

# Clients in Crisis

## Representing Today's Clients

Chase L. Andersen, Esq.  
Lawyers Concerned for Lawyers

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## Lawyers Concerned for Lawyers - Minnesota's Lawyers Assistance Program

- Who We Are:
  - Minnesota's Lawyer Assistance Program (LAP)
- Who We Support:
  - Lawyers, Judges & Law Students, their immediate family members
  - Free Service and 100% Confidential
  - Last year we assisted over 400 individuals.
- Our Contact Information
  - [help@mnlcl.org](mailto:help@mnlcl.org)
  - [\(651\) 646-5590](tel:651-646-5590)
  - [www.facebook.com/mnlcl](http://www.facebook.com/mnlcl)

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## Today's Topics:

- Issues Facing Today's Clients
- Ethical Considerations
- What Help is Available

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## Clients in Crisis

- Today's Stressors
  - Pandemic and Changes to our Lives
  - Unprecedented Political and Judicial Strife
  - Social & Racial Inequalities/Injustices
  - Economical Downturn
  - Lawyers on the Forefront

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## Clients in Crisis

- Our Clients
  - All eyes on Minnesota
  - Affects Community in Numerous Ways
  - Changing needs of Clients
  - Clients helping to support others (friends, family, co-workers, community)
  - Lawyers Needed to Help Advocate/Guide/Heal

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## All of This Can Lead to Impairment

- Mental Health and Substance Use Issues
- Racial tensions could be triggering past traumas or may become new traumas
- Workplace discrimination and daily microaggressions (racial/gender/other) can lead to depression and anxiety
- Can lead to Post Traumatic Stress Issues

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## All of This Can Lead to Impairment

- What is Impairment?
  - Inability to effectively and competently perform
  - A disability need not be present for there to be impairment

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## Depression: Common Symptoms

- Feeling Sad or Empty
- Loss of Interest in Normally Pleasurable Activities
- Change in Appetite
- Sleep Disturbance
- Fatigued, Loss of Energy
- Difficulty Concentrating, Remembering, Deciding
- Physical Pain(s)
- Wishing You Weren't Alive
- Thinking of Dying, Suicide

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## Depression: Symptoms in Older Adults

- Loss of self-worth – burden to others
- Low motivation
- Anxiety or worries – self or others
- Less or no interest in personal care
- Social withdrawal and isolation
- Slow movement
- Self medication

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## Other Mental Health Issues

- Bipolar Disorder
- Anxiety Disorder (including OCD)
- ADHD
- Post Traumatic Stress Disorder
- Age Related Dementia
- Schizophrenia
- Personality Disorders
- Psychosis

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## The Disease of Addiction

- **Primary, chronic disease with genetic, psychosocial, and environmental influences**
- Can be **progressive** and even **fatal**
- **Impaired control** over drinking, **preoccupation** with the substance, continued use despite adverse consequences, and distortions in thinking, most notably **denial**
- Symptoms manifested in physical behaviors

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## Stages of Dependency

- **Early** - use for stress, emotional relief, increasing frequency and amount of use, blackouts/memory loss, possible harmful consequences
- **Middle** - family problems, personality changes, behavior inconsistent with values, continued use despite harmful consequences, using to feel "normal"
- **Late** - physical deterioration, free-floating anxiety, using to eliminate the pain, premature death

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## Legalization of Marijuana in Minnesota

- Many legal professionals may have previously avoided using marijuana before legalization because of professional, legal, and licensing concerns.
- Marijuana potency and use frequency have significantly increased over the last 25 years. Plus, consumption methods have expanded.
- Risks factors include, but are not limited to, lack of uniform regulation, overuse, and addiction.

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## Other Addictions

- Drugs
  - Prescription & Non-Prescription
- Gambling
- Internet Addiction
- Sexual Compulsivity
- Eating Disorders
- Shoplifting Addiction
- Compulsive Shopping

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## Impairment in Older Adults

- Cognitive Impairment (memory and/or thinking skills)
- Alcohol and Other Drugs
- Socially Isolates
- Family Resistance
  - Resistance On Both Sides
- Loss of Independence an Issue

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## Problem Gambling...

