

PRACTICE MAKES PERFECT – UNLESS IT'S DRIVING YOU CRAZY

Competence, Mental Health and Substance Abuse in the
Legal Profession

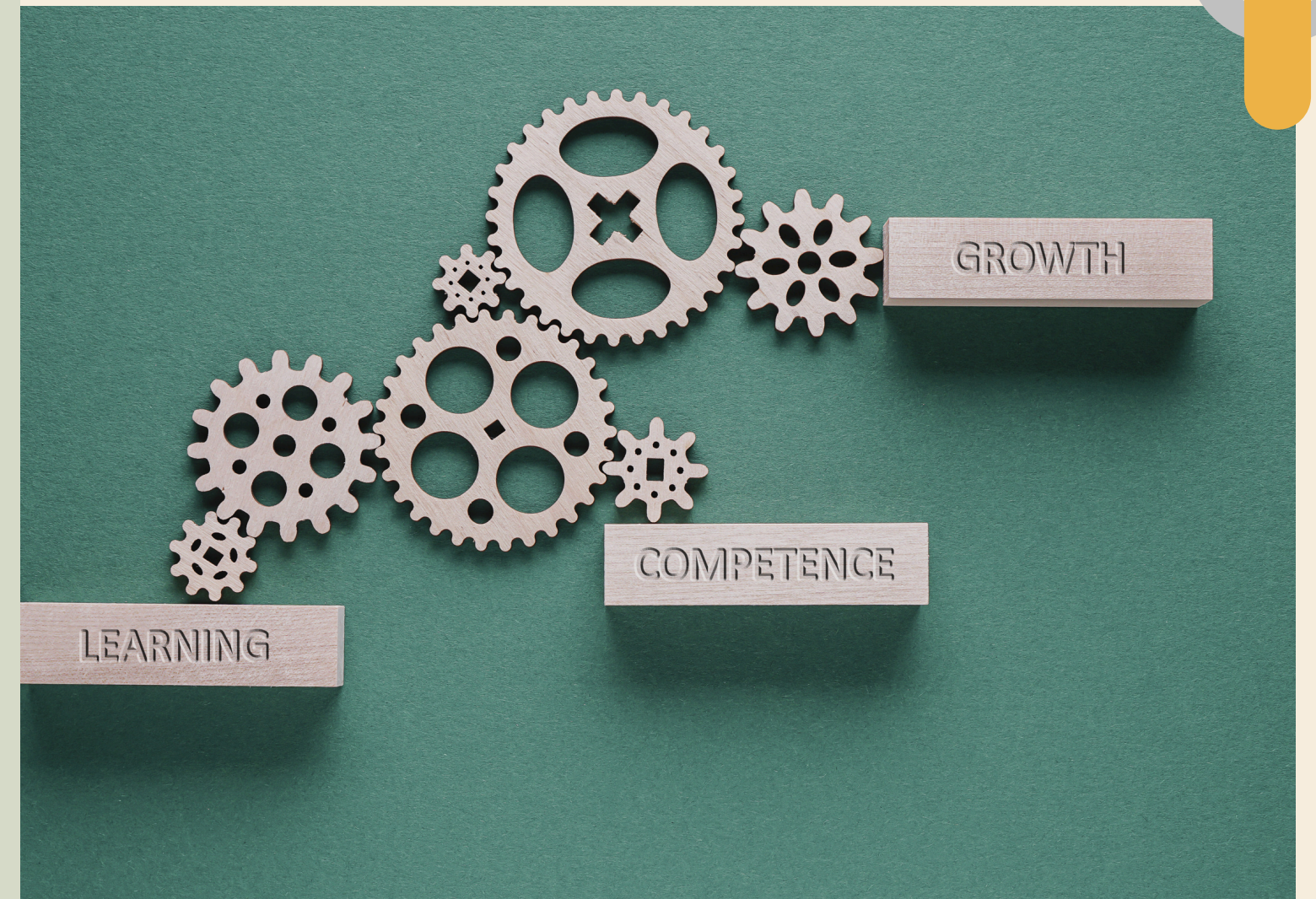
MCLE Day 1, Jan. 15th 2025

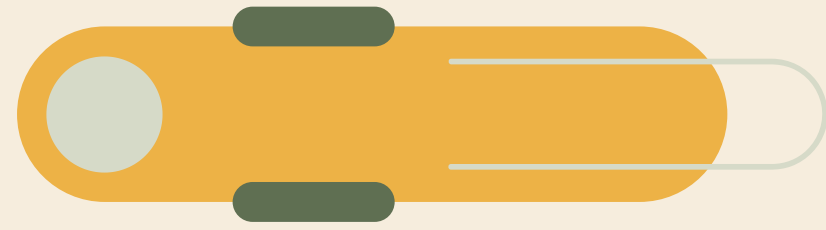
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COMPETENCE

