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Practicing with Professionalism Program Materials

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NEW ENGLAND
Keep raising the bar.®

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About the Faculty

KATHLEEN M. O'DONNELL is a sole practitioner in Milton, where her real estate practice includes residential conveyancing and title certifications, as well as representing municipalities in projects relating to affordable housing, conservation of open space, and community preservation issues. She is a past president of the Real Estate Bar Association for Massachusetts and a past president of the Abstract Club, an invitation-only club consisting of 100 conveyancers and land use attorneys in the Commonwealth of Massachusetts. Ms. O'Donnell is also a board member of the Massachusetts Land Trust Coalition and served on the steering committee of the Community Preservation Coalition for twelve years. She is a member of the Zoning Board of Appeals for the Town of Milton and a member of the Milton Planning Board's open space and recreation planning committee. In addition to her legal practice, Ms. O'Donnell is a frequent lecturer on continuing education panels for lawyers, planners, and land surveyors. She is a graduate of Boston College and the University of Miami School of Law.

STACEY A.L. BEST is the executive director of Lawyers Concerned for Lawyers/Law Office Management Assistance Program (LCL/LOMAP) and, in that role is responsible for the strategic direction, daily operation, and management of the staff of both LCL and LOMAP. She represents and participates with key stakeholders at various agencies and committees of the Supreme Judicial Court (SJC), including the SJC standing committee on lawyer well-being, the Board of Bar Overseers (BBO), and the standing advisory committee on professionalism, to improve the quality of the legal profession. Ms. Best joined LCL after spending eighteen years with the BBO and the Office of Bar Counsel (OBC). Most recently, she served as the acting director of diversity, equity, and inclusion at the OBC. She began her career as a staff attorney in the trial division of the Committee for Public Counsel Services. She tried cases at the district and superior court levels representing indigent clients charged with felonies. Ms. Best is also a former clinical instructor at the Criminal Justice Institute at Harvard Law School, where several of her students tried cases. She enjoys mentoring and teaching in a variety of settings including continuing legal education, bar associations, and law schools. Ms. Best is a "transplant" from California to the Boston area. She is a 1995 graduate of the Boston College School of Law. When she is not working, she enjoys gardening, fishing, cooking, and riding her Harley.

JACQUELYNNE J. BOWMAN is the executive director of Greater Boston Legal Services (GBLS) in Boston. She initially started work at GBLS as a senior attorney and then managing attorney of the family law unit. Ms. Bowman left GBLS for seven years to work at the Massachusetts Law Reform Institute as the state support attorney for family and juvenile law matters. She returned to GBLS first as an associate director, and then later became the deputy director. Ms. Bowman is a graduate of the University of Chicago and Antioch University School of Law and is a member of the Tennessee and Massachusetts bars. She is a nationally recognized expert in family and juvenile law as well as in law practice management. Ms. Bowman serves on the access to justice committee of the Supreme Judicial Court as well as the boards of several non-profit organizations.

DR. JEFFREY FORTGANG is a licensed psychologist and licensed alcohol and drug counselor who has become well acquainted with the lives and stresses of lawyers through staff positions at Lawyers Concerned for Lawyers (LCL) since 1998. He is a former clinical instructor in psychology at Harvard Medical School. Dr. Fortgang's career has included working in and directing both inpatient and outpatient programs in the greater Boston area. He provides clinical consultations to lawyers and runs an online group for sole practitioners dealing with professional stress. Dr. Fortgang also maintains a half-time private practice in Newton and via telehealth. He is a member of the American Psychological Association and the National Register of Healthcare Providers in Psychology. Dr. Fortgang is a graduate of Yale University and Adelphi University.

