



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2020 Rocky Mountain Bankruptcy Conference

## *Consumer Workshop IV*

### **It's About You: Mental Health, Professionalism and Burnout**

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*Denver*

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# MENTAL HEALTH, PROFESSIONALISM, AND BURNOUT

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Colorado Lawyer Assistance Program

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Montgomery, Little & Soran, PC

## INTRODUCTION

- ▶ Part I - Burn Out - the Deep End of the Pool
  - ▶ Statistics on depression and substance abuse
  - ▶ Survey of Law Student Well Being
  - ▶ Path to Lawyer Well Being
  - ▶ Our Challenges - Our Potential
  - ▶ Colorado Lawyer Assistance Program

## STATISTICS ON DEPRESSION AND SUBSTANCE ABUSE

- ▶ 20.6% of attorneys responding drink problematically, as compared to 11.8% of similarly educated professionals.
- ▶ Attorneys under age 30 the percentage is even higher; 28.9%.
- ▶ Illicit substance use or misuse of prescription medications
- ▶ Co-occurring Disorders
- ▶ 28%, 19%, and 23% of attorneys reported experiencing symptoms of depression, anxiety, and stress, respectively.
- ▶ Source: Betty Ford/Hazelden Foundation in conjunction with the American Bar Association Commission on Lawyer Assistance Programs

## SURVEY OF LAW STUDENT WELL BEING

- ▶ Some of the Findings
- ▶ Help Seeking Attitudes
- ▶ Discouraging Factors - alcohol and drugs
- ▶ Discouraging factors - mental health

## PATH TO LAWYER WELL BEING

- ▶ 1 - Acknowledge the Problems and Take Responsibility.
- ▶ 2 - Use This Report as a Launch Pad for a Profession-Wide Action Plan.
- ▶ 3 - Leaders Should Demonstrate a Personal Commitment to Well-Being.
- ▶ 4 - Facilitate, Destigmatize, and Encourage Help Seeking Behaviors.

## PATH TO LAWYER WELL BEING

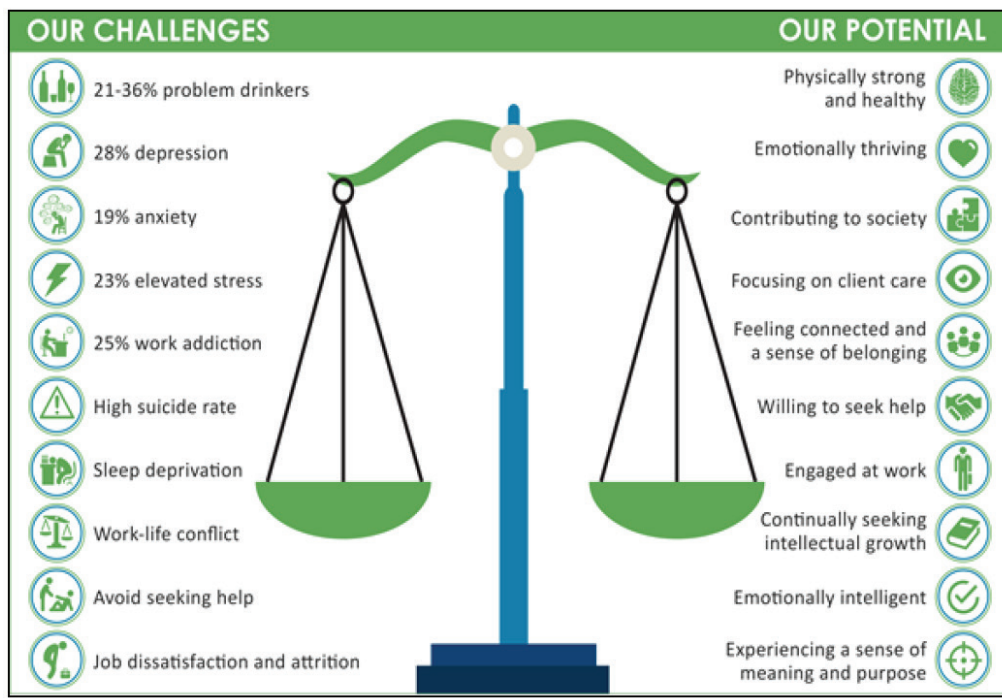
- ▶ 5. Build Relationships with Lawyer Well-Being Experts.
  - ▶ 5.1 Partner with Lawyer Assistance Programs.
  - ▶ 5.2 Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts.
- ▶ 6. Foster Collegiality and Respectful Engagement Throughout the Profession.
  - ▶ 6.1 Promote Diversity & Inclusivity.
  - ▶ 6.2 Create Meaningful Mentoring and Sponsorship Programs.
- ▶ 7. Enhance Lawyers' Sense of Control.

