



*It's Not the Job That Makes
You Crazy – Well, Maybe It Is*



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About the Presenter

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Charles opened his own practice immediately upon being sworn into the Illinois Bar, concentrating on contract and trademark issues for small businesses.

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Course Description

Course Presentation

This course provides a fundamental overview of the process and procedure of how to handle the stress of being a small firm or solo practitioner, proactively dealing with stressors, and finding the right work/life balance WITHOUT alcohol or similar.

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.

Course Learning Objectives and Outcomes

Participants will develop an understanding of how to have a better work/life balance which leads to better mental health.

Participants will develop an understanding about activities both in and outside the profession that counter the conflict, anger, and stress.

Participants will have an understanding that if joy of accomplishment and achievement are missing from their Law profession, they need to seek it outside of their profession in order to have good mental health.

Participants will be given five ideas of where to seek joy of accomplishment outside the profession by finding other life activities and strategies without turning to substance abuse.

Participants will learn tips and techniques about dealing with Opposing Counsel during Discovery that can lead to a constructive working relationship and reduce antagonism and animosity.

Participants will learn tips and techniques on how to do Discovery so that the scope of the case is reduced, in order to reduce workload and stress levels

Participant will learn tips on Pre-Discovery conversation with Opposing Counsel that can make Discovery go more smoothly, reducing stress and anger that can develop during Discovery.

Participants will learn some tips on dealing with the ten percent of Opposing Counsel that is very difficult to work with.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.

Timed Agenda:

Presenter Name: Charles Silverman

CLE Course Title: It's Not the Job That Makes You Crazy – Well, Maybe It Is

Time Format (00:00:00 - Hours: Minutes: Seconds)	Description
00:00:06	ApexCLE Company Credit Introduction
00:00:21	It's Not the Job That Makes You Crazy – Well, Maybe It Is
00:00:33	CLE Presenter Introduction
00:00:39	CLE Substantive Material Presentation Introduction
00:01:07	Why aren't you happy?
00:04:24	Conflict from your job - Leaving it at Work!
00:06:46	Five Ways to seek joy and accomplishments outside of your Job
00:07:01	First Way - Gardening - Health Benefits - Outside, Physical Activity, Patience, Joy of Accomplishment, Real Payoff for your Efforts
00:08:57	Alfred Austin Quote
00:09:58	Litigation is a 6-month process - don't always see a payoff for your efforts.
00:10:37	If your job does not provide joy of accomplishment, have a hobby outside of work that provides it.
00:10:41	Art - Anything creative
00:11:19	Scott Adams Quote about Creativity and Art
00:13:22	Art - Health Benefits, calms you down, relaxes you, joy of discovery, learn patience
00:16:04	Career, Secondary Job
00:17:25	Secondary Career Benefits - Income Stream not tied to Conflict. Admiration and Curiosity about the Law Profession from Non-Lawyers - Plays with your Filter in a Good Way
00:19:30	Spirituality - Individual thing. What's important, what is not, leave stress behind, only meaningful when the individual figures out what it means and let's it flow through them

00:20:25	Exercise - Health Benefits- Physical and Mental
00:20:47	Conflict In the Job - Discovery, Discovery, Discovery
00:21:15	A Less Stressful Litigation Practice Involves Discovery. Give a person a chance to make their case
00:22:47	If Discovery is done properly, it ends in a summary judgment or settlement and will lower your stress and anger
00:23:35	Clients - Start the Relationship with a Written Agreement, but do not text with your clients
00:24:08	Email/Texting/Twitter clients, causes more upset versus speaking to a client in person which relieves stress
00:26:01	Emails should be Limited to Sharing Documents. Relationships with Clients need to be Cultivated preferably in person or verbally over-the-phone.
00:27:00	Cut Off Toxic Behavior Immediately
00:30:22	Opposing Counsel - Relationship based on Opposition
00:33:00	Prior to starting the meeting, talk to the opposing counsel about a simple topic other than the Case, reduces or eliminates any antagonism because a Human Element has entered the relationship
00:35:53	Opposing Counsel
00:35:58	Federal Rule 26 - Purpose is for Attorney's to talk to put together a Discovery Schedule. Lawyers often view it negatively.
00:47:16	What About the Jerks? Control and Limit the Engagement with these People. Not going to change them. Don't take what they say personally and get stressed and angry
00:51:16	Some things to Remember - Email is Bad /Email is Good -It is Bad because it is a terrible way to communicate. Email is Good because it provides a written record when dealing with antagonistic Opposing Counsel.
00:52:24	Must learn to work with the antagonistic Opposing Counsel - According to their dysfunction. Identify and counteract their dysfunction, Discovery will go smoother and leads to a smoother trial.

