pro bono legal services each year to poor persons; and

(2) contribute financially to organizations that provide legal services to poor persons. Lawyers in private practice or employed by a for-profit entity should aspire to contribute annually in an amount at least equivalent to (i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time; or (ii) if the lawyer's work is performed on a contingency basis, the amount typically billed by lawyers in the community for one hour of time; or (iii) the amount typically paid by the organization employing the lawyer for one hour of the lawyer's time; or (iv) if the lawyer is underemployed, an amount not to exceed one-tenth of one percent of the lawyer's income.

(b) Pro bono legal services that meet this goal are:

(1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) Appropriate organizations for financial contributions are:

(1) organizations primarily engaged in the provision of legal services to the poor; and

(2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

(d) This Rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

RULE 6.2.

[Reserved]

RULE 6.3.

Membership in a Legal Services Organization

A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests that differ from those of a client of the lawyer or the lawyer's firm. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rules 1.7 through 1.13; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests differ from those of a client of the lawyer or the lawyer's firm.

RULE 6.4.

Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform

may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer actively participates, the lawyer shall disclose that fact to the organization, but need not identify the client. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7.

RULE 6.5.

Participation in Limited Pro Bono Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) shall comply with Rules 1.7, 1.8 and 1.9, concerning restrictions on representations where there are or may be conflicts of interest as that term is defined in these Rules, only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest; and

(2) shall comply with Rule 1.10 only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9.

(b) Except as provided in paragraph (a)(2), Rule 1.7 and Rule 1.9 are inapplicable to a representation governed by this Rule.

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client's informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

RULE 7.1.

Advertising

(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:

(1) contains statements or claims that are false, deceptive or misleading; or

(2) violates a Rule.

(b) Subject to the provisions of paragraph (a), an advertisement may include information as to:

(1) legal and nonlegal education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by these Rules; public offices and teaching positions held; publications of law related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;

(2) names of clients regularly represented, provided that the client has given prior written consent;

(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by Rule 5.8, and the nature and extent of services available through those contractual relationships; and

(4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by paragraph (p);

range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.

(c) An advertisement shall not:

(1) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;

(2) include the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;

(3) use actors to portray a judge, the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same; or

(4) be made to resemble legal documents.

(d) An advertisement that complies with subdivision (e) of this section may contain the following:

(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;

(2) statements that compare the lawyer's services with the services of other lawyers;

(3) testimonials or endorsements of clients, and of former clients; or

(4) statements describing or characterizing the quality of the lawyer's or law firm's services.

(e) It is permissible to provide the information set forth in subdivision(d) of this section provided:

(1) its dissemination does not violate subdivision(a)of this section;

(2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated;

(3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome"; and

(4) in the case of a testimonial or endorsement from a client with respect to a matter still pending, the client gives informed consent confirmed in writing.

(f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled "Attorney Advertising" on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words "Attorney Advertising" shall appear therein. In the case of electronic mail, the subject line shall contain the notation "ATTORNEY ADVERTISING."

(g) A lawyer or law firm shall not utilize meta tags or other hidden computer codes that, if displayed, would violate these Rules.

(h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.

(i) Any words or statements required by this Rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud. In the case of a web site, the required words or statements shall appear on the home page.

(j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services that are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

(k) All advertisements shall be pre-approved by the lawyer or law firm, and a copy shall be retained for a period of not less than three years following its initial

dissemination. Any advertisement contained in a computer-accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this Rule shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.

(l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

(m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this Rule in a publication that is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this Rule in a publication that is published once per month or less frequently, the lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this Rule in a publication that has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.

(n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this Rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(o) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.

(p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law §488(3).

(q) A lawyer may accept employment that results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services.

(r) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give individual advice.

RULE 7.2.

Payment for Referrals

(a) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

(1) a lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuing basis as permitted by Rule 5.8, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; and

(2) a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by Rule 1.5(g).

