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COMPETENCE

It's More Than Knowing the Law



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Competence

IN ADDITION TO LEARNING AND SKILL, COMPETENCE
REQUIRES:

“MENTAL, EMOTIONAL, AND PHYSICAL ABILITY REASONABLY
NECESSARY FOR THE PERFORMANCE” OF LEGAL SERVICES.

We Will Discuss

1

THE MEANING AND IMPORTANCE
OF THOSE TERMS IN THE PRACTICE
OF LAW

2

RESOURCES FOR HELP WHEN MENTAL,
EMOTIONAL, OR PHYSICAL ABILITIES
ARE IMPAIRED.

RULES OF PROFESSIONAL CONDUCT



Rule 1.1 Competence

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

RULES OF PROFESSIONAL CONDUCT

Rule 1.1 Competence

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



COMMON CAUSES OF LAWYER INCOMPETENCE



Mental Health Issues



Alcohol Abuse



Drug Abuse

MENTAL HEALTH, ALCOHOL AND DRUG ABUSE





Mental Issues

- Stress
- Anxiety/fear
- Depression
- Financial problems

Alcohol and Drug Abuse





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

COMMON STRESSORS IN THE PRACTICE OF LAW



Level of Responsibility



Rigid Deadlines



Competitive Atmosphere -
Inability to Process Losses



Financial Stress and
Risks



Feelings of Inadequacy



The Excessive
Demands of Clients



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

32%

OF ATTORNEYS AGE 30 AND UNDER ARE
"PROBLEM DRINKERS"

28%

OF LAWYERS WITH 10 YEARS OF EXPERIENCE OR LESS
HAD THE HIGHEST RATE OF PROBLEMS WITH ALCOHOL.

25%

OF MEN AND 15.5% OF WOMEN IN THE HAZELDEN
BETTY FORD STUDY



GOOD PHYSICAL HEALTH DOES NOT GUARANTEE ONE'S COMPETENCE

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





WELL-BEING

Assessing your well-being may identify issues that increase the risks for incompetence

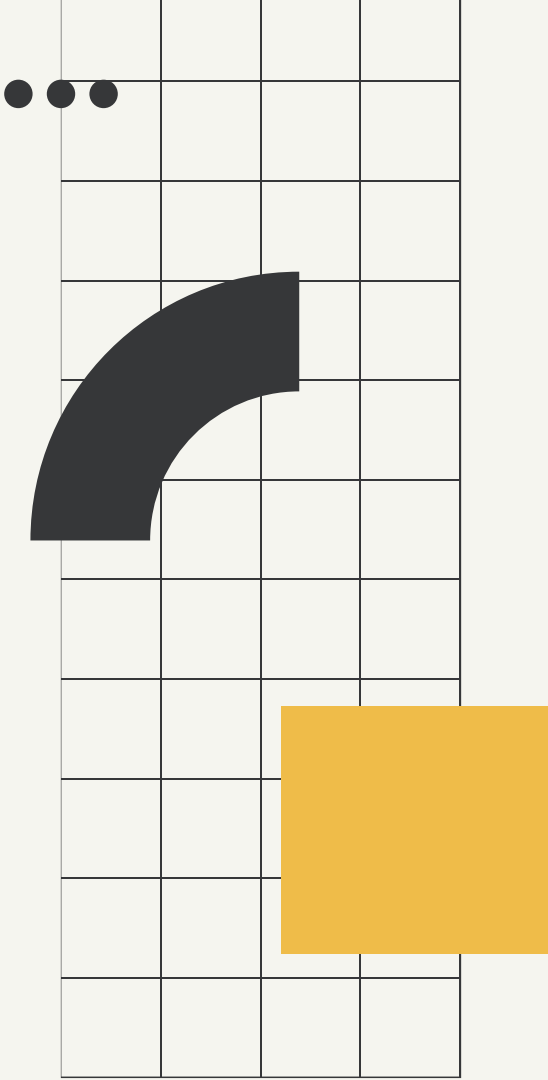
WHAT ARE THE PHYSICAL AND BEHAVIORAL WARNING SIGNS OF MENTAL HEALTH PROBLEMS, ALCOHOL AND SUBSTANCE ABUSE?



Physical signs and symptoms



Behavioral signs and symptoms



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

DUTY TO WITHDRAW UPON BECOMING INCOMPETENT



RULE 1.16(A)(3) AN ATTORNEY SHALL WITHDRAW

"if the lawyer's mental or physical condition renders it unreasonably
DIFFICULT to carry out the representation effectively"

COMPARE RULE 1.16(B)(8)

[An attorney MAY withdraw]



THE LAWYER'S RESPONSIBILITIES WHEN AN INCOMPETENT PARTNER, SHAREHOLDER OR EMPLOYEE VIOLATE THE RULES OF PROFESSIONS FOR CONDUCT

IS THERE A DUTY TO TAKE ACTION?

No, unless...



**The lawyer
has
managerial
authority**

**Direct
supervisory
authority**

**Or Directly
supervises
the offender
(impaired
lawyer)**





LEGAL MALPRACTICE AND INCOMPETENCE



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





DO I NEED HELP?

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

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



The State Bar of California Lawyer Assistance Program (LAP)

**877-LAP 4 HELP (877-527-4435)
THE TWENTY QUESTIONS
Of Alcohol/Drug Abuse**

Other Resources



Other Bar
(800)-222-0767



Judicial Officers
Assistance Program
(800)-327-0422



Hazelden Betty Ford
Foundation
(855) 995-3642



Thank You

Keep In Touch!



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