



Stress, Attention, Wellness, and the Legal Profession.



Friday,
October 22, 2021

This presentation reviews the stress-feedback loop in the brain (when stress becomes distress or chronic stress and how this leads to burnout); how this cycle and other occupational risks in law may impact your professional competency and ethical requirements; and ways to prevent to recognize early warning signs of distress or burnout in yourself and others, and to improve your resilience.

The Intersection of Stress, Competency, and Wellness

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Overview

- Legal Competence
- Lawyer Baseline 101
- Lawyer Risks 101
- Ethical Requirements
- Impairment Impacting Ethics
- Lawyer Resilience 101
- Lawyer Motivation 101
- VJLAP 101

Legal Competency

- Legal knowledge
- Skill
- Thoroughness
- Preparation
- Mental, emotional, and physical ability necessary for the representation

Legal Competency

Rules of Professional Conduct

A Framework/Not an Exhaustive Moral Authority

- Competent, promptness, and diligence
- Communication and confidentiality
- Observe the Rules of Professional Conduct

Purpose:

- Maintain the independence of the profession
- Protect the public interest/preserve society

Requires:

- Understanding, compliance, and reinforcement
- Enforcement/discipline

Lawyer Baseline 101

A Studied Profession

A Profession at Risk

Committee on Lawyer Well-Being of the Supreme Court of Virginia, 2018)

The Occupational Risks of the Practice of Law The Virginia State Bar President's Special Committee on Lawyer Well-Being, 2019

The Path to Lawyer Well-Being: Practical Recommendations for Positive Change

The National Task Force on Lawyer Well-Being, 2017

The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

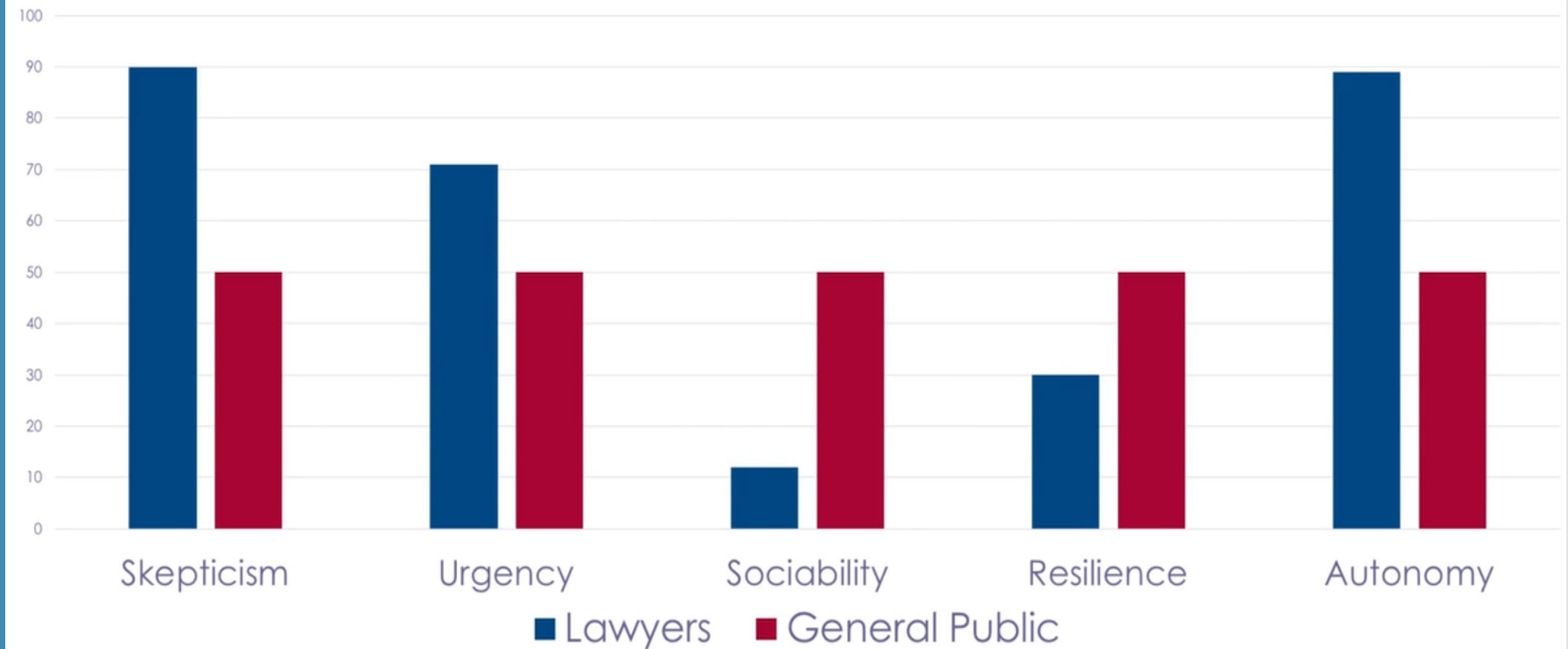
ABA/Hazeldon Betty Ford, 2016)



