Mental Health and the Practice of Law: Personal Health & Professional Responsibilities

Eric C. Lang

September 17, 2025

Lang Legal

HELPING PEOPLE WE CARE ABOUT
SOLVE PROBLEMS AND ACHIEVE GOALS.

Alta Pro
Lawyers Risk Purchasing Group

Discussion Topics

- Defining Mental Health and Mental Illness
- Is the Practice of Law in a Mental Health Crisis
- Ethics and the Mentally Impaired Attorney
- Ethical Responsibility to and for Other Lawyers
- The Ethics of Representing Mentally Impaired Clients
- Professionalism and Morality – How to Help Yourself and Others

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Part 1:
Defining Mental Health and Mental Illness

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Medical Definition

Diagnostical Statistical Manual

- A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning.
- Mental disorders are usually associated with significant distress in social, occupational, or other important activities.
- An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder.
- Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.

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Statutory Definitions

- Statutes that incorporate the DSM (e.g. Arkansas, Pennsylvania)
- “Laundry List” statutes (California)
- Legislators trying to be psychiatrists (Louisiana, New York)
- The “Blooper Reel” (such as Georgia, with “"Mentally ill" means “having a mental illness.”)

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Practical Framework

- Behavior (significantly) out of place in the environment.
- That is involuntary.
- And is not a reasonable reaction to an outside stimulation.

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Out of Place Behavior			
Added Facts	Family in horrible car crash.	Con artist.	Well, I woke up that way.
Intentional	**No.**	**Yes.**	**No.**
Stimulated	Yes.	No.	No.

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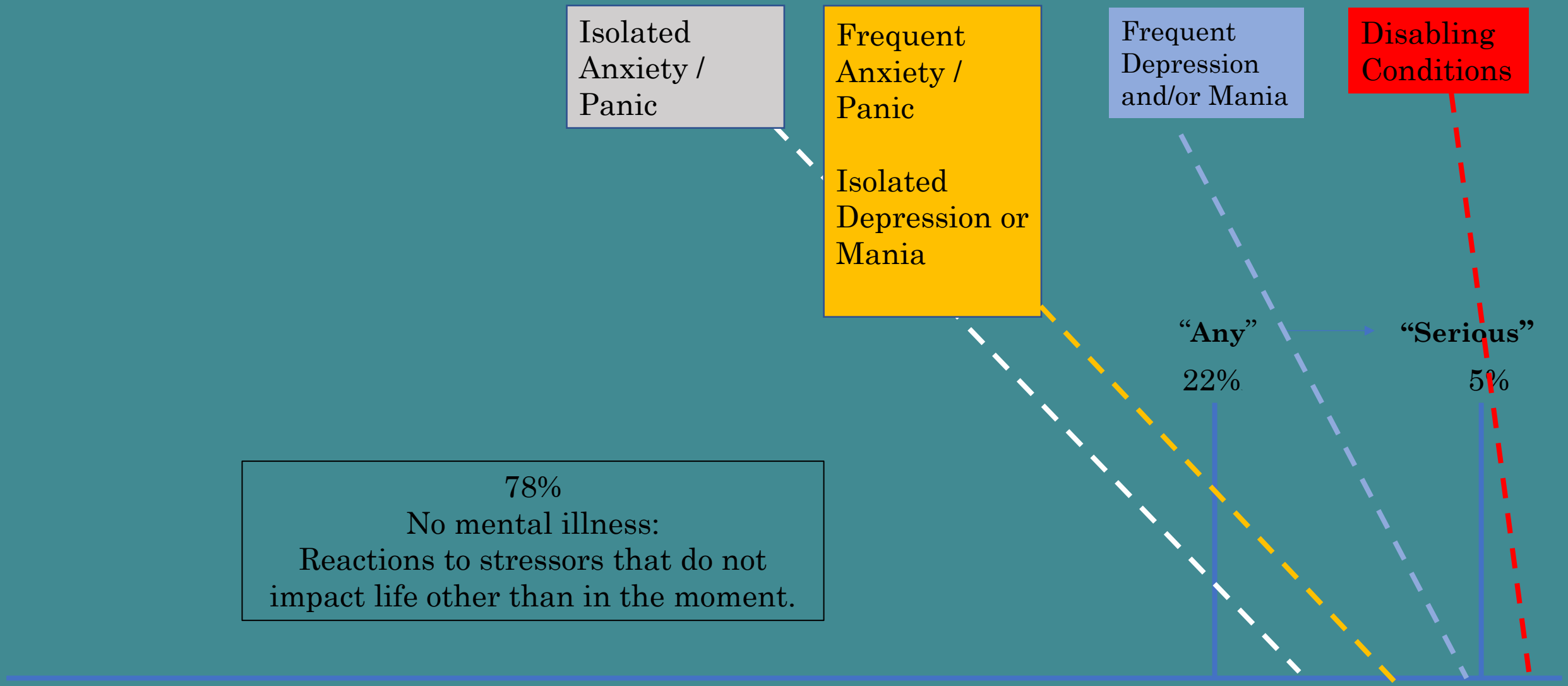
Who Are We Talking About?