(b) A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations that promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:

(1) a legal aid office or public defender office:

(i) operated or sponsored by a duly accredited law school;

(ii) operated or sponsored by a bona fide, non-profit community organization;

(iii) operated or sponsored by a governmental agency; or

(iv) operated, sponsored, or approved by a bar association;

(2) a military legal assistance office;

(3) a lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule; or

(4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(i) Neither the lawyer, nor the lawyer's partner, nor associate, nor any other affiliated lawyer nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer;

(ii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization;

(iii) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter;

(iv) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under

the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief;

(v) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations; and

(vi) Such organization has filed with the appropriate disciplinary authority, to the extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

RULE 7.3.

Solicitation and Recommendation of Professional Employment

(a) A lawyer shall not engage in solicitation:

(1) by in-person or telephone contact, or by real-time or interactive computer-accessed communication unless the recipient is a close friend, relative, former client or existing client; or

(2) by any form of communication if:

(i) the communication or contact violates Rule 4.5, Rule 7.1(a), or paragraph (e) of this Rule;

(ii) the recipient has made known to the lawyer a desire not to be solicited by the lawyer;

(iii) the solicitation involves coercion, duress or harassment;

(iv) the lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient makes it unlikely that the recipient will be able to exercise reasonable judgment in retaining a lawyer; or

(v) the lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.

(b) For purposes of this Rule, "solicitation" means any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request.

(c) A solicitation directed to a recipient in this State shall be subject to the following provisions:

(1) A copy of the solicitation shall at the time of its dissemination be filed with the attorney disciplinary committee of the judicial district or judicial department wherein the lawyer or law firm maintains its principal office. Where no such office is maintained, the filing shall be made in the judicial department where the solicitation is targeted. A filing shall consist of:

(i) a copy of the solicitation;

(ii) a transcript of the audio portion of any radio or television solicitation; and

(iii) if the solicitation is in a language other than English, an accurate English-language translation.

(2) Such solicitation shall contain no reference to the fact of filing.

(3) If a solicitation is directed to a predetermined recipient, a list containing the names and addresses of all recipients shall be retained by the lawyer or law firm for a period of not less than three years following the last date of its dissemination.

(4) Solicitations filed pursuant to this subdivision shall be open to public inspection.

(5) The provisions of this paragraph shall not apply to:

(i) a solicitation directed or disseminated to a close friend, relative, or former or existing client;

(ii) a web site maintained by the lawyer or law firm, unless the web site is designed for and directed to or targeted at persons affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or

(iii) professional cards or other announcements the distribution of which is authorized by Rule 7.5(a).

(d) A written solicitation shall not be sent by a method that requires the recipient to travel to a location other than that at which the recipient ordinarily receives business or personal mail or that requires a signature on the part of the recipient.

(e) No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death shall be disseminated before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.

(f) Any solicitation made in writing or by computer-accessed communication and directed to a pre-determined recipient, if prompted by a specific occurrence involving or affecting a recipient, shall disclose how the lawyer obtained the identity of the recipient and learned of the recipient's potential legal need.

(g) If a retainer agreement is provided with any solicitation, the top of each page shall be marked "SAMPLE" in red ink in a type size equal to the largest type size used in the agreement and the words "DO NOT SIGN" shall appear on the client signature line.

(h) Any solicitation covered by this section shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.

(i) The provisions of this Rule shall apply to a lawyer or members of a law firm not admitted to practice in this State who shall solicit retention by residents of this State.

RULE 7.4.

Identification of Practice and Specialty

(a) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law, except as provided in Rule 7.4(c).

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

(1) A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "The [name of the private certifying organization] is not affiliated with any governmental authority."

(2) A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of

certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: "Certification granted by the [identify state or territory] is not recognized by any governmental authority within the State of New York."

(3) A statement is prominently made if:

(i) when written, it is clearly legible and capable of being read by the average person, and is in a font size at least two font sizes larger than the largest text used to state the fact of certification; and

(ii) when spoken aloud, it is intelligible to the average person, and is at a cadence no faster, and a level of audibility no lower, than the cadence and level of audibility used to state the fact of certification.

RULE 7.5.

Professional Notices, Letterheads and Signs

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1, including the following:

(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;

(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law

firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;

(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or

(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(b) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like may be used only by qualified legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a

nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer's name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:

(1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;

(2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;

(3) the domain name does not imply an ability to obtain results in a matter; and

(4) the domain name does not otherwise violate these Rules.

