

Help for Attorneys in Crisis: Dealing with Lawyer Addiction and Impairment

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Today's Topics

- Why is this an Ethical Issue?
- How to recognize and obtain help when you, a colleague or other fellow bar member suffers from a substance use or mental health problem
- Employment law issues and risks
- Support staff issues

What the numbers show – the national picture

- Nearly 1 in 12 (20.3 million) adults had a substance use disorder in the past year.
- Nearly 1 in 5 (43.8 million) adults had any mental illness in the past year. 10 million had serious mental illness.
- 7.7 million had both.

SAMHSA 2013 National Survey on Drug Use and Health (NSDUH)

What the numbers show – Our Profession and alcohol

- Alcohol misuse and dependency is twice as prevalent among attorneys as it is among non-attorneys.
- Women lawyers do not have as high rates as male attorneys, but when they do, the problem is likely to be more severe.
- Lawyers from underrepresented groups are often more severely addicted when they get help.

2016 data

- ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation surveyed 18,000 lawyers
- 21% met the criteria for substance use disorder

Other Substances and Behaviors

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

What the numbers show – Our Profession and Mental Health

- Lawyers are 3.6 times as likely to suffer from depression as the rest of the population.
- Women – Report depression twice as frequently as men. Symptoms more congruent with sadness. More honest reporting.
- Men – Less likely to admit to depression and less likely to be diagnosed. Cover up symptoms with work, alcohol, and drugs. Symptoms tend toward anger/irritability.

What the Numbers Show - Suicide

- Suicide was the tenth leading cause of death for all ages in 2010 (38,364 or an average of 105 each day).
- 33.3% of suicide decedents tested positive for alcohol, 23% for antidepressants, and 20.8% for opiates.
- There is one suicide for every 25 attempted suicides.
- Suicide among males is four times higher than among females, but females are more likely than males to have had suicidal thoughts.
- Firearms are most commonly used by men (56%) and poisoning is the most common method among women (37%).

Centers for Disease Control, 2012

Suicide in our Profession

- A Canadian study suggested that lawyers are nearly 6x as likely to die by suicide .
- Stress and addiction are predictors and we have higher rates.
- Other predictors include stress, isolation and the stigma of asking for help.
- Because of perfectionism, if we attempt suicide, we're more likely to die by suicide

2016 Data

- 28% met the criteria for depressive disorder
- 18% met the criteria for an anxiety disorder
- 11.5% had considered suicide.

More ABA/Hazelden Data

- The rates of mental health and substance issues were significantly higher in respondents 30 years old and younger or who had worked in the profession for 10 or fewer years. This is contrary to earlier studies where the levels increased with longevity in the profession and age.
- Distress occurs in every type of job. Newer attorneys in law firms reported the highest overall rate.

Definition of Alcoholism

a **primary, chronic disease** with **genetic, psychosocial,** and environmental factors influencing its development and manifestations. The disease is (often) **progressive and fatal.**

Definition of Alcoholism

It is characterized by continuous or periodic: **impaired control** over drinking, **preoccupation** with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably **denial**.

Signs of Impairment

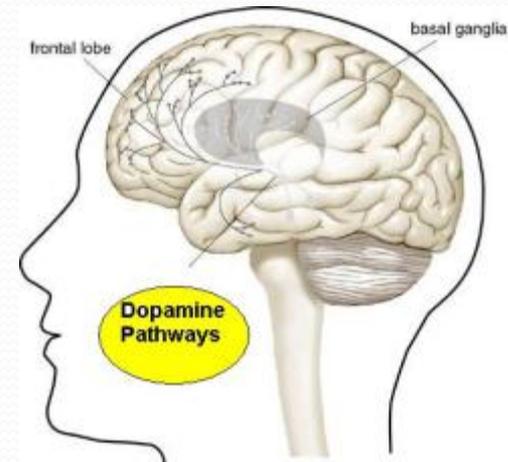
- Personal behavior
- Attendance
- Job performance
- **BUT**, the impaired lawyer may cover very well at work.

