

LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET K
INTRODUCTION TO SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Worksheet K is intended to facilitate a discussion about substance abuse and mental health issues in the legal profession, including possible warning signs, what to do if the new lawyer is faced with a substance abuse or mental health issue, and resources for assistance.

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- Review the accompanying Indiana Judges and Lawyers Assistance Program (JLAP) materials and discuss the statistics regarding substance abuse and mental health problems in the legal community. *See* JLAP Ad, JLAP Statistics Ad, Depression Handout, Depression Warning Signs, Suicide Warning Signs, Signs and Symptoms of Substance Abuse in Attorneys, What is Chemical Dependency?, DSM IV Criteria for Substance Use Disorders.
- Discuss the signs and symptoms of chemical dependency and depression described in the attached pages.
- Share with the new lawyer experiences, if any, that you have had dealing with an impaired lawyer or judge and how you handled (or should have handled) the situation(s.)
- Discuss with the new lawyer your experience (if any) with noticing the signs and symptoms of chemical dependency in someone with whom you worked. Talk about how one might professionally address this type of situation.
- Discuss a lawyer's duty to decline or withdraw from representation if a physical or mental condition materially impairs his or her ability to represent a client. *See* Prof. Cond. Rule 1.16.
- Discuss your duty to report the misconduct of a colleague when a substance abuse problem or mental health issue affects his or her fitness to practice law. *See* Prof. Cond. Rule 8.3 and Admis. Disc. R. 31, sec. 8.
- Identify local assistance programs and direct new lawyers to the JLAP website at www.IN.gov/judiciary/ijlap for information. Discuss the confidentiality of referrals to JLAP or other local assistance committee.
- Discuss the most professional ways for dealing with the following situations:
 - The judge before whom you appear seems to be impaired
 - The opposing counsel in your case attempts to negotiate with you while s/he appears to be impaired
 - The opposing counsel in your case appears with his or her client at a deposition or hearing and you suspect s/he is impaired
 - Your client appears to be hearing impaired.

- Discuss a lawyer's personal and professional duties to assist their colleagues if they suspect impairment.
- Discuss a lawyer's heightened responsibility to a client who is mentally impaired. See Prof. Cond. Rule 1.14 below.
- Review and discuss the attached article: Donald R. Lundberg *Message in a Bottle: Lawyers and Alcohol* RES GESTAE, July/August 2006
- Discuss the article in the ABA Publication GP Solo Magazine, Timothy Davis Edwards *The Lawyer as Counselor Representing the Impaired Client* October/November 2004 <http://www.abanet.org/genpractice/magazine/2004/oct-nov/lawycounselor.html>
- Review materials from JLAP attached on Depression and Substance Abuse in Attorneys

IN-HOUSE MENTORING RELATIONSHIPS

- Share with the new lawyer any policy your firm has for dealing with an employee who exhibits symptoms of chemical dependency or mental health problems. Discuss what the new lawyer should do if such problems are suspected of partners, other associates or support staff.
- Discuss any support plans your firm has in place for assisting an employee with chemical dependency or mental health problems.
- Discuss the importance of protecting clients' cases from an impaired lawyer.

RESOURCES

Indiana Judges and Lawyers Assistance Program: <http://www.IN.gov/judiciary/ijlap>

Evansville Bar Association Lawyers Assistance Committee:
<http://www.evbar.org/Attorneys/Paralegals/jlap.aspx>

American Bar Association Commission on Lawyer Assistance Programs:
<http://abanet.org/legalservices/colap>

INDIANA RULES OF PROFESSIONAL CONDUCT

I. CLIENT-LAWYER RELATIONSHIP

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.
- (d) This Rule is not violated if the lawyer acts in good faith to comply with the Rule.

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
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 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client

VII. MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

- (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 reporting of a violation or disclosure of information if such action would involve disclosure of information that is otherwise protected by Rule 1.6, or is gained by a lawyer while providing advisory opinions or telephone advice on legal ethics issues as a member of a bar association committee or similar entity formed for the purposes of providing such opinions or advice and designated by the Indiana Supreme Court.
- (d) The relationship between lawyers or judges acting on behalf of a judges or lawyers assistance program approved by the Supreme Court, and lawyers or judges who have agreed to seek assistance from and participate in any such programs, shall be considered one of attorney and client, with its attendant duty of confidentiality and privilege from disclosure.

To view comments to the above rules, *see*
http://www.in.gov/judiciary/rules/prof_conduct/index.html

INDIANA ADMISSION AND DISCIPLINE RULES

RULE 31. JUDGES AND LAWYERS ASSISTANCE PROGRAM

Section 1. Establishment.

The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. . . .

Section 2. Purpose.

The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

Section 8. Referrals.

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.

- (d) The Committee may refer judges, lawyers, and law students to outside agencies, organizations, or individuals for assessment or treatment upon such terms authorized by the Guidelines.

