MANAGING STRESS AND MAINTAINING BALANCE:

Finding Your Way as an Advocate in the World of Civil Legal Services

May 13, 2019

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CLE credits (2.0)
1.0 Ethics and Professionalism
1.0 Law Practice Management

HOUSING COURT ANSWERS
2019 ANNUAL CONFERENCE
Fordham University School of Law
150 West 62nd Street
New York, NY 10023
Managing Stress and Maintaining Balance: Finding Your Way as an Advocate in the World of Civil Legal Services

May 13, 2019

AGENDA

<table>
<thead>
<tr>
<th>I.</th>
<th>Introduction</th>
<th>15 minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>II.</td>
<td>Professional Standards (Ethics Review)</td>
<td>35 minutes</td>
</tr>
<tr>
<td>III.</td>
<td>Assessment</td>
<td>25 minutes</td>
</tr>
<tr>
<td>IV.</td>
<td>Skills and Tools for Managing Stress</td>
<td>25 minutes</td>
</tr>
</tbody>
</table>
Managing Stress and Maintaining Balance: Finding Your Way as an Advocate in the World of Civil Legal Services

May 13, 2019

Presenter Biographies:

Lucia Alanis
Ms. Alanis is the Legal Clinic Coordinator at Part of the Solution (POTS) a non-profit organization in the Bronx. Ms. Alanis is a graduate of the University of Texas at Austin (2016), where she earned a dual degree in International Relations and Spanish. As a student Ms. Alanis interned with the Teresa Lozano Long Institute of Latin American Studies (LLILAS) where she co-organized book readings, symposiums, lectures and other events. Ms. Alanis started her work with POTS as a legal advocate, working with clients at risk of eviction in housing court and in fair hearings seeking to maintain and access public benefits. Ms. Alanis currently manages the grants provided by POTS for emergency assistance. Ms. Alanis serves as a board member with the Emergency Rent Coalition, a collection of NYC providers who provide grants to eligible clients at risk of eviction or other emergencies.

Elizabeth Maris
Ms. Maris is a Supervising Attorney at Part of the Solution (POTS), where she represents clients and manages the staff providing legal services in the fields of housing and public benefits law. A graduate of Brown University (1988) and Columbia University School of Law (1992), Ms. Maris worked previously with Bronx Legal Services as a staff attorney (1992-1997) and supervisor (2007-2013). Ms. Maris worked with The Legal Aid Society from 1997 to 2007, where she was a member of the litigation teams for plaintiffs in Jiggetts v. Dowling, an 18-year lawsuit against the New York State welfare agency seeking an increased shelter allowance for public assistance recipients with minor children, and in Brownley v. Doar, a related lawsuit. Ms. Maris is a past delegate and officer of the Legal Services Staff Association (LSSA, UAW Local 2320) (1994-1996) and a past delegate (1998-2000) and executive board member (2004-2005) of the Association of Legal Aid Attorneys (ALAA, UAW Local 2325). Ms. Maris is a 2017 recipient of the Legal Services Award from the Association of the Bar of the City of New York.
# NEW YORK RULES OF PROFESSIONAL CONDUCT

Effective April 1, 2009
As amended through June 1, 2018
With Commentary as amended through June 1, 2018

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Rule</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Terminology</td>
<td>6</td>
</tr>
<tr>
<td>1.1</td>
<td>Competence</td>
<td>11</td>
</tr>
<tr>
<td>1.2</td>
<td>Scope of Representation and Allocation of Authority Between Client and Lawyer</td>
<td>14</td>
</tr>
<tr>
<td>1.3</td>
<td>Diligence</td>
<td>19</td>
</tr>
<tr>
<td>1.4</td>
<td>Communication</td>
<td>21</td>
</tr>
<tr>
<td>1.5</td>
<td>Fees and Division of Fees</td>
<td>24</td>
</tr>
<tr>
<td>1.6</td>
<td>Confidentiality of Information</td>
<td>29</td>
</tr>
<tr>
<td>1.7</td>
<td>Conflict of Interest: Current Clients</td>
<td>38</td>
</tr>
<tr>
<td>1.8</td>
<td>Current Clients: Specific Conflict of Interest Rules</td>
<td>49</td>
</tr>
<tr>
<td>1.9</td>
<td>Duties to Former Clients</td>
<td>60</td>
</tr>
<tr>
<td>1.10</td>
<td>Imputation of Conflicts of Interest</td>
<td>63</td>
</tr>
<tr>
<td>1.11</td>
<td>Special Conflicts of Interest for Former and Current Government Officials and Employees</td>
<td>69</td>
</tr>
<tr>
<td>1.12</td>
<td>Specific Conflicts of Interest for Former Judges, Arbitrators, Mediators, or Other Third-Party Neutrals</td>
<td>74</td>
</tr>
<tr>
<td>1.13</td>
<td>Organization as Client</td>
<td>77</td>
</tr>
<tr>
<td>1.14</td>
<td>Client with Diminished Capacity</td>
<td>82</td>
</tr>
<tr>
<td>1.15</td>
<td>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</td>
<td>85</td>
</tr>
<tr>
<td>1.16</td>
<td>Declining or Terminating Representation</td>
<td>90</td>
</tr>
<tr>
<td>1.17</td>
<td>Sale of Law Practice</td>
<td>94</td>
</tr>
<tr>
<td>1.18</td>
<td>Duties to Prospective Clients</td>
<td>99</td>
</tr>
<tr>
<td>2.1</td>
<td>Advisor</td>
<td>103</td>
</tr>
<tr>
<td>2.2</td>
<td>[Reserved]</td>
<td>105</td>
</tr>
<tr>
<td>2.3</td>
<td>Evaluation for Use by Third Persons</td>
<td>106</td>
</tr>
<tr>
<td>2.4</td>
<td>Lawyer Serving as Third-Party Neutral</td>
<td>108</td>
</tr>
<tr>
<td>3.1</td>
<td>Non-Meritorious Claims and Contentions</td>
<td>110</td>
</tr>
<tr>
<td>3.2</td>
<td>Delay of Litigation</td>
<td>111</td>
</tr>
</tbody>
</table>
NEW YORK RULES OF PROFESSIONAL CONDUCT  
(Effective April 1, 2009)  

PREAMBLE:  
A LAWYER’S RESPONSIBILITIES  

[1] A lawyer, as a member of the legal profession, is a representative of clients and an officer of  
the legal system with special responsibility for the quality of justice. As a representative of clients, a lawyer  
assumes many roles, including advisor, advocate, negotiator, and evaluator. As an officer of the legal  
system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to  
seek improvement of the law; and to promote access to the legal system and the administration of justice. In  
addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the  
justice system because, in a constitutional democracy, legal institutions depend on popular participation and  
support to maintain their authority.  

[2] The touchstone of the client-lawyer relationship is the lawyer’s obligation to assert the client’s  
position under the rules of the adversary system, to maintain the client’s confidential information except in  
limited circumstances, and to act with loyalty during the period of the representation.  

[3] A lawyer’s responsibilities in fulfilling these many roles and obligations are usually  
harmonious. In the course of law practice, however, conflicts may arise among the lawyer’s responsibilities  
to clients, to the legal system and to the lawyer’s own interests. The Rules of Professional Conduct often  
prescribe terms for resolving such conflicts. Nevertheless, within the framework of the Rules, many difficult  
issues of professional discretion can arise. The lawyer must resolve such issues through the exercise of  
sensitive professional and moral judgment, guided by the basic principles underlying the Rules.  

[4] The legal profession is largely self-governing. An independent legal profession is an  
important force in preserving government under law, because abuse of legal authority is more readily  
challenged by a profession whose members are not dependent on government for the right to practice law.  
To the extent that lawyers meet these professional obligations, the occasion for government regulation is  
obviated.  