## PATH TO LAWYER WELL BEING

- ▶ 8. Provide High-Quality Educational Programs and Materials About Lawyer Well-Being.
- ▶ 9. Guide and Support The Transition of Older Lawyers.
- ▶ 10. De-emphasize Alcohol at Social Events.
- ▶ 11. Use Monitoring to Support Recovery from Substance Use Disorders.

## PATH TO LAWYER WELL BEING

- ▶ 12. Begin a Dialogue About Suicide Prevention.
- ▶ 13. Support A Lawyer Well-Being Index to Measure The Profession's Progress.



- ▶ <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>

## COLORADO LAWYER ASSISTANCE PROGRAM

- ▶ Your Well-Being Resource
- ▶ Free, Confidential & Independent Program for Colorado Judges, Lawyers, and Law Students
  - ▶ All communication with COLAP is confidential. We *cannot* release *any* information without a signed release from the individual the information pertains to.
  - ▶ COLAP is separate and independent from all legal organizations, including the OARC & CBA.
- ▶ Specialized & Experienced Staff are attorneys & licensed mental health professionals.

## COLORADO LAWYER ASSISTANCE PROGRAM

- ▶ Where: 2490 West 26th Avenue, Suite 260-A Denver, CO 80211 Diamond Hill Complex; Near I-25 & Speer, West Side
- ▶ When: By appointment
- ▶ Call or email anytime
- ▶ 303.986.3345
- ▶ [www.coloradolap.org](http://www.coloradolap.org)

## INTRODUCTION

- ▶ Part II - Avoiding the Deep End of the Pool
  - ▶ Managing Stressful Cases and Clients - What You Can and Can't Control
  - ▶ Using the Colorado Rules of Professional Conduct To Reduce Stress
  - ▶ Boundaries Between Work and Home
  - ▶ Exercise, Meditation, and Nutrition
  - ▶ Benefits of Humor

## WHAT YOU CAN'T CONTROL

- ▶ Legal Conflict
- ▶ Clients & opposing counsel
- ▶ Pressure of deadlines
- ▶ The past

## WHAT YOU CAN CONTROL

- ▶ Stress management
- ▶ Declining cases
- ▶ Prioritizing tasks
- ▶ Exercise and nutrition
- ▶ Personal and family activities
- ▶ The present

## MANAGING STRESSFUL CASES & CLIENTS

- ▶ Reasonable Diligence
- ▶ Communication
- ▶ Retainers
- ▶ Handling Mistakes

## COMPETENCE

- ▶ C.R.P.C. 1.1 - competence
  - ▶ Don't dabble
  - ▶ Comments 2 and 4 - you may be able to obtain competence in a new field - but is that overly stressful?

## SCOPE OF REPRESENTATION

- ▶ C.R.P.C. 1.2 - scope of representation
- ▶ Let the client make the decision - keeps the stress off you
- ▶ Always use engagement letters
- ▶ Use retainers to screen out difficult clients and unwanted work

## DILIGENCE

- ▶ Colo. R.P.C. 1.3 - Diligence
  - ▶ “A lawyer shall act with reasonable diligence and promptness in representing a client.”
  - ▶ Reasonable diligence
  - ▶ Stay efficient at work - avoid social media
  - ▶ Prioritize tasks at start of each day

## COMMUNICATION WITH CLIENTS

- ▶ Colorado Rule of Professional Conduct 1.4(a)(3)
  - ▶ “A lawyer shall keep the client reasonably informed about the status of the matter.”

