

LUI: Lawyering Under the Influence

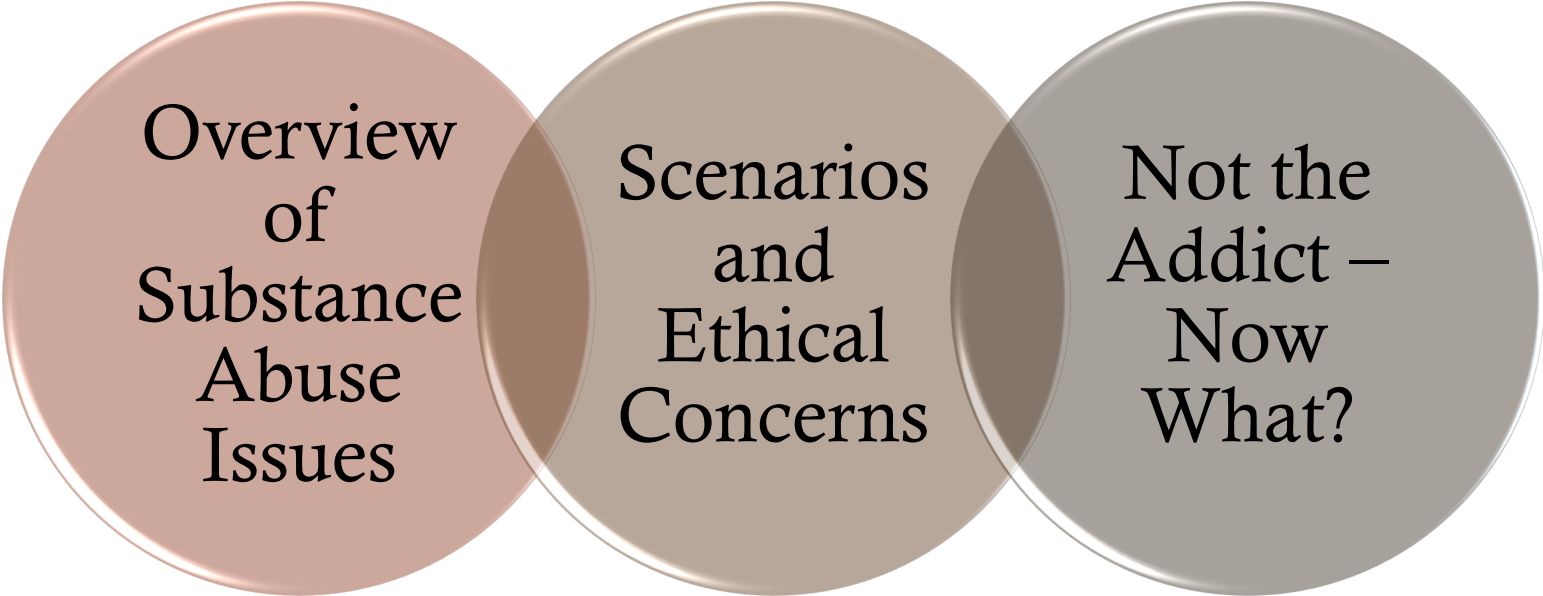
Identifying, Understanding, and Reporting

Carla Baldwin
U.S. Magistrate Judge
District of Nevada

Why Me?



OVERVIEW



Overview
of
Substance
Abuse
Issues

Scenarios
and
Ethical
Concerns

Not the
Addict –
Now
What?

Take Out Your Phones



HOW IT WORKS

- **TEXT: Carlab191**
- **To NUMBER: 37607**

Substance Abuse Issues

Focus for this training - Alcohol Related Issues

What percentage of population suffers from Alcohol Use Disorder (AUD)?

Over 10%

Between 5%
and 10%

Less than
5%

Substance Abuse General Population

10%
Alcohol/AUD

3% Drug/SUD

80% Drug
Addicts also
Alcoholics

75% of Addicts
are employed

95,000 people die
each year from
alcohol related
issues

What is Alcohol Use Disorder (AUD)?