[5] The relative autonomy of the legal profession carries with it special responsibilities of self-  
governance. Every lawyer is responsible for observance of the Rules of Professional Conduct and also  
should aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the  
independence of the profession and the public interest that it serves. Compliance with the Rules depends  
primarily upon the lawyer’s understanding of the Rules and desire to comply with the professional norms  
they embody for the benefit of clients and the legal system, and, secondarily, upon reinforcement by peer and  
public opinion. So long as its practitioners are guided by these principles, the law will continue to be a noble  
profession.  

SCOPE  

[6] The Rules of Professional Conduct are rules of reason. They should be interpreted with  
reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives,  
cast in the terms “shall” or “shall not.” These Rules define proper conduct for purposes of professional  
discipline. Others, generally cast in the term “may,” are permissive and define areas under the Rules in
which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role. Many of the Comments use the term “should.” Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules. The Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action.

[7] The Rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[8] The Rules provide a framework for the ethical practice of law. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.

[9] Furthermore, for purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[10] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily repose in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide whether to agree to a settlement or to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state’s attorney in state government, and in their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[11] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer’s conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[12] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule
does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer’s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, because the Rules do establish standards of conduct by lawyers, a lawyer’s violation of a Rule may be evidence of breach of the applicable standard of conduct.

[13] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.
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) A 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.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to associate with a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances. One such circumstance would be where the lawyer, by representations made to the client, has led the client reasonably to expect a special level of expertise in the matter undertaken by the lawyer.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kinds of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] [Reserved.]
[4] A lawyer may accept representation where the requisite level of competence can be achieved by adequate preparation before handling the legal matter. This applies as well to a lawyer who is appointed as counsel for an unrepresented person.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client may limit the scope of the representation if the agreement complies with Rule 1.2(c).

Retaining or Contracting with Lawyers Outside the Firm

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer’s own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and should reasonably believe that the other lawyers’ services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(g) (fee sharing with lawyers outside the firm), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer’s own firm will depend upon the circumstances, including the needs of the client; the education, experience and reputation of the outside lawyers; the nature of the services assigned to the outside lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[6A] Client consent to contract with a lawyer outside the lawyer’s own firm may not be necessary for discrete and limited tasks supervised closely by a lawyer in the firm. However, a lawyer should ordinarily obtain client consent before contracting with an outside lawyer to perform substantive or strategic legal work on which the lawyer will exercise independent judgment without close supervision or review by the referring lawyer. For example, on one hand, a lawyer who hires an outside lawyer on a per diem basis to cover a single court call or a routing calendar call ordinarily would not need to obtain the client’s prior informed consent. On the other hand, a lawyer who hires an outside lawyer to argue a summary judgment motion or negotiate key points in a transaction ordinarily should seek to obtain the client’s prior informed consent.

[7] When lawyer from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other about the scope of their respective roles and the allocation of responsibility among them. See Rule 1.2(a). When allocating responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations (e.g., under local court rules, the CPLR, or the Federal Rules of Civil Procedure) that are a matter of law beyond the scope of these Rules.
[7A] Whether a lawyer who contracts with a lawyer outside the firm needs to obtain informed consent from the client about the roles and responsibilities of the retaining and outside lawyers will depend on the circumstances. On one hand, if a lawyer retains an outside lawyer or law firm to work under the lawyer’s close direction and supervision, and the retaining lawyer closely reviews the outside lawyer’s work, the retaining lawyer usually will not need to consult with the client about the outside lawyer’s role and level of responsibility. On the other hand, if the outside lawyer will have a more material role and will exercise more autonomy and responsibility, then the retaining lawyer usually should consult with the client. In any event, whenever a retaining lawyer discloses a client’s confidential information to lawyers outside the firm, the retaining lawyer should comply with Rule 1.6(a).

[8] To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer’s practice, (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information, and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500.
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.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client to participate effectively in the representation.

Communicating with Client

[2] In instances where these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with the client and secure the client’s consent prior to taking action, unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, paragraph (a)(1)(iii) requires that a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously made clear that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).
Paragraph (a)(2) requires that the lawyer reasonably consult with the client about the means to be used to accomplish the client’s objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases, the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client’s behalf. Likewise, for routine matters such as scheduling decisions not materially affecting the interests of the client, the lawyer need not consult in advance, but should keep the client reasonably informed thereafter. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer or a member of the lawyer’s staff acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications, or arrange for an appropriate person who works with the lawyer to do so.

**Explain Matters**

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interest and the client’s overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(j).

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. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to those who the lawyer reasonably believes to be appropriate persons within the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.
Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.
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.

Comment

[1] The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. The conventional client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. Any condition that renders a client incapable of communicating or making a considered judgment on the client’s own behalf casts additional responsibilities upon the lawyer. When the client is a minor or suffers from a diminished mental capacity, maintaining the conventional client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon and reach conclusions about matters affecting the client’s own well-being.

[2] The fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client attentively and with respect.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. The lawyer should consider whether the presence of such persons will affect the attorney-client privilege. Nevertheless, the lawyer must keep the client’s interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client’s behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, with or without a disability, the question whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward,
and reasonably believes that the guardian is acting adversely to the ward’s interest, the lawyer may have an obligation to prevent or rectify the guardian’s misconduct. See Rule 1.2(d).

**Taking Protective Action**

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a conventional client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take reasonably necessary protective measures. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client’s best interest, and the goals of minimizing intrusion into the client’s decision-making autonomy and maximizing respect for the client’s family and social connections.

[6] In determining the extent of the client’s diminished capacity, the lawyer should consider and balance such factors as: (i) the client’s ability to articulate reasoning leading to a decision, (ii) variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision, and (iii) the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client’s interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client’s benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that a minor or a person with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be unnecessarily expensive or traumatic for the client. Seeking a guardian or conservator without the client’s consent (including doing so over the client’s objection) is appropriate only in the limited circumstances where a client’s diminished capacity is such that the lawyer reasonably believes that no other practical method of protecting the client’s interests is readily available. The lawyer should always consider less restrictive protective actions before seeking the appointment of a guardian or conservator. The lawyer should act as petitioner in such a proceeding only when no other person is available to do so.

[7A] Prior to withdrawing from the representation of a client whose capacity is in question, the lawyer should consider taking reasonable protective action. See Rule 1.16(e).
Disclosure of the Client’s Condition

[8] Disclosure of the client’s diminished capacity could adversely affect the client’s interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client’s interests before discussing matters related to the client.
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.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c), 6.5; see also Rule 1.3, Comment [4].
Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation under paragraph (a), (b)(1) or (b)(4), as the case may be, if the client demands that the lawyer engage in conduct that is illegal or that violates these Rules or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] Court approval or notice to the court is often required by applicable law, and when so required by applicable law is also required by paragraph (d), before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client’s demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer’s statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rule 1.6 and Rule 3.3.

Discharge

[4] As provided in paragraph (b)(3), a client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer’s services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client’s interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14(b).

Optional Withdrawal

[7] Under paragraph (c), a lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if withdrawal can be accomplished without material adverse effect on the client’s interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer’s services were misused in the past, even if withdrawal would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action with which the lawyer has a fundamental disagreement.

[7A] In accordance with paragraph (c)(4), a lawyer should use reasonable foresight in determining whether a proposed representation will involve client objectives or instructions with
which the lawyer has a fundamental disagreement. A client’s intended action does not create a fundamental disagreement simply because the lawyer disagrees with it. See Rule 1.2 regarding the allocation of responsibility between client and lawyer. The client has the right, for example, to accept or reject a settlement proposal; a client’s decision on settlement involves a fundamental disagreement only when no reasonable person in the client’s position, having regard for the hazards of litigation, would have declined the settlement. In addition, the client should be given notice of intent to withdraw and an opportunity to reconsider.

[8] Under paragraph (c)(5), a lawyer may withdraw if the client refuses to abide by the terms of an agreement concerning fees or court costs (or other expenses or disbursements).

