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Fear Factor Written Materials

I want to leave you with a helpful reference tool. As a result, these written materials are not designed to be a recitation of everything we've discussed in the live program and you won't be able to follow along with the materials while I give the program. In fact, I try to write my materials with a completely different objective. I want to give you something that you can refer to later, when issues arises in your practice. Thus, I've provided a discussion about several major topics that we'll talk about during the program, as well as a listing of some other rules we'll be discussing.

Can Conflicts Make Sense?

Unfortunately, most lawyers don't know how to properly evaluate conflicts. Far too many believe that if you see an obvious conflict you can simply ask the client for consent and you're good. But that's not the case. The analysis that follows includes some comments about each relevant rule, followed by the rule itself.[1]

1. Concurrent Conflicts

To understand our obligations, we should start with the mechanically-oriented Rule 1.7. Why do I say mechanically oriented? Because Rule 1.7 has a "structured" feel. Subsection (a) helps us decide whether a conflict exists, and if one does, subsection (b) tells us what we have to do to be able to take the client despite the conflict. It's sort of like the old Basic programming

[1] Note that I'd like to reference the ABA Model Rules of Professional Conduct because most states' rules are a derivative of that code. However, copyright restrictions prevent me from doing so. As a result, the within rules are actually the Delaware Rules of Professional Conduct which are the same as the ABA code, but not subject to the same copyright restrictions.

language—"if (a), then (b)." That's almost formulaic, as opposed to other, less mechanical rules in the code.

Rule 1.7. Conflict of interest: Current clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concur-rent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Staying in the genre of concurrent conflicts, let's take a look at Rule 1.8. Concurrent conflicts are those conflicts that exit between existing clients, or maybe it's better to say, "existing interests." That's because you can have a conflict between two existing clients, between an existing client and your own personal interests, two existing contradictory legal positions, etc.

Rule 1.8 addresses a variety of concurrent conflicts. It almost seems as if the drafters found themselves staring at a group of unrelated conflicts and said, "Well, they're all concurrent conflicts, so let's throw them into the same rule, instead of making 20 smaller, separate rules." There's nothing wrong with that, but at least it helps explain why the rule seems a little disjointed. Remember, however, that even if the topics seem a little unrelated, they're not. Each of these conflicts ultimately all come down to an evaluation of the same two fundamental principles—loyalty and confidentiality.

Rule 1.8. Conflict of interest: Current clients: Specific rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigations, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is in-dependently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that per-son is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

2. Former Clients

The previous rules dealt with evaluating conflicts where there may be harm to existing clients. However, we must also be concerned that our representation of some person/entity could cause a conflict with a former client. Rule 1.9 allows us to evaluate whether we would be harming a former client, thereby creating a conflict. Two interesting things to note…

First, you can see that the hurdles are a bit lower in Rule 1.9. To see what I mean, look at the contract between Rules 1.9(a) and 1.7(b). If we find that a conflict exists under 1.9, all we need to do is get informed consent. However, if a conflict exists in 1.7, we need to jump through all of the hurdles of 1.7(b). That's because of a policy decision. The drafters have raised the bar regarding existing clients.

Second, most lawyers don't realize that conflict analyses usually require us to analyze a situation under rules 1.9 as well as 1.7. That's because those two rules deal with different players—Rule 1.7 allows us to evaluate the harm being done to an existing client. Rule 1.9, however, has us evaluate the harm to the former client. So if we are evaluating a conflict between an existing and former client, we probably have to do a conflict analysis under both rules.

Rule 1.9. Duties to former clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;
unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

3. Imputing Conflicts

It's not all about me. That's what my wife tells me and, if I can confess, I'm not so happy about that. But I understand that in the world of conflicts, it's certainly not all about the individual attorney alone and Rule 1.10 tells us so. That rule deals with imputing conflicts of interest—basically it states that when one lawyer has a conflict, other lawyers in the firm also have a conflict. Of course, the rule lists exceptions, so it would be wise to review the details of the rule if the issue arises. Here's a unique part of the rule that's worth explaining to veteran lawyers.

Subsection (a)(2)(i) discusses an exception and tells us that a firm could take a client, despite the conflict in one of this lawyers, if the disqualified lawyer is "screened" from participation. I bring this section to your attention because if you're around my age, you may be wondering what screened means—that phrase wasn't taught to us in law school. Back in the day we learned the term, "Chinese Wall." Well, the term Chinese Wall is not deemed to be politically correct anymore, so now we are asked to "screen" disqualified lawyers. I'm not making any political commentary here, rather, I'm just pointing out how the current language differs from the terminology some of us may have learned in law school.

Rule 1.10. Imputation of conflicts of interest: General rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.[2]

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the mat-ter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a client in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the affected former client.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

4. Government Lawyers

There are different rules that govern conflicts of interest if you're a government lawyer. Specifically, you need to look to Rule 1.11. The reason is policy based (at least in part). The drafters know that if conflict rules make it very difficult for government lawyers to move into the

[2] The Delaware rule is different here, so to give you the full ABA text, I've done some combining-- I've given you part from the ABA and part from Delaware. Subsection (a) is the ABA text. The ABA copyright restrictions allow me to print no more than 250 words from their code (this section is 27 words). Subsection (b) is also the same as the ABA text, but it's from the Delaware Rule.

private sector, they'll discourage lawyers from entering into public service in the first place. As a result, they've given special consideration to the code as it pertains to those attorneys.

Rule 1.11. Special conflicts of interest for former and current government officers and employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not other-wise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

5. Organizations

Corporations are people too! Wow, I don't think I could get away with shouting that from the political mountaintop these days could I? Regardless of where you come down on the debate these days, one thing we can all agree on is that the company is certainly a separate and distinct client. As a result, there are rules that govern the topic of conflicts.

SCR 3.130(1.13)[3] Organization as client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if,
(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

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[3] This is Kentucky's rule 1.13, which is the same as the ABA rule. Source: http://www.kybar.org/documents/scr/scr3/scr_3.130_%281.13%29.pdf last checked August 2, 2012.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members

6. Withdrawal

What's must we do I we're faced with a conflict situation? We must either decline the representation, or withdraw from existing representation. As you can see, that statement shows that the duty to be aware of conflicts of interest is ongoing. The rule that governs that obligation is Rule 1.6.

Rule 1.16. Declining or terminating representation

(a) Except as stated in paragraph (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.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
(1) withdrawal can be accomplished without material adverse effect on the interests of the client;
(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
(3) the client has used the lawyer's service to perpetrate a crime or fraud;
(4) a client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

The Fab Four of Attorney Lies: Misrepresentation

There are four rules in the ethics code where attorney misrepresentation is addressed directly (okay, it's actually 5, but I'll explain all of that shortly).

Misleading Statements and Deception

Rule 3.3. Candor toward the tribunal
(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
(c) The duties stated in paragraph (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

This is the most complicated rule in the representation genre. It only seems logical, given the forum to which it applies. We need to be sure that our statements to tribunals are as far away from deception as possible. Not only do we want to avoid deception, but we may need to remediate situations where untrue testimony is provided to a tribunal. In that regard, this rule contains significant guidance regarding our duty to remediate false statements. Note something else in that regard: this is one of the rules where you should check to commentary. The commentary contains a lot of direction regarding how we remediate and the steps we must take when counseling a client who may have given false testimony to a tribunal. Furthermore, the commentary expands on the differing obligations in a civil and criminal context.

