

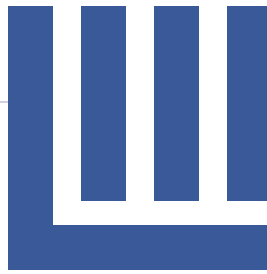


CLE MANUSCRIPT

PUT INTO PRACTICE CLE:

Risk Management Tips for Your Firm

Fall 2022 and Winter 2023 Series



AGENDA

8:30 – 9:00 **Registration**

9:00 – 10:00 **Lawyer Well-Being: Strategies for Finding Happiness, Satisfaction and Meaning in Your Personal and Professional Life**

Will Graebe; Lawyers Mutual

Well-being is a hot topic in the legal profession, and with good reason. Lawyers are suffering higher rates of anxiety, depression, and stress than ever before. The problem has only been exacerbated by the pandemic. What do we mean by well-being? Is it the same thing as happiness? How can we, as individuals, improve our personal and professional well-being? What can the profession do to help foster improvement in attorney well-being? In this program, we will explore practical solutions backed by science to improve our overall well-being and reduce symptoms of anxiety, depression, and stress.

10:00 – 10:15 **Break**

10:15 - 11:15 **60 Tech Tips in 60 Minutes**

Erik Mazzone; Lawyers Mutual and Ketan Soni; Soni Brendle, PLLC

The presenters in this fast-paced CLE will provide 60 technology tips to power up your practice, ratchet down your risk, and crank up your client communication tools. The session will help you keep abreast of the benefits and risks of the dizzying array of technology solutions available for your firm and make sure you are meeting your duty of technology competence under RPC 1.1[8].

11:15 – 11:30 **Break**

11:30 – 12:30 **Dealing with Clients and Attorneys with Diminished Capacity or Mental Impairment Issues**

Claire Modlin, Warren Savage, Mark Scruggs, or Laura Loyek; Lawyers Mutual

Lawyers in almost every area of practice will encounter clients and other attorneys that show signs of diminished capacity or mental impairment. During this hour, Lawyers Mutual Claims Attorneys will discuss the professional responsibility and risk management issues that can arise when representing a client with diminished capacity or encountering another attorney with mental impairment. Topics will include communication, allocation of authority, decision making, conflicts of interest, supervision, and Rules of Professional Conduct 1.2, 1.4, 1.7, 1.14, 5.1 and 5.2.



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PRESENTERS

WILL GRAEBE

Will Graebe came to Lawyers Mutual in 1998 as claims counsel. In 2009, Will became the Vice President of the Claims Department and served in that role until 2019. After a two-year sabbatical, Will returned to Lawyers Mutual as claims counsel and relationship manager. In his role as claims counsel, Will focuses primarily on claims related to estates and trusts, business transactions and real estate matters. Will received his J.D. from Wake Forest University School of Law and his undergraduate degree from Stetson University. Prior to joining Lawyers Mutual, will worked in private practice with the law firm of Pinna, Johnston & Burwell.



ERIK MAZZONE

Erik graduated from Boston College Law School. After graduating, he worked in the litigation department of large corporate law firms in Boston and Raleigh. He then shifted to practice in an innovative, technology-forward family law firm in Raleigh. As an attorney and later as managing shareholder, Erik helped to steer the firm through years of double-digit revenue growth as well as geographic and personnel expansion from one office with four attorneys to three offices with a multi-disciplinary client services team of nearly twenty lawyers, accountants, and mental health professionals.



In 2008, Erik became the founding Director of the Center for Practice Management at the North Carolina Bar Association. He served in that capacity for nine years, during which he helped hundreds of North Carolina lawyers with law firm start up, technology, marketing and management. He organized, spoke and taught at countless CLE programs on legal technology and law firm management, and was a frequent presenter at law schools, bar associations, law firm retreats, and conferences across the US and Canada. At the NCBA, Erik served for the last five years as Senior Director of Membership Experience. In that role, he led the integration, reorganization and management of the member-facing and revenue-producing departments of the NCBA: continuing education, membership, Center for Practice Management, membership services, communities and the lawyer referral service.

Erik is excited to return to his first vocational passion: providing practice management consulting and coaching for lawyers. Erik formed Mazzone Works LLC in 2022 to serve institutional and individual clients and he can be reached through his website, ErikMazzone.com.



PRESENTERS

KETAN SONI

Ketan Soni was born in Charlotte, North Carolina and raised in the bitter cold and wind of the Chicago suburbs with the only comfort coming from the joy of being a Cubs fan. After giving the Midwest a final chance by attending the University of Illinois, Champaign-Urbana, he fled back to the warm embrace of the Carolinas to attend law school at Wake Forest University School of Law.



Ketan started practicing divorce and family law with a law firm in Raleigh before finally landing back where it all started in Charlotte to open up a branch office. In 2020, Ketan opened [Soni Brendle, PLLC \(www.nclawattorneys.com\)](http://www.nclawattorneys.com), with Andrew Brendle after developing a mediation practice over the past 10 years, which let him tap into the need to develop every imaginable and un-imaginable spreadsheet possible, including one for counting the number of spreadsheets that one has created in the past.

In the 2020s, Ketan continues representing clients in divorce and advancing Dispute Resolution (when appropriate) as a desirable alternative to the court system, including mediating and arbitrating for his colleagues. Ketan frequently trains other mediators either to become certified or to maintain certifications with qualified training programs. Ketan also teaches Continuing Legal Education classes in addition to hosting free programs for his colleagues in an effort to raise the bar for the profession. Ultimately this lets Ketan create more spreadsheets (because that's what the spreadsheets told him to do).

CLAIRE MODLIN

Claire is the Vice President of Claims. She joined Lawyers Mutual in 2017 and previously served in the role of Underwriter and Senior Claims Counsel. Prior to joining Lawyers Mutual, she practiced in the areas of civil litigation, medical malpractice defense, insurance defense and transportation. Claire actively practiced in both large and medium sized firms in North Carolina for 22 years. She previously worked at McGuireWoods, Patterson Dilthey Clay & Bryson and Womble Carlyle Sandridge & Rice.



Claire is a native of North Carolina and received her law degree from Campbell University School of Law and her undergraduate degree from UNC-Chapel Hill. She is a member of the North Carolina and Wake County Bar Associations, the North Carolina Association of Defense Attorneys, the North Carolina Association of Women Attorneys and the Defense Research Institute. Claire is active in the community and currently serves as a member of the Wake County Lawyer Support Committee. She previously served as a board member on the Wake County Commission for Women.



PRESENTERS

LAURA M. LOYEK

Laura Loyek came to Lawyers Mutual as a claims attorney in 2009. Her focus areas include estates and trusts, litigation, appellate law, bankruptcy, and ethics. Prior to joining Lawyers Mutual, she practiced with the law firms of Smith Moore and K&L Gates. Laura received her J.D. from Harvard Law School and her undergraduate degree from Wake Forest University. Laura has served on the Board of the North Carolina Association of Women Attorneys for several years, including as President in 2021. She is also an active member of the Insurance, Real Property, and Estates Sections of the NCBA and Wake Women Attorneys.



WARREN SAVAGE

Warren Savage joined Lawyers Mutual in 2005 where he is a Sr. Claims Counsel. He focuses on litigation, insurance law, appellate advocacy, criminal matters and professional responsibility in his work with Lawyers Mutual. A former partner with the law firm of Bailey & Dixon in Raleigh, Warren graduated from the University of Virginia and earned a Master of Arts in Teaching at the University of North Carolina at Chapel Hill before graduating magna cum laude from Campbell University School of Law. He spent several years as a high school English teacher before entering the legal profession. Warren currently serves as a Councilor from the 10th Judicial District on the North Carolina State Bar. Warren has served on the State Bar Ethics Committee for many years, and he speaks frequently at CLEs around the state about professional responsibility and malpractice claims avoidance.



MARK A. SCRUGGS

Mark Scruggs joined Lawyers Mutual in March 2001 as claims counsel. In May 2018, Mark became Senior Claims Counsel with Lawyers Mutual.

Formerly a partner with Spears, Barnes, Baker, Wainio & Scruggs, LLP in Durham, North Carolina, Mark has over 14 years of experience as a trial attorney concentrating in insurance defense litigation. For the last 20 years, Mark has worked with Lawyers Mutual primarily in litigation-related claims and workers' compensation and family law matters.



He is a 1986 cum laude graduate of Campbell University School of Law. Mark is a past chair of the Law Practice Management section of the North Carolina Bar Association. He has served as an Advisory Member of the State Bar Ethics Committee and the Authorized Practice Committee of the North Carolina State Bar. He also served as co-chair of the North Carolina Bar Association's "Transitioning Lawyers Commission," working to address aging lawyers' issues. In December 2019, Mark received the North Carolina State Bar's John B. McMillan Distinguished Service Award.



LAWYER WELL-BEING: STRATEGIES FOR FINDING HAPPINESS, SATISFACTION AND MEANING IN YOUR PERSONAL AND PROFESSIONAL LIFE

Will Graebe; Lawyers Mutual

Introduction

As lawyers, we do not like to talk about our problems. We want to talk about other people's problems.

We are good at the latter and less comfortable with the former. We like the perception of having it all together. If we are struggling with something emotionally or mentally, we often resist the need to ask for help from anyone else. What would people think? Would my adversaries see weakness and take advantage? Would my clients lose confidence in my ability to handle their matters?

What if, as a profession, we begin to shift this dynamic? What if we made it okay to be honest? What if, rather than shaming or taking advantage of lawyers struggling with mental health issues and/ or addictive behaviors, we created a safe space for those lawyers and offered support, encouragement, and tools? Our State Bar is already doing this through the Lawyers Assistance Program. But what might happen if law firms created wellness programs and promoted a culture of support and encouragement for mental and emotional well-being? There are signs that we are moving in that direction. Several firms in North Carolina have created programs for well-being and mindfulness. Firm management is beginning to understand that these programs improve performance, productivity, and job satisfaction. But there is much work to be done in a profession predicated on perfection. Lawyers and law firms need the tools to implement programs and develop strategies for addressing the mental health crisis our profession is facing. This manuscript will offer practical solutions to improve the well-being of lawyers in our state.

Current State of Mental Health and Substance Abuse in the Legal Profession

Study after study suggests that lawyers suffer from mental health issues and substance abuse disorders at higher rates than the general population. In 2016, a mental health and substance abuse study was published in the Journal of Addictive Medicine. The study was commissioned by the American Bar Association and the Hazelton Betty Ford Foundation. The study found that lawyers suffered from higher rates of alcohol use disorders and higher levels of anxiety and depressive



symptoms than non-lawyers. This was the first national study of its kind and scope. Previous smaller studies had examined mental health and substance abuse among lawyers and had come to the same conclusion. For example, a study of Washington attorneys found that “(c)ompared with the 3 to 9 percent of individuals in Western industrialized countries who suffer from depression, 19 percent of . . . Washington lawyers suffered from statistically significant elevated levels of depression.”

These studies occurred prior to the COVID pandemic. There is evidence that the pandemic has exacerbated the problems of depression and anxiety. A new study published in the journal the Lancet Regional Health showed that 32.8% of Americans had elevated depressive symptoms in 2021, compared to 8.5% before the pandemic. Another study by the World Health Organization reported that COVID triggered a 25% increase in the prevalence of anxiety and depression worldwide. A 2021 survey of 3,200 lawyers conducted by ALM Intelligence and Bloomberg Law confirmed decreases in well-being in the legal profession as well. Almost half of the lawyers who responded reported a decline in their well-being. So, in a profession that was already subject to elevated levels of depression, anxiety and substance abuse, we now have COVID 19 as an added stressor on the legal profession.

Why might lawyers have higher than average anxiety, depression, and alcohol abuse levels? There are likely several factors. First, lawyers have very stressful jobs. Second, lawyers are expected to be perfect. This expectation can come from others or be self-imposed. Third, lawyers are not supposed to be vulnerable and tend to hold everything inside. They are not trained to reach out for help. Showing a chink in the armor could be perceived as a weakness. A fourth possible reason is that lawyers tend to have higher levels of negativity bias than the average person. The average human brain has evolved to have a strong negativity bias. We are constantly scanning our environment for threats to our safety and security. This skill was essential for survival when animals were trying to eat us in the jungle or forest. But today our brains see threats everywhere in the form of potential failures at work, loss of money, car accidents, looming deadlines, health concerns, car trouble, work performance, or anything that might go wrong in a person’s day. People who choose the law as their profession seem to have a natural talent for threat identification. If you are a lawyer or law student who does not come by this naturally, we ensure that you develop this skill through law school education and law firm training. We are trained into pessimism and to look for the negative. While helpful for our clients, the evidence supports that it is not beneficial to our mental health and well-being.

That is a lot of Bad News: What is the Good News

Let’s be honest. We work in a profession with a lot of stress and pressure. People entrust us with their money, their rights, and their freedom. The system is most often adversarial and involves conflict. Some attorneys deal with this better than others, but we all experience it. It is one of the primary factors leading to higher mental health problems and substance abuse rates. But science is beginning to show us that it doesn’t have to be that way. Science now suggests that we can do something about it even if we are genetically predisposed to anxiety and depression or have experienced trauma and stress that have caused elevated levels of anxiety and depression. Neuroscientists once believed that, as we aged, our brains and our neural networks stopped changing. However, an enormous amount of research has shown that our brains never stop changing. This is known as neuroplasticity. Neuroscientists and the psychology community now believe we can



rewire our brains to address various behavioral and health problems. In her TED Talk, neuroscientist Lara Boyd explained that our brain can change in three ways:

1. Chemically (brains can increase the number of chemical transmitters produced).
2. Structurally (neural pathways can change, and certain parts of the brain can grow).
3. Functionally (brains can alter certain functions, so it becomes easier to use certain parts of the brain).

Neuroscientists carefully point out that neuroplastic changes in our brains require work. Neural pathways are formed over a lifetime and are hard to rewire. If you want your brain to change, you must start creating new neural connections through practice. Over time, the brain can change, leading to new ways of thinking, behaving, and responding to our environment. An excellent example of this was a study conducted on London taxi drivers. Researchers looked at structural MRIs of London taxi drivers who had to learn the complex road systems in London. Those MRIs were compared with control subjects who did not drive taxis. The MRIs showed that the posterior hippocampi of taxi drivers were significantly larger than those of the control subjects. The longer the taxi drivers had been driving the streets of London, the larger their hippocampi. The posterior hippocampus stores a spatial representation of the environment. The researchers concluded that the hippocampi of the taxi drivers had grown and adapted to meet the challenge presented. This is an example of neuroplasticity at work.

Science is also beginning to show us what does and does not bring well-being and happiness. It turns out that many things we thought would bring us joy and well-being are not effective and might have the opposite effect. There are now hundreds, if not thousands, of studies that measure happiness and well-being in controlled research settings. Many of these studies have focused on four hormones in the human body known as the happiness hormones. These hormones are dopamine, serotonin, oxytocin, and endorphins. Science can now show us how each of these hormones contributes to our well-being and how a deficiency of one of these hormones can contribute to sadness, anxiety, depression, lack of motivation, and a variety of other mental health issues. We examine below some of the practices that have been found to contribute to increased levels of well-being, but before we do, it is valuable to review how each happiness hormone works to bring about these positive states of being.

- Serotonin acts as a neurotransmitter to regulate mood, stress levels, sleep, sexual desire, digestion and appetite. Serotonin has been called the happy chemical because it boosts our mood. Studies show that we can naturally boost serotonin by exposure to sunlight or through exercise.
- Dopamine is both a neurotransmitter and hormone that plays a role in muscle movement, memory, motivation and a variety of bodily functions. When most people think of dopamine, they think of it as the chemical that gives us a feeling of pleasure when we engage in certain activities or consume certain substances. Naturally, we like this feeling, but this is a temporary pleasure. Our body is designed to be in a state of homeostasis and will return to normal levels after a dopamine release.
- Oxytocin is a hormone and neurotransmitter that has been called the love hormone or cuddle chemical. Oxytocin is released during labor, during physical touch and intimacy, and when you are surrounded by people with whom you feel a close connection. When oxytocin is released, the effect is feelings of positive emotion, empathy, bonding, relaxation and a decrease in anxiety. In addition to physical touch and social connection, oxytocin is increased by getting outside



in the sun, exercising, petting your dog (yes, studies show this) and listening to music.

- Endorphins are secreted by the pituitary gland when a person feels pain or stress but also during pleasurable activities like eating certain foods (dark chocolate), exercise and sex. When people say they experienced a “runner’s high,” they are describing a burst of endorphins in their system. Endorphins are natural pain relievers. Studies have shown that endorphins can also ease the symptoms of depression and help with stress and anxiety.