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Part 2
Is the Practice of Law in a Mental Health Crisis

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Look Who's Talking

1. Paid Consultants
2. Concerned Volunteers
3. Connected Volunteers
4. Those Who Live It

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What Are They Saying to You?

- Addressing the Lawyer Suicide Crisis: A Guide for Bar Leaders.
- Lawyer Mental Health Crisis: Unveiling 2023 Data, Trends, and Essential Resources for Building Healthier Legal Careers
- Mental Health in the Legal Profession: A Crisis, a Case Study and a Call to Action
- We Are in a Crisis: Attorney, Judge Suicide Prevention Takes Center Stage in Georgia
- Mental health crises plague attorneys along with alcohol abuse
- Lawyer Well Being as a Crisis of the Profession.
  - "The legal industry has the 11th-highest incidence of suicide among professions."
  - "Lawyers ranked fourth when the proportion of suicides in that profession is compared to suicides in all other occupations . . ."
  - "Male lawyers in the United States are two times more likely to commit suicide than men in the general population."
  - "Suicide ranks among the leading causes of premature death among lawyers."

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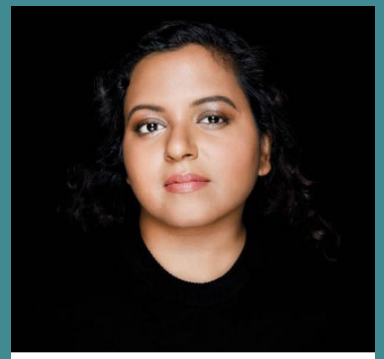
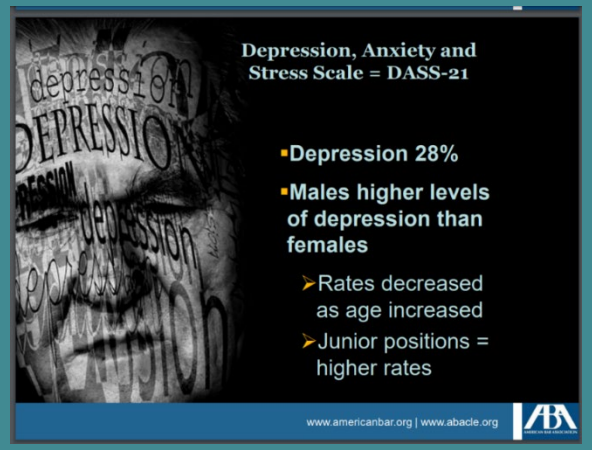
What They Show You



Fear



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Scary Suicide Statistics???