Lawyer Baseline 101

Common Traits

- Traits of the Profession
- Traits of the Professionals





Four Categories

Lawyer
Baseline 101

The
Occupational
Risks of
Practicing
Law

<p style="text-align: center;"><u>Physical</u></p> <p style="text-align: center;">Those that directly affect a lawyer's bodily health (Sedentary Work, Managing Long/Unusual Hours, Sleep Deprivation, Working Indoors, Aging)</p>	<p style="text-align: center;"><u>Adaptation</u></p> <p style="text-align: center;">Related to the changing nature of law practice in the 21st century (Changing Legal Paradigms, Technology Addiction, Lack of Diversity in the Legal Profession, External Pressures on Independence)</p>
<p style="text-align: center;"><u>Mental & Emotional</u></p> <p style="text-align: center;">Conditions of law practice that harm psychological well-being (Adversarial Nature, Individual Work, Professional Demands, Vicarious Trauma, Managing Others' Problems, Confidentiality, Educational Debt, Business Management, Need to Display Confidence/Conceal Vulnerability)</p>	<p style="text-align: center;"><u>Self-Actualization</u></p> <p style="text-align: center;">Conditions that prevent lawyers from flourishing or reaching a state of contentment between their work, social, and personal lives (Losing control of Professional Destiny, Values Conflict with Client or Practice Setting, The Expectations-Reality Gap)</p>



Lawyer Baseline 101

Statistics

Surveyed lawyers suffering from some level of **DEPRESSION: 28.3 percent**



Surveyed lawyers suffering from some level of **ANXIETY: 19.3 percent**



Surveyed lawyers suffering from some level of **STRESS: 22.7 percent**



Surveyed lawyers reporting concerns with **DEPRESSION** at some point in their careers: **45.7 percent**



Surveyed lawyers reporting concerns with **ANXIETY** at some point in their careers: **61.1 percent**



Lawyer Baseline 101

Statistics

- Members of the legal profession present with mental health and substance use disorders at a higher rate than the non-lawyers
- Considerably higher rates of mental health distress (problem drinking: 21-36%; depression: 28%; elevated stress: 23%)
- Suicide is the third leading cause of premature death among attorneys (after cancer and heart disease); 54% more likely than general population
- Lawyers in their **first ten years of practice** as well as those working in private practice **have the highest rates** of both problem drinking and depression

