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**PROGRAM MATERIALS**

**Program #35203**

**November 25, 2025**

## **What Should I Do? - Ethical Dilemmas and the Duty to Report an Impaired Colleague**

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# What Should I Do?

## *Ethical Dilemmas and the Duty to Report an Impaired Colleague*

**Presented by:**

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# What Is A LAP ?

Our mission:

To provide a caring peer assistance program to save the lives and restore the health and professional competence of lawyers and judges, members of their families, and law students who are at risk as a result of alcohol and drug use, gambling, depression or other serious mental illness. We carry out this mission through a combination of confidential helpline services, volunteer support and education.

- Free information and literature
- Free evaluation by a healthcare professional
- Free assistance with interventions
- Peer support
- Lawyer/Judge/Law Student-only support group meetings
- LCL staff support
- **FULLY OPERATIONAL** during COVID

Our services are **free, confidential, non-judgmental** and **non-obligatory**.

## **Lawyers Concerned for Lawyers of Pennsylvania, PA**

**CONFIDENTIAL Helpline**

**1-888-999-1941**

**24 hrs./day, 7 days/week,  
365 days/year**

**[www.lclpa.org](http://www.lclpa.org)**

## We Protect Your Identity and Information

LAPs do **not**\* report or disclose any identifying information to the Supreme Court, the Judicial Conduct Board, the Disciplinary Board, the Board of Law Examiners or any other agency of the Supreme Court; nor do we report or disclose any identifying information to a State Bar Association, local Bar Associations or any judicial or law related organization. We do not report any identifying information to anyone without your prior consent.

**You may remain anonymous and still receive our services.**

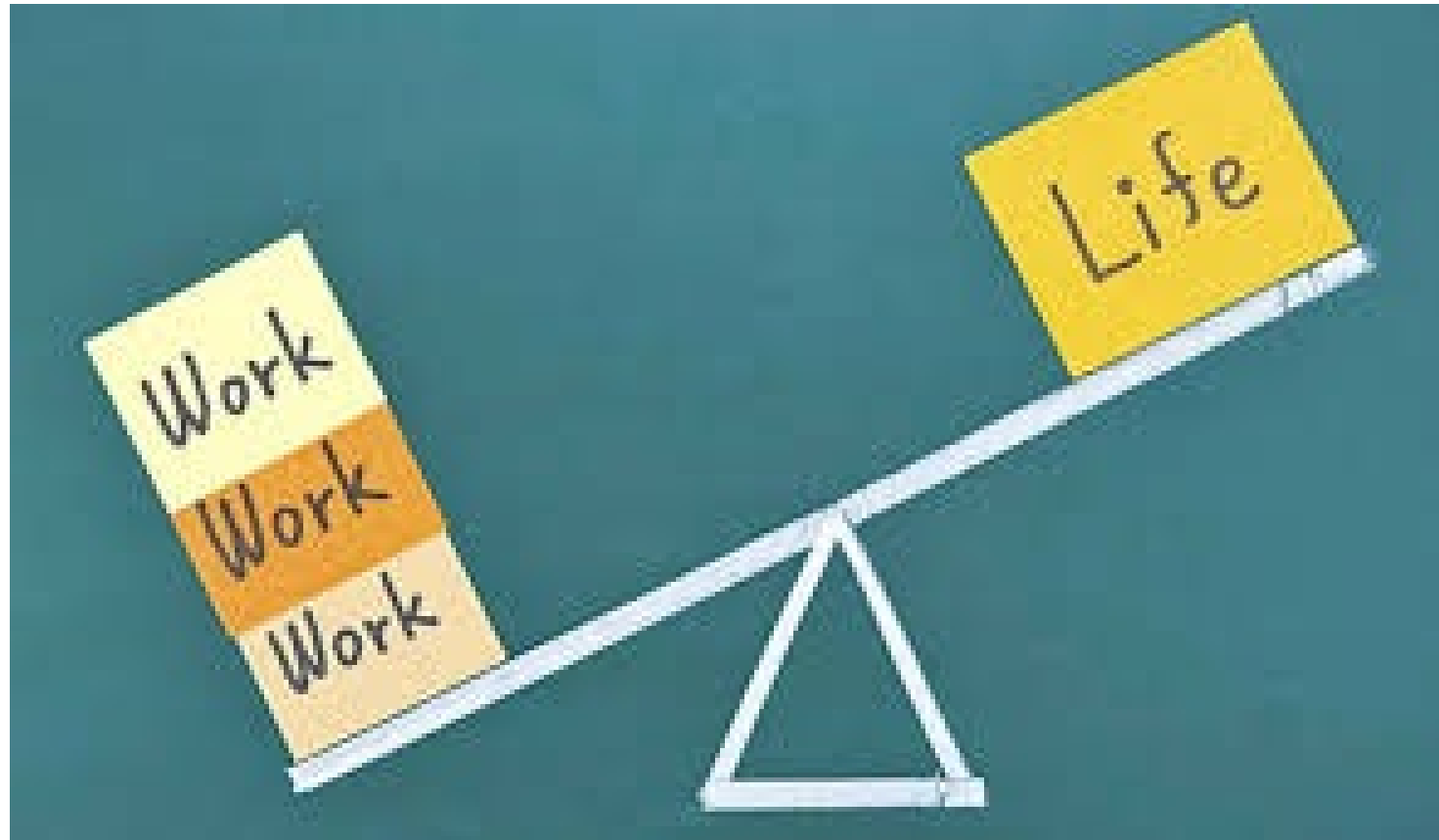
**\*Consult your state's Rules of Professional Conduct**