## COMMUNICATION WITH CLIENTS

- ▶ Colorado Rule of Professional Conduct 1.4(b)
  - ▶ “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

## COMMUNICATION WITH CLIENTS

- ▶ Colorado Rule of Professional Conduct 1.4(b)
  - ▶ Document major stages and decisions in the case
  - ▶ Keeps the worry out
  - ▶ Share the stress with the client

## COMMUNICATION

- ▶ Communication with clients
- ▶ Communication with opposing counsel
  - ▶ Avoid instantaneous e-mails
  - ▶ Pick up the phone!
- ▶ Communication with colleagues and partners

## RETAINERS

- ▶ Colo. R.P.C. 1.5 - reasonableness of fees
  - ▶ C.R.P.C. 1.5(f) - keep client funds separate until earned
- ▶ Colo. R.P.C. 1.16 - declining representation

## WITHDRAWAL

- ▶ Colo. R.P.C. 1.16 (Terminating Representation)
  - ▶ Withdrawal permitted if, among other things, “withdrawal can be accomplished without material adverse effect on the interests of the client.”

## WITHDRAWAL

- ▶ Colo. R.P.C. 1.16 (Terminating Representation)
  - ▶ Include termination/withdrawal provisions in your engagement letter
  - ▶ Right to withdraw if bill remains unpaid

## WHETHER TO REPORT COLLEAGUES

- ▶ Colo. R. Prof. Conduct 8.3 - Duty to Report
- ▶ Substantial question as to lawyer's fitness
- ▶ Exception for lawyer's assistance program

## MISTAKES

- ▶ Formal Ethics Opinion 113
  - ▶ Ethical duty to disclose errors to client
    - ▶ Material errors that will likely result in prejudice
    - ▶ Versus likely to not result in prejudice

## MISTAKES

- ▶ Don't overreact
- ▶ Most mistakes are correctable
- ▶ Get out of your head - talk to your colleagues

## BOUNDARIES BETWEEN WORK AND HOME

- ▶ Maintain boundaries
- ▶ Keep work at work
- ▶ Maximize work efficiency
- ▶ Come in early - avoid traffic

## BOUNDARIES BETWEEN WORK AND HOME

- ▶ Relaxation
- ▶ Avoid late night activity
- ▶ Sleep cycles

## EXERCISE, MEDITATION & NUTRITION

- ▶ Exercise/Hobbies
  - ▶ Find something fun
  - ▶ Find something you are passionate about
  - ▶ Stretch during work breaks
- ▶ Meditation - keep it simple!
- ▶ Nutrition

## HUMOR

- ▶ Numerous studies support benefits of humor
- ▶ Avoid sarcasm
- ▶ Keep it clean!

## CONCLUSION

- ▶ Comments or Questions?

## CONTACT INFORMATION

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  - ▶ Montgomery, Little & Soran, PC
  - ▶ 303-773-8100
  - ▶ [mmccormick@montgomerylittle.com](mailto:mmccormick@montgomerylittle.com)

**Mental Health, Professionalism and Burn Out  
How to Cope with the Stress of Being a Lawyer**

**By:**

**Chip Glaze and Michael McCormick**

Moderated by Deanna Lee Westfall

Part I:  
“The Deep End”

According to the recent research conducted by the Betty Ford/Hazelden Foundation in conjunction with the American Bar Association Commission on Lawyer Assistance Programs:

- 20.6% of attorneys responding drink problematically, as compared to 11.8% of similarly educated professionals.
- Attorneys under age 30 the percentage is even higher; 28.9%.
- Illicit substance use or misuse of prescription medications
- Co-occurring Disorders
- 28%, 19%, and 23% of attorneys reported experiencing symptoms of depression, anxiety, and stress, respectively.

<http://www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use>

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In 2016, The Association of American Law Schools published *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns* in its Journal of Legal Education.