Defining Happiness and Well-being: Is happiness just a synonym for well-being?

When people are asked what they want most in life, they routinely put happiness at or near the top of their list. Our founders thought it so important that they equated the pursuit of happiness with liberty and life. But what is happiness? Do we even know what we mean when we say we want to be happy? There is no universally accepted definition of happiness. Some have suggested that you know it when you feel it. The ancient Greeks defined it as the joy you feel when striving toward your potential. More recently, Sonja Lyubomirsky, a pioneer in happiness research, described it as the experience of pleasure, contentment, or positive well-being, combined with a sense that one’s life is good, meaningful, and worthwhile. Martin Seligman, the father of the field of positive psychology, has suggested that happiness is an oversimplified concept. He prefers a model based on overall well-being. Happiness, or positive emotion, as Seligman describes it, is only one element of well-being. Well-being also includes engagement (in work or personal pursuits), relationships (deep connection with others), meaning (belonging to and serving something bigger than yourself), and accomplishment. While Seligman acknowledges the importance of happiness (positive emotion), he points out that we cannot always be happy. Inevitably, we will face circumstances that create negative emotions. Under Seligman’s model, when we face these adverse circumstances and corresponding negative emotions, we will continue flourishing if we are in a state of well-being.

In his book *Happiness By Design*, Paul Dolan suggests that happiness is a balance of pleasure and purpose. Our lives consist of daily activities that we regard as either pleasurable or purposeful or some combination of both. Dolan posits that the secret is to find the right balance, and that balance is different for everyone. Some people need more pleasure, and others need more purpose. Once you find that balance, Dolan recommends focusing on activities that bring you joy or purpose. This involves stopping and noticing the good feeling you have at the moment. I believe that Seligman’s and Dolan’s more comprehensive frameworks are more valuable than simpler definitions of happiness that only consider what brings hedonic pleasure. If long-term well-being is the goal, we must find something that gives life meaning and purpose.

Misconceptions: We Are Bad Predictors of Our Own Happiness: Where did we go wrong?

It is deeply ingrained in our Western culture that if we get a good job and make a lot of money, we will be happy. Happiness has been viewed as something out there that we can get if we strive hard enough. Print, digital, and television advertising target this message aggressively. We will be happy if we accumulate enough stuff, make enough money, have a big house, and get a high-paying job. But data does not support this. Where is the flaw? The field of positive psychology might have the answer.

Noted author and positive psychologist Sean Achor suggests in his book *The Happiness Advantage* that we need to flip the script. He cites numerous studies to support his argument that money and success will not bring happiness. Rather, happiness brings money and success. Happy employees are far more likely to excel in their work than unhappy employees.



Achor cites a study that shows that 75% of job successes are predicted by a person's optimism levels, support, and ability to see stress as a challenge rather than a threat. He cites another study that concludes that a person in a positive state of mind is 31% more productive than a person in a neutral or negative one.

So, what about this question of money and happiness? Anyone who does not have enough money to pay their bills will tell you that this brings anxiety, stress, and conflict. A 2010 study by Daniel Kahneman found that \$75,000 was the sweet spot for household income. According to the study, anything above that did not result in appreciable happiness gains. Anything below that tended to result in higher levels of unhappiness. Maybe a better question to ask is whether we can increase our happiness by the way that we spend our money. Lindsay Bryan-Podvin, author of *The Financial Anxiety Solution*, suggests that spending money on experiences or items that align with your values will result in higher happiness levels, while spending money to "keep up with the Joneses" will not. In their book *Happy Money*, professors Elizabeth Dunn and Michael Norton echo Bryan-Podvin's finding. Dunn and Norton also determined, through multiple studies, that spending money on others will bring far greater happiness than spending money on ourselves.

Acquiring "stuff" may bring a short-term boost to happiness in the form of a dopamine hit to our system. The problem with dopamine hits is that they are temporary and typically followed by a need for something bigger and better the next time. In her book, *Dopamine Nation*, Ann Lembke explains how the neurotransmitter dopamine works in our brain. Our brain and body are designed to be in a state of homeostasis. So, every time we get a dose of pleasure in the form of a dopamine hit, our brain is signaled to return to a neutral state. So, these pleasures are temporary. If you want to use your money to attain something more than simple hedonic pleasure, try investing in experiences and other people.

There is nothing wrong with seeking short term pleasure. It feels good. But, if what you want is true well-being you need something more. The remainder of this manuscript will focus on ways we can improve our overall well-being in lasting ways. These are not "get well quick" schemes. The tools that I will discuss will require practice and lifestyle changes. You don't go to the gym and get in shape and then quit going to the gym because you are now physically fit. You must keep going back if you want to stay fit. The same is true for our mental health.

Ways to Improve Well-being and Happiness

Change Your Mindset-Change Your Life

Mindsets are those beliefs we have about ourselves and the world around us. Mindsets determine how we interpret and respond to situations and circumstances. Our mindsets affect our physical, mental, and emotional responses to conditions. The same events can cause one person to experience highly negative emotions, while another may have a neutral emotional response. The same is true for physical responses. Scientific research into mindsets is relatively new but may hold great promise for improving our overall well-being.

To better understand this concept, consider a study that tracked 30,000 people for eight years. The participants were _____



asked how much stress they experienced in the past year. They were then asked whether they thought the stress was harmful to their health. The researchers then looked at the death records of the participants. They found that people who had experienced a lot of stress in the previous year and believed stress was harmful to their health had a 43% increased risk of dying. People in the study who experienced a lot of stress but didn't believe stress was toxic were no more likely to die than those with little stress.

In another study at Harvard University, participants were put through a highly stressful situation, but before they went through the stress test, they were taught that stress was helpful and a good thing. Ordinarily, when people are subjected to stress, you expect to see a constriction of blood vessels. However, for the subjects who were taught that stress was a good thing, their hearts were pounding, but their blood vessels stayed relaxed and open.

Numerous other studies show how a change in mindset can produce positive health outcomes. Stanford University professor Alia Crum conducted a study of two groups of hotel maids. The maids were given a physical exam (weight, body mass index, blood pressure, etc.) and asked how much exercise they got each day. Most of the maids said they engaged in no activity. One group of maids was shown how their daily work was exercise and how it was good for their health. The other group was told nothing about how their work might actually be physical exercise. They brought the maids back four weeks later and gave them another physical exam. The group that was taught that their work was exercise and that it was good for their health lost weight and dropped their systolic blood pressure by 10 points. Nothing had changed about their daily routines except how they perceived their work. They changed their mindset.

Professor Crum was also part of a study that examined the effect that mindset had on people's mental health and well-being in response to the COVID pandemic. The study recruited 5,365 participants at the beginning of the pandemic and asked them to pick one of three mindsets they had about the pandemic:

1. The pandemic is a catastrophe.
2. The pandemic is manageable.
3. The pandemic can be an opportunity.

They followed up with the participants 6 months later to examine each of the three categories' emotional, mental, and physical health. Not surprisingly, the group that believed the pandemic was a catastrophe experienced higher levels of negative emotions and unhealthy behaviors than the other two groups.

So, we know that our mindset can influence our health and how we feel. A negative attitude that expects the worst and sees everything as a threat rather than a challenge or opportunity is likely to experience more negative emotions and worse health outcomes. At the same time, a positive mindset can positively influence outcomes and improve overall well-being.

Relationships, Relationships, Relationships

Read any article, book, or study on happiness, and you will find that relational connection is a predictor of and contributor to happiness and well-being. In 1938, a group of Harvard researchers initiated a study in which they tracked the lives _____



of two very different groups of young men. The first group was made up of a group of 268 Harvard sophomores (one of them being future President John F. Kennedy). The second group consisted of 456 young men living in the poorest neighborhoods of Boston. The researchers conducted in-depth interviews of each participant, reviewed their medical records, did brain scans, and took blood samples. They then tracked the participants into adulthood and beyond to old age. After 80 years of collecting and analyzing data from the study, the most straightforward message they found was that quality relationships and connections are the most significant predictors of happiness and longevity. Dr. Robert Waldinger, the current director of the study, stresses that it is the “quality” of relationships and not the “quantity” of relationships that matters. The relationships that have a positive effect on our physical and mental health are relationships that are stable and supportive. Relationships involving high levels of conflict or abuse can have the opposite effect.

When we are depressed, anxious, or stressed, we often isolate ourselves from our friends, family, and colleagues. This is especially true for lawyers. Shawn Achor emphasizes that relationship is even more critical in times of crisis, stress, or difficulty. Achor’s advice makes sense when we think about what happens in our bodies when surrounded by people close to us. Studies have shown that being with those close to us during difficult times can reduce stress hormone cortisol levels and increase happiness hormone oxytocin levels.

Law firms can help to create opportunities for meaningful relational connection by offering a safe space for lawyers to share their struggles. Often, the most helpful relational connection is with someone who understands what you are going through. Nobody can understand a lawyer’s stress better than another lawyer. If law firms encourage open communications without fear of punishment or shame, lawyers can better deal with daily stresses before it becomes a bigger problem.

Quality relationships are not only important for sharing our struggles but are also crucial for celebrating our successes, joys, and shared passions and purposes. If you are an avid runner, find a running group. If you belong to a faith community, plug into a small group there. If you love reading, join a book club. If you have a passion for cooking, host a dinner club. Remember, though, that it’s not about the number of your relationships. Find quality relationships that are based on trust, support, and encouragement.

Exercise

We all know the positive effects of exercise on our physical body. But did you know that exercise contributes to mental health as well? Anders Hovland, a clinical psychologist in Norway, reviewed 23 clinical trials that tested the effectiveness of physical training in treating depression. He found that these studies showed exercise was effective in easing the symptoms of depression. What is not clear yet is why this is the case. We know that it helps. There is also evidence from scientific studies that exercise can aid in treating PTSD and anxiety disorders. Additionally, exercise helps to moderate the body’s response to stress and can reduce inflammation in the body.

Simply knowing that exercise improves physical health can change our mood and outlook. We get a sense of accomplishment and progress as our physical condition improves. We worry less about our health and longevity. We deal with fewer physical ailments that can contribute to our overall mood and stress levels.



But how much exercise do we need in order to get these benefits, and what kind is best? Studies have found that exercising 30 to 60 minutes a day three to five times a week is optimal. Experts warn, though, that you can exercise too much. One study found that people who worked out more than five times a week experienced worse mental health. So, take those rest days to allow your body to recover. As far as the type of exercise, any exercise helps. However, most studies have shown aerobic exercise to have the most significant benefit—think cycling, swimming, running, cross-fit, and zumba classes. The hardest part about exercise is making yourself do it. Most of us have had the experience of committing to an exercise program only to find ourselves falling off the wagon after only a few weeks. Think about all the New Year’s resolutions that are made. Gyms are always busiest right after the new year. So, what is one to do? Well, the first thing to do is find something you enjoy that is practical. Swimming isn’t for you if you hate getting your hair wet. If running makes your joints hurt, avoid that. Find something that brings you joy. Second, start with small goals and work your way up. If you would like to try running but haven’t been a runner in the past, try intermittent running/walking. Run 100 yards, followed by a 200-yard walk, and then work your way up as your body feels comfortable. Third, tell someone what you’re doing. Studies have shown that we are far more likely to reach our goals when we have shared them with someone. Fourth, find a partner who will join you in your exercise program. Finally, don’t look at it as work—your perception matters. If you see something that you enjoy and see it as fun and meaningful, you are more likely to stick with it.

Meditation, Mindfulness and Yoga

When I was growing up, people who meditated and did yoga typically walked around in robes and handed out flowers at airports. Today, yoga and meditation have become mainstream. Meditation is no longer taboo. It is seen as a useful tool for improving our state of mind and focus. Yoga has become the exercise of choice for many men and women. Fortunately, we have evolved to see the benefits of these practices and no longer feel threatened by them.

Several studies suggest that yoga may improve anxiety, depression, and PTSD symptoms. Yoga combines the benefits of physical movement with meditation and mindfulness all in one. Yoga has been shown to lower stress hormones while increasing the feel-good hormones. Yoga is easily accessible as a home practice or at a local yoga studio. There are a wide variety of classes. The most common form of yoga offered in yoga studios in the United States is hatha yoga. Hatha yoga is simply yoga that pairs poses (asanas) with breathing techniques (pranayama). Then there is yin yoga, a slower practice involving poses with deep stretches that are held for more extended periods. There is hot yoga, where you practice Hatha or flow yoga in a room heated to a temperature somewhere between 100 and 106 degrees Fahrenheit. There is even a practice called yoga Nidra, which means yogic sleep. This profoundly relaxing practice takes you to a deep state of conscious relaxation. On the other end of the spectrum is flow yoga, which involves flowing in continuous movements from one pose to another. For older adults or people with disabilities, chair yoga is a gentle form of yoga done while sitting in a chair or standing on the ground and using the chair as support. The point is that there is a style of yoga to suit almost anyone. The goal is to relax and have fun.

There is less scientific evidence on the mental health benefits of meditation than yoga. What we know about meditation, though, is that it can help reduce stress and inflammation in the body, reduce blood pressure and improve self-awareness. Specific forms of meditation (loving-kindness meditation) can also make us more compassionate human beings. There are



as many forms of meditation as there are yoga practices. There is mindfulness meditation, where you sit and observe your thoughts and let them pass without judgment. You are fully present with your awareness. There is guided meditation where a teacher leads you through a meditation practice. This is a good form of meditation for beginners. As mentioned above, there is loving-kindness meditation, where you bring your attention to people in your life and direct positive thoughts and energy toward them. There is object-centered meditation, where you focus your gaze on an object like a candle flame. Meditation can be practiced from almost anywhere. You don't have to design the perfect meditation room in your home with candles and a meditation cushion. You can do it while standing in line at a store, sitting at your desk, or sitting on your couch at home. And there is no specific amount of time that you meditate. You can do it for 2 minutes or 2 hours. If you have not meditated before, I recommend starting with no more than a 5-minute sitting.

Regarding body position, sitting up straight to meditate is generally recommended. However, it is perfectly acceptable to practice lying down. Do not worry if your mind is flooded with thoughts. That is natural. Just let them come and go without judgment. While you ideally want to meditate at a time and place where you will not be interrupted by people or sounds, do not worry if you are. Just bring your attention back inward. I have found that paying attention to my breath is an excellent way to slow the monkey mind.

Mindfulness is the practice of paying attention to the present moment and observing whatever is happening without judgment. Because each moment is constantly passing, mindfulness involves the observation of a never-ending stream of external stimuli and circumstances. The practice of mindfulness in Western society began in the 1970s. Since then, it has grown in popularity as a treatment for depression, anxiety, chronic pain, and stress. Mindfulness is a valuable tool to enrich our lives when we are bombarded with external messages from the news, social media, the internet, television, and all forms of advertising and print media. It can seem impossible to stop and observe what is going on in our minds when we have so much interference. If we do stop, though, and consider the present moment, it can make room for gratitude for what is. It can also bring our attention to negative thoughts and self-talk of which we might not have even been aware. We are taking back control of our brains by consciously choosing to be mindful of the present moment. We are shifting from our limbic system (think fear, anger, survival) to the prefrontal cortex (consider complex cognitive behavior and decision making).

Reach Out and Touch Someone

Closely related to relationships as a contributor to well-being is physical touch. When we are touched, our brain signals a release of oxytocin and serotonin. One study showed that regular hugs were associated with lower blood pressure and heart rates. This study also found that those who hugged more often experienced improved physical and mental health. Touch has been credited with boosting our immune system as well.

As we move to a more virtual society where screen time and cell phones are replacing human contact, daily touch has been reduced. The pandemic only magnified the problem. If we are going to make up for the touch deficiency that has resulted from our virtual world, we will need to be intentional in seeking out touch. Make it a practice to hug your partner or children as often as possible. Maybe make room in your schedule for frequent massages. It goes without saying that touch must be appropriate in the circumstances. A touch that might be welcomed by one person could be offensive to another. Use good judgment.



Get Outside

Most of us have experienced the feeling of awe when we look at a beautiful sunset or stand at the top of a mountain and look over the vastness of the earth or when we look up at the stars in wonder. This emotion of awe triggered by the observation of nature has been shown to have positive physiological, psychological, and social benefits. Studies have shown that awe increases positive mood and feelings of connectedness. But the benefits of nature are not limited to those experiences that evoke wonder. Just being outside in nature has been shown to have positive effects. In a study conducted in Japan, one group of participants walked through a remote forest area. Another group walked through an urban center. The researchers took tests before and after the walk to measure the participants' heart rates, stress, and anxiety levels. The participants who had walked through the forest had lower heart rates and less anxiety and stress than those who walked through the urban center. In a similar study where one group of participants walked in a metropolitan area and another group walked in a natural setting, those who walked in the natural environment reported decreased rumination after the walk. Rumination is associated with the onset of depression and anxiety.