LAURA KEELER joined Lawyers Concerned for Lawyers/Law Office Management Assistance Program (LCL/LOMAP) as a practice management advisor in 2020. She works with lawyers on all areas of law practice management, including technology, operations, marketing, finance, and more. Ms. Keeler also writes and speaks on topics relevant to practice management. Before joining LCL, she served as the New Hampshire Bar Association's member services and law practice management coordinator. Ms. Keeler also worked as an honors program paralegal specialist at the Department of Justice in Washington, D.C. in the antitrust division, as a paralegal at private firms, and as a teaching assistant for law and government at the St. Paul's School advanced studies program. She has worked with lawyers across a range of areas, from litigation with two-week trials to a broad range of transactional work, from civil to criminal matters, and from cases run by a sole practitioner to cases that have thirty personnel plus outside experts to coordinate. She also has experience facilitating outreach for newer lawyers. Ms. Keeler graduated from Middlebury College with her bachelor's in political science. She furthered her legal education in Concord's Community College's paralegal studies program, earning a certificate of scholarship from the Paralegal Association of New Hampshire and her certified paralegal designation from the National Association of Legal Assistants. Ms. Keeler serves on the board of directors for her paralegal association. Ms. Keeler is an avid reader, loves learning, and enjoys exploring new places.

AMANDA E. MUROS-BISHOFF is an assistant bar counsel with the Office of Bar Counsel in Boston. Previously, she served as a court attorney for the New York City criminal courts, an assistant district attorney in Brooklyn, New York, and a law clerk for the Massachusetts Superior Court. Ms. Muros-Bishoff is a graduate of Boston College Law School.

SANKEETHA SELVARAJAH is the managing attorney of Selvarajah Law, PC, a civil transactional firm located in Boston and New York, New York. Her practice has an emphasis on general business law and mergers and acquisitions; clients include companies within the cannabis, technology, real estate, food service, and e-commerce sectors, as well as manufacturers and retailers. Ms. Selvarajah's primary role is as strategic advisor to clients and liaison to outside vendors. She is a frequent speaker and writer on corporate formation, business growth, and risk management topics. She is also the founder of Startup Dox, a platform designed to assist small business owners and start-up founders with strategic planning. Ms. Selvarajah was recently named as a 2022 Chase Luminary Fellow and as a 2020 Top 100 Attorney by *Top 100* magazine and is a proud ABA Fellow with the American Bar Foundation. She is a graduate of the University of Buffalo and New England Law | Boston.

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Program Agenda

Monday, February 13, 2023

9:00 a.m. – 9:05 a.m.

Law as a Profession: The Relevance and Importance of the Practicing with Professionalism Requirement

- A member of the SJC's Standing Committee on Professionalism emphasizes the value of this course, and identifies attributes and the importance of professionalism in the practice of law, while also highlighting the historical significance of Massachusetts lawyers in upholding the rule of law.

Ingrid C. Schroffner, Esq., *University of Massachusetts Chan Medical School Office of Management, Shrewsbury*

9:05 a.m. – 9:45 a.m.

Professionalism in Developing, Managing, and Maintaining Relationships—and in Problem Solving

- Your reputation takes years to build; start off right today: Civility in attorney-client relationships, attorney-to-attorney interactions, relationships with colleagues (including non-attorney staff), and communication with court and government agency personnel must all be respectful and rooted in ethical principles.

Kathleen M. O'Donnell, Esq., *Law Office of Kathleen M. O'Donnell, Milton—Chair*

Jacquelynn J. Bowman, Esq., *Greater Boston Legal Services, Boston*

- How to artfully balance the tension between zealous advocacy and the duty to conduct oneself civilly at all times; and how to diffuse difficult personalities (group session).

9:45 a.m. – 10:40 a.m.