[8A] Continuing to represent a client may impose an unreasonable burden unexpected by the client and lawyer at the outset of the representation. However, lawyers are ordinarily better suited than clients to foresee and provide for the burdens of representation. The burdens of uncertainty should therefore ordinarily fall on lawyers rather than clients unless they are attributable to client misconduct. That a representation will require more work or significantly larger advances of expenses than the lawyer contemplated when the fee was fixed is not grounds for withdrawal under paragraph (c)(5).

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, under paragraph (e) a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.
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.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Such tactics are prohibited if their only substantial purpose is to frustrate an opposing party’s attempt to obtain rightful redress or repose. It is not a justification that such tactics are often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay or needless expense. Seeking or realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.
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.

Comment

[1] Paragraph (a) applies to law firms; paragraph (b) applies to lawyers with management responsibility in a law firm or a lawyer with direct supervisory authority over another lawyer.
Paragraph (b) requires lawyers with management authority within a firm or those having direct supervisory authority over other lawyers to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules. Such policies and procedures include those designed (i) to detect and resolve conflicts of interest (see Rule 1.10(e)), (ii) to identify dates by which actions must be taken in pending matters, (iii) to account for client funds and property, and (iv) to ensure that inexperienced lawyers are appropriately supervised.

Other measures that may be required to fulfill the responsibility prescribed in paragraph (b) can depend on the firm’s structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and lawyers with management authority may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Paragraph (d) expresses a general principle of personal responsibility for acts of other lawyers in the law firm. See also Rule 8.4(a).

Paragraph (d) imposes such responsibility on a lawyer who orders, directs or ratifies wrongful conduct and on lawyers who are partners or who have comparable managerial authority in a law firm who know or reasonably should know of the conduct. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Partners and lawyers with comparable authority, as well as those who supervise other lawyers, are indirectly responsible for improper conduct of which they know or should have known in the exercise of reasonable managerial or supervisory authority. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer’s involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent misconduct or to prevent or mitigate avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (a), (b) or (c) on the part of a law firm, partner or supervisory lawyer even though it does not entail a violation of paragraph (d) because there was no direction, ratification or knowledge of the violation or no violation occurred.

Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of another lawyer. Whether a lawyer may be liable civilly or criminally for another lawyer’s conduct is a question of law beyond the scope of these Rules.
[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by these Rules. See Rule 5.2(a).
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.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that
the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether
a lawyer had the knowledge required to render conduct a violation of these Rules. For example,
if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would
not be guilty of a professional violation unless the subordinate knew of the document’s frivolous
character.

involving professional judgment as to ethical duty, the supervisor may assume responsibility for
making the judgment. Otherwise, a consistent course of action or position could not be taken. If
the question can reasonably be answered only one way, the duty of both lawyers is clear, and
they are equally responsible for fulfilling it. However, if the question is reasonably arguable,
someone has to decide upon the course of action. That authority ordinarily reposes in the
supervisor, and a subordinate may be guided accordingly. To evaluate the supervisor’s
conclusion that the question is arguable and the supervisor’s resolution of it is reasonable in light
of applicable law, it is advisable that the subordinate lawyer undertake research, consult with a
designated senior partner or special committee, if any (see Rule 5.1, Comment [3]), or use other
appropriate means. For example, if a question arises whether the interests of two clients conflict
under Rule 1.7, the supervisor’s reasonable resolution of the question should protect the
subordinate professionally if the resolution is subsequently challenged.
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.

Comment

[1] This Rule requires a law firm to ensure that work of nonlawyers is appropriately supervised. In addition, a lawyer with direct supervisory authority over the work of nonlawyers must adequately supervise those nonlawyers. Comments [2] and [3] to Rule 5.1, which concern supervision of lawyers, provide guidance by analogy for the methods and extent of supervising nonlawyers.

[2] With regard to nonlawyers, who are not themselves subject to these Rules, the purpose of the supervision is to give reasonable assurance that the conduct of all nonlawyers employed by or retained by or associated with the law firm, including nonlawyers outside the firm working on firm matters, is compatible with the professional obligations of the lawyers and firm. Lawyers typically employ nonlawyer assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such nonlawyer assistants, whether they are employees or independent contractors, act for the lawyer in rendition of the lawyer’s professional services. Likewise, lawyers may employ nonlawyers outside the firm to assist in
rendering those services. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm). A law firm must ensure that such nonlawyer assistants are given appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose confidential information – see Rule 1.6 (c) (requiring lawyers to take reasonable care to avoid unauthorized disclosure of confidential information. Lawyers also should be responsible for the work done by their nonlawyer assistants. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. A law firm should make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters will act in a way compatible with the professional obligations of the lawyer. A lawyer with supervisory authority over a nonlawyer within or outside the firm has a parallel duty to provide appropriate supervision of the supervised nonlawyer.

[2A] Paragraph (b) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of these Rules if engaged in by a lawyer. For guidance by analogy, see Rule 5.1, Comments [5]-[8].

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include (i) retaining or contracting with an investigatory or paraprofessional service, (ii) hiring a document management company to create and maintain a database for complex litigation, (iii) sending client documents to a third party for printing or scanning, and (iv) using an Internet-based service to store client information. When using such services outside the firm, a lawyer or law firm must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the professional obligations of the lawyer and law firm. The extent of the reasonable efforts required under this Rule will depend upon the circumstances, including: (a) the education, experience and reputation of the nonlawyer; (b) the nature of the services involved; (c) the terms of any arrangements concerning the protection of client information; (d) the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality; (e) the sensitivity of the particular kind of confidential information at issue; (f) whether the client will be supervising all or part of the nonlawyer’s work. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4 (professional independence of the lawyer) and 5.5 (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.
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.

Comment

[1] Self-regulation of the legal profession requires that members of the profession
initiate disciplinary investigation when they know of a violation of the Rules of Professional
Conduct. Lawyers have a similar obligation to cooperate with authorities empowered to
investigate judicial misconduct. An apparently isolated violation may indicate a pattern of
misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially
important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would result in violation of
Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where
prosecution would not substantially prejudice the client’s interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to
report any violation would itself be a professional offense. Such a requirement existed in many
jurisdictions, but proved to be unenforceable. This Rule limits the reporting obligation to those
offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of
judgment is therefore required in complying with the provisions of this Rule. The term
“substantial” refers to the seriousness of the possible offense and not the quantum of evidence of
which the lawyer is aware. A report should be made to a tribunal or other authority empowered
to investigate or act upon the violation.

[3A] Paragraph (b) requires a lawyer in certain situations to respond to a lawful
demand for information concerning another lawyer or a judge. This Rule is subject to the
provisions of the Fifth Amendment to the United States Constitution and corresponding
provisions of state law. A person relying on such a provision in response to a question, however,
should do so openly and not use the right of nondisclosure as a justification for failure to comply
with this Rule.
[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer’s or judge’s misconduct or fitness may be received by a lawyer in the course of that lawyer’s participation in a bona fide assistance program for lawyers or judges. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) encourages lawyers and judges to seek assistance and treatment through such a program. Without such an exception, lawyers and judges may hesitate to seek assistance and treatment from these programs, and this may result in additional harm to their professional careers and additional injury to the welfare of clients and the public.
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, sexual orientation, gender identity, or gender expression. 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.

Comment

[1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on their behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.
Many kinds of illegal conduct reflect adversely on fitness to practice law. Illegal conduct involving violence, dishonesty, fraud, breach of trust, or serious interference with the administration of justice is illustrative of conduct that reflects adversely on fitness to practice law. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

The prohibition on conduct prejudicial to the administration of justice is generally invoked to punish conduct, whether or not it violates another ethics rule, that results in substantial harm to the justice system comparable to those caused by obstruction of justice, such as advising a client to testify falsely, paying a witness to be unavailable, altering documents, repeatedly disrupting a proceeding, or failing to cooperate in an attorney disciplinary investigation or proceeding. The assertion of the lawyer’s constitutional rights consistent with Rule 8.1, Comment [2] does not constitute failure to cooperate. The conduct must be seriously inconsistent with a lawyer’s responsibility as an officer of the court.