Rule 4.1. Truthfulness in statements to others
In the course of representing a client a lawyer shall not knowingly:
(a) make a false statement of material fact or law to a third person; or
(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

What I find interesting about Rule 4.1 is the limited responsibility with respect to the failure to disclose. Of all the rules addressing misrepresentation, this rule appears to impose the minimum responsibility because it only prohibits the failure to disclose when it's necessary to avoid assisting in a crime or fraud. That's a pretty limited situation. I think it has something to do with the audience.

4.1 governs those situations where we are speaking on behalf of a client, but not necessarily to a tribunal or other authority (since those venues are governed by Rule 3.3). Thus, the rule is most likely in play when we are talking to an adversary. It makes sense that, given the adversarial nature to our system, we would have a limited obligation to disclose when it comes to the opposing lawyer.

Rule 8.1. Bar admission and disciplinary matters
An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
(a) knowingly make a false statement of material fact;
(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.1 deals with several specific instances of misrepresentation. Interestingly, this is the only rule that applies to lawyers before they become members of the bar. But it’s not only applicable to almost-lawyers. In addition to bar applications we also need to be concerned about statements about CLEs. The item that I want to make sure I point out to you, however, pertains to disciplinary tribunals.

We can see from the text of the rule that it’s improper to make a misrepresentation in connection with a disciplinary matter. But also note this related item: In many jurisdictions, failure to respond to a disciplinary tribunal is grounds for an independent grievance. In many

cases it won't matter if you're ultimately exonerated for the underlying charge that got you into ethical trouble—if you fail to respond, you will still face a grievance.

Misrepresentations that may occur when we talk about ourselves or our services are covered by Rule 7.1. That rule is placed in the sections that deal with advertising, so it's common for lawyers to think that 7.1 is only invoked in cases of advertising. Personally, I think it's easier to think of it as being invoked in cases of "self-promotion." Every time you think you're acting in a self-promoting nature, Rule 7.1 could be in play.

Self-promotion is the cornerstone of any business's marketing effort. Major stars employ publicists and scores of other personnel whose sole job is to promote the celebrity and get them noticed and as we all know, many will sink to almost any level in order to get attention. As the old saying goes, "Bad publicity is better than no publicity." That's what the drafters of the rules of professional conduct were afraid of.

To a certain extent, lawyers are no different. We need to attract clients and self-promotion is certainly a way of doing that. But the drafters know that, if left to our own devices, many attorneys would likely indulge in ethically questionable tactics in order to get noticed and would end up denigrating the integrity of the profession in the process. Thus, it regulates advertising through Rules 7.1 and 7.2. There are other reasons that lawyer advertising is regulated, such as protecting the long standing professional traditions in the practice. The commentary to Rule 7.2 expresses that best when it states, "Advertising involves an active quest for clients, contrary to the tradition that lawyers should not seek clientele." Rule 7.2, Comment [1].

On the other hand, there are reasons to permit attorney promotion such as the desire to encourage competition among lawyers to keep the cost of legal services at a reasonable level

for the public and the “interest in expanding public information about legal services” Rule 7.2, Comment [1].

Two rules to be aware of when dealing with attorney advertising are Rules 7.1 and 7.2. Those Rules state:

Rule 7.1. Communications concerning a lawyer's services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Rule 7.2. Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
(b) Except as permitted by Rule 1.5(e), a lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
(1) pay the reasonable costs of advertisements or communications permitted by this Rule;
(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and
(3) pay for a law practice in accordance with Rule 1.17.
(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Basically. Rule 7.2 tells us where we’re permitted to advertise. The content of our advertisements, however, must be seen through the prism of Rule 7.1. By way of example, we are permitted to put an ad in an, “electronic communication,” per 7.2, but the content of that communication may not contain a “material misrepresentation of fact,” per 7.1. One of the underlying goals of these rules is to make sure that attorneys avoid deceptive tactics.

Deception is an issue that was dealt with by the Philadelphia Bar Association as well. In Opinion 2009-02, the bar dealt with permissible actions in the world of social media. What's helpful to attorneys is that the decision hinged on the issue of deception (Note: The opinion is reprinted in its entirety in the Appendix). It's often been difficult to determine when a statement is permissible or so misleading that it violates the code. I think decisions like the Philadelphia

opinion give that issue some teeth-- if you intended to deceive, then your statements/actions are probably in violation of the rule.

Here's the NY Rule on Advertising, which is quite different from the ABA version, just in case you care…I find that a lot of lawyers are licensed in this state…

RULE 7.1: ADVERTISING
(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:
(1) contains statements or claims that are false, deceptive or misleading; or
(2) violates a Rule.
(b) Subject to the provisions of paragraph (a), an advertisement may include information as to:
(1) legal and nonlegal education; degrees and other scholastic distinctions; dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by these Rules; public offices and teaching positions held; publications of law-related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;
(2) names of clients regularly represented, provided that the client has given prior written consent;
(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by Rule 5.8, and the nature and extent of services available through those contractual relationships; and
(4) legal fees for initial consultation; contingent fee rates in civil matters, when accompanied by a statement disclosing the information required by paragraph (p); range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service, hourly rates, and fixed fees for specified legal and nonlegal services.
(c) An advertisement shall not:
(1) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;
(2) include the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;
(3) use actors to portray a judge, the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same;
(4) be made to resemble legal documents.
(d) An advertisement that complies with paragraph (e) may contain the following:
(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;
(2) statements that compare the lawyer's services with the services of other lawyers;
(3) testimonials or endorsements of clients, and of former clients; or
(4) statements describing or characterizing the quality of the lawyer's or law firm's services.
(e) It is permissible to provide the information set forth in paragraph (d) provided:
(1) its dissemination does not violate paragraph (a);
(2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; and

(3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome"; and
(4) in the case of a testimonial or endorsement from a client with respect to a matter still pending, the client gives informed consent confirmed in writing.
(f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled "Attorney Advertising" on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words "Attorney Advertising" shall appear therein. In the case of electronic mail, the subject line shall contain the notation "ATTORNEY ADVERTISING."
(g) A lawyer or law firm shall not utilize meta-tags or other hidden computer codes that, if displayed, would violate these Rules.
(h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.
(i) Any words or statements required by this Rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud. In the case of a web site, the required words or statements shall appear on the home page.
(j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services that are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.
(k) All advertisements shall be pre-approved by the lawyer or law firm, and a copy shall be retained for a period of not less than three years following its initial dissemination. Any advertisement contained in a computer-accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this Rule shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.
(l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.
(m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this Rule in a publication that is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this Rule in a publication that is published once per month or less frequently, the lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this Rule in a publication that has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.
(n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this Rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(o) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.
(p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law § 488(3).
(q) A lawyer may accept employment that results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services.
(r) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give individual advice.

Preying on Vulnerabilities

While this section may be slightly off the beaten path (at least as far as this program is concerned) it's closely related and deserves exploration. After all, when we talk about misrepresentation we're talking about a form of deception and the drafters know that there is a very real risk that lawyers will resort to questionable tactics in their effort to drum up business. That aggressiveness may manifest itself in misleading advertisements as we discussed in the previous section, but it may also appear in the context of soliciting clients for work. The drafters realized that lawyers might put undue pressure on people in order to convince them to retain the services of the lawyer, so Rule 7.3 was created.

