



# **Professional Responsibility and Impaired Lawyers Ethics Presentation**

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## **SCOPE OF THE IMPAIRMENT PROBLEM**

Precise statistics on prevalence of chemical dependency and mental health problems among attorneys are difficult to come by. Attorney reluctance to admit such problems contributes to the lack of data.

One of the few published studies was reported in the **INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY** in 1990, in which researchers surveyed a sample of Washington state lawyers. The findings included:

- 19% of the surveyed lawyers suffered from depression, compared to 3 to 9% among the general population.
- 18% were problem drinkers, nearly double the 10% rate for US adults, as determined by the National Clearinghouse for Alcohol and Drug Information.
- Less than 1% were cocaine abusers, below the national average of 3% of the adult population. But 26% of the attorneys said they'd used cocaine at some point in their lives, compared to 12% in the general population.
- The same research group found similar results on depression, problem drinking and cocaine abuse in a previous study which they conducted among Arizona lawyers, indicating the rates may not be dependent upon jurisdiction within the United States.

# The Iowa Code of Professional Responsibility and “Impaired Lawyers.”

## A. The Iowa Lawyers Assistance Program (ILAP)

- 1) History
- 2) How it works

## B. **Canon 1** - "A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession.

**EC 1-1.** Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer."

**EC 1-2.** "The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in ... moral standards or other relevant factors." . . .

**EC 1-5.** "A Lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified and he should refrain from all illegal and morally reprehensible conduct."

## C. Disciplinary Rules

1. **DR 1-103(C).** "A lawyer possessing unprivileged knowledge or evidence that another lawyer or judge is suffering from such mental or emotional instability as renders him unfit or unable to furnish competent legal services shall report such knowledge to a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges."

2. What does constitute "suffering from such mental or emotional instability as renders him unfit or unable to furnish competent legal services"?

3. What is "unprivileged knowledge" and how does this phrase affect working with "impaired" lawyers.

## D. **Canon 2.** "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

1. **EC 2-8.** ...."The public expects any lawyer licensed by the Supreme Court to practice law to be a person of ability and integrity. The Supreme Court, therefore, has a compelling interest to ensure the public that its trust has not been misplaced."

2. Establishment and funding of the "Iowa Lawyers Assistance Program."

3. **EC 2-32.** "Employment should not be accepted by a lawyer when he is unable to render competent service..."

4. Recent Louisiana case holding that it was medical malpractice for a doctor to fail to tell his patient of his (the doctors) alcoholism. Negligence relating to doctrine of informed consent.

E. **Canon 4.** "A lawyer should preserve the confidences and secrets of a client."

1. **EC 4-1.** "Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him."

F. **Canon 5.** "A lawyer should exercise independent professional judgment on behalf of a client."

1. **EC 5-1.** "The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties."

2. "There are two things an alcoholic and an addict cant do - they can't tell the truth and they cant be loyal."

3. Alcoholism and drug addiction always place the impaired person in a "compromising" position.

4. The effects of alcoholism, drug addiction and other psychological dysfunction on an individual morality.

G. **Canon 6.** "...a lawyer should represent a client competently."

1. **EC 6-1.** "... a lawyer shall act with competence . . . ."

2. **EC 6-2.** ....maintaining his competence ....assist in improving the legal profession.... strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself

3. **EC 6-5.** "A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear ...."

4. **DR 6-101.** "Failing to Act Competently."

(A) A lawyer shall not:

(1) "Handle a legal matter.... that he is not competent to handle."

(2) "Handle a matter without preparation adequate ...."

(3) "Neglect a legal matter entrusted to him."

H. **Canon 7.** "A lawyer should represent a client zealously within the bounds of the law."

1. **EC 7-9.** ". ... a lawyer should always act in a manner consistent with the best interest of his client." (Partial Quote)

2. **EC 7-38.** a lawyer should be punctual in fulfilling all professional commitments."

