Session YLN 2 | More Than “Fine”: Anxiety and Mental Health in the AAPI Legal Community

Navigating anxiety and mental health is a challenge when you are faced with the high demands and expectations of the legal profession - billable targets, adversarial counsel and demands on your time from clients, stakeholders, and of course, your family. When we toss in the additional stigma of talking about anxiety in the legal profession and the AAPI community, we’re faced with a crisis that is growing by the day.

The prevailing advice is to “toughen up”, “stay heads down”, or “fake it until you make it”. But if anything, this has led to some of the highest rates of attrition and burnout in the legal profession. The status quo doesn’t work anymore. But what if there was another way?

Join our speakers in a safe and authentic space, as they share their own lived experiences of anxiety and mental health in their careers and how they were able to (for the most part) navigate their careers with their life outside of work.

Moderator:
Steven Ngo, Counsel, Rivian

Speakers:
Blake Gansborg, Partner, Nelson Mullins Riley & Scarborough LLP
Chinny Law, Partner, Ramos & Law
Alina Lee, Founding Partner, Your Ad Attorney
Stephanie Ng, Associate, Ogletree Deakins
More Than “Fine”
Anxiety and Mental Health in the AAPI Legal Community
Speakers

- Alina Lee, Founding Partner, Your Ad Attorney
- Blake Gansborg, Partner, Nelson Mullins Riley & Scarborough LLP
- R. Chinny Law, Partner, Ramos & Law
- Stephanie Ng, Associate, Ogletree Deakins

Moderator

- Steven Ngo, Co-Founder, Beyond the A | Counsel, Rivian
ABA Model Rules Impacted by Wellbeing

Rule 1.1: Competence
Rule 1.3: Diligence
Rule 1.4: Communications
Rule 1.6: Confidentiality
Rule 1.15: Safekeeping property (no commingling of funds)
Rule 5.1: Responsibilities of partner or supervisory lawyer
Rule 5.2: Responsibilities of subordinate lawyer
Rule 5.3: Responsibilities regarding nonlawyer assistance
Rule 8.3: Reporting professional misconduct
Rule 8.4: Misconduct
Prevalence of Substance Use and Mental Health Concerns Among American Attorneys

- 12,825 licensed, employed attorneys were surveyed
- Problematic drinking: This is when you’re not physically dependent on alcohol (you can go days, weeks, or months without alcohol) and you don’t have detox symptoms, but when you do drink, it causes an issue in your life or in the life of someone you know.
  - 6.4% of the general population suffers from problematic drinking
  - 20.6% of attorneys in the survey screened positive for problematic drinking. This is 1 out of 5 attorneys.
  - 32% of attorneys under the age of 30 in the survey screened positive for problematic. This is almost 1 out of 3 attorneys under the age of 30.
- Depression
  - In 2017, 7.1% of the general population 18 years and older had a major depressive episode
  - 38% of the lawyers in the survey experienced symptoms of depression. Rates decreased as age increased - junior positions correlated with higher rates of depression

Results from a 2015 study conducted by the ABA and published in the Journal of Addiction Medicine in January/February 2016 issue at https://www.americanbar.org/groups/lawyer_assistance/research/colap_hazelden_lawyer_study/
Prevalence of Substance Use and Mental Health Concerns Among American Attorneys

● 19% of lawyers surveyed experience symptoms of anxiety

● 23% of lawyers surveyed experience stress

● 11.5% of lawyers surveyed reported suicidal thoughts during their careers. 2.9% reported injurious behavior. 0.7% reported at least one suicide attempt.
  ○ When asked if they’ve sought help for suicidal thoughts and behaviors, lawyers generally said no because:
    ■ Stigma - they didn’t want others finding out they needed help; and
    ■ Concerns regarding privacy and confidentiality

Results from a 2015 study conducted by the ABA and published in the Journal of Addiction Medicine in January/February 2016 issue at https://www.americanbar.org/groups/lawyer_assistance/research/colap_hazelden_lawyer_study/
Prevalence of Substance Use and Mental Health Concerns Among American Attorneys

- Other difficulties include:
  - Social alienation
  - Work addiction
  - Sleep deprivation
  - Job dissatisfaction
  - A diversity crisis
  - Work-life conflict
  - Incivility in the practice of law
  - A narrowing of values so that profit predominates
  - Negative public perception