Section 9. Confidentiality.

- (a) All information, including records obtained by the Committee in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana, shall be confidential, except as provided by the Program Guidelines.
- (b) Nothing in this section prevents the Committee from communicating statistical information which does not divulge the identity of any individual.
- (c) Violation of the confidentiality provisions of this rule shall be subject to disciplinary proceeding under Indiana Admission and Discipline Rules 12, 23 and 26.

Section 10. Immunity. The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

To view the complete text of the above rule, *see*
http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc241999455

PROGRAM GUIDELINES FOR THE INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

The Indiana Judges and Lawyers Assistance Program (JLAP), established pursuant to Indiana Admission and Discipline Rule 31, provides assistance to judges, lawyers, and law students who suffer from physical or mental disabilities resulting from disease, chemical dependency, mental health problems, or age that impair their ability to practice or serve. JLAP neither engages in punishing nor disciplining members nor does it have the power or authority to do so. These policies and procedures have been adopted by JLAP and constitute guidelines approved by the Committee.

Section 1. Definitions.

The following terms or phrases shall have the meanings assigned in this section.

- (a) **Chairperson**--the person who is currently holding the office of chairperson of the committee.
- (b) **Clinical director**--clinical director of JLAP
- (c) **Committee**--the body comprised of the persons appointed by the Supreme Court of Indiana to administer JLAP pursuant to Admis.Disc.R. 31 § 1.
- (d) **Confidential information**--all information, whether oral, written, or electronically acquired, received by, or held in the possession of a representative, which in any manner (including identity) relates to a member who is impaired, believed to be impaired or possibly has an impairment.

- (e) **Contract participant**--a participant who has entered into a formal, written agreement with JLAP.
- (f) **Court**--the Supreme Court of Indiana
- (g) **Director**--executive director of JLAP
- (h) **Impaired**--having a physical or mental disability resulting from disease, chemical dependency, mental health problems, or age that could affect a member's ability to practice law or serve as a lawyer or judge.
- (i) **Independent source**--any person consulted to verify a JLAP contact who did not initiate the contact.
- (j) **JLAP**--the Indiana Judges and Lawyers Assistance Program as established pursuant to Admis.Disc.R. 31, its staff and volunteers.
- (k) **Members or members of the legal profession** -- persons who are judges, lawyers, law students, or have applied for admission to the Indiana bar.
- (l) **Monitor**--Volunteer who oversees a contract participant's compliance with a JLAP monitoring agreement.
- (m) **Monitoring agreement**--a formal written agreement between a participant and JLAP that establishes the obligations of the participant and provides for the monitoring of the participant's compliance.
- (n) **Official referral**--referral of a member to JLAP by:
 - 1) The Indiana Supreme Court Disciplinary Commission;
 - 2) The Indiana Board of Law Examiners;
 - 3) The Indiana Commission on Judicial Qualifications; or
 - 4) Any Indiana law school administration as part of its disciplinary process.
- (o) **Participant**--any member who is referred to JLAP and, as a result thereof, receives a contact or communication from a representative.
- (p) **Permitted disclosures**--disclosure of confidential information
 - 1) Permitted or required pursuant to Rule 31 § 9(c);
 - 2) With the written consent of the participant or contract participant to whom such confidential information relates; or
 - 3) By or among representatives to carry out or accomplish the purposes of JLAP.
- (q) **Representative**--the director, clinical director, any member or employee of the committee or any volunteer.
- (r) **Self-referral**--a member's direct contact with a representative to consider becoming a participant in JLAP not in furtherance of an official referral or a third party referral.
- (s) **Staff**--any and/or all of the employees of JLAP.
- (t) **Third party referral**--any referral of a member to JLAP other than an official referral or self-referral.

- (u) **Volunteer**--any person (including members of the committee) who has entered into an agreement with JLAP to assist in providing services in accordance with JLAP policies and procedures including completing any required application process.

Section 2. Purpose of JLAP.

Pursuant to Admis.Disc.R. 31 § 2, JLAP was established to assist impaired members in recovery; to educate the bench and bar; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system.

These guidelines have been adopted with these purposes in mind. The work of JLAP is designed to be educational, confidential, and responsive to the special situations faced by impaired members of the legal profession.

The JLAP committee and the executive director may take any other action required to fulfill, yet remains consistent with, the stated purpose.

Section 3. Organization.

JLAP was established pursuant to Admis.Disc.R. 31. The Committee consists of fifteen (15) members appointed by the Court: seven (7) practicing attorneys, five (5) judges, one (1) law student, and two (2) judge(s), lawyer(s), or law student(s). The director operates under the direction of the committee. The clinical director, staff and volunteers operate under the direction of the director.

Section 4. Policies.