(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.

RULE 8.1.

Candor in the Bar Admission Process

(a) A lawyer shall be subject to discipline if, in connection with the lawyer's own application for admission to the bar previously filed in this state or in any other jurisdiction, or in connection with the application of another person for admission to the bar, the lawyer knowingly:

(1) has made or failed to correct a false statement of material fact; or

(2) has failed to disclose a material fact requested in connection with a lawful demand for information from an admissions authority.

RULE 8.2.

Judicial Officers and Candidates

(a) A lawyer shall not knowingly make a false statement of fact concerning the qualifications, conduct or integrity of a judge or other adjudicatory officer or of a candidate for election or appointment to judicial office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Part 100 of the Rules of the Chief Administrator of the Courts.

RULE 8.3.

Reporting Professional Misconduct

(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 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.

(c) This Rule does not require disclosure of:

(1) information otherwise protected by Rule 1.6; or

(2) information gained by a lawyer or judge while participating in a bona fide lawyer assistance program.

RULE 8.4.

Misconduct

A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability:

(1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or

(2) to achieve results using means that violate these Rules or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified

copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or

(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

RULE 8.5.

Disciplinary Authority and Choice of Law

(a) A lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this state and another jurisdiction where the lawyer is admitted for the same conduct.

(b) In any exercise of the disciplinary authority of this state, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct:

(i) If the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and

(ii) If the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice,

the rules of that jurisdiction shall be applied to that conduct.

21 A.D.3d 42
Supreme Court, Appellate Division, First Department, New York.

In the Matter of Joseph J. PIERINI, an attorney and counselor-at-law:
Departmental Disciplinary Committee for the First Judicial Department, Petitioner,
Joseph J. Pierini, Respondent.

June 21, 2005.

Synopsis
Background: In attorney disciplinary proceeding, Disciplinary Committee sought attorney's immediate suspension.

[Holding:] The Supreme Court, Appellate Division, held that attorney's conduct demonstrated willful noncompliance with a Committee investigation and threatened the public interest.

Suspension ordered.

West Headnotes (2)

[1] **Attorneys and Legal Services** Maintaining license

Attorney's conduct of moving his business address and changing his business telephone number without notifying the Office of Court Administration (OCA) within 30 days, as required, his failure to re-register with OCA, and his failure to pay his biennial attorney registration fees for more than five years, constituted conduct prejudicial to the administration of justice, warranting disciplinary action. McKinney's Judiciary Law § 468–a, subds. 2, 5.

7 Cases that cite this headnote

[2] **Attorneys and Legal Services** Conduct as to Licensure
Attorneys and Legal Services Conduct as to Disciplinary Process
Attorneys and Legal Services Cooperation and participation
Attorneys and Legal Services Suspension

Attorney's conduct of failing to respond to Disciplinary Committee's numerous letters seeking an answer to two complaints against him, to amend his business address and telephone number on his attorney registration forms, to re-register and pay his biennial registration fees, and to respond to suspension motion, constituted conduct demonstrating a willful noncompliance with a Committee investigation, and threatened the public interest, warranting attorney's immediate suspension from the practice of law.

8 Cases that cite this headnote

Attorneys and Law Firms

****65** Thomas J. Cahill, Chief Counsel, Departmental Disciplinary Committee, New York (Angela Christmas, of counsel).

No appearance for respondent.

RICHARD T. ANDRIAS, Justice Presiding, DAVID FRIEDMAN, GEORGE D. MARLOW, EUGENE NARDELLI, MILTON L. WILLIAMS, Justices.

Opinion

PER CURIAM.

***43** Respondent was admitted to the practice of law in the State of New York by the Second Judicial Department on May 5, 1976. At all times relevant to this proceeding, respondent has maintained an office for the practice of law within the First Judicial Department.

The Departmental Disciplinary Committee seeks an order

pursuant to 22 NYCRR 603.4(e)(1)(I) immediately suspending respondent from the practice of law until further order of the Court due to his failure to cooperate with the Committee's investigation into allegations of professional misconduct, which immediately threatens the public interest, his failure to re-register with the Office of Court Administration (OCA) and pay his biennial registration fee, and his failure to inform OCA of changes to his business address and telephone number in violation of Judiciary Law § 468–a.

