

Ethics in Law

Lawyer Impairment by the Numbers

Results of a 2020 American Lawyer Mental Healthy Survey Found:

- **74% of lawyers said that the profession had a negative impact on their mental health over time.**
- **17.9 % said they contemplated suicide at some point in their career.**
- **31.2 % said they are depressed**
- **64 % said they have anxiety**
- **10.1 % said they have an alcohol problem**
- **2.8 % said they have a drug problem**

Common Types of Impairments

- **Alcohol Use Disorder**
- **Substance Use Disorder**
- **Depression**
- **Anxiety**
- **Obsessive Compulsive Disorder**
- **Bipolar Disorder and Mania**
- **Suicidal Ideation**

Why Are Lawyers At Risk?

- **Adversarial Nature of Practicing Law**
- **Perfectionism**
- **Pessimism**
- **Long hours, billable hours**
- **Deadlines**
- **Lack of work/life balance**

TYPES OF MISCONDUCT

Neglect

- Incompetent effort
- Failure to respond to client inquiries
- Failure to appear
- Failure to prosecute case
- Missed statute of limitations
- Providing false information to a client
- Poor office/file management

Financial Misconduct

- **Conversion of client funds**
- **Comingling client funds**
- **Failure to promptly refund fees**
- **Over-billing/bill padding**
- **Deliberate destruction of financial records**

Criminal Misconduct

- **Drunk driving**
- **Possession/sale of narcotics**
- **Domestic violence**
- **Forged drug prescriptions**
- **Harassment**
- **Stalking**

Complaints 2023-2024

ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2023-2024

COMPLAINTS PENDING & RECEIVED

Complaints Pending June 30, 2023 ¹	1893	
Complaints Received July 1, 2023 – June 30, 2024	<u>2055</u>	
Total Complaints Pending and Received		<u>3948</u>

DISPOSITION OF COMPLAINTS

Dismissed

By Disciplinary Counsel after initial review	714	
By Disciplinary Counsel after investigation	620	
By Investigative Panel	66	
By Commission Counsel	<u>6</u>	
Total Dismissed		<u>1406</u>

Not Dismissed

Closed But Not Dismissed	4	
Closed Due to Death of Lawyer	21	
Letter of Caution – Issued by Investigative Panel	29	
Letter of Caution – Issued by Disciplinary Counsel	8	
Admonition – Issued by Investigative Panel	19	
Admonition – Issued by Supreme Court	3	
Public Reprimand	3	
Definite Suspension	2	
Disbarment	7	
Permanent Resignation in Lieu of Discipline	<u>0</u>	
Total Not Dismissed		<u>96</u>

Total Complaints Resolved	<u>(1502)</u>
Total Complaints Pending as of June 30, 2024	<u>2446</u>

Complaints 2023-2024

Practice Type

Law Firm	39.41%
Solo Practice	26.03%
Public Defender	12.32%
Prosecutor	10.52%
Other Government	5.26%
Unknown	3.60%

Source of Complaint

Client	46.34%
Opposing Party	28.96%
Family/Friend of Client	4.53%
Citizen	4.39%
Attorney	2.00%
Unknown	1.93%
Bank	1.80%
Family/Friend of Opposing Party	1.73%
Litigant (ADR/Regulatory)	1.66%
Court Rptr/Med. Prov/3d Party Payee	1.33%

Complaints by Practice Area 2023-2024

<u>Case Type</u>	
Criminal	37.35%
Domestic	18.51%
General Civil	7.59%
Probate/Estate Planning	7.19%
Real Estate	5.46%
Personal Injury/Property Damage	5.26%
Not Client Related	4.39%
Property/Contract Dispute	2.06%
Other Case Type	2.00%
Unknown	1.93%
Debt Collection/Foreclosure	1.33%
Workers Compensation	1.26%

<u>Alleged Misconduct</u>	
Legal Issues Only	18.84%
Dishonesty/Deceit/Misrepresentation	16.78%
Inadequate Communication	14.85%
Neglect/Lack of Diligence	11.25%
Unknown	11.12%
Other Litigation Conduct	3.26%
Trust Account Conduct	3.20%
Scope of Representation	2.80%
Other Conduct	2.53%
Conflict of Interest	2.40%
Civility	1.80%
Lack of Competence	1.73%
Fees	1.66%
Failure to Deliver Client File	1.46%

Hypothetical 1

Attorney Allison has been battling with a particularly contentious attorney for several months now. The trial date has arrived, she sits in her vehicle in the parking lot of the courthouse. She sees her adversary pull into the parking lot, because of the contentious nature of their relationship, Allison decides to stay in her car and wait until her adversary goes into the courthouse. Instead, the adversary remains in his car and appears to be snorting cocaine in his car prior to walking into court.

What is Allison's duty?

Rule 8.3 Reporting Professional Misconduct

(c) 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.

Hypothetical 2

Tim is a part-time municipal judge. He takes a trip to Las Vegas with a group of friends. Several of those friends are local attorneys that practice in his court. After returning from vacation a friend posts photographs on social media of the trip. The photographs include Tim in a hot tub with the other attorneys drinking a beer and Tim in the hotel casino.

Has Tim violated any of the Rules of Ethics? If so, which ones?