Connecting with the Legal Community: Building Your Skills, Reputation, and Network through Pro Bono Work, Continuing Legal Education, and Engagement with Bar Associations

- Supporting Access to Justice and Pro Bono Service
Susan M. Finegan, Esq., *Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC—Moderator*
Bethany Yue-Ping Li, Esq., *Greater Boston Legal Services, Boston*
Cynthia T. Runge, Esq., *Peridot Family Law LLC, Boston*
Payal Salsburg, Esq., *Laredo & Smith LLP, Boston*
- Engaging in Bar Associations and Continuing Your Legal Education
Michael A. Kippins, Esq., *Seyfarth Shaw LLP, Boston*
Michael J. Merriam, Esq., *Law Offices of Michael J. Merriam, Boston*
Christina Miller, Esq., *Suffolk University Law School, Boston*
Victoria M. Santoro Mair, Esq., *Sweeney Merrigan Law LLP, Boston*
Ingrid C. Schroffner, Esq., *University of Massachusetts Chan Medical School Office of Management, Shrewsbury*

10:40 a.m. – 11:20 a.m.

Challenges and Opportunities of New Technology and Social Media

- Maximize the benefits of technology and social media in your practice and marketing, with civility, while steering clear of potential ethical traps and pitfalls.

Sankeetha Selvarajah, Esq., *Selvarajah Law, PC, Boston*

11:20 a.m. – 11:35 a.m.

Break

11:35 a.m. – 12:20 p.m.

Implicit Bias; the Importance of Diversity and Inclusion in the Legal Profession; and Promoting Access to Justice

- Impact implicit biases have on the practice of law, including on attorney interactions, client representation, court access, and jury selection. What can lawyers do to address this problem and promote diversity within, and equal service from, the legal profession?

Stacey A.L. Best, Esq., *Lawyers Concerned for Lawyers, Inc., Boston*

Laura Keeler, *Mass LOMAP, Boston*

12:20 p.m. – 1:05 p.m.

Tools and Resources for Maintaining Your Professional and Personal Well-Being: A Better Practice and a Better YOU

- Top 10 tips for avoiding rookie missteps that can lead to an inquiry from the Office of Bar Counsel.

Amanda E. Muros-Bishoff, Esq., *Office of the Bar Counsel, Board of Bar Overseers, Boston*

- Resources abound: The importance of well-being, and tips for caring for yourself and your practice from Lawyers Concerned for Lawyers (LCL) and its Law Office Management Assistance Program (LOMAP).

Jeffrey Fortgang, Ph.D., LADC-I, *Lawyers Concerned for Lawyers, Inc., Boston*

<https://lawyerwellbeingma.org/news/mentorship-program-signup>

1:05 p.m. – 1:15 p.m.

Closing Remarks

- Be proud to be a lawyer, and develop the great one inside you!

Kathleen M. O'Donnell, Esq., *Law Office of Kathleen M. O'Donnell, Milton*—Chair

Please complete the program evaluation online: <https://tinyurl.com/pwp-feb2023>

WELCOME TO THE PROFESSION!

SECTION 1

**Challenges and Opportunities of New Technology
and Social Media**

Sankeetha Selvarajah, Esq.
Selvarajah Law, PC, Boston

Navigating the Challenges + Opportunities in New Technology + Social Media



Practicing with Professionalism course
February 13, 2023



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Data Security

- Obligations
 - Ethics Rules
 - Ethics Opinions
 - State Law
- Practical Considerations
 - Access Control/Passwords
 - Encryption
 - Vetting Responsibilities
 - Management Responsibilities