The Committee opened an investigation into respondent's professional conduct on July 16, 2004 after receiving a complaint ****66** from Thomas Vasta, alleging neglect of his medical malpractice matter and failure to communicate about the status of his case. Mr. Vasta, who retained respondent in 1997, stated that in September 2003 respondent advised him that the case had been settled. Despite numerous attempts, Mr. Vasta was unable to contact respondent regarding the status of the settlement. Mr. Vasta has since retained another attorney to assist in the settlement. The Committee's first attempt to send a copy of this complaint to respondent for an answer was made on July 28, 2004. However, that letter was sent to what the Committee now knows is an out of date business address and was returned by the post office as undeliverable.

On August 6, 2004, the Committee opened another investigation after receiving a complaint from Maribel Tirado, similarly alleging neglect and failure to communicate regarding her medical malpractice matter. This complaint listed a different Long Island City business address for respondent. Ms. Tirado, who retained respondent in 1998, alleged that respondent informed her that her case had been settled and, in January 2004, she returned a notarized stipulation of discontinuance to him. Since then, she has been unable to reach respondent and she retained another attorney who settled her case. The settlement calls for an amount representing attorneys' fees to be held in escrow for six months and if respondent fails to claim it, it will be released ***44** to Ms. Tirado less costs and expenses incurred by defense counsel in attempting to locate respondent.

After the Committee's July 28, 2004 letter was returned as undeliverable and prior to notifying respondent of the new Tirado complaint, the Committee's investigator used various methods in an attempt to contact respondent, including leaving phone messages on respondent's office telephone and sending a letter dated August 24, 2004 to his home address, requesting that he contact the Committee, but to no avail.

Thereafter, on September 14, 2004, after the investigator discovered that the business address respondent listed on his OCA records was no longer current, he visited respondent's home address where the building manager confirmed respondent's residence and stated that respondent had been seen a few weeks earlier. On September 24, 2004, the Committee sent a letter, by first class and certified mail, to respondent's Long Island City business address requesting that he contact the Committee regarding the Vasta complaint. That letter was returned by the post office as undeliverable. When the investigator visited that office on October 4, 2004, there was no answer but a stack of at least 50 pieces of mail addressed to respondent were lying at the door. In addition, the building manager had not seen or heard from respondent for several months and stated that he was several months delinquent in paying his rent.

Subsequent attempts were made to contact respondent by first class and certified mail and in person at respondent's home address, asking him to contact the Committee to discuss both complaints.

Despite the foregoing efforts, the Committee states that respondent has failed to respond to the complaints against him or contact the Committee in response to the many letters sent to him and, as a result, by failing to communicate with the Committee and his two complaining clients, respondent has intentionally made himself inaccessible to those to whom he is accountable. The Committee thus seeks to suspend respondent from the practice of law until further order of the Court due to ****67** his failure to cooperate with the Committee in its investigation.

The Committee's efforts to serve respondent with the present motion were similarly unavailing. On April 13, 2005, an investigator went to respondent's apartment building where the doorman rang respondent's apartment, but there was no response. The doorman stated that he had seen the respondent ***45** the day before. The investigator then hand delivered a copy of the motion to a mailroom employee at respondent's apartment building and mailed a copy to respondent's home address. Respondent has not filed a response to the motion.

Pursuant to 22 NYCRR 603.4(e)(1), this Court may suspend an attorney from the practice of law pending consideration of charges of professional misconduct upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. Such a finding may be based upon:

> (I) ... the attorney's failure ... to comply with any lawful demand of this court or the Departmental Disciplinary Committee made in connection with any investigation ...

(22 NYCRR 603.4[e][1][I]).

[1] Moreover, it appears that respondent has moved his business address and changed his business telephone number, but failed to notify OCA of the changes within 30 days, as required by Judiciary Law § 468–a(2), thereby frustrating the efforts of the Committee to contact him. Respondent has also not re-registered with OCA or paid his biennial attorney registration fees since the 1998/99 biennial period. Such noncompliance constitutes conduct prejudicial to the administration of justice and warrants reference to this Court for disciplinary action (Judiciary Law § 468–a[5]).