- (a) JLAP designs and delivers programs to raise the awareness of the legal community about potential types of impairment and the identification, prevention and available resources for treatment and/or support.
- (b) JLAP works toward increasing the likelihood of recovery by encouraging early identification, referral and treatment.
- (c) Any person may report to the director, clinical director, or any member of the committee that a particular member of the bar needs the assistance of JLAP.
- (d) JLAP encourages and welcomes contact by any means. However, the confidentiality of e-mail communications is subject to the limitations inherent in Internet transmissions.
- (e) Neither JLAP, nor any representative, in their role as a volunteer, engages in the practice of law while fulfilling their JLAP responsibilities. Upon admission to inpatient or residential treatment, or with a physical disability case, JLAP may:
 - 1) work with the participant to find friends and/or colleagues to assist with the law practice;
 - 2) work with the relevant local and state bar association committees to assist with the practice;
 - 3) should no other arrangements be possible, attempt to facilitate movement of a participant's case files to the respective clients upon receipt of written permission from the participant.

Section 5. Referral Procedures

(a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

(b) Self-Referrals and Other Referrals

- 1) When the participant is a self-referral, the following procedures apply:
 - i. JLAP may conduct an initial consultation to determine the nature of the participant's impairment;
 - ii. where appropriate, JLAP may make a referral to a qualified medical and/or clinical resource for further evaluation, assessment, and/or treatment;
 - iii. if appropriate, JLAP may assist in the development of a treatment plan, which may include participation in JLAP;
 - iv. with the participant's permission, a volunteer will be appointed to provide ongoing support.
- 2) When the member is referred by a third party the following procedures apply:
 - i. JLAP will obtain detailed information from the referral source regarding the nature of the impairment, the referral source's relationship to the member, and the circumstances giving rise to the referral. The identity of the referral source shall remain confidential unless the referral source instructs otherwise.
 - ii. JLAP may conduct further investigations to verify the circumstances that led to the referral by contacting independent sources to determine whether the member may be impaired.
 - iii. Any independent sources shall be approached in a manner to preserve, as far as possible, the privacy of the member.
 - iv. If it is determined the member may be impaired, JLAP will determine how the member will be approached with special attention given to involving local volunteers and/or local members of the bar who may already be involved in the case.
 - v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.
- 3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:
 - i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
 - ii. assistance in locating treatment resources; and
 - iii. assistance in development of continuing care including support and referral to JLAP.

- 4) The director may terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.
- (c) Official Referrals
- 1) Upon receipt of an official referral for assessment/evaluation, JLAP will:
 - i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
 - ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
 - iii. Contact the official referral source for background information and direction, if necessary.
 - iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
 - v. Release information and/or the final assessment/evaluation as allowed by written release.
 - 2) Upon receipt of an official referral for a monitoring agreement JLAP will:
 - i. Determine if all appropriate signed releases/authorizations have been obtained.
 - ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
 - iii. Develop a monitoring agreement.
 - iv. Select and provide a monitor.
 - v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the agreement to explain JLAP's role and the agreement terms and conditions.
 - vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

Section 6. Services.

- (a) Any member is eligible for assistance and participation in JLAP. JLAP services will be provided without charge for initial consultation, in-house assessment, referral, and peer support.
- (b) Referrals for medical and/or clinical evaluations, treatment, therapy and aftercare services will be provided; engagement of, and payment for, such services is solely the responsibility of the participant.
- (c) Participants entering into a monitoring agreement with JLAP due to an official referral or upon their own initiative may be charged a monthly fee pursuant to JLAP's fee policy as approved by the Supreme Court from time to time.

Section 7. Treatment--Medical Assistance.

- (a) JLAP endeavors to provide a network of therapeutic resources that includes a broad range of health care providers, therapists, and “self-help” support groups. JLAP will maintain a statewide list of available providers.
- (b) With the written consent of the participant, JLAP may maintain contact with, and receive information from, the treatment provider. JLAP may remain involved in support during treatment, and shall endeavor to provide peer support and aftercare assistance in early recovery.
- (c) In cases where it is determined the participant is not in need of inpatient or residential treatment, JLAP may provide referrals to outpatient counseling resources and self-help groups such as 12-step programs.

Section 8. Confidentiality.

- (a) JLAP and its representatives will observe anonymity and confidentiality at all times. JLAP is an autonomous program, independent from the administrative offices of the Court or any other board or disciplinary organization, agency or authority.
- (b) No disclosure of confidential information will be made by any representative except for permitted disclosures and those identified in Ind. Professional Conduct Rule 8.3.

Section 9. Role of Program Volunteers.

JLAP will maintain a statewide network of volunteers to assist the committee in carrying out the purposes of JLAP. Volunteers fulfill the following functions:

- (a) Assist in investigations, assessments, interventions, monitoring and support;
- (b) Appear on behalf of contract participants as witnesses at the discretion of the director;
- (c) Attend ongoing training on topics that enhance their ability to assist impaired members of the legal profession; and
- (d) Disseminate information about JLAP including the offer of presentations to local and specialty bars.