Rule 7.3. Direct contact with prospective clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
(1) is a lawyer; or
(2) has a family, close personal, or prior professional relationship with the lawyer.
(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
(2) the solicitation involves coercion, duress or harassment.
(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Rule 7.3 places different restrictions on different types of conduct. The rule distinguishes the conduct by the ability for the lawyer to coerce the potential client. Thus, subsection (a) addresses the more pressure-filled communication of in-person, live telephone or real time electronic contact. Since the potential to coerce in those instances is so great, the rule outright prohibits that kind of solicitation, unless the lawyer has a close relationship with the prospect.

That restriction exists because there is an inherent potential for abuse in direct interpersonal communication. Rule 7.3, Comment [1]. With in-person communication there is a greater potential that a lawyer could persuade the client in a way that overwhelms the client's judgment. Comment [2].

Note, however that the rule does not prohibit contact with *any* person, rather the rule refers to contact with a "prospective client." Rule 7.3, Comment [1] describes that person as one who is, "known to need legal services." The key here is that the pressing need for legal services puts the prospective client in a more vulnerable mental state. Thus, the purpose of the rule prohibiting solicitation is to protect vulnerable people from being preyed upon.

The reason I say that there are only four rules that address misrepresentation (3.3, 4.1, 7.1 and 8.1) is because the fifth rule, 8.4 Misconduct, is about much more than just misrepresentation. In fact, it almost seems as if misrepresentation is an afterthought—or at the very least buried among some other important concepts. Here is the rule, along with some important things to consider in Rule 8.4.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The sections that I find most interesting are (b), (c) and (d). In subsection (b) the rules tell us that misconduct can be the commission of certain crimes that impact our fitness to be an attorney. Do you think that driving drunk would fall in there? Maybe that's debatable. How about drug offenses? Of course it seems to get a little easier when you talk about check fraud or theft. What's interesting, though is that the rule doesn't say that you must be “convicted” of a criminal act, only that you “commit” the act. As a result, discipline may be forthcoming if the criminal behavior occurred, even if there were no formal consequences in the justice system.

Subsections (c) and (d) are what I call the “catch all” sections. For instance, I think we could spend an entire day giving examples of, “conduct involving dishonesty, fraud, deceit or misrepresentation.” What's critical to remember is that the conduct we're talking about is not limited to the things you do in your office-- the rule doesn't make that distinction. That's one of the reasons that I tell attorneys that there is almost no separation between the professional and private life of an attorney. What you do outside the office matters and if your behavior outside the office violates Rule 8.4, you're going to be subject to discipline

Likewise, I could imagine a slew of actions that could be considered "prejudicial to the administration of justice." What about blogging about how you believe a judge is a thief and a liar? How about stealing evidence out of a courthouse. The list could go on. An interesting side note: 8.4(d) would probably be the section that would be cited in a claims of discrimination in the profession. Many states have adopted specific ethics rules outlawing discrimination, but not all of them. 8.4(d) would serve the purpose for states without a specific prohibition.

Deadly Pitfalls in the Practice of Law
Substance Abuse

1. Introduction:

For those of you who've seen me speak in the past you'll already be familiar with my obsession with "threes." Well, I've got one more for you. I'm fascinated by the three things that seem to bring down so many attorneys-- I call it "The Trifectus that Affects Us" (you have to sort of let that one roll off your tongue like a drum beat.). The triple dose of terror that I'm referring to are Substance Abuse, Bias/Discrimination in the Profession and Hot Trendy Stuff that gets us in trouble, like social networking and new ways to make a quick buck.

Substance abuse is a particularly dangerous pitfall because we're all susceptible. It isn't a malady that's confined to the weak or those with substance abuse in their family history. It's a pitfall that befall us all and there are valuable lessons to be learned by every attorney.

The first critical thing to know is that not all substance abusers start out as addicts. Not all substance abusers have parents who were alcoholics and not all substance abusers end up in the street, losing their jobs families and life savings. Lots do, but not all. Hitting bottom is different for everyone.

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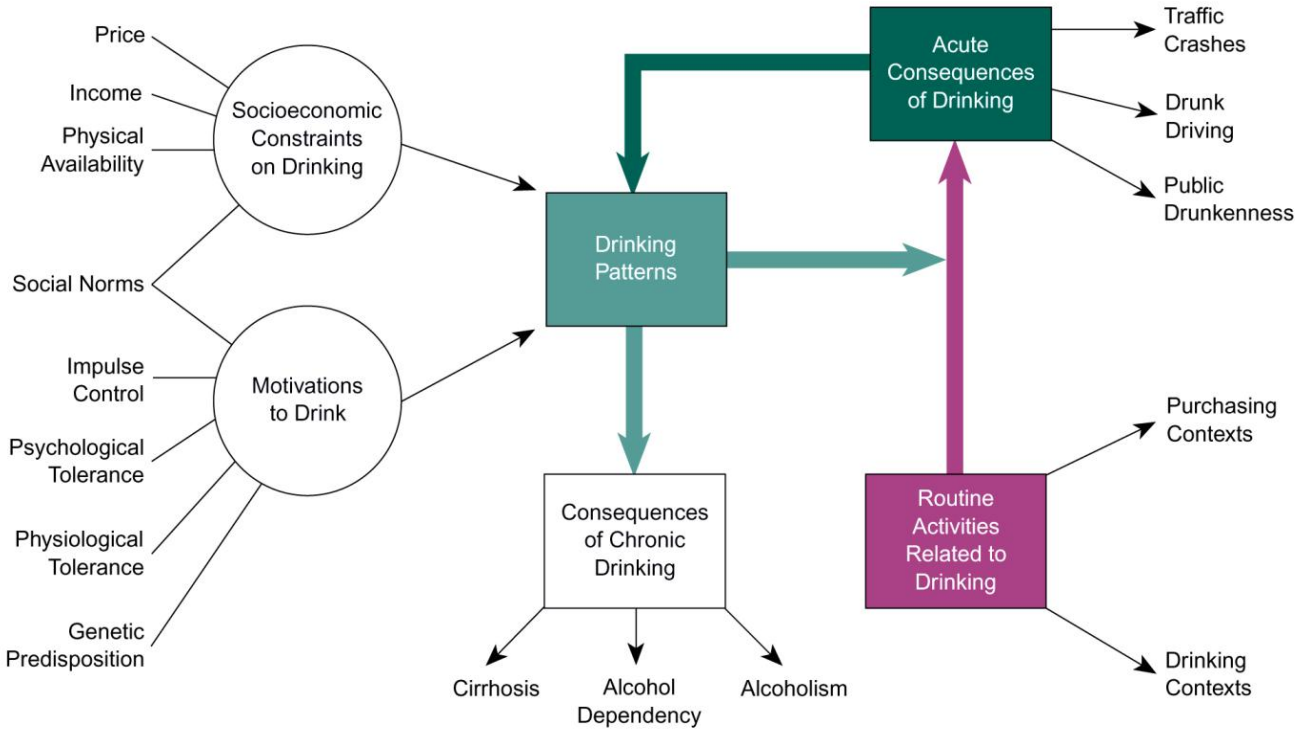
For many attorneys substance abuse isn't like a truck that comes out of nowhere and hits them blindside as they cross a street. They don't go to sleep one night the picture of perfect health and wake up the next day a drunk. Quite often it's an insidious, disguised progression that they don't see coming on.

