

Under Pressure: Avoiding Ethical Issues in Private Practice

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A Look at Statistics: Where do the Problems Arise?

Disciplinary Complaints
ARDC Annual Report 2015



There were 5,648 investigations and
125 lawyers were sanctioned.

Nature of the Complaint

- 54% of all grievances involve issues of poor attorney-client relations, neglect of a client matter (39%), or failure to communicate with a client (15%).



Classification of Charges Docketed in 2015 by Violation Alleged

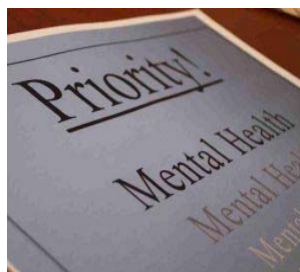
Chart 9: Classification of Charges Docketed in 2015 by Violation Alleged

Type of Misconduct	Number*	Type of Misconduct	Number*
Neglect.....	2,137	Failing to comply with Rule 764 following discipline.....	71
Failing to communicate with client, including failing to communicate the basis of a fee.....	700	Not abiding by a client's decision concerning the representation or taking unauthorized action on the client's behalf.....	64
Fraudulent or deceptive activity, including misrepresentation to a tribunal, clients and non-clients.....	675	Improper communications with a party known to be represented by counsel or with an unrepresented person.....	55
Excessive or improper fees, including failing to refund unearned fees.....	636	Improper division of legal fees/partnership with nonlawyer.....	46
Improper management of client or third party funds, including commingling, conversion, failing to promptly pay litigation costs or client creditors or issuing NSF checks.....	522	Failing to preserve client confidences or secrets.....	40
Failing to provide competent representation.....	342	Threatening criminal prosecution or disciplinary proceedings to gain advantage in a civil matter.....	26
Filing frivolous or non-meritorious claims or pleadings.....	314	Failing to report misconduct of another lawyer or judge.....	21
Criminal conduct, assisting a client in a crime or fraud, and counseling illegal or fraudulent conduct.....	292	Failing to supervise subordinates.....	15
Improper trial conduct, including using means to embarrass, delay or burden another or suppressing evidence where there is a duty to reveal.....	245	Ex parte or improper communication with judge or juror.....	12
Failing to properly withdraw from representation, including failing to return client files or documents.....	236	Failing to maintain appropriate attorney-client relationship with client with diminished capacity.....	11
Conflict of Interest.....	214	Incapacity due to chemical addiction or mental condition.....	9
Rule 1.7: Consensual client.....	145	Improper extrajudicial statement.....	7
Rule 1.8(a): Improper business transaction with client.....	10	Violation of anti-discrimination statute or ordinance.....	5
Rule 1.8(b): Improper use of information.....	1	False statements about a judge, judicial candidate or public official.....	4
Rule 1.8(c): Improper instrument or gift from client.....	2	Improper practice after failure to register under Rule 756.....	4
Rule 1.8(d): Improper financial assistance to client.....	7	Stating or implying ability to improperly influence authority.....	4
Rule 1.8(d)(1): Improper compensation from third party.....	3	Aiding judicial misconduct/gift/loan to judge or court employee.....	3
Rule 1.8(d)(2): Improper settlement of claim against lawyer.....	1	Improper employment where lawyer may become a witness.....	3
Rule 1.8(d): Improper acquisition of interest in cause of action.....	1	Abuse of public office to obtain advantage for client.....	1
Rule 1.8(d): Improper sexual relations with client.....	8	Failing to report discipline in another jurisdiction.....	1
Rule 1.9: Successive conflicts.....	24	Failing to disclose to prevent death/bodily harm.....	1
Rule 1.10: Imputed conflict.....	6	Failing to report criminal conviction.....	1
Rule 1.13: Organizational client.....	1	Failing to pay child support.....	1
Rule 1.18(c): Prospective client.....	5	Failing to file tax return or pay taxes.....	1
Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction.....	201	Making false statement in bar admission or disciplinary matter.....	1
Prosecutorial misconduct.....	126	No misconduct alleged.....	143
Practicing in a jurisdiction where not authorized.....	99		
Improper commercial speech, including inappropriate written or oral solicitation.....	78		

* Totals exceed the number of requests for investigations docketed in 2015 because in many requests more than one type of misconduct is alleged.

