

POP-UP CLE: PERSPECTIVES ON ETHICS
AND PROFESSIONALISM

Presentation for CHIEF JUSTICE'S
COMMISSION ON PROFESSIONALISM –
FEBRUARY 22, 2022

Supplemental Materials to accompany
presentation
-Matt Mashburn

*"We remember what we understand; we understand only what we pay
attention to; we pay attention to what we want." - Edward Bolles*

Why should we aspire to Professionalism in Law Office Management?

1. The difference between Ethics and Professionalism. See *King v. State*, 262 Ga. 477, 421 S.E.2d 708, 709 (1992), Benham J., concurring. ("Recently, in commenting on the need for professionalism, Chief Justice Clark said, 'Ethics is that which is required and professionalism is that which is expected.'").
2. The difference between "following the Rules" and Ethics & Professionalism. See *Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C.*, 265 Ga. 374, 453 S.E.2d 719 (1995), Benham, J., concurring. ("While I applaud the desire of this court to clear up perceived confusion in the trial of legal malpractice cases and agree with the disallowance of ethical violations as a basis for malpractice actions, I must sound a note of caution with regard to our holding that ethical rules are relevant to the standard of care in legal malpractice actions.").
3. The difference between ethically supervising your staff and running your law office like a Professional.

What are the Characteristics exhibited by a Professional?

Honesty.
Trustworthiness.
Truthfulness.
Integrity.
Fairness.
Civility.

See *King v. State*, 262 Ga. 477, 421 S.E.2d 708, 709 (1992), Benham J., concurring. (Professionalism comes when one realizes that all of the problems encountered in a closing practice cannot be solved by passing laws, rules or regulations).

See "A Lawyer's Creed" or The Aspirational Statement on Professionalism,

- An Honest lawyer does not steal from a trust account.
- An Ethical lawyer does not allow others to steal from a trust account.
- A Professional knows how to do the job of every person who touches the lawyer's trust account and not only exercises general supervision of the trust account but is aware of every aspect of the trust account's operation.

Professionalism

Is there a Problem?

21 percent of licensed, employed lawyers qualify as problem drinkers.

For lawyers under age 30, its 31.9 percent.

By comparison only 6.8 percent of the adult population as a whole has a drinking problem.

Lawyers have twice the rate of problem drinking than among surgeons.

Krill, Johnson & Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, *Journal of Addiction Medicine* (February, 2016)

The same study reports that the most common barrier to a lawyer seeking treatment for a drinking problem is the concern that others will find out that they need help.

"Upon arrival, though, instead of making a brilliant argument before a judge, these young lawyers may find themselves competing with their similarly gifted peers for the privilege of proofreading documents for a high-ranking partner. If they do a great job, they may get to proofread all weekend." Smith, The most terrifying part of my drug addiction? That my Law Firm would find out, *Washington Post*, March 24, 2016.

For the First time in my lifetime:

Lawyers have passed Nurses and Teachers in self-rated “Low Decision Latitude” (the second highest contributing factor behind family history in predicting coronary artery disease and heart attacks) Ridley, *Genome: The Autobiography of a Species in 23 Chapters* (Harper Perennial 2006)(citing a study of 17,000 British civil servants and another study of over 1,000,000 employees of Bell Telephone Company).

In addition to high rates of substance abuse and alcoholism, lawyers have three times (3.6 actually) the rate of depression than society as a whole. Lukasik, wwwlawyerswithdepression.com, November 2, 2016 citing Hazelden Betty Ford Foundation study).

Lawyers self reporting issues that they themselves had experienced during their career as a Lawyer:

Anxiety	61.1%	19% currently experiencing
Depression	45.7%	28% currently experiencing
Social Anxiety	16.1%	
Suicidal Thoughts	11.5%	
Panic Attacks	8.0%	
Self-Injury	2.9%	
Suicide Attempt	0.7%	



Among the lawyers who used a drug, how many used that drug in the last week:

Stimulants	74.1%
Sedatives	51.3%
Tobacco	46.8%
Marijuana	31.0%
Opioids	21.6%

Krill, Johnson & Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, *Journal of Addiction Medicine* (February, 2016)

One risk factor not present in other professions is the requirement of a pessimistic thinking style to do the job of lawyering well.

One study tested the entire entering class of the University of Virginia Law School in 1990 and followed the students throughout their three year career. As a whole, pessimists outperformed the optimists in grade point average and law journal success. Seligman, Ph.D., *Why are Lawyers so Unhappy?* from *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment*.