- Medical condition impaired ability to stop or control alcohol use despite adverse social, occupational, or health consequences.
- Physical Components
- Mental Health Components
- AKA = Alcoholism

2016 ABA – Betty Ford Study

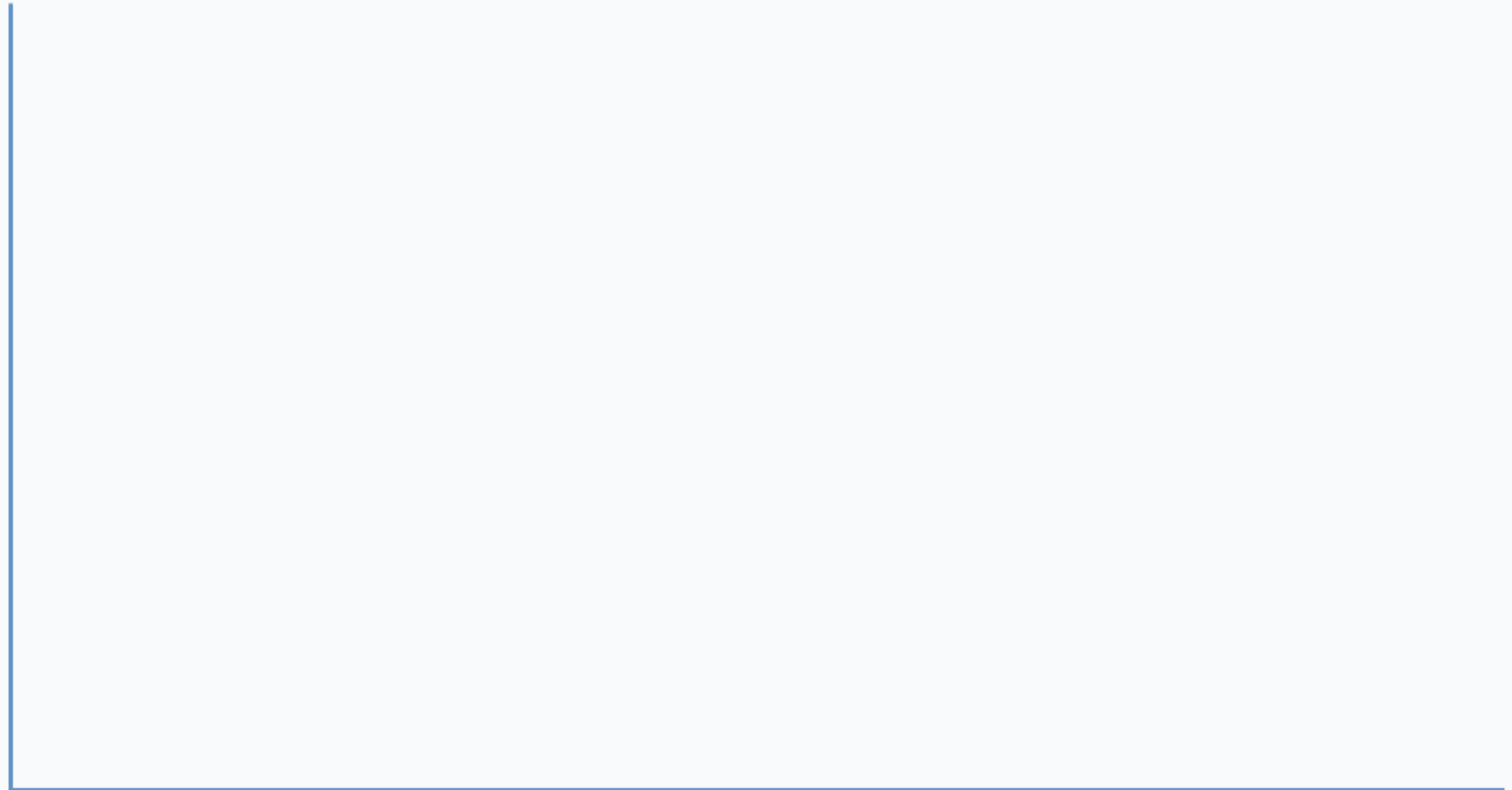
Substance Abuse/ Mental Health Issues Among Lawyers

Krill, Johnson, and Albert,
*The Prevalence of Substance Abuse and Other Mental Health Concerns
Among American Attorneys,*
10 J. Addict Med. 46-52, 2016

Participants

- 12,825 Lawyers
- 19 States
- Variety of Legal Jobs
 - Law Firms
 - Sole Practitioner
 - In-House Counsel
 - Government
 - Law Clerks
- Cross section ages, genders, marital status, stages of career

Lawyers suffer from alcoholism twice as much as general population?