...is gambling behavior which causes disruptions in any major area of life: psychological, spiritual, physical, social or vocational.

Source: National Council on Problem Gambling

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## Signs of a Gambling Problem

- Increased frequency of gambling activity.
- Increased amount of money gambled.
- Spending an excessive amount of time gambling at the expense of job or family time.
- Being preoccupied with gambling or with obtaining money with which to gamble.
- Gambling continues despite negative consequences such as financial problems, absence from work or family problems.

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## What's Your Role as Attorney? What Do You Say? How Do You Say It?

- Your Client
- Opposing Party
- Opposing Counsel
- The Court
- The Client's Family
- Co-Workers/Partners
- Your Friends and Family
- You

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## How does this affect your practice?

- Criminal Cases – capacity, pleas & PSI
- Family Law/CHIPS – parents & kids
- Employment Law – equal pay, discrimination, harassment
- Contracts/Business Transactions
- Elder Law
- Bankruptcy
- Commitments

Jennifer L. Thompson, *Competent but compromised: Representing clients on the spectrum between mental health and mental illness*, Bench & Bar of Minnesota, April 2021.

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## Ethical Considerations

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## Ethical Considerations

- Diminished Capacity
- Confidentiality
- Communication
- Declining or Terminating Representation
- Lawyer as Advisor

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## Rule 1.14 – Clients with Diminished Capacity

- Diminished Capacity
  - When a client's capacity to make adequately considered decisions in connection with a representation is diminished, the lawyer shall, *as far as reasonably possible*, maintain a normal client-lawyer relationship with the client.

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## Rule 1.14

- When lawyer reasonably believes the client has diminished capacity, is at risk of substantial harm (physical, financial, or other) *unless action is taken*, the lawyer may take reasonable protective action.

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## Rule 1.14

- When taking protective action, the lawyer is impliedly authorized to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

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## Rule 1.4: Communication

- Ordinarily, the information given to client from a lawyer is to be that which is appropriate for a client who is a *comprehending and responsible adult*. However, fully informing the client according to this standard may be impracticable, for example, where the client suffers from diminished capacity.

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## Rule 1.16: Declining or Terminating Representation

- Barring exceptions, a lawyer shall not represent a client or (in an ongoing case) shall withdraw from representing a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

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## Rule 1.16: Declining or Terminating Representation

- If a client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer and that discharge may also be seriously adverse to the client's interests.
- The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective actions.

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## Rule 2.1: Advisor

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.
- A lawyer may refer not only to the law but to other considerations such as moral, economic, social, etc.

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## Rule 2.1: Advisor - Scope of Advice

- Purely technical legal advice, therefore, can sometimes be inadequate.
- Relevant moral and ethical considerations can be considered when giving advice because moral and ethical considerations may influence how the law will be applied.

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## Rule 2.1: Advisor

- Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation.

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## Information Gathering

- Ask about alcohol, substance use, etc.
- Other issues: family, property, facts, history
- Screen for safety (yours, your clients, others)
- Ask in open ended manner: if it's an issue, it will make a difference in the case
- "What will the other party say about you?"

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## Be on the lookout for...

- Unusual Speech/Thought Patterns
- Fixation of Certain Facts
- Irrational Fears/Misperceptions
- Lack of Incite into own behaviors
- Physical Symptoms (sleep, weight, illness)

Jennifer L. Thompson, *Competent but compromised: Representing clients on the spectrum between mental health and mental illness*, Bench & Bar of Minnesota, April 2021

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## Make It An Issue

- It's not your job to diagnose
- FLAG IT – you need to deal with a variety of issues and this is one of them
- "It might help your case."

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## When You Know There is Mental Illness

- Medication Issues
- How to Communicate
- Who Else Can Help
  - Mental Health Services
  - Community Resources
- Capacity
  - Decision Making Ability
  - Total or Specific?

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## Recognize Warning Signs of Suicide

- Statements of hopelessness, helplessness, or worthlessness
- Threats or talking with intent
- Preoccupation with death - moving from ideation to plan
- Tying up loose ends, urgency, acting recklessly
- **Get immediate professional help. Take it seriously.**

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## What can we do?