I. **Canon 8.** "A lawyer should assist in improving the legal system."

1. **EC 8-1.** " public respect... ."

2. **EC 8-3.** "...requires the availability of competent counsel."

3. "Enabling" an impaired lawyer, how it works, how it hurts, what real "Help" for the impaired lawyer constitutes.

4. "...they (lawyers) should be persons of integrity. . ."

J. **Canon 9.** "A lawyer should avoid even the appearance of professional impropriety. "

1. **EC 9-1.** "...a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession. . . ."

2. **EC 9-2.** "Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law .... to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the APPEARANCE of impropriety.

3. The DR's of this canon relate to the rules and regulations concerning trust accounts and states several examples of the "appearance of impropriety" but on its face the canon is obviously much broader.

K. How ILAP can help.

1. Education about the problems.

2. Applications and use of solutions.

# **SURVIVING CAREER KILLERS: BURNOUT, STRESS and DEPRESSION**

Compiled by Hugh Grady, Iowa Lawyers Assistance Program (ILAP) from several sources with special gratitude to Leah Landmann, Wisconsin Lawyers Assistance Program; Don Jones, Director Texas Lawyers Assistance Program, and Mike Sweeney, Oregon Attorney Assistance Program

## **Iowa Lawyers Assistance Program 1999**

### 1. What is burnout?

- a. "Fatigue, frustration or apathy that results from our work - the ways we manage it and/or our attitudes toward it."
- b. Burnout has been defined as "a type of depression, characterized by apathy and strong negative feelings about the job, declining productivity, increased illness, increased substance abuse, and difficulty in personal relations".
- c. Burnout happens to people when they are highly invested in a way of life, a career, or relationship that fails to produce the reward expected.
- d. Burnout sufferers find themselves overwhelmed, overstressed, and trapped.
- e. They tend to feel physically and emotionally exhausted, chronically impatient and irritable, and acutely resentful and apathetic toward people, places, and things about which they once cared deeply.

### 1. Warning signs

- a. You expect high quality from yourself all the time under all conditions
- b. You believe there is simply no excuse for mistakes
- c. You believe it is always better - and usually easier - to do a task yourself than to delegate

- d. You feel particularly uncomfortable saying "no" to new responsibilities
- e. You feel anxious or angry when you don't have control over situations or circumstances
- f. You obsess about a job until it is finished
- g. You feel uncomfortable unless you are doing something
- h. You feel angry when things don't go the way you planned
- i. You find it hard to "let go" of past mistakes
- j. You feel angry or anxious when you are late for an appointment
- k. You often find it difficult to "leave your job at the office" when you are at home
- 1. You rarely take a vacation, and when you do, you feel you should be back at the office

## 2. The role of stress in burnout

- a. Stress can be almost anything that produces tension or anxiety - job, people, telephone, court, deadlines, etc. Stress needs to be defined for each individual because stressors for one person might not affect another person.
- b. Stress is nothing more than "pressure to act." It is always there, we all experience it, and it can be positive. Deadlines, for example, motivate us to act. The pressure of exams motivated us to study when we were in school. Stress prods us to excel in competitive sports and games.
- c. There are detrimental effects as well. Negative results of stress:
  - Poor memory
  - Inability to concentrate
  - Lower levels of creativity
  - Irritability
  - Disorganization
  - Poor management
- d. Stress does not cause burnout but it may accelerate it.

3. The "setup" Stress in the legal profession. Stressors include:

- a. Time constraints, deadlines
- b. High stakes involving loss of property or freedom
- c. High expectations of expertise, and unambiguous clarity where none may exist
- d. Constant scrutiny, critical judgment
- e. Conflict: equal or opposing legal counsel out to prove us wrong
- f. Malpractice threats, Murphy's Law, "cover your butt" machinations
- g. Assumption of client's burdens as they leave our office
- h. Professional training to notice and anticipate the negative
- i. Expectation to solve problems - even problems that cannot be solved
- j. Group norms -billable hour expectations
- k. Depletion of energy from high demands, intense focus, staying on task

4. "Fight or flight.

