

# Why is Mental Health an Ethics Issue?

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**LAWYERS** CONCERNED FOR **LAWYERS**

Confidential Support for Legal Professionals

# Today's Topics

- Understanding the urgency
- Stress and mental health challenges in the legal profession
- Ethical considerations – us
- Ethical considerations – our clients
- What help is available?

# Lawyers Concerned for Lawyers Minnesota LAP

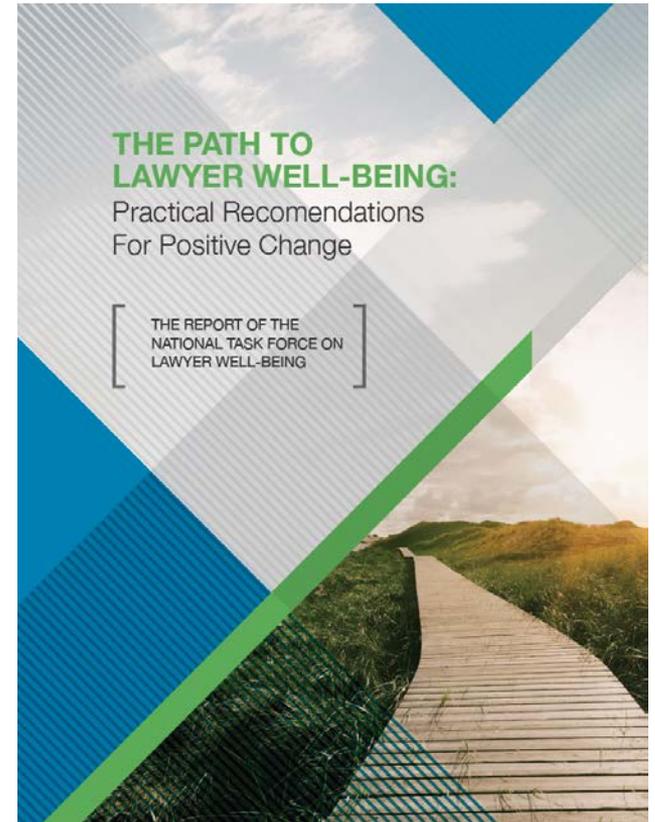
- History
- Confidentiality
- Lawyers, judges, law students, and their families
- Education
  - CLEs
  - Website [www.mnlcl.org](http://www.mnlcl.org)
- Consultation
  - Advice and support to concerned persons
  - Assistance to legal organizations with policies and procedures

# Lawyers Concerned for Lawyers Minnesota LAP (continued)

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

# The Path to Lawyer Well-Being: Practical Recommendations for Positive Change

THE REPORT OF THE NATIONAL TASK FORCE ON LAWYER WELL-BEING



*National Task Force on  
Lawyer Well-Being:*

“...seeking to create a MOVEMENT  
towards improving the health and  
well-being of the legal profession.”