According to the US Department of Health and Human Services, there is no one reason that people become substance abusers, rather there are several risk factors. They include a person's biology, environment and stage of development. There's a lot of talk among scientists about how some people are genetically predisposed to abuse alcohol and having a family history is certainly a factor, but it's not always about your genes. The more risk factors someone has, the greater the likelihood that they'll develop a substance abuse problem, so there's a very real reason for all of us to be aware. Incidentally, I'm going to focus primarily on alcohol abuse for the remainder of this material.

Take a look at the next figure, entitled, "An ecological Model of Drinking Behavior," from the National Institute on Alcohol Abuse and Alcoholism. It shows the multitude of factors and consequences of drinking. It doesn't take long to see that the problem is about far more than genes.

An ecological model of drinking behavior



This schematic illustrates some relationships between motivations to drink and socioeconomic constraints on drinking, drinking patterns, and routine activities related to drinking and associated consequences. Constraints and motivations influence drinking patterns, which in turn influence the relationship between routine activities related to drinking and acute and long term consequences of drinking. Acute consequences of drinking can reciprocally influence patterns of drinking.

Source: Gruenewald, P. J., et al. Alcohol availability and the ecology of drinking behavior. *Alcohol Health & Research World* 17(1):39–45, 1993.

Updated: October 2000

2. Understanding that Substance Abuse is a Disease:

It's critical to realize that alcoholism and substance abuse is very much a disease. Research has come quite a long way in the past decades and it's now generally accepted that alcoholism is a brain disease.

The following information from the National Institute on Drug Abuse and the National Institutes of Health helps us understand the essential elements of this complex disease.

Understanding Drug Abuse and Addiction

Many people do not understand why individuals become addicted to drugs or how drugs change the brain to foster compulsive drug abuse. They mistakenly view drug abuse and addiction as strictly a social problem and may characterize those who take drugs as morally weak. One very common belief is that drug abusers should be able to just stop taking drugs if they are only willing to change their behavior. What people often underestimate is the complexity of drug addiction—that it is a disease that impacts the brain and because of that, stopping drug abuse is not simply a matter of willpower. Through scientific advances we now know much more about how exactly drugs work in the brain, and we also know that drug addiction can be successfully treated to help people stop abusing drugs and resume their productive lives.

Drug abuse and addiction are a major burden to society. Estimates of the total overall costs of substance abuse in the United States—including health- and crime-related costs as well as losses in productivity—exceed half a trillion dollars annually. This includes approximately $181 billion for illicit drugs,1 $168 billion for tobacco,2 and $185 billion for alcohol.3 Staggering as these numbers are, however, they do not fully describe the breadth of deleterious public health—and safety—implications, which include family disintegration, loss of employment, failure in school, domestic violence, child abuse, and other crimes.

What is drug addiction?

Addiction is a chronic, often relapsing brain disease that causes compulsive drug seeking and use despite harmful consequences to the individual who is addicted and to those around them. Drug addiction is a brain disease because the abuse of drugs leads to changes in the structure and function of the brain. Although it is true that for most people the initial decision to take drugs is voluntary, over time the changes in the brain caused by repeated drug abuse can affect a person's self control and ability to make sound decisions, and at the same time send intense impulses to take drugs.

It is because of these changes in the brain that it is so challenging for a person who is addicted to stop abusing drugs. Fortunately, there are treatments that help people to counteract addiction's powerful disruptive effects and regain control. Research shows that combining addiction treatment medications, if available, with behavioral therapy is the best way to ensure success for most patients. Treatment approaches that are tailored to each patient's drug abuse patterns and any co-occurring medical, psychiatric, and social problems can lead to sustained recovery and a life without drug abuse.

Similar to other *chronic, relapsing* diseases, such as diabetes, asthma, or heart disease, drug addiction can be managed successfully. And, as with other chronic diseases, it is not uncommon for a person to relapse and begin abusing drugs again. Relapse, however, does not signal failure—rather, it indicates that treatment should be reinstated, adjusted, or that alternate treatment is needed to help the individual regain control and recover.

What happens to your brain when you take drugs?

Drugs are chemicals that tap into the brain's communication system and disrupt the way nerve cells normally send, receive, and process information. There are at least two ways that drugs are able to do this: (1) by imitating the brain's natural chemical messengers, and/or (2) by overstimulating the "reward circuit" of the brain.

Some drugs, such as marijuana and heroin, have a similar structure to chemical messengers, called neurotransmitters, which are naturally produced by the brain. Because of this similarity, these drugs are able to "fool" the brain's receptors and activate nerve cells to send abnormal messages.

Other drugs, such as cocaine or methamphetamine, can cause the nerve cells to release abnormally large amounts of natural neurotransmitters, or prevent the normal recycling of these brain chemicals, which is needed to shut off the signal between neurons. This disruption produces a greatly amplified message that ultimately disrupts normal communication patterns.

Nearly all drugs, directly or indirectly, target the brain's reward system by flooding the circuit with dopamine. Dopamine is a neurotransmitter present in regions of the brain that control movement, emotion, motivation, and feelings of pleasure. The overstimulation of this system, which normally responds to natural behaviors that are linked to survival (eating, spending time with loved ones, etc.), produces euphoric effects in response to the drugs. This reaction sets in motion a pattern that "teaches" people to repeat the behavior of abusing drugs.

As a person continues to abuse drugs, the brain adapts to the overwhelming surges in dopamine by producing less dopamine or by reducing the number of dopamine receptors in the reward circuit. As a result, dopamine's impact on the reward circuit is lessened, reducing the abuser's ability to enjoy the drugs and the things that previously brought pleasure. This decrease compels those addicted to drugs to keep abusing drugs in order to attempt to bring their dopamine function back to normal. And, they may now require larger amounts of the drug than they first did to achieve the dopamine high—an effect known as *tolerance*.

Long-term abuse causes changes in other brain chemical systems and circuits as well. Glutamate is a neurotransmitter that influences the reward circuit and the ability to learn. When the optimal concentration of glutamate is altered by drug abuse, the brain attempts to compensate, which can impair cognitive function. Drugs of abuse facilitate nonconscious (conditioned) learning, which leads the user to experience uncontrollable cravings when they see a place or person they associate with the drug experience, even when the drug itself is not available. Brain imaging studies of drug-addicted individuals show changes in areas of the brain that are critical to judgment, decisionmaking, learning and memory, and behavior control. Together, these changes can drive an abuser to seek out and take drugs compulsively despite adverse consequences—in other words, to become addicted to drugs.

Why do some people become addicted, while others do not?

No single factor can predict whether or not a person will become addicted to drugs. Risk for addiction is influenced by a person's biology, social environment, and age or stage of development. The more risk factors an individual has, the greater the chance that taking drugs can lead to addiction. For example:

- *Biology.* The genes that people are born with—in combination with environmental influences—account for about half of their addiction vulnerability. Additionally, gender, ethnicity, and the presence of other mental disorders may influence risk for drug abuse and addiction.