0100:50	Some Things to Remember - Some Opposing Counsel are locked into his/her Own Narrative. Identify the person's dysfunction and counteract it.
01:10:19	Humor- Try to laugh and find the humor in what the other Counsel does, avoid getting angry
01:14:57	The more dysfunctional Lawyers are, the more they ignore the rules
01:16:16	Discovery - If done properly you will lower conflict by getting straight to the issues
01:16:28	What is the point of doing a Stipulation? The Trial will be shorter, and Stipulation lowers the emotional impact of proving the case.
01:17:19	Discovery is a chance to isolate Issues - Find the Void, find the thing that should be there that isn't. What are they glossing over? What are they not being specific about? That is the Void.
01:25:53	Use Discovery in a Targeted Way to reduce the scope of the case so you are not fighting with Opposing Counsel which lessens your stress level.
01:30:43	Discovery – Pre Discovery, try an informal conversation with the opposing Counsel, to find Common Ground to make Discovery go smoother. Less stress for all involved.
01:33:00	Closing Statement: If you use Discovery this way, 90% of opposing Counsel will respond positively. They will be Happier, you will be Happier which is what you are trying to accomplish, to be Happier in your Practice.
01:33:12	ApexCLE Company Closing Credits
01:0	End of Video

Course Material

Introduction

The idea for this course came from the fact that I started gardening recently. The practice of Law can make you crazy. Very good reason for this. The practice of Law is about conflict. This course is about psychological strategies to approach your job and approach other attorneys.

Why aren't you happy?

Hopefully most of the time you are happy. But the job can grind you down. There is a reason why we require CLE Mental Health Credits. The reason why we have had some of the highest rates of drug and alcohol abuse in the industry.

From a speech given to my class on my first day of law school. The legal profession is great because:

- 1) There's no manual labor - can be a drawback to good health
- 2) It is intellectual - most of the work is not intellectual
- 3) It is a noble profession - has a lot of noble people in it but they are not the problem

You aren't happy because these 3 things are lies. These 3 things are not true in the day-to-day life of an attorney and that is why attorneys get frustrated in their day-to-day lives

The theory of contracts is for about 95% of the people and the lawsuits about contracts are for 5% of the people. Lawyers usually are dealing with dysfunctional people. If a case is at a lawsuit level, someone is dysfunctional. If not the other client, your client, the other attorney, you need to look in the mirror.

Accomplishment = Joy in Life. Most accomplishment comes from building. People want to see that what they do has a positive real effect and really accomplishes something, and accomplishment gives joy. What do you do about the stress in your job? The stress that is slowly making you nuts.

Two Things:

1. You need to reduce conflict from your job
2. You need to reduce conflict in your job

What is meant by conflict from your job - don't take it home and have something outside your job that diffuses your job. How do you leave this at work? Unresolved aggression leads to stress. People with physically dangerous jobs often develop PTSD. Lawyers do not have that type of job conflict normally, so we do not get PTSD. Lawyers deal with constant sniping, snarling and yelling and we do not realize that our adrenalin is spiking, and other things are getting involved and that we are getting angry and carrying it with us. If you are the sort of lawyer that does not have a number of things in your practice that you can point to – I solved a problem, I accomplished something, I built something so that you can feel the joy of accomplishment, then you need to have something outside your job. If you are not getting that psychological necessity of accomplishment - I fixed this, I accomplished this therefore I feel better about myself, you need to find it outside your job. This is a real human need. If you do not get this need fulfilled from your job you need to get it outside your job.

Transactional work has some building. Litigation has virtually none.

Litigation is conflict.

"The job of arguing with the umpire belongs to the manager, because it won't hurt the team if he gets thrown out of the game." - Earl Weaver

Reduce conflict from your job, and then reduce conflict in your job.

