

**Substance Abuse and Ethics:
The Judicial Duty to Respond**

**Model Lesson Plan
created by
ABA Standing Committee on Substance Abuse
&
The ABA Commission on Lawyer Assistance
Programs
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I. Introduction

The abuse of illicit drugs and alcohol casts a shadow over virtually every aspect of American life -- be it truancy, homelessness, crime, mental illness, the dissolution of families, child abuse or the spread of disease.

There are good reasons why we should intervene. According to the National Institute on Drug Abuse, the total annual cost of illicit drug use to society in 1995 was estimated at \$110 billion for costs associated with health care, drug use prevention and treatment programs, drug-related crime, and lost resources resulting from reduced worker productivity or death.

And, we are very often confronted with perhaps the most compelling reasons of all: the immeasurable and tragic results evident in dangerous neighborhoods and a clogged criminal justice system and ruined lives. Moreover, the members of our profession are themselves suffering from addiction and substance abuse. Studies show that 15-18 percent of the legal profession suffers from addiction, compared to ten percent of the general population.

Judges, attorneys and judicial educators are in a unique position to ameliorate these problems, privy to intimate details about individuals' lives, often at critical moments when there may be no family member, friend or other professional available to recognize and respond to a need for help.

Judges and judicial educators can make a difference in stemming the abuse of alcohol and other drugs by using their knowledge, their credibility, and their position in the community to develop solutions. They can bring their specialized training and experience to bear by acting as conveners and mediators within the judicial and legal communities and throughout the courts.

The American Bar Association's Standing Committee on Substance Abuse was created in 1970 to mobilize members of the legal and judicial communities to do this work. The Standing Committee is also deeply committed to promoting justice system reform that effectively and comprehensively addresses problems associated with the illegal use of drugs and alcohol in this country. To carry out this mission, the Committee collaborates with other ABA entities; federal, state and local public/private organizations; and bar associations. The Committee also participates in an extensive range of activities with state and local bar associations, centering around substance abuse issues, and works to inform and educate lawyers and the public on exemplary programs which address substance abuse as well as the many problems associated with illegal drug use.

In response to the issue of substance abuse and psychological impairments in the legal profession and in order to provide a model for assisting those judges and lawyers whose lives were affected by these conditions, the American Bar Association created the Commission on Lawyer Assistance Programs (CoLAP) in 1988. CoLAP's primary goal is to advance the legal community's knowledge of impairments facing judges and lawyers, and to provide a clearinghouse regarding lawyer assistance programs and information regarding substance abuse and psychological disorders. In 1980, only twenty-six state bar programs existed, while today all fifty states have developed lawyer assistance programs or committees focused on addressing impairments and quality of life issues. These programs employ the use of intervention, peer counseling, and referral to 12-Step Programs to assist in the recovery process.

Beginning with this workshop, the Standing Committee on Substance Abuse and CoLAP would like to begin working with judges, judicial educators and bar associations to develop model programs and curricula for use by judges throughout the justice system. This booklet was created to offer a blueprint for judicial educators who are interested in using our work as a springboard for their own work -- to spark discussion, understanding, and most importantly, action to help save lives.

II. OVERVIEW

"Alcoholism is a chronic, progressive and fatal disease that will cause problems in the major areas of one's life such as health, employment and relationships." Studies place the overall United States population's rate of alcoholism at between ten and thirteen percent of adults. Lawyers have been found, however, to suffer from alcoholism and substance abuse at a rate at least twice as high as the general population.

* * *

One study found that lawyers are particularly subject to psychological distress, which can manifest in a variety of counterproductive actions and impairments. The resultant stress directly relates to the fact that 9.20% of lawyers exceed expected norms for current alcohol-related problems. Even more alarming, the data suggests "that nearly 70% of lawyers are likely candidates for alcohol-related problems at some time within the duration of their legal careers."

(footnotes omitted). George Edward Bailly, "Impairment, the Profession and Your Law Partner," 15 Me. B.J. 96, 96-97 (April 2000).

Lawyers and Substance Abuse

As nearly everyone associated with the legal profession knows, courts have been, and continue to be, flooded with cases involving abuse of alcohol and other drugs. Alcohol and illicit drug use result all too often in family violence and mistreatment of children. Annually, millions of people are arrested for driving under the influence of alcohol or illicit drugs and other offenses related to alcohol and drug use. The safety of many neighborhoods is threatened by the violence associated with drug sales.