Most Recent CDC Stats:

TABLE 1. Suicide rates* for persons working in major industry and occupational groups meeting reporting criteria, by sex — National Violent Death Reporting System, 32 states,† 2016§

Return

Census code¶	Major group	Sex rate (95% CI)	
		Male	Female
Total	All industries or occupations	27.4 (26.9–27.9)	7.7 (7.5–8.0)
Industry			
2100–2160	Legal	16.3 (12.1–21.7)	7.9 (5.4–11.2)

Supplementary Table 2. Male and female suicide rates per 100,000 civilian, noninstitutionalized working persons aged 16-64 years for major and detailed occupational groups meeting reporting criteria, National Violent Death Reporting System, suicide decedents (n = 15,779), 32 states†, 2016

Occupation title	2010 Census code§	Male			Female		
		Deaths, n	Estimated population (1000s), n	Rate (95% CI)	Deaths, n	Estimated population (1000s), n	Rate (95% CI)
Religious workers, all other	2060	[illegible]	16	NC	[illegible]	24	NC
Legal occupations:	2100–2160	70	429	16.3 (12.1–21.7)	41	519	7.9 (5.4–11.2)
Lawyers, and judges, magistrates, and other judicial workers	2100	[illegible]	366	15.8 (11.4–21.6)	<20	254	NC
Paralegals and legal assistants	2145	<20	32	NC	<20	193	NC
Miscellaneous legal support workers	2160	<20	26	NC	<20	66	NC
Education, training, and library occupations:	2200–2550	139	1,401	9.9 (8.3–11.6)	156	3,950	3.9 (3.3–4.6)

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Attorney Suicide in Statistical Context

Year	Deaths	States	Adjusted to US	Per 100,000
2016	111	32	174	13.25
2015	63	17	186	14.3
2012	78	17	230	18.47

Year	Attorney Per 100,000 (Blend)	National Per 100,000	Attorney Per 100,000 (Male) (Rank)	Attorney Per 100,000 (Female) (Rank)	Highest Occupation Per 100,000 (Male)	Highest Occupation Per 100,000 (Female)
2016	13.25	13.5	16.3 (17)	7.9 (9)	49.4 (Construction)	25.5 (Construction)
2015	14.30	13.3	18.7 (14)	9.2 (5)	53.2 (Construction)	15.6 (Arts etc.)
2012	18.47	12.6	21.3 (12)	11.1 (3)	43.6 (Construction)	11.7 (Arts etc.)

Citations: Peterson C, Sussell A, Li J, Schumacher PK, Yeoman K, Stone DM. Suicide Rates by Industry and Occupation — National Violent Death Reporting System, 32 States, 2016. MMWR Morb Mortal Wkly Rep 2020;69:57–62 DOI: http://dx.doi.org/10.15585/mmwr.mm6903a1; Peterson, C., Stone, D.M., Marsh, S.M. & others. (2018). Suicide rates by major occupational group -- 17 states, 2012 and 2015. Morbidity and Mortality Weekly Report. 67(45):1253–1260 DOI: http://dx.doi.org/10.15585/mmwr.mm6745a1; https://www.cdc.gov/nchs/data/databriefs/db464-tables.pdf#1

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Part 3
Ethics and the Mentally Impaired Attorney

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Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[Comment 8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

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Rule 1.16

(a) . . . a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . .

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

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Mandating Mental Health?

Proposed Comment to Rule 1.1: A lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law.

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Or, The Movement Away from Mandating Mental Health

- The American Psychological Association has called for "the removal of mental health questions on applications to practice law," explaining that "there is no connection between bar application questions about mental health and attorney misconduct and that such questions have not been empirically shown to work as a successful screening tool for who can and cannot practice law in a competent manner." (August 7, 2023)
- *Doe v. Supreme Court of Ky.*, 482 F.Supp.3d 571 (W.D. Ky. 2020)
  - "This case is not only about Jane Doe. It's also about the lawyers who decide who else can be a lawyer."
  - "The Bar Bureaucracy won this round against an applicant it deemed suspect and undesirable. But there will be more applicants — and more lawsuits. Some of those plaintiffs will have standing to seek prospective relief. And when they do, the Bar Bureaucracy will have to answer for a medieval approach to mental health that is as cruel as it is counterproductive."

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Patterns of Unethical Actions

- Misuse of funds.
- Client Neglect
- Actions outside practice.