It's important that you advocate for yourself when you begin your job as a candidate. You have a job offer and you're excited and you want to accept it. You're probably just glad you have a job and you're not going to have to keep searching. No one's going to blame you for wanting to jump into that offer of full-time employment but, you need to discuss with the person interviewing you about the culture in the firm, about what's expected of you at the firm. Ask questions such as:

- What is the work-life balance like?
- What does the firm do in order to try to facilitate that as a lawyer?

- What are the expected billable hours?
- Describe a typical workday, do people take off for lunch or eat at their desk?
- How late do the lawyers usually work Monday through Friday?
- What percentage of the lawyers work on Saturday?

It is important to set boundaries and you want to do that immediately when you start your job. You want to let your co-workers and your managers know you can certainly put in extra time and that you will put in extra time and that you're going to ensure that all of your deadlines are met and that you will go above and beyond when possible. But, if it's something like your daughter plays baseball on a Saturday from certain hours or you have hockey practice or you play in a band at certain times, know that it's okay to say that these are hours that I'm not going to be working. You want to make it a habit to not respond during those hours to emails or take a meeting on a Sunday if it's your priority that you don't want to work on a Sunday or that you typically won't work on a Sunday. Clients and co-workers can be respectful of weekend time and it's important to set those boundaries.

Bring Balance to an Existing Career

Let's look at an attorney already in practice. How can you change your pattern and add more Work-Life balance to your career? Start by making time for yourself.

You must carve out certain times for yourself whether it's waking up early in the morning to get your exercise time or carving out a couple hours just for you. That may mean working later in the office and not going home at 5 at night or maybe being there till 7 or maybe bringing work home.

Most clients and co-workers are supportive of your personal endeavors. If you want to train for a marathon and you tell your co-worker what you are doing or your bosses and most of your time for training is weekends and you make sure that it doesn't interfere with your work, people are going to be supportive of that.

It's also important to try to get a good night's sleep and I know that that seems something that we should all do, and we should all know about but if you're going to have a balance in your life, sleep is very important at night.

Communication is also important for a work-life balance. You want to communicate your boundaries; you want to be honest with people about your personal time. You want to be honest with people about what you can take in terms of your caseload, how you're managing your files, if you have enough work, if you don't have enough work and it's okay if you decide that you want to take a class at work and you need to leave early one day at work. As long as you run that by your boss, your supervisor, or human relations to get the time you need for yourself.

You need to keep a good calendar, you want to know what your schedule entails, you want to know when your deadlines are, when things are due, and you want to stay on top of that because that helps eliminate some of the stress in your life. Sometimes you just can't do something and we're all guilty of wanting to and taking on more than we can handle but it's okay. It's okay that we don't always say yes at things that we were asked to do and it's okay not to join that committee or go to that event and really prioritize what is important to you. Learn when to say no to taking on more than you can fit into our calendar.

Conflict from your job – Leaving it at work!

Effects of getting your fight up, letting it go.

Do you have accomplishments that you can touch and see?

Do you have something that you built? Something that you made grow.

Gardening:

- Health Benefits
- Joy of growth
- Patience
- Budgeting items & Free guidance

"The glory of gardening: hands in the dirt, head in the sun, heart with nature. To nurture a garden is to feed not just on the body, but the soul." - Alfred Austin

"I see a real payoff for my efforts." Most of what you do in litigation is grinding nonsense until both sides agree to what was obvious 6 months before. Don't always see a payoff for your efforts. One thing to try doing to reduce conflict from your job. If you are not getting joy of accomplishment from your job as an attorney, have a little hobby at home to take the edge off.

Art:

Consider some kind of Art. Art is anything creative - painting, sculpting, line drawing, singing, playing an instrument etc.

"Creativity is allowing yourself to make mistakes. Art is knowing which ones to keep." - Scott Adams

You *dare not do that* in law! Lawyers dare not make mistakes. They spend a lot of time looking over their shoulders. Stressed that they might make a mistake, it is good to have something in your life where it does not matter if you make a mistake, mess something up. Art does that for you.