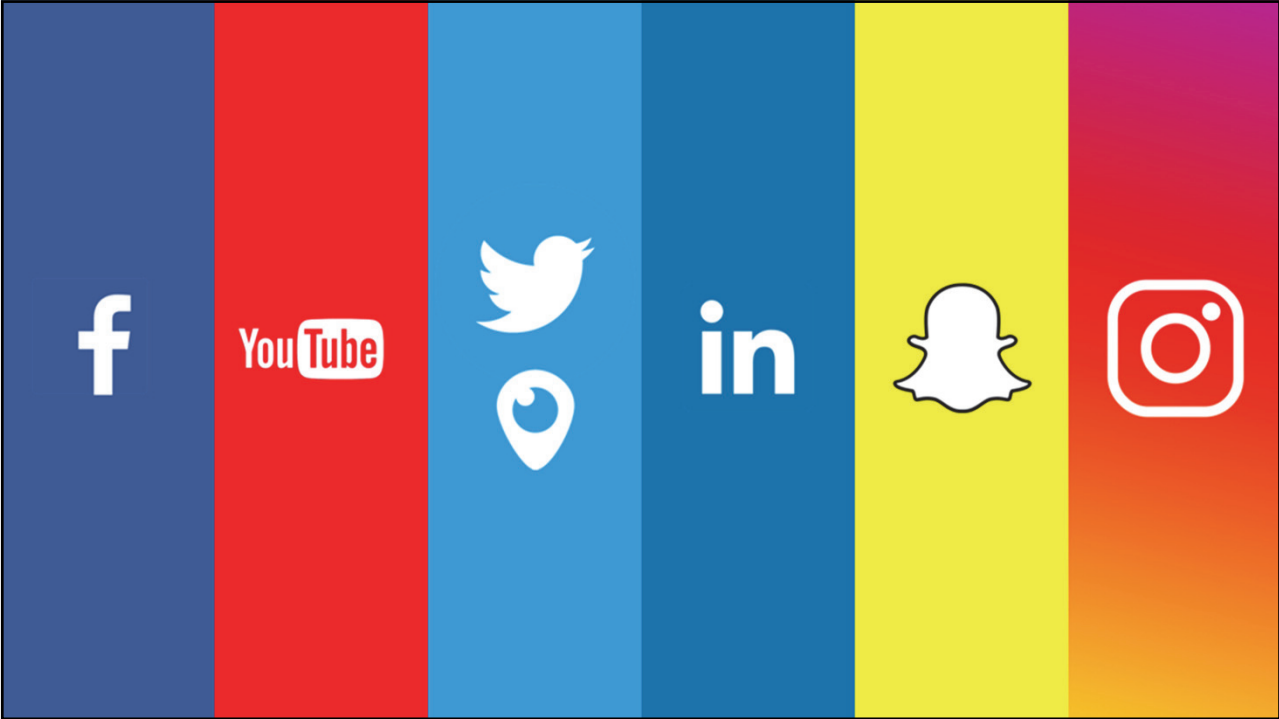




Marketing



- False/Misleading
- Analogous Activities
- Solicitation
- Attorney-Client Relationship
 - Disclaimers, Documentation
- Confidentiality



SECTION 2

**Implicit Bias, the Importance of Diversity and Inclusion
in the Legal Profession, and Promoting Access to Justice**

Stacey A.L. Best, Esq.
Lawyers Concerned for Lawyers, Inc., Boston

Laura Keeler
Mass LOMAP, Boston

Confronting Implicit Bias

Practicing with Professionalism



- Presenter Laura Keeler, Law Practice Advisor
- Lawyers Concerned for Lawyers
- Massachusetts Law Office Management Assistance Program
- 2023

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Who am I?

Law Practice Advisor, Lawyers Concerned for Lawyers|
MassLOMAP

Expert in law practice management & technology

Columnist in *ABA Law Practice Magazine*

MBA Solo/Small Firm Law Practice Management Section Council

Roadmap

1. The First Challenge
2. Introduction to Cognitive Biases
3. Structural Power Privileges
4. Commit to Act.



1. The First Challenge

- How might we create a legal system and profession that is diverse, equitable, and inclusive?
- What's the goal?
- Clarity on words + ideas
→ Clarity on solution



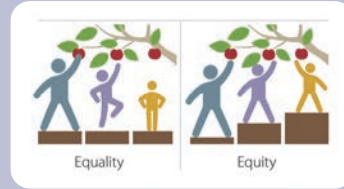
Thought Experiment: Can you define 3 key words?



Diversity



Inclusion



Equity

Our 3 key words defined...