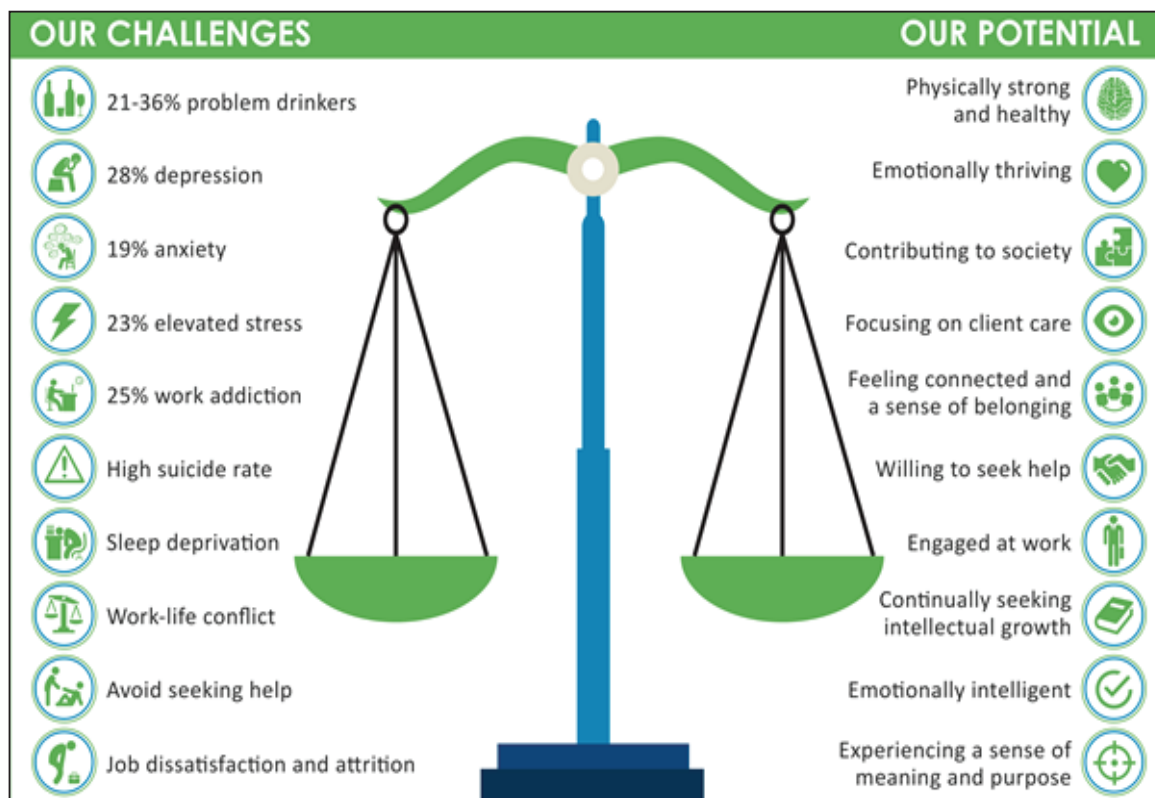
Building on the research above, The National Task Force on Lawyer Well-Being produced the following:

***THE PATH TO LAWYER WELL-BEING: Practical Recommendations for Positive Change.***

**Recommendations for All Stakeholders**

- 1. Acknowledge the Problems and Take Responsibility.**
- 2. Use This Report as a Launch Pad for a Profession-Wide Action Plan.**
- 3. Leaders Should Demonstrate a Personal Commitment to Well-Being.**
- 4. Facilitate, Destigmatize, and Encourage Help Seeking Behaviors.**
- 5. Build Relationships with Lawyer Well-Being Experts.**
  - 5.1 Partner with Lawyer Assistance Programs.**
  - 5.2 Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts.**
- 6. Foster Collegiality and Respectful Engagement Throughout the Profession.**
  - 6.1 Promote Diversity & Inclusivity.**
  - 6.2 Create Meaningful Mentoring and Sponsorship Programs.**
- 7. Enhance Lawyers' Sense of Control.**
- 8. Provide High-Quality Educational Programs and Materials About Lawyer Well-Being.**
- 9. Guide and Support The Transition of Older Lawyers.**
- 10. De-emphasize Alcohol at Social Events.**
- 11. Use Monitoring to Support Recovery from Substance Use Disorders.**
- 12. Begin a Dialogue About Suicide Prevention.**
- 13. Support A Lawyer Well-Being Index to Measure The Profession's Progress.**

The ***Report*** further offers specific recommendations to multiple groups of stakeholders including Courts, law schools, malpractice carriers, and legal employers, *inter alia*.



<https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>

Colorado Lawyer Assistance Program (COLAP)

Your Well-Being Resource

Free, Confidential & Independent Program for

Colorado Judges, Lawyers, and Law Students

- *All* communication with COLAP is confidential. We *cannot* release *any* information without a signed release from the individual the information pertains to.
- COLAP is separate and independent from all legal organizations, including the OARC & CBA.

