



# PUBLIC DEFENSE: STRESS, ANXIETY AND ETHICAL DILEMMAS

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## OBJECTIVES

This presentation will cover

- The prevalence of stress and anxiety in the legal profession
- Tips and strategies
- Available resources
- Common ethical challenges

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**"THE PREVALENCE OF  
SUBSTANCE USE AND OTHER  
MENTAL HEALTH CONCERNS  
AMONG AMERICAN  
ATTORNEYS"**

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**19  
States**



**Anonymous**



**14,895  
Participants**

# 1 out of 5

## Alcohol Use

Of the 11,278 participants analyzed who completed all 10 questions on the AUDIT, 20.6 percent screened **positive for hazardous, harmful and potentially alcohol-dependent drinking.**

Findings included a significantly higher proportion of positive screens among:

- men
- younger participants
- those working in field for shorter duration

Higher proportions found in those:

- working at private firms or for bar associations
- among junior or senior associates



Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol.10(1), Jan/Feb 2016, pp. 46-52. Notes: AUDIT-C measures frequency and quantity consumed.



# 1 out of 5

## Alcohol Use

22.6 percent participants reported they felt their use of alcohol/other substances **was problematic at some point in their lives.**

They reported it manifested:

- Before law school (27.6%)
- During law school (14.2%)
- Within 15 years of practice (43.7%)
- More than 15 years of practice (14.6%)



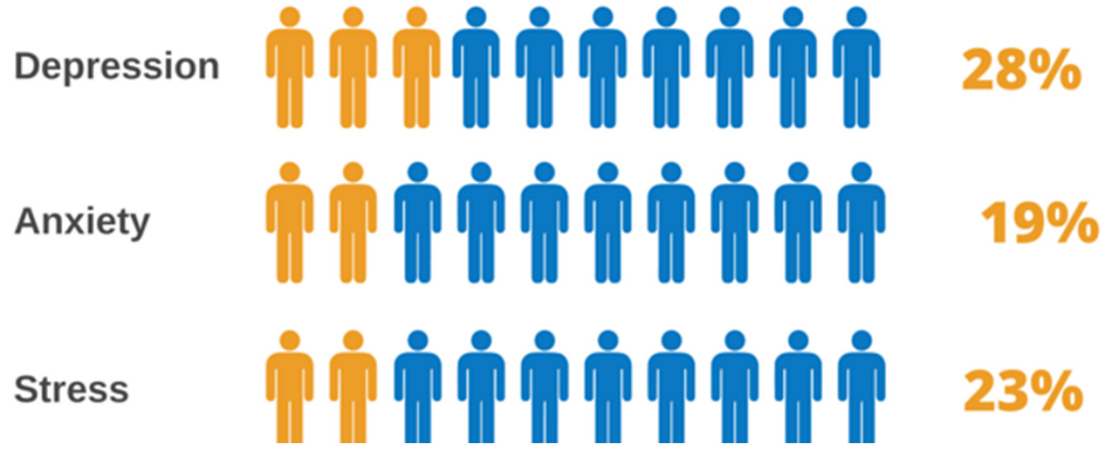
Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol.10(1), Jan/Feb 2016, pp. 46-52. Notes: AUDIT-C measures frequency and quantity consumed.

# Symptoms

## Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the following **reported symptoms of depression, anxiety and stress:**