Other studies have shown that nature can relieve attention fatigue and increase creativity. But do we need science to tell us this? We know this from our experience. For example, I have an overwhelming sense of peace if I am out on my kayak in the early morning when the sun is coming up, and everything in the water is coming to life. When I hike through a wooded forest, I forget about all the things that are stressors in my life. So, the next time you are feeling overwhelmed by work, relationship conflict, or financial pressures, get outside and get a dose of nature.

Practice Gratitude

Several years ago, I attended a seminar where the keynote speaker was a lawyer who had written a book in which he shared how a simple gratitude practice brought him out of depression and hopelessness. This lawyer explained how his law practice had declined and how he had isolated and lost relationships with family members. He was desperate to find a solution and was inspired by a thank you note from an ex-girlfriend. He decided to try an experiment. He committed to handwrite one thank you note a day for the following year. He sent thank you notes to family members, friends, colleagues, and even strangers. He told one story where he wrote a message to a restaurant employee who worked at a place where the lawyer stopped almost every day. The lawyer had never had any meaningful conversation with the employee, but the employee was always kind to him. The lawyer shared how moved the employee was to get this unexpected note. The lawyer explained that he probably got more of a positive boost than the employee. Long story short, by the end of the year, the lawyer had renewed and improved relationships with many people in his life and put his law practice back on track. This is an excellent example of combining gratitude with connection to enhance well-being.

Thank you notes are a great way to practice gratitude because it includes social connection. However, other gratitude practices that don't involve other people can be helpful. Sean Achor recommends starting or ending your day by writing down three things for which you are grateful. Another practice that some find practical is gratitude journaling. Journaling can cause a person to think deeply about a thing or person for which they are thankful. A gratitude practice can also be as simple as sending a text or email to someone to let them know you appreciate them. You can also combine a gratitude



practice with a mindfulness practice. Take moments throughout your day to stop and notice what you are grateful for. You could even set alarms on your phone to remind you to stop and be grateful. There are also gratitude apps that you can download to help with your gratitude practice. The important thing is to do something that works for you and feels genuine.

The study of gratitude and its benefits is relatively new. Several studies have shown a correlation between gratitude and feelings of happiness or satisfaction. In one study, neuroscientists took brain-imaging scans to determine which circuits in the brain become active when we feel grateful. The study showed that gratitude correlated with relief from stress. In another study, participants who wrote thank you notes for three months showed better mental health than participants who did not write the letters. Other researchers have questioned the effect that gratitude has on happiness. One thing that is certain, though, is that when we express genuine gratitude to another person, we improve the quality of that relationship. And we know that there is substantial evidence to show that quality relationships lead to happier and healthier lives.

Stop Throwing Second Darts

In his book, *Buddha's Brain*, best-selling author and neuroscientist Rick Hanson suggests that physical and mental pain and suffering are inevitable. People die. They lose their jobs and suffer illnesses and injuries. Marriages dissolve. Hanson calls these things first darts. They are events or circumstances that we often have little or no control over. However, Hanson explains that we often exaggerate or prolong our suffering by throwing second darts. Second darts can come from negative self-talk or ruminating over our pain. Hanson uses the simple example of stubbing your toe on a chair. Physical pain is the first dart. But then you throw second darts by becoming angry that someone moved the chair, or you feel resentment toward your partner because they aren't sympathetic enough to your pain. Or maybe you ruminate about whether your toe is broken and how much the medical bills will cost. We all do this. We take the first dart and make it bigger than it is.

If we want true happiness and well-being, we must learn to move through and process the pain of the first dart without making it worse than it needs to be. This allows us to release the negative emotion or pain and move toward a positive feeling. We can also reduce suffering by changing our mindset (perception) of what a dart is in the first place. In other words, we can stop seeing so much of what happens as unfavorable and perceive circumstances as nothing more than that-circumstances. This concept can best be understood by considering an old Taoist story of a farmer.

In the story, one of the farmer's horses ran away. A neighbor dropped by to apologize for the farmer's bad luck. "Maybe," the farmer replied. The next day, the horse returned with three wild horses. The neighbor exclaimed, "How wonderful!" "Maybe," replied the farmer. The following day, the farmer's son was thrown from one of the horses and broke his leg. The neighbor again offered his sympathies for the farmer's son's misfortune. "Maybe," answered the farmer. The day after, military officers came by to draft the farmer's son for war. Because the son had a broken leg, the officers passed him by. The neighbor expressed to the farmer how well things had turned out. "Maybe," said the farmer.

Avoiding second darts and limiting what we see as the first darts requires mindfulness. When something "bad" happens, we can choose to stop and observe the circumstance without judgment. If it causes physical or emotional pain, let that pain come without fighting it. Then let it pass without magnifying or exaggerating it with fear and rumination. If you catch yourself throwing second darts, stop and observe the second darts you're pitching. Then stop throwing logs on the fire.



Serving Something Other Than Yourself

If you want to be happy and feel a sense of purpose in the world, try doing something for someone else without expecting anything in return. Numerous studies have shown that giving of yourself can lower stress levels, reduce depressive symptoms, increase life satisfaction, lower blood pressure and increase longevity. Researchers have determined that when we give to others authentically, we increase our endorphin levels. They have a name for it—the helper’s high.

But not all giving is equal. If you want to get a positive boost to your own well-being, your giving needs to be authentic. It needs to be something that you want to do and means something to you. We’ve all known people in our lives who give and give and are always resentful about their giving. Something else to watch out for is your motivation for giving. If you are serving others because you want people to admire you, you are less likely to get the same benefit.

There are endless opportunities to serve others. The world is full of social injustices, poverty, hunger, homelessness, abuse, and oppression. Don’t let the magnitude of these problems stop you. One of the biggest reasons that people don’t volunteer is because they don’t think their small contribution will help. The problem seems too big. And so, they choose to do nothing. Don’t let the magnitude of the problem stop you. You can never know how your small act of service might benefit others or grow into something more significant. Do something small and see where it takes you. And look for opportunities where you can join others in service. As with gratitude practices, if you can find a way to combine giving with relational connection, you will likely increase the chances of improving your well-being.

Giving can be as simple as random acts of kindness. Researchers have found that random acts of kindness can decrease cortisol (stress hormone) levels and increase dopamine, serotonin and oxytocin (feel-good hormones) levels. One study showed that people who practiced random acts of kindness saw a boost in happiness. In that study, the degree to which their satisfaction increased was directly related to the number of acts of kindness they performed. So, the next time you’re in the drive-thru, try paying for the people in line behind you.

Conclusion

Well-being and happiness are not prizes at the end of a road. They are not something we strive for and get and then sit back and enjoy. Well-being is a journey—a lifestyle. It’s about designing a life that creates opportunities for joy and purpose and meaning. It’s about creating a state of mind that, when bad things happen, we can be present with that experience and then move forward. Mental health is much like physical health. To have either, we must be active participants. Sure, there is a genetic component to both physical and psychological health. But neuroscience has shown us that we can rewire our brains for improved well-being.

As individual lawyers, we have a choice. We can structure our lives to include some of the practices discussed above or let our genetics and circumstances limit what is possible. As a profession, we also have a choice. We can support and encourage well-being programs and policies or turn a blind eye to the problem and move forward with business as usual. If we as a profession want to change, it will require law firms, the State Bar, and local bar groups to work together.



LAWYER WELL-BEING: STRATEGIES FOR HAPPINESS, SATISFACTION AND MEANING IN YOUR PERSONAL AND PROFESSIONAL LIFE

Will Graebe, Claims Counsel/Relationship Manager
Lawyers Mutual Liability Insurance Co. of NC

CURRENT STATE OF MENTAL HEALTH AND SUBSTANCE ABUSE IN THE LEGAL PROFESSION



-
- 2016 ABA Study
 - One in five lawyers qualify as problem drinkers.
 - Almost one-third of lawyers struggle with some level of depression.
 - One-fifth of lawyers exhibit symptoms of anxiety.
 - Effect of COVID
 - In 2021 study, almost one-half of lawyers reported a decline in their overall well-being.



WHY ARE LAWYERS MORE LIKELY TO SUFFER FROM MENTAL HEALTH ISSUES AND ALCOHOL ABUSE?



- Negativity bias and pessimism
 - Everyone suffers from negativity bias. Lawyers are just really good at it.
- High stress work environment
 - Deadline driven
 - Billable hours
 - Expectation of perfection
 - Constant conflict
- Lack of vulnerability
 - We hide our imperfection.

REASONS FOR HOPE



- Neuroplasticity: We can rewire our brains
 - Chemically (increase good hormones)
 - Structurally (change our neural pathways)
 - Functionally (make it easier to use certain parts of the brain)
- Example of Neuroplasticity
 - London Cab Drivers
- Changing our brains requires time and effort
- Law firms and the State Bar are promoting wellness programs and providing resources to lawyers. The Lawyers Assistance Program is one of the strongest in the country.



BRAIN CHEMICALS 101

- Feel Good Hormones
 - Serotonin (“happy chemical” that boosts our mood)
 - Dopamine (responsible for motivation, muscle movement and memory and feeling pleasure)
 - Oxytocin (“love hormone” or “cuddle chemical” gives feelings of positive emotion, empathy, bonding and relaxation)
 - Endorphins (secreted by pituitary gland during times of stress and pleasure and is natural pain reliever—think runner’s high)



DEFINING HAPPINESS AND WELL-BEING

- Well-being is much more than happiness
- Martin Seligman’s Definition
 - Well-being includes traditional notions of happiness in the form of hedonic pleasure but also includes engagement (in work or personal pursuits), relationships (deep connection with others), meaning (belonging to and serving something bigger than yourself), and accomplishment.
- Paul Dolan (Happiness by Design)
 - Happiness is a balance of pleasure and purpose.



WE'RE BAD PREDICTORS OF WHAT MAKES US HAPPY



- Positive psychology theory about happiness
 - Money and success don't bring happiness.
 - Happiness brings money and success.
 - 75% of job successes are predicted by optimism levels, support and ability to see stress as a challenge rather than a threat.
 - An employee in a positive state of mind is 31% more productive than a person in a neutral state.

MONEY AND HAPPINESS



- Relationship between money and success.
 - 2010 study found that happiness improves as income increases up to \$75,000. No appreciable gains in happiness above \$75,000.
 - How we spend money is more important.
 - Research shows that spending money on ourselves to buy things results in very small increases to our happiness.
 - Spending money on others results in larger increases to our happiness.
 - Spending money on experiences brings more happiness than buying things.



SCIENTIFICALLY VALIDATED WAYS TO IMPROVE WELL-BEING



- Change your mindset
- Relational connection
- Physical exercise
- Meditation, mindfulness and yoga
- Physical touch
- Nature
- Gratitude Practices
- Stop throwing darts
- Serving others

IMPROVING WELL-BEING BY CHANGING YOUR MINDSET



- Mindsets are those beliefs we have about ourselves and the world around us.
- Mindsets affect our physical, mental and emotional responses to conditions in our environment.
- Studies show that we can improve our physical health and well-being by changing our mindset.



CHANGING OUR MINDSET ABOUT STRESS

- University of Wisconsin study of 30,000 people asked participants how much stress they were under and whether they thought stress was harmful to their health. Researchers then looked at death records over the years for the participants in the study.
 - Participants in the study who had high levels of stress and thought stress was harmful had a 43% increased risk of dying.
 - Participants who had high stress but didn't think it was harmful were no more likely to die than those who had little stress in their lives.



MINDSETS AFFECT OUR MENTAL HEALTH

- Stanford study found that mindsets formed at the beginning of the COVID-19 pandemic predicted well-being 6 months later.
 - Participants were asked whether they saw the pandemic as 1) a catastrophe; 2) manageable; or 3) an opportunity.
 - Participants who, at the beginning of the pandemic, saw it as a catastrophe experienced higher levels of negative emotions and unhealthy behaviors than the other two groups.



MILKSHAKES



- o Milkshake Study: Participants were given two different milkshakes and told that one was low-calorie with no sugar and no fat and only 140 calories and the other was decadent with lots of sugar and fat and 620 calories. Both shakes actually were the same. Ghrelin (appetite hormone) levels were then checked. Even though they had consumed the same shake, their ghrelin levels were far different after drinking each shake. Their mindset overrode their bodies' natural response.

MAIDS



- o Study of two groups of hotel maids. Both groups were given physical exams (weight, blood pressure, body mass index, etc.). Both groups were asked whether they engaged in any regular physical exercise and most responded no or very little.
 - One group was shown video about how their work was actually exercise and how it improved their health. Other group was told nothing.
 - Participants were tested four weeks later. Group that had been showed the video lost weight, had lower blood pressure and reduced body fat. Other group showed no changes.



RELATIONAL CONNECTION

- The Harvard Study of Adult Development
 - Most comprehensive and longest running well-being study ever conducted.
 - Starting in 1938, researchers followed two groups: 1) a group of 268 Harvard sophomores; 2) a group of 465 young men from one of poorest neighborhoods in Boston.
 - Researchers conducted periodic interviews, took brain scans, did blood tests and collected information on the participants' personal and professional life.
 - Most significant finding was that quality relationships and the best predictor of happiness and longevity.



RELATIONAL CONNECTION CONTINUED

- Relational connection is even more important in times of difficulty or crisis. Isolating is the worst thing you can do.
- It is not the quantity of relationships that increases happiness. It is the quality (deep connection with someone you can trust and who is supportive).
- Studies show that being with close friends and family during difficult times can reduce stress hormone cortisol levels and increase happiness hormone oxytocin levels.



EXERCISE



- Benefits of Exercise
 - Improves physical condition, reduces inflammation and improves cardiovascular health.
 - Eases symptoms of depression.
 - Reduces cortisol levels and increases oxytocin and endorphin levels.
 - Helps in treating PTSD and anxiety disorders.

EXERCISE: WHAT KIND AND HOW MUCH



- What kind of exercise is best?
 - The kind that you enjoy. You won't do it if you don't enjoy it.
 - Aerobic exercise (running, swimming, cycling, cross-fit, zumba, etc.) has been found to provide the greatest benefit.
- How much exercise?
 - Studies have found that 30 to 60 minutes of exercise a day three to five times a week is optimal.
 - Too much exercise can have negative impact on mental and physical health.



EXERCISE: HOW TO STICK WITH IT

- Tips for staying on track with exercise:
 - Pick a form of exercise you enjoy.
 - Start small and build.
 - Tell someone you are doing it.
 - Find a partner or group.
 - Change your perception about what exercise is— if you view it as work or a chore instead of fun, you probably won't keep doing it.



YOGA

- Studies suggest that yoga may improve anxiety, depression and PTSD symptoms.
- Lowers stress hormones and increases happiness hormones.
- Improves core strength, flexibility and balance.
- There is a wide variety of yoga practice from which to choose (hatha yoga, restorative yoga, flow yoga, hot yoga, yin yoga, yoga nidra, chair yoga).



MEDITATION



- Benefits of mediation
 - Reduces stress and inflammation in the body.
 - Reduces blood pressure.
 - Increases self-awareness.
- Wide variety of meditation practices
 - Mindfulness meditation (observe thoughts and let them pass)
 - Guided meditation (good for beginners)
 - Object centered meditation
 - Loving-kindness meditation
- Practice for 2 minutes or 2 hours and do it

MINDFULNESS



- The practice of paying attention to the present moment and observing whatever is happening without judgment.
- Mindfulness has been used as a treatment for depression, anxiety, chronic pain and stress.
- May reduce cortisol levels, lower blood pressure and improve immune system.
- Eliminate self-talk and rumination.



SECOND DARTS



- Rick Hanson, Buddha's Brain
- First darts are those negative events or circumstances over which we have little control (people die, injuries happen, etc.).
- Second darts are things we do to make the first dart worse (ruminate about the negative circumstance, blame others, exaggerate the problem, etc.).
- Process the pain of the first dart and then don't throw second darts. Mindfulness helps.
- Stop seeing everything as a dart (farmer story).

PHYSICAL TOUCH



- Studies have shown that physical touch can lower blood pressure and heart rate and improve our immune system.
- Physical touch causes a release of happiness hormones oxytocin and serotonin.
- Virtual world and pandemic have reduced frequency of physical touch. Need to be intentional to get adequate physical touch.



NATURE



- Being outside in a natural setting has greater benefits than being outside in urban areas.
- Nature can increase positive mood, lower anxiety and blood pressure and decrease rumination.

GRATITUDE PRACTICES



- Studies have shown that gratitude practices can increase positive emotions and relieve stress.
- Gratitude, when combined with relational connection, offers benefits of both.
- Example of lawyer who turned his life around with one-year thank you note practice.



