

The Prevalence of Substance Use and other Mental Health Concerns among American Attorneys - Ethical Considerations

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LAWYERS CONCERNED FOR **LAWYERS**

Confidential Support for Legal Professionals

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

- ABA Commission on Lawyer Assistance Programs (CoLAP) and Hazelden Betty Ford collaboration
- 12,825 lawyers in 19 states

Survey Instruments

- AUDIT 10-Alcohol Use Identification Test
 - Developed by World Health Organization
 - Widespread use by health workers and alcohol researchers
 - Screens for hazardous, harmful and possible alcohol dependence

Alcohol Use- AUDIT 10

- **20.6 % scored at a level consistent with problematic drinking-Using Audit 10 = problem behaviors and levels of use**
 - **Problematic drinking = hazardous drinking and possible dependence**
 - **More males (25.1%) than females (15.5%) among lawyers**

Alcohol Use – Audit 3

- **Using the Audit 3 = levels of use**
 - **Physicians 15% problematic drinking**
 - **Lawyers 36.4%**

Demographic and Position Data

- **Position in the field**
 - Higher scores for those working in private firms (23.4% on Audit 10)
- **Age and experience**
 - Highest scores for
 - Fewer than 10 years in profession
 - 30 and under

Self Reporting-Concerns

- 22.6% felt their use of alcohol or substances was a problem sometime during their lives
- 27.6% reported problematic use prior to law school
- 14.2% reported problematic use started during law school
- **43.7 % reported problematic use started within the first 15 years following law school**
- 14.5% reported problematic use started more than 15 years after law school.

Other Addictions

- o Drugs
- o Gambling
- o Internet Addiction
- o Sexual Compulsivity
- o Eating Disorders
- o Shoplifting Addiction
- o Compulsive Shopping

Depression, Anxiety and Stress Scale = DASS-21

- Depression 28%
- *Males higher levels of depression than females*
 - *Same inverse relationship*
 - Rates decreases as age increased
 - Junior positions = higher rates

ANXIETY/STRESS

- Anxiety 19%
 - *Females higher than males*
- Stress 23%
- Higher scores on Audit correlated with higher scores on the DASS
- DASS scores decreased as age and years in the field increased-similar to Audit

Self Reporting of Mental Health Concerns

- Anxiety 61%
- Depression 45.7%
- Social Anxiety 16.1%
- ADHD 16.1%
- Panic Disorder 8.0%
- Bipolar Disorder 2.4%

The Silver Tsunami

- o Previous studies showed increase in alcohol and depression correlated with more years in the profession
- o Cognitive Impairment

Our Aging Profession:

- No clear guidance of when to stop
- No succession plans
- Reluctance of others to approach
- Many are solo
- Malpractice and discipline issues
 - Neglect
 - Competence

The Right Perspective

- Cognitive Impairment begins in our 30s
- As we age, we are at greater risk
- Being older does not equal incompetence
- Should you presume competence?
- A broad view of Professional Responsibility

Pseudo Mental Capacity

- Confabulation
- Denial
- Superficiality
- Defensiveness
- Get an assessment

High-Functioning and Impaired

- Competitive overachievers
- No public consequences
- Little accountability
- Physical appearance
- Subtle isolation
- Seems to have good boundaries
- Finishes drinks

Suicidal Thoughts and Self Harm

- 11.5% reported suicidal thoughts during their career
- 2.9% reported self injurious behaviors
- 0.7% reported at least one suicide attempt = 85 – 96 people

The Rules

1.3 Diligence

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

The Rules

1.3 Diligence

- Comment 2: “A lawyer’s workload must be controlled so that each matter can be handled competently.”

What is your role?

- The challenge of working for/with an impaired lawyer
 - Enabling - covering for mistakes and lapses
 - Intimidation
 - You don't know what you don't know
- Protecting clients
 - Call LCL
 - Call the OLPR
- Maximizing your career – make sure you have resources outside of your job

Chemical Misuse, Discipline and Malpractice

MINNESOTA EXPERIENCE

- Former OLPR Director estimated alcohol involved in 50% of investigated discipline cases – not all are disciplined.
- Probations sometimes include a chemical dependency requirement (verified ASG – e.g. AA attendance or random urinalysis)