Art:

- Health Benefits
- Joy of discovery
- Patience
- Budgeting & Guidance

As mentioned before, Law isn't always very intellectual or noble. You can satisfy that need by having a second career. Teaching about law is intellectual. First you are getting an income stream not tied to the conflict of your everyday law practice. If you do something once or twice a week that makes you some money, psychologically your income stream is not tied to conflict. Another advantage to a secondary job, is you meet people who treat the law with admiration and curiosity. Sitting around talking to attorney friends ends up being a complaint session. If you speak with people who don't know anything about the law, they will be interested and fascinated in learning how it works. When you tell someone about your job and they think it is really cool, it makes you feel good about your profession. A secondary job can play with your filter in a good way.

Career, secondary job:

- Law Without Conflict
- Small Steady Money
- Admiration & Curiosity

Interesting end of the story: Band of Brothers, E Company, 506th Regiment, 101st Airborne: From Normandy to Hitler's Eagle's Nest, by Stephen E. Ambrose. None of them who survived stayed in the Army. They became builders, teachers etc. They had enough of conflict, of fighting. They were good at fighting, and they fought a very important fight, the Battle of the Bulge, and Battle of Normandy, during World War II. When the fight was over, they wanted to be in professions where there was building and growth. Something to think about as Lawyers, how do we experience building and growth in our lives?

Spirituality:

Has to be what you have found for yourself

Spirituality - Individual thing. The individual needs to figure out what's important and what is not in order to leave stress behind. It is only meaningful when the individual figures out what it means and let's it flow through them.

Exercise

Health Benefits
Mental Benefits
Spiritual Benefits
Joy of Growth

Many of us need to do more with exercise. It does a lot to relieve the stress we are feeling.

Conflict IN the job – Discovery, Discovery, Discovery (Also: Clients, Opposing Counsel, and other silly people).

Discovery is the key to a less stressful practice. Discovery is what makes the practice of law different from a stupid argument on social media. You gain nothing by throwing blocks of text at people. Discovery is where you give a person a chance to make their case.

"If discovery is done properly, every case ought to end in summary judgment or a settlement." - I can't remember who told me this.

Discovery will lower your stress. If you do Discovery in the correct way, it will lower your stress level. More on Discovery later, for now...

Clients:

- Begin the relationship the right way IN WRITING with a written agreement
- Do NOT text with your clients
- Email in a limited fashion - sharing documents
- Talking to the client relieves stress - emailing and texting causes more upset
- The client is not in a good place most of the time
- A relationship with the client needs to be cultivated
- Cut toxic behavior off immediately - if you don't at some point you will, and it won't be diplomatic

"I don't practice a certain area of law; I practice with certain clients." - An attorney at 400 W. Superior, told me. He has clients that are good clients, and he does whatever they need done. If they need him to do something, he researches how to do it, does it for them and then gives them a fair bill. It was insightful because he has a core group of clients who treat him well and respect him, he bills them fairly and he does what they need him to do. He feels respected and has a less stressful practice.

Most lawyers do certain types of law and find clients who need their services. If you have a good client who respects you and is not obnoxious and they need you to do something, and you don't know how to do that type of law they are requesting, be honest with them. Ask them if they want you to figure it out or recommend an attorney who does that type of law. You recommend an attorney and what they should look for when choosing an attorney. You will find the client appreciates you and will come back for other legal needs. It is a cultivated client relationship. You feel respected and the stress level is very low when dealing with this client.

Opposing Counsel:

Your relationship is about their opposition! them your 'co-chair'!

What do you do about Opposing Counsel? I discovered this tip by accident. Prior to going into the meeting, talk to the Opposing Counsel about a simple topic other than the Case and the Case will go easier for both of you. Make them your Co-chair. It reduces or eliminates any antagonism because a human element has entered the relationship. Because our whole relationship was not about the case, it made the meeting go easier without antagonism. Future

conversations about the case were also easier. Both Counsels will represent their clients, but when we see ourselves as human beings it eliminates the antagonism which lowers your stress level with the case.

Federal Rule 26 Meetings, Discovery plans – How I did it right. As in, NOT: “Oh you fool who does not know what I know!” Fed. R. Civ. Pro. 26 (Duty to Disclose; General Provisions Governing Discovery)

Federal Rule 26 - says the attorneys are supposed to talk to each other and plan out a Discovery schedule. Sometimes you do talk about substance, sometimes you talk hostile talk, most days it is “we have to do this, what day do you want to get together”.