- *Environment.* A person's environment includes many different influences—from family and friends to socioeconomic status and quality of life in general. Factors such as peer pressure, physical and sexual abuse, stress, and parental involvement can greatly influence the course of drug abuse and addiction in a person's life.

- *Development.* Genetic and environmental factors interact with critical developmental stages in a person's life to affect addiction vulnerability, and adolescents experience a double challenge. Although taking drugs at any age can lead to addiction, the earlier that drug use begins, the more likely it is to progress to more serious abuse. And because adolescents' brains are still developing in the areas that govern decisionmaking, judgment, and self-control, they are especially prone to risk-taking behaviors, including trying drugs of abuse.

Prevention is the Key

Drug addiction is a preventable disease. Results from NIDA-funded research have shown that prevention programs that involve families, schools, communities, and the media are effective in reducing drug abuse. Although many events and cultural factors affect drug abuse trends, when youths perceive drug abuse as harmful, they reduce their drug taking. It is necessary, therefore, to help youth and the general public to understand the risks of drug abuse, and for teachers, parents, and healthcare professionals to keep sending the message that drug addiction can be prevented if a person never abuses drugs.

Source: National Institute on Drug Abuse, http://www.drugabuse.gov/infofacts/understand.html last checked January 5, 2010

National Institutes of Health
Fact Sheet Alcohol Dependence (Alcoholism)

Thirty Years Ago

Little then was known about the genetic basis of alcohol dependence, or the nervous system changes that occur as a result of prolonged heavy drinking.
Alcohol dependence was thought to be a disease of middle age.

Disulfiram (Antabuse®) was the only medication approved for treating alcohol dependence. Antabuse® produces acute sensitivity to alcohol. This sensitivity causes a highly unpleasant reaction when the patient ingests even small amounts of alcohol.
Other treatments included various behavioral approaches, mostly group counseling and referral to Alcoholics Anonymous (AA). These treatments were only offered in intensive programs provided at specific locations separated from mainstream health care.

NIH-supported research demonstrated that relatively few people with alcohol dependence ever received treatment.

Today: NIH-supported researchers identified genes that increase an individual's risk for becoming alcohol dependent, as well as genes that protect against alcohol problems.

The neural basis of alcohol dependence was clarified. Research showing that drinking is influenced by multiple neurotransmitter systems, neuromodulators, hormones, and intracellular networks provides evidence of a number of potential target sites for which new medications may be developed.
Multiple excellent animal models provide valuable tools for today's researchers.

Clinicians have access to a wide range of treatment options that can be tailored to patients' specific needs, and a broad array of drinking problems can be effectively treated by non-specialists.

Screening and Brief Intervention – one to four repeated short counseling sessions focused on increasing motivation to reduce drinking – has recently emerged as an effective strategy for addressing high-risk drinking.

Investigators developed screening tools that allow clinicians to quickly and reliably determine if their patients' alcohol consumption patterns place them at risk for future adverse consequences. Studies show that brief interventions delivered in trauma units can reduce subsequent drinking and injuries. Brief interventions with high-risk college students successfully reduce alcohol consumption and/or the related consequences.

Efforts to develop medications for alcohol use disorders have expanded rapidly in recent years. In addition to disulfiram, naltrexone and acamprosate are now approved for use in treating alcohol dependence. Naltrexone and acamprosate reduce relapse to heavy drinking in people who want to quit by normalizing brain dysfunction caused by alcohol dependence.

When used in conjunction with behavioral therapies, medications improve the chance for recovery and the lives of those who suffer from alcohol dependence.

Several behavioral approaches, such as motivational enhancement therapy, cognitive-behavioral therapy, and Twelve-Step facilitation, are effective in treating alcohol dependence, offering the patient and therapist a choice of approach. Brief counseling by a health professional combined with medication recently was found to

be as effective as specialized counseling. Thus, it may be possible to provide access to effective treatment to many more people in primary care and mental health clinics. **Tomorrow:** The future holds promise for substantially reducing the public health burden of heavy drinking to our society through carefully targeted behavioral and pharmacological therapies for individuals who develop alcohol dependence.

- *Predictive and personalized treatment*. An important direction for medications development research lies in pharmacogenetic research—the identification of genetic subtypes of alcohol dependence that respond to specific pharmacologic agents. The recent discovery of specific genetic variants that may contribute to the risk for alcoholism could help define sub-sets of alcohol dependent individuals who respond to a specific therapeutic agent. Other studies will pursue biobehavioral markers of therapeutic response through human laboratory studies.

- Ongoing investigations seek to determine how best to extend treatment to the estimated 90 percent of heavy drinkers who do not seek treatment. Methods under study include making brief motivational counseling widely available, such as in primary and general mental health care settings, churches, schools, and workplaces. Innovative technologies such as internet and other computer-based methods and toll-free telephone approaches will likely play a significant role.

Source: http://www.nih.gov/about/researchresultsforthepublic/AlcoholDependenceAlcoholism.pdf last checked January 5, 2010

3. Detection:

It's critical for you to understand whether you're having a problem with alcohol. Here are two tools for you to use in that regard:

1. If you'd like to conduct a self test to determine if you're abusing alcohol or you're having a problem with substance abuse, then try this link:

- http://www.alcoholscreening.org/index.asp

2. Here's an interesting worksheet that contains direction on how to cut down your drinking, created by the National Institute on Alcohol Abuse and Alcoholism. It may also open your eyes a little bit about the extent of your drinking.

How to Cut Down on Your Drinking

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM – NATIONAL INSTITUTES OF HEALTH

If you are drinking too much, you can improve your life and health by cutting down. How do you know if you drink too much? Read these questions and answer "yes" or "no":

- Do you drink alone when you feel angry or sad?
- Does your drinking ever make you late for work?
- Does your drinking worry your family?
- Do you ever drink after telling yourself you won't?
- Do you ever forget what you did while you were drinking?

- Do you get headaches or have a hang-over after you have been drinking?

If you answered "yes" to any of these questions, you may have a drinking problem. Check with your doctor to be sure. Your doctor will be able to tell you whether you should cut down or abstain. **If you are alcoholic or have other medical problems, you should not just cut down on your drinking--you should stop drinking completely. Your doctor will advise you about what is right for you.**

If your doctor tells you to cut down on your drinking, these steps can help you:

1. Write your reasons for cutting down or stopping.

Why do you want to drink less? There are many reasons why you may want to cut down or stop drinking. You may want to improve your health, sleep better, or get along better with your family or friends. Make a list of the reasons you want to drink less.

2. Set a drinking goal.

Choose a limit for how much you will drink. You may choose to cut down or not to drink at all. If you are cutting down, keep below these limits:

Women: No more than one drink a day

Men: No more than two drinks a day

A drink is:

- a 12-ounce bottle of beer;
- a 5-ounce glass of wine; or
- a 1 1/2-ounce shot of liquor.

These limits may be too high for some people who have certain medical problems or who are older. Talk with your doctor about the limit that is right for you.

Now--write your drinking goal on a piece of paper. Put it where you can see it, such as on your refrigerator or bathroom mirror. Your paper might look like this:

My drinking goal

- I will start on this day _____.
- I will not drink more than _____ drinks in 1 day.
- I will not drink more than _____ drinks in 1 week.....or
- I will stop drinking alcohol.