A lawyer may refuse to comply with an obligation imposed by law if such refusal is based upon a reasonable good-faith belief that no valid obligation exists because, for example, the law is unconstitutional, conflicts with other legal or professional obligations, or is otherwise invalid. As set forth in Rule 3.4(c), a lawyer may not disregard a specific ruling or standing rule of a tribunal, but can take appropriate steps to test the validity of such a rule or ruling.

A lawyer harms the integrity of the law and the legal profession when the lawyer states or implies an ability to influence improperly any officer or agency of the executive, legislative or judicial branches of government.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Unlawful discrimination in the practice of law on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation is governed by paragraph (g).
ETHICS OPINION 822

New York State Bar Association
Committee on Professional Ethics

Opinion #822 - 06/27/2008 - Clarifies: N.Y. State 531

Topic: Lawyer's duty to report violation of disciplinary rule

Digest: A lawyer who satisfies the prerequisites to trigger mandatory reporting of a Disciplinary Rule by another lawyer must report such conduct to an appropriate authority, such as a tribunal (in a litigated matter) or to the appropriate Grievance Committee. Filing a report with a lawyer assistance program is not sufficient.

Code: DR 1-102(A), 1-103(A); EC 1-4

QUESTION

1. If a lawyer has an obligation to report a violation of a Disciplinary Rule by another lawyer, to whom must the lawyer report? Does filing a report with a lawyer assistance program satisfy the reporting requirement?

OPINION

2. In certain circumstances a lawyer is required by the Code of Professional Responsibility to report a violation of a Disciplinary Rule to the appropriate authority. DR 1-103(A) provides:

A lawyer possessing knowledge, (1) not protected as a confidence or secret, 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 DR 1-102 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.

DR 1-102(A) provides:

A lawyer or law firm shall not: (1) Violate a disciplinary rule. (2) Circumvent a Disciplinary Rule through the actions of another. (3) Engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer. (4) Engage in conduct involving dishonesty, fraud, deceit, or
misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice. (6) Unlawfully discriminate in the practice of law . . . .

3. The New York State Bar Association has a Lawyer Assistance Program (LAP) to deal with issues of alcohol abuse, substance abuse, and related mental health issues. There are also 17 similar committees formed by local bar associations. According to its statement of purpose, the NYSBA LAP provides education and confidential assistance to lawyers, judges, law school students, and immediate family members who are affected by the problems of substance abuse, stress, or depression. Its goal is to assist in the prevention and early identification of problems that can affect professional conduct and quality of life and to assist in arranging appropriate intervention where such problems are identified. The services provided by the NYSBA LAP, for example, include early identification of impairment; motivating impaired attorneys to seek help; assessing and evaluating the problem and developing an appropriate treatment plan; providing information on training programs on alcoholism, drug abuse and stress management; and referring impaired attorneys to community resources, self-help groups, outpatient counseling, or detoxification and rehabilitation services.[1] Lawyers who serve on committees or programs have no obligation to report a violation of DR 1-102.[2]

4. This opinion deals with the obligations of lawyers who do not serve on such committees. In N.Y. State 635 (1992) we discussed the four prerequisites that must be met before a lawyer has a reporting obligation under DR 1-103(A). They are:

(1) The lawyer must possess a sufficient degree of knowledge of ostensibly wrongful conduct; a mere suspicion of misconduct is not sufficient.

(2) Any knowledge included in the lawyer’s report must not be protected as a confidence or secret.

(3) The conduct in question must violate a Disciplinary Rule.

(4) The violation must raise a substantial question as to the lawyer’s honesty, trustworthiness or fitness.

For purposes of this opinion we assume that a lawyer has satisfied all four tests; that is, the lawyer has a sufficient degree of knowledge of a violation of a Disciplinary Rule by another lawyer that raises a question about the other lawyer’s honesty, trustworthiness or fitness and that knowledge is neither a confidence or secret. Thus, the lawyer has a mandatory reporting obligation under DR 1-103(A). The question this opinion addresses is to whom the lawyer must report.

5. DR 1-103(A) requires a lawyer to report the knowledge of a violation "to a tribunal or other authority empowered to investigate or act upon such violation." The inquirer asks whether reporting to an LAP would satisfy that obligation. In our opinion, while lawyers are to be encouraged to refer to an LAP lawyers who are abusing alcohol or other substances or who face mental health issues, such a referral would not satisfy the ethical reporting requirement.[3]

6. DR 1-103 requires reporting to a tribunal or other authority empowered to investigate or act upon such violation. Although the Code does not further specify to whom reporting is required, the phrase "investigate or act" suggests that the "authority" must be a court of competent jurisdiction or a body having enforceable subpoena powers. Thus, a violation in the course of litigation could be reported to
the tribunal before which the action is pending. In both a litigation and a non-litigation context, the report could be filed with a grievance or disciplinary committee operating under the powers granted to them by the Appellate Division of the State Supreme Court pursuant to Section 90 of the Judiciary Law and court rules.[4] The report could be filed with the grievance committee in the Appellate Department in which litigation is pending or with the grievance committee in the Department where the lawyer is admitted or where the prohibited conduct occurred.

7. The report need not be made immediately or without some reasonable effort at remediation, particularly where the consequences of reporting the violation may be more harmful to the lawyer’s client than some alternative course of action.[5] Once a report has been made to an appropriate authority, notwithstanding the existence of other authorities to which the report could have been made, the reporting lawyer’s obligation under the Code will be deemed satisfied.[6]

8. In N.Y. State 531 (1981), the Committee, in holding that members of an LAP may ethically refrain from reporting professional misconduct, noted that the LAP “committee of the bar stands in a position analogous to that of a tribunal or other authority empowered to investigate or act.” In this opinion we clarify that an LAP is not an appropriate authority to which misconduct can be reported. In contrast to a tribunal or grievance committee, an LAP has no formal powers. LAP services are voluntary. Although an LAP may seek to assist a lawyer in need of assistance, the lawyer does not need to respond and may refuse the assistance of the LAP. Furthermore, without the assistance of the affected lawyer, the LAP has no power to investigate whether the impairment has resulted in a violation of a Disciplinary Rule.

9. The purpose of the reporting requirement is to assist courts, disciplinary agencies and other authorities in policing members of the bar.[7] The focus of an LAP is on assisting in the lawyer’s recovery process, not on any code violations that may have resulted from the lawyer’s impairment. Disciplining a lawyer for a Code violation may be at odds with the recovery process. The fact that a lawyer’s impairment has resulted in a violation of the profession’s disciplinary rules may be a lever to convince the lawyer that he or she needs help. The process of obtaining that help, however, will not satisfy the profession’s obligation to regulate itself.

CONCLUSION

10. A lawyer who is required under DR 1-103(A) to report knowledge of misconduct "that raises a substantial question as to another lawyer’s honesty, trustworthiness or fitness as a lawyer" may report that knowledge to those agencies described above. Reporting the lawyer’s conduct to a lawyer assistance program, while salutary, does not satisfy the lawyer’s ethical reporting requirement.

(4-08)

[2] DR 1-103(A); see also Judiciary Law § 499 (treating the confidential information provided to lawyers on such committees as privileged).

[3] We note that lawyers may refer other lawyers to an LAP in situations where the alcohol or substance abuse or mental health issue has not resulted in any violation of a Disciplinary Rule. A lawyer in such a situation may not be so impaired that the lawyer's representation of clients is affected. For example, the lawyer may suffer from stress and depression and need assistance but still be able to perform legal work competently. See generally ABA Formal Op. 03-429 (obligations with respect to mentally impaired lawyer within a law firm); ABA Formal Op. 03-431 (lawyer's duty to report rule violations by another lawyer who may suffer from disability or impairment).