# Three Reasons to Take Action

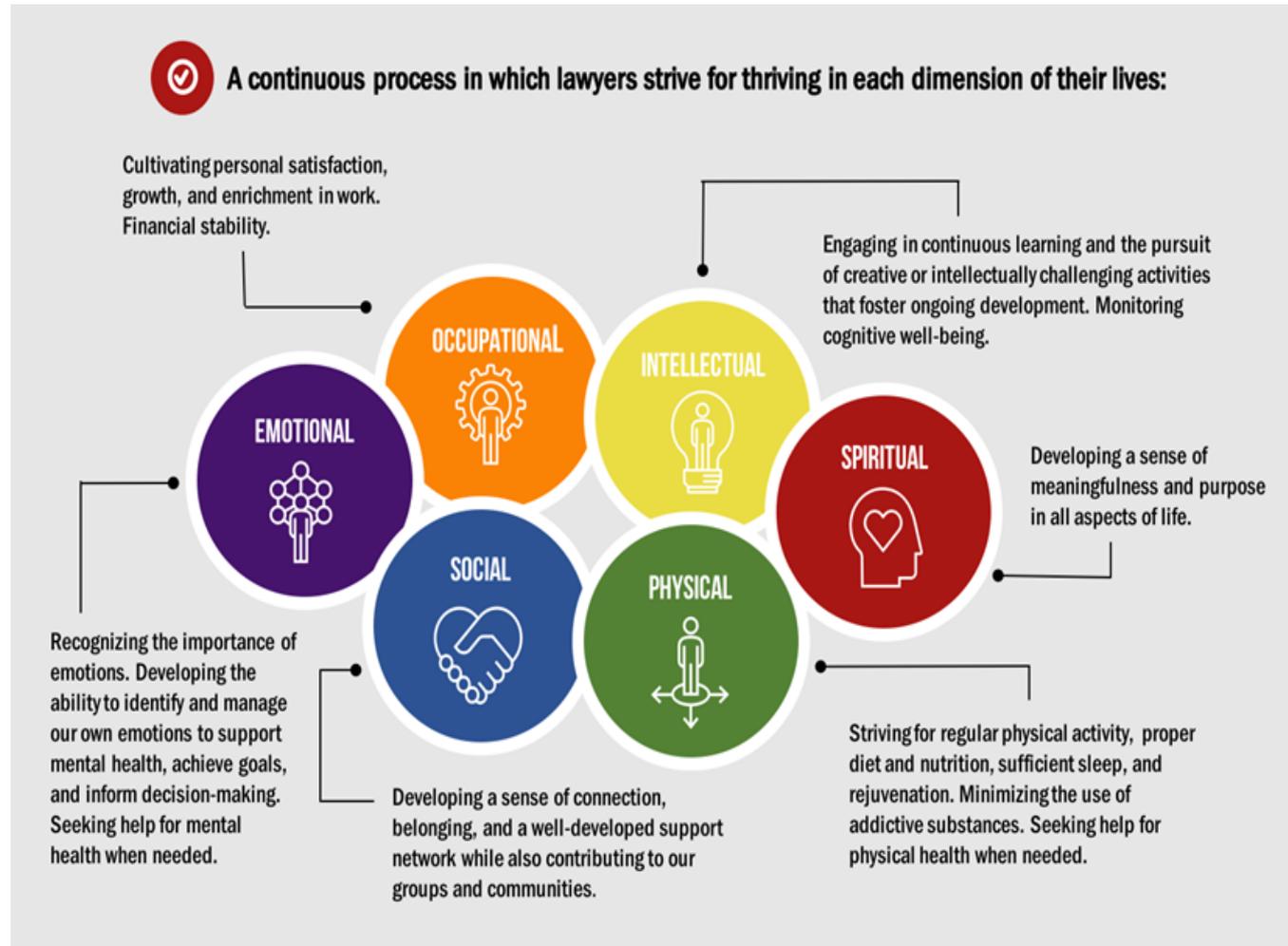
(1) Organizational success—in law firms, corporations, and government entities.

(2) Well-being influences ethics and professionalism.

- Rule 1.1 – competence
- Rule 1.3 – diligence
- Neglect, supervisory lawyers, reporting

(3) Humanitarian reasons—untreated mental health and substance use disorders ruin lives and careers.