Legal Competency

*A well-balanced
lawyer is a productive,
competent lawyer*

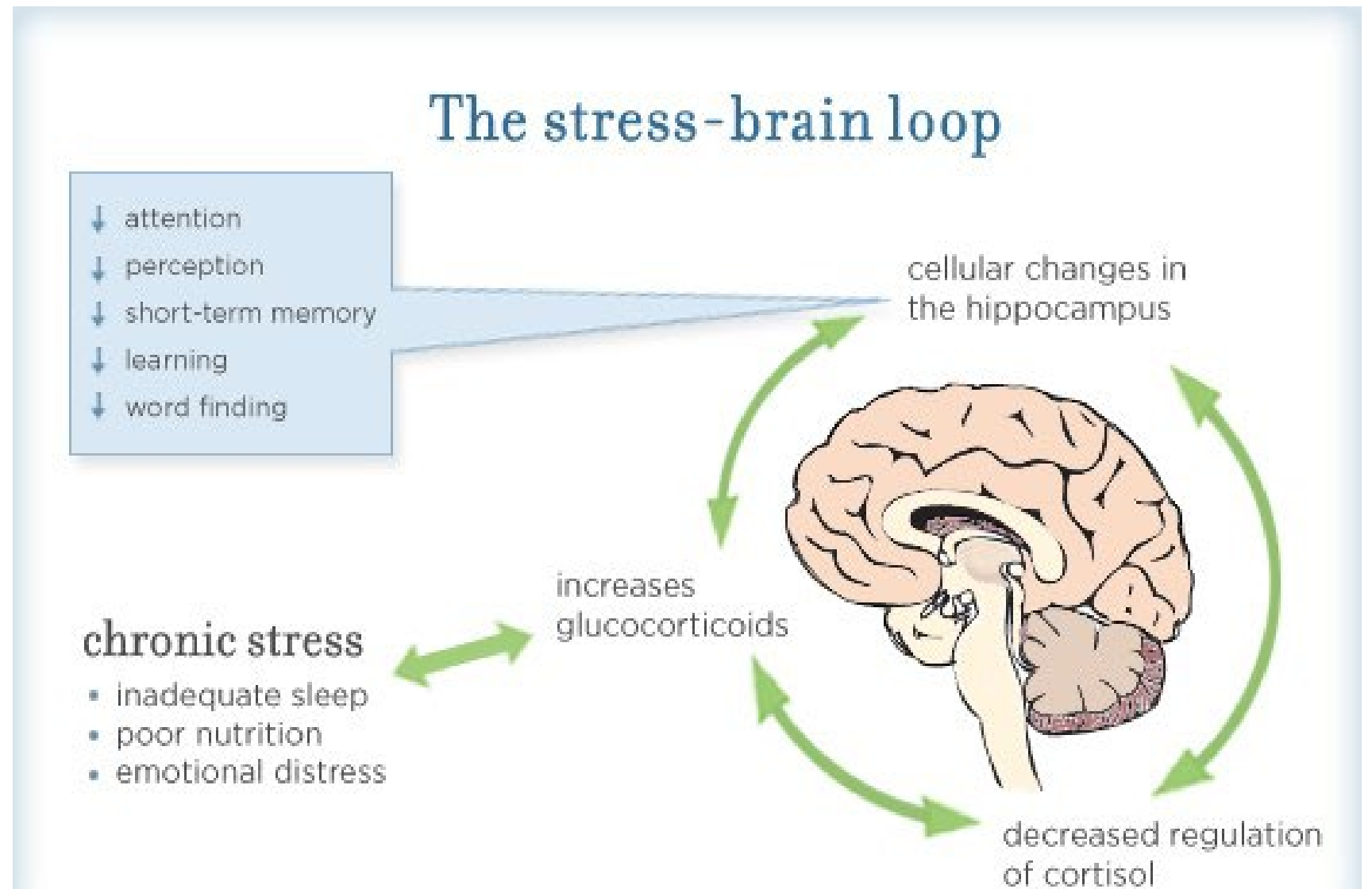
Why Should We Care?

- Self-governing profession
 - Protect the public
 - Protect the profession
- Ethical responsibility (Rules of Professional Conduct)
 - Competence (mental, emotional, and physical ability)
 - Impairment
 - Malpractice
 - Discipline
- Practice Implications
 - Productivity
 - Reputation