[4] See, e.g., Nassau County 98-12 (if reporting is required, lawyer can report to the court or to the grievance committee); N.Y. City 1995-5 (misconduct should be reported to the appropriate disciplinary or grievance committee). Cf. People v. Romero, 91 N.Y.2d 750, 698 N.E.2d 424, 675 N.Y.S.2d 588 (1998) (holding that N.Y. Jud. Law § 476-a(1) authorized the attorney general to bring a civil action for unauthorized practice of law).

[5] See, e.g., U.S. v. Cantor, 897 F. Supp. 110 (S.D.N.Y. 1995) ("DR 1-103 must be read to require reporting . . . within a reasonable time under the circumstances"); N.Y. City 1990-3 ("While it may be permissible in certain limited circumstances to postpone reporting for a brief period of time, we reiterate our caution . . . that 'once a lawyer decides that he or she must disclose under DR 1-103(A), any substantial delay in reporting would be improper.'"); N.Y. City 81-40. Cf. U.S. v. Turkish, 470 F. Supp. 903, 909 n.7 (S.D.N.Y. 1978) (prosecutor who believes defense counsel's representation of multiple clients is a conflict problem could "in most instances" satisfy DR 1-103(A) by raising the problem directly with the attorney, and then, if necessary, the clients themselves).

[6] See Nassau County 88-10 ("The code requires that the matter be brought to the attention of the grievance committee, but does not require that it also be reported to the district attorney or other appropriate prosecuting agency having jurisdiction of such matters").

[7] EC 1-4 ("The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials"); see also Restatement Third, The Law Governing Lawyers § 5 cmt i (collecting authorities regarding the reporting obligation); Matter of Wieder, 80 N.Y.2d 628, 636, 609 N.E.2d 105, 108, 593 N.Y.S.2d 752, 755 (1992) (noting that the legal profession relies upon lawyers to report appropriate cases to protect the public and the integrity of the Bar).

Related Files

Lawyer's duty to report violation of disciplinary rule(PDF File)
PRACTICE RESOURCES

CONFIDENTIALITY

JUDICIARY LAW

SECTION 499. LAWYER ASSISTANCE COMMITTEES

Chapter 327 of the Laws of 1993

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 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.
I HATED THE WORLD

Just a few years ago, unless I was drinking, I hated myself and everything around me. Today, I don’t drink, and like who I am and what is around me. Here’s my story.

Although I grew up enough food, clothes, shelter, friends and family support, I always felt alone and different. That was until I discovered alcohol. After taking my first drink, I was like everyone else, able to do whatever I wanted. By the time I reached my twenties, alcohol had become my constant companion. Before, during and after most of my activities, I drank. It was not an option. It enabled me to escape from fear and worry.

By my thirties, although constantly drinking, I was doing pretty well. I made it through high school, college, law school and passed the bar. In a short time, I got a job, met my wife and had a couple of kids. It seemed all was going my way. But, through it all, I drank to feel comfortable. Increasing episodes of yelling, arguing, fighting and ultimate self-loathing ensured. Abusive behavior became the norm for me. While blaming the world for all my problems, I could not stand me. Anyone in my path suffered.

In my early forties, no one intentionally remained in my path too long. I was usually drunk. At work or at home, no one could predict when I’d either say or do something unacceptable. I had lost all my friends and was close to losing my family and job. That was then.

My life has changed dramatically. What happened? While eating dinner alone and having a few too many, I started talking to a guy sitting next to me. What I said, or how I spoke, is a mystery to me. I remember what the guy said to me. He asked, “Do you want to stop drinking?” He added, “I’ve seen you before I’m a lawyer too. Used to drink.” After that, I only know when I came to the next day, two phone numbers were in my pocket. One was for Lawyer Assistance Program, the other for Alcoholics Anonymous.

Many times people told me that I drank too much and that I’d better stop before losing everything. But I never listened. Yet, rather than make a demand, when another lawyer asked me a question and told me about himself, giving me phone numbers to obtain information, well, that finally moved me. I was able to admit that I had a drinking problem. It was the root of all my other problems.

I called Lawyer Assistance Program. Anonymously, they helped me learn what steps to take so I could live comfortably without alcohol. Now, in my late forties, I have comfortable personal and professional life. My life today is filled with fun, laughter, and success. When I have a problem, I don’t have to drink over it.
PRACTICING ALONGSIDE DEPRESSION

As a civil trial attorney, I have been fortunate to have over the last several years an amazingly skillful, hardworking and successful law partner. It just so happens that this partner suffers from severe clinical depression. This psychological illness not only impacts my partner's personal life, but also directly affects his professional practice. By courageously dealing with his depression, I am pleased to say that my partner has actually enhanced his professional practice and magnified his positive contribution to our law firm. Over the years we have been able to effectively grow our law practice while assisting our partner on his steady path toward psychological wellness in a very stressful and competitive profession.

We have been able to achieve this success through cultivating social and emotional supports for our partner, while developing appropriate strategies to overcome the inevitable obstacles posed by his illness. Necessary support is offered both socially and emotionally, and manifests itself in many ways. Emotional support has been extended to our depressed partner through a willingness to discuss the frequent struggles and stressors accompanying our partner's illness.

Building a supportive environment entails an open dialogue and communication regarding the illness of depression and its specific manifestations, including the effects of prescribed medications. Accommodating and encouraging ongoing psychological treatment and psychotherapy is another essential element of this supportive environment. Active social engagement is also an important support structure. For instance, frequent and regular lunch meetings out of the office have proven very restorative for our depressed partner.

Developing strategies to help our partner successfully deal with his illness focuses on reducing and tempering the considerable stressors that accompany the adversarial civil litigation process. The implementation of flexible work and trial schedules, the intentional and thoughtful staffing of trial teams and out of town work assignments all take into consideration the needs and concerns accompanying our partner's depression illness. Additionally, regular and frequent planning and scheduling meetings are an essential strategic component. Special care has to be given that case and work loads and trial assignments are fairly distributed and shared evenly throughout the firm, even though special consideration is given to our ill partner's needs and requirements.

Overcoming the inevitable obstacles posed by our partner's clinical depression can only be achieved through this cultivation of social and emotional support and the intentional development and implementation of specific coping strategies. The illness cannot be simply ignored or kept in the closet. Care and concern combined with purposeful action are absolutely essential to the continued health and well being of our partner and the positive advancement of our law firm. The steady growth of our law practice and the continued effectiveness and wellness of our partner are a testament that clinical depression can be successfully managed within a vibrant civil litigation practice through proper support and purposeful strategic planning.
SUICIDE OF A LAWYER.

LANCASTER, Penn., Feb. 15.—The people of Lancaster were shocked this morning by the news, which spread like wildfire, of the suicide of William A. Wilson, one of the most prominent members of the Bar. He went into the water closet of Eshleman's law building, in which his office is, placed the muzzle of a revolver against his right eye and pulled the trigger, the ball lodging in the brain. Fifteen minutes later his body, which was yet warm, though life was extinct, was discovered by a brother attorney, who gave the alarm. Mr. Wilson had long suffered from insomnia, which affected his mind, as his friends and physician testified, and the Coroner rendered a verdict of death by his own hand while insane. Mr. Wilson was a native of Elizabethtown, and was 48 years of age. He graduated at the Millersville Normal School, where he taught Greek and mathematics until 1863, when he began the study of law and was admitted to the Bar in 1865. A widow and two children survive him. He was a brilliant lawyer, and the sad ending of his life is sincerely regretted by all who knew him.
Alcohol & Drug Use Questionnaire
- NYC Bar Lawyer Assistance Program

Answer these questions as honestly as you can

Are my peers, friends, or family alleging that my drinking/drug use is interfering with my work?

Do I plan my day around my drinking/drug use?

Do I ever feel I need a drink/drug to face certain situations?

Do I frequently drink/use drugs alone?

Have I ever had a loss of memory when apparently functioning because of my drinking/drug use?

Do I ever drink/drug before a meeting or court appearance to calm my nerves, gain courage, or improve my performance?

Do I want, or take, a drink/drug the morning after a hard night drinking/drugging?