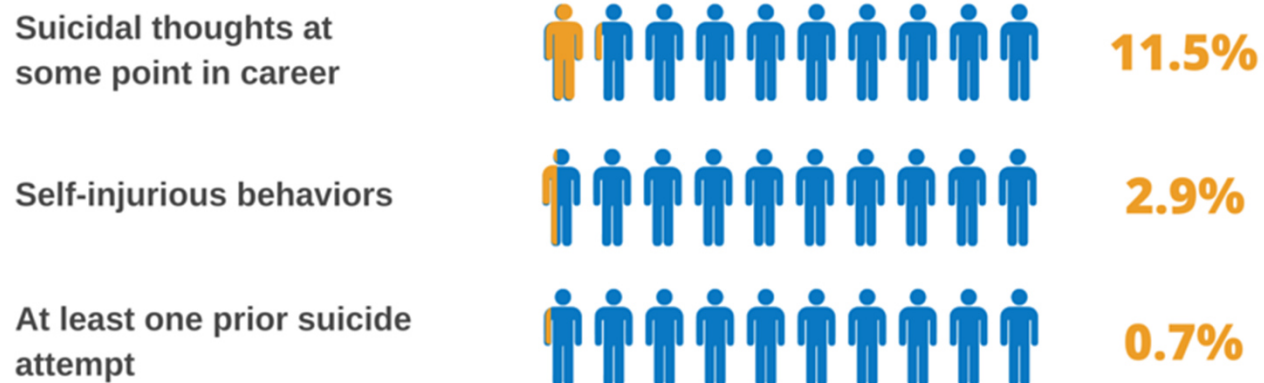
- Men reported significantly higher levels of depression
- Women reported significantly higher levels of anxiety and stress



# Self Harm

## Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the following related to **self harm or suicidal ideation** was self-reported:



Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol.10(1), Jan/Feb 2016, pp. 46-52. Notes: The DASS-21 is a 21 item questionnaire with three, seven-item subscales designed to assess symptoms of depression, anxiety and stress.

# Barriers

## Treatment

Those who got treatment were asked about barriers that impacted their ability to obtain treatment. Those with no prior treatment were asked about hypothetical barriers in event they were to need future treatment.



depression :

an illness,  
not a choice

17/11/2016 10:00:00 AM

- Fatigue, loss of energy
- Sad, empty, tearful
- Concentration problems, indecisive
- Loss of interest/pleasure in things
- Sleep disturbances
- Poor appetite or overeating
- Isolating
- More tense, anxious, easily irritated
- Feelings of helplessness, hopelessness or worthlessness
- Thoughts of death

DSM 5

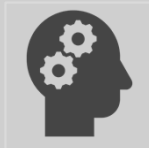
# COMPARISON



# ANXIETY



Reaction to situations perceived as dangerous or stressful



Brain learns from past experience, looks for patterns



Triggers fight or flight system when it recognizes a potential hazard or danger



*“Heart pounding. In my face.  
Throat closing.  
Tongue tingling.  
Head throbbing – like it’s about to explode.  
Face flushing.  
Palms sweating. Mind Blanking.  
Wanting to cry, but too tense to let go.”*

Little, Annie. “Anxiety, Law + Me (It’s Not Just You),”





# ANXIETY DISORDERS

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**Phobias**

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**Panic disorder**

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**Generalized anxiety disorder**

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**Social anxiety disorder**

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**Separation anxiety disorder**

# ANXIETY DISORDERS

Are the most prevalent  
mental disorders

Associated with  
immense health care  
costs, high burden of  
disease.

Large population-based  
surveys indicate up to  
33.7% of us are affected  
by an anxiety disorder  
during our lifetime.

Substantially  
underrecognized and  
undertreated.

No evidence that the  
prevalence rates have  
changed in the past  
years.

Bandelow, B., & Michaelis,  
S. (2015). "Epidemiology of  
anxiety disorders in the 21st  
century." Dialogues in  
Clinical Neuroscience,  
17(3), 327–335.

# ANXIETY DISORDERS



MORE COMMON IN  
MIDLIFE



MORE COMMON IN  
WOMEN

# IMPACT

**Sense of worry,  
impending  
danger**

**Obsessive  
thoughts**

**Feelings of  
inadequacy**

**Difficulty  
concentrating,  
making  
decisions**

**Irritability**

**Sleep  
disturbances**

**Anticipating and  
focusing on  
every problem**

**Sweating**

**Fatigue and  
muscle tension**

**Interferes with  
daily activities**

**Heart  
palpitations**

**Recognizing the  
worry is  
excessive, but  
cannot stop**

# TREATMENT



THERAPY



MEDICATION

# STRESS IN THE LEGAL PROFESSION IS WELL DOCUMENTED



**Adversarial system**



**Demanding schedules**



**Heavy workloads may contribute to increased stress levels.**



**Source: ABA  
Commission on Lawyer  
Assistance Programs.  
Stress, 5/23/18.**

# FACTORS



PERFECTIONISM



PESSIMISM

# COPING STRATEGIES



Mindfulness



Exercise



Connections



Rest



# MINDFULNESS



**Gaining momentum  
in legal profession**



**Law schools**



**Workshops**



**Books**

# MINDFULLY IN THE MOMENT

1

Basic idea: Be in the moment.

