

*Recognizing, Helping and Reporting
Lawyers with Mental Health
Impairments*

Presented by

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ANTI-POWER POINT

- <http://anti-powerpoint-party.com>
- They want the number of “boring Power Point Presentations” on the planet to decrease and the average presentation to become more exciting and interesting.
- 490 members, 9th biggest party in Switzerland



THE FOUNDER

Goals

- Recognizing behaviors and symptoms indicating mental impairment
- Rules of Professional Responsibility that apply
- Tips for reporting and obtaining assistance for lawyers with clients with mental health issues and impairments

What Is Attorney Impairment?

- An attorney or judge who suffers from:
 - alcoholism, drug addiction, substance abuse, chemical dependency, mental illness, or senility or dementia due to age or illness, that:
 - materially impairs the lawyer's ability to represent the client or serve in a judicial capacity.
- ABA Formal Op. 03-431

JDs, not Drs.

Lawyers are not health professionals, nor do they have any professional obligation to recognize or address such problems that do not impair another lawyer's functioning as a lawyer.

- [ABA Formal Op. 03-431](#)

Progressive Continuum of Behaviors Suggesting Impairment

More than just a bad hair day!



Unresponsive - neglectful behavior:

- Not returning phone calls to the clients or opposing counsel;
- Not available when clients or opposing counsel attempt to reach at the office;
- Voicemail full;
- Not following through in delivering work product requested and promised;

Unresponsive-Neglectful behavior continued...

- Tends to disappear or vanish for periods of time;
- Missed deadline and/or court appearances;
- High absenteeism or fired from previous employment;
- Phones disconnected;
- Office vacated/closed

Physical Signs of Impairment:

- Behaves jumpy, irritable, agitated, very quick to anger;
- Smells of alcohol, especially in the morning or early afternoon;
- Bloodshot eyes, disheveled appearance;
- Exhibits obvious signs of intoxication or cognitive impairments (slurred or impaired speech, unsteady feet, difficulty tracking conversation, nodding off/falling asleep during work or client meeting)



What is addiction ?

- ▶ Addiction is a disease of the brain.
 - ▶ Necessary neurotransmitters are blocked or released in abnormal ways by the use of chemicals.
 - ▶ The brain tries to return to normal but now chemical use is perceived as normal.
 - ▶ Chemicals then become necessary to return to normal and addiction has set in.
 - ▶ Any mood altering drug will now have this affect.

ADDICTION IS THREE DIMENSIONAL

- **PHYSICAL-** The neurobiology of the addiction (reward center); Physical effects of the substance on the body; behaviors/actions of an individual.
- **MENTAL** – Thoughts, thinking processes, cognitions – when an individual is sick with an addiction – their thinking becomes distorted and can be dominated by negative thoughts.
- **SPIRITUAL/EMOTIONAL** – One's connection to higher self, sense of purpose/meaning, values. Addiction cuts a person off from themselves

Addiction is:

Chronic

Progressive

Fatal

TREATABLE

Addiction is a Brain Disease

Addiction requires formalized treatment to interrupt the cycle.

Treatment options

Detox

Inpatient

Outpatient

Residential

Alcoholics Anonymous

Other Addictions

- Drugs
- Gambling
- Internet Addiction
- Sex Addiction
- Eating Disorders
- Shoplifting Addiction
- Compulsive Shopping

Gambling: The Hidden Addiction

- Approximately 3 million adults nationwide meet the criteria for pathological gambling each year.
- Unlike alcohol or drug addiction, problem gambling has few outward signs.
- Problem gamblers are more likely to have issues with drinking, drugs, smoking and depression.
- A strong link exists between pathological gambling and suicide.

Attorneys: Drugs of Abuse

<u>Drug/Drug Family</u>	<u>% Pts Using</u>
Alcohol	88%
Nicotine	60%
Cocaine	29%
Opiates	26%
Benzodiazepines	23%
Cannabis	14%
Amphetamines	8%
Sedative-Hypnotics	1%

Talbot Recovery Center, Atlanta, GA

Mood Disorder: disturbance of mood which affects all aspects of life and perception

- Anxiety
- Depression
- Bipolar (Manic Stage)



Signs of Anxiety Disorder

- Excessive Anxiety or Worry
 - More days than not
 - At least six months
 - Irritability
 - Restlessness, Keyed-Up, On edge
 - Muscle tension
 - Sleep disturbance; easily fatigued
 - Panic attacks

Signs of Depression

- Feeling Sad, Hopeless, Worthless
- Changes in
 - Energy (agitation or lethargy)
 - Sleep Habits (insomnia or sleeping too much)
 - Eating (eating too much or too little)
- Recurrent Thoughts of Death or Suicide

http://www.lawyerswithdepression.com/research_on_depression.asp

What Causes Depression ?