Have I missed deadlines or appointments because of my drinking/drug use or because of a hangover?

After drinking/drug use, have I ever felt any of the following: fear, remorse, guilt, loneliness, depression, severe anxiety, terror, or a feeling of impending doom?

Is my drinking/drug use making me careless about my finances, health or other responsibilities?

While drinking/drugging, have I ended up in places I would not normally frequent or with people I would not normally socialize with?

Do I need or desire a drink/drug to steady my nerves at a particular time of day or week?
Have I ever lied, cheated or stolen to support or cover up my drinking/drug use?

Have I ever tried unsuccessfully to quit drinking/drugging for any length of time?

Have I made attempts to control my drinking/drug use by limiting it to special occasions, special times of the day, or certain days of the week, certain number or types of drinks/drugs?

Do I avoid people in order to hide the effects of my drinking/drug use?

Have I ever been hospitalized or treated by a doctor directly or indirectly as a result of my drinking?

Is there anyone in any generation of my family who has been diagnosed, treated for, or sought help for an alcohol, drug or other addiction problem such as gambling?

If you answered YES to one or more of these questions on this alcohol and drug questionnaire, you owe it to yourself, your family, your clients and your profession to contact the New York City Bar Lawyer Assistance Program, at: 212-302-5787.
Symptoms of Depression - Is Someone You Know Depressed?

How can you tell if you or someone you know is depressed? The first sign is often a change in the usual behavior.

For example, a formerly cheerful, sociable person may become irritable and withdrawn. He or she may lose interest in activities once enjoyed, or may begin having trouble with sleep or appetite. These symptoms have a significant intensity or duration and can affect a person's functioning and a sense of well-being in a variety of ways. This type of depression impairs a person's ability to carry on with normal life activities, work or relationships, and causes significant distress. It may require treatment. Because everyone is unique, the signs of depression may vary greatly from person to person. Not everyone will have the same symptoms.

The symptoms of depression can include:

- Feelings of sadness
- Loss of interest and/or pleasure in once-enjoyed activities such as hobbies, work, sex, etc.
- Changes in appetite or weight
- Changes in sleep patterns
- Restlessness or decreased activity that is noticeable to others
- Feelings of fatigue or having little energy
- Difficulty in concentrating or making decisions
- Feelings of worthlessness or inappropriate guilt
- Recurrent thoughts of death or suicide

Depression Self-Test

Here are two self-screening tests developed by Dr. Douglas G. Jacobs, a key figure in National Depression Screening Day (each October). They are not intended to substitute for a professional evaluation (which LCL can provide in person), needed to actually make a diagnosis of depression or manic-depression (also known as bipolar disorder). You may also wish to visit the National...
Depression Screening site at

Symptoms of Depression:

1. I am unable to do the things I used to do.
2. I feel hopeless about the future.
3. I can't make decisions.
4. I feel sluggish or restless.
5. I am gaining or losing weight.
6. I get tired for no reason.
7. I am sleeping too much, or too little.
8. I feel unhappy.
9. I become irritable or anxious.
10. I think about dying or killing myself.

If you answered yes to 5 or more of these questions, and you have felt this way every day for several weeks, there is a good chance you are suffering from depression and should see a licensed mental health professional).*

If you answered yes to question 10, you should seek help immediately, regardless of your answer to any other questions.
Lawyer Assistance Program
The Lawyer Assistance Program (LAP) of the New York State Bar Association was established in 1990 to assist attorneys, judges, and law school students who are affected by alcoholism, drug abuse, stress, depression, and other mental health issues. LAP also provides support services to families, law firms and others in the legal community who are concerned about mental health issues among attorneys.

Judges' Assistance Program
Specialized help is available for members of the judiciary. The purpose of the Judges' Assistance Program of the New York State Bar Association is to assist judges who are affected by alcoholism, drug abuse, stress, depression or other mental health issues. The goal of the Judges' Assistance Program is to prevent health-related, personal or professional problems.

Available Services
- Early identification of impairment
- Intervention and motivation to seek help
- Assessment, evaluation and development of an appropriate treatment plan
- Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
- Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
- Information and consultation for those concerned about an attorney
- Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Seeking assistance is voluntary and confidential.

LAP is available to all attorneys in New York State and their immediate family members, whether or not the attorney is a member of the New York State Bar Association.

Assistance Resources
Lawyer Assistance Programs
Patricia Spataro, Director 1.800.255.0569
NYSBA LAP or 518.487.5685
Eileen Travis, Director 212.302.5787
New York City LAP
Peter J. Schweitzer, Director 888.408.6222
Nassau County LAP

Judiciary Law
Section 499. Lawyer Assistance Committees
Chapter 327 of the Laws of 1993
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, 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.

NEW YORK STATE BAR ASSOCIATION

Confidential Help for the Problems Lawyers, Judges and Law Students Face

drinking problems gambling stress drug abuse mental health issues depression

NEW YORK STATE BAR ASSOCIATION
1.800.255.0569

All LAP services are confidential and protected under Section 499 of the Judiciary Law as amended by Chapter 327 of the Laws of 1993.
Personal Inventory

Personal problems such as addiction and mental health concerns affect a professional’s ability to practice law. Review the following questions. If you answer “yes” to any of these questions, you may benefit by calling LAP.

1. Are important people in my life saying that my behavior has changed or that I seem different?

2. Is it difficult for me to maintain a routine and stay on top of responsibilities?

3. Have I experienced memory problems or an inability to concentrate?

4. Am I having difficulty managing emotions such as anger and sadness?

5. Have I missed appointments or appearances or failed to return phone calls or emails?

6. Have my sleeping and eating habits changed?

7. Am I experiencing a pattern of relationship problems with significant people in my life?

8. Does my family have a history of alcoholism, substance abuse or depression?

9. Do I drink or take drugs to deal with my problems?

10. Recently, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?

11. Is gambling making me careless of my financial responsibilities?

12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

Addiction and Alcoholism:
- Alcoholism and drug abuse are treatable.
- Addiction is characterized by a preoccupation with the substance and a loss of control over consumption.
- Addiction is a progressive disease; without treatment it only gets worse.
- Statistics indicate that 15-18% of lawyers become alcoholics.
- Prescription drug abuse happens whenever drugs are used in ways other than prescribed.

Depression:
- Is a serious medical condition in which a person feels sad, hopeless and is unable to live normally.
- Symptoms include persistent sadness, irritability, loss of concentration, unexplained physical pain, and an inability to enjoy life.
- Depression is a treatable illness.
- Statistics indicate attorneys suffer from depression at a higher rate than other professionals.

Suicide:
- Stress and mental health problems can cause a person to have thoughts of suicide. Call 1.800.273.8255 if you or someone you know is thinking about suicide.

Stress:
- Stress creates mental, social, and physical problems.
- Symptoms can include fatigue, changes in appetite, headaches, crying, and changes in sleep habits.
- Unmanaged stress can lead to serious physical and psychological problems.
- Unmanaged stress is linked to alcoholism, substance abuse, and depression.
- There are many positive ways to manage stress.

Doing Nothing is not an Option

For lawyers and judges the risks of untreated mental health issues are high due to the stress and demands of practicing law. And the consequences to your personal life and your professional career can be serious.

The profession demands that you represent your clients competently. This is difficult to do when you are suffering from a drinking problem, drug abuse, depression, stress or any mental health concern. These issues can all be successfully treated.

There are many things that stand in the way of a lawyer or judge asking for help. First and foremost, there is denial. Denial prevents someone from asking for help until the ramifications become so dire that ignoring them is no longer possible. Obstacles to seeking help also include shame and stigma both of which, when partnered with denial, can cause an unnecessary pain, suffering and serious consequences.