2

Mindfulness is a different way of thinking.

3

Guided practice is good for anyone with a stressful job



Recognize and name the anxiety



See the thoughts that are triggering the anxiety



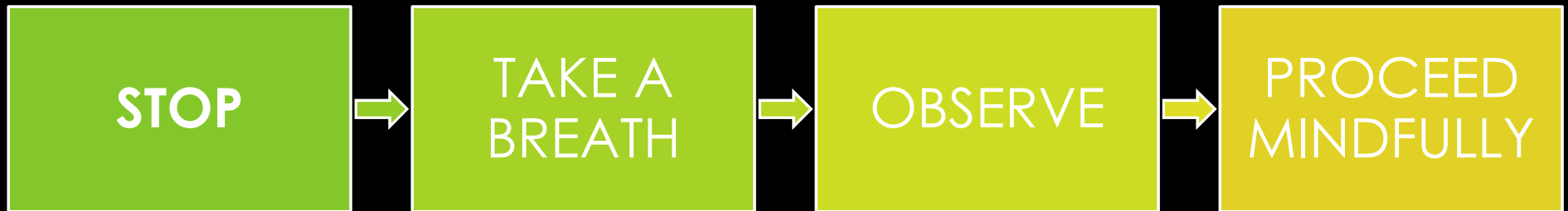
Sweat it out



Source: Cho, Jeena. 3 Tools for Rewiring the Anxious Lawyer Brain,  
<https://abovethelaw.com/2017/08/3-tools-for-rewiring-the-anxious-lawyer-brain/>, 11/2/17.