- a. Survival of many animals, including early man, was based on the ability to prepare the body to either engage in flight or to flee. Certain physiological changes take place in the body when this response triggered. These responses are instantaneous and automatic.
  - Increased heart rate and breathing rate. That allows more oxygen and blood to reach the large muscles in the body, an advantage either fighting or fleeing.
  - Hands and feet become cold. That also allows more blood to flow to the deep muscles.
  - Tightness in the stomach muscles and a general queasy, nervous stomach. That, too, has an advantage in nature. The digestive system shuts down. The adrenal glands secrete stimulants, giving the body a rush of energy.
- b. Once the body has triggered its fight or flight response, it is important that the body return to its normal, physiological functions. Mental and physical damage can result from continued stress over a long period.
- c. We can change our automatic response to stressors by developing a program that includes coping techniques and strategies. The idea is not to avoid stress, but to develop coping skills.



5. Burnout is not an event. It is a process with four stages. (Fire starting metaphor.)
  - a. Fueling
  - b. Ignition
  - c. Consumption
  - d. Burnout
  
6. Fueling phase - Burnout happens to people when they are highly invested in a way of life, a career, or relationship that fails to produce the reward expected. Unhealthy attitudes provide fuel.
  - a. Perfectionism - the attitude that rejects anything less than flawless work, usually an impossible goal.
  - b. Paranoia - others are waiting to judge and criticize.
  - c. Burden of unreasonable obligation - unable to delegate.
  - d. Unreasonable expectations of capacity for work, cannot say "no" to new responsibilities.
  - e. Belief that you should have "all the answers" and that there are no excuses for mistakes.
  - f. Belief that you must, and can, be all this to all people.
  
7. Ignition phase - the right spark. For many people, just the practice of law is the only spark needed. Lawyers deal with difficult people in difficult situations, often with little control over the outcome.
  - a. **Role overload.** We take on more than we can handle. We act on our belief that we can be all things to all people.
  - b. **Responsibility overload.** Reluctant to say "no"
  - c. **Expectation overload.** Having set ourselves up with high expectations, burnout prone individuals in the ignition phase take action to realize expectations including those that are unrealistic or impossible. In fact, many people in the ignition phase focus on their unrealistic or impossible expectations and set themselves up for accelerated burnout.
  
8. Consumption phase - The fire consumes lives in this phase because we have difficulty admitting that we cannot handle what we have taken on. We continue to hold on to our self-destructive beliefs. We discount, or ignore completely, the emotional and physical signs that we are heading for trouble. In fact, most of us attempt to defeat the "gremlins" within us by working harder and taking on more responsibility.

9. Burnout phase - This is the crisis phase of the process. Continuing the fire metaphor, this is time when we feel "extinguished" our passion for life is exhausted. Disillusionment with our careers, relationships, and with ourselves reaches bottom. We often feel chronically depressed.
- a. Often we feel that we are being pulled in all directions. That everyone wants a piece of us.
  - b. We begin to hate our work
  - c. We avoid old friends and confidants
  - d. We feel trapped in our jobs and relationships
  - e. We often experience physical problems in this stage - fatigue, tension headaches, susceptibility to various illnesses

10. Sometimes burnout leads to depression. When we say we are depressed, we are describing a number of different symptoms. It is a general term, loosely used. Psychologically, there are several types of depression:

- a. **Situational depression** (e.g. grief, burnout, etc.) We will focus on this type but there are several other types. Situational depression is a condition in which the depressed person reacts to some life circumstance.
- b. Excessive stress or burnout does not cause **incidental depression**. It is the result of - or incidental to - another physical illness. Common examples are cancer, hypothyroidism, alcoholism, drug addiction, hypothyroidism, etc. Sometimes, incidental depression needs to be treated along with the other disease. Just treating the depression, however, without treating the other illness will not "cure" the depression. On the other hand, successful treatment for alcoholism will often reduce depression in alcoholics. Most alcoholism treatment programs include treatment for depression because it is a common symptom of alcoholism.
- c. **Clinical depression** is neurological. It occurs when there is a neurochemical glitch in our systems. In lay terms, clinical depression involves "wiring" or "plumbing" problems in the brain. Clinical depression includes major depression as well as such illnesses as bipolar disorder (manic/depression) and unipolar disorder. These physical illnesses require treatment. Treatments include various medical therapies. Sufferers cannot will themselves out of clinical depression anymore than a cancer patient or diabetic can.

11. The bad news:

- a. 10% to 25% of us will experience an episode of depression in our lives.
- b. 70% to 90% of those who experience an episode of severe depression will experience it again

- c. About 15% of depressed patients commit suicide. Women attempt it four times as often as men do but men succeed four times as often.

## 12. Depression - the signs and symptoms

- a. Loss of pleasure or interest
- b. Change in eating or sleeping habits
- c. Difficulty concentrating
- d. Persistent sadness/depressed mood
- e. Feelings of guilt or worthlessness
- f. Slowed movements or restlessness
- g. Fatigue or decreased energy
- h. Thoughts of death or suicide

13. The good news: there is better than 90% success rate in treatment.

14. Treatment usually involves some form of psychotherapy and medication.

- a. Depression is a fatal illness that requires and deserves treatment
- b. Medications usually take two-to-three weeks to kick in. They are not "happy" pills or "zombie" pills. Generally, the medications are safe but they do require supervision.
- c. The medications won't work unless they are taken.

## 15. Depression and the legal profession

- a. Someone with untreated depression can be a liability to the profession and their clients.
- b. If you know a lawyer who appears depressed, don't look the other way. Depression is often a fatal illness.
- c. Someone with properly treated depression is not a liability to the profession or their clients and should not be treated as if they were.

16. Help in a hurry. Most lawyers don't burnout overnight. Repairing the damage from years of stress buildup takes major lifestyle changes. However, some remedies could reduce stress immediately.

- a. Make sure you have a comfortable chair.
- b. Turn down the ring on your telephone.
- c. Adjust the lighting to reduce glare or increase brightness.
- d. Personalize your workspace with posters, pictures, etc.
- e. Establish a regular time for lunch and for getting out of your office for a change of scene.
- f. Avoid tight shirt collars, tightly cinched belts, or other clothing that creates a feeling of pressure on the body. Tight clothes can interfere with the blood flow in the body leading to feelings of lightheadedness and panic attacks.
- g. Get out of your chair and move around for a few minutes when you feel stressed.
- h. Make contact with other people in a non-work environment and make contact with other attorneys who are successfully managing stress. Call ILAP for suggestions.

17. Stress management is a combination of three skills:

- a. Stressor reduction
- b. Resiliency building
- c. Distress reduction

18. Stressor reduction. A stressor is anything that raises the stress/pressure level in our lives. Stressors can be external - deadlines, public speaking, conflict with others, or demand for performance. The more threatening we perceive them, the more stress they create.

The most stressful, however, are internal - intolerance of our own mistakes, expectations for others, worry about the future, guilt about the past. Stressor reduction techniques:

- a. Be prepared. Although an obvious technique, many of us hamstring our preparation with procrastination and overload. We end up doing much of our preparation at the last minute. Learn as much about the task as you can.
- b. Know your job. Know the limits of your job. For example, a lawyer's job in court is not to *win* cases. The lawyer's job is to try cases - to the best of his or her ability. The job is to represent the client in the most skillful, professional way. Obviously, there are factors beyond your control as an attorney in a trial. The idea here is to separate those factors that can be controlled from those that cannot. Knowing the difference can reduce stress.
- c. Manage your time. We all know about time management but few of us practice it. Take the time up front to learn a time management system that works for you and work it.

d. Manage self-talk. (Self-talk handout) Most of us are not conscious of the messages we give ourselves. Pay attention. The messages are self-destructive but they can be corrected. Here are a few examples:

Self-abusive. "I'm just not any good at this" "I'll never be as good a litigator as \_\_\_\_." Mistakes are unforgivable - even small ones."