Stress 101

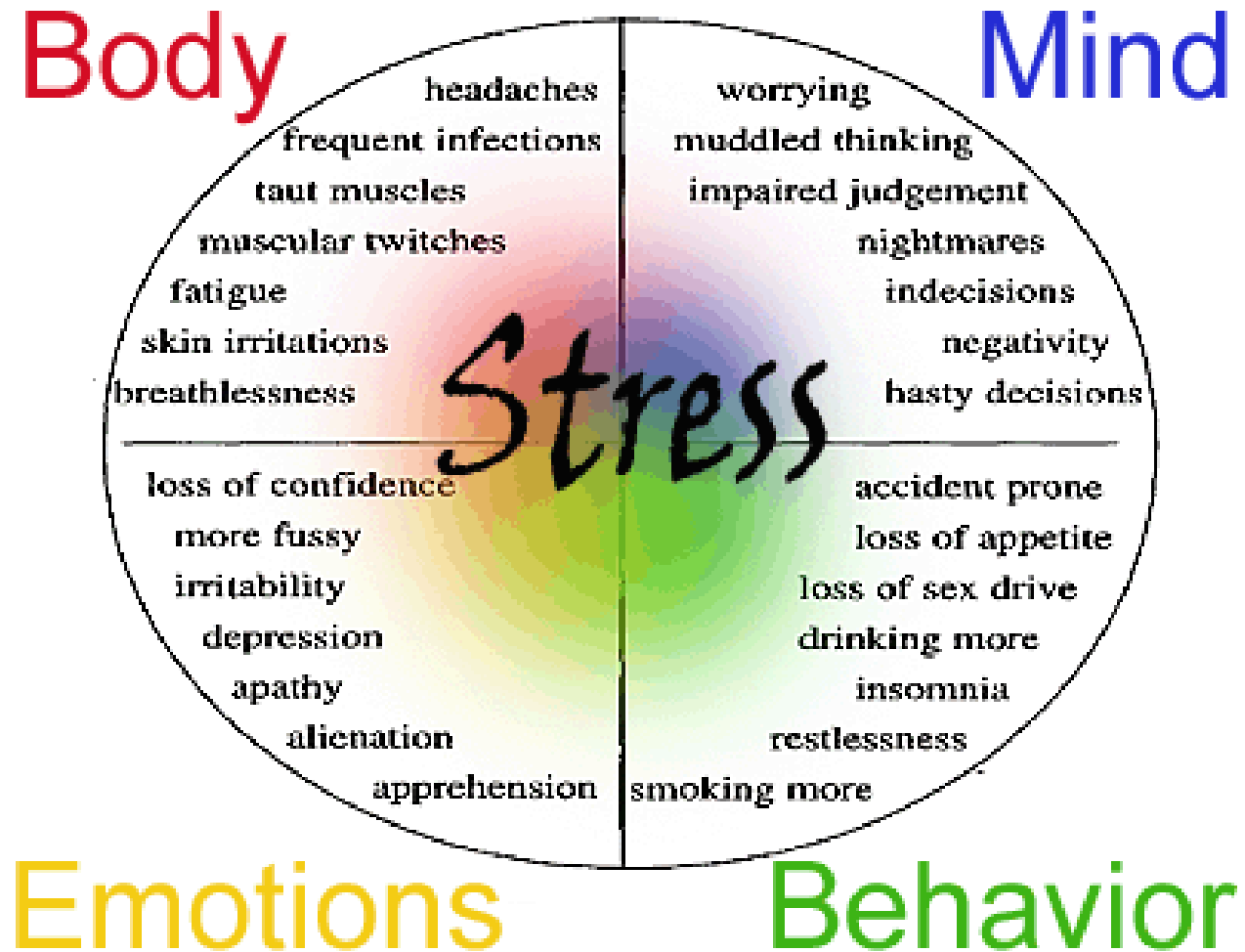
The Stress-Brain Loop



- The vicious cycle: When a person feels this way, they often try harder to manage these symptoms, which may make them worse.
- The 2016 ABA/Hazelden Betty Ford study discovered: 19% of lawyers experience anxiety; and 23% experience chronic stress.

Stress 101

The Impact of Stress in Our Lives?