TOOLS FOR SOOTHING ANXIOUS LAWYER BRAIN

# THE STOP APPROACH



Sit comfortably

Breathe in 3 counts  
Hold 4 counts  
Out 3 counts

Available anytime,  
anywhere  
Stops stress from  
accelerating

QUICK STRESS BUSTER  
10 COUNT BREATHING



5 LOOK



4 TOUCH



3 LISTEN



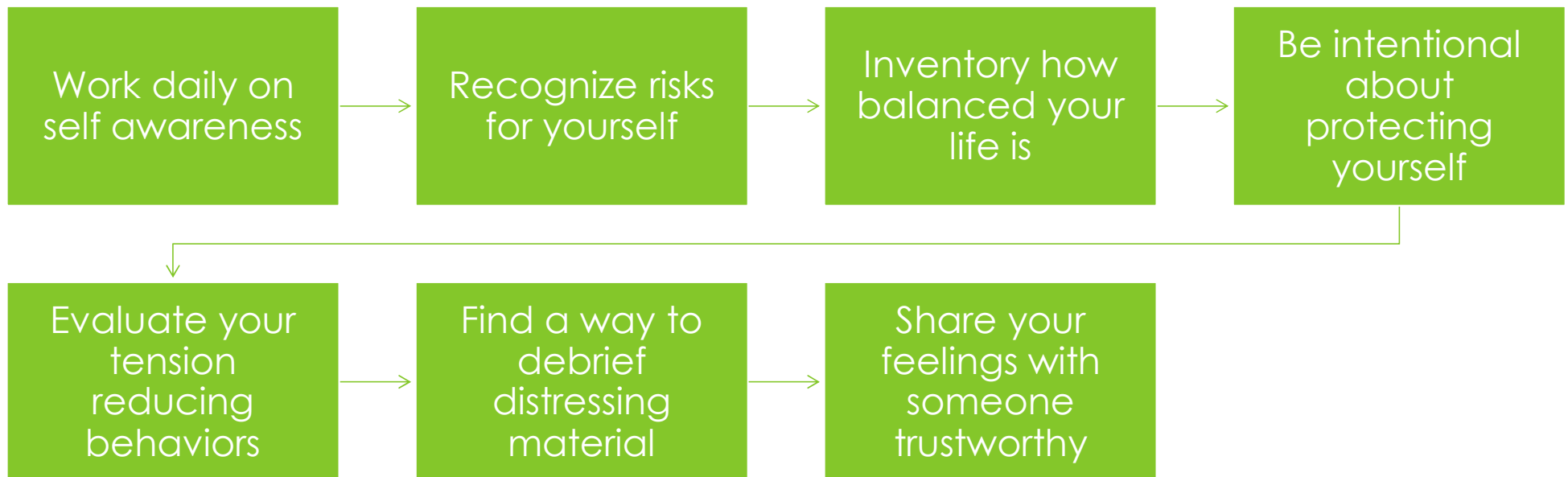
2 SMELL



1 TASTE

SOOTHING A PANIC ATTACK

# RESEARCH BASED SUGGESTIONS FOR IMPROVING MOOD AND MITIGATING STRESS



The background features a dark, almost black, field. On the left side, there are several overlapping, wavy shapes in various shades of green, ranging from a bright lime green to a dark forest green. On the right side, there are similar wavy shapes in shades of orange and yellow, also ranging from a bright yellow to a dark, burnt orange. A thin, vertical white line is positioned to the left of the main text, extending from the top of the text area down towards the bottom of the page.

# THE HALF SMILE





## ANNUAL

- Civic duty
- Child care
- Family vacation



WHAT IS  
RESILIENCE  
AND HOW  
DOES IT  
BOLSTER  
COMPETENCE?

Bree Buchanan

# YOU LOSE A BIG CASE

This is a tough result, but it's only one case and I've been successful in others.

I didn't prepare enough on this case.

We had really bad facts on this case. It wasn't meant to be.



I can't seem to do anything right.

I'm so far out of my league.

This was all my fault.

Bree Buchanan



**5 THINGS THAT  
MAKE YOUR LIFE  
ENJOYABLE**



**IDENTIFY MOST  
RECENT TIME  
SOMETHING DIDN'T  
GO YOUR WAY, OR  
YOU FELT  
FRUSTRATED,  
IRRITATED, UPSET.**



**IN A FEW  
SENTENCES,  
BRIEFLY DESCRIBE  
THE SITUATION IN  
WRITING.**



**3 THINGS THAT  
CAN HELP YOU  
SEE THE BRIGHT  
SIDE**

**TAKE THE FLEXIBLE OPTIMISM CHALLENGE**

Bree Buchanan

# POSITIVITY RATIO

Cultivate positive emotions to counter negative ones



Bad outweighs good

# WELL-BEING TOOL KIT FOR THE LEGAL PROFESSION



- Developed by Anne Brafford, JD, editor in chief of *Path to Lawyer Well-Being: Practical Recommendations for Positive Change*
- Helpful, free guide for lawyers and law students
- Available at [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_Brafford\\_Tool%20Kit.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_Brafford_Tool%20Kit.authcheckdam.pdf).