It becomes an ethical obligation for lawyers and judges to get help when problems arise. The Lawyer Assistance Program has been around for 25 years and is dedicated to providing competent, compassionate, confidential assistance. We believe that we make it doable for a lawyer, judge or law student to take that important first step and ask for help.
Resources for Lawyer Assistance

New York State Bar Association Lawyer Assistance Program
The New York State Bar Association Lawyer Assistance Program (LAP) provides education and confidential assistance to lawyers, judges, law school students, and immediate family members who are affected by the problem of substance abuse, stress, depression or other mental health issues. Its goal is to assist in the prevention, early identification and intervention of problems that can affect professional conduct and quality of life.

Lawyer Assistance Program (LAP)

1.800.255.0569
(Confidential helpline for attorneys, judges and law school students)

or nysbalap@hushmail.com (confidential e-mail)
http://www.nysba.org/rap/ (website)

American Bar Association Lawyer Assistance Programs - Nationwide Directory of Lawyer’s Assistance Programs
http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html

NYC: New York City Bar Association – Lawyer Assistance Program
212-302-5787 (Confidential Helpline)
http://www.nycbar.org/lawyer-assistance-program/overview (website)

Rochester: Monroe County Bar Association - Lawyers Concerned for Lawyers
1-585-234-1950 (Confidential Helpline)

Buffalo: Bar Association of Erie County - Lawyers Helping Lawyers (LHL)
For a confidential referral to a member of the LHL Committee, call Kathie Bifaro at 716-852 8687 ext. 119
http://www.eriebar.org/LawyersHelpingLawyers (website)

Syracuse: Onondaga County Bar Association – Lawyer Assistance Program
Please use the information provided above for the New York State Bar Association’s Lawyer Assistance Program.
Online Resources

Jay Dixit, The Art of Now: Six Steps to Living in the Moment, PSYCHOLOGY TODAY (Sep. 20, 2013),
https://www.psychologytoday.com/articles/200810/the-art-now-six-steps-living-in-the-moment

Yael Fischman, Ph. D., Secondary Trauma in the Legal Profession, A Clinical Perspective,

CONTEMPLATIVE LAWYERS: SOME MINDFULNESS RESOURCES,

http://abovethelaw.com/2014/02/think-your-job-is-killing-you-how-to-survive-the-profession-in-3-easy-steps/

Tyger Latham, Psy.D., The Depressed Lawyer, PSYCHOLOGY TODAY, (May 2, 2011),
http://www.psychologytoday.com/blog/therapy-matters/201105/the-depressed-lawyer


THE HEALTHY LAWYER: STRESS MANAGEMENT, (May 15, 2012),
http://ms-jd.org/healthy-lawyer-stress-management

Jennifer Pirtle, Stressing Yourself Sick, ABA JOURNAL, (Sep. 24, 2006, 8:06 AM),
http://www.abajournal.com/magazine/article/stressing-yourself-sick/


Books


REBECCA NERISON, ABOUT LAWYERS, ANGER AND ANXIETY: DEALING WITH THE STRESS OF THE


Law Review


“Confidentiality is our cornerstone. It’s not just a promise, it’s the law.”

Judiciary Law Section 499, Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance program 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.

Who We Are

NYC LAP, the New York City Lawyer Assistance Program, was established by the New York City Bar Association to provide support for all legal professionals in New York City. We are committed to offering help and assistance to individuals, colleagues, friends, and family members. Contact us on our confidential helpline, or by secure email, for a free, confidential consultation. Please visit our website for additional information: www.nycbar.org

- CONFIDENTIAL HELPLINE: 212.302.5787

In addition to the personalized services we provide, confidential recovery groups are available for those individuals who can benefit from this additional support.

- LAWYER AA MEETING
  Thursdays: 6:30 p.m.

- LAWYER GAMBLERS ANONYMOUS MEETING
  Thursdays: 12:30 p.m. - 1:30 p.m.

Meetings take place at the New York City Bar Association, 42 West 44th Street, between 5th & 6th Avenues.

Nyc Lap
New York City Lawyer Assistance Program

Confidential Hotline 212-302-5787
www.nycbar.org
The practice of law is demanding.

It demands your time, your energy, and your attention. Whether you are preparing to enter the profession, are already practicing, or on the bench, your responsibilities to others often require you to forsake your own well-being in order to achieve success. Over time, this can exact a toll on your mental and physical health.

Are you:
- Feeling that things are not quite right or could be going better?
- Struggling to keep up personally and professionally?
- Having problems with sleep, appetite, concentration, and/or procrastination?
- Drinking or using drugs or engaged in other unhealthy behaviors to cope?
- Thinking that whatever you have tried to regain balance is not working?
- Willing to reach out and get the help you deserve?

Be proactive when facing life’s challenges.

Many law students, attorneys, and judges struggle with stress, alcohol abuse, drug abuse, depression, and anxiety. Research confirms that legal professionals suffer from mental health issues and addiction at much higher rates than the general population.

NYC LAP has a proven record of helping lawyers, judges, and law students overcome their struggles and achieve health and well-being.

“Hearing that other attorneys also experience job-related stress and they have learned to cope in positive ways provided me with a framework that has given me hope.”

Our Services

NYC LAP provides free, confidential assistance to all lawyers, judges, law students, and their family members in New York City, including:
- Comprehensive evaluation and assessment
- Identifying solutions and developing a plan of action
- Supportive counseling
- Crisis intervention
- Referrals to treatment professionals and programs with expertise working with legal professionals
- Peer support from attorneys and judges who have overcome their own struggles and want to help their colleagues
- Educational presentations, CLE programs, and seminars at bar associations, firms, law schools, and agencies in the public sector on preventing, recognizing, and addressing mental health, addiction, relationship issues, anger management, career concerns, caregiving, and any other issues affecting the well-being of legal professionals.

“The personal attention you gave meant so much to me and assisted me in getting through one of the most difficult times in my life.”
Lawyer Assistance Program

This is a FREE, CONFIDENTIAL service, available to attorneys, judges, law students and their family members, in New York City, who are struggling with alcohol or drug abuse, depression, anxiety and stress, as well as other addictions and mental health issues.

LAP's confidential hotline is available 24 hours a day, seven days a week: 212.302.5787.

Lawyer AA Meetings in New York City

**Thursdays: 6:30 pm**
42 West 44th Street (New York City Bar Association, between 5th & 6th Avenues)

Lawyer GA Meeting Gamblers Anonymous

**Thursdays: 12:30 pm-1:30 pm**
42 West 44th Street (New York City Bar Association, between 5th & 6th Avenues)

Contact LAP

Name

Email

Phone

Enter your message here

https://www.nycbar.org/serving-the-community/lawyer-assistance-program
LAP Resources

For more information from other organizations, click on the links below.

Alcoholics Anonymous

307 7th Avenue New York, NY 10001
212-647-1680

Alanon/Alateen

300 Broadway Street New York, NY 10013
212-941-0094

Narcotics Anonymous

70A Greenwich Avenue New York, NY 10011
212-929-6262

Nar-anon

P.O. Box 656570 Fresh Meadows, NY 11365
631-582-6465

Gamblers Anonymous

P.O. Box 7 New York, NY 10116
877-664-2469
Gamanon
P.O. Box 157 Whitestone, NY 11357
718-352-1671

Overeaters Anonymous
350 Third Avenue PO Box 759 New York, NY 10010
212-946-4599

Cocaine Anonymous
48 W. 21st St. New York, NY 10010
212-929-7302

Marijuana Anonymous
PO Box 1244 Cooper Station
New York, NY 10276
212-459-4423

JACS (Jewish alcoholics and family members)
850 7th Ave. New York, NY 10019
212-255-3712

Women For Sobriety, Inc.
PO Box 618
Quakertown, PA. 18951-0618

https://www.nycbar.org/serving-the-community/lawyer-assistance-program/resources
Debtors Anonymous
P.O. Box 152 New York, NY 10163
212-969-8111

Emotions Anonymous

National Alliance for the Mentally Ill - NYS
432 Park Avenue South Suite 710
New York, NY 10016
212-684-3264

National Institute on Drug Abuse
6001 Executive Blvd.
Bethesda, MD 20892-9561
301-443-1124