SERVING SOMETHING OTHER THAN YOURSELF



- Studies have shown that giving of yourself can lower stress levels, reduce depressive symptoms, increase life satisfaction, lower blood pressure and increase longevity.
- Increases endorphin levels (helper's high).
- Must be authentic and something you want to do. Otherwise, giving can create resentment.
- Random Acts of Kindness: Decrease cortisol levels and increase happiness hormones.

CHALLENGE



- Experiment with one or more of these suggestions and see how you feel. Think about lifestyle changes instead of quick fixes or temporary improvements.
- Law firm managers, partners, bar leaders:
 - Promote well-being programs in your firms and in the profession.
 - Create safe environments for people to share mental health and substance abuse struggles and provide resources to address these issues.



WEEK OF WELLNESS

Monday	Tuesday	Wednesday	Thursday	Friday
<p>People routinely report Monday as the most stressful day of the week. Notice when you feel stress at work. Sit with the feeling of stress and take a few minutes to jot down 2 reasons why the sensation of stress might be a benefit (e.g., stress gets blood pumping, sharpens the mind, allows you to rise to the level of a challenge)</p>	<p>The second day of the week is for noticing a second dart. Catch yourself throwing an unnecessary second dart such as blame or exaggeration and stop yourself. Stop and notice how you feel after you have stopped the rumination.</p>	<p>Take 5 minutes to sit and meditate. Find a quiet place where you won't be disturbed. Turn off your phone. Let thoughts arise and pass without judgment. Just notice the thoughts as they come and go. Simply pay attention to your breath, maybe counting each inhale and exhale for a count of 10 and then repeating.</p>	<p>Thursday is gratitude day. Identify 2 people in your life who are important to you. Sit down and write a short email to each person thanking them for something specific they have done for you or for a specific character trait you appreciate about them.</p>	<p>Get out in nature and take a hike. Leave your phone and your Fitbit behind. Notice the beauty of the woods and the wildlife. Along the way, stop and take a few deep breaths and notice the feeling of relaxation that you experience from a simple breath.</p>



RESOURCES

o Books

- The Happiness Advantage by Shawn Achor
- Happiness By Design by Paul Dolan
- Mindfulness and the Brain by Jack Kornfield and Daniel Siegel
- Buddha's Brain by Rick Hanson
- Dopamine Nation by Anna Lembke
- The Power of Now by Eckhart Tolle

o Podcasts

- o The Happiness Lab with Dr. Laurie Santos



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60 TECH TIPS IN 60 MINUTES

Erik Mazzone; Lawyers Mutual
and
Ketan Soni; Soni Brendle, PLLC

A photograph of a server rack with glowing green lights, overlaid with a white circuit board pattern.

60 TECH TIPS IN 60 MINUTES

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KETAN@NCLAWATTORNEYS.COM

ERIK MAZZONE – LAWYERS MUTUAL


ERIK@LAWYERSMUTUALNC.COM

A person is shown from the chest down, wearing a grey t-shirt and glasses, connecting a black external drive to a silver laptop. The person is wearing a watch on their left wrist.

Backup 1-2-3




Safely
(or any lock)

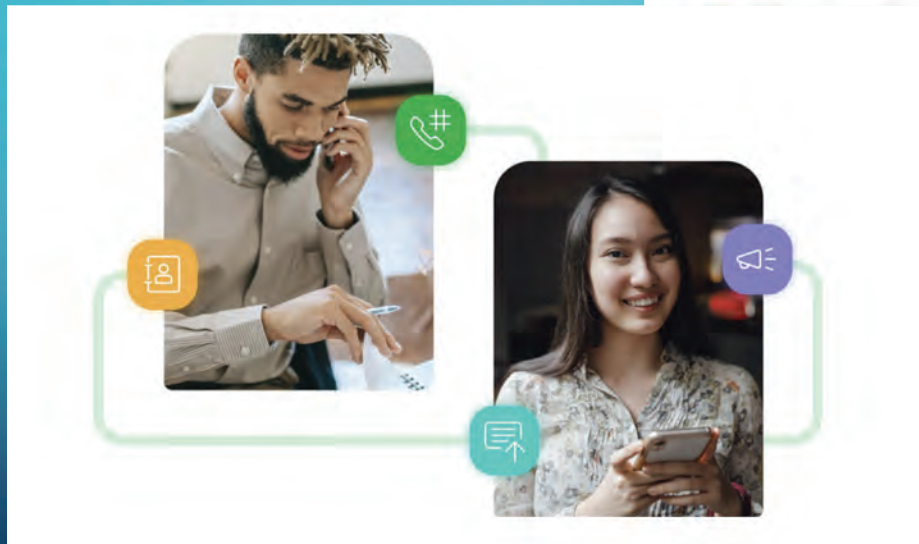


X Model

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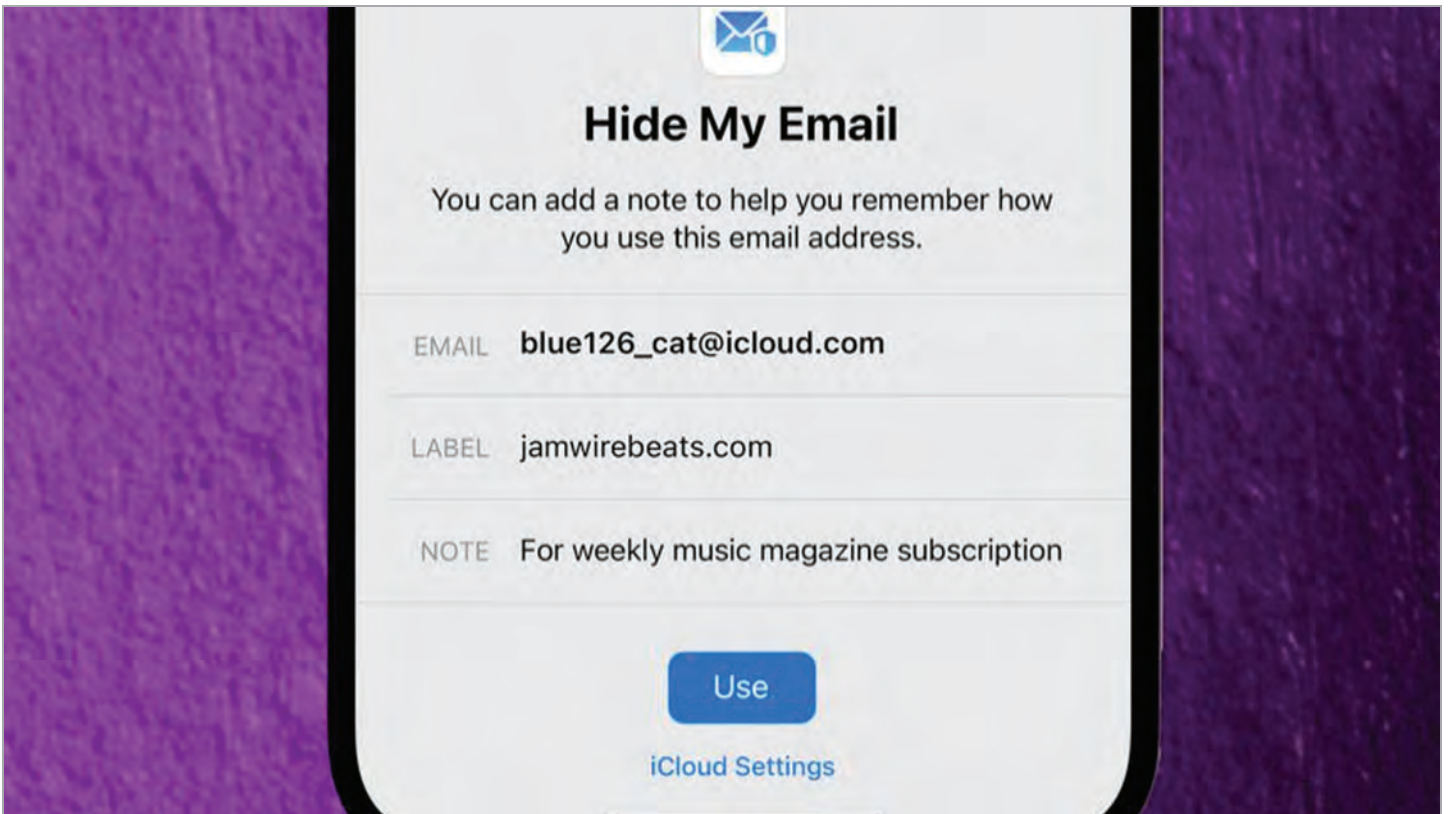


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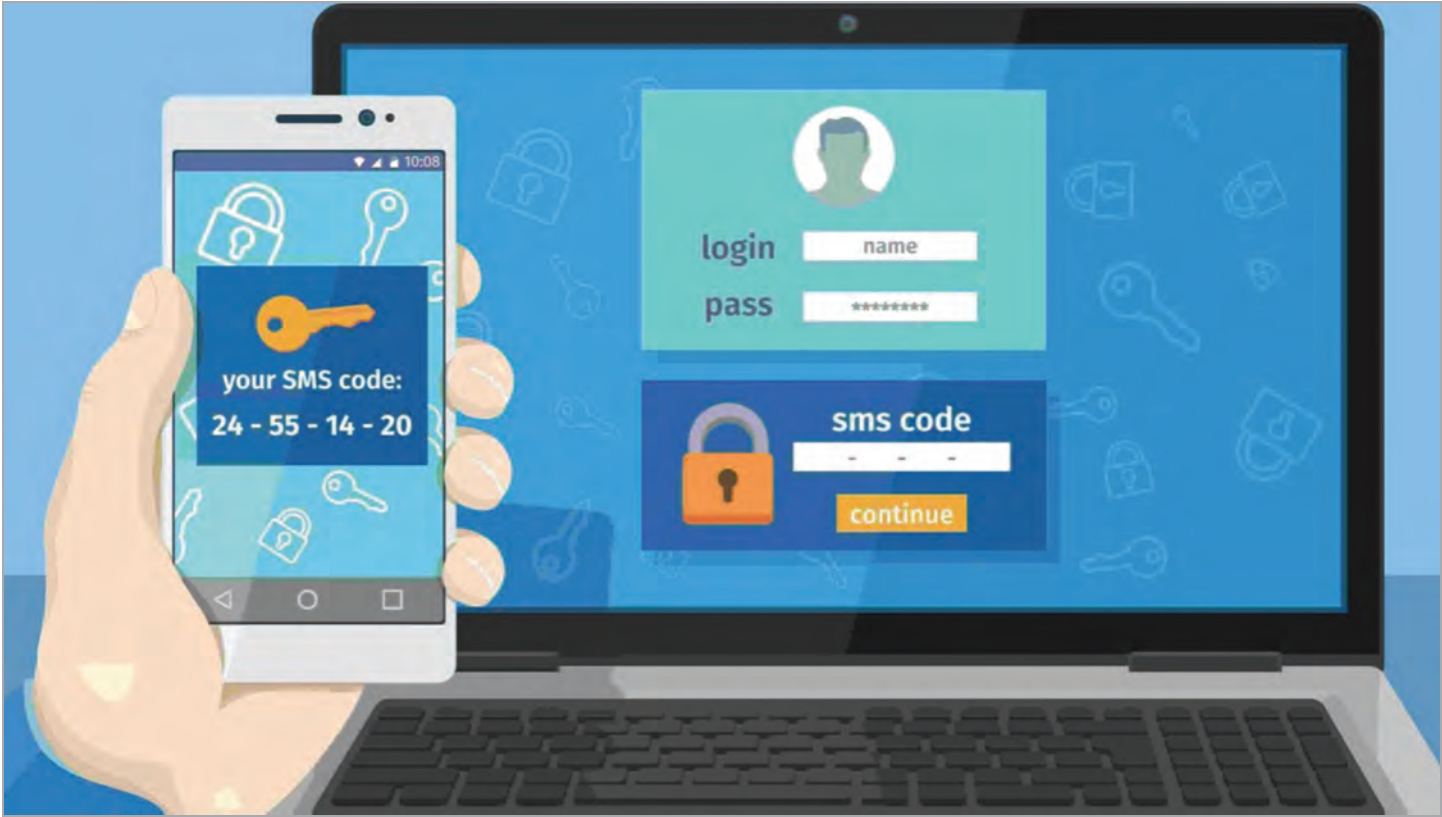


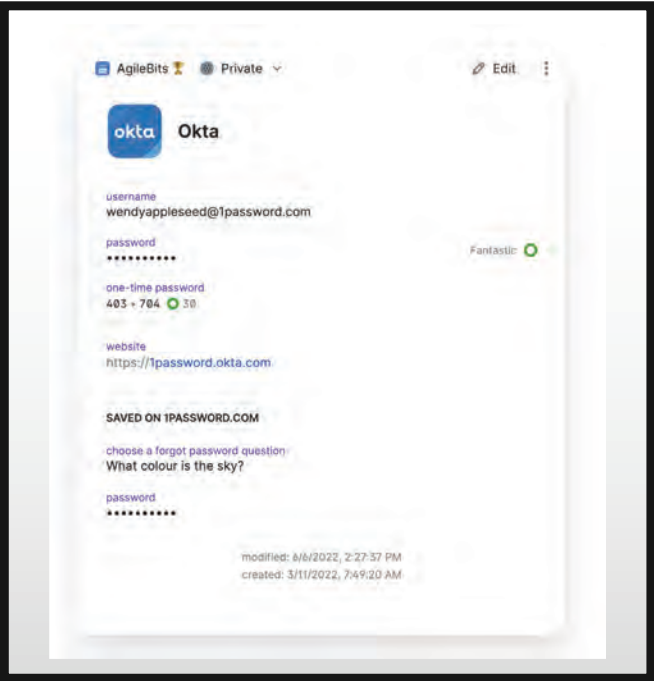
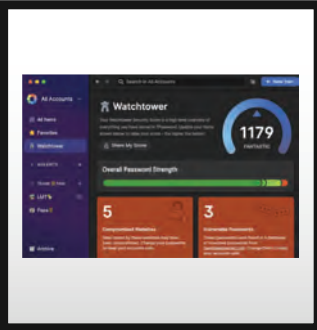
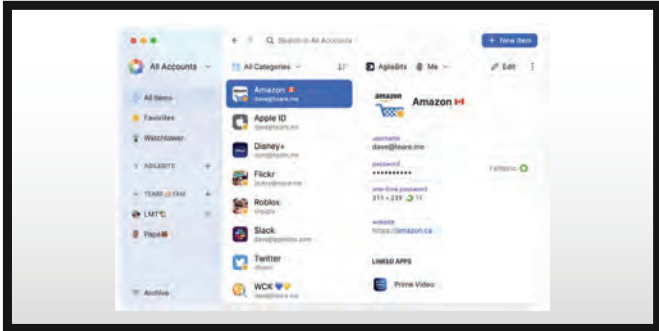
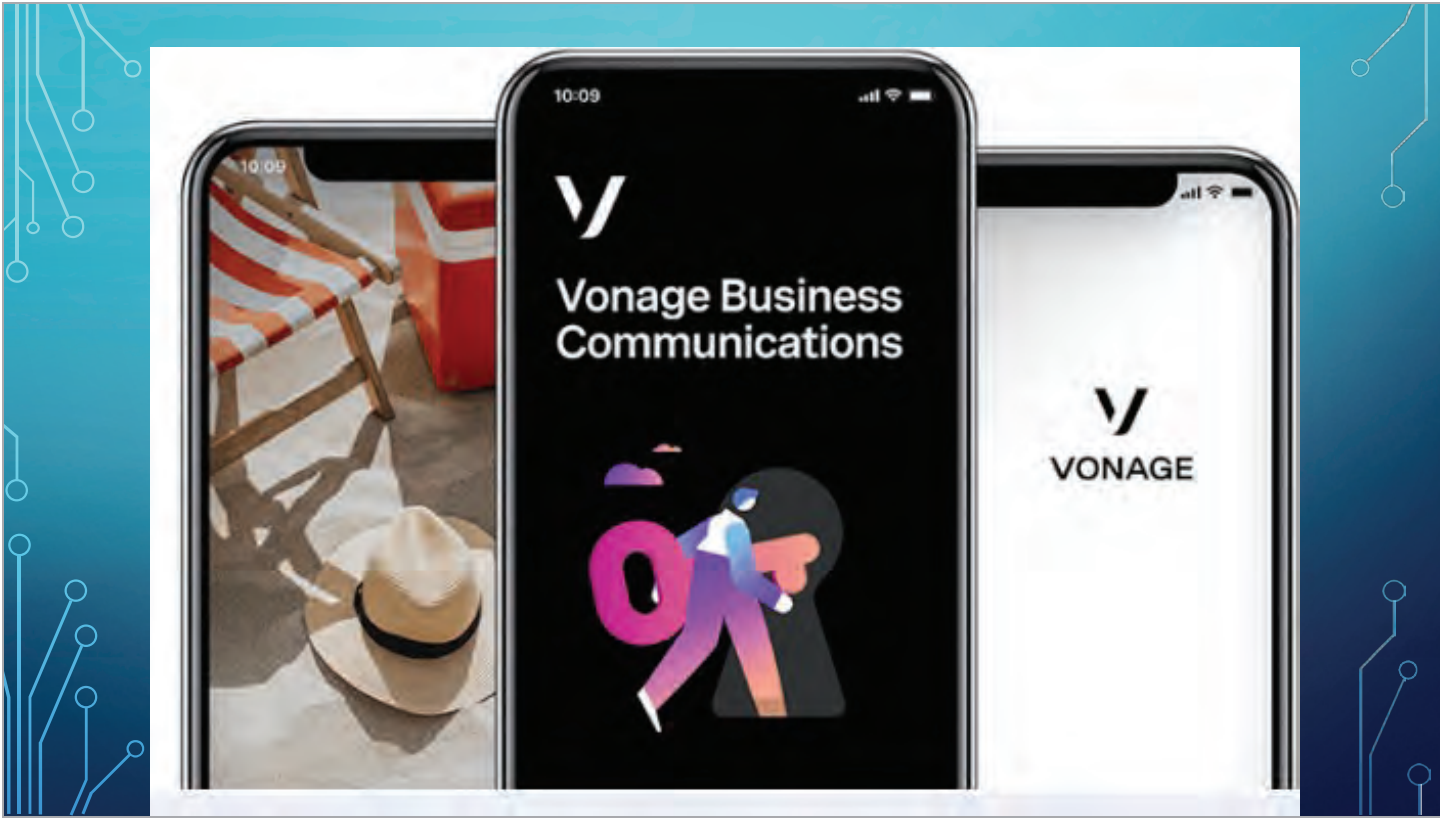
BRAVE BROWSER