# Guidance From the Court

Most\* Rules of Professional Conduct address that concern by providing an exception to the duty to report: The Rules may not require disclosure of information otherwise protected or information gained by a lawyer or judge while participating in an approved lawyers assistance program. **See ABA Model Rule 8.3(c)**

The Court believes that “... **providing for an exception ... encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and to the public.**” (emphasis added)

**\*CONSULT YOUR STATE’S RULES OF PROFESSIONAL CONDUCT**



THE PROBLEMS

# Major Problems for Attorneys:

Stress / Anxiety

Depression

Burnout / Secondary Trauma

Alcohol / Substance Use

Cognitive Impairment

Suicide

Gambling and other process addictions





# ABA / Hazelden- Betty Ford Study

(Published February, 2016 *Journal of Addiction Medicine*)

## Problematic Drinking\*

- 6.4% of entire U.S. population
- **21%** of *all licensed attorneys*
- **32%** of *all attorneys under 30 yrs. old*

\* Problematic drinking defined as hazardous, possible dependence



# Be Honest, Be Objective.

Nobody is going to know how you answered these.

- Do you lose time from your practice because of drinking, or sometimes drink more or longer than you intended ?
- Is drinking affecting your reputation as a lawyer ?
- Do you rely on drinking to help you become less shy with colleagues, clients and friends ?
- Do you regularly crave a drink at the end of the day ?
- Have you ever made mistakes or otherwise underperformed on a client matter as a result of being drunk or hung over ?

# Be Honest, Be Objective.

Nobody is going to know how you answered these.

- Have friends or colleagues expressed concern or otherwise commented about your drinking ?
- Does your drinking make you care less about work responsibilities ?
- Do you ever want to drink the morning after a night of drinking ?
- Do you regularly drink alone ?
- Has drinking led to legal or ethics problems for you ?
- Have you gotten into financial problems because of drinking ?

# Be Honest, Be Objective.

Nobody is going to know how you answered these.

- Have you found that you need to drink more than you once did in order to get the desired effect, or that your usual number of drinks had much less effect ?
- Do you avoid drinking with people in the legal community so that you feel freer to drink more ?
- Have you ever missed or rescheduled a meeting or court appearance because you were drunk or hung over ?
- Is drinking making your home life unhappy or causing domestic issues ?
- Has your professional ambition decreased since drinking

Answering yes to even one or two of these might be reason enough for you to take a harder look at your drinking and to examine the role it plays in your life.

Beyond one or two, the more of these you answered affirmatively, the more important it will be to have your drinking further assessed by a professional and to otherwise take protective steps toward reducing your alcohol related risks.



# ABA / Hazelden- Betty Ford Study

(Published February, 2016 *Journal of Addiction Medicine*)

## Depression, Anxiety and Stress Scale

- Depression – **28%** of all attorneys
- Stress – **23%** of all attorneys
- Anxiety – **19%** of all attorneys
- Higher rates among younger lawyers



# STRESS or DISTRESS ?

- Some stress is healthy. Positive stressors can energize and motivate lawyers to be productive and creative problem solvers.
- A totally stress free life is not only unrealistic, it can actually be a harmful form of denial.
- We need to eliminate distress. Distress is harmful both physically and psychologically.





# STRESS or DISTRESS ?

- Gradual, incremental increases in responsibilities, duties, pressures and demands at home and work combined with long workdays and weeks is risky.
- We stay busy and “stuff” our feelings.
- Even relaxing can cause us to feel distress.
- We become unaware that we have lost balance in our lives.
  
- REMEMBER, DISTRESSED LAWYERS EVENTUALLY LOSE THEIR EFFICIENCY AND EFFECTIVENESS !!



