

From Warning Signs to Solutions: Competence, Impairment & Ethical Responsibility

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Program Agenda

Understand the State Bar rules on competence.

Identify early-warning signs in litigation and mediation settings.

Provide practical prevention strategies and real-world examples.

California Rule 1.1 - Duty of Competence

"Competence" shall apply to the:

(i) learning and skill

AND

(ii) mental, emotional, and physical ability

reasonably necessary for the performance of such service.

The Three Pillars of Competence

Legal Knowledge & Skill

Understanding the law, procedures, and strategy

Mental & Emotional Fitness

Cognitive clarity, emotional regulation, judgment

Physical Ability

Health sufficient to perform professional duties

Business & Professions Code Requirements

Bus. & Prof. Code § 6068

Duties of an Attorney

Establishes core professional duties. Violations of the Rules of Professional Conduct — including Rule 1.1 — can constitute violations of this section.

Bus. & Prof. Code § 6106

Moral Turpitude / Dishonesty / Corruption

Gross incompetence may support discipline when it rises to a level involving moral turpitude or professional misconduct.

Bus. & Prof. Code § 6077

Discipline for Rule Violations

Authorizes discipline for violations of the Rules of Professional Conduct — the primary enforcement mechanism for Rule 1.1.

B & P §6078 – State Bar’s Power to Discipline and Reinstate

...the State Bar Court has the power to recommend to the Supreme Court the disbarment or suspension from practice of licensees **or to discipline them by reproof, public or private, without such recommendation.**

Rules of Professional Conduct - Rule 8.4. “Misconduct”

- It is professional misconduct for a lawyer to:
 - (a) violate these rules or the State Bar Act. . .;
 - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
 - (d) engage in conduct that is prejudicial to the administration of justice. . .;

“Other Misconduct” Warranting Discipline

- DUIs ; Posses Controlled Substances ; Domestic Violence ; etc.
- See, In re Carr (1988) 46 Cal 3d 1089 & In re Kelley (1990) 52 Cal 3d 487.

Discipline may be imposed for a range of personal conduct that does not directly affect one’s legal practice.

“We cannot and should not sit back and wait until petitioner’s alcohol abuse problem begins to affect her practice of law”. Kelley, at 495.

B & P 6230 - 6238 – The State Bar Attorney Diversion Assistance Program

§ 6230. Legislative intent

- It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.





Competence v. Wellness

Competence	Wellness
Ability to perform legal services	Self-care & prevention
Measured against professional standard	Personal health & balance
Disciplinary consequences	No direct disciplinary link

Causes & Contributing Factors

Common Underlying Issues

Mental Health

- Anxiety & depression
- Burnout & compassion fatigue
- PTSD from vicarious trauma

Substance Use

- Alcohol dependence
- Prescription drug misuse
- Illicit substance use

Cognitive & Physical

- Cognitive decline / aging
- Chronic illness
- Sleep deprivation & fatigue

Life Stressors

- Litigation pressure & deadlines
- Financial strain
- Family, divorce, bereavement

Industry Trends



28%

of attorneys report
depression
symptoms

19%

experience anxiety
symptoms

21%

qualify as problem
drinkers

11-16%

use substances
at problematic levels

A Cultural Shift Is Underway

Increased recognition and destigmatization is changing how the profession addresses these issues. Bar associations, courts, and law firms are investing in resources — but attorney awareness and self-identification remain critical first steps.

Warning Signs Observed in Practice



Behavior Red Flags

Behavioral Red Flags

- Disorganization & inability to articulate case facts
- Volatile or erratic interactions with counsel or clients
- Signs of intoxication, withdrawal, or obvious impairment during proceedings
- Failure to recall prior agreements or representations
- Unusual emotional responses disproportionate to the situation
- Extreme lateness or failure to appear
- Inconsistent or contradictory positions within the same proceeding
- Lack of communication
- Life events (divorce, family)

Impact on Clients & Cases

- Prejudice on clients
- Delays & continuances
- Mistrials
- Sanctions
- Malpractice Exposure
- Disciplinary action



Real World Examples: Case Preparation Failures

Client Prejudice

The Uninformed Attorney at Mediation

Attorney arrives at mediation without basic file knowledge — unable to state the value of medical bills despite trial being imminent.