Moreover, alcohol and drug abuse can affect a family in numerous ways, including divorce and separation. More than 40 percent of separated or divorced women were married to or lived with a problem drinker or alcoholic. More than three-quarters of female victims of nonfatal domestic violence reported that their assailant had been drinking or using drugs (National Crime Victimization Survey, 1998).

Reports of child neglect and abuse have increased dramatically in recent years, and many such incidents are believed to be directly related to illicit drug – and possibly alcohol use – among parents. Alcohol and drug abuse are factors in the placement of more than three-quarters of children entering foster care.

In the criminal court arena, the link between alcohol or illicit drug use and crime is visible every day in courtrooms, jails, and prisons. In 1997, more than 2.5 million arrests were made for alcohol offenses (driving under the influence, liquor law violations, drunkenness, disorderly

conduct, and vagrancy) and more than 1.5 million for drug offenses. At least half of the adults arrested for major crimes, such as homicide, theft and assault – and more than eight in ten arrested for drug offenses – tested positive for drugs at the time of their arrest.

The statistics go on and on, underscoring the pervasive nature of substance abuse and addiction in the legal and judicial systems. Unfortunately, these problems also hit close to home. One of every 10 legal professionals will deal with an addictive disorder (drugs, alcohol, gambling, sex, work, food) during their professional career - some estimates put it as high as 20%. Another 33% of professionals will experience either short-term or chronic symptoms of depression or stress. The cost to clients is obvious: inadequate preparation, missed court dates, trust account violations, irrational or unsound decisions and so on. Less obvious is the cost to society in general and to the profession in particular. Society pays a price in terms of increased medical costs, accidents and loss of productivity. Members of the profession, of course, bear the brunt of public ire and outrage.

Studies done by the Washington State Bar and the Oregon State Bar found that over half of their disciplinary cases are caused by these impairments. Data from Florida cases support this finding. Judges can play an important role in helping the impaired legal professional. They are in a unique position to see what often no one else does: the attorneys in action and their fellow judges in more informal settings. They also have considerable power and authority over local attorneys as well as influencing other members of the judiciary.

Understanding Chemical and Psychological Impairments

No one takes a drink of alcohol, snorts a line of cocaine or places a bet on a football game thinking they'll become addicted. Most people believe they will be the ones who can "handle it" or may believe the drug they are using is not addictive. The process of moving from use to abuse to dependency varies depending on the person and the substance. Some alcoholics report they were addicted to alcohol from the first drink. Pathological gambling can begin in high school or earlier. Cocaine, especially if smoked, seems to be addictive very quickly. However, the process is usually slow, and it can take years before addiction actually interferes with everyday living. A generic definition of addiction is: "Engaging in the same behavior after suffering negative consequences as the result of that behavior."

There is considerable evidence that all addictions are the result of biochemical processes in the body. It appears that people who are predisposed to addiction metabolize alcohol and other drugs (including the adrenaline produced by gambling wins or losses) differently from the rest of the population. Addiction has been recognized by the American Medical Association since the mid-1950's as a **chronic** (an addict is never "cured"), **progressive** (it has a predictable course and symptoms and will not get better without some type of treatment) and, if untreated, **fatal** disease.

Likewise, psychological conditions such as depression, bi-polar disorder, schizophrenia and obsessive-compulsive disorders are no longer considered to be solely the result of emotional trauma or other issues. Instead, such conditions are now believed to be primarily caused by imbalances in brain chemistry, a condition which can often be remedied through therapy and proper medication.

Myths and Misconceptions

There are many myths and misconceptions about chemical and psychological impairments. Here are a few of the more common ones.

Myth: I'm just a recreational user/drinker. That won't hurt me.

Fact: The use of drugs and alcohol can result in devastating physical damage. Marijuana can cause lung cancer; cocaine can cause strokes and heart attacks; heroin use can result in mental disorders, death from respiratory collapse, infection and AIDS if needles are shared; alcohol use is known to cause cirrhosis of the liver, cancer, heart disease, brain damage, loss of memory and impaired muscle coordination; amphetamine use can result in strokes and mental disorders; and barbiturates can cause death from respiratory collapse.

Myth: Drug use is a private matter. It is none of the Bar's business what I do on my own time.