Specialized & Experienced

- Staff are attorneys & licensed mental health professionals.

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Where: 2490 West 26<sup>th</sup> Avenue, Suite 260-A

Denver, CO 80211

Diamond Hill Complex; Near I-25 & Speer, West Side

When: By appointment

Call or email anytime

303.986.3345

[www.coloradolap.org](http://www.coloradolap.org)

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COLAP Services Are:

*Confidential*

*Voluntary*

*No Charge*

COLAP services are available to **ALL** lawyers, Judges, and law students, and serves these populations exclusively. COLAP's staff is therefore uniquely suited to assist lawyers in

“Broadbrush” services – Lawyer Assistance Programs across the nation have long been recognized for their work with lawyers struggling with Substance Use Disorders and Addiction, and more recently Mental/Emotional Health issues. COLAP strives to offer assistance and guidance with any personal or professional (frequently in combination) issues lawyers are facing.

Lawyers Call COLAP for:

- Presentations
- Stress management issues
- Relationship issues - family, co-workers, difficult clients, etc.
- Concern for a colleague
- Grief issues
- Referrals for therapy/treatment
- Mental health or substance use issues
- Transitions - job/career change, retirement
- “Just need to talk”

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COLAP Services:

- Free & confidential consultation: individuals, family members, and concerned colleagues
- Therapeutic referrals
- Recovery support
- Connection with peer-to-peer assistance
- Referrals to other available resources
- Presentations on a wide array of topics
  - \* qualifies for Ethics CLE \*
- Articles on well-being topics
- Staffed exhibit tables for conferences
- Consultations with legal organizations

**Part II:  
Getting Out of the Deep End  
Or Avoiding it all Together**

- **Introduction**
  - Burn Out -- the Deep End of the Pool
  - Duty to Report Under Rule 8.3
  - Available Resources
  - Managing Stressful Cases and Clients - What You Can and Can't Control
  - Using the Colorado Rules of Professional Conduct To Reduce Stress
  - Boundaries Between Work and Home
  - Exercise, Meditation, and Nutrition
  - Benefits of humor
- **Burn Out -- the Deep End of the Pool**
  - Effects of chronic workplace stress
  - Exhaustion, depression, cynicism, and reduced professional efficiency
  - Missing time off work
  - Drug and alcohol dependency
- **Whether to Report Colleagues Under Colo. R. Prof. Conduct 8.3**
  - Duty to Report
    - “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.” C.R.P.C. 8.3(a).
  - Exception to the Duty
    - “This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of a lawyers' peer assistance program that has been approved by the Colorado Supreme Court initially or upon renewal, to the extent that such information would be confidential if it were

communicated subject to the attorney-client privilege.”  
C.R.P.C. 8.3(c).

- Comment 5 to C.R.P.C. 8.3. - providing an exception to the reporting requirements encourages lawyers and judges to seek treatment through a lawyers assistance program.

- **Available resources**

- Colorado Lawyer Assistance Program
- [www.cololap.org](http://www.cololap.org)
- 303-986-3345
- Free
- Confidential

- **Managing Stressful Cases and Clients - What You Can and Can't Control**

- What you can't control
  - Legal conflict
  - Clients & opposing counsel
  - Pressure of deadlines
  - The past
- What you can control
  - Stress management
  - Declining cases
  - Prioritizing tasks
  - Exercise and nutrition
  - Personal and family activities
  - The present

- **Managing and reducing stressful cases and clients using the Colorado Rules of Professional Conduct**

- C.R.P.C. 1.1 – competence
  - “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” C.R.P.C. 1.1

- “Expertise in a particular field of law may be required in some circumstances.” Comment 1 to C.R.P.C. 1.1
  - Don’t dabble
- Comments 2 and 4 to C.R.P.C. 1.1 – you may be able to obtain competence in a new field through study, peer assistance, etc., but is that overly stressful?
- C.R.P.C. 1.2 – scope of representation
  - “. . . a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.” C.R.P.C. 1.2(a)
    - Let the client make the decision – keeps the stress off you
  - Always use engagement letters
  - Use retainers to screen out difficult clients and unwanted work
- C.R.P.C. 1.3 - Diligence
  - “A lawyer shall act with reasonable diligence and promptness in representing a client.” C.R.P.C. 1.3.
  - Reasonable diligence
    - Doesn’t say you need to work every day for 12 hours a day and send an e-mail every five minutes!
  - Stay efficient at work – avoid social media