Canon 2 A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Hypothetical 3

Ebony is a domestic lawyer who is handling a contentious divorce and her client's husband Doug is a judge. During the course of discovery Ebony sees ring camera footage of Doug driving recklessly and appearing intoxicated after exiting his vehicle. She also has bank statements that coincide with the videos and would indicate he was in fact at the bar.

What is Ebony's obligation under the Rules of Ethics?

ABA Rule 8.3 Reporting Professional Misconduct

(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.

Hypothetical 4

Attorney Alan has just seen the local news where a former client has criticized his handling of her case. The woman has described him as a “slimy, no-good lawyer”. The reporter covering the story is now calling Alan’s office for a statement.

Without his former client’s consent, what if any protected client information can Alan disclose to the reporter to defend his reputation?

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

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(6) 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.

Hypothetical 5

Walter recently left his firm to start his own practice. Business has been slower than expected and he has incurred some unexpected expenses. He is now behind on his rent for the new office. He has some money a client placed in escrow for an investigator on a new case. However, he has a disbursement scheduled for next week on a small personal injury claim. He wouldn't have to use all the escrow funds to cover his rent, and he can replace the money before anyone notices...

If Walter decides to use his escrow funds what Rule is he violating?

Rule 1.15 Safekeeping Property

(c) A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the lawyer and the client have entered into a written agreement concerning the handling of fees paid in advance pursuant to Rule 1.5(f).

Hypothetical 6

Judge Moony is a regular at a local watering hole. He usually makes an appearance once or twice a week and he always puts more than a few back. One evening there is a fight at the bar and the police are called. Judge Moony was not involved in the fight, but he knows the men that were. He identifies himself to police and asks that the men not be arrested.

Has Judge Moony violated any Ethics Rules? If so, which ones?

Canon 1 A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2 A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Rule 8.4 Misconduct

- (e) engage in conduct that is prejudicial to the administration of justice;**
- (f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or**

Hypothetical 7

Alonso has been practicing for 25 years. He has never been disciplined or had a complaint filed against him. Then COVID-19 hit, and Alonso became isolated and anxious. To cope with his anxiety, he started drinking heavily. He stopped answering emails and calls and he missed the statute of limitations on a major case. Alonso now has a hearing before the disciplinary committee.

What Rules has Alonso violated?

Is Alonso's substance use disorder a mitigating or an aggravating factor?

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:

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information.

Hypothetical 8

Moira receives an email from someone seeking a lawyer to handle the wrongful death case of her husband. The woman's husband was killed in a motor vehicle accident with a drunk driver who was leaving a bar. Moira instantly recognized the bar's name - because her firm currently represents the owner in an unrelated matter.

What should Moira do with this information?

Rule 1.7 Conflict of Interest: **Current Clients**

(a) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client.

Hypothetical 9

Edna is a real estate attorney in a small community. She has never worked on a criminal case. However, Edna has a friend who was recently charged with assault and is begging her to handle the case.

If Edna takes the case, is she automatically violating the Rules? If she is concerned about violating the Rules, what are her options?

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.

Hypothetical 10

Attorney Christopher is working late with several other attorneys. One attorney asks Christopher to get some documents from his desk drawer. Christopher goes to retrieve the documents, but he opens the wrong drawer. Instead, he finds multiple, prescription pill bottles that appear to be empty and have different names on them.

Does Christopher have actual knowledge? Could that knowledge be inferred from the circumstances?

Rule 8.3 Reporting Professional Misconduct

(c) 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.

Hypothetical 11

Attorney Megan has been frustrated with a particularly difficult client. The client provided Megan with medical records to submit to the court. Before submitting these records Megan realized that her client had manufactured part of the records. Megan now wants to withdraw as her attorney.

In her motion to the court can Megan include the fact her client falsified records?

Rule 1.16 Declining or Terminating Representation

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

Rule 1.6 Confidentiality of Information

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act;

(3) 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.

Hypothetical 12

Attorney Melody is planning to retire soon. She has a longtime friend Attorney Scott that she has been referring new clients to. Melody runs into Scott in court several times over the next few weeks. She knows Scott well and felt something was off the first time she saw him, but most recently she could smell the alcohol coming off his breath.

What is Melody's duty? Does she have a duty to the client's she referred to Scott?

Rule 8.3 Reporting Professional Misconduct

(c) 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.

Hypothetical 13

Attorney Maria has bi-polar disorder. Her firm has been supportive and accommodating and her disorder has never been an issue. One day Maria announces her intent to leave the firm. Her plan is to set up a solo practice and to take all of her current client files with her. The other lawyers in the firm are concerned that, absent any supervision or assistance, Maria will be unable to competently represent clients because of her BPD.

What are the duties of the remaining lawyers in the firm?

Rule 8.3 Reporting Professional Misconduct

(c) 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.

Rule 1.4 Communications

(b) A lawyer shall: explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Hypothetical 14

Stewart works as in-house counsel for a candy company. A recent batch of chocolate candy was accidentally mixed with peanuts. The peanuts and chocolate were separated but the chocolate was then sold without any warning labels. The company wants to know how to protect themselves but also avoid a recall.

What should Stewart's course of action be?

Rule 1.16 Declining or Terminating Representation

(b) a lawyer may withdraw from representing a client if:

- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
- (3) the client has used the lawyer's services to perpetrate a crime or fraud.**

Rule 1.6 Confidentiality of Information

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act;**
- (2) to prevent reasonably certain death or substantial bodily harm;**