END OF DAY  
ROUTINE

# CHALLENGES TO ETHICAL DUTIES

4 – 1.1

Competence

4 – 1.2

Scope

4 – 1.3

**Diligence**

4 – 1.4

**Communication**

4 – 1.5

Fees

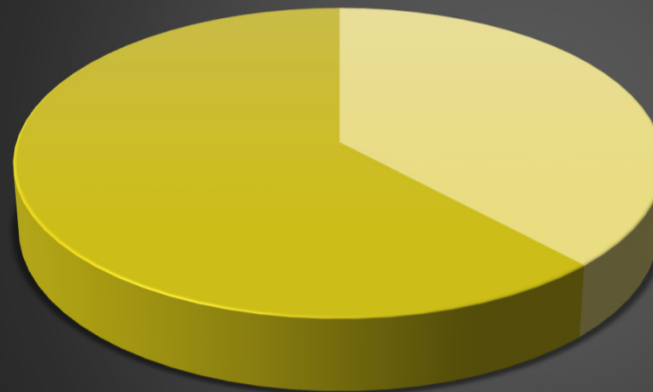
4 – 1.6

Confidentiality



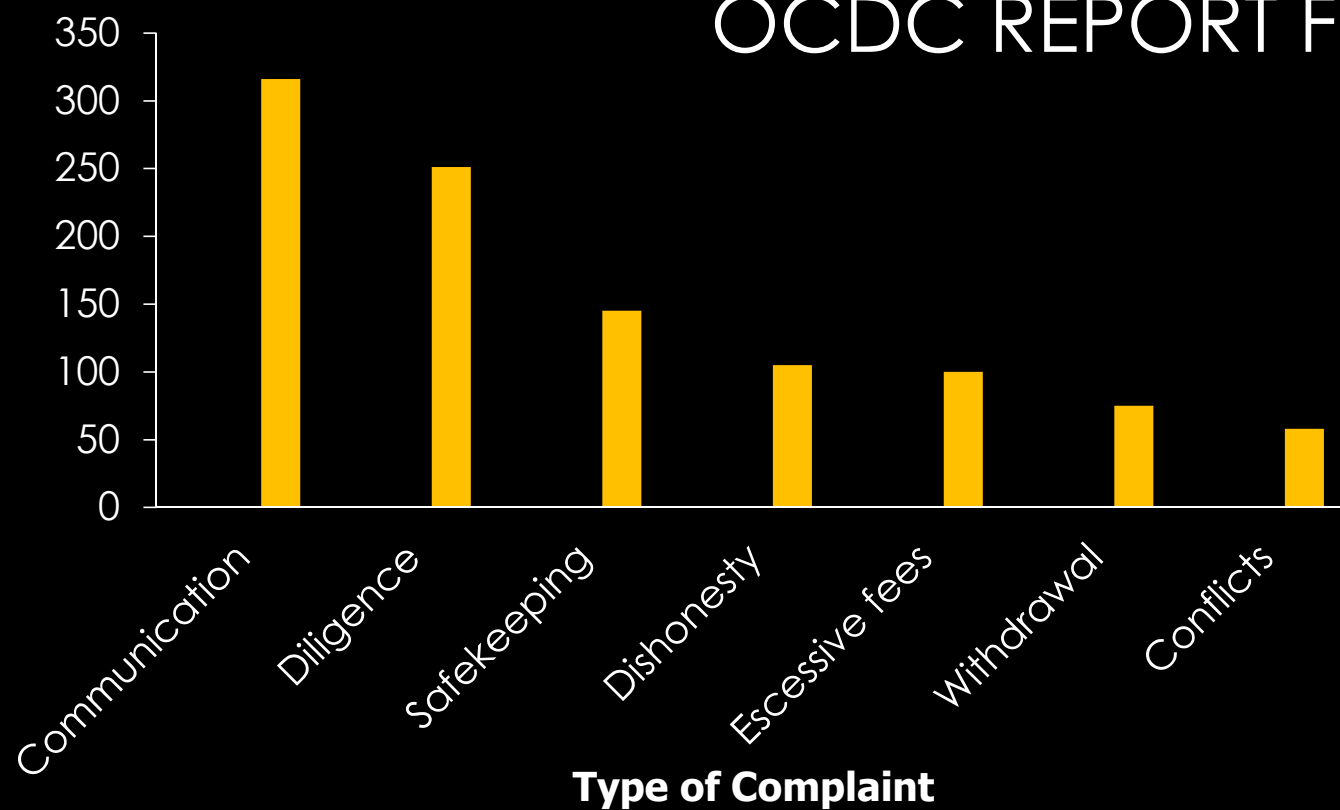
# OFFICE OF CHIEF DISCIPLINARY COUNSEL ANNUAL REPORT FOR 2017

1830 Complaints Made

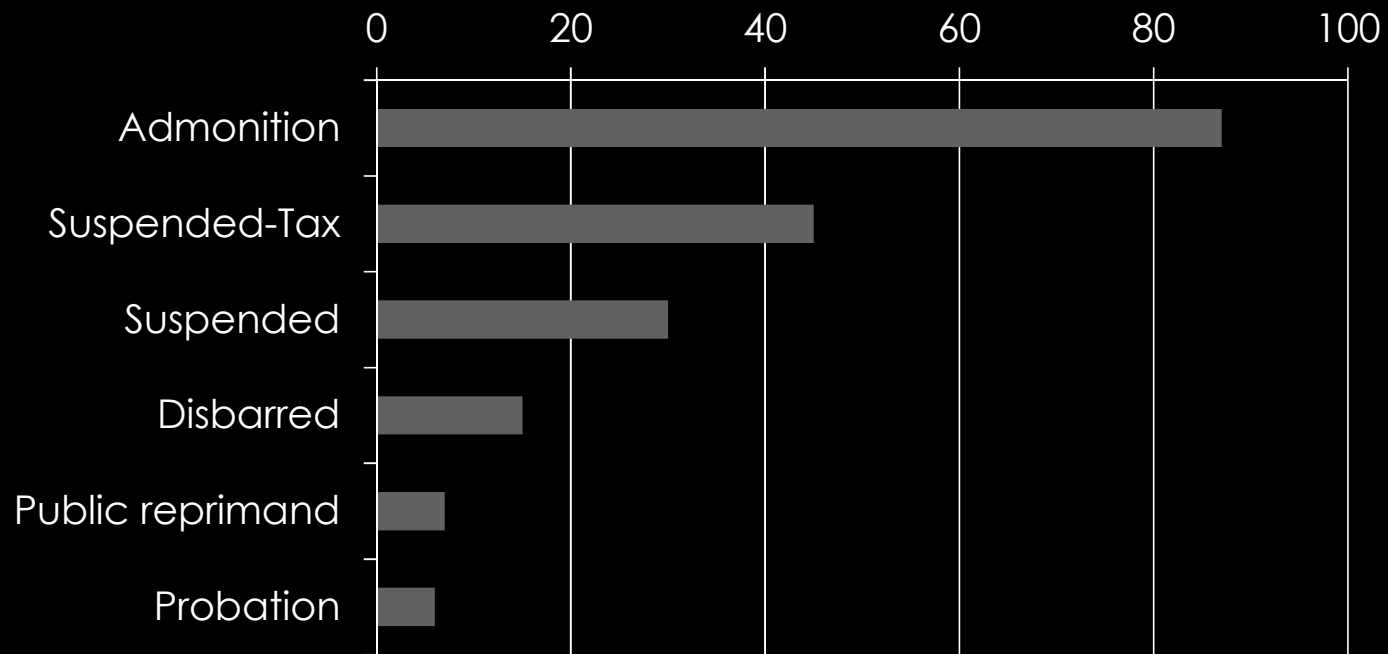


■ Led to Investigation ■ Didn't

# OCDC REPORT FOR 2017



# DISCIPLINARY ACTIONS 2017



# CLAIMS AGAINST ATTORNEYS

Substance use is a factor in about half of all malpractice and disciplinary claims



# SUPREME COURT OF MISSOURI EN BANC

41

## RULE 16 -- SUBSTANCE ABUSE INTERVENTION

[16.01 -- Purpose and Intent](#)

[16.02 -- Definitions](#)

[16.03 -- The Intervention Committee, Membership and Tenure](#)

[16.04 -- Authority and Duties](#)

[16.05 -- Investigative Process](#)

[16.06 -- Intervention Process](#)

[16.07 -- Immunity from Liability](#)

[16.08 -- Rehabilitation Process -- Probation](#)

[16.09 -- Rules and Regulations](#)

[16.10 -- Records](#)

<http://www.courts.mo.gov/page.jsp?id=719>



# MODEL POLICY FOR LAW FIRMS ADDRESSING IMPAIRMENT

- **NOTICE**

- The Missouri Bar is dedicated to helping Missouri lawyers better help their clients. Substance abuse and mental health issues can interfere with an attorney's ability to provide quality legal services to their clients. Those same issues also can detrimentally affect the quality of life of the attorney and his or her family. The Missouri Lawyers' Assistance Program (MOLAP) is a free, confidential counseling service designed to assist lawyers and law firms with mental health and substance concerns. Based on the work of the New York State Bar Association, the Missouri Lawyers' Assistance Program offers this Model Policy for Law Firms to assist law firms in addressing substance abuse and mental health problems. We believe this model policy can be a valuable tool for law firms when it comes to addressing a lawyer's substance abuse and/or mental health issues. It is intended for use as a sample and can be modified to suit the needs of your practice or firm. The following model policy was endorsed by The Missouri Bar Board of Governors.