Do not lord it over Opposing Counsel with esoteric knowledge. Use the knowledge you learn in a constructive way. Lording over Opposing Counsel and taking an attitude doesn't do anything for your case and adds antagonism and stress to a case.

Why do attorneys do that? Not sure but I know I do not want to be this way. I had a case where there was a problem with the structure of a building, but I also discovered there was a soil problem which should have been reported on RESPA (Real Estate Settlement Procedures Act). The soil was down by the river and not related to the structure. I had run into this problem before and understood the problem. I did not want to be the kind of lawyer that keeps things from the other lawyer that they should know about. I had a conversation with the other attorney asking what 3-4 issues were important to her and her client regarding the case. I asked how much time she would need for discovery. I explained that I came from the side of one who has sold a property with the soil problem. I explained that I don't know a lot about the buyer's side of things. I asked if there was anything she wanted me to read to become more knowledgeable regarding their case. She asked me what issues I had, and I told her what I was going to ask her to do for me. Because I spoke with her in this way and did not try to lord anything over her, we have had a very constructive relationship going forward.

The case has gone smoothly. When I get an email from her or her firm, it is not a cause for alarm. It is a very calm, civil conversation. I am not going to get one of these surprise motions. If I had the same relationship with all opposing counsel, I would not have to do this course. I would not have to garden. It is a very healthy working relationship which is healthier for me and my staff.

Stress level is way down, there are no last-minute surprises that make for tense situations.

This kind of relationship will only happen with lawyers that are normal people. There are a certain number of people that this won't matter at all. Some of the most dysfunctional human beings are attorneys. If you tell yourself that there is no point in getting upset when a dog barks at me because that is what dogs do or there is no point in getting upset if a pigeon poops on the windshield of my car because that is what pigeons do; think about some of these dysfunctional attorneys in the same way and you will be less upset and less stressed working with this person. 90% of the legal profession is normal. Some are burnt out but if you use the tricks I talked about, you can have a constructive working relationship with them. The other 10% are not going to change and become better people. You have to engage with them, but you have to control the engagement and limit the engagement.

What about the jerks?

Antagonistic people who like to 'win' arguments are drawn to the legal profession for the same reason that pedophiles enter professions that involve exposure to victims. Yes, that's an ugly thing to say. But it's ugly because it's true. Some dysfunctional attorneys are drawn to the profession because it allows them to be dysfunctional. They follow their worst impulses, and they don't care. People who like to argue and win, enter the legal profession and poison it. They love being a lawyer. What do you do when dealing with people like that? You won't be able to have an inane conversation with them and have a working relationship. Tell yourself this is who they are and there is no point in getting upset

Some Things to Remember?

Some things to Remember - Email is Bad /Email is Good - It is Bad because it is a terrible way to communicate. Email is good because it provides a written record when dealing with the antagonistic Opposing Counsel

Have to Learn to Work with the antagonistic Opposing Counsel - According to their dysfunction. If you can identify their dysfunction, you can figure out how to counter their dysfunction which makes discovery go smoother and leads to a smoother, less stressful trial.

Some Things to Remember - Some Opposing Counsel are locked into his/her Own Narrative. He/She handles cases on the same topic and can't prove the case. Identify the person's dysfunction and counteract it.

Humor- Try to Laugh and Find the Humor in What the Other Counsel Does, Avoid Getting Angry

The More Dysfunctional Lawyers are, the more they Ignore the Rules. If you think what they are telling you about the rules does not sound correct, do your research. You will usually find out that they are not correct.

Discovery - If done properly you will lower conflict by getting straight to the Issue

Don't talk to dysfunctional opposing counsel any more than you have to. Your communication with opposing counsel has to be shaped by their dysfunction.