Chemical Imbalance in the Brain

- Some folks have a seasonal component to their depression
- 70% of depressed people have no known precipitating cause
- Average length of an untreated depression is 5 years

Depression is Treatable

Depression requires formalized treatment to interrupt the cycle.

Treatment options

Medication

Therapy

Inpatient

Outpatient

Support Groups

Bipolar Disorder

- A mood disorder characterized by both depressive episodes and manic episodes.

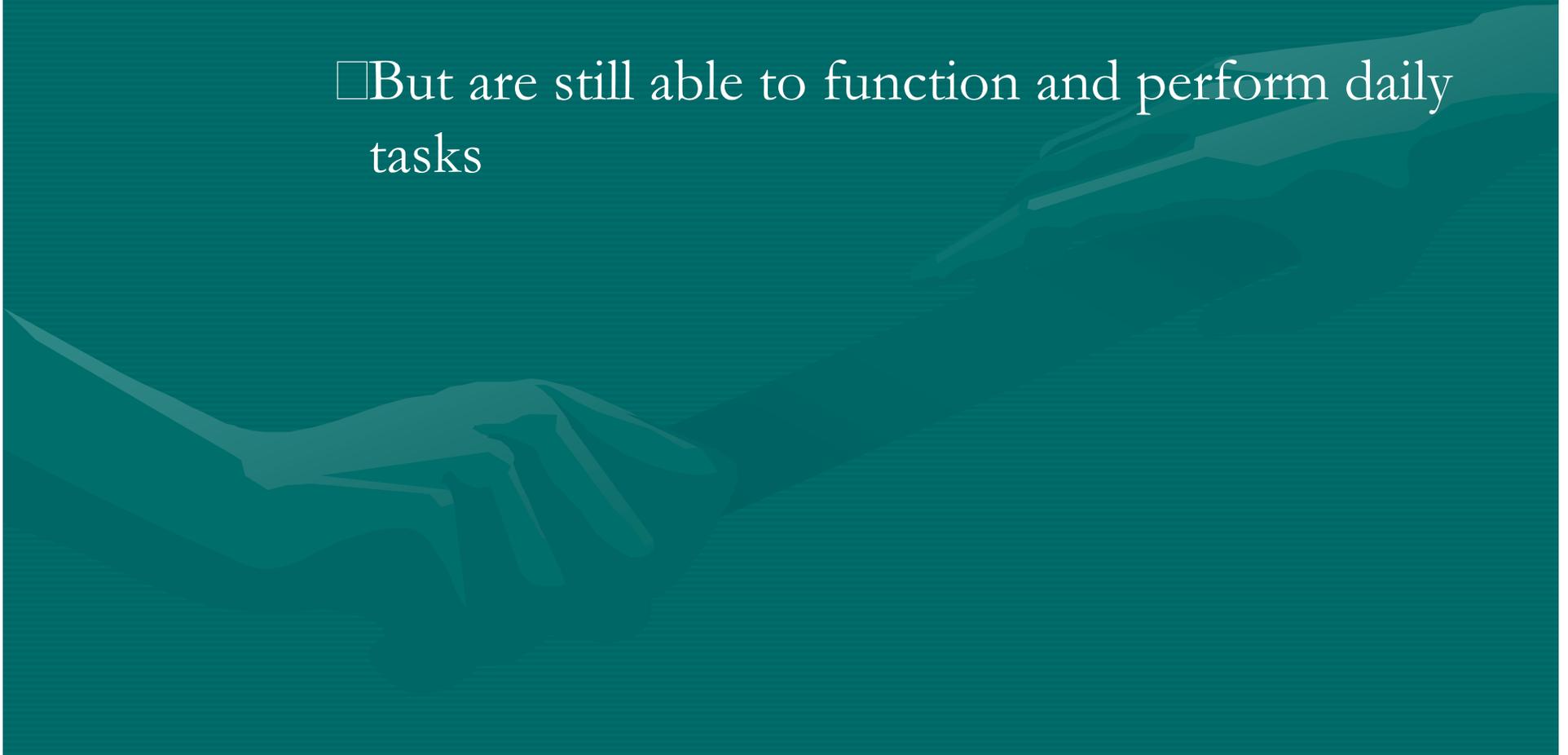


Signs of Manic Phase

- Persistently Elevated Mood: Elated, Euphoric, Expansive
- Grandiosity, Inflated Self-Esteem
- Hyper-talkative
- Racing thoughts - flight of ideas
- Decreased need for sleep, distractible
- Danger to self and others