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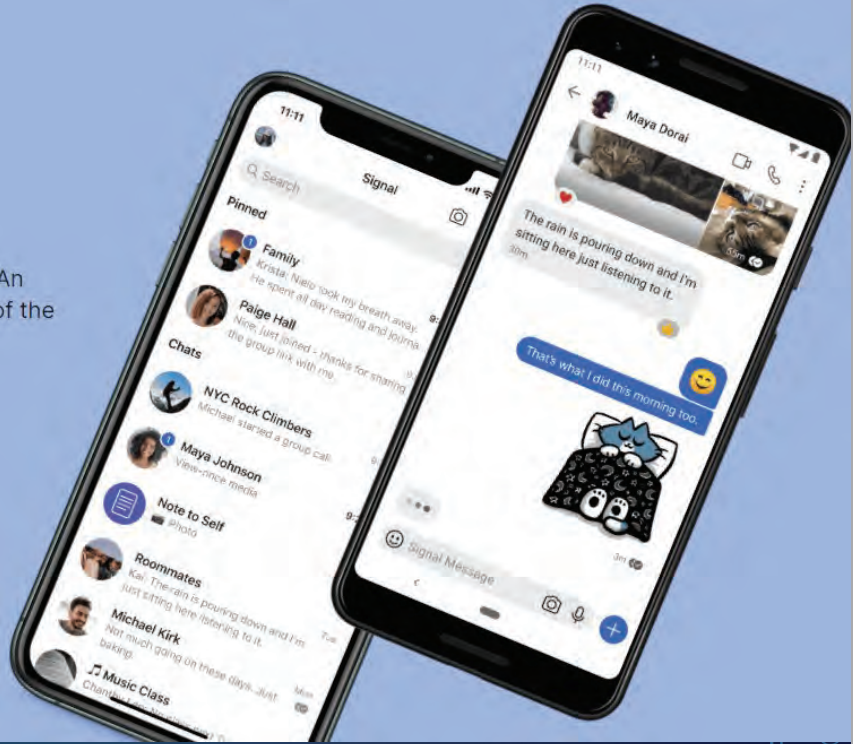


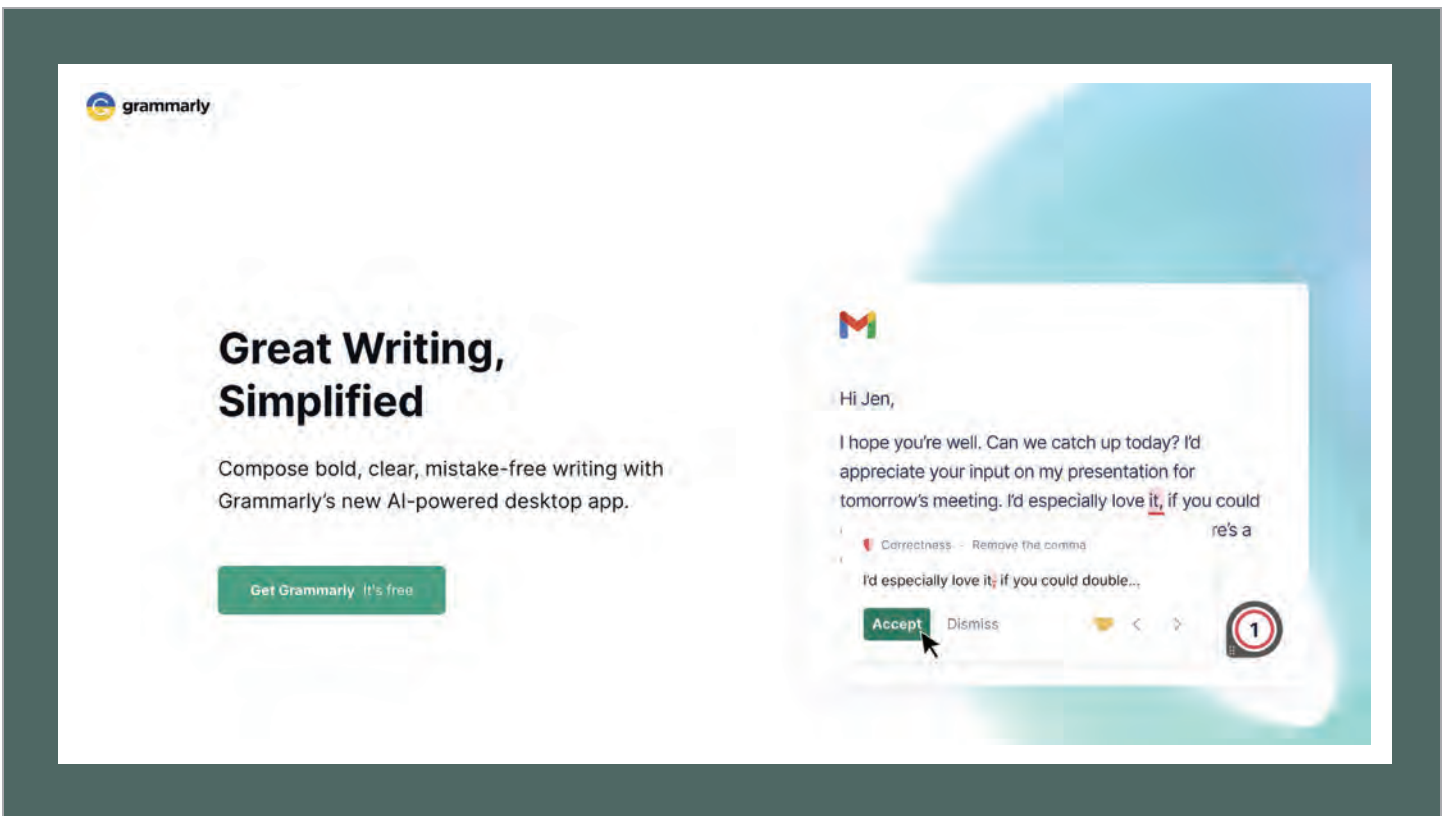


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Get Signal







CALENDLY



Ketan Soni

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7 hr

Click the calendar on the right to see Ketan's availability for a full-day mediation. Pick your "start" time.

Select a Date & Time

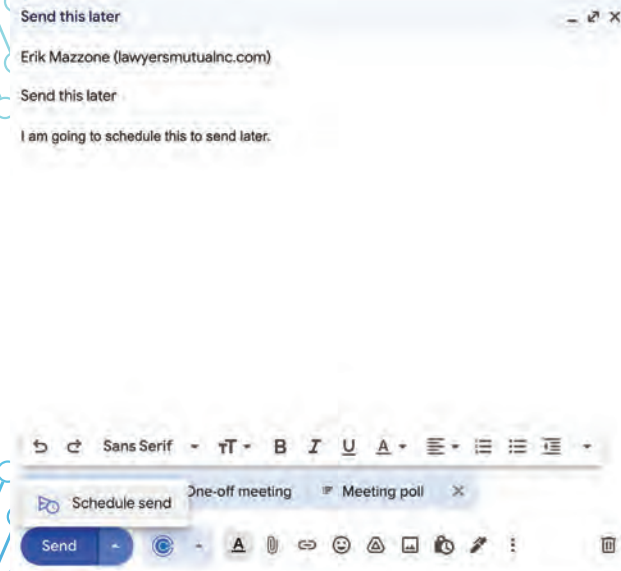
September 2022 Tuesday, September 20

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Show times you're free

- 9:30am
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- 10:30am



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Erik Mazzone (lawyersmutualnc.com)

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Schedule send

Eastern Daylight Time

- Tomorrow morning Sep 6, 8:00 AM
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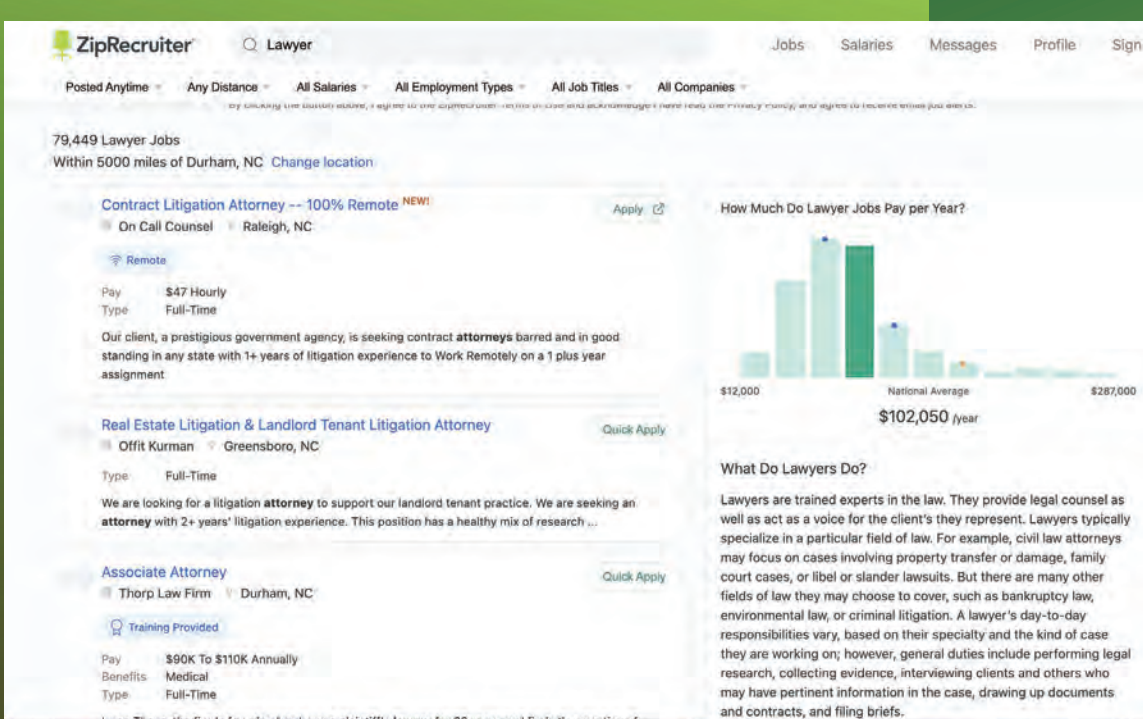



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The screenshot displays the Obsidian 0.9.2 interface. The central pane shows a graph view for the 'Habits MOC' page. The graph has a central node labeled '#habit' and 'Habits MOC' with numerous other nodes connected to it. Nodes include 'Habits MOC - Unifying Phase', 'Habits MOC - Colliding Phase', 'Defining a habit', 'The mechanism for breaking through development plateaus', 'Charting out habit cycles in my life circa 2013', 'Habit formation provides an evolutionary advantage', 'The neural formation c additive', 'Understanding the habit cycle and habitual cues', 'Improving Micro Habits Contact', 'Resiliency Routines help regain a sense of control', 'Preparing for the next day is an important habit', 'Development of skills, strength, habits, and more', 'I Wins foster a Sense of Control', 'mental control', 'important', 'I to describe important', '#habits', 'How Atomic I conversat', '2013-02-20-21 Habit Planning', 'Cobwebs into Ci', 'ig down daily goals in the ring is an important habit', '2019-07-14-21 Atomic Habits', '2019-02-20-19 Habit Cycles as a Theory', 'The trust habit metaphors are additive - v1', 'ases of', 'Habits MOC - Asymptotic Phase', 'Habits MOC - Unifying Phase', 'Understanding Habits', 'Designing Habits', 'Example of Habit Design', 'Important Habits', and 'Related Concepts'. The left sidebar shows a list of notes with a search bar and a table of contents. The right sidebar shows a list of linked mentions and other concepts.

Habits MOC - Unifying Phase

Enjoy and Use - Enjoy the spatial constellation you created. It's certainly meaningful to you. Use it for different purposes: for final products (content creation), as a reference point in the future, or for the inherent joy the ideas provide.

Here's an assembly of the notes in some sort of formalized structure. I have continued adding to this whenever it made sense.

Understanding Habits

- Defining a habit
- Habit formation provides an evolutionary advantage
- Habits carry a ton of hidden inertia
- The neural formation of habits is additive
 - The trust habit metaphors are additive

Designing Habits

- Understanding the habit cycle and habitual cues
 - How Atomic Habits fit into the conversation on habits
 - Resiliency Routines help regain a sense of control
 - Improving Micro Habits at the Point of Contact
- Small Wins foster a Sense of Control
- An asymptotic curve models the development of skills - strength - habits - and more
 - The mechanism for breaking through development plateaus

Example of Habit Design

- Charting out habit cycles in my life circa 2013

Important Habits

Important habits preserve mental clarity and a sense of control

Preparing for the next day is an important habit

Journaling in the morning is an important habit

Writing down daily goals in the morning is an important habit

Related Concepts

Positive Feedback Loop, Like targets like

Cobwebs into Cables, Reqs, Sense of Control



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The "Touch it Once" Principle That Will Skyrocket Your Personal Efficiency

MINDSETS

Alpha Leadership

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Challenge: Touch Emails Only Once - 2 Easy Tips