Stages of Substance Use Disorder

- **Early**—use for stress, emotional relief, increasing frequency and amount of use, blackouts/memory loss, possible harmful consequences
- **Middle**—family problems, personality changes, behavior inconsistent with values, livelihood threatened, continued use despite harmful consequences, using to feel “normal”
- **Late**—physical deterioration, free-floating anxiety, using to eliminate the pain, premature death

Chemicals and the Brain

- Necessary neurotransmitters are blocked or released in abnormal ways
- The brain tries to return to normal but now chemical use is perceived as normal.
- Then chemicals become necessary to return to normal and addiction has set in.
- Any mood-altering drug will now have this effect. The brain has been hijacked by the drug.



High-Functioning and Impaired

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

Impairment and Work

- Educate support staff
- Provide non-threatening reporting options
- Give family members a contact
- Distribute LCL or other materials with benefits materials



Is there a Problem?

- Have you ever felt you should **Cut down** on your drinking/use/behavior?
- Have people **Annoyed** you by criticizing (or commenting on) your drinking?
- Have you ever felt bad or **Guilty** about your drinking?
- Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (**Eye opener**)?

Depression

- It occurs in stages: emptiness, hopelessness/helplessness, suicide
- A loss of interest in normally pleasurable activities
- Impaired ability to concentrate, remember and decide
- It's not just a blue mood that can be wished away
- In a colleague, look for a change.

Depression: Common Symptoms

- Feeling Sad or Empty
- Loss of Interest in Normally Pleasurable Activities
- Change in Appetite
- Sleep Disturbance
- Fatigued, Loss of Energy
- Difficulty Concentrating, Remembering, Deciding
- Physical Pain(s)
- Wishing You Weren't Alive
- Thinking of Dying, Suicide



Depression: From the Outside

- Gloomy
- Pessimistic
- Cynical
- Negative
- Moody
- Irritable
- Complaining
- Brooding
- Anxious
- Critical



**The key is a
change in
behavior**

Other Mental Health Issues

- Anxiety Disorder
- Bipolar Disorder
- Obsessive Compulsive Disorder
- ADHD
- Unresolved Grief
- Post Traumatic Stress Disorder
- Cognitive Impairment

Erasing the stigma

- Stigma refers to a feeling of disgrace or fear
- Experienced with mental health issue *or just stress*
- The bearer has feelings of shame and isolation
- “I’ll do it myself!”
- Education can help with public stigma; personal stigma is tougher – especially for us
- What do you think of?

What Stigma Means

- ABA Hazelden Study - Barriers to seeking help included
 - “not wanting others to find out they needed help”
 - “concerns regarding privacy or confidentiality”