Self-defeating. "I just can't get a break." "There's no way I can win this trial." "If I don't have it by now, I'll never get it." "Anything worth doing is worth doing perfectly." "This judge hates me.

Self-fulfilling Prophecies. "This is going to be the *worst* case." "You can't do anything right for this judge." "I can tell I'm never going to get along with this opposing counsel."

e. Don't stop your good habits. Keep eating well. Get as much rest as time will allow. Continue to exercise.

19. Resiliency building. This aspect of stress management is really about lifestyle. It involves living choices that must be practiced every day. Consider the following "S's" as conditioning training for a lawyer.

a. Sleep. Get enough of it on a daily basis. A tired mind and body are poor allies in stressful situations.

b. Sustenance. Treat your body like a friend. Eat well. Exercise daily. Learn some stretching techniques to help you relax. Avoid relying on the "sucker punch" stress reducers like alcohol, caffeine, nicotine, etc. Get help when you experience illness or distress.

c. Solitude. All of us need some time alone - some need a lot, some need less. What you do with the time is most important. This is the time to refill your emotional reserves; to give your mind a chance to quiet down and rest. Use meditation, relaxation, restful activity, recreation, etc. to quiet your mind of all the chatter about what you did, should have done, have yet to do, or should do.

d. Sharing. Learn how to interact with others, particularly your family and close friends. Converse with them; don't interrogate. Practice listening to someone else and really try to understand what he or she is saying. Find someone you trust enough to share your feelings with.

e. Silliness. Don't take yourself so seriously. If you can't laugh at yourself, you are a heart attack waiting to happen. It doesn't matter how important you are - or would like to be. At least once a week, do something fun that does not involve competition.

f. Spirituality. A strong sense of spirituality can provide you with "grounding" a sense of perspective. Spirituality does not necessarily mean religion, although it could. If getting out in nature is a spiritual experience for you, try to get out regularly. If listening peacefully to fine music provides a spiritual experience for you, do it.

g. Service. Try to do something kind for someone at least once a week. And try to avoid practicing law when you do it. Service helps build self-esteem and it can help put your life in perspective.

h. Structure. Make resiliency building a habit for life. Build structure into your life at work and away from work. Learn to separate work from life. We can be proud of our professional skills but are more than that. We are all more than what we do. We can be more successful in our professional life when we learn to separate what we do from who we are. That separation requires restructuring our lives.

20. Distress reduction. Stress will always be with us. We need to know how to handle stress as it arises. Here are some suggestions to reduce the stress responses in your life and to keep you on the healthy side of stress. They take very little time and tend to be quite effective.

a. *The Seventh Inning Stretch*. This technique is designed to help relieve the muscular tension that comes with stress. (Reduce the muscular tension and the mind will follow!) The exercise is made up of five muscle stretches you can do just about anywhere, anytime. If you experience any discomfort or pain at any time during any of these stretches, discontinue the stretching and focus on relaxing the muscle.

Sit up straight on the front edge of your chair with both feet on the floor. Rest your hands on your knees. Close your eyes and take two deep abdominal breaths. (When you breathe, your abdomen should rise and fall, but not your shoulders. This is called abdominal breathing. It is deeper and more relaxing than shallow chest breathing.) Open your eyes, and begin the first stretch. While stretching each group of muscles, concentrate on the stretching and release of the muscles, while relaxing the rest of your body. Breathe through each stretch, holding each stretch for about three complete abdominal breaths. Between each stretch, consciously relax your body for two complete breaths.