FREE RESOURCE FOR ETHICAL QUESTIONS

Legal Ethics Counsel

573-638-2263

[www.legal-ethics-mo.org](http://www.legal-ethics-mo.org)

# Rule 4-1.16: Declining or Terminating Representation

(a) Except as stated in Rule 4-1.16(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.





# Impairment may be caused by

Conditions that impair judgment, cognitive ability or volitional or emotional functioning in relation to performance of professional duties and commitments.

Conditions more likely to produce this include, but are not limited to:

Schizophrenia, other psychotic disorders, bipolar illness, major depressive disorder, substance concerns, delirium and dementia

*Rule 5.285*

*Adopted Feb. 8, 2010, eff. Feb. 8, 2010*

# MITIGATING: MISSOURI SUPREME COURT RULE 5.285

46

Mental disability, chemical dependency, alcoholism and drug dependency are listed among mitigating factors when:

There's medical evidence the respondent is affected by a chemical dependency or mental disability

The chemical dependency or mental disability caused the misconduct

Respondent's recovery is demonstrated by a meaningful and sustained period of successful rehabilitation and

The recovery stops the misconduct and its recurrence is unlikely

## OTHER COMMENTS

- Identification of the medical cause allows attorney to start treatment
- Chance to demonstrate management of the disorder
- To be considered in determining whether to impose discipline less than that which would've been imposed where the disorder was not present.
- Hard to answer "How'd your mental condition cause your conduct?" without a hint of confession.

# Confidentiality

## **RULE 4-8.3: REPORTING PROFESSIONAL MISCONDUCT**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule 4-8.3 does not require disclosure of information otherwise protected by Rule 4-1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

*(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007.)*

# MISSOURI LAWYERS' ASSISTANCE PROGRAM WHO WE SERVE

- Attorneys
- Judges
- Law students
- Immediate family members
- Bar applicants

Free and Confidential



# SERVICES PROVIDED

- Unlimited access to a licensed clinical social worker
- Available 24/7 days a week
- Part time licensed professional counselor
- Assessment
- Counseling
- Referral
- Coaching
- Volunteer connections on request
- Support for suicide survivors
- Crisis intervention for individuals and firms
- Presentations