True

False

Alcohol Use Findings

Over 20% - Problem Drinking



More Men than Women

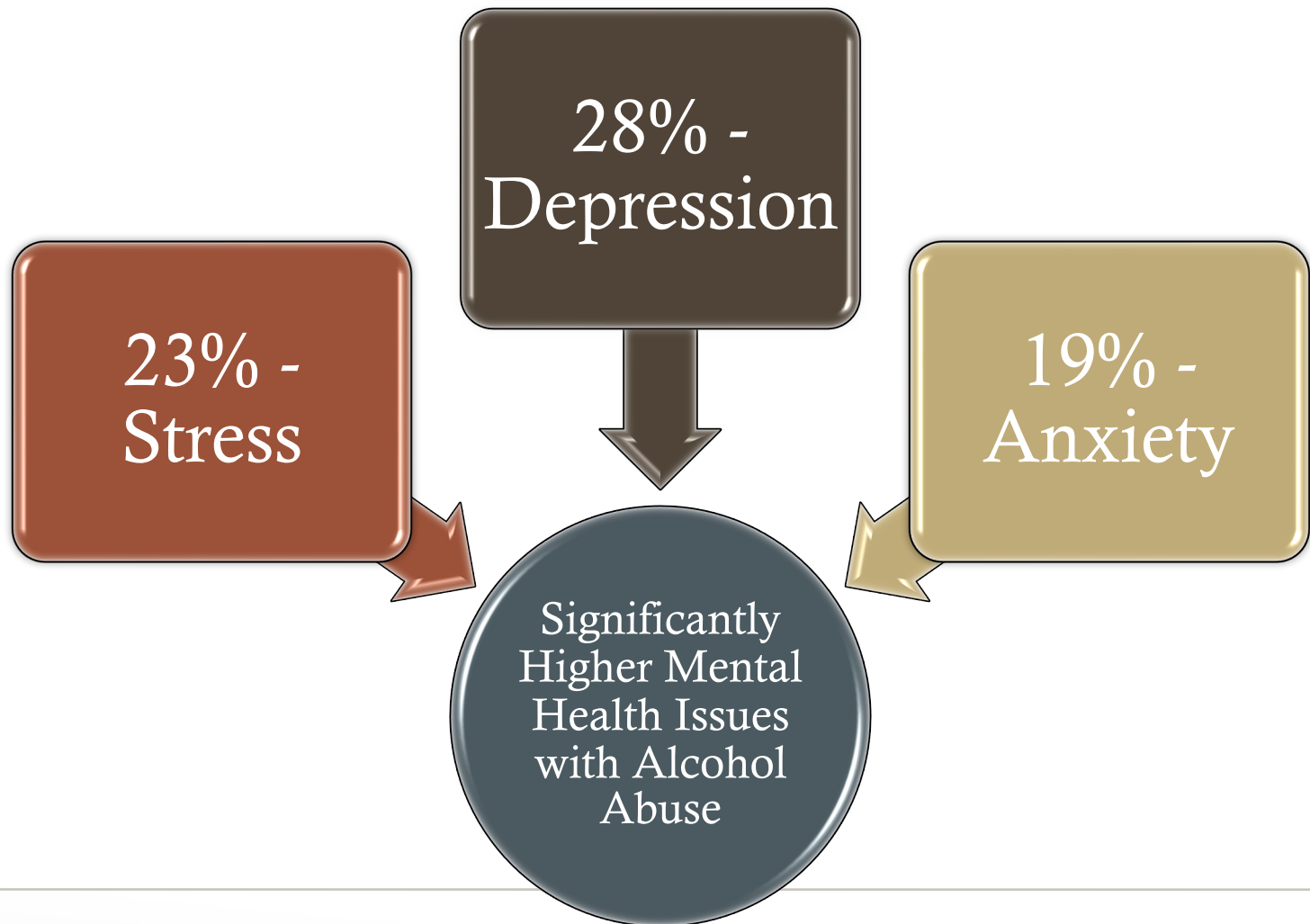


30 and Younger Highest Risk



Law Firm – Junior Associates

Mental Health Findings





Drinking Over Time

Gender/Age

Childhood Trauma/Abuse

Family History

Social/Cultural Factors

Signs and Symptoms

You or Your Loved Ones . . .

**Increased use of
Alcohol/Drugs**

Increases in Absenteeism

**Noticeable changes to
hygiene**

Depression/Withdrawal

**Resistance/Overreaction
to company policy**

Mood Swings

Issues at Home

Ethics Scenarios

What should you do when you observe an LUI in progress?

Scenario 1

For over a year, you are involved in litigating a large case with opposing counsel, Joe Cuervo. During conversations with Joe, sometimes his speech seems slurred and his behavior seems off.

Scenario 1 Cont.

The case proceeds to trial. On the second day of trial, after returning from lunch, Joe's speech is again slurred, and his behavior has changed. He appears to have a hard time holding exhibits and is unsteady on his feet. After approaching Joe to discuss an evidentiary issue, you smell what appears to be alcohol on his breath.

WHAT DO YOU DO?