Stress 101

From Stress to Burnout

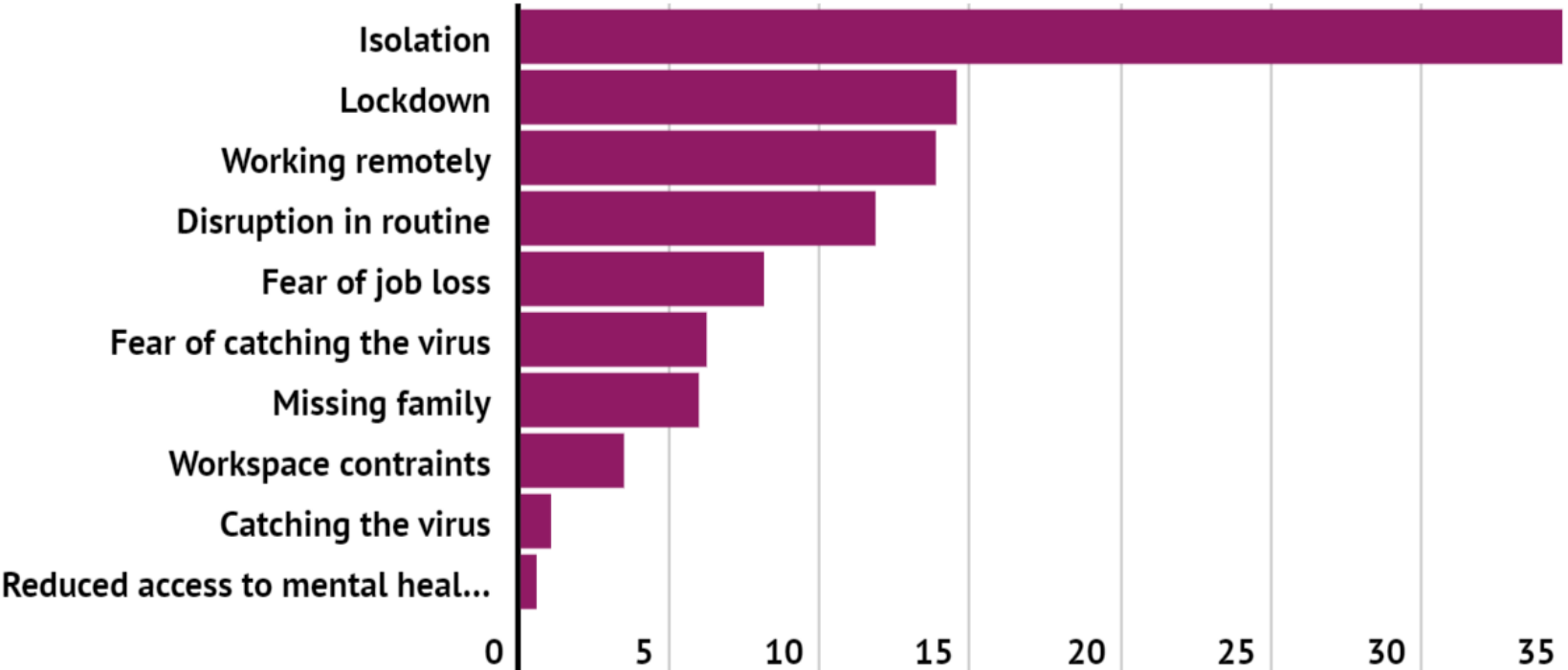




ALM Survey on Mental Health

Has your mental health suffered during COVID because of...?

Multiple answers allowed.
Answers among those that said their mental health was worse because of COVID.



Stress 101

Statistics

Self-reported data from over 3,200 lawyers.