National Institute on Alcohol Abuse & Alcoholism
6000 Executive Blvd. Willco Building
Bethesda, MD 20892-7003
800-729-6689

Substance Abuse & Mental Health Administration
NYC Mental Health Referral Hotline

800-543-3638

NYC State Office of Mental Health

93 Worth Street New York, NY 10013
212-219-5400

National Institute of Mental Health

6001 Executive Blvd., Bethesda, MD 20892-9663
301-443-4513

International Lawyers in AA

The National Center on Addiction and Substance Abuse at Columbia University

633 Third Avenue, 19th floor, New York, NY 10017-6706
212-841-5200
New York State Bar Association
Lawyer Assistance Program

Ray M. Lopez, Director
One Elk Street
Albany, NY 12207
(800) 255-0569 or (518) 487-5685
Lawyer Assistance Program

The inherently competitive and demanding nature of the practice of law makes lawyers particularly vulnerable to stress, anxiety, depression, alcohol and drug use, and other issues that affect their personal and professional lives. The Lawyer Assistance Program (LAP) offers free, confidential help to attorneys, judges, law students, family members, and colleagues who experience physical, psychological, and social challenges that impact their personal lives and careers. LAP’s mission is to help attorneys build on their strengths by offering services that promote physical, emotional, and mental well-being.

LAP provides: evaluation and assessment; early identification of impairment; referral to appropriate treatment resources; short-term supportive counseling; monitoring and peer assistance; crisis intervention; consultation and information for those concerned about a legal professional; and CLE and educational programs on preventing, recognizing, and addressing addiction, stress, depression, anxiety, and other mental health issues. All lawyers, judges, law students, family members, and concerned others in the five boroughs of New York City and Westchester are eligible for LAP services. You do not have to be a member of any bar association to access LAP assistance.
### Year in Review

2017 saw the release of the ABA report “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” which opened the door for large law firms to begin a conversation about how they can establish an organizational infrastructure that promotes well-being. LAP provided presentations to lawyers and staff at twelve New York City law firms, addressing the high incidence of addiction and mental health problems in the profession. Presentations also provided guidelines for firms to recognize stress, minimize burnout, build resilience, reduce stigma, and provide empathy and support to lawyers and staff who may be struggling. LAP participated in an online ethics CLE for Lawline, received its first referrals from the Attorney Disciplinary Committees for Diversion Monitoring under the new NYS Disciplinary Rules, 22NYCRR Part 1240, and developed a protocol for lawyers and judges experiencing vicarious trauma as a result of working with clients who are experiencing trauma, abuse, violence, grief, and loss.

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### Our Impact in 2017-2018

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<th>Total Persons Reached Through Presentations</th>
<th>Monitoring Cases (Court-Ordered and Voluntary)</th>
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<tbody>
<tr>
<td>6,218</td>
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<table>
<thead>
<tr>
<th>Total Sessions</th>
<th>Total Clients</th>
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<tbody>
<tr>
<td>1,205</td>
<td>465</td>
</tr>
</tbody>
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**You are not alone.**

Help is only a phone call away. For free, confidential assistance for yourself or someone you are concerned about, call or email LAP: 212.302.5787 or www.nycbar.org

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The information I have gained, tools I have been equipped with, and support network I have built have been invaluable to my ongoing recovery. In all, I am grateful to be sober and to be really invested in my recovery. This entire episode has proven an unlikely gift: I have been in desperate need of help to address my alcoholism and substance abuse and the LAP has put me in a position to get that help and make significant progress in my recovery.

LAP Participant
LAWER ASSISTANCE
PROGRAM

The inherently competitive and demanding nature of the practice of law makes lawyers particularly vulnerable to stress, anxiety, depression, alcohol and drug abuse, compulsive behaviors, and personal and professional problems. The Lawyer Assistance Program offers free, confidential help to attorney, judges, law students, family members and colleagues who experience physical, psychological and social challenges that impact their personal lives and careers. LAP’s mission is to help attorneys build on their strengths by offering services that promote physical, emotional and mental well-being. LAP provides evaluation and assessment; early identification of impairment; referral to appropriate treatment resources; short-term supportive counseling; monitoring and peer assistance; consultation and information for those concerned about a legal professional and CLE and educational programs on preventing, recognizing and addressing addiction, stress, depression, anxiety and other mental health issues. All lawyers, judges, law students, family members, and concerned others in the five boroughs of New York City may receive LAP services. You do not have to be a member of a bar association to access LAP services.

YOU ARE NOT ALONE
For confidential help call or email LAP today, 212.302.5767 or www.nycbar.org

OUR IMPACT IN 2016–2017

<table>
<thead>
<tr>
<th></th>
<th>Total Clients</th>
<th>New Referrals</th>
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<tbody>
<tr>
<td><strong>356</strong></td>
<td><strong>304</strong></td>
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<tr>
<td><strong>1K</strong></td>
<td><strong>22</strong></td>
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<tbody>
<tr>
<td><strong>56</strong></td>
<td><strong>4.9K</strong></td>
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<tbody>
<tr>
<td><strong>12</strong></td>
<td><strong>38</strong></td>
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</table>

A NOTE FROM THE EXECUTIVE DIRECTOR OF THE NEW YORK CITY BAR ASSOCIATION AND VICE PRESIDENT OF THE CITY BAR FUND

Thank you for your contributions, which allow us to operate the four individual City Bar Fund projects and the Fund as a whole. Your generous support leverages the expertise and enthusiasm of our knowledgeable staff and the efforts of hundreds of committed volunteers to focus on areas of critical importance to the public and our profession. From doing pro bono in the New York City area and around the world, to tackling the ongoing challenges of diversity & inclusion and caring for the mental health of attorneys, judges and their families, the City Bar Fund allows lawyers to step outside their day-to-day practices to make a difference. Many thanks for your ongoing commitment to public service.

Bret I. Parker
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OUR IMPACT IN 2015–2016

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<thead>
<tr>
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<tbody>
<tr>
<td>Total Clients</td>
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<tr>
<td>New Referrals</td>
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<th>997</th>
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<tr>
<td>Total Sessions</td>
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<tr>
<td>Ongoing Supportive Counseling</td>
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<td>Monitoring Cases (Discipline and Character &amp; Fitness)</td>
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<td>Total persons reached through educational presentations</td>
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<td>Presentations at New York City Law Schools</td>
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<tr>
<td>CLE Programs/ Seminars</td>
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A NOTE FROM THE VICE PRESIDENT OF DEVELOPMENT AND EXTERNAL RELATIONS FOR THE CITY BAR FUND

I would like to thank all those who have supported the City Bar Fund. It has been a year of focus and transition as we have worked to develop a strategic plan to grow the City Bar Fund so that we can continue to foster the good work of its four programs: the City Bar Justice Center, the Cyrus R. Vance Center for International Justice, the Office for Diversity and Inclusion and the Lawyer Assistance Program.

Because of our connection with you—our generous donors, sponsors and volunteers—the City Bar Fund was able to connect with and serve over 30,000 people through our programs last year. It is an honor to be a part of an organization through which volunteers and supporters can serve alongside those who also share a commitment to giving back.

Thank you for your support,

Lauren Sampson

A NOTE FROM THE EXECUTIVE DIRECTOR OF THE NEW YORK CITY BAR ASSOCIATION AND VICE PRESIDENT OF THE CITY BAR FUND

Thank you for your support of the City Bar Fund and your interest in the important work being done by our volunteers and staff. This first annual report of the combined efforts of the four projects of the City Bar Fund highlights that the New York City Bar Association community can come together to "do good" for the community at the same time we are doing well for our various practices. Harnessing our collective expertise as members of the Association, we demonstrate that lawyers are capable of doing amazing things far beyond our profession. From helping veterans to helping homeless, the City Bar Fund reminds us all that giving back has a deep tradition in the legal profession, which sets us apart and hopefully serves as a model for others.

Many thanks for everything you do and everything you have contributed.

Bret Parker

Bret Parker