3. Keep a "diary" of your drinking.

To help you reach your goal, keep a "diary" of your drinking. For example, write down every time you have a drink for 1 week. Try to keep your diary for 3 or 4 weeks. This will show you how much you drink and when. You may be surprised. How different is your goal from the amount you drink now? Use the "drinking diary" below to write down when you drink.

Week:			
	# of drinks	**type of drinks**	**place consumed**
Mon.			
Tues.			
Wed.			
Thurs.			
Fri.			
Sat.			
Sun.			

Week:			
	# of drinks	**type of drinks**	**place consumed**
Mon.			
Tues.			
Wed.			
Thurs.			
Fri.			
Sat.			
Sun.			

Week:			
	# of drinks	**type of drinks**	**place consumed**
Mon.			
Tues.			
Wed.			
Thurs.			
Fri.			
Sat.			
Sun.			

Week:			
	# of drinks	**type of drinks**	**place consumed**
Mon.			
Tues.			
Wed.			
Thurs.			
Fri.			
Sat.			
Sun.			

Now you know why you want to drink less and you have a goal. There are many ways you can help yourself to cut down. Try these tips:

Watch it at home.

Keep a small amount or no alcohol at home. Don't keep temptations around.

Drink slowly.

When you drink, sip your drink slowly. Take a break of 1 hour between drinks. Drink soda, water, or juice after a drink with alcohol. Do not drink on an empty stomach! Eat food when you are drinking.

Take a break from alcohol.

Pick a day or two each week when you will not drink at all. Then, try to stop drinking for 1 week.

Think about how you feel physically and emotionally on these days. When you succeed and feel better, you may find it easier to cut down for good.

Learn how to say NO.

You do not have to drink when other people drink. You do not have to take a drink that is given to you. Practice ways to say no politely. For example, you can tell people you feel better when you drink less. Stay away from people who give you a hard time about not drinking.

Stay active.

What would you like to do instead of drinking? Use the time and money spent on drinking to do something fun with your family or friends. Go out to eat, see a movie, or play sports or a game.

Get support.

Cutting down on your drinking may be difficult at times. Ask your family and friends for support to help you reach your goal. Talk to your doctor if you are having trouble cutting down. Get the help you need to reach your goal.

Watch out for temptations.

Watch out for people, places, or times that make you drink, even if you do not want to. Stay away from people who drink a lot or bars where you used to go. Plan ahead of time what you will do to avoid drinking when you are tempted.

Do not drink when you are angry or upset or have a bad day. These are habits you need to break if you want to drink less.

DO NOT GIVE UP!

Most people do not cut down or give up drinking all at once. Just like a diet, it is not easy to change. That is okay. If you do not reach your goal the first time, try again. Remember, get support from people who care about you and want to help. Do not give up!

NIH Pub No. 96-3770
Printed 1996, Updated: May 28, 2001

4. Treatment Options

There are several options available to someone who is struggling with alcohol.

- Lawyer's Assistance Programs: Every State has a program that is designed to help members of the bar who are struggling with addiction, depression, stress and other psychological issues. You can find a complete listing of all Lawyer's Assistance Programs (LAP) here:
  - http://www.abanet.org/legalservices/colap/lapdirectory.html

- Alcoholics Anonymous: This is a very helpful program for people who need help recovering from alcoholism. It is the home of the well known "12 Step Program." This is how the Alcoholics Anonymous website describes the group (www.AA.org): Alcoholics Anonymous® is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for membership is a desire to stop drinking. There are no dues or fees for AA membership; we are self-supporting through our own contributions. AA is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.

- Medication: You can see your physician to inquire about the pharmaceuticals that are available to treat substance abuse

- Therapy and Counseling

- Rehabilitation Programs, both in patient and out patient programs are available.

SUPPLEMENTAL WRITTEN MATERIALS
Substance Abuse Program Delivered by
Stuart Teicher, Esq,

Here are some things that I believe that lawyers, in particular, should watch out for when it comes to substance abuse. You might recall that we talked about these items during the program, but I thought it would be helpful for you to actually have a written version of this information:

THE REALITIES OF THE PRACTICE

Substance abuse is a particular concern for lawyers.

- Lawyers are particularly to other mental health issues as well, including gambling addiction, sex addiction, anger issues, and depression.
- There is a a unique contributing factor— how we are "always on" because our ethical rules govern our behavior even when lawyers are acting on their own time (we talked about Rule 8.4(c) misconduct in that regard).
- Other reasons that lawyers are susceptible…I called it a "career cocktail" which includes:
  - Chronic work overload
  - The specter of constant deadlines
  - The ramifications of missing those deadlines are really severe
  - The Pressure of dealing with clients who are sometimes making the largest investments of their lives.
  - Throw in some other clients who are literally facing the loss of their liberty or life
  - And the constant, overbearing threat of malpractice
- Also remember other unique aspects of the practice of law that contribute to the possibility of forming a substance abuse problem:

- How practicing law can be a lonely endeavor
- That attorneys have a real, and dangerous tendency to have their entire identity overwhelmed by their career
- The constant competition in the practice

RISK FACTORS

Risk factors that lawyers might have include

- Family History of Addiction (especially if you have lawyers in the family)
- Lack of Family Involvement
- Another psychological problem (depression, ADD, post-traumatic stress disorder)
- Loneliness (we see that in the law a lot)
- Anxiety, Anxious work environment (which is common in a law firm)

THE SCIENCE OF ADDICTION AND HOW IT RELATES TO LAWYERS

I explained the realities of addiction when I noted that brain imaging studies from drug-addicted individuals show physical changes in areas of the brain that are critical to judgment, decision-making, learning and memory, and behavior control. Scientists believe that these changes alter the way the brain works, and may help explain the compulsive and destructive behaviors of addiction.

PREVENTATIVE MEASURES

Remember the things that lawyers can do to prevent the onset of substance abuse.

- The need to “live your whole life” and the need to live a rich life away from the law office.
- Doing so actually increases our ability to provide quality legal services to our clients.
  - In addition to preventing substance abuse, an attorney who lives her whole life is a multi-dimensional individual and a well rounded professional who is able to find a way to identify somehow with the people she needs to represent and ultimately provides better service to the client and the community.
- Don’t forget about the tendency of attorneys to get so wrapped up in their caseload that they forget about taking care of themselves.
  - Taking care of oneself as a lawyer is actually the ultimate statement of loyalty to the client
  - Taking care of ourselves, emotionally, mentally, and physically allows us to provide the requisite services to our client. We are able to fulfill our role as a lawyer and maximize our ability to perform for our client provided that we are firing on all of our mental cylinders. If you take care of yourself, it will mean that you function at optimal levels and you will be a better attorney.

TREATMENT & RECOVERY

Regarding recovery, we discussed how abstinence from drinking and drugging is the only viable option.

Regarding Treatment, I discussed the lawyer’s assistance program. I mentioned that:

- Lawyers assistance programs provide confidential assistance to lawyers, judges, law students and their families in coping with alcoholism and other addictions,
- They also help treat depression, anxiety and other problems related to the stress of practicing law.