# What is lawyer “well-being”?



# Are we special? Our stress is!

- o Perfection
- o Pessimism
- o Isolation
- o Uncertainty
- o Vicarious trauma



## OUR CHALLENGES



21-36% problem drinkers



28% depression



19% anxiety



23% elevated stress



25% work addiction



High suicide rate



Sleep deprivation



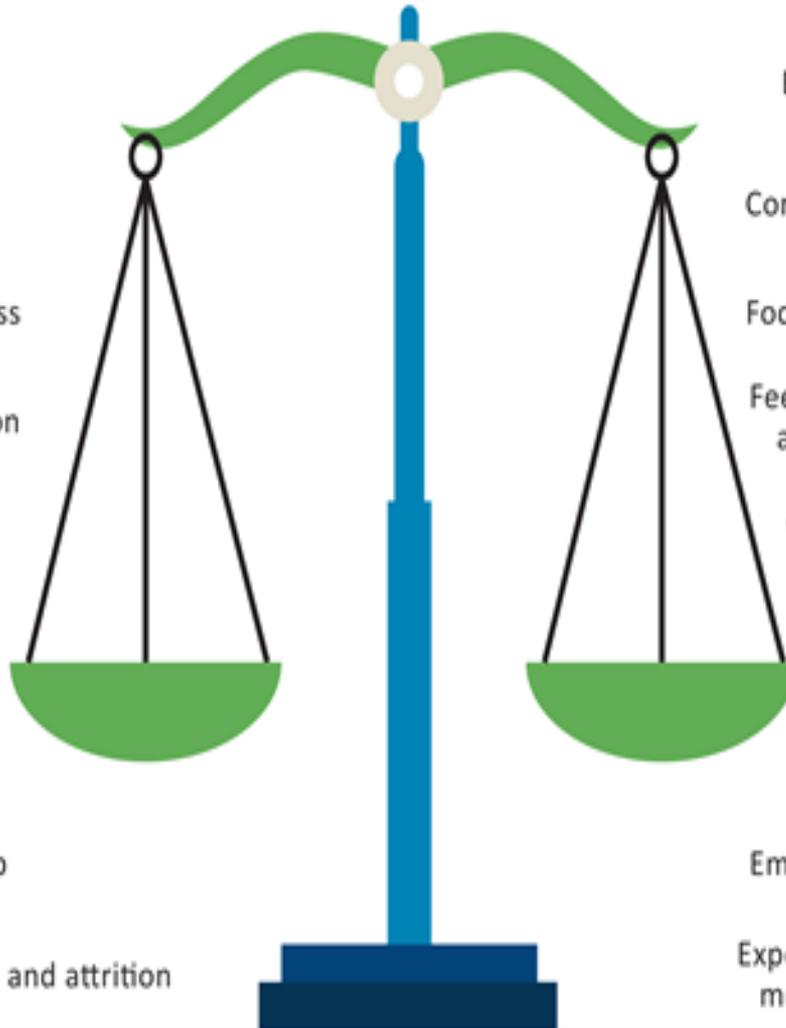
Work-life conflict



Avoid seeking help



Job dissatisfaction and attrition



## OUR POTENTIAL

Physically strong and healthy



Emotionally thriving



Contributing to society



Focusing on client care



Feeling connected and a sense of belonging



Willing to seek help



Engaged at work



Continually seeking intellectual growth



Emotionally intelligent



Experiencing a sense of meaning and purpose



# Consequences of Failing to Manage Stress

- Reduced personal and professional performance
- Health problems (mental and physical)
- Dangers of increase in alcohol use and other unhealthy coping mechanisms

# 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.”

# ABA Substance Use Data

- ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford surveyed lawyers in multiple states – 12,825 total
- 21% met the criteria for alcohol use disorder

# Characteristics of Addiction

- Primary
- Progressive
- Chronic
- Fatal
- Genetic
- Psychosocial
- Environmental
- Increased Tolerance
- Loss of Control
- Preoccupation
- Denial

# Stages of Dependency

- 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, continued use despite harmful consequences, job impact, using to feel “normal”
- Late—physical deterioration, free-floating anxiety, using to eliminate the pain, premature death

# Other Addictions

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

# Mental Health and Lawyers

- 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.
- 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.