Fact: Drug use affects performance. Most drugs continue to affect the user for 24 hours after use. Thus, many users report to work still under the influence, even if they are not "using" on work time.

Myth: I can't be an alcoholic; I still make it to work every day.

Fact: Most alcoholics can maintain a home and a job for extensive periods, but as the illness progresses, all aspects of their life suffer. Only a small percentage of alcoholics are on "skid row."

Myth: I don't know any alcoholics.

Fact: About one of every ten people that drink has a drinking problem.

Myth: You're not an alcoholic unless you drink a pint a day.

Fact: Experts have concluded that the quantity consumed is far less important than when, how, why and what happens to an individual when he or she consumes alcohol.

Myth: Most alcoholics are middle-aged or older.

Fact: A University of California research team has found that the highest proportion of drinking problems occur among men in their early 20's, followed by men in their 40's and 50's.

Myth: Alcoholics and drug addicts are morally weak.

Fact: Addiction has been medically and legally classified as an illness. Saying an addict is morally weak is the same as saying that having diabetes is a question of willpower.

Myth: All alcoholics drink in the morning.

Fact: The craving for a morning drink is a "late stage" symptom and is rare among those in the early or middle stages of the disease.

Myth: Alcoholics drink every day.

Fact: Alcoholism is not determined by how often people drink, but by whether or not they can control their drinking once they start.

Myth: You can't become an alcoholic by drinking only beer.

Fact: People who drink beer simply have to drink larger quantities to get the same effect as with wine or distilled spirits. The amount of alcohol in a 12 ounce beer is equal to that in a six ounce glass of wine or a one ounce shot of 80 proof alcohol.

Myth: Pills are okay; everybody takes them. Besides, a doctor wrote the prescription.

Fact: Addiction to prescription drugs can be as deadly as any other. Withdrawal from barbiturates can be fatal. Withdrawal from tranquilizers such as Valium or Xanax can take up to two years. Unfortunately, most physicians receive little or no training regarding chemical dependency in medical school and consequently are often sadly unfamiliar with the signs, effects and prescribing protocols used for addicts and alcoholics.

Myth: People are friendlier when they are drunk.

Fact: Sometimes. But they can be more dangerous to themselves and others. The majority of domestic violence and vehicular homicides, half of all murders and one-third of all suicides are substance related.

Myth: Black coffee and a cold shower will sober up a drunk.

Fact: All this does is produce a drunk who is awake. An awakened drunk may attempt to drive or do other things which he or she is no more capable of doing right than a sleepy drunk. Time is the only method of sobering up.

Myth: Getting out of depression is just a matter of time and right thinking.

Fact: Although it is true that some depression is situational (caused by circumstances that are sad or painful) and will pass with time, *clinical* depression is a biochemical illness which has little relationship to external circumstances and will only respond to treatment and proper medication.

Myth: Stress is just part of practicing law.

Fact: While the practice of law is an increasingly stressful profession, different individuals react differently to that stress. Some understand how to ameliorate or utilize the stress, while others become increasingly debilitated, hostile and eventually paralyzed by the pressure. Factors contributing to an individual's response include training, brain chemistry, personality or life style.

What Kind of Treatment is Available for Impaired Attorneys and Judges?

Treatment for impairments may include inpatient detoxification, inpatient hospitalization (four to twelve weeks is the average), and/or outpatient and aftercare counseling for up to two years. Successful treatment, whether inpatient or outpatient, will address all components of a person's life, including their physical condition, mental and emotional state, appropriate use of antidepressant medications, family and personal relationships, how they spend their leisure time, their professional life, financial situation, and any legal problems they may have.

The type of treatment the individual receives may ultimately depend upon financial resources, including insurance. Private treatment centers can be quite expensive, but many will work with patients and allow them to pay off the bill after they finish treatment and resume practice. There are also a number of nonprofit, sliding scale treatment facilities that cost little or nothing. "Twelve-step programs" such as Alcoholics Anonymous and Narcotics Anonymous are free and available virtually 24 hours a day. Lawyer assistance programs usually cost little or nothing.

What Motivates Someone to Seek Treatment?

The old adage that "you can't help an addict until he is ready to help himself" or until he has hit bottom has been proven to be inaccurate. While internal motivation on the part of the impaired person is important, external motivating factors are often necessary to overcome the denial and ambivalence that are characteristic of addiction, especially in high intellectually functioning professionals such as judges and attorneys. There are a number of very effective factors that are useful in externally motivating the person into initial treatment.