[2] Given respondent's failure to respond to the Committee's numerous letters seeking an answer to the two complaints against him, his failure to amend his business address and telephone number on his attorney registration forms, his failure to re-register and pay his biennial registration fees, which in and of itself constitutes independent grounds for discipline (*see Matter of Horoshko*, 218 A.D.2d 339, 341, 638 N.Y.S.2d 445 [1996]), and his failure to respond to this motion, it appears that respondent has abandoned his law practice and made himself inaccessible to the Committee and his clients. Such conduct demonstrates a willful noncompliance with a Committee investigation and threatens the public interest warranting an immediate suspension from the practice of law (*see Matter of Kamgar*, 7 A.D.3d 114, 116, 777 N.Y.S.2d 467 [2004]).

Accordingly, the Committee's motion should be granted and respondent suspended from the practice of law, effective immediately, pursuant to 22 NYCRR 603.4(e)(1)(I), and until the further order of this Court.

***46** Respondent suspended from the practice of law in the State of New York, effective the date hereof, until such time as disciplinary matters pending before the Committee have been concluded and until further order of this Court.

All concur.

All Citations

21 A.D.3d 42, 797 N.Y.S.2d 65, 2005 N.Y. Slip Op. 05202

Matthew Flanagan is a 1989 graduate of Fordham University and received a Juris Doctorate degree from St. John's University School of Law in 1992. He is a skilled litigator with extensive trial and appellate experience in the area of legal malpractice defense, professional liability and general litigation. He has successfully argued numerous appeals in the Appellate Divisions for the First, Second and Third Departments, and New York's highest court: the Court of Appeals.

Mr. Flanagan has been named annually to the New York *Super Lawyers* list as one of the top attorneys in the New York Metropolitan area since 2012, and has been awarded a rating of AV Preeminent™ by Martindale-Hubbell. The Rating is the Highest Possible Rating in both Legal Ability and Ethical Standards, and was awarded following a Peer Review Rating Process, which included surveys of judges and other attorneys. He has also been named annually as one of the top professional liability and legal malpractice defense attorneys on Long Island by LexisNexis Martindale-Hubbell, and has been given an AVVO rating of "Superb" (10.0 out of 10.0).

Mr. Flanagan is admitted to practice before the Courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit. He is a member of the American Bar Association, New York State Bar Association, the Nassau County Bar Association and the Theodore Roosevelt American Inn of Court.

Mr. Flanagan is a frequent lecturer regarding legal malpractice prevention and defense, and ethics and professional liability.

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Memberships

American Bar Association

New York State Bar Association

New York Bar Foundation, Fellow

Nassau County Bar Association, Former Director; Community Relations & Public Education Committee, and Strategic Planning Committee, former Chairs

Nassau County District Court Judges' Association, Past President

Assistant District Attorneys Association of Nassau County, Past President

Jewish Lawyers Association

Nassau Academy of Law, Former Dean

Theodore Roosevelt American Inn of Court, Member and Past President

American College of Business Court Judges, Founding Member and Past President

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Justice Ira B. Warshawsky, ret. is Of Counsel in the Litigation and Alternative Dispute Resolution practices at Meyer, Suozzi, English & Klein, P.C. in Garden City, Long Island, N.Y. Since joining the firm, the judge has handled mediations with a concentration in multiple areas including construction, personal injury and business disputes. The Judge serves not only as an advocate, representing clients in commercial litigation, but also as a mediator, arbitrator, litigator, private judge, special master and referee, especially in the area of business disputes and the resolution of electronic discovery (E-Discovery) issues. The Judge is also a member of NAM's arbitration and mediation panels. Judge Warshawsky was a distinguished member of the New York judiciary for 25 years. Immediately prior to joining Meyer Suozzi, he served as a Supreme Court Justice in one of the State's leading trial parts -- the Commercial Division -- where he presided over all manner of business claims and disputes, including business valuation proceedings, corporate and partnership disputes, class actions and complex commercial cases.