Diversity describes a **system** with a lot of differences. People are unique. Systems are diverse.

Inclusion describes the **culture** of a system that welcomes and creates a sense of belonging.

Equity is a **process** that ensures everyone has access to the same opportunities

COGNITIVE BIAS CODEX

What Should We Remember?

- We store memories differently, based on how they were experienced
- We reduce events and facts to their key elements
- We discard specifics to form generalities
- We edit and reinforce some memories after the fact
- We favor simple-looking options and complete information over complex, ambiguous options
- To avoid mistakes, we aim to preserve autonomy and group status, and avoid irreversible decisions
- To get things done, we tend to complete things we've invested time & energy in
- To stay focused, we favor the immediate, reliable thing in front of us

Too Much Information

- We notice things already primed in memory or repeated often
- Bizarre, funny, visually striking, or anthropomorphic things stick out more than non-bizarre/funny things
- We notice when something has changed
- We are drawn to details that confirm our own existing beliefs
- We notice flaws in others more easily than we notice flaws in ourselves
- We tend to find stories and patterns even when looking at sparse data
- We fill in characteristics from stereotypes, generalities, and prior histories

Need To Act Fast

- To act, we must be confident we can make an impact and feel what we do is important
- We project our current mindset and assumptions onto the past and future

Not Enough Meaning

- We think we know what other people are thinking
- We simplify probabilities and numbers to make them easier to think about
- We imagine things and people we're familiar with or fond of as better

DESIGNHACKS.CO · CATEGORIZATION BY BUSTER BENSON · ALGORITHMIC DESIGN BY JOHN MAHOOGIAN III (JMJ3) · DATA BY WIKIPEDIA

2. Introduction to Cognitive Biases

- Too much to notice
- Too many possible meanings
- Too much to remember
- Too little time

What is implicit bias?

Implicit bias is the mind's way of quickly and easily drawing conclusions about the relationship between two concepts.

Thought Experiment:
Is there unconscious bias here?

In a content meeting for a book on resilience, a suggestion is made to link to the #MeToo Movement and include stories about women who bounced back from incidents of sexual harassment.

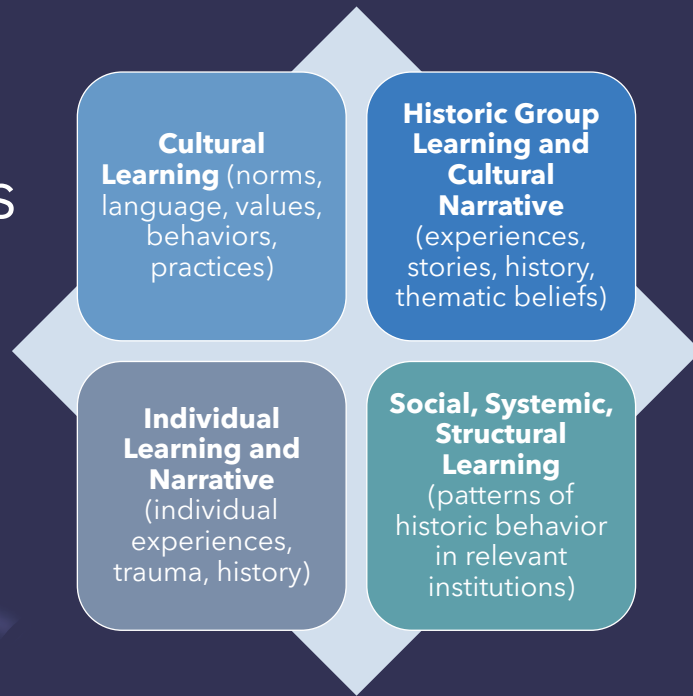
Fast thinking and filters in the workplace



Performance evaluation criteria

- Are we judging competency or excellence?
- Women and minorities are more easily judged competent than men and whites; however, higher standards are used when evaluating women and minorities for excellence. Biernat & Kobrynowicz, 1997
- Comfortable when they are individual contributors, but uncomfortable with idea of giving them power.