Stress 101

Pandemic Impact

The impact of the pandemic

7 in 10

Americans know someone who was hospitalized or died from COVID-19¹

24%

Nearly 1 in 4 U.S. adults say they or a household member were laid off²

22%

Started working from home

85%

Of parents had at least one child remote learning from home

67%

Americans reported less in-person social interaction since the pandemic started

<https://www.pewresearch.org/fact-tank/2020/11/02/covid-19-impacts-2020/>, Jan. 2021
<https://www.pewresearch.org/fact-tank/2020/09/01/the-american-workforce/>





Ethical Requirements Impacted

- **Rule 1.1 Competence**
- **Rule 1.3 Diligence**
- **Rule 1.4 Communication**
- **Rule 1.16 (a) Declining or Terminating Representation**
- **Rule 5.1 Responsibilities of Partners and Supervisory Lawyers**
- **Rule 5.3 Responsibilities Regarding Nonlawyer Assistants**
- **Rule 8.3 Reporting Misconduct**

Ethical Requirements Impacted

- **Rule 1.1 Competence:** Legal knowledge, skill, thoroughness, and preparation reasonably necessary
VA(*Comment 7*) A lawyer's mental, emotional, and physical well-being impacts competence
- **Rule 1.3 Diligence:** Reasonable diligence and promptness; follow through with contract (or withdraw)
(*Comment 3*) Avoid procrastination (unreasonable delay, needless anxiety for client; undermine trustworthiness; may change condition of client's interests)
(*Comment 5*) Attorney contingency planning ("should") to protect client's interests in the event of death, disability, impairment, or incapacity
- **Rule 1.4 Communication:** Keep client reasonably informed and comply with reasonable requests for information.

Ethical Requirements Impacted

- **Rule 1.16 (a):** ... a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: ... (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(Comment 1): [1] A lawyer should not accept or continue representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Ethical Requirements Impacted

- **Rule 5.1 Responsibilities of Partners and Supervisory Lawyers:** Duty to supervise subordinates when (i) the misconduct is known or should have been known at a time when its consequences can be avoided or mitigated but (ii) fails to take reasonable remedial action.
(Comment 5) Appropriate remedial action depend on immediacy and seriousness of the misconduct. The supervisor must intervene to prevent avoidable consequences (the supervisor as well as the subordinate have the duty to correct).
- **Rule 5.3 Responsibilities Regarding Nonlawyer Assistants**

Ethical Requirements Impacted

Rule 8.3 Reporting Misconduct: Required if a lawyer has reliable information or another's misconduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Disclosure is not required if the information is gained through volunteering/working with a lawyer's assistance program (LAP) when the information is obtained for LAP purposes.

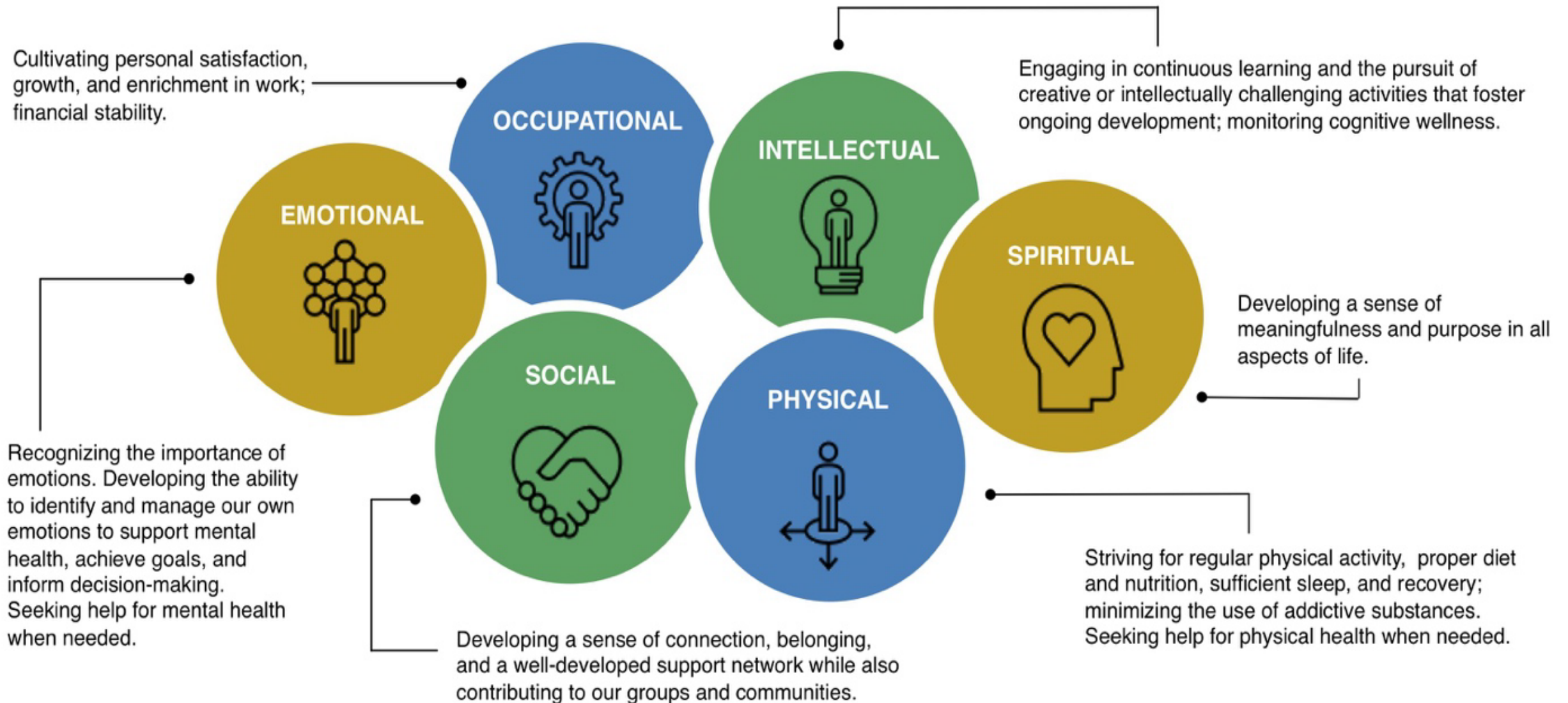
VA(*Comment 5*) NC (*Comment 6*) Lawyer Assistance Program exception to disclosure is to provide confidentiality and encourage help-seeking behaviors.