# Distress Assessment Quiz

Do any of the following attributes apply to you? Check the ones that apply:

- ☐ Do you sleep less than 7-8 hours per night?
- ☐ Is your sleep restless or do you wake up a lot?
- ☐ Is it difficult to get out of bed in the morning?
- ☐ Do you exercise less than 5 hours a week (including walks)?
- ☐ Do you eat a lot of fast foods or junk foods?
- ☐ Do you skip breakfast or lunch?
- ☐ Do you drink more than 2-3 cups of coffee a day?

# Distress Assessment Quiz

Do any of the following attributes apply to you? Check the ones that apply:

- ☐ Do you drink more than 2-3 alcoholic beverages a day?
- ☐ Do you take sedatives or sleep aids with/without a drink to relax or sleep?
- ☐ Are you more impatient and irritable than you would like to be?
- ☐ Do you feel that you are not in control of your life?
- ☐ Are you feeling worn out at the end of most days?
- ☐ Do you wish for more time to spend with family or yourself?
- ☐ Are you worried about your marriage, children or parents?

# Distress Assessment Quiz

Do any of the following attributes apply to you? Check the ones that apply:

- ☐ Are you struggling to make (financial) ends meet?
- ☐ Do you work a lot of nights, weekends or holidays?
- ☐ Do you skip vacations?
- ☐ Do you feel that you don't have anybody to confide in?
- ☐ Are you feeling stressed over how many "yes" answers you just gave?

The more ☐ marks, the greater the likelihood that you are in distress. Change is possible !!!



# Aloneness

## Solitude vs. Loneliness

### Solitude

- The *physical* state of being alone
- Need not be a permanent experience
- Balance between solitude & togetherness
- Develop an “I’m not alone” mentality



# Aloneness

## Solitude vs. Loneliness

### Loneliness

- The *emotional* state of being alone
- Response to perceived isolation
- Belief that no one understands our circumstances, thoughts or emotions
- More importantly, a belief that no one cares

# Social Isolation

**Social isolation** is the combination of solitude and loneliness, experienced by an individual for an extended period. Both the emotional and physical state feed off of one another and can create an inability to reengage with society in a meaningful way.



# Social Isolation

**Even perceived social isolation** can be linked with adverse health conditions such as depression, poor sleep quality, and accelerated cognitive decline.

The issues only become more substantial when the isolation is *no longer just perceived, but immediate and ongoing.*





# “What’s Wrong With Him/Her?”

You notice a change from baseline.

- Unreliability
- Change in behavior and reactivity
- Decreased quality or quantity of work product
- Disheveled appearance or looking ‘ill’
- Frequent somatic complaints (headaches, back or stomach pain, etc.)







## “What’s Wrong With Him/Her?”

- Missing deadlines and filings
- Absenteeism
- Erratic, irritable and moody
- Withdrawn and uncooperative
- Abrupt weight gain or loss
- Client complaints; trust irregularities

# JD's NOT MD's

What could be going on ?

- Stress and/or anxiety
- Depression
- Medical issues
- Bipolar or other mental illness or mood disorder
- Drug or alcohol misuse or addiction
- Gambling or other 'process' addictions (eating disorder, etc.)

Only a healthcare professional (i.e. *not you*) is qualified to make the diagnosis.

**“The Road to He\*\* is  
Paved with Good  
Intentions.”**



**when we don't reach out...**

- Out of some misplaced sense of loyalty
- Due to fear of anger or retribution
- Out of concern about implications for career and firm
- Because of a 'mind-my-own-business' attitude

**...people get sicker and die.**

# The Good, the Bad and the Ugly

The 'bad and the ugly' kind of  
'intervention':

- Disciplinary action
- Disbarment
- Termination of employment
- Dire health consequences
- Loss of relationships
- Financial ruin
- Arrest
- Death



# The Good, the Bad and the Ugly

## The 'good' kind of 'intervention':

- Thoughtfully planned (call LAP)
  - Individualized (call LAP)
  - Collaborative (call LAP)
- Evokes the person's own motivation to change
- This 'good' can save someone from the 'bad' and the 'ugly.'



# Intervention Techniques



Dancing vs. Wrestling

Motivational Intervention  
vs. 'Old School'  
Intervention

# ‘Old-School’ Interventions

Often evokes defensiveness and counter argument rather than positive change. Professionals respond especially poorly to this style.