Impact of Substance Abuse/Mental Health Issues

- 27% of all sanctioned lawyers had one or more identified substance abuse or mental impairment issue



Impairments Identified for Lawyers Disciplined in 2015, by Practice Setting

Chart 21D: Impairments Identified for Lawyers Disciplined in 2015, By Practice Setting

Practice Setting	Solo	Firm 2-10	Firm 11-25	Firm 26+	Gov't/Judicial	In-House	No Practice
34 Lawyers* with Impairments	24	3	1	1	2	0	3
Impairment							
Substances:							
Alcohol	8	2	0	0	1	0	3
Cocaine	5	0	0	0	0	0	0
Cannabis	0	0	0	0	0	0	0
Heroin	2	0	0	0	0	0	0
Other	1	0	0	0	0	0	0
Mental Illness:							
Depression	7	0	1	0	1	0	1
Bipolar	3	1	0	1	0	0	0
Schizophrenia	0	1	0	0	0	0	0
Other	4	0	0	0	0	0	0
Gambling	4	0	0	0	0	0	0
Sexual Disorder	4	0	0	0	0	0	0
Cognitive Decline	0	0	0	0	0	0	0
% of 34 lawyers with impairments	70%	9%	3%	3%	6%	0%	9%

*Some lawyers have more than one impairment identified.

Legal Malpractice Complaints – ABA Survey 2006

1. Failed Office Procedures

- Inadequate docketing system
- Inadequate message system



Legal Malpractice Complaints – ABA Survey 2006

2. Failed Ability – Substantive Legal Error

- Failure to know the law
- Failure to apply the law
- Lack of knowledge regarding deadlines
- Inadequate discovery
- Conflict of interest



Cracking Under the Pressure – What Not to Do

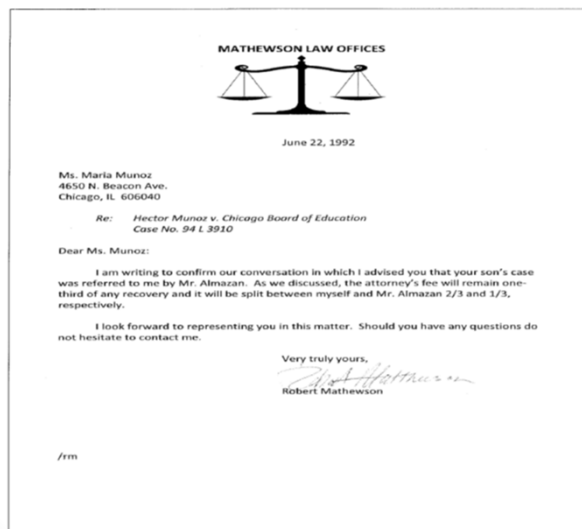
The Candor Impaired Approach

- In re Mathewson



Cracking Under the Pressure - What Not to Do

- Mathewson Law Offices



Cracking Under the Pressure – What Not to Do

- The Fitzgeralds



Cracking Under the Pressure – What Not to Do

- In re Mason



Cracking Under the Pressure – What Not to Do The Ostrich Approach

- In re Demansky



Found to suffer from bi-polar disorder and
was suspended one year UFO.

Preventing ARDC Complaints/Ethical Issues

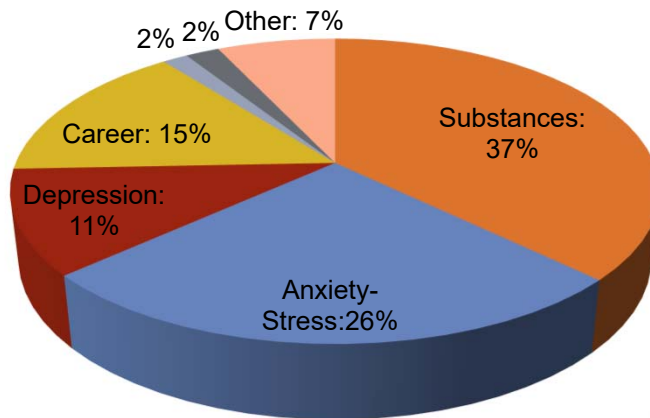
- 1. Communication, communication, communication
- 2. Manage expectations
 - Fee Agreements
 - Budgets
- 3. Avoid dabbling in unfamiliar areas of the law
- 4. Not every mistake constitutes conduct subject to discipline
 - In re Mason; In re Karavidas





LAWYERS'
ASSISTANCE
PROGRAM

Issues



LAWYERS'
ASSISTANCE
PROGRAM


Alcohol Anxiety

Depression Stimulants

Common Issues

Aging

Stress Grief



Not returning Isolation
calls or emails

Analysis paralysis Procrastination


Avoiding Clients

Looks Like?