Ignore it and pretend everything is fine.

Yell "objection" - "Drunk Lawyer"

Ask Joe if you can have a drink.

Ask for a recess.

Overview

*Applicable Rules of Professional Conduct –
Impaired Lawyers*

Impaired Lawyer

Ethical Rules

Rule 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.

Rule 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.6(a): Duty to Withdraw



A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:



(1) The representation will result in violation of the Rules of Professional Conduct or other law;



(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client

Observing Attorney

Ethical Obligations

Rule 8.3:

Duty to Report

A lawyer who **knows** 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.

Reporting Triggered



KNOWLEDGE



A VIOLATION OF
RULE



SUBSTANTIAL
QUESTION FITNESS

Key: “Knowledge”

Rule 1.0(f) – Definition

Actual knowledge of the fact in question or knowledge may be inferred from circumstances.

Options On How To Handle

Request Break During Proceeding

- Talk to Lawyer – if you believe you can
- Discreetly Inform Court Clerk of Issue/Request Meet with Court
- Request Continuance

Contact Nevada Lawyers Assistance Program ("NLAP")/Lawyers Concerned for Lawyers ("LCL")

Possible Reporting Obligation – Depending on Severity of the Issue

ABA Formal Opinion 03-431, August 8, 2003

Scenario 1 – Observing Judge

You are the presiding judge in this scenario. You noticed what appeared to be odd behavior by Joe Cuervo after the lunch break – particularly his inability to handle exhibits.

Opposing counsel, Mr. Teetotalbaum, abruptly asked for a recess – right after lunch with the jury in the box waiting to hear evidence. You reluctantly agree. Shortly thereafter, your courtroom deputy explains that Mr. Teetotalbaum is concerned that Mr. Cuervo may be under the influence.

What are your options?

Recuse **A**

Call your therapist **B**

Hold a hearing outside
presence of jury to discuss **C**

Have Mr. Cuervo drug
tested **D**

Have a drink, its going to
be a long day **E**

Ethical Considerations – Presiding Judge

Nevada Code of Judicial Conduct
Canons 2.14 & 2.15

Canon 2.14

"Reasonable Belief" that performance of lawyer or another judge impaired by drugs, alcohol, mental/emotional/physical condition, "shall take appropriate action"

NCJC 2.14 vs. NRPC 8.3

Reasonable
Belief

- Actual Knowledge

Performance
Impaired

- Actual Violation of an Ethical Rule
- Substantial question of Fitness

Appropriate
Action

- Required to Report

Comments to Canon 2.14

- Referral to Lawyer/Judicial Assistance Program
- Talk to Impaired Lawyer
- May Require Referral to Appropriate Agency (State Bar)

Canon 2.15(B)



A judge having **knowledge** that a lawyer has committed a violation of the NRPC



Raises **substantial question** regarding the lawyer's ... fitness as a lawyer in other respects



shall inform the appropriate authority.

Observing Judge - Knowledge?

Hearing/Question
Counsel

Test for
Drugs/Alcohol

Continuance of
Hearing/Trial

If Use Confirmed,
Duty to Report

Scenario 2

You are a fulltime District Court Judge in the 8th Judicial District Court. Your law clerk is Johnny Walker, who is under your direct and sole supervision. For the first six months or so, Johnny was a very productive and highly effective law clerk.

Recently, Johnny's behavior and worked has changed. Johnny routinely comes to work late and calls in sick – usually on Mondays. After observing Johnny, you notice his physical appearance has also changed – he is losing weight, his skin is gray/pale, his face is red, and his eyes are red and bloodshot.

Scenerio 2: Cont.

Johnny's performance is also getting worse – his writing becomes sloppy, his draft orders fail to cite to the NRS or controlling authority. Last week, Johnny failed to attend court hearings that were necessary to assist you in drafting significant orders in both a civil and criminal case.

You suspect Johnny may be suffering from a substance abuse problem.

What To Do with Your Law Clerk?

Ethical Considerations:

Supervising Judge

Canon 2.12 – Supervision Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

What Canons May Apply?


Canon 1.2

Promoting Confidence In Judiciary



Canon 2.5

Competence and Diligence



Canon 2.14

Disability or Impairment

Canon 2.14

"Reasonable Belief" that performance of lawyer or another judge impaired by drugs, alcohol, mental/emotional/physical condition, "shall take appropriate action"

Referral to
Lawyer/Judicial
Assistance
Program

Talk to Impaired
Lawyer/Judge

May Require
Referral to
Appropriate
Agency (State
Bar)

Issues for Supervising Judge – Employment and Other Issues

Obligation to Adopt Measures to Prevent Violations of Rules

Can accommodations be made to allow to work on legal matters WITHOUT violating the judicial canons?