What?
Why?
How?

WELL-BEING
IS AN ASPECT OF
COMPETENCE

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



Competence and Impairment

ABA: Top 10 Necessary Skills

1. Keeping confidentiality.
2. Arriving on time.
3. Honoring commitments.
4. Integrity and trustworthiness.
5. Treating others with courtesy and respect
6. Listening attentively and respectfully.
7. Responding promptly.
8. Diligence.
9. Having a strong work ethic.
10. Paying attention to detail.



Lawyer Resilience 101

What is Resilience?

- Being able to adapt to life's misfortunes and setbacks.
- Building resilience will not end problems but it can give you the ability to see past them and engage in healthy coping skills.
- Resilience is not:
 - Putting up with difficult situations/people,
 - Being stoic, or
 - Managing on your own.

Lawyer Resilience 101

Managing Stress

- Avoid controllable stressors
- Plan to manage major lifestyle changes
- Realize your limitations
- Prioritize
- Improve communication
- Consistently practice sleep hygiene
- Practice gratitude
- Take breaks
- Share your feelings with someone trustworthy
- Cultivate a positive attitude
- Reward yourself
- Practice mindfulness
- Maintain a healthy diet
- Exercise
- Utilize personal supports
- Seek professional help



Lawyer Resilience 101

Self Monitoring

- Helps to identify and change our behaviors or negative thought patterns.
 - Anticipate experiences that could tempt you to use old, self-defeating behaviors or thoughts.
 - Prepare to use alternate behaviors to substitute for the old, destructive, and unhealthy thought patterns or behaviors.
 - Stay in the moment, consciously noticing how well the new behavior or thought pattern is working.
 - Debrief: when the situation has passed, take time to evaluate and assess how things went.

“*Relapse Prevention Therapy Workbook*,” pp. 14-15. Terence Gorski & Stephen Grinstead, 2010.

Lawyer Resilience 101

Recognize Triggers

- **Emotional triggers:** circumstances or occurrences that cause an intense emotional response.
- Triggers are different for each of us.
- Examples:
 - Abuse of vulnerable populations
 - Certain kinds of disrespect
 - Unfair, unjust realities of life/systems
 - Double bind
 - Something that opens an old wound or cuts too close to home
 - The line at your door?