Legal: Substance related charges such as driving while intoxicated, disturbing the peace or possession of controlled substances represent manifest evidence of behavioral problems with chemicals. The treatment versus punishment issue frequently coerces a begrudging individual into treatment who later may move successfully into the long-term rehabilitation process.

Job: In those instances in which the impaired attorney is referred by a local judge, a grievance committee, the local bar association or the attorney's firm, the threat to job and profession can be one of the strongest determinants in the legal professional's commitment to the initial phase of treatment.

Family: Chemical and psychological impairments are illnesses affecting all members of the family leading to disruption and deterioration of relationships within both the nuclear and extended families. A family's willingness to set limits on the patient's behavior can precipitate a family crisis which frequently motivates the impaired legal professional toward the initial phase of treatment.

What Are The Warning Signs?

Warning signs of impairment are there if you know what to look for.

Absenteeism.

- Unexplained or repeated absences or tardiness for court appearances, depositions, etc.
- Peculiar or improbable excuses for absences.

Confusion or difficulty in concentration.

- Difficulty in recalling instructions, details, etc.
- Increasing difficulty in handling complex assignments.
- Difficulty in recalling own mistakes.
- Work requires more effort than it should.

Spasmodic work patterns.

- █ Alternate periods of high and low productivity.

Generally lowered job efficiency.

- █ Missed deadlines.
- █ Mistakes due to inattention or poor judgment.
- █ Making bad decisions.
- █ Complaints from clients.
- █ Improbable excuses for poor performance.

Poor interpersonal relationships.

- █ Overreaction to real or imagined criticism.
- █ Wide swings in morale or mood.
- █ Unreasonable resentments or hostility.
- █ Excessive suspicion.

Physical problems/symptoms.

- █ Complaints of fatigue.
- █ Back pains or other vague medical problems.
- █ Complaints of stomach problems or nausea.
- █ Repeated hospitalizations and/or accidents.
- █ Observable physical signs such as bleary eyes, wobbly, shakes, flushed face, widely dilated or tightly constricted pupils, bloodshot eyes, staggering, blank look/expressionless, standing or sitting immobile (as if in a trance), hand or leg tremors, downcast or disheveled appearance, slurred speech, lethargy, restlessness/nervousness/anxiety, panic reaction, facial tic, excessive talking, disoriented thoughts ("word salad"), silence.

Financial or legal problems.

- █ DUIs
- █ Client complaints such as failure to communicate or return telephone calls, failure to appear at hearings or depositions, or missing statute of limitations dates
- █ Trust account violations or misappropriation of client funds.

Appearing in court or elsewhere in an obviously abnormal condition.**Specific Signs of Clinical Depression (5 or more of the following symptoms continuing for more than 2 weeks):**

- █ Feelings of sadness or irritability
- █ Loss of interest or pleasure in activities once enjoyed
- █ Changes in weight or appetite
- █ Changes in sleeping patterns
- █ Feelings of guilt, hopelessness, or worthlessness
- █ Inability to concentrate, remember things, or make decisions
- █ Fatigue or loss of energy
- █ Restlessness or decreased activities
- █ Complaints of physical aches and pains for which no medical explanation can be found

- Thoughts of death or suicide

REMEMBER: All people, including you, exhibit some of these problems occasionally. It is a pattern of problems over a period of time (several months) that should alert you.

What Can You Do?

If you are concerned about an attorney or fellow judge, the most unkind act you can do is to do nothing. If you suspect an attorney in your area has a problem with drugs, alcohol, or another condition which appears to be interfering with their law practice, or if you have any questions regarding impairment, contact your local Lawyers Assistance Program (LAP). They can assist in exploring options available to you and to the attorney. You needn't give your name or the attorney's name. If you believe you, a fellow judge, or an attorney may have a chemical or psychological problem, you can call the confidential judges or lawyers hotline in your area. You need only give your location and a contact phone number - a recovering judge in your area will call you back as soon as possible.

Lawyer Assistance Programs

A Lawyer Assistance Program usually provides assessment, short-term counseling, referral, follow-up, peer support, consultation and crisis intervention.