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Mental Condition: A Mitigating Factor In Discipline

Under ABA Standard 9.32, Mitigating factors include:

Personal or emotional problems;

Mental disability . . . when:

1. there is medical evidence that the respondent is affected by a . . .mental disability;
2. the . . . mental disability caused the misconduct;
3. the respondent's recovery from the . . .mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
4. the recovery arrested the misconduct and recurrence of that misconduct is unlikely

McMurphy Query: Do lawyers fake it to get mitigation?

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Part 4
Ethical Responsibilities to and for Other Lawyers

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Rule 5.1

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.1 – Comment 2

Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

Rule 5.1 – Comment [3]

Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) 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 the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Rule 5.2

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Formal Opinion 03-429, June 11, 2003

OBLIGATIONS WITH RESPECT TO A MENTALLY IMPAIRED LAWYER IN THE FIRM

- Mental impairment known to firm *or* supervising attorney.
- Duty to prevent violations of rules.
- Violations must be reported.
- Possible requirement to disclose to client.
- Departure does not terminate obligations.

Formal Opinion 03-431, August 8, 2003

DUTY TO REPORT RULE VIOLATIONS BY ANOTHER WHO MAY SUFFER FROM DISABILITY OR IMPAIRMENT

- Belief that another lawyer's mental condition impairs ability to represent clients.
- Potential that other lawyer is or may be representing clients.
- Belief that a violation raises questions of mental fitness.
- Must report.

What Do You Do When You Know Opposing Counsel Is (Mentally) Impaired: *Beyond the Obvious*

- Adapted From
- North Carolina State Bar 2003 Formal Ethics Opinion 2

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It is “known” that opposing counsel has psychiatric issues but is still practicing. You know how to push your opponent’s buttons to your client’s advantage. Your client knows this and asks you to pursue a strategy that will get your client one million more dollars in negotiations.

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Are you going to do what your client asks (implores, demands, orders) you to do.

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Your partner says: 33% of that million goes the firm, do it or write me a check for $333,333.

You hear that the client is “shopping” the case around town, and you know that someone will take the case. Does this change your thinking, if you wouldn’t do it to begin with.

If you wouldn’t do it to begin with, do you generally refuse to “beat” lawyers when your skills are superior?

Although a lawyer must competently and diligently represent clients, this does not create a duty to press every advantage for a client particularly when such conduct is inconsiderate or repugnant. The client establishes the legal objectives of the representation, but the lawyer is primarily responsible for choosing the means by which those objectives are obtained. As noted in Rule 1.2(a)(2), a lawyer does not violate the duty to abide by the client's decisions relative to the objectives of the representation, "...by avoiding offensive tactics, or treating with courtesy and consideration all persons involved in the legal process."

Part 5
The Ethics of Representing Mentally Impaired Clients

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"Thank you, counselor, for explaining the risks I am taking, here. I have evaluated them and have concluded after careful consideration that I will pursue the path you have recommended against."

"I know you have told me not to commit perjury, but I am going to commit perjury.
Over and over again."

My client won't take my advice.

"I don't understand the concept – what do you mean, even if I win in court I might not get any money."

"I don't understand your concern, counselor. Once we get to court my secret powers of mind control will sway the judge and jury."

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Aging Clients and Lawyers: Ethics Implications

www.americanbar.org . . . senior_lawyers/publications/experience/2013/winter-2013/

"The aging of clients and lawyers can create situations fraught with agonizing emotional and ethical implications. Lawyers of any age should familiarize themselves with the ***ethics roadmaps*** provided by the ABA in its rules and opinions."

Rule 1.14: Diminished Capacity Client

a. When a **client's capacity** to make adequately considered decisions in connection with a representation **is diminished**, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, **maintain a normal client-lawyer relationship with the client.**

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Rule 1.14: Diminished Capacity Client

a. When a **client's capacity** to make adequately considered decisions in connection with a representation **is diminished**, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, **maintain a normal client-lawyer relationship with the client.**
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**.