Are there instances of rule violations that have already occurred that are serious enough to cause “serious question” as to ability and require reporting?

Issues to Consider

Talk to Clerk?

Report to LCL/NLAP
without disclosing
confidences

ABA Formal Opinion 03-429, June 11, 2003; *In re Clegg*, 41 So.3d 1141 (La. S. Ct. 2010) (good example of handling supervised attorney situation)

Scenario 3

Rumors abound in your small legal community that Judge Amber Ale, a state trial court judge, may have a drinking problem. You are an attorney who practices in front of Judge Ale in Reno. You recently heard that Judge Ale was seen intoxicated at Louis Basque Corner in Reno where she spilled water and yelled profanities at a waiter, and shouting “do you know who I am?” When the police arrived, she called them pigs and oinked.

You were told that Judge Ale was also arrested for DUI.

You have a case pending before Judge Ale and you have hearing set before her on a motion for summary judgment about a week after you hear the above gossip.

Scenario 3 Cont.

At your hearing, Judge Ale seems to have a difficult time walking onto the bench – appearing a bit wobbly.

The case is called and you approach the lecture to argue. However, before you can begin, Judge Ale throws a pen at her courtroom deputy to get her attention and seems to ignore you.

Undeterred, you begin your argument. After introducing yourself, Judge Ale begins to yell obscenities at you, calls you a “f*%\$ing idiot” and tells you to sit down before she has you arrested. Her speech is clearly slurred and she seems to have a hard time sitting up. Judge Ale is clearly intoxicated.

Drunk Judge: What do you do at the hearing?

Call her a "f*cking idiot" back - then
put your hands out for the cuffs

Leave

Ask for recess/continuance

Attempt to speak with Opposing
Counsel

Fake a heart attack

Real Case

Florida

Miami-Dade Judge Allegedly Showed Up Drunk on Bench and Called Cops "Pigs"

KYLE MUNZENRIEDER | APRIL 19, 2016 | 12:07PM



Maybe you remember Miami-Dade County Judge Jacqueline Schwartz from previous headlines. She's the judge who **told a**



Coconut Grove convenience store clerk "go fuck yourself" in a row involving an opponent's campaign sign. She also once sent out an election victory **email boasting about being an "Anglo" who defeated a "nondescript Hispanic."**



Well, she's back at it again. According to **a report by the state's Judicial Qualifications Committee (JCQ)**, in March she showed up noticeably impaired in public and on the bench and has been on paid medical leave since then.



Update: The State Supreme Court has **ruled** that Schwartz will be suspended, but will still mull over whether the suspension should be with or without pay.



What if you are Judge
Ale's Judicial Colleague?

Nevada Code of Judicial Conduct

Canons 2.14 & 2.15

What if YOU are Judge Amber Ale?

[https://judicial.nv.gov/Discipline/
Decisions/New_Decisions/](https://judicial.nv.gov/Discipline/Decisions/New_Decisions/)



Addict

Their Loved
Ones

Effects Of Substance Abuse on Others

2012 – 10% Children Live with an Alcoholic Parent

2007 - 76 million Adult Children of Alcoholics lived in United States (43% of Population)

Addiction of 1 Addict affects (on average) between 7 to 10 other people

Increases Risk of Domestic/Family Violence

Children of Alcoholics 4 times more likely to become addicts

What Can You Do

For Yourself and the Addict

Self-Care

- Take Care of Yourself
- Get Help for Yourself
- Programs (Open AA meetings, Al Anon, Therapy, etc.)

Understand the Three C's

- Didn't Cause
- Can't Cure
- Can't Control

Don't Enable

- Set Boundaries
- Detach with Love

Don't Talk To Them When Using

- Can't reason with booze/dope

Consider Intervention

- They have to want help
- They have to be at a place to get help

Research

- Detox Facilities
- Treatment Facilities
- Outpatient Help/Treatment

Resources Available



Lawyers Concerned for Lawyers



Nevada Lawyer Assistance Program



Twelve Step Programs/Support Groups

Additional Resources

National Institute of Alcohol Abuse and Alcoholics (NIAAA)

- (301-443-3860)

Substance Abuse and Mental Health Administration (SAMHA)

- (800-662-HELP)
(800-662-4357)

National Institute of Drug Abuse (NIDA)

- (301-443-1124)

National Institute of Mental Health (NIMH)

- (866-615-6464)

Primary Care Physician

Conclusion

LEAVE Poll Everywhere

Text “Leave”

Hit “Send”