Ethical Considerations

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

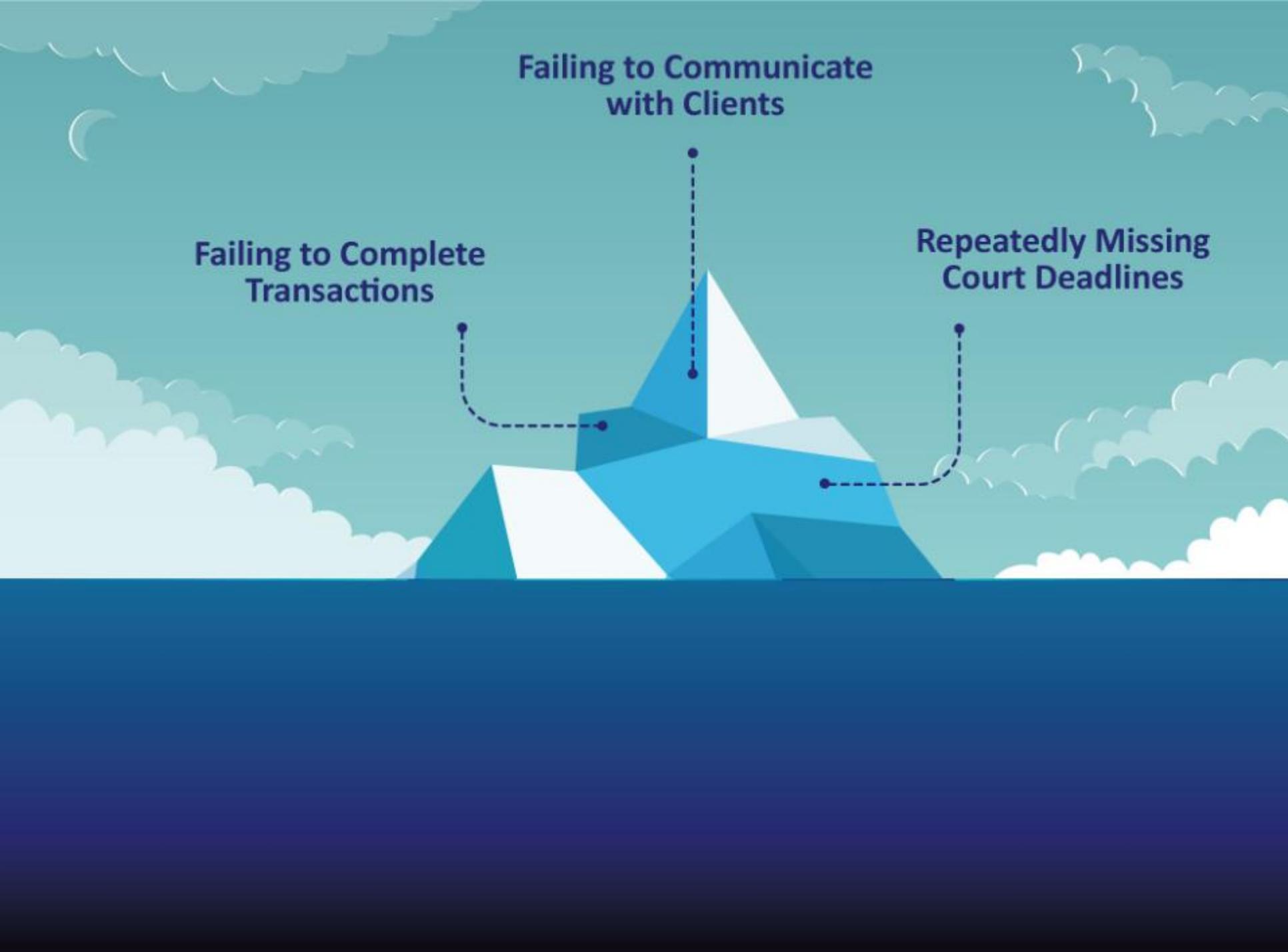
MINNESOTA EXPERIENCE

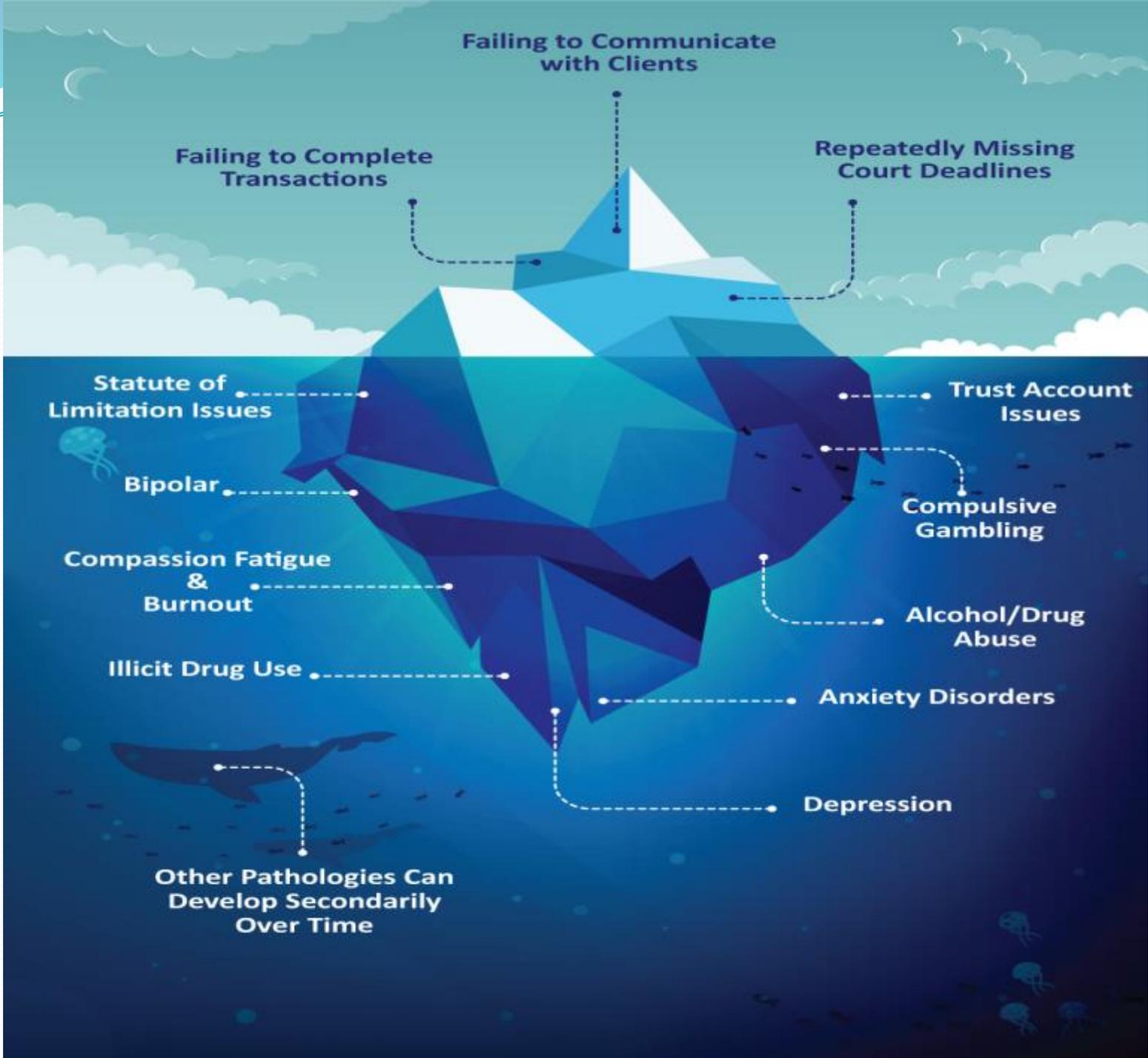
- Probations sometimes include a mental health treatment requirement
- Open OLPR cases include:
 - neglect and non-communication
 - non-cooperation

**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

Trust Account Issues

Bipolar

Compulsive Gambling

Compassion Fatigue & Burnout

Alcohol/Drug Abuse

Illicit Drug Use

Anxiety Disorders

Depression

Other Pathologies Can Develop Secondly Over Time

Impact of Behavioral Disorder on the Legal System

- Criminal Justice System
- Disciplinary System
 - Decline or Withdraw
 - Prepare for Disability
 - Take Responsibility within Firm
 - 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.

5.1 Responsibilities of a Partner or Supervisory Lawyer

- Comparable managerial authority or supervision
- Knows of the conduct
- Fails to take 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.

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 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.

Professional Misconduct is not Excused

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

The Rules – 1.3 Diligence

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

Offering Help

- Levels of Intervention
- What to say
- What not to say
- Regarding as disabled
- Who needs to know
- Return to work
- Last chance agreements

What about clients and parties?

- You suspect an addiction/mental health issue
- The best interests of your client?
- How do lawyers talk to each other?

Lawyer assistance programs

- Free and confidential
- Firms can call for guidance
- Lawyers can call for help

Lawyers Concerned for Lawyers

Minnesota LAP

- History
- Current Services
 - Confidentiality
 - Lawyers, judges law students and their families
 - Education
 - CLEs
 - 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 (continued)

- Current Services (continued)
 - Clinical Services
 - 24 hour hotline
 - Assessment
 - Intervention Coaching
 - Free short term counseling
 - Referral to Community Services
 - Group Therapy
 - Support Group
 - Mentoring
 - Social Support

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

- Up to 4 free counseling sessions
- Resource website
 - www.sandcreekeap.com
 - Click on WORKLIFEWELLNESS LOGIN
 - Enter password LCL1
- Contact Sand Creek directly at **651-430-3383** or toll-free: **1-888-243-5744**



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HELP *and*



THERE IS
HOPE