# ABA Mental Health Data

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

# Other Mental Health Issues

- o Bipolar Disorder
- o Anxiety Disorder
- o Obsessive Compulsive Disorder
- o ADHD
- o Unresolved Grief
- o Post Traumatic Stress Disorder
- o Alzheimer's Disease

# Depression: #1 Predictor for Suicide

- Suicide rates among lawyers 6X National
- More Women Attempt, More Men Succeed

Symptoms Include:

- Depression symptoms
  - Statements of hopeless, helplessness, or worthlessness
  - Preoccupation with death or methods of dying
  - Feeling trapped or anxious, withdrawing
- Sometimes unexpected sudden improvement in mood
- Giving away possessions
- Tying up loose ends, setting one's affairs in order
- Giving "hints" of plans

Intervention: Ask, Support, Connect with Help

**DOING NOTHING IS NOT AN OPTION!**

# 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

# Anxiety: An Ethical Sinkhole

- We act rashly
- In our own self-interest

# 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 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.
- In Re Clark, 834 N.W.2d 186 (Minn. 2013) – medical records sealed.

# Professional Misconduct is not Excused

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

# What about Clients?

- Diminished Capacity
- Confidentiality
- Communication
- Supervisory Lawyer
- Lawyer as Advisor

# Rule 1.14—Clients 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 normal client-lawyer relationship with the client.

# Rule 1.14

(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 reasonable protective action, including consulting individuals or entities that have the ability to take action to protect the client. . . .

# Rule 1.14

- 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(b)(3) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

# Rule 1.6 Confidentiality

- (a) Except when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client.
- (b) A lawyer may reveal information relating to the representation of a client if:
  - (3) the lawyer reasonably believes the disclosure is impliedly authorized in order to carry out the representation;

# Rule 1.4: Communication

- [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14.

# 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 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 the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

# Rule 2.1: Advisor

- Scope of Advice
- [2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

# Rule 2.1: Advisor

- [4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work. . . Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

# The Rules

## 1.3 Diligence

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

# OLPR Advisory Opinion Service

- Available to licensed MN attorneys
- OLPR attorneys will provide no cost verbal opinion on application of specific facts to rules; every day an attorney is assigned to A/O tasks and spends much of the day returning calls; will receive answer the same day or next day
- Confidential; non-binding on third parties
- No opinion will be offered on (1) conduct of third parties, (2) where conduct has already occurred, and (3) OLPR does not approve lawyer advertising, but will advise rules relating to same.
- In 2017, the OLPR provided 2051 opinions.
- Options: Submit a written request on line (preferred where facts are complicated or detailed); call 651-296-3952 or toll-free 1-800-657-3601 and ask for the A/O attorney
- Website: <http://lprb.mncourts.gov>

# Lawyer Assistance Programs

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

# Partnership with The Sand Creek Group

- o Up to 4 free counseling sessions
- o Resource website
  - o [www.sandcreekeap.com](http://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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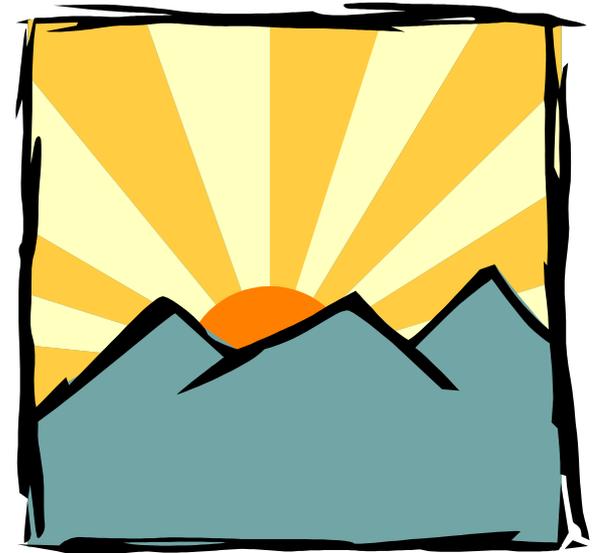
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# LAWYERS CONCERNED FOR LAWYERS

There is Help



&



There is Hope