Results from a 2015 study conducted by the ABA and published in the Journal of Addiction Medicine in January/February 2016 issue at https://www.americanbar.org/groups/lawyer_assistance/research/colap_hazelden_lawyer_study/
Conclusion

Change must occur in the legal profession. The numbers for substance abuse and mental health issue are at odds with a sustainable career and culture.
ABA Ethics Rules Implications

1. When we start struggling with follow through, attention to detail, and prompt responsiveness, it can call into question our integrity and trustworthiness as a lawyer. When we start missing deadlines, we fail to respond to clients, we ignore our work, we do sloppy work, we’re violating rules of competence (Rule 1.1), diligence (Rule 1.3), communications (Rule 1.4), and maintaining the integrity of the profession. Violation of any Rule of Professional Conduct triggers Rule 8.4, Misconduct.

2. Depending on what’s happening with a lawyer’s performance and behavior due to substance use or mental health issues, there could be violations of the rules of confidentiality and safekeeping property (Rules 1.6 & 1.15).
ABA Ethics Rules Implications

3. And both supervisory lawyers and subordinate lawyers can be found in violation of the rules if colleagues are found in violation of the rules (Rules 5.1 & 5.2). And if we know that a colleague has violated a Rule of Professional Conduct that calls into question the colleague’s honesty, trustworthiness, and fitness as a lawyer, we have a duty to report it. If we don’t it’s an ethical violation (Rule 8.3).

4. And it extends to nonlawyer assistants who may be struggling with substance use or mental health issues. Supervising attorneys can be found in violation of the rules if nonlawyer assistants are in violation of the rules (Rule 5.3).

5. According to an article by the ABA in October 2014, at least 25% of the attorneys who face formal disciplinary charges from their state bar are identified as suffering from addiction or other mental illness.

American Bar Association, If There Is One Bar A Lawyer Cannot Seem to Pass: Alcoholism in the Legal Profession, October 1, 2014
ABA Ethics Rules Implications

1. Avoiding malpractice: Approximately 60% of all malpractice claims and 85% of all trust fund violation cases involve substance abuse.

2. Delivery of quality, effective client service
   a. Major depression is associated with impaired executive functioning, including diminished memory, attention, and problem-solving.
   b. For alcohol abuse, the majority of abusers (up to 80%) experience mild to severe cognitive impairment. Deficits are particularly severe in executive functions, especially in problem-solving, abstraction, planning, organizing, and working memory - core features of competent lawyering.

American Bar Association, If There Is One Bar A Lawyer Cannot Seem to Pass: Alcoholism in the Legal Profession, October 1, 2014
Rule 1.1: Competence

Client-Lawyer Relationship

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

Client-Lawyer Relationship

A lawyer shall act with reasonable diligence and promptness in representing a client.
Rule 1.4: Communications

Client-Lawyer Relationship

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.
Rule 1.6: Confidentiality

Client-Lawyer Relationship

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;
Rule 1.6: Confidentiality

**Client-Lawyer Relationship**

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.
Rule 1.15: Safekeeping Property  
(no commingling of funds)

Client-Lawyer Relationship

a. A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

b. A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

c. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
Rule 1.15: Safekeeping Property
(no commingling of funds)

Client-Lawyer Relationship

d. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

e. When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
Rule 5.1: Responsibilities of partner or supervisory lawyer

Law Firms And Associations

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(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.
Rule 5.2: Responsibilities of subordinate lawyer

Law Firms And Associations

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.
Rule 5.3: Responsibilities regarding nonlawyer assistance

Law Firms And Associations

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the 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 person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
Rule 8.3: Reporting professional misconduct

Maintaining The Integrity of The Profession

(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 gained by a lawyer or judge while participating in an approved lawyers assistance program.
Rule 8.4: Misconduct

Maintaining The Integrity Of The Profession

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) 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;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The report’s recommendations focus on five central themes:
1. Identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession
2. Eliminating the stigma associated with helpseeking behaviors
3. Emphasizing that well-being is an indispensable part of a lawyer’s duty of competence
4. Educating lawyers, judges, and law students on lawyer well-being issues, and
5. Taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

See the full report at https://www.americanbar.org/groups/professional_responsibility/task_force_lawyer_wellbeing/
QUESTIONS?