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Comments to Rule 1.14

How to determine diminished capacity:

- the client's ability to articulate reasoning leading to a decision;
- variability of state of mind and ability to appreciate consequences of a decision;
- the substantive fairness of a decision; and 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.

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Comments to Rule 1.14

Caution

Disclosure of the client's diminished capacity could adversely affect the client's interests. . . . At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. ***The lawyer's position in such cases is an unavoidably difficult one.***

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The **maximum penalty** for a violation of this Rule is a **public reprimand**.

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Part 6: Professionalism and Morality – How to Help Yourself and Others

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What To Look For - Clinically

Depression:

- Depressed mood
- Loss of interest or pleasure
- Change in appetite or weight
- Change in sleeping patterns
- Fatigue or loss of energy
- Speaking and/or moving with unusual speed or slowness
- Feelings of worthlessness or excessive or inappropriate guilt
- Diminished ability to think or concentrate, or indecisiveness
- Recurrent thoughts of death or suicide
- Suicide attempts

Risk of Suicide:

- Depression symptoms at a serious level.
- Increased alcohol / drug use.
- Impulsiveness.
- Unnecessary risk taking.
- Threats or expressions of suicidal wishes.
- Planning, such as giving away possessions or obtaining means.
- Unexpected fits of rage or anger.

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What To Look For In Others

- Not returning phone calls to the clients or opposing counsel;
- Not available when clients or opposing counsel attempt to reach at the office;
- Not following through in delivering work product requested and promised;
- Tends to disappear or vanish for periods of time;
- Missed deadline and/or court appearances;
- High absenteeism;
- Quality changes in communications and writings;
- Change in appearance / dress;
- Financial stress;
- Negative professional outcomes.

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Forget These Words and Phrases

- Snap out of it.
- Things will get better, just wait.
- Let me tell you what works for me.
- You just have to be strong/courageous or try harder.
- Choose happiness.

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What You Can Do

- For someone close:
  - Be there, which does not mean be there and do things.
  - Identify behaviors, not descriptions.
  - Offer real steps, not platitudes.
- If not close, consult others.