Assessment Staff can assess the problem and assist the judge or attorney in getting appropriate help. An initial assessment is generally done in one to three sessions.

Short-Term Counseling If the person's problem is assessed to be something that can be treated by short-term counseling, a LAP can provide this service at no charge, either in the office or by phone. Also available are audio tapes, video tapes, and written material on topics such as stress management, time management, and the like.

Referral If the judge or attorney is assessed to need more than short-term counseling, the LAP will refer the individual to the most appropriate resource in the community. This may include social service agencies, private therapists, physicians, hospitals, etc.

Follow-Up After referral, the LAP staff will follow up to ensure that the judge or attorney is satisfied with the service and that he or she is progressing toward their goal. If the problem is chemical dependency, the person will be followed for a year.

Peer Support An individual contacting the LAP will be connected with a recovering judge or attorney in their part of the state who can assist them in getting involved with a 12 Step or mental health care program. In addition, they will be directed to the closest chemical dependency or mental health attorney support meeting in their area.

Consultation The LAP can provide assistance to judges, law partners, friends or family members who are concerned about a judge or attorney. LAP staff will help the concerned person explore the options available and make recommendations.

Intervention If a judge or attorney is seriously in trouble with drugs or alcohol, or has a mental disorder that demands immediate treatment, the LAP staff can intervene with the person, arrange for appropriate treatment, and encourage the person to accept the necessary help.

Monitoring In situations where the attorney's impairment has resulted in ethical or disciplinary violations, the LAP can develop a monitored reporting system to insure that the attorney or judge enters into and maintains his or her recovery, providing the best insurance that such actions will not be repeated.

Lawyer Assistance Programs generally have no connection with the state or local bar association other than one of cooperation. Their primary purpose is to assist judges and attorneys before they deteriorate to the point of receiving client complaints or otherwise become involved in the disciplinary process. Confidentiality of records is often protected by rules regulating the state Bar.

Description of Model Lesson Plan

This booklet provides a model lesson plan that can be used by judicial educators planning ethics programs to educate judges on both the resources available to judges and lawyers who have an alcohol or substance abuse problem and the judicial duty to respond to suspected or know alcohol and other drug abuse by judges and lawyers which result in a violation of their respective rules of professional conduct.

The model lesson plan includes the following

- a suggested timetable for implementation,
- an overview of the problem of substance abuse,
- an explanation of lawyer assistance programs and
- three scenarios involving suspected substance abuse.

Each scenario is followed by a number of questions for discussion; these questions are for the use of a moderator to stimulate discussion among a panel of speakers or the audience. Also included are two sample PowerPoint presentations as examples of how to present on (1) lawyer assistance programs and (2) the duty to report using one of the scenarios from the model lesson plan and a discussion of the questions raised by it.

This model lesson plan can be used as is or may serve as a framework upon which judicial educators can base their own ethics training program focusing on substance abuse and the duty to report. The ABA Model Code of Judicial Conduct and Model Rules of Professional Conduct are used in these materials. Educators should use their own jurisdiction's Code or Rules, and include controlling and relevant ethics decisions and case law.

Development and Implementation of Model Lesson Plan

A. Identification of Need

The Standing Committee on Substance Abuse noted that there was little, if any, literature or training available on the ethical duty to report substance abuse which either is by itself a violation of the rules of professional conduct or which results in a violation of the rules of professional conduct. This Model Lesson Plan is the Committee's effort to facilitate the creation and provision of such training.

B. Goal

The goal of the lesson plan is to educate judges about ethical issues that may arise as the result of the abuse of alcohol or other substances by legal professionals, the judicial duty to report unethical behavior by judges and attorneys, and resources available in the legal and general communities to assist those with substance abuse problems.

C. Design

The Standing Committee on Substance Abuse designed the Model Lesson Plan so that it can be used as is or may serve as a framework upon which judicial educators can base their own ethics training program focusing on substance abuse and the duty to report. The ABA Model Code of Judicial Conduct and ABA Model Rules of Professional Conduct are the rules upon which this lesson plan is based. Educators should use their own jurisdiction's Code or Rules, and include controlling and relevant ethics decisions and case law.

The Model Lesson Plan was created with the idea that a program based upon it could serve as a freestanding 1-3 hour program or as only part of a larger program.