In addition to learning skill, competence requires:

“Mental, emotional, and physical ability reasonably necessary for the performance” of legal services.





WE WILL DISCUSS

01

The meaning and importance of those terms in the practice of law

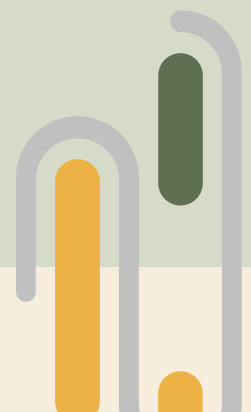
02

Resources for help when mental, emotional, or physical abilities are impaired

RULES OF PROFESSIONAL CONDUCT

Rule 1.1 Competence

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.



RULES OF PROFESSIONAL CONDUCT

Rule 1.1 Competence

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, **and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service**

COMMON CAUSES OF LAWYER INCOMPETENCE



Bottom Line: Like America's Deadliest Catch, the law is a hazardous profession

- 1**
Substance Use and Mental Health Issues
- 2**
Chronic Stress and Burnout
- 3**
Workplace Risk Factors
- 4**
Gender-Specific Risks
- 5**
Insufficient Training on Wellness During Education

THE PRACTICE OF LAW IS STRESSFUL AND OFTEN CAUSES ANXIETY, DEPRESSION AND SUBSTANCE ABUSE



**High-Pressure
Work
Environment**

**Excessive
Workload**

**Stigma Around
Seeking Help**

**Adversarial
Nature of Legal
Practice**

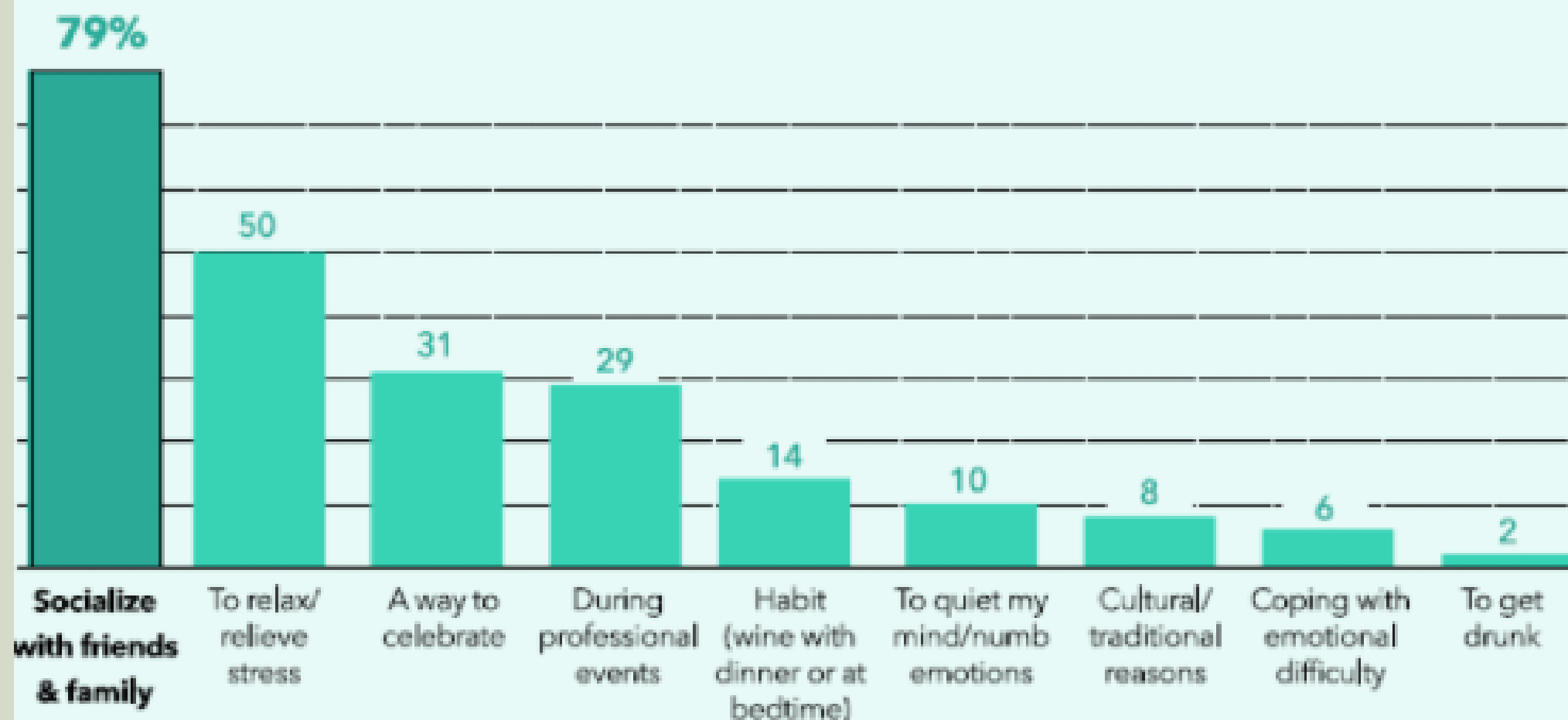
**Gender-Specific
Challenges**



THE TOP REASONS ATTORNEYS ARE DRINKING

The Top Reasons Attorneys Are Drinking

We asked attorneys to select the top three reasons for their alcohol consumption.*



Source: 2024 Attorney Well-Being Survey