Implicit bias is a perceptual lens shaped throughout a lifetime by...



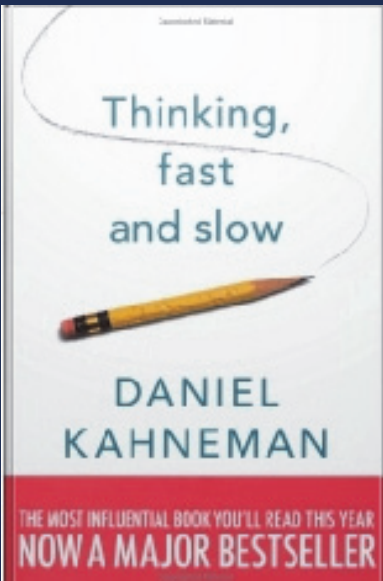
Implicit Bias & unconscious attribution

Implicit Bias

The unconscious attribution of particular qualities to a member of a certain social group. Implicit stereotypes are shaped by experience and based on learned associations between particular qualities and social categories, including race and/or gender.

Explicit Bias

The attitudes and beliefs we have about a person or group on a conscious level. Much of the time, these biases and their expression arise as the direct result of a perceived threat.



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Thinking Fast & Slow:

System 1 Thinking:

fast, automatic, effortless,
occurs with no conscious sense of voluntary control

System 2 Thinking:

slow, conscious, explicit, deliberate

Without **intentional and sustained effort** to counteract **narratives**, System 1 brains will continue to make assumptions about individuals based on them, even if those assumptions do not align with our conscious, explicit beliefs

3. Structural Power and Privilege

Structures connect people to each other and to power.

Systems of power and privilege produce racially disparate outcomes regardless of people's intentions.

People protect self-image, worldview, and interests unconsciously.

85% of lawyers are white; 5% black, 5% Hispanic; 5% Asian; 64% men; 36% women (2019 ABA)

It's part of our collective narratives and norms and affects cognitive biases - what we notice (and miss); how we make sense (and never consider); and what we remember (and forget).

Implicit Bias in the Law

Criminal
Justice
System

Property and
Housing Law

Employment
Law

Health Law

The ABA

"The criminal justice system's problems with racism start before the first contact and continue through pleas, conviction, incarceration, and release."



4. Commit to Action

How might you use your power or agency to encourage these types of discussions?



Image by [Sasin Tipchai](#) from [Pixabay](#)

What can you do?





Questions?

- Laura@masslomap.org
- www.masslomap.org
- www.lclma.org

Law Practice Management Consultations

Free & Confidential for Lawyers, Law Students, and Judges in Massachusetts

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Our consultation formats include:

- **20-minute** phone calls for simple questions
- **60-minute** consultations for advice by phone, video conference, and at our office in downtown Boston **once we return to in-person services** following the Covid-19 crisis.

To schedule a MassLOMAP Consult, go to: <https://www.masslomap.org/consultations/>

SECTION 3

Tools and Resources for Maintaining Your Professional and Personal Well-Being: A Better Practice and a Better You

Amanda E. Muros-Bishoff, Esq.
*Office of Bar Counsel, Massachusetts Board
of Bar Overseers, Boston*

Jeffrey Fortgang, Ph.D., LADC-I
Lawyers Concerned for Lawyers, Inc., Boston



TOP TEN TIPS TO AVOID ETHICAL ISSUES

Kristy Lavigne, Assistant Bar Counsel
Office of the Bar Counsel
Massachusetts Board of Bar Overseers

COMMUNICATE

[Rule 1.4]



Return

Return clients' telephone calls promptly, even if you have no update



Respond

Respond to written communication & info requests from clients



Consult

Regarding Status, Objectives, Means



Notify

Notify your clients promptly if something has gone wrong



Cooperate

Respond to telephone calls & requests for information from the Office of the Bar Counsel & ACAP