Some things to remember

- Email is bad, Email is very good.
- C.L. - Worst of the Worst, vicious and very bitter, older attorney and because of his age judges tend to cut him more slack and let him get away with his behavior. Everything is a fight. Everything is nasty and bitter. You can't have a conversation without him screaming. It disturbed me to interact with him. I was afraid I would get like him. Questioned if this is what the job does to you. It can if you let it. Once I acknowledged that the scariest thing about him was that I was afraid of becoming like him, he no longer bothered me. I am not going to turn into someone like him. Not going to let it happen. What is his dysfunction? Everything is a fight. Engage with him as little as possible. Keep answers short. Would rather argue the case in front of the judge.
- D.G. - This person is narcissistic and wants all the attention. He kept calling and after a while I quit taking his calls. All he wanted was to tell me how great he is. His dysfunction is narcissism. He needs to be the center of attention. I don't pay attention to him. I just concentrate on the case.

- R.R. - Is a serial liar. I don't talk to this person on the phone because the first time I did he lied about me. I must stay on top of everything about the case.
- R.K - This lawyer files lawsuits on this one subject and doesn't seem to care about truth. He had no answers, and he can't prove his case. He is locked into his own narrative. I file these cases; people settle and then they cut me a fat check. I refused to have my client settle. We agreed to pay his costs and he kept talking about \$20,000, \$15,000. He is so locked into his own narrative that it is preventing effective communication with him, so I did not communicate with him. I kept sending him discovery and made him do some work. We eventually came to a settlement and worked out the details with the help of the judge.
- If you identify their dysfunction, you can ask yourself what you need to do to counter the dysfunction? If the dysfunction is pay attention to me, you don't pay attention to him. If the dysfunction is that I want to fight about everything, you refuse to fight with him. If the dysfunction is that he lies about everything, then you stay on top of everything and make sure you keep a list of all the facts.
- If they mistreat your staff serially, you must let the judge know.

Humor:

- Anger, Depression, Hilarity
- Exhibit A to Reply
- As much as you can, try to see the humor in your dealings with these dysfunctional people. Laugh instead of cry, laugh instead of getting angry, frustrated and stressed.

The most dysfunctional opposing counsel, the more they ignore the rules, do your research and catch them.

Discovery (I told you that I would get back to it).

If you do Discovery properly, you will lower conflict and get straight to the issues.

What is the point of doing a Stipulation? If you can stipulate some things about the Opposing Counsel's case, the trial will be shorter. Stipulation lowers the emotional impact of proving the case. You only go to trial on the things on which you disagree - the trial is shorter.

Finding the void

Discovery is a chance to isolate issues - Say "Put Up or Shut Up" - You need to find the Void, find the thing that should be there that isn't there. What part did they skip over? What are they glossing over? What is the thing that they are not being specific about? That is the Void. Need to say to yourself, if this is true then there ought to be what? Example if Opposing Counsel says, "Your client is screaming through the wall at my client all of the time." If that is true, it would not be just Opposing Counsel's client that would hear it. The guy on the other side of the apartment would also hear it. Give me his name and his complaints. Opposing Counsel says that "Your client went through a red light and hit my client. If this is true, there should be a red-light camera to prove it. If Opposing Counsel's client is really injured, there should be medical bills. If what you are saying is true, there ought to be this.

Finding the void works, if you are the plaintiff as well. Two ways you know people are lying:

1. When they refuse to produce evidence
2. They have seen evidence, but they can't talk about it.

If they have evidence, they will produce it up front. If they don't produce the evidence, you don't proceed to any kind of settlement. You push back until they give you the evidence or agree to drop the case. You must have something to take to your client if you present a settlement, which shows the evidence that they have against the client and why the settlement is a good idea.

By using Discovery to target the void, the thing that wasn't talked about, the conclusory areas, I was able to put the onus on the opposing counsel where it belongs. This works whether you are counsel for the defendant or plaintiff. Give me your evidence. There is a difference between arguing with Opposing Counsel over social media and Discovery. Use Discovery in a targeted way to reduce the scope of the case so you are not fighting with Opposing Counsel about everything, and which lessens your stress Level.

Sample Interrogatory:

In your Complaint's paragraph [whatever], you alleged that [whatever foolish thing they said, especially if it is conclusory.] Are you, or any agents or persons acting on your behalf, aware of any fact, observation, document, or item that demonstrates, supports, or is otherwise relevant to this allegation? For each and every fact, observation, document, and item of evidence, please set forth the following information separately, specifically, and in detail:

A. A detailed description of the fact, observation, document, or item of evidence, setting forth names, dates, times, places and any other information that might assist in the identification and location of the subject information.