D. Participants

In order to be most effective, any training or educational program on substance abuse must include a discussion of the problem and resources available to address it, which include, in the case of judges and lawyers, the Lawyer Assistance Programs (LAPs) which exist in all jurisdictions. LAPs offer confidential assistance to lawyers who have alcohol or drug problems or who suffer from mental depression. Therefore, it is recommended that a program based upon this Model Lesson Plan include not only a discussion about ethics and the law, but also any LAPs that exist in the jurisdiction.

Recommended participants include a litigation lawyer, a representative from the LAP in the jurisdiction, a representative from the judicial and lawyer disciplinary agency(ies), and at least one judge. The Standing Committee on Substance Abuse would also encourage the use of substance abuse treatment personnel.

E. Timetable

<u>Time Prior to Program</u>	<u>Task</u>
6-12 months	<ul style="list-style-type: none">■ Determine and announce date of program (note that judge's court calendars are often set at least six months in advance).■ Select and reserve location for program.■ If necessary, apply for designation as a mandatory judicial continuing legal education program.■ Prepare budget proposal and/or apply for any available grants.■ Select program coordinator and/or moderator.

4-9 months	<ul style="list-style-type: none"> ■ Select and confirm faculty (note that persons likely to be used as faculty for this type of program will need as much advance notice as possible to clear or reserve the time to prepare for and present at the program).
4-6 months	<ul style="list-style-type: none"> ■ If the program is not a mandatory judicial continuing legal education program, send out initial program announcement.
2 months	<ul style="list-style-type: none"> ■ If the program is not a mandatory judicial continuing legal education program, send out second program announcement. ■ Send faculty members reminder of course, including a reminder of the deadline(s) for materials and AV requests. ■ If necessary, prepare and submit tentative AV and catering order(s).
1 month	<ul style="list-style-type: none"> ■ If the program is not a mandatory judicial continuing legal education program, send out third and final program announcement.
3-4 weeks	<ul style="list-style-type: none"> ■ Deadline for any written materials and AV requests from faculty members. ■ Prepare course evaluation form and any welcome or introductory materials to be included in program materials.
2-3 weeks	<ul style="list-style-type: none"> ■ Have program materials printed or copied.
1 week	<ul style="list-style-type: none"> ■ Prepare final registration list and nametags. ■ Finalize any AV and catering order(s).

After program

- Coordinate persons to work at program.
- Appropriate “thank you” letters to faculty.
- Prepare program report, if any.

It should be noted that this timetable does not list every task to be done.

V.
**SAMPLE SCENARIOS
AND
QUESTIONS FOR DISCUSSION**

SCENARIO 1

You are Judge Fair N. Just, a state district court judge. Your office and that of the other district court judges in your judicial district are located in the district courthouse. The courthouse also houses the courtrooms, the clerk of court's office, the prosecutor's office and the public defender's office.

Upon entering your secretary's office one day, you hear a court reporter say that Judge Smith smelled like alcohol in court twice that week. The conversation ends when they see you.

Later that day, you send your law clerk to Judge Smith's chambers to borrow a law book. Your law clerk comes back and tells you that the judge smelled of alcohol.

One month later, as you are working late, Judge Smith calls you. He explains that he is in his office waiting on a jury verdict; he invites you to join him and talk about some report. When you enter his office, he is pouring himself a scotch and water. During the course of your conversation, Judge Smith has several of these drinks. When the jury returns with their verdict, he leaves his office to accept it and to rule on post-verdict motions.

Questions for Discussion:

1. What, if anything, are you ethically bound to do in regard to Judge Smith?
2. Why?
3. If you think that you are ethically bound to do something, what and when?
4. Does your response depend upon whether these observations or actions of Judge Smith were made while he was on the bench as opposed to being in his chambers or elsewhere in the courthouse?
5. Does your response depend:
 - a. upon the number of occasions Judge Smith was in court when others smelled alcohol on his breath?
 - b. upon the number or identity of persons who made these type of observations?
 - c. upon whether Judge Smith only smelled of alcohol or actually consumed alcohol while on duty or in the courthouse?
 - d. upon whether Judge Smith only smelled of alcohol or consumed alcohol as opposed to appearing to be intoxicated?
 - e. upon whether Judge Smith acted inappropriately, unprofessionally or incompetently while in the observed condition or after drinking alcohol?
6. Would your answers be different if Judge Smith were a lawyer employed by either the prosecutor's or public defender's office in your courthouse? Why or why not?