- Confrontational
- Authoritarian
- Intimidation & threats
- Often demeaning & demoralizing
- Highly directed with the intervening party clearly assuming the role as the ‘expert boss’
- “You must” or “You need to”

# Motivational Interventions

A compassionate, respectful and collaborative approach

Goals:

- Develop insight/acceptance that there may be an issue and to tap into his own motivation to change
- Help him see the discrepancy between his 'true' self, his goals and values and his current behavior/condition
- Respectful of personal autonomy and dignity
- Guidance vs. explicit direction
- Move from ambivalence to action
- Done 'with' someone rather than 'to' someone



# Steps in Motivational Intervention

1. **Engage** - active listening and open ended questions
2. **Focus** - create goals for the conversation
3. **Evoke**- tap into the internal/intrinsic motivation to change to overcome natural ambivalence
4. **Plan**- work together to develop a 'change' or 'action' plan

# MOTIVATION

A person's degree of motivation for change is a very strong predictor of the likelihood of his/her acceptance of the problem and engagement in and continuation of treatment.

## **Motivation is...**

- a dynamic process (not a static trait) that can increase or diminish over time. We never give up.
- influenced by biopsychosocial and spiritual variables.



# MOTIVATION

- Professionals can be highly motivated to change to preserve their career and are far more likely than others to accept help and treatment accordingly.
- The recovery rate (continuous abstinence over 5 years related to substance use disorder) for professionals is as high as 90% vs. the 10-20% recovery rate for the general population.





# Motivation to Change

- Extrinsic: “made” to do something by some outside force; coercive or threatening.and/or
- Intrinsic: “you” want to change

Consequences are extrinsic factors that can lead to intrinsic change.

***Our goal is to generate an intrinsic desire to change.***

# Ambivalence

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- Simultaneous conflicting feelings or opinions
- A natural human resistance to change
- “Yes, but...”
- The goal of MI is to guide someone from denial, defensiveness, and ambivalence to acceptance of help and hope for healing.



# Duty to Report – Safe Harbor

## PA Rule 8.3 Duty to Report

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority
- (c) **This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gathered by a lawyer or judge while participating in an approved lawyers assistance program.**

## Rule 5.1 Responsibilities of Partners, Managers and Supervisory Lawyers

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
2. the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.



# THE CONSPIRACY OF SILENCE ENABLING

The high functioning lawyer impaired by substance use or mental illness is successful in hiding the signs of their impairment.

They may have someone in their life who is knowingly or unknowingly allowing them to avoid the consequences of their illness based misconduct or behavior.





# THE CONSPIRACY OF SILENCE ENABLING

- Removes motivation to change
- Provides evidence that fuels denial
- Allows cons of treatment to outweigh pros
- PREVENTS treatment of a progressive disease
- Greater harm to career, family and well being
- Not good for YOU either !!

# THE CONSPIRACY OF SILENCE ENABLING

Are YOU an enabler ??

1. **RATIONALIZE** your colleague's behavior by blaming other situations ?
2. **CLEANUP** your colleague's messes ?
3. **IGNORE** new bad behaviors ?
4. **HIDE** your thoughts or feelings to avoid angering a colleague ?
5. **LIE & MAKE EXCUSES** for behavior to colleague's clients or coworkers ?

# THE CONSPIRACY OF SILENCE ENABLING

Are YOU an enabler ??

6. **RESENT** your colleague because they don't seem to care ?
7. **HELP** your colleague by loaning money ?
8. **RESCUE** your colleague when impairment gets them into trouble ?
9. **BACKDOWN** from ultimatums that you know you can't meet ?
10. **GIVE A MILLION "LAST CHANCES"** to colleague for change ?

# Choosing the Best Approach

## ***Things to Consider***

- Risk of harm or injury to self, others or clients?
- Reasons for or behaviors of concern
- Receptivity of the troubled lawyer to approach
- Support systems available
- Who is willing to be involved?

# Why Can Law Professionals Be Challenging to Approach?

- Highly educated; the '**paralysis of analysis**' effect (adept at rationalization and comparison)
- Excel at debate
- Accustomed to being in control
- Excessive dependence on self-reliance
- Pressure to appear invincible



# Key Principles

- Collaborative conversation, not confrontation
- Build a rapport, create trust, and convey concern. Approach from a place of love and caring.
- Ask open ended questions.
- Kindly re-state what she says:
  - It validates that you are listening to her.
  - People are more persuaded by what they hear themselves say.
  - Mirroring can help her realize her own inconsistencies.

# Key Principles

- Don't engage in an argument or debate.
- Don't 'label' someone alcoholic or depressed.
- Don't rely on hearsay.
- Don't use a 'laundry list' to prove your point.
- Make sure your body language and tone of voice conveys concern, not anger or frustration.
- Use leverage as a last resort. Risk of harm to self, clients, firm or others is unacceptable.