People with Personality disorders

- May have problems with relationships
- But are still able to function and perform daily tasks





Three Clusters of Personality Disorders

- A. Odd-Eccentric- want to isolate from people
- B. Dramatic, Emotional, Erratic- have problems in relationships
- C. Anxious and Fearful – reluctant to relate without reassurances



Addiction, Dependency and Mental Health

Dual Diagnosis:

- Addiction or dependency is present in 40-60% of people with a mental illness

- A mental illness is present in 40-60% of people who are addicted to or dependent on substances or processes.

- Addiction/dependency is present in 27% of individuals with major depression.

- Addiction/dependency is present in 56% of individuals with bipolar disorder.

What Should You Do When Recognizing the Symptoms of Impairment in Lawyers in Your Office ?

(... and others?)





Denial Is a Key Impediment to Treatment

1. The Impaired Attorney's Denial

- ▶ The attorney's professional skills and position permit him to mask his impairment longer than others
- ▶ The attorney's advocacy, intelligence and self-reliance all help him avoid treatment
- ▶ Resources of staff, money and flexible calendar may camouflage depth of the problem

Denial Is a Key Impediment to Treatment

2. The Firm's Denial

- Colleagues hesitant to confront one of their own
- Support staff hesitant to jeopardize paycheck
- Belief that problem will take care of itself
- Mention of problem often results in defensive, aggressive response by impaired individual

You Have a Duty to Monitor the Conduct of:

1. People You Supervise Directly

- Staff
- Other Lawyers

Model Rule 5.1, Responsibilities of Partners, Managers and Supervisory Lawyers

2. If you Are a Partner or “Comparable Managerial Authority”

- Everyone In Your Office (Including Staff)

Model Rule 5.1(a)

3. Fellow Members of the Bar

Model Rule 8.3, Reporting Professional Misconduct

“But I didn’t know what he was doing.”

- Lack of awareness of misconduct by another person, either lawyer or non-lawyer, under a lawyer's supervision does not excuse a violation...
- A supervisory lawyer is required to take reasonable measures, given the level and extent of responsibility that the lawyer or non-lawyer possesses....

– RESTATEMENT (THIRD) OF THE LAW GOVERNING
LAWYERS §11

Special Duty of Managers for All People in the Office

- Direct: Office Must Have Measures Reasonably Assuring Staff's and Lawyers' Conduct Is Compatible with Lawyers' Obligations
- Vicarious: A supervisory lawyer is responsible for the misconduct of another lawyer in the office if the supervisor:
 - Orders It
 - Ratifies It
 - Ignores It
 - Unreasonably Fails to Mitigate Known Misconduct

– Model Rule 5.1

The old “I didn’t know” defense....

- A lawyer affiliated with other lawyers in a law office is not privileged to attend only to his or her own activities and those of lawyers directly under the lawyer's supervision, while ignoring the activities of others within the office.
- To the contrary, a manager has a duty to ensure that the office has in place measures giving reasonable assurance that all lawyers in the office conform to the applicable lawyer code.

RESTATEMENT (THIRD) OF THE LAW GOVERNING
LAWYERS §11

Supervisor vs. Duty to Report

Ethics Rules Make a Distinction Between

Supervising Liability

Model Rule 5.1

and

Duty to Report to Disciplinary Authorities

Model Rule 8.3

Duty to Report Misconduct of Another Lawyer

Duty to Disclose Misconduct, if

- *You know* of a rule violation
- Your knowledge is *unprivileged, and*
- Conduct raises a substantial question as to lawyer's honesty, trustworthiness or fitness