1. With your hands still resting on your knees, let your head easily and slowly drop forward, resting your chin on your chest, and hold this stretch. Then slowly and easily roll your head to the left, stretching until your ear rests on your shoulder, and hold. Then slowly and easily roll your head back with your face turned to the ceiling and hold. (Remember to take three deep abdominal breaths with each hold.) Return your head to its normal position and take two deep breaths. Repeat this exercise rolling the head to the right and then to the back. Return your head to its normal position and take two deep breaths.
2. Join your hands together behind your lower back, entwining your fingers. Gently try to squeeze your shoulder blades together and hold for three breaths. Repeat this exercise.
3. Raise your arms over your head and entwine your fingers. Slowly and easily, bend to the left, sideways at the waist until you feel the pull of the stretch. Hold for three breaths and return to your normal position. Repeat to the right.
4. Carefully place your left ankle on top of your right knee. With your left arm draped across your leg (elbow on your left knee, hand on your left ankle) and your right hand resting on your left foot, lean forward slightly until you feel the stretch in your back and legs. Hold for three breaths and then repeat with the right ankle on the left knee.
5. Extend your feet out in front of you with your knees slightly bent. Inhale deeply and, on the exhale, slowly bend forward at the waist reaching for your ankles with your hands. Only go forward as far as comfortable for you and rest your hands on your legs at that location. Hold for-three breaths.

- b. *Meditation for the Busy Lawyer.* Often, when we are stressed, we tend to lose touch with the "here and now". We even tend to lose touch with our bodies. Designed to be done anywhere, anytime, the "Meditation for the Busy Lawyer" can help you refocus your attention, however briefly, on the present and, thus, to refocus your energy and concentration on the issues at hand.

You can practice this technique with eyes open or closed (although it is easier with eyes closed). Sit upright in your chair with both feet on the floor. First, direct your attention to the soles of your feet and try to feel the floor through your shoes. After a couple of seconds, focus your attention on your breathing. Consciously take deep abdominal breaths. Try to feel your breath as it flows through your nose and hits the back of your throat. It will feel cool while inhaling and warmer on the exhale. Perform as many times as you can, bringing your attention back to your breath whenever it strays.

You will find your energy and concentration greatly improved if you try this twice a day for 10 or 15 minutes at a time. Of course, many lawyers would not feel comfortable practicing this exercise that long. For many, 5 minutes is an eternity. Do it as long as you feel comfortable and gradually build to 10 or 15 minute periods. The rewards are worth the time.

You can also practice this exercise for 15 seconds or less in the middle of a stressful situation, even during an intense conversation. You will be amazed at the clarity and vigor it brings to your thinking.

- c. *Deep Relaxation.* Obviously, when we are stressed, one of the first things we do is tense up physically. When we are tense physically, we tend to be tense mentally. We become more irritable and we have difficulty concentrating. The "Deep Relaxation" technique is designed to give you a few moments respite from tension, ease some of the attendant pain, and refocus your energy.

Find a quiet place where you can remain uninterrupted for at least 15 minutes. Sit or lie down. Close your eyes. Take three deep abdominal breaths through your nose. In your imagination, concentrate on your feet and ankles. As you continue to breathe, imagine your breath flowing down your body and into your feet, bring warmth and relaxation to your feet. Continue concentrating on your feet for three breaths, each time, relaxing your feet a little more. Move your focus gradually up your body with each set of three breaths. Concentrate on the muscles in your lower leg, your thighs, your lower back, your shoulders, your arms, wrists, fingers, back up your arms to your shoulders, your neck, your chin, your face, and, finally, the top of your head. Do not rush. When you find a muscle or area that is particularly tense, spend more time there and take a couple of extra breaths to release the tension. At the end, breathe deeply and enjoy a relaxing moment.

- d. *Full Stress Shakedown.* For the full benefit of the routine, practice each of these exercises in order (*Seventh Inning Stretch, Meditation for the Busy Lawyer, and Deep Relaxation*) one right after the other, at least once a day.