# Choosing the Best Approach

## *A Step Up Plan of Action*

Start with the least confrontational approach indicated:

1. A private meeting
2. A group meeting with no leverage
3. A group meeting with leverage

Crisis intervention or appointment of a conservator may be indicated in severe cases.



# If the Risk of Harm is 'Low'

- LCL can help you with “what to say,” “how to say it,” and how to respond.
- Build rapport and trust.
- Segue into what causes you concern.
- Inquire how he is feeling.
- Respect his desire to not “open up.”
- Active listening, not authoritarian approach
- Follow up with LCL to discuss the next approach strategy should the colleague decline help.

# If the Risk of Harm is 'High'

LCL will:

- help develop a plan of action and/or connect you with a professional interventionist.
- assist with arranging treatment *before* the approach.

**The same 'key principles' apply.**

Be prepared to:

- communicate personal and professional boundaries.
- hold her accountable and exert appropriate leverage if she refuses assistance.

# Private Meeting

- Express your concern and why you are concerned – don't label – don't overstate.
- If he discloses a problem, acknowledge it and empathize (not pity.)
- Share your own experience with a similar problem if appropriate.
- Tell him you want to be helpful.
- Ask if he has a plan for dealing with the problem.

# Private Meeting

- Offer your support; don't criticize his plan or give unsolicited advice.
- Ask if he has heard of LCL; tell him about us; ask if he is interested in calling us, but don't be pushy.
- Tell him you are always available to take his phone call or to meet with him to talk.
- Mention you may give him a call just to stay in touch as a friend.
- Ask if he will accept your help if his plan doesn't work as well as he hopes it will.

# Group Meeting

- A properly conducted group meeting adds subtle pressure without coming across as threatening or coercive.
- The same principles apply; be non-judgmental, non-confrontational, empathetic, and concerned.
- If the problem is acknowledged but she refuses your assistance, ask what her plan is.
- Ask if she will accept your help if her plan doesn't work as well as she hopes it will.

# The Application of Leverage

## **CALL LCL FIRST!**

LCL will help develop an action plan and/or connect you with a professional interventionist.

- Same principles apply
- Explain how his conduct is causing harm to colleagues, clients, the firm, etc.
- Communicate your personal and professional boundaries. End any residual enabling.
- Be prepared to hold him accountable and exert appropriate leverage.
- Consequences are a fact of life & can lead to a motivation to change.

# Alternate “Invite” Approach

- Schedule a meeting of concerned parties with a professional interventionist / therapist. (LCL can provide resources.)
- Inform the distressed colleague of the meeting and *invite* him to it.
- He may attend out of curiosity.
- If not, then use the meeting (s) to prepare for a *formal* intervention using leverage if indicated.
- Allow the professional to facilitate.

What can  
YOU do ??



Although it is difficult, remember that your end goal is to help motivate the impaired lawyer or judge to seek professional help they so desperately need.



## What Should I Do?

### Ethical Dilemmas and the Duty to report and Impaired Colleague

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Thank you all for attending today's Continuing Legal Education program.

If you have any questions that were not answered or would like to contact me for any reason, please call or email me **confidentially** at the following:

**Brian S. Quinn, Esq., Education and Outreach Coordinator**

**LAWYERS CONCERNED FOR LAWYERS of PA, INC.**

**(717) 460-3385**

**[brian@lclpa.org](mailto:brian@lclpa.org)**

# Model Rules of Professional Conduct

## 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: Communications

(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.

# Model Rules of Professional Conduct

## Rule 1.6: Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
  - (1) to prevent reasonably certain death or substantial bodily harm;
  - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
  - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
  - (4) to secure legal advice about the lawyer's compliance with these Rules;
  - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
  - (6) to comply with other law or a court order; or
  - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

# National Task Force on Lawyer Well-Being Recommendations

**"The Path to Lawyer Well-Being:  
Practical Recommendations For Positive Change"**

**<http://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>**

# How to Join the National Well-Being MOVEMENT

## **“WELL-BEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS”**

Created By Anne M. Brafford For Use By The American Bar Association

[https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lis\\_colap\\_well-being\\_toolkit\\_for\\_lawyers\\_legal\\_employers.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_well-being_toolkit_for_lawyers_legal_employers.authcheckdam.pdf)

## **“Well-Being Toolkit Nutshell: 80 Tips For Lawyer Thriving”**

[https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lis\\_colap\\_Well-Being\\_Toolkit\\_Flier\\_Nutshell.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_Well-Being_Toolkit_Flier_Nutshell.authcheckdam.pdf)