HOW EXTENSIVE ARE MENTAL HEALTH PROBLEMS, AND DRUG AND ALCOHOL ABUSE IN THE LEGAL PROFESSION?

1

Prevalence of
Mental Health
Issues

2

Substance
Abuse Rates

3

Impact of the
Pandemic

4

Gender-Specific
Findings

5

Early Onset in
Law School

GOOD PHYSICAL HEALTH DOES NOT GUARANTEE ONE'S COMPETENCE

AS IT RELATES TO COMPETENCE, THE MOST REVEALING
FACTOR IS THE STATE OF YOUR WELL-BEING



Physical Health is Part
of the Equation



Mental Health and
Substance Abuse
Matter

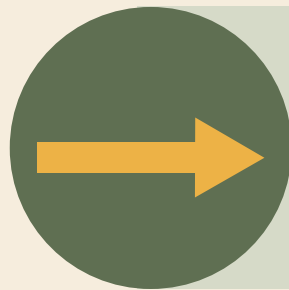


Workplace
Environment and
Support Systems

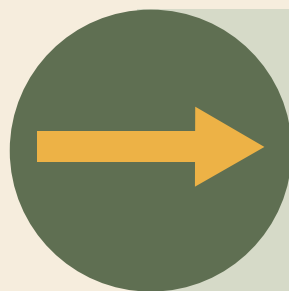
WHAT ARE THE PHYSICAL AND BEHAVIORAL WARNING SIGNS OF MENTAL HEALTH PROBLEMS, ALCOHOL AND SUBSTANCE ABUSE?

1

Some ways of detecting problems:



Physical Warning Signs



Behavioral Warning Signs

2

Substance Abuse Indicators

WHAT ARE THE DUTIES OF A LAWYER WHO IS INCOMPETENT OR HAS COLLEAGUES WHO BECOME INCOMPETENT IN THE PRACTICE OF LAW?



- Duty to withdraw upon becoming incompetent
- Rule 1.16(A)(3) an attorney shall withdraw
 - "if the lawyer's mental or physical condition renders it **unreasonably** DIFFICULT to carry out the representation effectively;"
 - COMPARE RULE 1.16(B)(8)
 - [An attorney MAY withdraw]

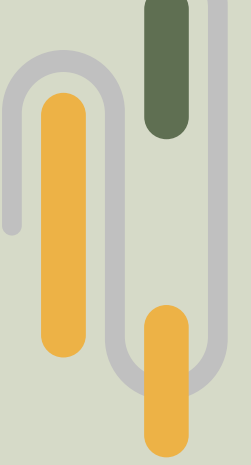




THE LAWYER'S RESPONSIBILITIES WHEN AN INCOMPETENT PARTNER, SHAREHOLDER OR EMPLOYEE VIOLATES THE RULES OF PROFESSIONAL CONDUCT

IS THERE A DUTY TO TAKE ACTION?