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## How to Help your Clients

- Check in with Clients (past and current)
- Have Mentors to Call (and use them!)
- Be cognizant of communication limitations
- Recognize their previous experiences and how this could be triggering previous traumas
- *Caringly* set boundaries

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## How to Help your Clients

- Shut Up and Listen (listen *differently*)
  - Client feel like they can trust their lawyers and they may want to talk about issues outside of your representation and experience
- Be Patient, Compassionate and Observant
- Acknowledge their Answers and Discuss Biggest Concerns/Priorities
- Ask each other for help & practice self care...

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## What does this do to us?

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## STRESS!

- Rules Based Morality
- Perfectionism
- Living Up to Expectations
- Vicarious Trauma
- Competitive Nature
- Pessimism - we must see everything that could go wrong
- Problem Solvers ("Suit of Armor")
- Little Value in Feelings, Only FACTS
- "Success" defined by others
- ...and PRESSURE (Good & Bad!)



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## 2016 ABA/Hazelden Study

- Prevalence of Substance Use & Mental Health issues in attorneys:
  - 20.6% use alcohol in unhealthy ways
  - 28% have experienced depression
  - 23% overwhelming stress
  - 18% anxiety
  - 11.5% have thought about suicide
- Higher rates for lawyers practicing 10 years or less and/or those 30 years of age or younger

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## Mental Health & The Pandemic



Category	Anxiety	Depression	Suicide
Attorney Pre-COVID	23	28	11
General Population During COVID	30	26	11

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## American Lawyer Survey

- 3,200 Lawyers Surveyed
- 70% said pandemic made their mental health worse
- 53.83 % felt their law firm was actually helping with their mental health during COVID

*The Legal Industry's Mental Health Problem Grew in 2020, Our Survey Shows; May 3, 2021.*

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## Stigma

- ABA/Hazelden Study - Barriers to seeking help included:
  - Not wanting others to find out they needed help
  - Concerns regarding privacy or confidentiality
  - Bar/Professional Concerns

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## Promoting Supportive Work Environment

- Healthy Lawyer ↔ Healthy Employer
- Well-being programming, activities & committees
- Identifying your employee's major sources of stress
- Normalize conversations about these issues
- Who is a safe and empathetic person at your office that someone can talk to when they are struggling?
- Policies in place if someone needs time off/returns from leave
- Mental Health Days, Sick Time for Counseling, etc.
- "How are you doing?"

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## Healthy Stress Management

- *Allow yourself to make mistakes*
- Mistakes are BEHAVIORS, not who you are as a person
- Listen to Your Body
- Challenges are opportunities for change
- Oftentimes these Issues are hard to see
- Mental Health vs. Physical Health
- Don't "Sweep Problems Under The Rug"
- Getting help if things go bad *and* when things aren't going bad
- Realize that we can't always do it alone
- Positive Changes for yourself and the profession

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## Resources

- Sand Creek – Our Counseling Partner
  - 651-430-3383
  - [www.sandcreekeap.com](http://www.sandcreekeap.com)
  - Click on "Member Portal & App"
  - When creating account, use "lawyers" for company code
- County Resources
- National Alliance on Mental Illness
  - [www.namihelps.org](http://www.namihelps.org)
- **Lawyers Concerned for Lawyers**

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## How LCL Can Help...

- Available Services:
  - 4 Free Counseling Sessions
  - Peer Volunteers (Maybe You?)
  - Treatment Center Visits
  - 24-hour hotline
  - Coaching
  - Referral to Community Services
  - CLE's, Outreach, Tabling & Education
  - Group Therapy & Support Group
  - Crisis Intervention
  - Someone to listen

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2550 University Ave. West, Ste. 313N  
St. Paul, Minnesota 55114

Phone: (651) 646-5590  
Toll Free: (866) 525-6466  
24 hour crisis line: **1-800-367-3271**

Website: [www.mnlcl.org](http://www.mnlcl.org)  
Facebook: [www.facebook.com/mnlcl](http://www.facebook.com/mnlcl)  
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