Put it in writing

- **MUSTS**
 - Fee agreements [Rule 1.5]
 - Consents to conflict of interest [Rules 1.7- 1.9]
 - Notice of Fee Withdrawals [Rule 1.15]
- **SHOULD**S
 - Non-engagement and disengagement letters [Rule 1.16]
 - Settlement offers and demands [Rule 1.2]
 - Notice of something going wrong
 - Requests for compliance



It's not your
file

Rules require attorneys to promptly provide clients a copy of their files upon request

Rule 1.15A specifies the information that must be provided and whether attorneys may charge the clients for copying

You cannot ransom the file for unpaid legal fees

Failure to do may result in complaint to OBC

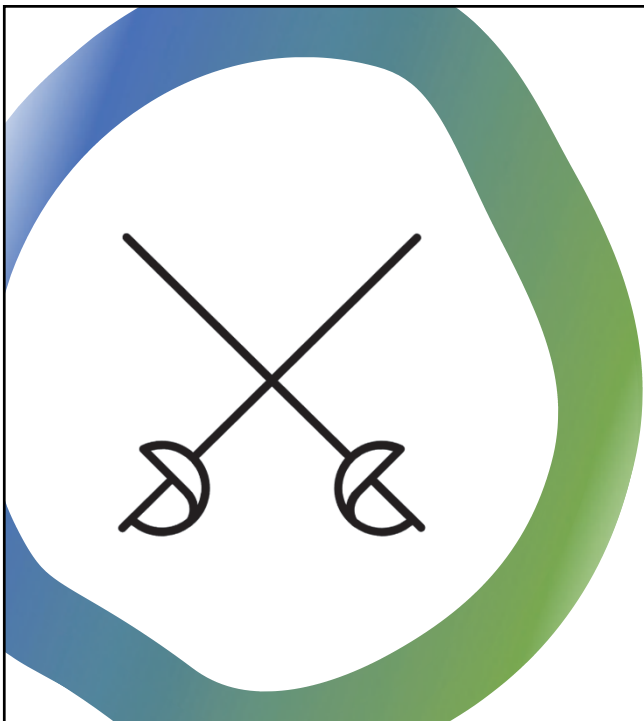
Breaking up is hard to do

- If you don't want a case, reject it ASAP
- Permissive & Required Withdrawals [Rule 1.16]
- You are either in a case or out of it; Don't withhold services for nonpayment
- Withdraw in accordance with tribunal rules
- Document termination of representation
- Return file and unearned fee
- Avoid noisy breakups
 - Do not disclose client confidences



If it feels like a conflict, it probably is


- Avoid conflicts of interest [Rules 1.7-1.12]
- Identify who is your client at the outset
- Develop conflict-checking system and use it
- Obtain waivers in writing where required
- Get Advice
 - Read Rules & Comments
 - Call the Ethical hotline
- Red Flags
 - Multiple clients in the same matter
 - Business relationship with client





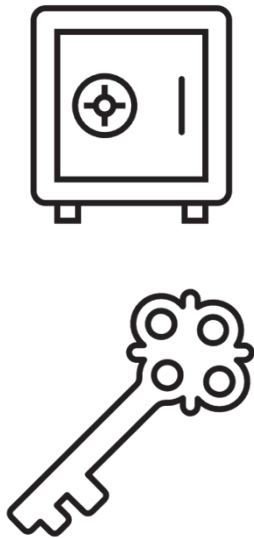
Don't take the money and run

- Requirements for client funds [Rule 1.15]
 - IOLTA or individual trust account?
 - What goes into account?
 - When/how can you withdraw?
 - What records must you keep?
- Put a record-keeping system in place and use it
 - Can delegate tasks, but not obligation
- Common Scenarios
 - Bounced Checks
 - Paying Firm Bills directly from IOLTA account
 - Improper reconciliation
- Resources
 - Trainings
 - Massachusetts IOLTA Committee website
 - Law Office Management Assistance Program (LOMAP)