21. **Commitment.** Burnout prevention and stress management takes time, energy, and commitment. Burnout can creep up on us. It reduces law practices into inefficient, ineffective, and unpleasant places. And it can ruin careers. You can prevent it from happening to you or your firm.

**SUPREME COURT DECISIONS**  
**DEALING WITH IMPAIRMENTS OF THE ATTORNEY**  
**AS A MITIGATING FACTOR**

**Recognized as a Mitigating Factor**

Supreme Court Board of Ethics and Conduct v. Scieszinski, Summary  
179/99-527 (September 9, 1999)

A case involving neglect in performing professional duties. Scieszinski received eight district court notices of delinquency in a number of matters regarding estates, conservatorships, and guardianships for failure to file annual reports, interlocutory reports, and final reports. He also failed to respond the notice of complaint from the board. There was testimony that Scieszinski suffers from major depression and that it precipitated the neglect of the probate matters and his failure to react to notices. Court accepted board recommendation of a second public reprimand with two conditions. First, that Scieszinski work with the Iowa lawyers Assistance Program. Second, that he refrains from all probate matters.

Disciplinary Proceedings Against Fay, 123 Wis.2d 73, 365 N.W. 2d 13 (1985)

Court found that the misconduct (neglect and misrepresentation) was caused by Fay's alcoholism. Fay had sought treatment and had "recovered" for more than 2 years. Amicus curiae brief filed by Wisconsin Lawyers Concerned for Lawyers, which argued that this satisfied 2 of the three purposes of lawyer discipline: protection of the public and rehabilitation of the attorney. The 3rd purpose, deterrence, cannot be accommodated by discipline, as a disease cannot be deterred by threat of discipline. 60-day suspension, stayed for 2 years, and conditions imposed on his practice.

**Not Recognized as a mitigating Factor**

Committee on Professional Ethics and Conduct v. Paulous, 410 N.W. 2d 260 (Iowa 1987)

The Supreme Court will not excuse unsatisfactory performance by an attorney involving two estate matters remaining open after more than ten years and two conservatorships failing to file annual reports for more than three years because of attorney's health, emotional problems, or general stress of a busy law practice.

Committee on Professional Ethics and Conduct v. Barrer, 495 N.W. 2d 756 (Iowa 1993).

Personal or emotional problems, including stress and inner turmoil of attempting to cope with homosexual identity, are no defense to charges of unethical conduct.



## **The Firm 's' Responsibility**

Cutler v. Klass, Whicher and Mishne, 473 N.W. 2d 178 (Iowa 1991)

Firm is ethically bound to delay attorney's return to active practice until attorneys can be assured of attorney's mental stability and capacity to practice law.

**In re Weston**, 92 Ill. 2d 431, 442 NE. 2d 236 (1982)

Attorney disbarred for failure to adequately supervise mentally ill associate.

### **Suggested Reading**

Beck, Aaron T. (Ed.) *Cognitive Therapy of Depression*. New York---, Guilford Publications, US, 1979

Benson, H., *The Relaxation Response*. New York: Morrow, 1975

Berger, Diane, and Berger, Lisa, *We Heard the Angels of Madness*. New York: William Morrow, 1991

Brown, Barbara, *Stress and the Art of Biofeedback*. New York: Harper & Row, 1977

Carson, Richard D., *Taming Your Gremlins: A Guide to Enjoying Yourself* New York: Harper Collins, 1983

Copeland, Mary E., *Living Without Depression & Manic Depression*. Oakland, CA: New Harbinger Publications, 1994

Cousins, Norman, *Anatomy of an Illness*. New York: Bantam Books, 1981.