Mental Health Issues and Disciplinary Proceedings

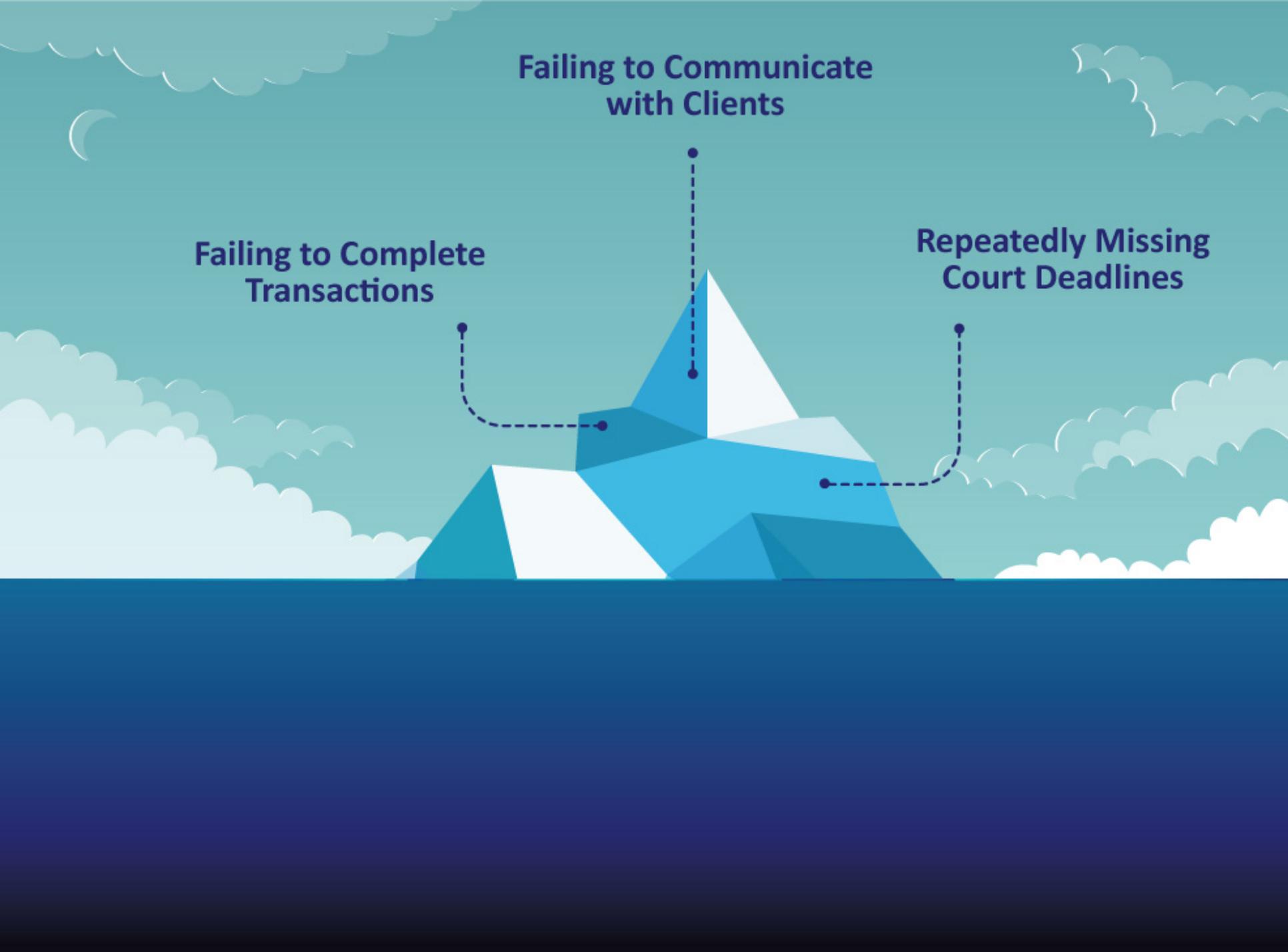
MINNESOTA EXPERIENCE

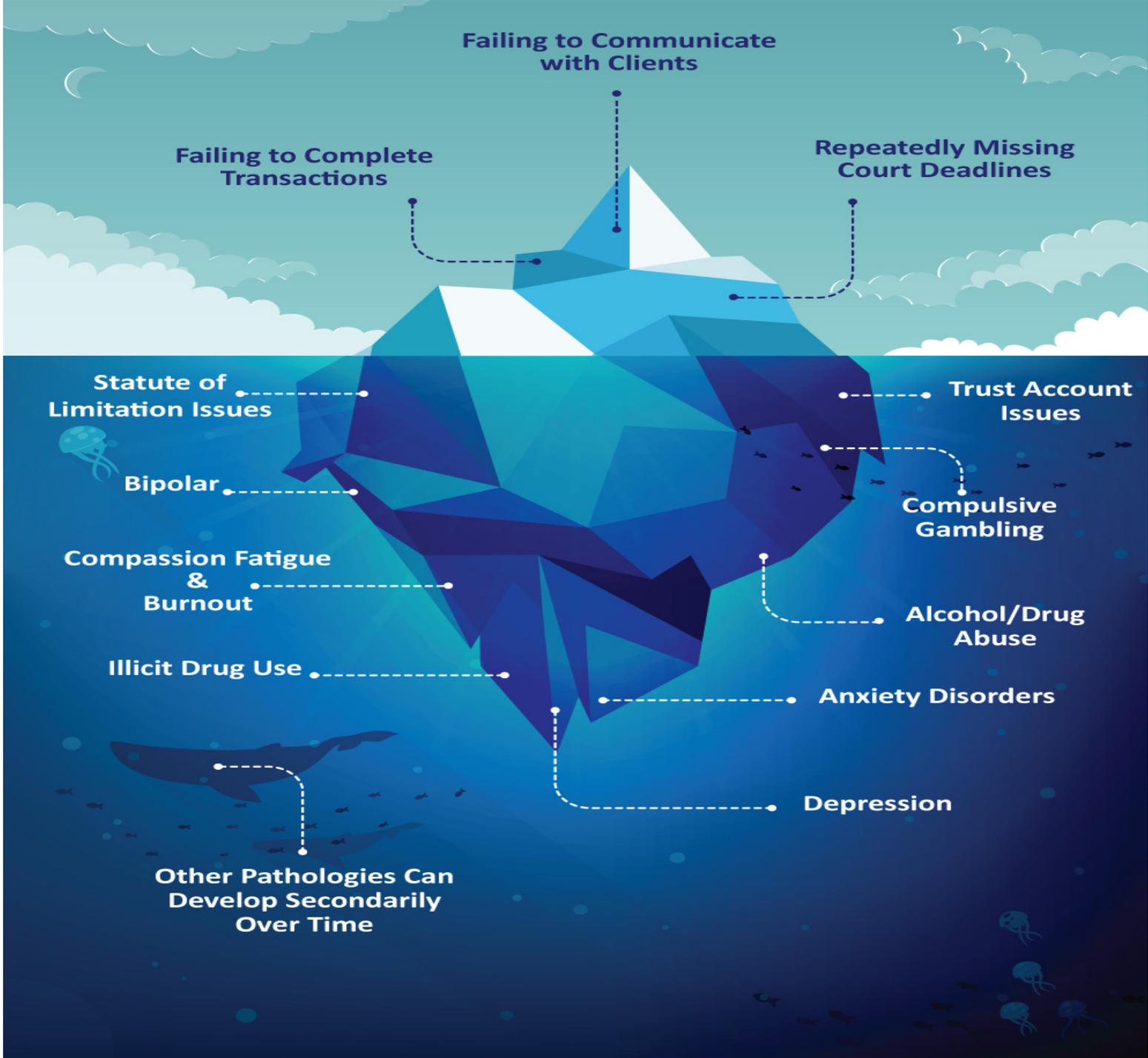
- Probations sometimes include a mental health treatment requirement
- Open OLPR cases include:
 - neglect and non-communication
 - non-cooperation

**Failing to Communicate
with Clients**

**Failing to Complete
Transactions**

**Repeatedly Missing
Court Deadlines**





Failing to Communicate with Clients

Failing to Complete Transactions

Repeatedly Missing Court Deadlines

Statute of Limitation Issues



Bipolar

Compassion Fatigue & Burnout

Illicit Drug Use



Other Pathologies Can Develop Secondarily Over Time

Trust Account Issues

Compulsive Gambling

Alcohol/Drug Abuse

Anxiety Disorders

Depression

Impact of Behavioral Disorder on the Legal System

- o Criminal Justice System
- o Disciplinary System
 - o Decline or Withdraw
 - o Prepare for Disability
 - o Take Responsibility within Firm
 - o Report Violations of the Rules

Declining or Terminating Representation

- [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

Diligence: Making a Plan

- [5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

Rule 5.1 Responsibilities of a Supervisory Lawyer

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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 in other respects, shall inform the appropriate professional authority.