Judge Warshawsky started his career in public service as a Legal Aid attorney in 1970 when he was Assistant Chief of the Family Court branch in Queens County. He served as a Nassau County Assistant District Attorney in the District and County Court trial bureaus from 1972 to 1974. Following these four years of prosecution and defense work he became a law secretary, serving judges of the New York State Court of Claims and County Court of Nassau County. In 1987 he was elected to the District Court and served there until 1997. In 1997 he was elected to the Supreme Court of the State of New York where he has presided in a Dedicated Matrimonial Part, a Differentiated Case Management Part and sat in one of the county's three Dedicated Commercial Parts until 2011.

Judge Warshawsky has been active in numerous legal, educational and charitable organizations during his career. The Judge recently served as an expert in New York Law in the Grand Court of the Cayman Islands. He has also served as a lecturer in various areas of commercial, civil and criminal law, most recently in the area of e-discovery and its ethical problems. He frequently lectures for the National Institute of Trial Advocacy (NITA) at Hofstra and Widener Law Schools. The Judge currently serves as a contributing editor of the *Benchbook for Trial Judges* published by the Supreme Court Justices Association of the State of New York. He has served as a member of the Office of Court Administration's Civil Curriculum Committee. In 2010, while still on the bench, he was named the official representative of the New York State Unified Court System to The Sedona Conference®, a leading organization

credited with developing rules and concepts which address electronically stored information in litigation. The judge is currently a member of the Advisory Board of The Sedona Conference.

As a judge in the Commercial Division of the Supreme Court, he authored several informative decisions dealing with the discoverability and cost of producing electronic materials as well as determining “fair value” in corporate dissolution matters. He has presented numerous seminars on electronic discovery to practicing lawyers through the ABA, the NYSBA, the Nassau Bar Association and private corporate law forums.

In 1996 Judge Warshawsky was the recipient of EAC's Humanitarian of the Year Award, in 1997 he received the Nassau County Bar Association President's Award, in 2000 he received the Former Assistant District Attorneys Association's Frank A. Gulotta Criminal Justice Award and in 2004, the Nassau Bar Association's Director's Award. He is also past president of the Men of Reform Judaism, the men’s arm of the Union of Reform Judaism, the parent body of the Reform movement of Judaism. In 2013, 2015, and 2016, Judge Warshawsky was voted as one of the top 10 Arbitrators in a *New York Law Journal* reader’s poll. In 2016, he was also named an “ADR Champion” by the *National Law Journal*.

In 2018, Judge Warshawsky was named ADR Champion by The National Law Journal. In 2017, he was given a ProBono Award at the Nassau County Bar Association’s Access to Justice for being one of Nassau’s attorneys to provide the most pro bono hours of service in 2016.

WZMP
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Omid Zareh

Mr. Zareh is a founding member of Weinberg Zareh Malkin Price LLP.

His practice focuses on executives and companies in corporate planning and all phases of complex, commercial litigation. He advises in varied areas of law including attorney professional responsibility, partnership break-ups, technology, real property, and contractual and corporate disputes. His clients range from law firms, entrepreneurs, start-up companies, established financial companies, and alcohol manufacturers.

Mr. Zareh is a member of the bars of New York State and New Jersey, as well as the Federal Circuit. He is the former Chair of the Ethics Committee of the Nassau County Bar Association and former Vice President of the NYU Law Alumni Association. He also has participated in a number of community and professional organizations, and often lectures about the law. Mr. Zareh currently serves as a board member of different organizations, including real estate holding companies. He also is a member of the Nassau Academy of Law Advisory Board.

While attending New York University Law School, Mr. Zareh was the Legal Theory Editor of the Review of Law and Social Change.

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DEBORA G. NOBEL

Debora G. Nobel specializes in the area of medical malpractice, and was a defense litigator for 38 years. She currently practices independently as local counsel to several medical malpractice firms. Prior to becoming an attorney, she served as the Acting Director of the Office of Health Systems Management of the New York State Department of Health, which administered the Medicaid Program in New York City.

Ms. Nobel has a Master's Degree in Health Policy and Administration from New York University Wagner School of Public Service (1974) and a J.D. from New York Law School (Night Division 1979).

Ms. Nobel previously held the office of Secretary of the Theodore Roosevelt American Inn of Court and continues to serve as a Board member.