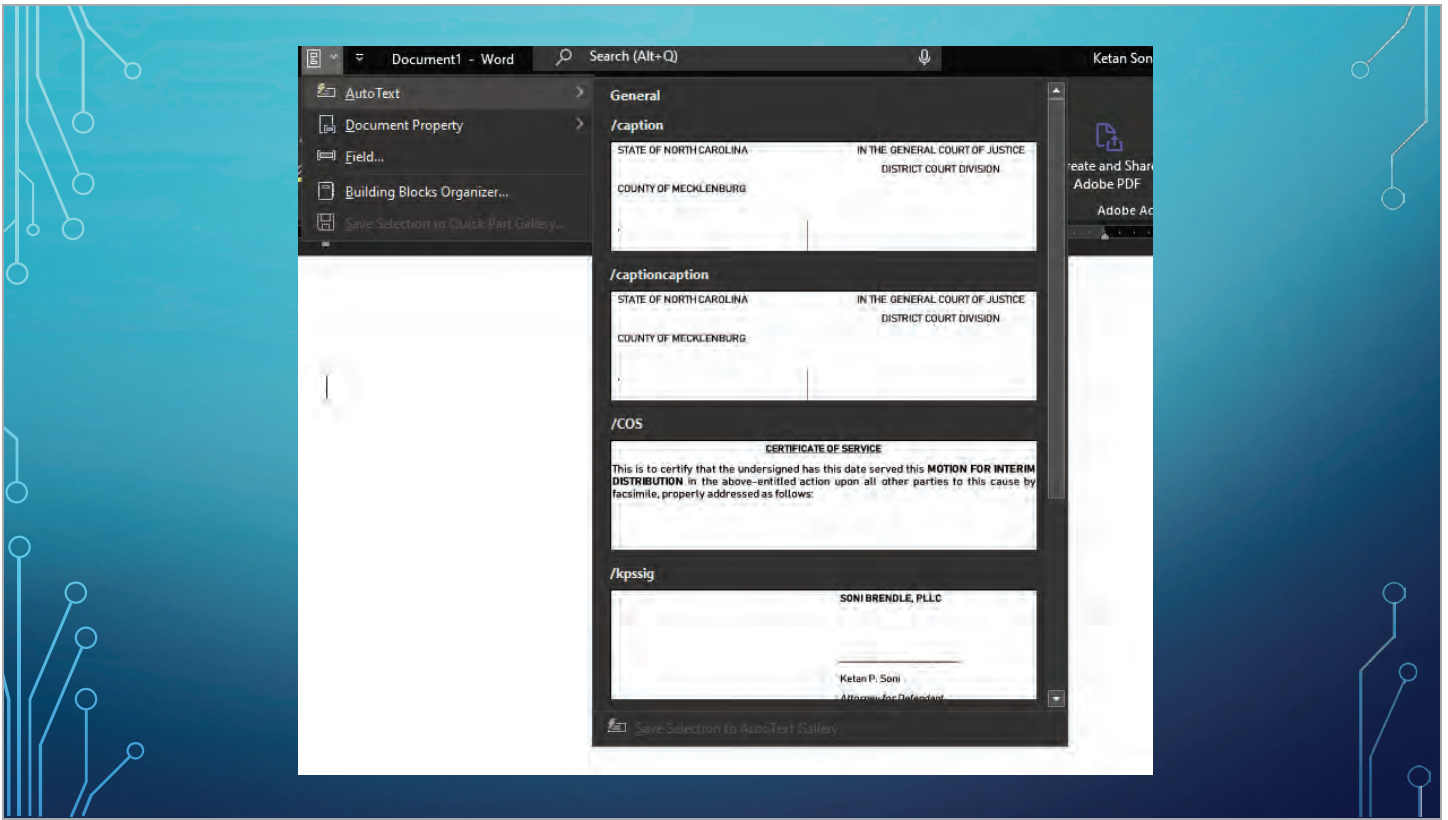
COMMUNICATION, MESSAGES, LEADERSHIP, ALPHA, NEWSLETTER, PRODUCTIVITY | 0 comments

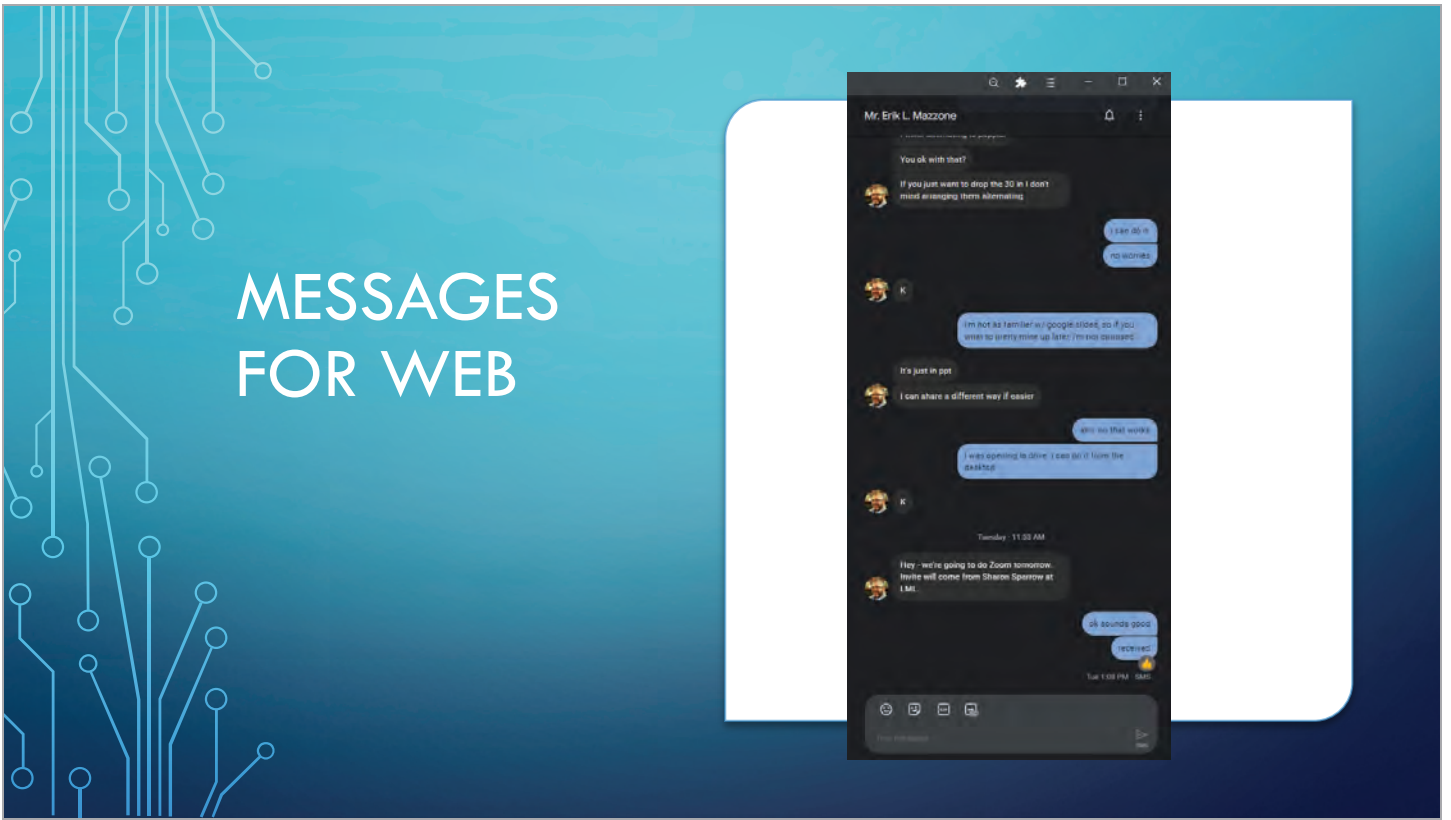
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The "One Touch" Rule



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You had a great conversation with a lead, but your co-worker Bob called them. Unsure that you had already talked with Bob's activity logs, you can see all lead information and their communication with the firm in date. Having access to this data allows you to avoid confusion and unnecessary meetings that make the firm look bad.

Send Desk Items

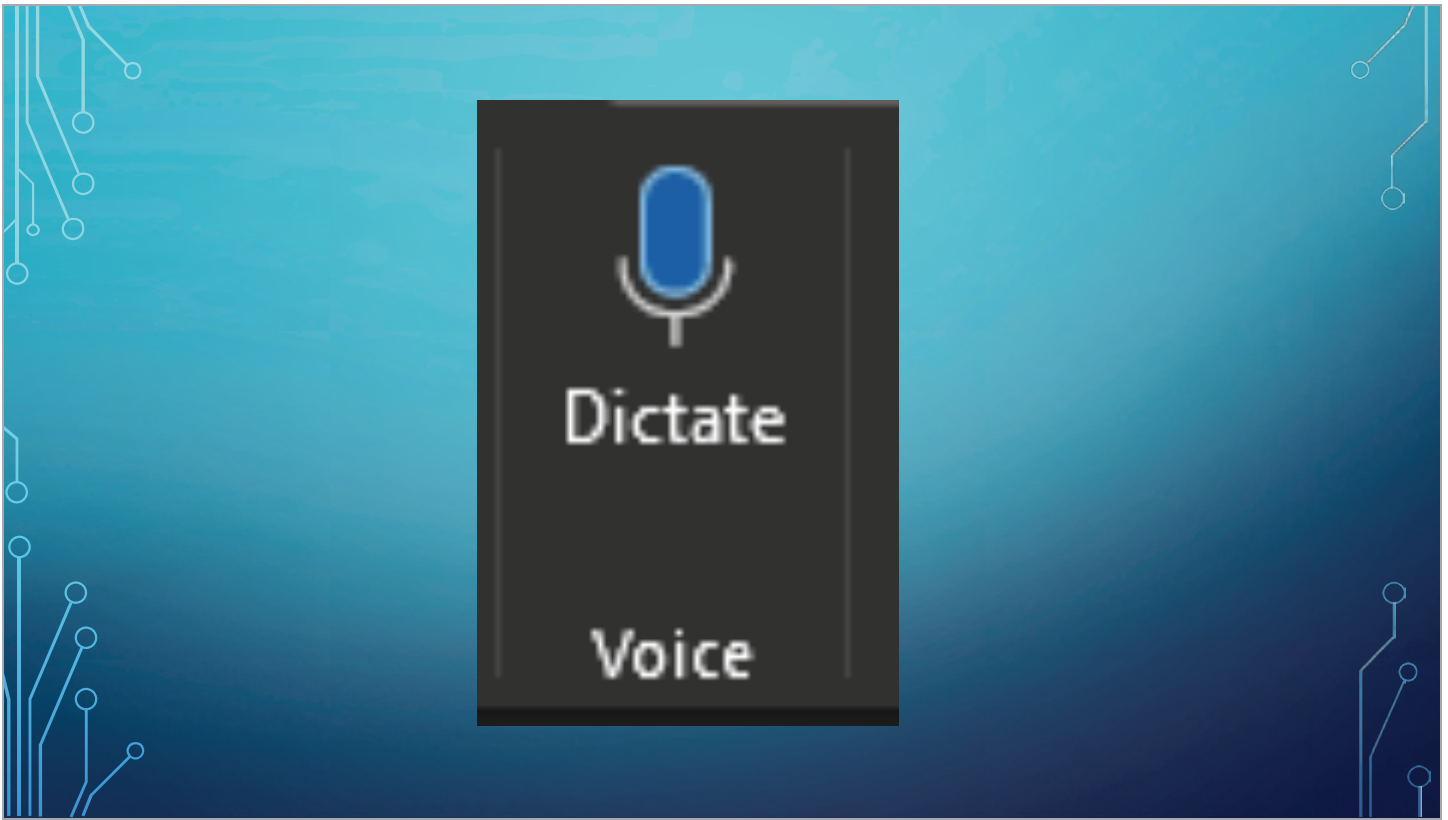
Sending in-clipboard over email is inefficient, and people often overlook the tasks. Use Desk to quickly send notes, texts, and emails to team members at your law firm. Increase efficiency and shorten response time.

Set Reminders

Remembering tasks like follow-up calls can be difficult. Instead of trying to keep track of everything on paper or in your head, set reminders for a future date and time.

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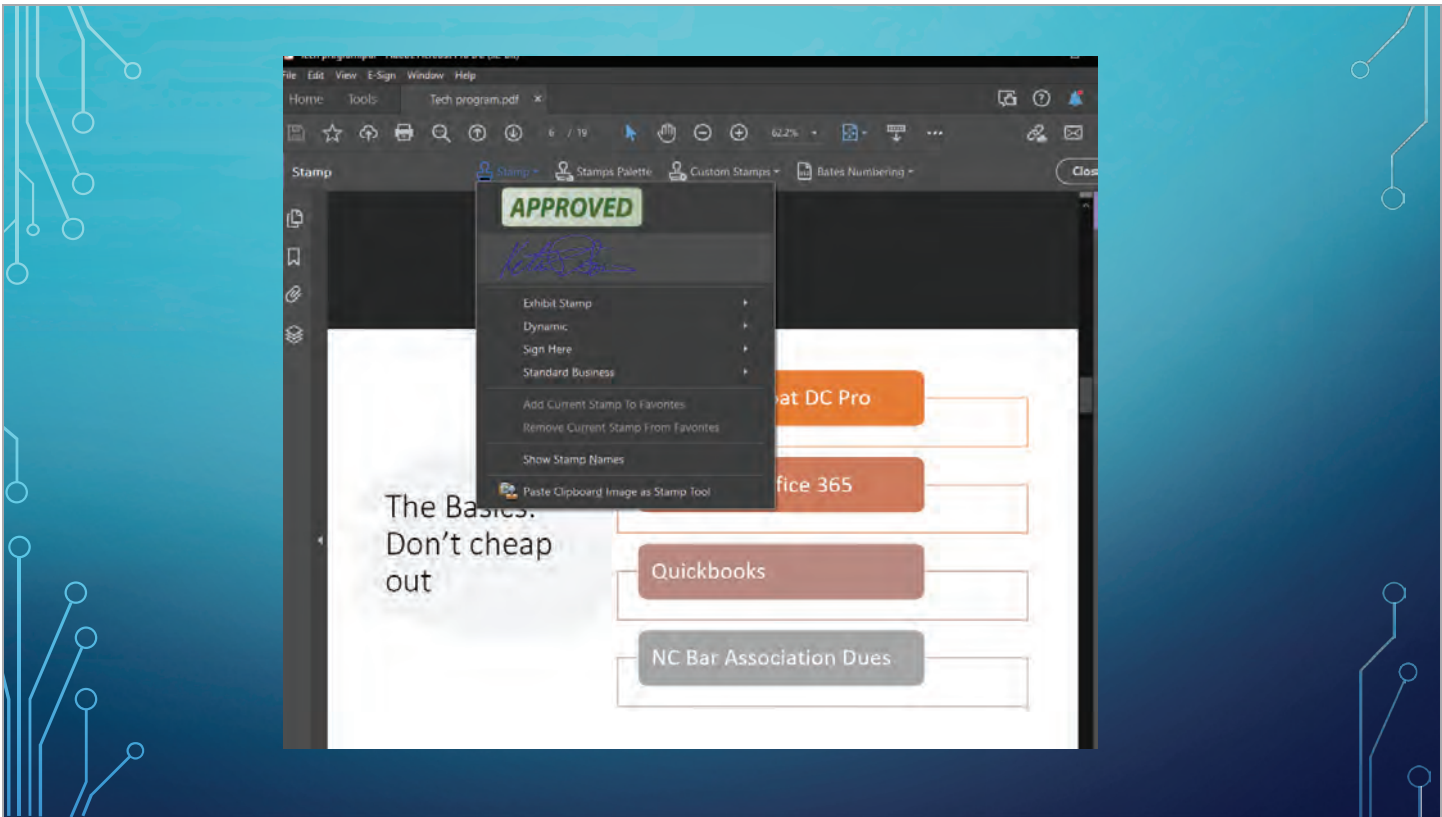


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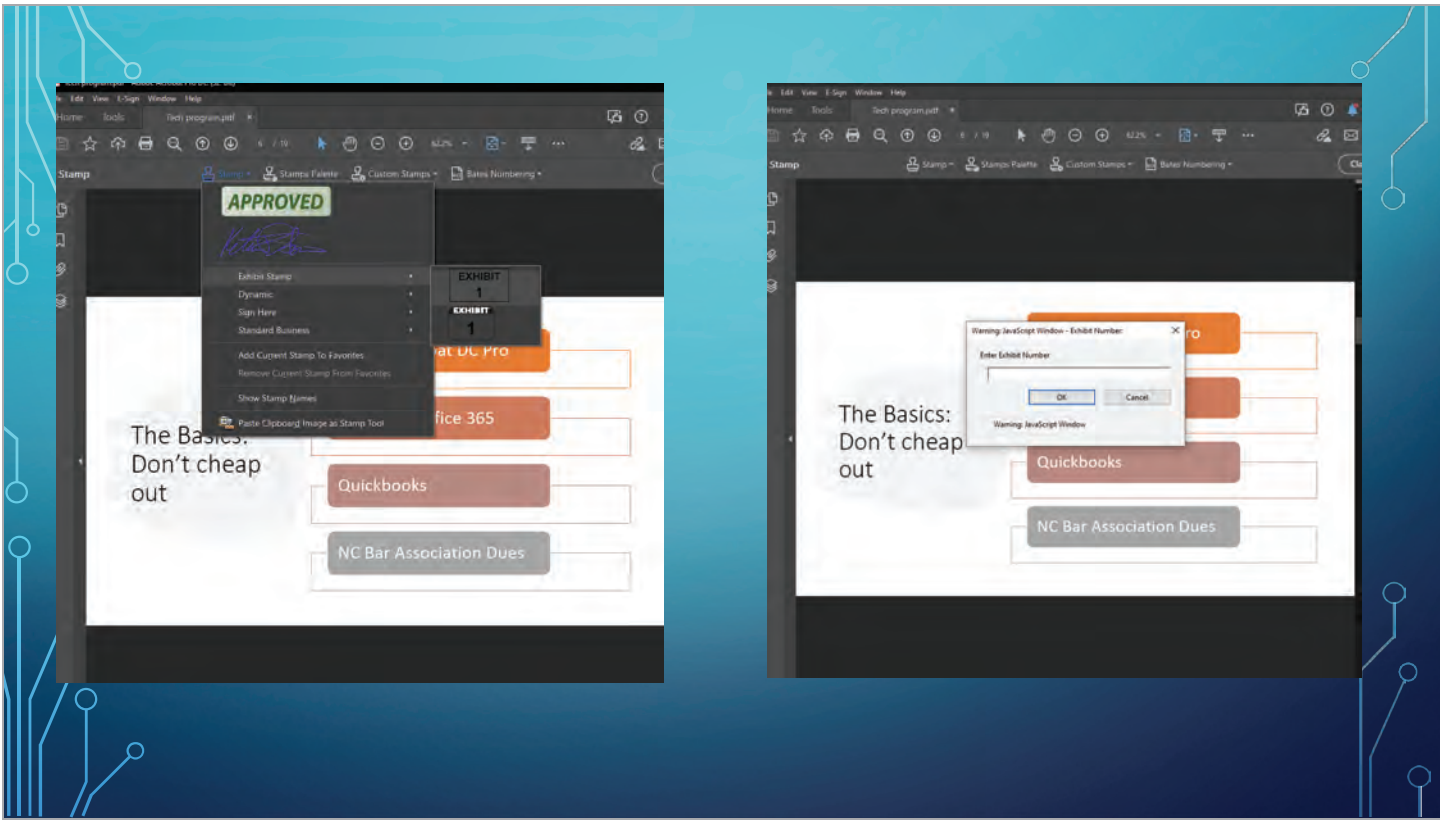


Turn raw jurisdictional data into an interactive map with a few clicks.