- Prioritize tasks at start of each day
- C.R.P.C. 1.4 - Communication
  - “A lawyer shall . . . 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” C.R.P.C. 1.4(a)(1).
    - “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” C.R.P.C. 1.4(b)
      - seek client’s informed consent for decisions
      - informed consent defined in Rule 1.0(e)
      - Let the client decide
      - Document major stages and decisions in case – engagement agreement, pleadings, discovery, mediation, pre-trial, post-trial, etc.
        - Keeps the worry factor out
        - Helps share the stress with the client
  - “A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished” C.R.P.C. 1.4(a)(2).
    - Keep it about the client’s objectives, not yours
  - “A lawyer shall . . . keep the client reasonably informed about the status of the matter” C.R.P.C. 1.4(a)(3).
    - Reasonably – doesn’t mean need to send an e-mail every five minutes
  - “A lawyer shall . . . (4) promptly comply with reasonable requests for information” C.R.P.C. 1.4(a)(4)
    - Don’t keep the client in the dark for extended periods of time – bad for them and for you
  - Communication with opposing counsel
    - Avoid instantaneous emails
    - Pick up the phone!

- Communication with other lawyers in your firm
- C.R.P.C. 1.5 – fees and retainers
  - Engagement/Screening Clients
  - Retainers
    - A security retainer is intended to secure the client’s payment of fees for future services that the lawyer is expected to perform.
    - “A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d).” Comment 4 to C.R.P.C. 1.5
    - “Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15B(a)(1) until earned. If advances of unearned fees are in the form of property other than funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to Rule 1.15A(a).” C.R.P.C. 1.5(f)
      - Keep client funds (including retainers) in your COLTAF account. Don’t deposit retainers into your business account until earned as fees.
- C.R.P.C. 1.16 declining or terminating representation
  - “a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client . . . (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client” C.R.P.C. 1.16(1) and (6).
    - Include termination/withdrawal provisions in your engagement letters
    - Right to withdraw if bill remains unpaid
- C.R.P.C. 1.7 - conflicts of interest

- Do thorough conflicts of interest checks and comply with the rules on obtaining client consent to conflicts of interest if waivable.
- Mistakes
  - Mistakes happen – what should you do?
  - Colorado Formal Ethics Opinion 113
    - Available online at [https://www.cobar.org/Portals/COBAR/repository/ethicsOpinions/FormalEthicsOpinion\\_113\\_2015.pdf](https://www.cobar.org/Portals/COBAR/repository/ethicsOpinions/FormalEthicsOpinion_113_2015.pdf)
    - Ethical duty to make prompt and specific disclosure to a client of material error.
    - A material error is one that will likely prejudice a client's right or claim.
    - Lawyer should inform client of right to independent counsel.
    - Lawyer need not inform client of legal malpractice claim against lawyer.
    - Lawyer may continue to represent the client in certain circumstances.
- It's easy to overreact to things
- Most mistakes are correctable
- Stay out of the washing machine – get outside of your head and talk to your colleagues
- **Boundaries between work and home**
  - Studies show can handle significant stress if adequate boundaries
  - The mind needs adequate time to absorb adrenaline and process conflict
  - Keep work at work
  - Maximize work efficiency
  - Come in early – avoid traffic
- **Exercise, meditation, and nutrition**
  - You need something to deal with the stress of litigation and the expectation of perfection
  - Many actors and celebrities found a hobby to deal with stress – exercising, gardening, something that works for you
  - Find something fun – not more work!

- Find something you are passionate about
- Stretch during work breaks
- Meditation – keep it simple!
- Observe relaxation and sleep cycles
- Nutrition - if you eat something bad, eat something good
  
- **Benefits of humor**
  - Numerous studies support benefits of humor
  - Avoid sarcasm
  - Keep it clean
  
- **Questions and Comments**
  
- **Contact Information - Presenters**
  - Chip Glaze, JD, LMFT\*  
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