If you think about it, all of due diligence is based on pessimism.

The ability to anticipate the whole range of problems and betrayals that non-lawyers are blissfully blind to is highly adaptive for the practicing lawyer who can, by doing so, protect clients from dangerous events.

In what other professions do we see the same traits of hyper-vigilance and the anticipation of existential threat as being required for survival?
 Combat Infantry. Kimble MO, Fleming K, Bennion K. *The Hypervigilance Questionnaire: Assessment of hypervigilance in a trauma sample*. Paper presented at the 25th Annual Meeting of the International Society for Traumatic Stress Studies; Atlanta, GA. (Nov. 2009).
 Police Officer. Kevin M. Gilmartin, *Emotional Survival for Law Enforcement*, (E-S Press, Tuscon, AZ), pg. 35
 ("The average citizen has the neurological advantage of stimulus habituation. The capacity to be non-reactive to stimuli whose threshold of perceived potential danger is insufficient to warrant attention. The law enforcement perceptual style considers stimulus habituation to be potentially lethal carelessness.")

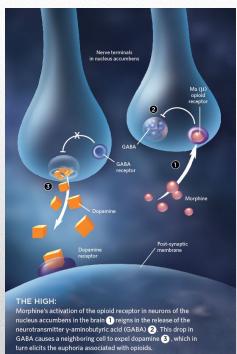
In other words, just like a police officer and a combat soldier, a lawyer must develop a skill to recognize when "things just don't look right" in order to survive.

No wonder that so many lawyers suffer from less intense but similar symptoms as combat veterans who come back with post-traumatic stress disorder. Vincent, *Lawyers and Post-Traumatic Stress Disorder*. Michigan Bar Journal, June, 2015.

"Angry or irritable outbursts," "self-destructive behavior," "hyper-vigilance," "exaggerated startle response," and in more severe cases "problems with concentration," and "sleep disturbance."

Remind you of anybody you know?





It's all about the Dopamine

How to Boost Dopamine

On the HR approved list:

Caffeine

Alcohol (after hours)

NOT HR approved:

Marijuana

Psychoactive Mushrooms

Heroin

Opioids

LSD

Flakka

Ecstasy

Cocaine

Better Choices (none of these will get you into trouble).

Eat foods rich in tyrosine. Almonds, bananas, avocados, eggs, beans, fish and chicken.

Exercise regularly

Meditate

Get a massage

Get a good night's sleep

Listen to restful music



Source: Brodwin, [What 9 common drugs including caffeine, weed and booze do to your brain](#). Business Insider, July 14, 2015

- We have an Ethical Duty to ourselves. We have a Professional Obligation for each other.
- “To my colleagues in the practice of law, I offer concern for your welfare.” Chief Justice’s Commission on Professionalism’s “A Lawyer’s Creed.”
- “What could have helped?...I still wish for that chance to try.” Barclay, [The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness Georgia State Bar Journal](#), June, 2018 p. 79.



Kind-hearted listening

The State Bar of Georgia Wellness Program

<https://www.gabar.org/wellness/about.cfm>

The Wellness Program has four major parts:

Lawyer Assistance Program

Suicide Awareness Campaign

SOLACE | Support of Lawyers, All Concern Encouraged

Law Practice Management

All of them are free, all of them are confidential.

While it's too early to have a cite to a Bar Complaint where participation in the Wellness Program was cited as a positive, mitigating factor, doesn't it make sense that one would rather be the one who sought help than one who didn't?



Additional Resources:

Helping Others:

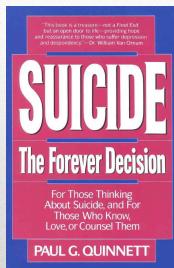
Quinn, *Suicide The Forever Decision* Crossroad Publishing Company (1992).

Helping Ourselves:

Blauner, *How I Stayed Alive When My Brain was Trying to Kill Me: One Person's Guide to Suicide Prevention* William Morrow Paperbacks (2003).

Understanding the Issues:

Joiner, *Why People Die by Suicide* Harvard University Press (2007).



Helping Others:

Kreisman, MD *I Hate You – Don't Leave Me: Understanding the Borderline Personality* TarcherPerigee; Revised, Updated edition (2010)

Helping Ourselves:

Mason & Kreger, *Stop Walking On Eggshells* New Harbinger Publications (2010)

Understanding the Issue:

Roth, *Surviving a Borderline Parent: How to Heal Your Childhood Wounds and Build Trust, Boundaries and Self-Esteem* New Harbinger Publications (2004)