Legality of cannabis by U.S. Jurisdiction

State	Year	Legislation	Notes
Alabama	2017	Alabama Medical Cannabis Act	Alabama is the only state in the country that has not passed any legislation related to cannabis.
Alaska	2015	Alaska Medical Cannabis Act	Alaska is the first state in the country to legalize medical cannabis.
Arizona	2010	Arizona Medical Cannabis Act	Arizona is the first state in the country to legalize medical cannabis.
Arkansas	2015	Arkansas Medical Cannabis Act	Arkansas is the first state in the country to legalize medical cannabis.
California	1996	California Medical Cannabis Act	California is the first state in the country to legalize medical cannabis.
Colorado	2000	Colorado Medical Cannabis Act	Colorado is the first state in the country to legalize recreational cannabis.
Connecticut	2012	Connecticut Medical Cannabis Act	Connecticut is the first state in the country to legalize medical cannabis.
Delaware	2015	Delaware Medical Cannabis Act	Delaware is the first state in the country to legalize medical cannabis.
District of Columbia	2015	District of Columbia Medical Cannabis Act	District of Columbia is the first state in the country to legalize medical cannabis.
Florida	2016	Florida Medical Cannabis Act	Florida is the first state in the country to legalize medical cannabis.
Georgia	2015	Georgia Medical Cannabis Act	Georgia is the first state in the country to legalize medical cannabis.
Hawaii	2018	Hawaii Medical Cannabis Act	Hawaii is the first state in the country to legalize medical cannabis.
Idaho	2015	Idaho Medical Cannabis Act	Idaho is the first state in the country to legalize medical cannabis.
Illinois	2013	Illinois Medical Cannabis Act	Illinois is the first state in the country to legalize medical cannabis.
Indiana	2015	Indiana Medical Cannabis Act	Indiana is the first state in the country to legalize medical cannabis.
Iowa	2015	Iowa Medical Cannabis Act	Iowa is the first state in the country to legalize medical cannabis.
Kansas	2015	Kansas Medical Cannabis Act	Kansas is the first state in the country to legalize medical cannabis.
Kentucky	2015	Kentucky Medical Cannabis Act	Kentucky is the first state in the country to legalize medical cannabis.
Louisiana	2015	Louisiana Medical Cannabis Act	Louisiana is the first state in the country to legalize medical cannabis.
Maine	2009	Maine Medical Cannabis Act	Maine is the first state in the country to legalize medical cannabis.
Maryland	2013	Maryland Medical Cannabis Act	Maryland is the first state in the country to legalize medical cannabis.
Massachusetts	2012	Massachusetts Medical Cannabis Act	Massachusetts is the first state in the country to legalize medical cannabis.
Michigan	2008	Michigan Medical Cannabis Act	Michigan is the first state in the country to legalize medical cannabis.
Minnesota	2015	Minnesota Medical Cannabis Act	Minnesota is the first state in the country to legalize medical cannabis.
Mississippi	2015	Mississippi Medical Cannabis Act	Mississippi is the first state in the country to legalize medical cannabis.
Missouri	2015	Missouri Medical Cannabis Act	Missouri is the first state in the country to legalize medical cannabis.
Montana	2015	Montana Medical Cannabis Act	Montana is the first state in the country to legalize medical cannabis.
Nebraska	2015	Nebraska Medical Cannabis Act	Nebraska is the first state in the country to legalize medical cannabis.
Nevada	2016	Nevada Medical Cannabis Act	Nevada is the first state in the country to legalize medical cannabis.
New Hampshire	2013	New Hampshire Medical Cannabis Act	New Hampshire is the first state in the country to legalize medical cannabis.
New Jersey	2010	New Jersey Medical Cannabis Act	New Jersey is the first state in the country to legalize medical cannabis.
New Mexico	2009	New Mexico Medical Cannabis Act	New Mexico is the first state in the country to legalize medical cannabis.
New York	2014	New York Medical Cannabis Act	New York is the first state in the country to legalize medical cannabis.
North Carolina	2015	North Carolina Medical Cannabis Act	North Carolina is the first state in the country to legalize medical cannabis.
North Dakota	2015	North Dakota Medical Cannabis Act	North Dakota is the first state in the country to legalize medical cannabis.
Ohio	2016	Ohio Medical Cannabis Act	Ohio is the first state in the country to legalize medical cannabis.
Oklahoma	2015	Oklahoma Medical Cannabis Act	Oklahoma is the first state in the country to legalize medical cannabis.
Oregon	2000	Oregon Medical Cannabis Act	Oregon is the first state in the country to legalize recreational cannabis.
Pennsylvania	2015	Pennsylvania Medical Cannabis Act	Pennsylvania is the first state in the country to legalize medical cannabis.
Rhode Island	2015	Rhode Island Medical Cannabis Act	Rhode Island is the first state in the country to legalize medical cannabis.
South Carolina	2015	South Carolina Medical Cannabis Act	South Carolina is the first state in the country to legalize medical cannabis.
South Dakota	2015	South Dakota Medical Cannabis Act	South Dakota is the first state in the country to legalize medical cannabis.
Tennessee	2015	Tennessee Medical Cannabis Act	Tennessee is the first state in the country to legalize medical cannabis.
Texas	2015	Texas Medical Cannabis Act	Texas is the first state in the country to legalize medical cannabis.
Utah	2015	Utah Medical Cannabis Act	Utah is the first state in the country to legalize medical cannabis.
Vermont	2004	Vermont Medical Cannabis Act	Vermont is the first state in the country to legalize medical cannabis.
Virginia	2015	Virginia Medical Cannabis Act	Virginia is the first state in the country to legalize medical cannabis.
Washington	2005	Washington Medical Cannabis Act	Washington is the first state in the country to legalize recreational cannabis.
Washington DC	2015	Washington DC Medical Cannabis Act	Washington DC is the first state in the country to legalize medical cannabis.
West Virginia	2015	West Virginia Medical Cannabis Act	West Virginia is the first state in the country to legalize medical cannabis.
Wisconsin	2015	Wisconsin Medical Cannabis Act	Wisconsin is the first state in the country to legalize medical cannabis.
Wyoming	2015	Wyoming Medical Cannabis Act	Wyoming is the first state in the country to legalize medical cannabis.

The figure is an interactive map titled 'Medical Use of Cannabis in US States'. It shows a map of the United States with states colored in shades of green and yellow, indicating the status of medical cannabis. A legend on the right side of the map provides details for each state, including the year of legislation and the type of cannabis (medical or recreational). The map is part of a web application with navigation tabs for 'Legal', 'Medical Use', 'Cannabis Use', and 'Legal'.