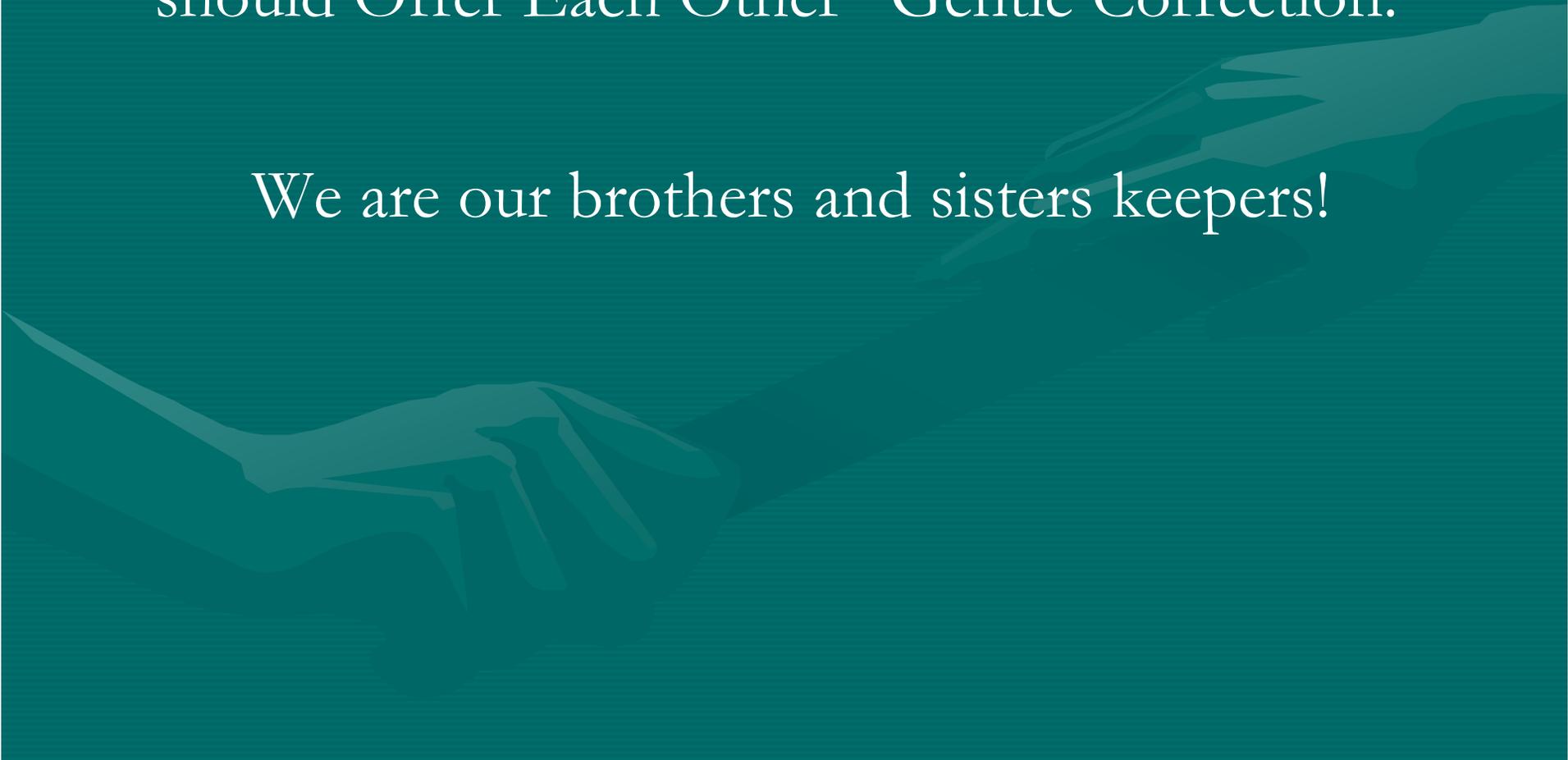
Applies to misconduct by *any* lawyer (judge, partner, opposing counsel, etc.)

- **Model Rule 8.3**

Duty Beyond the Rules

“Members of a Self-Regulating Profession should Offer Each Other “Gentle Correction.”

We are our brothers and sisters keepers!



LAP Confidentiality

- By Court Rule
 - Information and actions taken by LAP shall be privileged and held in strictest confidence;
 - The information shall not be disclosed or required to be disclosed to any person or entity outside of LAP.

And...

Exception to Rule 8.3

The duty to report professional misconduct specifically exempts disclosure of information gained by a lawyer or judge while participating in an approved Lawyers Assistance Program.

- **Model Rule 8.3 (c)**

The Good News

- With treatment, recovery is possible
- Recovery rates are much higher among professionals than they are among the general population
- General Population: 40-60%
- Professionals: as high as 90%



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