Impact: Mediation collapses. Client's case prejudiced. Settlement opportunity lost.

“Checking the Box”

Attorney appears at proceedings with no intention or ability to meaningfully participate. Simply going through the motions to satisfy a requirement.

Impact: Waste of court/opposing counsel time. Ethical exposure for attorney.

Ethical Exposure

Integrating Wellness into Competence Prevention



Healthy Alternatives & The Cultural Shift

“Go to the gym after trial instead of the bar.”

-A simple yet powerful reframe: what rituals do you reach for after a hard day?

THEN: Traditional Legal Culture

- After-court bar culture as the norm
- Drinking = networking & bonding
- Stress responses kept private
- "Tough it out" mentality
- Help-seeking seen as weakness

NOW: An Evolving Practice

- Exercise, mindfulness & meditation
- Therapy normalized & encouraged
- Peer support networks growing
- Law firms investing in wellness programs
- Bar associations expanding resources

Practical Strategies for Prevention & Early Detection

For Attorneys: Individual Prevention

Build Protective Routines

- Calendar non-negotiable recovery time
- Establish hard boundaries around off-hour contact
- Develop consistent wind-down rituals after work
- Prioritize sleep, nutrition, and physical health
- Maintain relationships outside the workplace

Recognize Your Burnout

- Cynicism or emotional detachment from clients
- Difficulty concentrating or making decisions
- Increased irritability with colleagues
- Dreading work that you previously found meaningful
- Relying on substances to decompress

Seeking Help

- LAP — Lawyer Assistance Program (State Bar)
- MAP — Member Assistance Program
- EAP — Employee Assistance Programs at firms
- The Other Bar — peer support for recovery
- Licensed therapists with legal profession experience

For Law Firms, Mediators & Judges

For Law Firms & Teams

- Supervising Duties:
 - Managing Partners and supervisors have affirmative duties to address known impairment that is causing harm to clients.
- Internal Reporting Pathways:
 - Create clear, confidential channels for attorneys and staff to raise concerns without fear of retaliation.
- Early Intervention Culture:
 - Address deteriorating performance before it escalates into client harm or disciplinary action.
- Access to Resources:
 - Ensure all attorneys know how to access EAP, LAP, and peer support programs — and that doing so is supported.

For Mediators & Judges

- Know Your Ethical Boundaries:
 - Mediators and judges have limited formal authority over attorney conduct, but important informal responsibilities as officers of the court.
- Approaches That Work in Practice:
 - A private word, a recess to allow composure, or a quiet conversation with the attorney's supervising partner can be effective first steps.
- When to Escalate:
 - If client harm is occurring and informal approaches fail, referral to State Bar or formal reporting may be warranted.
- Panel Insight:
 - Panelists will share their own experiences — what they've seen, what they've done, and what they wish they had done differently.

Key Resources for Attorneys

The Other Bar

A private, non-profit network of recovering lawyers, law students, and judges throughout California, dedicated to assisting others in the legal profession who are suffering from alcohol and substance use disorders. Confidential peer support from those who understand the profession's unique pressures.

LAP - Lawyer Assistance Program

Confidential support for substance use, mental health & other issues. Free to all California attorneys.

JASP - Judicial Officers Assistance Program

Providing confidential, early-intervention help to judicial officers and court staff for issues of stress, mental health, addiction, grief, and career challenges.

EAP - Employee Assistance Programs

Firm-provided confidential counseling, assessment, and referral services — check your firm's benefits.

Licensed Mental Health Professionals

Seek therapists experienced with legal professionals. Insurance often covers mental health services.

Key Takeaways



- 1 Competence is a legal requirement — Rule 1.1 encompasses mental, emotional, and physical ability, not just knowledge.
- 2 Impairment is often visible to neutrals first — mediators and judges are key early observers of competence failures.
- 3 Prevention is a professional responsibility — identifying your own early warning signs is an ethical imperative.
- 4 Resources exist and are confidential — LAP, The Other Bar, MAP, and EAP are there to help, not to punish.
- 5 The profession is changing — normalizing help-seeking protects clients, colleagues, and the integrity of the legal system.

Thank You



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