Resources:

Preamble and Canons 1, 2, and 3D, ABA Model Code of Judicial Conduct [or state equivalent]
Model Rules of Professional Conduct [or state equivalent]
Relevant Case law
Relevant Judicial Ethics Opinions

SCENARIO 2

You are Judge Fair N. Just, a state district court judge. You are aware that about a year ago, Judge Jones was involved in an automobile accident in which he suffered back and leg injuries and was required to undergo physical therapy.

Over the past two months, your bailiff informs you that Judge Jones's bailiff has been discussing some troubling behavior exhibited by Judge Jones, including: apparently dozing on the bench during trials; an apparent inability to focus, promptly respond to objections, or maintain his usual control during trials; coming to work late 2 to 3 days each week; and inappropriate displays of anger and defensiveness if his staff mentions any of the above behavior

Based on the above, you ask Judge Jones if he is experiencing any problems. Although Judge Jones denies any problem, he does acknowledge that as the result of the car accident he is still suffering some discomfort and tells you that although he was placed on pain medication after the accident, he is no longer using anything.

Questions for Discussion:

7. What, if anything, are you ethically bound to do in regard to Judge Jones?
8. Why?
9. If you think that you are ethically bound to do something, what and when?
10. Does your response depend upon whether these observations or actions of Judge Jones were made while he was on the bench as opposed to being in his chambers or elsewhere in the courthouse?
11. Does your response depend:
 - a. upon the number of occasions Judge Jones appeared to doze on the bench or acted in a manner different from his "normal" manner or was tardy in getting to the courthouse or on the bench?
 - b. upon the number or identity of persons who made these type of observations?
 - c. upon whether Judge Jones continues to act in the reported manner after you talk to him?
 - d. upon whether Judge Jones acted unprofessionally or incompetently while acting in any judicial function?
12. Would your answers be different if Judge Jones were a lawyer employed by either the prosecutor's or public defender's office in your courthouse or a civil lawyer? Why or why not?

Resources:

Preamble and Canons 1, 2, and 3D, ABA Model Code of Judicial Conduct [or state equivalent]
Model Rules of Professional Conduct
Relevant Case law
Relevant Judicial Ethics Opinions

SCENARIO 3

You are Judge Fair N. Just, a state district court judge. You are presiding over a term of criminal court. During the term, a case is called for trial. The defendant, represented by Mr. Private Counsel, is charged with rape; the case involves numerous evidentiary issues.

During the first day of the trial, pre-trial motions are argued in the morning and a jury is selected in the afternoon. You observe what appears to be odd or inappropriate behavior from Mr. Counsel – he appears to doze off during the prosecution's *voir dire* examination of a prospective juror and he seats another juror who had been raped 10 years earlier.

After lunch the next day, you meet with the attorneys in chambers. At that time, you smell alcohol on Mr. Counsel's breath.

On the last day of the trial, the case is submitted to the jury at 3:00 p.m. When the jurors indicate that they want to continue deliberations that evening, you request that dinner be ordered for the jury. You then give the attorneys an hour for their dinner. Upon Mr. Counsel's return to the courtroom after dinner, you smell alcohol on his breath.

Questions for Discussion:

1. What, if anything, are you ethically bound to do in regard to Mr. Counsel?
2. Why?
3. If you think that you are ethically bound to do something, what and when?
4. Does your response depend upon whether these observations of Mr. Counsel were made before, during or after a trial before you?
5. Does your response depend upon whether anybody else did or could have made the same observations and taken action?
6. Does your response depend:
 - a. upon the number of occasions you observed Mr. Counsel to be intoxicated, under the influence of alcohol, or with alcohol on his breath?
 - b. upon whether Mr. Counsel only smelled of alcohol as opposed to appearing to be intoxicated or under the influence of alcohol or another substance?
7. Does your response change if you yourself did not personally observe Mr. Counsel in an intoxicated state or smell alcohol on him, but only heard others talk about it?
8. Does your response depend upon whether Mr. Counsel provided effective representation for defendant?
9. Does your response depend upon the outcome of the trial?
10. Would your response be different if the attorney were the prosecutor?