Lawyer Resilience 101

Reframing Unproductive Thinking

- Seek to understand where you can have a measure of control or influence in a situation versus hyper focusing on what you cannot control or influence.
- Find measurable and specific evidence to support the accuracy of your thoughts (assess assumptions).
- Try to avoid black-and-white, all-or-nothing, thinking styles.
- Consider what would you tell a friend or colleague in the same situation. We often give better advice to others than what we would do.

Lawyer Resilience 101

Routines and Boundaries

Continued

Establish boundaries/routines

- Having a morning and evening routine; this helps your mind and body get going or relax.
- Taking a break mid-day (e.g., going outside; eating away from your desk; going to the gym, for a walk).
- Setting up a workspace that is peaceful.
- Have your workspace face or be near a window. Opening your window can bring in the outdoors and engage your senses.

Lawyer Resilience 101

Utilize Available Supports

- Regular supervision/consultation
- Debriefing
- Mentoring
- Workshops
- Keep an eye out for your fellow colleagues – friends know when to say when and are often a first line of defense



Lawyer Motivation 101

Avoid Malpractice or Impairment

- A lawyer whose physical or mental health “materially impairs” his capacity to represent has a duty to refrain or withdraw from representation
- A lawyer’s impairment does not excuse an ethical violation nor will it operate as a defense to a charge of misconduct
- A lawyer’s impairment may be considered as a mitigating factor with competent medical proof of the condition causing the misconduct

Primary Obligation:
Protect the Interests of the Client and Public



Lawyer Motivation 101

Recognize the Signs of Distress

- **Poor work performance:** Late to work, missing appointments/hearings, late filings
- **Changes in appearance:** weight loss/gain, changes in personal hygiene, disheveled cloths
- **Schedule difficulties:** Long lunches, unexplained absences from work.
- **Mood changes:** tearfulness, crying, statements that range from depressed to grandiose, defensiveness, quick temper
- **Relationship difficulties:** friends, family, colleagues
- **Attention:** low concentration, off-topic outbursts

Lawyer
Motivation
101

Avoid
Malpractice or
Impairment

Examples of Problematic Behaviors

(Practice-Based with Potential Ethical Consequences)

- Missed deadlines
- Last minute requests for continuances
- Frequent absenteeism
- Sub-par work product
- Errors in fiscal management
- Lack of communication with clients and/or colleagues
- Failure to advocate for client's interests
- Late for or missed appointments and/or hearings
- False representations

Lawyer Resilience 101

What Should You Do?

Take Action

- **Recognize:** the signs in yourself or in a colleague of distress
- **Acknowledge:** Don't ignore it
- **Engage:** Talk; Actively listen; Have empathy
- **Help:** Plan and take deliberate action for improved wellness; Avoid enabling
- **Monitor:** If the symptoms exists for longer than two weeks, seek medical or mental health treatment

Trust Your Instincts But Make Sure You are Not Minimizing the Issue



Profession- wide Collaboration

Change the Messaging

01

Acknowledge that dealing with mental health issues is the same as struggling with physical health issues

02

Let employees know you understand what they're going through

03

Understand the different degrees of issues employees may be facing



Profession- wide Collaboration

Change the Messaging

There is no shame in

- Mental illness
- Asking for help
- In the struggle to wellness

Asking for help is the smart thing to do.

Acknowledging the issues is the first step.

The Virginia Judges & Lawyers Assistance Program

Confidential * Non-Disciplinary * No Cost



ASSISTS CONFIDENTIALLY

attorneys, judges, law students and other legal professionals who may be impaired by mental health or substance use concerns.



PROVIDES SERVICES

such as evaluations, assessments, and referrals to health care programs and providers competent to work with legal professionals.



EDUCATES

the judiciary, bar associations, law schools, law firms, and other groups about mental health and substance use in the profession.

24/7 HelpLine: 1.877.545.4682; Website: vjlap.org



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Peer mentoring
Support Groups

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www.vjlap.org



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