No, unless...



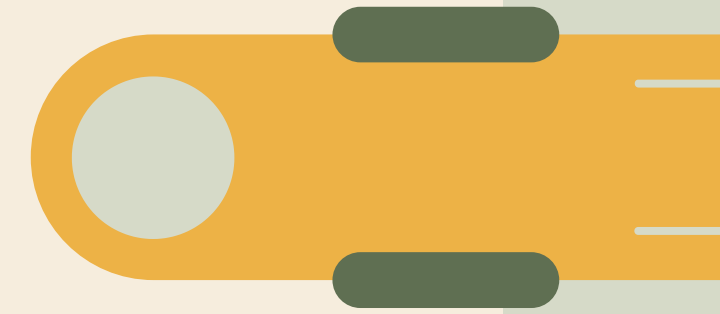
- The lawyer has managerial authority
- Direct supervisorial authority

Or

- Directly supervises the offender (impaired lawyer)
- (Source: Rule 5.1 of Professional Rules of Conduct)



DOES THE SNITCH RULE APPLY HERE?



Rule 8.3(d): “This rule does not require or authorize disclosure of information gained by a lawyer while participating in a substance use or mental health program, ...”

LEGAL MALPRACTICE AND INCOMPETENCE

WILL THE STATE BAR CONSIDER PERSONAL AND EMOTIONAL PROBLEMS IN MITIGATION OF FINDINGS OF INCOMPETENCE?

The California State Bar does consider personal and emotional difficulties as potential mitigating factors when determining the appropriate disciplinary action for an attorney

- Emotional and Personal Difficulties as Mitigation
- **Evidence Required**
- **Limits of Mitigation**

In conclusion, while the California State Bar will consider personal and emotional problems as **mitigating factors**, it is essential that the attorney demonstrates both the direct impact of these issues on their performance and efforts to remedy the situation.





DO I NEED HELP?

ANSWER THE “TWENTY QUESTIONS” FROM THE LAWYER’S ASSISTANCE PROGRAM (LAP), STATE BAR OF CALIFORNIA

https://www.calbar.ca.gov/portals/0/documents/lap/LAP_20-Questions-Test.pdf

HOW INDIVIDUAL HABITS AND ORGANIZATIONAL CHANGE CAN CREATE HEALTHIER WORK ENVIRONMENTS, ESPECIALLY DURING HIGH-STRESS TIMES LIKE THE YEAR-END CRUNCH AND THE HOLIDAY SEASON

1

Individual Habits for Mental Health and Stress Management

2

Organizational Change to Support Well-Being

3

Promoting a Culture of Wellness

4

Peer Support and Mentorship

5

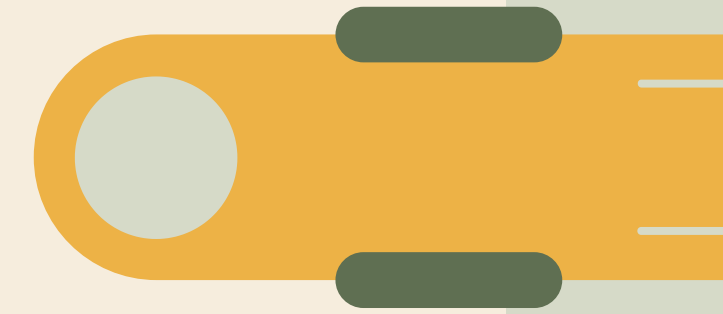
Focus on Prevention and Proactive Health Management

RESOURCES

The State Bar of California Lawyer Assistance Program (LAP) 877-LAP 4 HELP (877-527-4435)

Other Resources

- Other Bar (800)-222-0767
- Judicial Officers Assistance Program (800)-327-0422
- Hazelden Betty Ford Foundation (855) 995-3642
- Apps: Calm, Insight Timer



ONE EASY SOLUTION – SETTLE CASES!

**Instantly Eliminate Deadlines, Stress, and
Clear your Calendar!**

THANK YOU



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