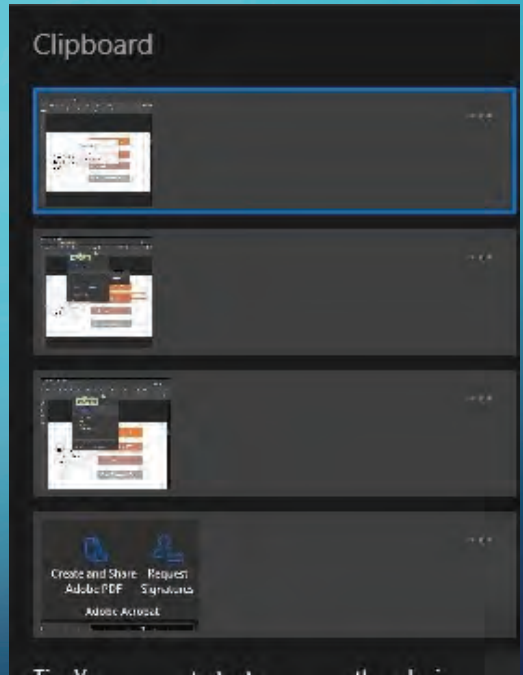


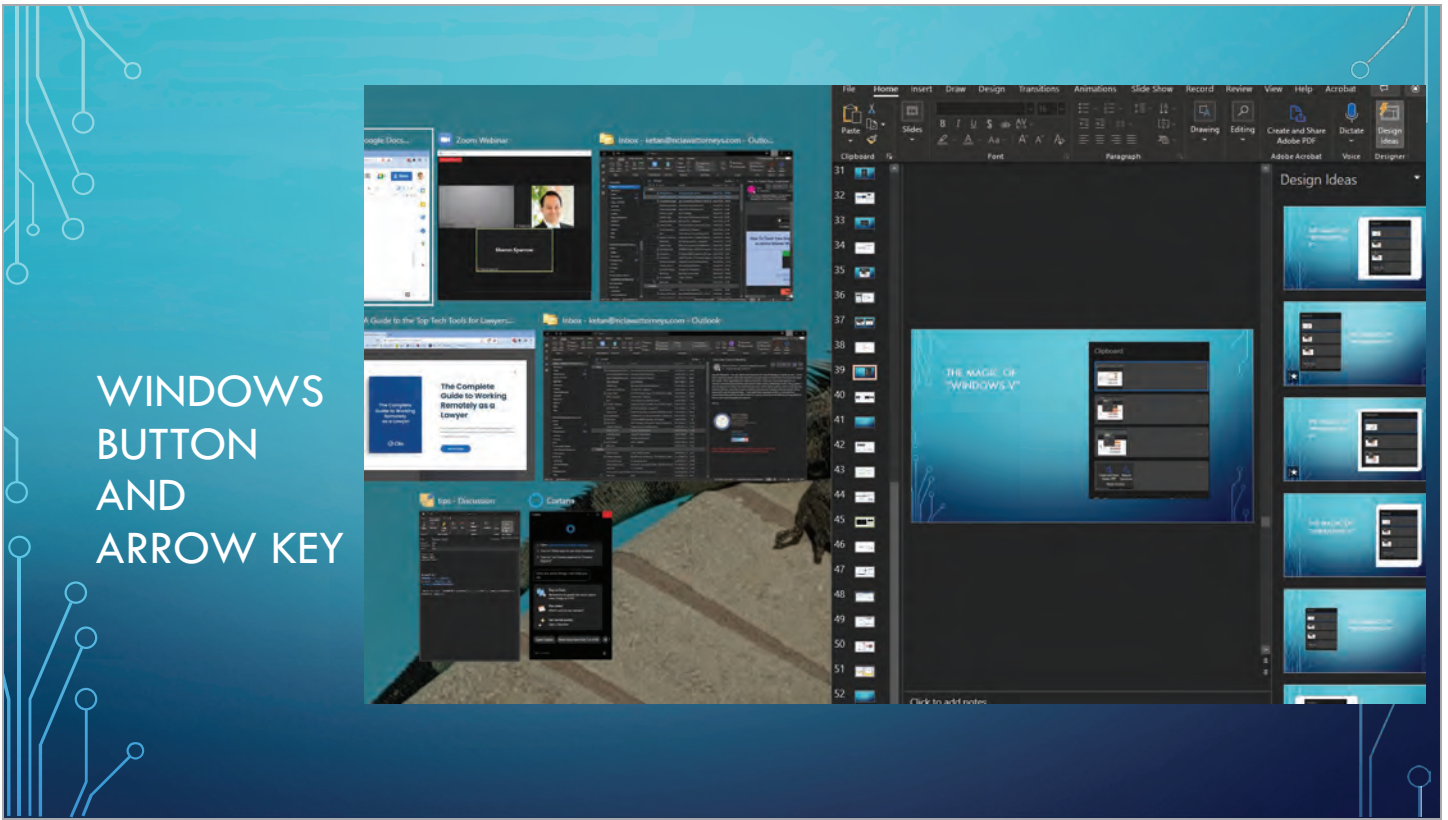
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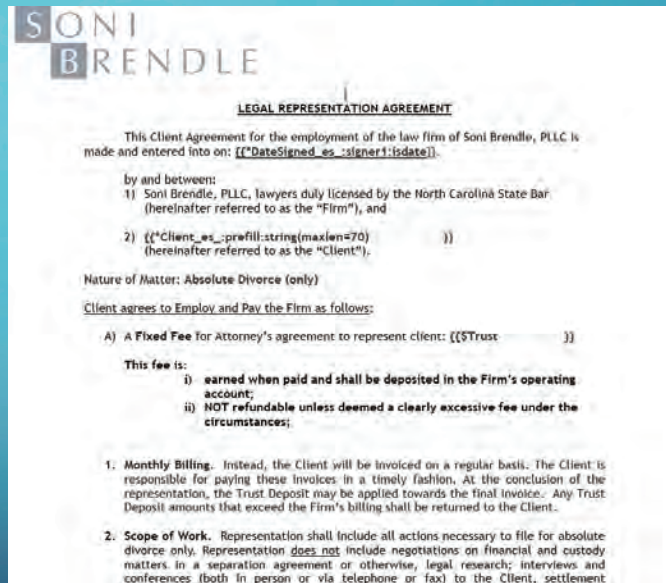
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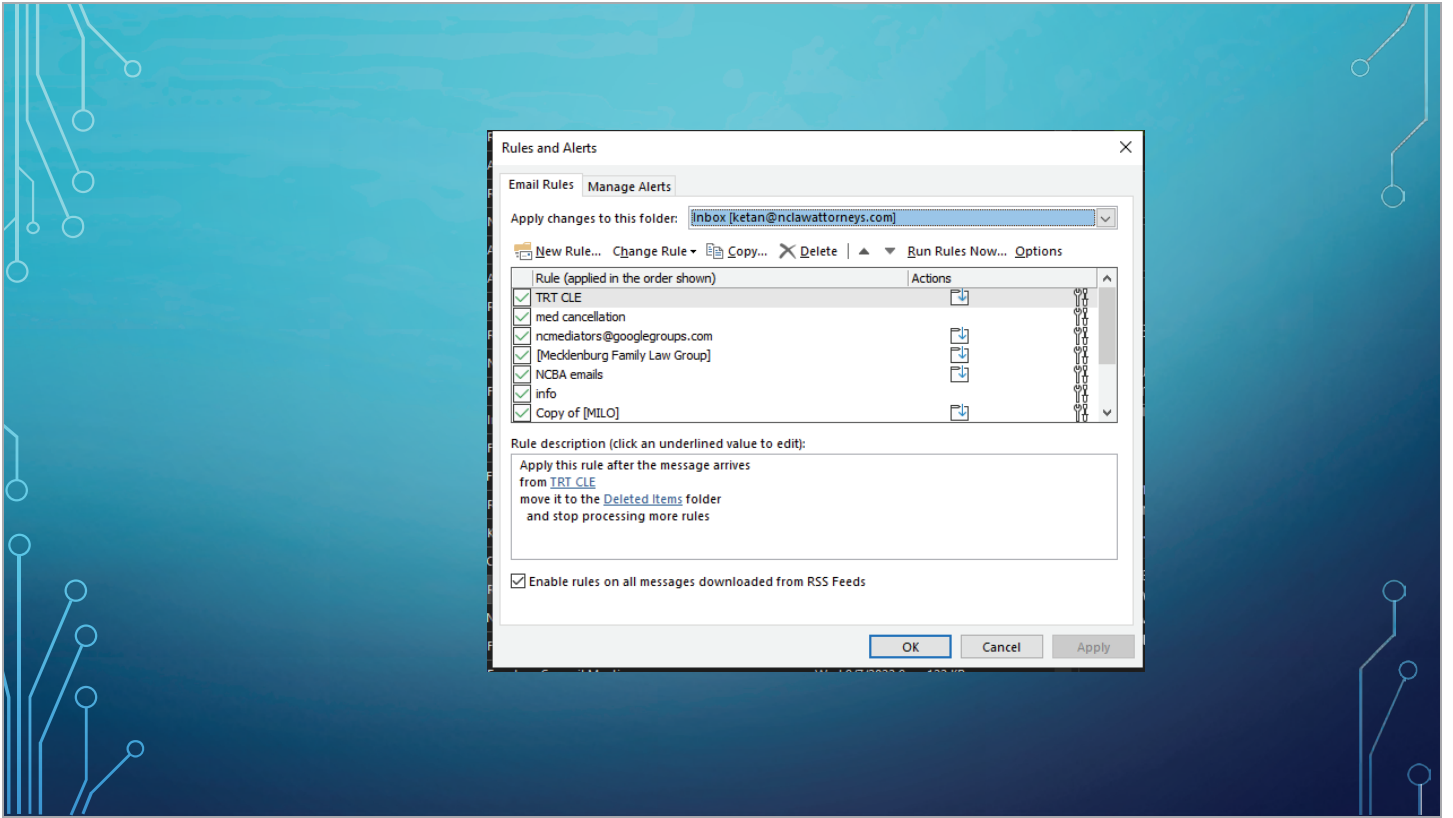
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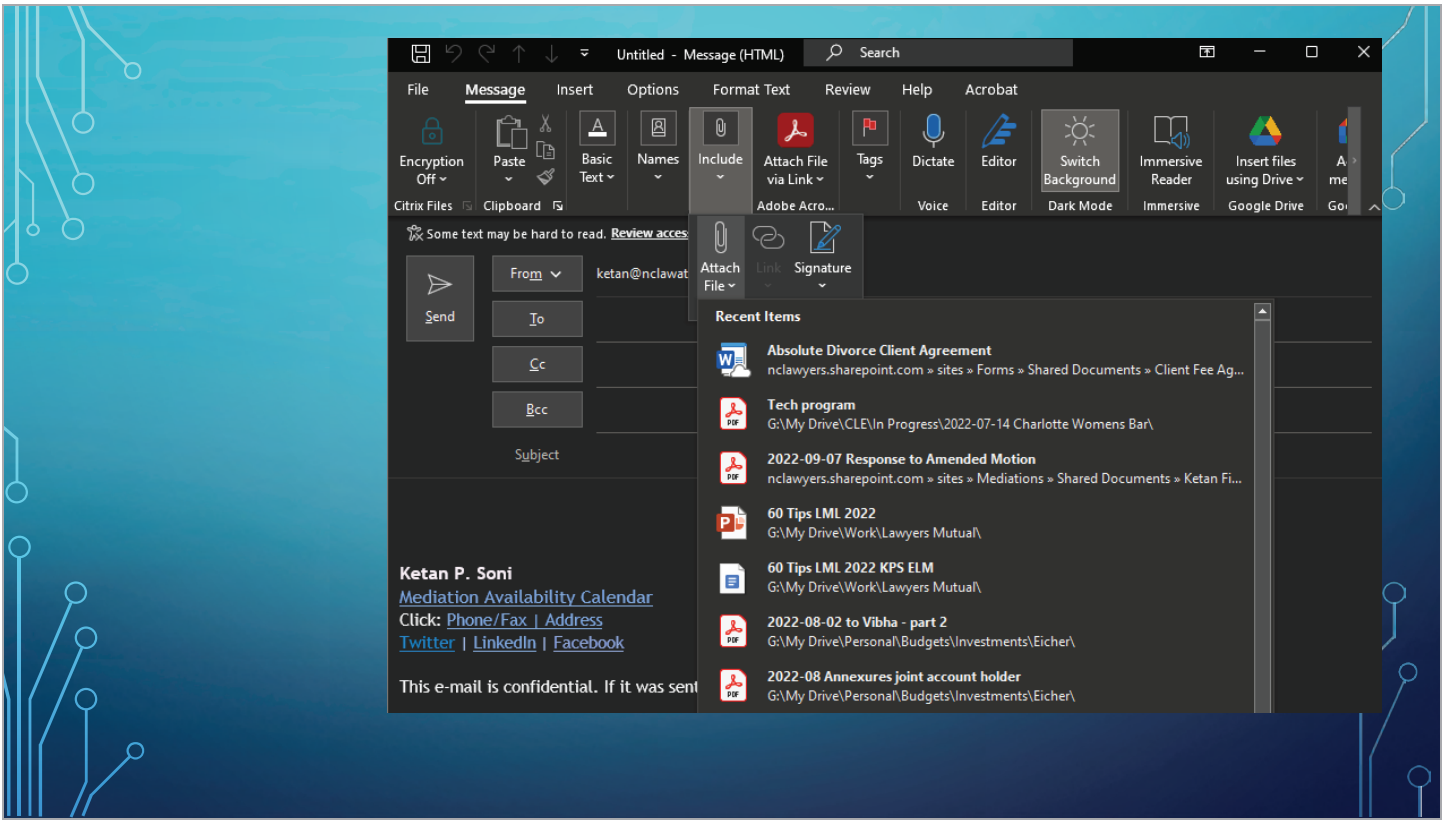
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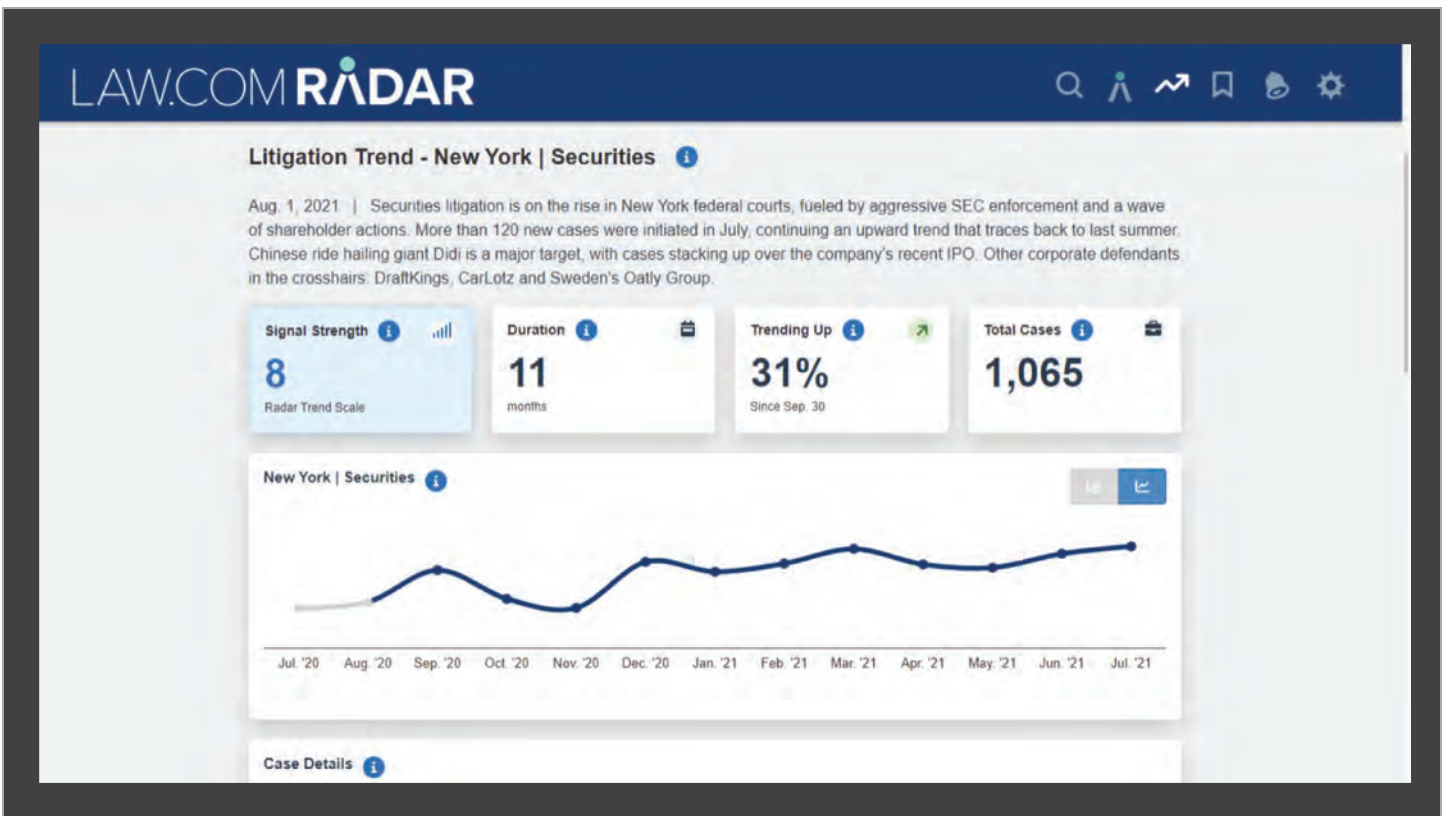
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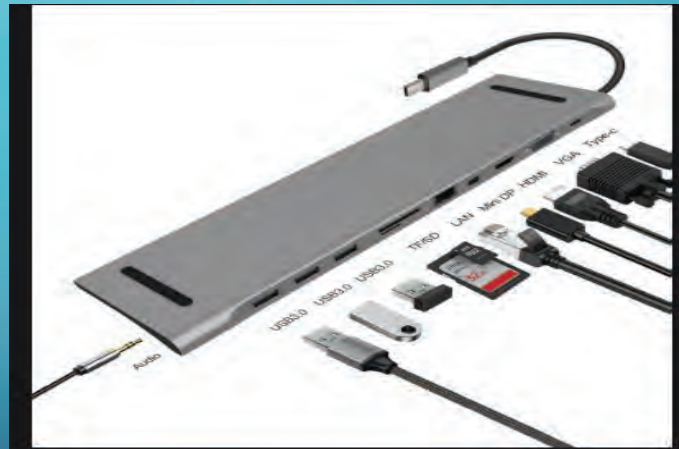
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ETHICS OF DEALING WITH CLIENTS WITH DIMINISHED CAPACITY

REPRESENTING A CLIENT WITH DIMINISHED CAPACITY

RULES IMPLICATED:

RULE 1.14 — CLIENT WITH DIMINISHED CAPACITY

RULE 1.2 — SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

RULE 1.4 — COMMUNICATION

RULE 1.6 — CONFIDENTIALITY OF INFORMATION

RULE 1.7 — CONFLICT OF INTEREST: CURRENT CLIENTS

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

A CLOSER LOOK AT RULE 1.14

- I. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (Rule 1.14(a))

Put this in context with:



RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

- (a) Subject to paragraphs (c) and (d), 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. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

AND

RULE 1.4 COMMUNICATION

- (a) A lawyer **shall**:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

II. The lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client. (Rule 1.14(b))

Put this in context with:

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, **the disclosure is impliedly authorized in order to carry out the representation** or the disclosure is permitted by paragraph (b).
- Taking action under Rule 1.14(b) is an exception to the duty not to disclose confidential information under Rule 1.6. The lawyer is impliedly authorized under Rule 1.6(a) to disclose information about the client, but only to the extent reasonably necessary to protect the client's interests.

III. In appropriate cases, the lawyer may seek the appointment of a guardian ad litem or guardian. (Rule 1.14(b))

- Consider the wisdom of this drastic option. Also, consider this option in context with Rule 1.2. I've had insured attorneys tell me they thought their client needed a guardian because the client would not listen to or take their advice about whether or for how much to settle their case.
- Is it better to withdraw from the representation before exercising the "nuclear option" of moving to have a guardian or guardian ad litem appointed for your client?



COMMENTS TO RULE 1.14

Comment [3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

- Consider drafting a *Berens v. Berens* Agency Agreement if a third party is present for attorney-client privileged discussions.

Comment [4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Comment [6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

Disclosure of the Client's Condition

Comment [8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

Comment [9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.



ETHICS OPINIONS

RPC 157 - REPRESENTING A CLIENT OF QUESTIONABLE COMPETENCE

Opinion rules that a lawyer may seek the appointment of a guardian for a client the lawyer believes to be incompetent over the client's objection.

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 - (1) the representation of one client will be directly adverse to another client; or
 - (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

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A lawyer may not prepare a power of attorney for the benefit of the principal at the request of another individual or third-party payer without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal.



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CPR 314. An attorney who believes his or her client is not competent to make a will may not prepare or preside over the execution of a will for that client.

- How do you know?
- What can you do to proactively defend against a challenge to the will?
- If competency is questionable, do you want to take on the representation?
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- Consider the risks. You will likely end up as a witness if not a defendant.

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2013 FEO 8 – RESPONDING TO THE MENTAL IMPAIRMENT OF FIRM LAWYER

Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.



ETHICS OF DEALING WITH CLIENTS WITH DIMINISHED CAPACITY

Lawyers Mutual Risk
Management Series –
2022-2023



TOPICS



- CLIENTS WITH DIMINISHED CAPACITY (RULE 1.14)
- SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER (RULE 1.2)
- COMMUNICATION (RULE 1.4)
- CONFIDENTIALITY OF INFORMATION (RULE 1.6)
- CONFLICT OF INTEREST: CURRENT CLIENTS (RULE 1.7)
- LAWYERS WITH DIMINISHED CAPACITY



RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian.



RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

DIMINISHED CAPACITY DOES NOT EQUAL INCOMPETENCE



LAWYERS
MUTUAL

COMMENT [6] – RULE 1.14

In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.



LAWYERS
MUTUAL

**“I THINK MY CLIENT NEEDS A
GUARDIAN; HE WON’T LISTEN TO MY
ADVICE!”**



RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

NO SUBSTITUTION OF JUDGMENT PERMITTED

RULE 1.2 AND THE ALLOCATION OF AUTHORITY STILL APPLIES

(CLIENTS HAVE THE RIGHT TO BE STUPID)



HYPOTHETICAL #1

Ava Attorney represents Charlie Client, who has limited means and has been sued in a contract dispute. Attorney believes Client has a complete defense to the action based on the creditor's fraudulent conduct. However, Client instructs Lawyer to pay the disputed bill, despite Lawyers' advice to the contrary and the disastrous impact on Client's financial well-being, because Client has "always paid" his bills in the past.



HYPOTHETIAL #2

Attorney has also represented Sally Senior for many years, and has been engaged to represent her in the sale of a residence to obtain the funds necessary to move into an assisted living facility - a move that Lawyer and Senior agree is in her best interest in light of her failing health and increasing memory problems. Shortly before the scheduled closing, Senior suffered a stroke and is unable to communicate with Lawyer or attend the closing.



**WHAT DOES IT MEAN TO
MAINTAIN A NORMAL CLIENT
LAWYER RELATIONSHIP WITH A
CLIENT WITH DIMINISHED
CAPACITY?**



RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

Subject to paragraphs (c) and (d), 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. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.



RULE 1.4 COMMUNICATION

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



HOW MAY A LAWYER CONSULT WITH “INDIVIDUALS OR ENTITIES” AND STILL PRESERVE CONFIDENTIALITY?



RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).**



RULE 1.14(C)

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.



COMMENT [3] – RULE 1.14

The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.



WHO MIGHT THE LAWYER CONSULT WITH?

**FAMILY MEMBERS
MEDICAL PROFESSIONALS
ADULT PROTECTIVE SERVICES
OTHERS WHO HAVE THE ABILITY TO PROTECT
THE CLIENT**



HOW MUCH SHOULD THE LAWYER DISCLOSE?

When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests. (RULE 1.14)(C)



COMMENT [8] – RULE 1.14

Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.



THE “NUCLEAR OPTION”

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian. Rule 1.14(b).



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HYPOTETHICAL

Lisa Lawyer is visited by two adult children of Wilma Widow. Widow's children express their concern about her ability to care for her basic needs and request Attorney's assistance getting her to explore available options. Widow has considerable assets and the children, who are the beneficiaries of her will, express their concerns that the assets might be dissipated before she dies. The children offer to pay Attorney's fee for consulting with Widow.

Attorney meets with Widow, who asks that Attorney prepare a new will leaving her estate to her church.



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COMMENT [3] – RULE 1.14

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).



THE PROBLEM WITH LAWYERS

2013 FEO 8 – RESPONDING TO THE MENTAL IMPAIRMENT OF
FIRM LAWYER

*Opinion analyzes the responsibilities of the partners and
supervisory lawyers in a firm when another firm lawyer has a
mental impairment.*

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