Covey, Stephen R., *First Things First*. New York: Simon & Schuster, 1994

Covey, Stephen R., *The Seven Habits of Highly Effective People*. New York: Simon & Schuster, 1989

Elwork, Amiram, *Stress Management For Lawyers*. Gwynedd, PA: The Vorkell Group, 1995

Kabat-Zinn, Jon, *Full Catastrophe Living*. New York: Delacorte Press, 1990

Lazarus, Richard S., *Psychological Stress and the Coping Process*. New York: Springer Publishing Co., 1994

LeVan, Gerald, *Lawyers' Lives Out of Control. A Quality of Life Handbook*. Alexandria, NC: WorldCom Press, 1992

Merson, Stephen, *Depression*. New York: Sterling, 1995

Pelletier, Kenneth R. *Healthy People in Unhealthy Places: Stress and Fitness at Work*. New York: Delacorte Press/Seymour Lawrence, 1984

Pelletier, Kenneth R. *Mind as Healer, Mind as Slayer*. New York: Delta, 1977

Potter Beverly A. *Preventing Job Burnout: Transforming Work Pressures Into Productivity*. Los Altos, CA: Crisp Publications, Inc. 1987

Thompson, Tracy, *The Beast: A Reckoning With Depression*. New York: Putnam & Sons, 1995

Veninga, Robert L., and Spradley, James P. *The Work Stress Connection: How to Cope With Job Burnout*. Boston: Little, Brown & Co., 1981

## Self-talk

### Stinking –Thinking

Something terrible will happen to me if I make a mistake.

*(Fear of making a mistake can paralyze people into doing nothing.)*

There is a right and a wrong way to do things.

*(What is right for one situation or person may not be right for another. There is a lot of gray between black and white.)*

It is awful and horrible to be criticized.

*(Criticism is not equated with failure; it is simply feedback.)*

I must be approved of all the time.

*(Positive feedback is great, but it is not awful if you don't get it, and you don't need it to do your best.)*

I must be competent and especially be viewed that way.

*(Being viewed as ordinary and human does not mean you are a failure. No one is competent at everything.)*

People in authority should never be challenged.

*(If you are always agreeable, others learn not to trust you. You can challenge what people say and do, in a constructive fashion, and nothing catastrophic will happen.)*

Life in the workplace must be fair and just.

*(Neither your colleagues nor your manager have to agree with what you say.)*

I must be in control all the time.

*(You will not always be alert or brilliant; you will have bad days.)*

I must anticipate everything.

*(Mind-reading and clairvoyance is a talent most of us don't have.)*

### Counter Thinking

Mistakes happen and nothing terrible results.

There is clearly no right or wrong way to do things.

I will accept criticism and see how I can benefit from it.

I will not demand approval.

I will not demand that I be competent, but I will certainly strive for it.

I will not be fearful in the presence of authority.

I accept the fact that life in the workplace is not always fair and just.

I give myself the right to be out of control once in a while.

I can neither anticipate nor be certain of everything.

I must have things the way I want them.

I accept the fact that I will not always get what I want, though I will continue to strive for it.

*(Avoid setting yourself up for disappointment.)*

Employees who are wrong should be punished.

I will give others the right to be wrong, and will not be hostile toward them.

*(Accepting your own imperfections makes it easier to accept imperfections in others.)*

I must have somebody's shoulder to cry on.

If I do not receive full support and enjoy a caring attitude around me, it will not be the end of the world.

*(Colleagues and supervisors will not always come across the way that you would like or expect. It does not mean that you are any less worthy.)*

I must feel perfect all the time.

I accept the fact that I will not feel superb all the time.

*(Everyone gets discouraged and down at times. Feelings are only feelings; they are not failures.)*

My worth as a person is exactly equated to my job performance.

I will not judge myself according to what I do or don't do.

*(Making errors does not imply being an error. Poor performance does not mean that you should resign from the human race.)*

I was promised a professional rose garden.

I was not promised a professional rose garden

*(Implies your work must always be rewarding and satisfying. Sometimes it is. Often it is not.)*

It is too late for me to change, and if you expect it, I won't be able to handle it.      It is not too late for change.

*(You alone are responsible for your life and career. You are capable of recognizing changes that need to be made in your behavior, and are capable of making those modifications if you wish to.)*