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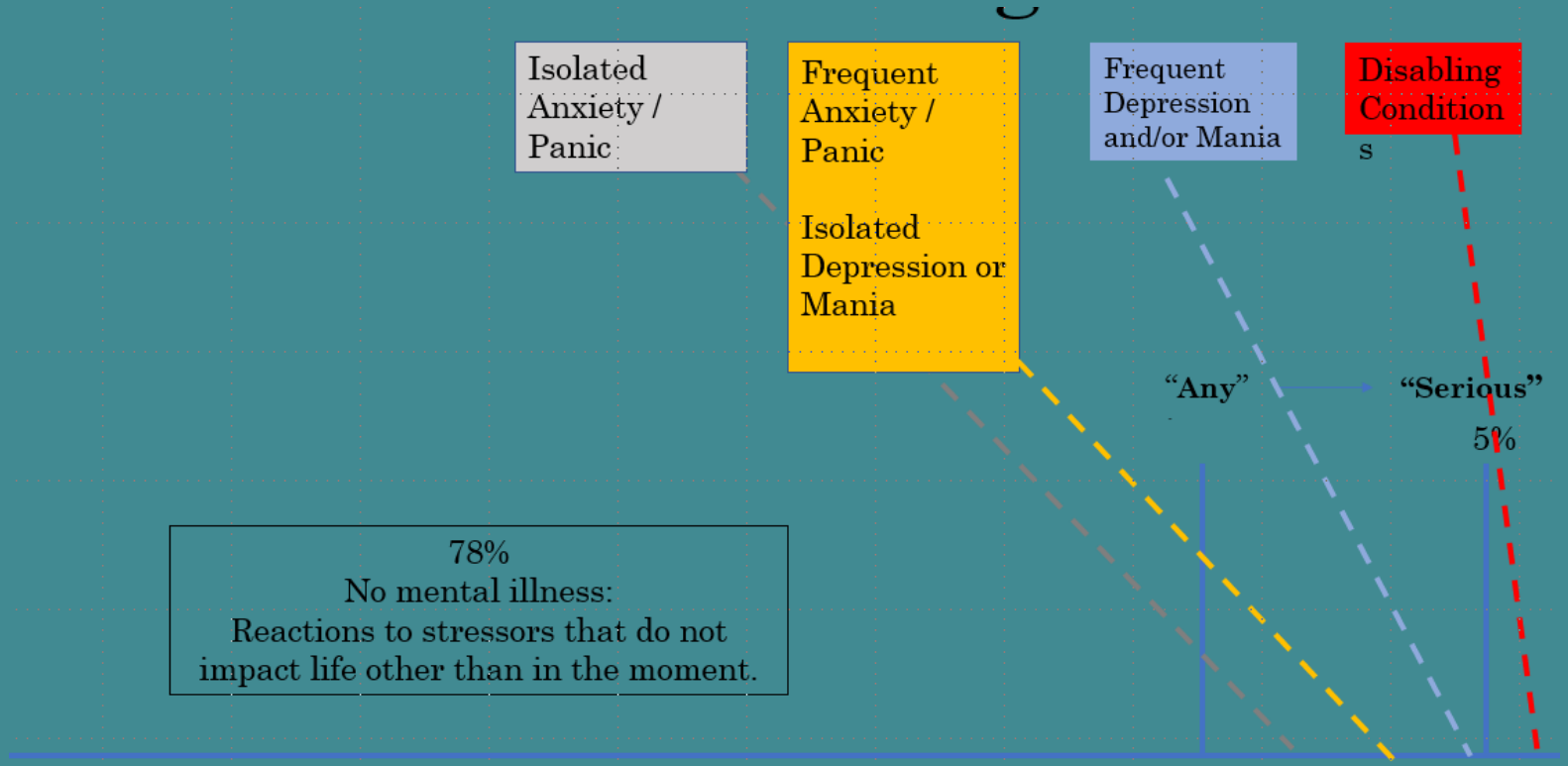
The Current Approach

- Lawyer Assistance Programs
- Wellness programming
- Are we reaching then right audience



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What To Look For In Yourself: AWARENESS IS THE MOST IMPORTANT TOOL

- Are people treating you differently? Avoiding you?
- Are there fewer clients?
- Fewer social invitations?
- Are people asking you if you are OK?
- Are you being passed over, left out, etc. for reasons that make no sense *to you*.
- Have objectively bad things happened and not bothered you at all?
- When is the last time you did something (which does not include "doing nothing") that you really like to do?
- Are you intently focused on the less important, non-urgent things in life? (For example, how many times have you organized your desk this week?)

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Helping Yourself

- Know yourself.
- Ask others.
- Speak to a professional.
- And yes, exercise, diet, mindfulness, prayer, meditation and many other things play a role.

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Is this Lawyer a Danger?

- Appointed defense counsel, rape case, pushing a “blame the victim” defense.
- Single father, not around much, children instead interact with potential stalker (ultimately a killer).
- Tries to keep children out of court but they sneak in.
- Reputedly very experienced gunman; shoots (to kill) an animal.
- Defense unsuccessful; convict killed by angry mob.

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Is this Lawyer a Danger?

- Failed the bar five times.
- Takes on murder case as first trial.
- Repeatedly lies to Judge about his legal experience.
- Makes many procedural errors, costing clients ground in the proceedings.
- Relies on charm and quick-wittedness and chooses not to actually review the law.
- Becomes dejected when things go poorly, alienating those close to him.
- Cycle threatens to repeat itself, as a late-trial “aha” moment reinforces belief that success occurs regardless of preparation, if you are smart enough.

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Mental Health and the Practice of Law:
Personal Health
&
Professional Responsibilities

Need to communicate "offline?"

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Further (and much more detailed) reading:

Lang, Eric C. (2024), *Going Beyond Fear in Addressing Attorney Mental Health,* MERCER LAW REVIEW: Vol. 75: No. 3, Article 4.

Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol75/iss3/4