

AABA Education Committee – CLE Written Materials

Event: Lawyer Competence in TV & Film

Date and Time: January 7, 2021, 5:00 pm to 6:00 pm

Panelists: Neel Chatterjee, Erin Daruszka

Description of Event: Discussion of mental health and substance abuse issues in practicing law

Total Number of Hours of MCLE Credit: 1 hour

Type of MCLE Credit: Competence

Agenda:

6:00 pm to 6:05 pm – Introductions

6:05 pm to 6:50 pm – Discussion

6:50 pm to 7:00 pm – Q & A

AABA Education Committee
MCLE Mini-Marathon
Thursday, January 7, 2021
5:00 PM – 6:00 PM

Lawyer Competence in TV & Film
Black and White on the Silver Screen but Shades of Gray in Real Life

Where do attorneys draw the line between normal human experience and having a problem where we may need to seek help?

In California, two updated rules on attorney competence went into effect on November 1, 2018, Rule 1.1 regarding Competence and Rule 5.1 (c) regarding Supervisory Duty.

Rule 1.1 Competence

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers

- (c) A lawyer shall be responsible for another lawyer’s violation of these rules and the State Bar Act if:
 - (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

Mental Health

Although not all distress is illness, the mental health of lawyers may become severe distress or illness and turn into a competence issue over time. Approximately one in five attorneys abuse alcohol, while approximately one in four attorneys have been screened positive for symptoms of depression. Some ways to deal with depression include practicing a healthy mind and body, and addressing protective factors within your personal life, relationship with others, organizational support, and finding meaning and purpose.

Substance Abuse

Many different types of substance abuse may affect competence. Attorneys should monitor and manage substance abuse, including substances such as alcohol, mushroom, and microdosing.

Temporary Incompetence

Temporary incompetence may occur at stressful times such as when the attorney is severely sleep deprived during trial. Warning signs of possible impending temporary incompetence include increase in sick days or other absences, personality changes, changes in work quality or motivation, changes in personal appearance, and social changes such as withdrawal or isolation. Response to these warning signs may include talking to HR or seeking therapy.

Resources Are Available

Although the topic of mental health may be a stigma, there are resources available to help:

- ABA National Task Force on Lawyer Well-Being
- ABA Commission on Lawyer Assistance Programs (COLAP)
- Lawyer Assistance Programs (run through local Bar Associations)
- Your employer's Employee Assistance Program
 - Many employers provide this free, confidential resource for mental health and substance use.
 - Some also provide other benefits to support greater well-being like concierge services
- National Alliance on Mental Illness
- Hazelden Betty Ford Foundation

Here are some self-assessments that may be helpful:

- Alcohol Use Self-Assessment: <http://auditscreen.org/using-audit/>
- Mental Health Self-Assessment: <http://www.helpyourselfhelpothers.org/>
- Burnout Self-Assessment: <https://www.scientificamerican.com/article/quiz-areyou-on-the-path-to-burnout/>

Moderator:

Andrew Ong, Partner in IP Litigation, Goodwin

Speakers:

Neel Chatterjee, Partner in IP litigation, Goodwin

Erin Daruszka, Senior Manager in Human Resources, Goodwin