

## ACHIEVING OPTIMAL BRAIN POWER DURING STRESSFUL TIMES

### **I. Introduction**

### **II. Why This Matters**

#### A. Duty of Competence – CA Rule 1.1

*(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.*

*(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.*

*(c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes\* to be competent.*

*(d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.*

#### B. Southern District of California Disciplinary Committee

#### C. Ninth Circuit Wellness Committee

### **III. How the Brain Reacts to Stress**

#### A. Neuroscience/Physiology (Judge Mann) (10 min)

1. Negativity bias
2. Cortisol and reaction to fear
  - a. Lizard Brain and Monkey brain
  - b. Fear of deadlines or being wrong leads to
    - i. Fight – Anger
    - ii. Flight – Anxiety
    - iii. Freeze - Depression
3. Self-regulation of sympathetic nervous system
4. Benefits of being in the Zone
  - a. Clearer thinking
  - b. Better relationships
  - c. Better health

#### B. Prevalence of Anxiety, Depression, and Mental Illness (Todd) (10 Min)

- C. Lawyer Stress - Perfectionist tendencies, deadlines, and dealing with other peoples' problems –
  - 2016 ABA and Hazelden Betty Ford Foundation Study
  - 21% of attorneys qualify as problem drinkers,
  - 28% struggle with some type of depression
  - 19% have anxiety
- D. Nearly 1 in 5 adults live with mental illness (51.9 million in 2019).
  - <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#:~:text=Mental%20illnesses%20are%20common%20in,mild%20to%20moderate%20to%20severe.>
- E. 1 in 3 people in a census bureau survey reported feeling nervous or anxious more than half of the previous week in a recent Census Bureau study
  - See <https://www.nbcnews.com/health/mental-health/map-anxiety-depression-your-state-compares-united-states-n1248473>

#### IV. Coping Mechanisms

##### A. Prevention and Maintenance (Mann) (5 min)

1. Breathe
2. Exercise
3. Yoga
4. Meditation
5. Deep Work
6. Stop looking at emails
7. Keep your phone away from where you sleep

##### B. Mental Health Challenges (Todd) (5 min)

***Don't deny and delay. No one wants to read your obituary. You'll get through this.***

##### C. Consider ways to get help and get out of harm's way

#### V. Questions

#### VI. Resources

##### A. Meditation

1. Brain shows greater grey matter density after 8-week mindfulness course  
See Holtzel, Carmody, Vangel, Congelton, Yerrasetti, Gard, and Lazar, "Mindfulness practice leads to regional brain grey matter density," Psychiatry Res. Jan 30, 2011; 191(1): 36-43 (2011).
2. Scripps Clinic Meditation Program
3. Meditation Apps

##### B. Articles & Materials

1. Christopher W. Todd, Esq., The Benchers, *Make Mental Health a Priority* ([https://home.innsofcourt.org/AIC/AIC\\_For\\_Members/AIC\\_Benchers/AIC\\_Benchers\\_Recent\\_Articles/2020\\_MarApr\\_Todd.aspx](https://home.innsofcourt.org/AIC/AIC_For_Members/AIC_Benchers/AIC_Benchers_Recent_Articles/2020_MarApr_Todd.aspx)) (March/April 2020)
2. Stephanie Francis Ward, ABA Journal, Lawyers are supposed to plan for the worst, so how can you ease COVID-19 anxiety? (<https://www.abajournal.com/web/article/lawyers-are-supposed-to-plan-for-the-worst-so-how-can-you-ease-covid-19-anxiety/>) (Mar. 2020)
3. Hugh Byrne, mindful: healthy mind, healthy life, *Guided Meditation: Working with Anxiety* (<https://www.mindful.org/a-23-minute-anxiety-practice/>) (Oct. 2018)

#### C. Other ABI Resources

- [https://www.americanbar.org/groups/lawyer\\_assistance/resources/covid-19--mental-health-resources/](https://www.americanbar.org/groups/lawyer_assistance/resources/covid-19--mental-health-resources/)

#### D. Mental Health Screenings

- Online tests for anxiety, depression, PTSD, among other mental health concerns: <https://screening.mhanational.org/screening-tools>
- Created by Mental Health America, Inc.

#### E. Crisis Resources - Anonymous

- Crisis Text Line: Text MHA to 741741 and you'll be connected to a trained Crisis Counselor. Crisis Text Line provides free, text-based support 24/7.
- National Suicide Prevention Lifeline: 1-800-273-8255

#### F. Resources for Lawyers

- State Bar of California Lawyer Assistance Program ([calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program](http://calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program))
- Offers free and confidential mental health assessments
- 877-LAP-4HELP/877-527-4435
- Email: [LAP@calbar.ca.gov](mailto:LAP@calbar.ca.gov)