Not Opening Mail

Significant increase or decrease
in time spent at work

Missing deadlines/court dates



What to do?



- Get Support
 - Family
 - Friend
 - Doctor
- Call LAP:312-726-6607
 - Free
 - Confidential
- Get Organized
- Overcome Procrastination



Failure to produce records Being ill prepared

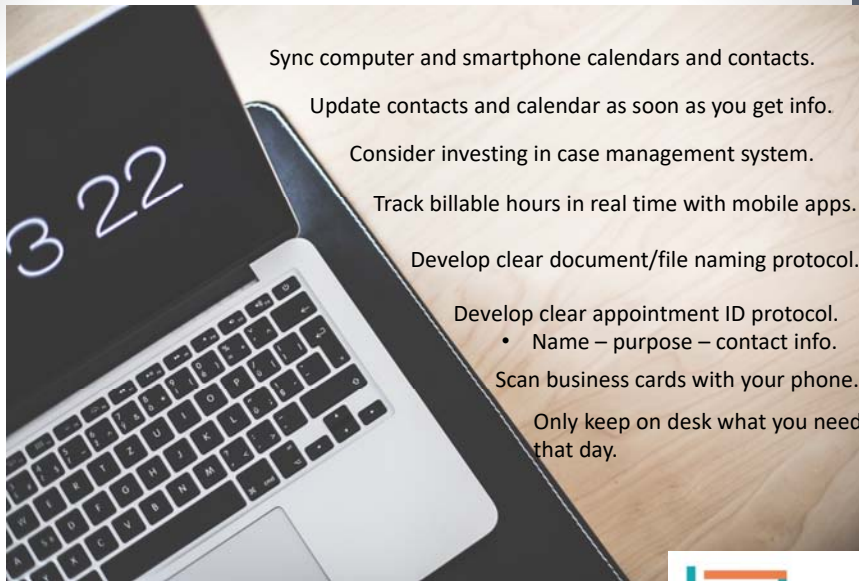
Commingling of funds

Failed Office Procedures

Seeming inaccessible to clients

Failure to file in timely manner





Sync computer and smartphone calendars and contacts.

Update contacts and calendar as soon as you get info.

Consider investing in case management system.

Track billable hours in real time with mobile apps.

Develop clear document/file naming protocol.

Develop clear appointment ID protocol.

- Name – purpose – contact info.

Scan business cards with your phone.

Only keep on desk what you need that day.



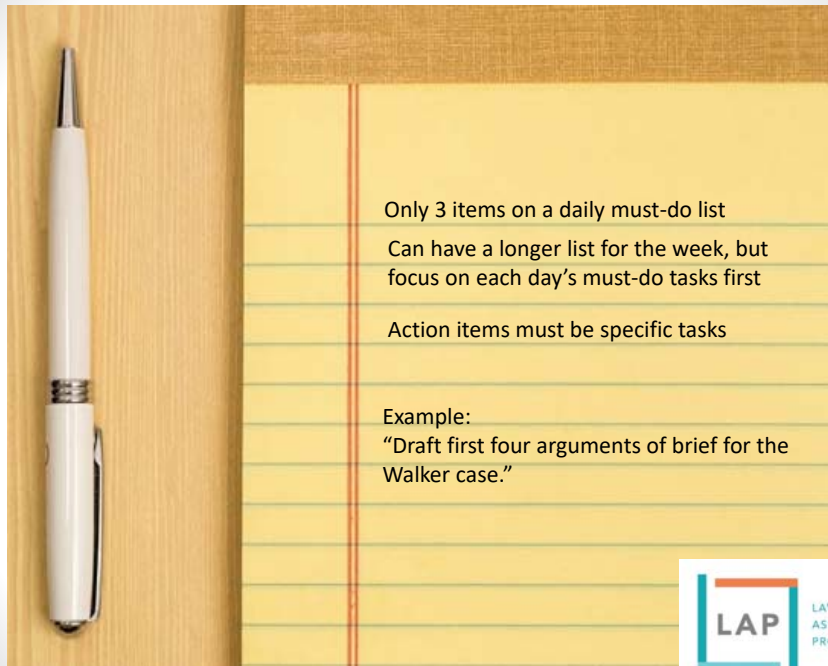
Procrastination



What to do?



- Hardest tasks at 9 AM
- Short bursts of activity followed by “zone out break”
- Single-task
- Check email at set times
- Bulk-tasks
- Only 3 items on must-do list per day



Thank you

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