- They believe that it's the overall responsibility of the profession to help our colleagues who are suffering with alcoholism, substance abuse, addictive behavior and psychological problems.
- I explained the ways LAPs can help:
  - Offers short term counseling
  - Career counseling
  - Supportive recovery programs and diversionary programs
  - LAPs can help you find a treatment facility, if you need one. We discussed the treatment alternative, in-patient alternatives and outpatient alternatives

Seminar Written Materials
Seven Secrets to Attorney Success

I. Introduction: Why I Created the Seminar

I believe that true success in the practice of law can only be realized by following an ethical, professional path. I also believe that the rules of attorney ethics lay out a formula for long term success in our practice and a sense of enduring satisfaction in our lives.

II. What the Ethics Rules are *Really* About[1]

The soul of the ethics code -- come on, there's no way you've ever heard an ethics teacher talk about the "soul" of the code, right? I digress…The soul of the ethics code is about values. Each of the restrictions in the code grew from a basic value to which the drafters wanted attorneys to adhere. Those values would include such things as integrity, loyalty, candor, etc. It's the particular behaviors that flow from those values that, when exhibited, steer us clear from disciplinary violations, yield tangible positive results in our practice and also guide us toward a long term sense of satisfaction in our lives. I call that direction, "True North." The rules put us on a heading toward True North—the direction that we're *required* to go in order to avoid disciplinary action, which not-so-coincidentally is also the direction toward professional success in the law (a place where every attorney *wants* to

[1] This paper sometimes references the ABA Model Rules, but copyright restrictions prohibit me from actually printing the ABA Rules. Thus, the rules printed herein are the Rhode Island Rules of Professional Conduct.

go).

So what the rules are really about are values and behavior which provide a roadmap to success in the profession and satisfaction in our lives. That, of course begs the question: What is the behavior that will head us toward True North? Unfortunately it's not always clear because the rules don't always explicitly state the proper behavior. Often the code is written in the negative, telling us what attorneys can't do. The code usually sounds like pure discipline but, trust me, those restrictions actually reflect the values that the drafters want to promote even though it doesn't always say it so directly.

This seminar reveals some of those behaviors and sketches out the roadmap provided by the rules. There are a myriad of behaviors involved and I've selected a few important ones for us to discuss in this seminar. I've chosen behaviors that hold us back and subject us to discipline, but I've also chosen several behaviors that propel us toward greatness. All of those behaviors are grounded in the rules of professional conduct and, you may have guessed, are also reflected in pop culture.

A note about Professionalism: Nearly every state has a statement on Professionalism, whether it's Ohio's "A Lawyer's Creed," New Mexico's "Creed f Professionalism," or the New Jersey Bar Associations, "Principles of Professionalism." Despite the apparent differences among them, a review of each reveals that the values and professional ideals that these statements promote are similar, if not identical. Even if you're in a jurisdiction that doesn't make professionalism education a mandatory element of your CLE experience, it's worth considering for a few reasons.

First, the concepts are worthy of our understanding regardless of whether their study is mandated. Also, the concepts of professionalism are almost all actually reflected in the codified rules. For instance, concepts such as honesty and integrity are inherent in Rule 4.1,

"Truthfulness in Statements to Others;" our obligations to treat other members of the bar appropriately is codified in Rule 3.4, "Fairness to Opposing Party and Counsel," and; our obligation to the overall community is reflected in Rule 6.1, "Voluntary Pro Bono Publico Service."

III. The secrets

As you'll see in the program I talk a lot about pop culture. That's because (a) I like it and (b) believe it or not, but there are good things about popular culture. It's not all about substance abuse and bias and negative stuff. Many of the most popular sports figures and celebrities exhibit behavior that's worthy of consideration. Concepts like pursuing excellence, being innovative, maintaining credibility, selflessness and loyalty. You probably saw this coming but, coincidentally, these behaviors are reflected in our rules of professional conduct. We see these behaviors exhibited in everything from Competence to Conflicts. The rules that advocate those positive behaviors provide a roadmap for professional success.

What follows below is a discussion about the six most important bits of direction we get from the rules of professional conduct: Pursue a sense of mission, be your best, take care of yourself, live a rich life outside the office, be vigilant and focus on the present.

#1: Pursue a Sense of Mission

After the NFL's New Orleans Saints won the 2009 Superbowl ,the star quarterback, Drew Brees, explained part of the team's motivation to win. The team was motivated by their personal desires, of course, but they also played for the struggling people in New Orleans who were still reeling from the effects of hurricane Katrina. That sense of mission, of pursuing a goal that was larger than themselves, was a significant factor in their ultimate success.

Similarly, I believe that if we are to achieve long term success in the law and an enduring sense of satisfaction in our lives, we must each must pursue some sense of mission about the law.

The practice of law is uniquely suited to pursuing a sense of mission…since we are a "representative of clients" as the Preamble to the rules states, we have another person's interests on our mind almost by default . Service of your clients in general could certainly be you mission, but it could also be more tailored. You could be committed to rehabilitating the image of lawyers, helping those suffering domestic abuse or even a less flashy goal of being committed to making real estate transactions less burdensome. It doesn't matter what the mission, as long as you have one and it has an element of selflessness.

A significant problem with pursuing a sense of mission, however, is cynicism. Cynicism is rampant in our profession and it holds many of us back from pursuing a mission that is larger than ourselves. However, there's a way to beat that cynicism—by keeping the nobility of our profession alive in your heart.

The ethics rules help us keep the fire burning in the hearts of lawyers because they are a constant reminder of the nobility of our profession. They do that by showing us that our role is critical to society and that we occupy an exalted position.

The rules show us how our role is critical to society in Comment 13 to the Preamble when it states, "Lawyers play a vital role in the preservation of society." It makes sense, after all, we are a society of laws and lawyers hold together the fabric of a society based on laws. We can see how distinguished our position is when we realize that we are "a public citizen having special responsibility for the quality of justice," a sentiment also mentioned in the commentary. We're not just any public citizen with normal civic duties, rather, when you take that oath you acknowledge that you have a special responsibility to society. But how does

this belief in the importance of our profession lead to practical success?

If you believe in the nobility of the profession, you are more likely to follow a sense of mission about the law. The level of pride you feel in the profession and the dedication you have to that mission is directly related to the amount of dedication you will have to your craft and ultimately, to your clients. That dedication is what yields the results you crave, whatever their form. A sense of mission propels lawyers to greatness.

#2: Be Your Best

The rules want us to be our best. It is just that simple.

The ethics rules encourage lawyers to perform at optimal levels in two ways. The most popular incentive is the negative incentive. If you fail to perform appropriately and abide by the rules, you will be disciplined. However, the rules also show us that there are certain steps we can take that will cause us to be the best. The place to look in that regard are a group of rules that I call "The Grand Troika" – Rule 1.1 Competence, 1.3 Diligence and 1.4 Communication.

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.

RULE 1.3 DILIGENCE
A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
(c) When a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the attorney-client relationship and the expectations and obligations arising out of that relationship, the lawyer shall take reasonable steps to inform the client of the nature of the attorney-client relationship before the representation is undertaken. Such disclosure should include what the lawyer expects of the client and what the client can expect from the lawyer. A lawyer may make such disclosure by providing the client with a copy of the statement of client's rights and responsibilities contained in Appendix 2 to these rules, or in any other manner sufficient to provide the client with a clear understanding of what services will be rendered by the lawyer and what the client's responsibilities are in order that the services can be performed effectively

Let's start with Rule 1.1, “Competence.” I think it’s important to take a moment to talk about the term, “competent” because I think it’s gotten a bad rap. Competent seems to have been denigrated to mean something like “good enough to get by,” but I don’t agree. A better definition would be, “adequate,” but even that sounds like it falls short. I believe that competency is a much higher standard and it only takes a quick look at Rule 1.1 to see what I mean. That Rule states, “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” When an attorney performs according to that standard, they are providing quality legal reputation. Anything less is not competent representation.