B. The name, address, telephone number or other means of identification of each person who has possession or firsthand knowledge of the subject fact, observation, document, or item of evidence, and that person's relationship to the parties herein.

C. The method or manner by which you obtained knowledge of this information, setting forth, names, dates, times, places and any other details that relate to the manner in which you obtained such knowledge.

III. Sup. Ct. R. 213 (Written Interrogatories to Parties).

There is this weird idea that if you file a motion to dismiss that you do not need to file discovery. You should file discovery. If I file a motion to dismiss but opposing counsel has intimated that there was an issue with my client, I file discovery. I want to know what they have on my client if they have anything. You use discovery to find out what they have and to reduce the scope of the case. You don't want to fight with them about everything. If you and Opposing Counsel agree on 4 issues of the case and disagree on 2 issues. You want to minimize the 4 issues that you agree on and spend most of the discussion on the 2 issues you don't agree on. What do we agree on about this litigation? Let's isolate those and then we are left with the 2 areas that need discussion. This will now go faster.

Summary

Discovery - Try an informal conversation with the opposing Counsel, to find out what they are really looking for, what is this case all about. Try to find common ground on Discovery. What do you want to see from my client and what my client wants from you? This will narrow the scope and time of the case. The Clients, Attorneys and Judge will all be less stressed and happier.

If you use Discovery this way, 90% of opposing Counsel will respond positively. They will be Happier, you will be Happier which is what you are trying to accomplish, to be Happier in your Practice.

Resources

Resources Specific to this Course

Tips to Avoid Heading Down the Path to Discipline

Now let's talk about some general tips that are good to stay out of trouble and I'm going to assume that most of us don't have alcohol issues that we still want to stay out of trouble, and we don't want our clients unhappy with us, we don't want to receive letters from the disciplinary commission asking us to respond.

The biggest complaint that clients make to the disciplinary office is a lack of communication. Clients are extremely upset with lawyers who don't communicate with them and that's tricky because as a lawyer you're busy you don't just generally have one client you have many and some cases are more pressing, and some matters are more pressing and you can't always respond as quickly to your clients calls or your client emails that they would have liked.

Sometimes they call every day and have family members call you too. There's only so much that one person can take. But remember, that if your clients are happy with you, they're going to be much less likely to file any kind of complaint against you and communicating with them is important. So, try to return calls as quickly as possible. Check your email often during the workday. Try to return calls or emails within 24 hours, if not sooner. A lot of other attorneys do that

too and if you can't return a call, have your assistant just contact the client and say, "Mr. Attorney is unavailable right now, he received your message and he will call you back as soon as possible" and give a date and perhaps even a time. If not an assistant, just send a quick email letting them know you heard from them and will call when you have a chance to review the file. Clients prefer a quick note to complete silence. If they feel you are responsive to them and they feel like you understand their needs, they're much less likely to complain about you. Communicate all the time if you can and when you can't, then you let the client know that you can't at this particular time and that you will when you can.

You should also stay in your own lane. If you have a practice focusing on wills, trusts and estates, do not take on a medical malpractice case. It's important to take cases that you know how to do. Many small offices or sole practitioners are tempted to take on a new matter in an area where they think they can make money. Some people dabble in an area from time to time. These will always take you more time than it's worth because you don't know the area and may need to find people to help you to research and learn what you are supposed to do. It's okay to admit you don't do that kind of work but you're going to help you find somebody who can help the client and to refer that out or to give the client suggestions to know where they can find somebody to help them.

The cases that you don't take on are as important as the ones that you do take. So, in order to stay out of trouble you don't want to dabble in things unless you're really prepared in things that you don't know and it's certainly best to focus on the area that you do practice in and try to stay within those rounds and refer to the ones that you don't. Model Rule 1.1, and most state rules provide that:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.¹

I suggest to you that dabbling is not a competent representation.