Resources:

Preamble and Canons 1, 2 and 3D, ABA Model Code of Judicial Conduct [or state equivalent]
Model Rules of Professional Conduct [or state equivalent]
Relevant Case law
Relevant Judicial Ethics Opinions

SCENARIO 4

You are Judge Fair N. Just, a state district court judge. You are serving as the chief administrative judge for criminal court.

Judy Jones is an attorney in the prosecutor's office located in the courthouse. For the last few months, you have noticed a change in Prosecutor Jones' courtroom demeanor – she is abrupt with other attorneys, courtroom staff and witnesses and she does not appear to be adequately prepared.

Prosecutor Jones is now prosecuting a case before you. During an in-chambers meeting before the lunch break, you observe Prosecutor Jones' hands shaking. The meeting concludes and the attorneys leave for the lunch recess. When the trial resumes after lunch, you notice that Attorney Jones is visibly calmer and her eyes are dilated.

As the afternoon session continues, Prosecutor Jones becomes more agitated and you notice again a tremor to her hands. After a later afternoon recess, Prosecutor Jones again is visibly calmer and her eyes are dilated. This behavior continues for the length of the trial.

In your opinion, Prosecutor Jones was not prepared for the trial and did not perform competently. The trial concludes in a not guilty verdict.

Questions for Discussion:

1. What, if anything, are you ethically bound to do in regard to Prosecutor Jones?
2. Why?
3. If you think that you are ethically bound to do something, what and when?
4. Do your responses to questions 1-3 depend:
 - a. upon the number of occasions your observed Prosecutor Jones act in the manner described above?
 - b. upon whether anyone else made any comments to you about Prosecutor Jones' behavior?
5. Would your responses to questions 1-3 change if
 - a. the jury had returned a guilty verdict?
 - b. you had observed Prosecutor Jones take some sort of pill or unknown substance?
 - c. you knew Prosecutor Jones had a medical or physical problem for which she was being treated?
6. How would you respond to questions 1-3 if you observed another judge acting in the same manner as Prosecutor Jones? Why?

Resources:

Preamble and Canons 1, 2 and 3D, ABA Model Code of Judicial Conduct [or state equivalent]

Model Rules of Professional Conduct [or state equivalent]

Relevant Case law

Relevant Judicial Ethics Opinions

SAMPLE POWERPOINT PRESENTATIONS

The following are samples of PowerPoint presentations. The first sample presentation is a model of how to use PowerPoint in a presentation on a Lawyer Assistance Program. The second sample presentation is based on Scenario 1 and is an example of how to use PowerPoint to lead a discussion on the ethical issues raised in that scenario.

When preparing a PowerPoint presentation, it is important to remember that it is not normally convenient or effective to go back and forth between PowerPoint slides when making a presentation. Therefore, when using different scenarios, such as those included in these materials, which may depend upon the same rules, law or terminology, it is normally more effective to repeat those common slides than to flip back to where they first appeared.

A. Sample Lawyers Assistance Program PowerPoint Presentation

B. Sample PowerPoint Presentation on Scenario 1

VII.

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National Organizations

American Bar Association (ABA): The ABA Standing Committee on Substance Abuse (202/662-1784) and the Commission on Lawyer Assistance Programs (312/988-5359). www.abanet.org

American Medical Association (AMA): Office of Alcohol and Other Drug Abuse. 312/464-4202. www.ama-assn.org

Community Anti-Drug Coalitions of American (CADCA): CADCA works to strengthen local communities' capacity to fight the problems associated with substance abuse and violence. 800/542-2322. www.cadca.org

Drug Help: A 24-hour information network for information on specific drugs, and referrals to treatment programs, self-help groups and crisis centers. (800)DRUG HELP. www.drughelp.org

Join Together: A national clearinghouse for publications, information, and links to help prevent, reduce, and treat substance abuse. 617/437-1500. www.jointogether.org

National Council on Alcoholism and Drug Dependence (NCADD): NCADD provides education and information to the public through a nationwide network of affiliates. 212/269-7510. www.ncadd.org

National Clearinghouse for Alcohol and Drug Information (NCADI): NCADI is a major resource for current information and materials published by the federal government on alcohol and substance abuse prevention, intervention and treatment. 800/729-6686. www.health.org

Office of National Drug Control Policy (ONDCP) Web Sites: The ONDCP Web site offers comprehensive information and links on national policy, drug facts and figures, prevention education, treatment, science, and medicine. www.whitehousedrugppolicy.gov