Of course, when one goes beyond what’s “reasonably necessary,” and provides thorough, high caliber legal services, an attorney transcends competence and provides superior representation. That should be our goal as attorneys—to constantly strive to provide better-than-acceptable representation for our clients.

Let’s get back to the elements of contained in what I call the “Grand Troika” of Attorney

Performance—the Rules regarding competence, diligence and communication (Rules 1.1, 1.3 and 1.4). When one breaks down the Rules, one sees that those basic elements are: legal knowledge, skill, thoroughness, preparation, diligence, promptness and the need to inform and consult the client.

A wise counselor would take the elements that are set forth in the "Grand Troika" of Rule1.1, 1.3 and 1.4 and formulate a checklist. If you do so, you'll see that the contents of these Rules don't just serve as a list of minimum standards for "acceptable" representation, rather, they provide direction for attorneys to give "complete" representation to clients as well.

The following idea may be a bit off the beaten path, but I want to make sure I mention something about Rule 1.4, Communication. Here's a tip that will improve your relationship with your client and also help you fulfill your ethical requirement to communicate with your client. When I first take a client, I like to send a short letter to them that summarizes my understanding of their case. That includes the relevant facts, the legal issues as I see them and also a recap of the client's objectives as I understand them. In a situation where I've already discussed the possibility of negotiation, I also try to include a short summary of the parameters that the client's given me as well. Also, I rehash any risk tolerances that may be relevant.

That process lets the client know that you're engaged in their matter and it can only serve to enhance the attorney/client relationship. From a selfish point of view, the letter you send helps you document that you've fulfilled sections of Rule 1.4, which require that an attorney, "reasonably consult with the client about the means by which the client's objectives are to be accomplished," Rule 1.4(a)(2), and that counsel explain matters as required by Rule 1.4(b). Finally, a periodic follow up letter in that regard will ensure that you "keep the client reasonably informed about the status of the matter," as required by Rule 1.4(a)(3).

#3: Take Care of Yourself

The most basic of attorney responsibilities is that "A lawyer...is a representative of clients."[2] We are an agent for someone else-- it's the very core of the attorney-client relationship. When you think about it, there is no 'single' part of the attorney's our psyche that's devoted to addressing the concerns of our client. Rather, we have been trained to dedicate *every* part of our mental make-up to serving our clients. Because of this unique aspect of our job, most of the practice requires a heightened state of awareness that's not necessarily in the forefront of the consciousness of other professionals. Whether it's in the courtroom or the conference room we are constantly asked to think on our feet and provide instantaneous reactions to some prompting.

If we fail to maintain a heightened state of awareness-- if we fail to maintain a state of mind that allows us to exercise the judgment upon which our clients depend, then we are failing at the most basic of attorney duties, the competence we owe our client (Rule 1.1). Unfortunately, the reality is that an attorney who is suffering from mental and emotional problems is likely to slack off in that regard. Emotional instability can very often lead us to letting our guard down and the likelihood of making gaffes that damage our client are increased if you're in a bad mental place.

Quite simply, we must acknowledge the following basic truth: If you don't take care of the machine, you can't expect it to work properly. If your machine doesn't work properly, you fail yourself and your client. This, it is critical for us to take care of ourselves mentally and emotionally if we expect to be able to function at optimal levels and exhibit the other behaviors that are emphasized by the rules.

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[2] Preamble, Comment [1]

#4: Live a Rich Life Outside of the Office

No one is defined completely by their career. Let me rephrase that. No one *sane* is defined completely by their career. Unfortunately, attorneys have a real, and dangerous tendency to have their entire identity overwhelmed by their career. However, if we can't find enjoyment in other areas of our lives and we're completely absorbed with the stresses of the practice of law, then we enter the danger zone where things like substance abuse starts to rear its head. This is why Lawyer's Assistance Programs have jobs – because most of us don't appreciate that to function properly, your brain needs a rest.

Your continued performance at levels that are mandated by the ethics rules is directly contingent upon a relief valve of sorts. The truth is that If you don't voluntarily find a healthy outlet— a productive place to seek refuge from the practice, then your brain will find a way for you to escape and it may not always take you to a good place. These diversions are the glue that keeps or head attached properly. Living a rich life outside of the office keeps our psyche intact and allows you to comply with our professional and ethical mandates.

#5: Have an Assertive Attitude: Be Vigilant.

There is an Evil Trilogy of bad habits that absolutely plagues our profession and we just can't seem to shake them. They are Distraction and Procrastination and Neglect and there's something about the practice of law in particular that makes us wildly susceptible to those traits. It's so bad that they ethics rules specifically discuss these matters in the commentary when it states, "Perhaps no professional shortcoming is more widely resented than procrastination."[3]

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[3] Rule 1.3, Comment [3].

As usual, the ethics rules provides helpful direction. The rules say that the behavior lawyers should exhibit that will counteract procrastination and neglect is to be diligent. Rule 1.,3 states that, “A lawyer shall act with reasonable diligence and promptness in representing a client.” If you search further you'll see that Black’s Law Dictionary defines diligence as "a continual effort to accomplish something." The key phrase there is "a continual effort"-- that's what being diligent is all about….engaging in an effort.

Dig through the text and you see the sentiment of a “continual effort” all over the rules. Throughout the code you see references to “commitment,” “dedication,” “zealousness.” So what it says to me, when you put all of this text together, is that the answer to this quandary is that attorneys must always act with relentless determination. That's about an unyielding pursuit of your client’s interest-- it's almost being a fanatic about it.

Apply that theory to Procrastination: The only way to get past procrastination is to kill it outright. You can’t make a half-hearted attempt at procrastinating less because that’s probably that type of approach that got you to develop the bad habit in the first place. You've got to declare a personal war on procrastination-- the only way you will beat it is by being relentlessly determined to stop. You can apply the theory to neglect as well. If you are relentlessly determined to prepare for every matter in your office then, by definition, you will never neglect another file.

#6 Focus on the Present

The ethics rules provide more direction for us when we talk about defeating the final leg of the Evil Trilogy, distraction. The direction there is about “focus.”

We take on a lot of files. We have a myriad of different clients and issues swarming around at any given time. People are clamoring to get our attention at every hour of the day (and night). That reality hampers our ability to be prompt in responding to our clients, it affects our ability to meet deadlines and it's a big contributor to the neglect so commonly leads to disciplinary violations. It's absolutely devastating to a lawyer—ultimately there's a lack of concentration, which is deadly in a profession where attention to every detail is critical.

What do the rules say? The rules allude to the need to focus. The code state that, "a lawyer should carry through to conclusion all matters undertaken for a client."[4] It doesn't say, *a lawyer shall give partial effort to a matter and leave it half way through.* It says "carry through," meaning *stay with it...focus...execute and complete.* Focusing on the present moment is the key to eliminating distraction.

[4] Rule 1.3, Comment [4]