Be aware of limits of advocacy

- Misrepresentations to Tribunal [Rule 3.3]
- Remediate client misrepresentations [Rule 3.3(a)(3)]
- Caution dealing with unrepresented parties [Rule 4.3]
- Never contact represented party w/o consent of counsel [Rule 4.2]
- Misrepresentations to Opposing/Third Parties [Rule 4.1, 8.4(c)]
- Civility: Be civil to clerks, court personnel, opposing counsel and clients



Maintain Confidences

- Keep client confidences [Rule 1.6]
- Concept of confidentiality much broader than attorney-client privilege which is a legal issue
- Be aware of your surroundings when discussing case
- Be aware of inadvertent electronic disclosures
 - Take appropriate security precautions
 - Take corrective measures if there is an inadvertent disclosure
- Be particularly wary when:
 - Withdrawing
 - Responding to client complaints
 - Responding to online reviews
 - Talking with successor counsel
 - Revealing confidences to prevent violence/harm



Choose wisely, you must

- Don't accept every case
- Be aware of your skills and expertise
- If you are too busy or unable to handle the case, decline the case in writing
- If investigation reveals case is not viable, advise the client ASAP
- If asked to do something that violates your professional obligations by a client or supervising attorney, just say "no"

RESOURCES

- Comments to the Mass. R. Prof. C.
- Articles on ethics, disciplinary decisions, trainings, news– www.massbbo.org
- Ethical hotline of OBC:
2-4pm MWF (617) 728-8750
- Attend a trust account training program
- Massachusetts IOLTA Committee
- LOMAP (Law Office Management Assistance Program)
- Disciplinary decisions can be searched on Westlaw and through Social Law Library



Tools and Resources for Maintaining Your Professional Well-Being

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SJC will continue effort to study, improve well-being of Bay State attorneys

By *Jordan Frias* Globe Correspondent, October 30, 2019, 9:11 p.m.



SJC Steering Committee on Lawyer Well-Being
Report to the Justices
July 15, 2019

“The obvious goal, which we all share, is to help all Massachusetts lawyers attain greater success in achieving a healthy, positive, and productive balance of work, personal life, and health.”



Attorney Well-Being: It's Not a Fad, It's a Movement

Law.com - Jan 10, 2019

Attorney Well-Being: It's Not a Fad, It's a Movement ... Working Group to Advance Well-Being in the Legal Profession (ABA Working Group).

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RELATE?



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CAN YOU
RELATE?

I must **balance** multiple matters and deadlines.

I'm worried that I might **make a mistake** and that it will result in a serious consequence.

I feel **overwhelmed** by my clients' demands and needs.

I focus primarily on **solving others' problems** and rarely take time for myself.

I must **manage challenging** office relationships, politics, supervisors, and staff.

It's hard to **make time** for personal commitments and family.

I must make enough money to pay off **student loans** in addition to covering current **living expenses**.

I'm concerned I lack **training, mentorship, and support**.

Sometimes I feel like **an imposter**.

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HEALTHY LAWYER 7 TIPS



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MAKE SELF-CARE YOUR FIRST PRIORITY.

TIP NUMBER *1*

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REMEMBER,
LAWYERS ARE HUMAN.

TIP NUMBER 2

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"It's an ergonomic ankle support to help you be more productive."

SCHEDULE ME-TIME
AND SET LIMITS.

TIP NUMBER 3

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**GET ORGANIZED.
STAY ORGANIZED.**

TIP NUMBER 4

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**TRY MEDITATION, OR JUST
FOCUS ON BREATHING.**

TIP NUMBER 5

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**DON'T IGNORE PROBLEMS;
BE AWARE OF OTHERS.**

TIP NUMBER 6

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**USE RESOURCES AVAILABLE;
ASK FOR HELP.**

TIP NUMBER 7

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