Another way to stay out of trouble is to put everything in writing that you can, you want to take notes, you want to memorialize your conversations, you

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https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/

certainly want to put together fee agreements with your client even if it's a flat fee, you want the terms of the flat fee to be in writing. It just protects you in terms of any dispute or any disagreement in the future as to what the scope of your representation is. If you have a limited scope of representation, in most states and under the Model rules, that limitation must be done with informed consent.² The only way to effectively prove informed consent is to show the written agreement.

Take notes of conversations with your clients. If a client claims that you didn't tell them about the fact that they had waived their right to a jury trial, or the right to file suit, your note will help establish what was said to the client. All these things were really helpful when you needed to answer the ARDC's allegations about the fact that the client claimed that you had not told them that they had waived a jury trial. Taking notes is just a way to protect yourself and they don't have to be long but memorizing what your clients and you talked about and putting it in your file may help at some unknown point in the future. You need to think about protecting yourself should a claim arise, whether legal malpractice claim or a disciplinary claim.

You should prepare disengagement letters if you decide not to take a case or if you withdraw from a case. If you are fired from a case, you want to make sure that the client gets a letter that you're no longer acting on their behalf. Those are important because it sets the tone, and it sets the terms that you're no longer acting for them, and they need to protect their own interests.

You want to be on time for your client, you want to be on time for meetings, you want to be on time for court, you want to be gracious to your client, you want to treat your client professionally and respectfully. As a lawyer you sometimes forget that people come to you because they have problems and because they're scared and they're looking to you for your professional judgment and your experience to help them and being on the other end of that and receiving another lawyer's help and just sitting back in and putting your trust in them, it makes you remember that other people are putting their trust in you and it's important to always respect that because that's exactly what they're doing. The more you can bond with your client the better it can be in terms of staying out of trouble. They're

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https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer/

not going to report you if they don't like a billing statement or if they don't like your fee, now they're going to come to you. They're going to be more willing to work with you than if they felt you were disrespectful.

These are tips that can help a lawyer with their practice and help them in terms of their client base and help them so that they don't get into trouble with the disciplinary office.

Using Available Resources to Assist Attorneys

There are organizations created throughout the country to provide assistance to lawyers, judges, law students whose performance is impaired due to addiction or mental illness. In the materials provided with this course, there are resources listed throughout the country. Your state will have similar resources available for attorneys. In Illinois one organization is called the Illinois Lawyers Assistance Program. The ILAP's mission is to:

- Help lawyers, judges, and law students get assistance with substance abuse, addiction and mental health problems.
- To protect clients from impaired lawyers and judges; and
- To educate the legal community about addiction and mental health issues.³

The ILAP provides Counseling, Peer Support, Educations and Interventions. LAP offers free individual and group counseling to all Illinois lawyers, judges and law students. There is a Men's Group that meets on Mondays and a Women's Group that meets on Wednesdays. There are also individual counseling sessions available by appointment.

The ILAP provides trained volunteers for free peer support for Illinois lawyers, judges and law students. Volunteers are matched with ILAP clients based on demographics and interests and they are bound by strict confidentiality.

The ILAP education offerings include training to attorneys interested in learning more about addiction, stress, and how to improve overall wellbeing. They

³ <https://illinoislap.org/about-lap/mission/>

offer both online and in-person continuing legal education and regularly speak to law firms, law schools, and bar associations.

Interventions aren't just for cheap TV drama; they are a real event and can assist an attorney in need. The ILAP provides interventions for legal professionals who may not realize they need help. Interventions are a group process initiated by family, friends or colleagues, and involve trained intervenors.⁴

There are similar organizations throughout the country. New York has a similar program as do many other states.⁵ Lawyers routinely turn to these organizations in order to get help and to meet with other lawyers who have alcohol related problems and mental health problems that affect their ability to practice law. In these organizations, there's counseling and peer mentoring and AA type meetings where somebody can go and get involved in a good support system where friendship and mentoring is very effective.

The legal profession holds a special place in the world of employment. Lawyers are entrusted with client's money, client's secrets and our client's trust. If an attorney is no longer in complete control of their life, no longer in control of their practice and no longer able to control their intake of alcohol or other substances, the client's money, property or even their freedom can be lost. We are each responsible to take action for ourselves and others if we see that we are no longer able to protect our clients.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

⁴ <https://illinoislap.org/mental-health-recovery-services/>

⁵ www.nysba.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org