Rule 8.3 Reporting Professional Misconduct

(c) This rule does not require disclosure of information . . . gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.

Professional Misconduct is not Excused

- Disability Inactive Status
 - Abates Disciplinary Action
 - Consequences Upon Reinstatement
- Probation
 - Public or Private
 - Non-serious Misconduct
- Mitigation of Discipline

Mitigation: Alcoholism and Disciplinary Proceedings.

In re: Johnson, 322 N.W.2d 616 (Minn. 1982).

Attorney must prove four factors by clear and convincing evidence to have substance abuse be a mitigating factor in discipline.

1. The accused attorney is affected by alcoholism.
2. The alcoholism caused the misconduct.
3. The accused attorney is in recovery from alcoholism and any other disorders which caused or contributed to the misconduct.
4. The misconduct has been arrested and is not apt to reoccur.

Mitigation: Mental Health Issues and Disciplinary Proceedings.

In re: Weyhrich, 339 N.W.2d 274 (Minn. 1983).

To successfully raise psychological disability as a mitigating factor, an attorney must prove four factors by clear and convincing evidence

1. The attorney has a severe psychological problem.
2. The psychological problem caused the misconduct.
3. The attorney is undergoing treatment and is making progress to recover from the psychological problem that caused or contributed to the misconduct.
4. The misconduct is not apt to reoccur.

Mitigation cases

- *In re Fairbairn*. Extreme Stress was a Mitigating Factor
- *In re Glasser*. Turmoil in an attorney's life can be considered a mitigating factor even without proof that the turmoil caused the misconduct

Mitigation Today

- The causal connection is difficult to prove.
 - *In re Mayne*, 783 N.W.2d 153 (Minn. 2010).
 - *In re Rodriguez*, 783 N.W.2d 170 (Minn. 2010).
- Some lawyers are reluctant to raise mitigating factors because of concern that their condition will be made public if public discipline is issued.
- *In re Clark*, footnote 2

Lawyers Concerned for Lawyers Minnesota LAP

- History
- Current Services
 - Lawyers, law students, judges, families
 - Confidentiality
 - Education
 - » CLEs and classes
 - Website www.mnlcl.org
 - Consultation
 - » Advice and support to concerned persons
 - » Assistance to legal organizations with policies and procedures

Lawyers Concerned for Lawyers Minnesota LAP

- Current Services
 - Clinical Services
 - » 24 hour hotline
 - » Assessment
 - » Intervention Coaching
 - » Short term counseling
 - » Referral to Community Services
 - » Group Therapy
 - » Support Group
 - Mentoring
 - Social Support

Partnership with The Sand Creek Group (former DOR and Associates)

- o Up to 4 free counseling sessions
- o Resource website
 - o www.sandcreekeap.com
 - o Click on WORKLIFEWELLNESS LOGIN
 - o Enter password LCL1
- o Contact Sand Creek directly at **612-430-3383**
or toll-free: **1-888-243-5744**



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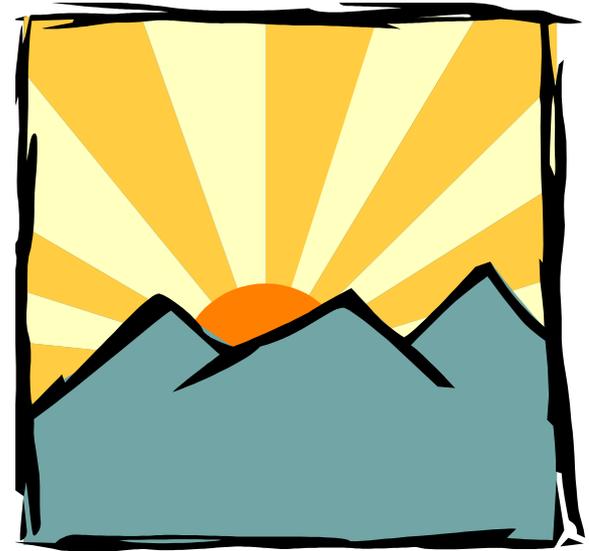
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LAWYERS CONCERNED FOR LAWYERS

There is Help



&



There is Hope