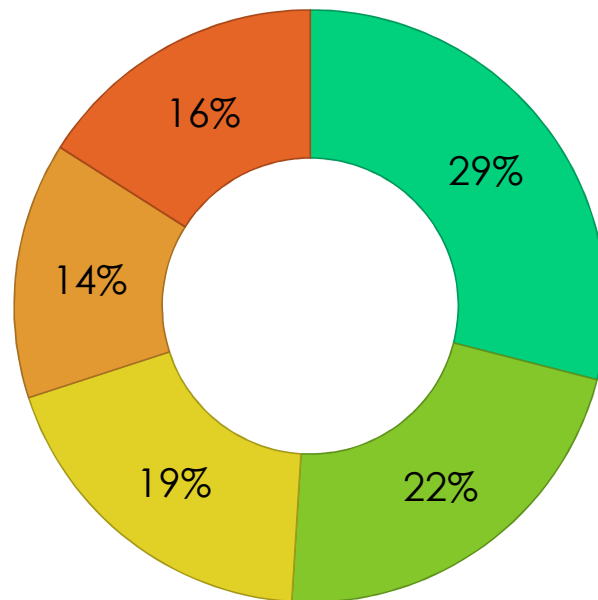
**MOLAP**

**FOR  
ASSISTANCE  
CALL**

**1-800-688-7859**

**CONFIDENTIALITY  
ASSURED**

# MOST COMMON CONCERNS

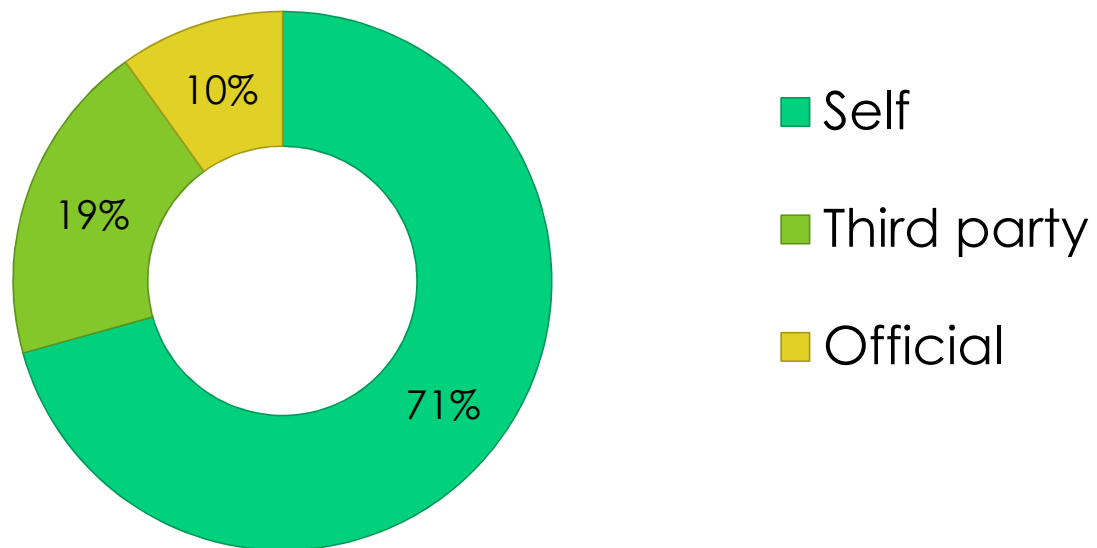


- Substances
- Other mental health
- Depression
- Marital/family
- Assorted



# SOURCES

Referral Source



If you recognize stress is taking a toll on a colleague, encourage him/her to develop positive coping strategies. Contact a LAP for additional support and resources.

ABA Commission on Lawyer Assistance Programs. Stress, /23/18.

## THE FRIENDLY REFERRAL

- Sounds like you are going through a tough time. Would you like to speak to someone about it? MOLAP is a free, confidential counseling program and a member service of the Missouri Bar.
- I'm sorry you're going through this. Have you heard of the Missouri Lawyers' Assistance Program?

# THE FRIENDLY REFERRAL

- Let them know MOLAP is there, offer phone #, mention our website
- Encourage them to check out the videos or articles on website, then make their call
- Give business card
- Ghost appointment



MOVE FROM  
IDEAS TO ACTION

# REVIEW QUIZ



ANXIETY  
DISORDERS  
ARE

A. Rare

B. Common

RECENT STUDIES INDICATE THE PREVALENCE OF ANXIETY DISORDERS IN THE LEGAL PROFESSION IS

A. More common than the general population

B. About as common as the general population

C. Less common than the general population



# THE STOP TECHNIQUE STANDS FOR

Stop, talk, outreach, progress

Stop, take a breath, observe,  
proceed mindfully

Stop, testify, object, protect

## THE LAWYER WELL-BEING TOOLKIT IS



A. FREE



B. AVAILABLE  
ONLINE



C. BOTH

# THE 5 4 3 2 1 TECHNIQUE

- 
- A. Stands for 5 Look, 4 Touch, 3 Listen, 2 Taste, 1 Smell

---

  - B. Can be used to help soothe a panic attack

---

  - C. Uses five senses to help ground us

---

  - D. All the above

ANXIETY  
DISORDERS ARE  
ASSOCIATED  
WITH



A. Higher health care costs



B. Lower health care costs

## WHICH IS INCORRECT?

### Mindfulness

- A. Focuses on being in the moment
- B. Focuses on rushing
- C. Focuses on our breath
- D. Has applications for stress reduction

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[https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/colap\\_Brafford\\_Tool%20Kit.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/colap_Brafford_Tool%20Kit.authcheckdam.pdf), 2017.

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<https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>, August 14, 2017.

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