



Ethics

Tuscaloosa County Bar
Association

May 6, 2022



Autumn A. Caudell

- Assistant General Counsel
- Director of Practice Management Assistance Program
- Former Assistant Ethics Counsel
- Native of Tuscaloosa, Alabama
- University of Alabama (2010)
- Jones School of Law (2013)
- Private Practice (2013-2019)

Office of General Counsel

- General Counsel
 - Roman Shaul
- Disciplinary Division
 - Jeremy McIntire
 - Mark Moody
 - Autumn Caudell
- Ethics Division
 - Tripp Vickers
- Numerous invaluable staff

What do we do?

Disciplinary Counsel

- Investigate & Prosecute
- Disability & Reinstatement
- Character & Fitness Appeals
- CLE Compliance
- CLE Presentations
- “Any other duty or responsibility conferred ... by the Executive Committee of the Board of Bar Commissioners of the Alabama State Bar.”

What do we do?

Ethics Counsel

- Informal Ethics Opinion
- Represent the Bar in Litigation
- Support the Executive Director & Bar Departments
- CLE Presentations
- “Any other duty or responsibility conferred ... by the Executive Committee of the Board of Bar Commissioners of the Alabama State Bar.”

What can Ethics help with?

Give licensed Alabama attorneys a confidential opinion regarding the ethical propriety of their prospective conduct based upon a verifiable set of facts.

What Ethics cannot do



Informal Ethics Opinion

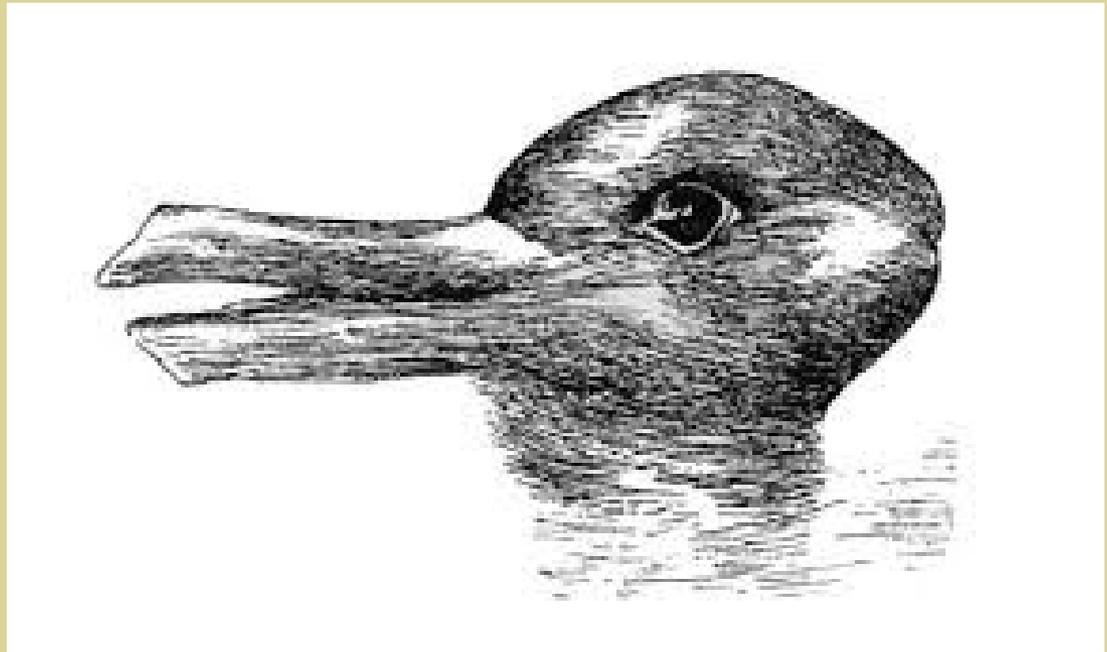
- Call: 334-269-1515
- Email: ethics@alabar.org
- Write: Alabama State Bar
Center for Professional
Responsibilities
Post Office Box 671
Montgomery, AL 36104

Disciplinary Stats

Complaints Received	882
Complaints Screened Out	819
Formal Investigation Files Opened	174
Private Reprimands	11
Public Reprimands	11
Suspensions	13
Disbarments	6
Consent to Disbarment	6
Transfer to Disability Inactive	5
Probation(with suspensions abated)	0
Formal Opinions Issued	1
Informal Opinions Issued	3,300

*2021

Perception



How are lawyers perceived?



How we see ourselves



Are you ethical?

Ranking the Honesty and Ethical Standards of each Profession:

Nurses	81%
Medical Doctors	67%
Pharmacist	63%
Police Officers	53%
Clergy	36%
<u>Lawyers</u>	<u>19%</u>

**2021 Gallup Poll

Changing Perceptions?



Most Violated Rules



Alabama Rules of Professional Conduct Most Violated Rules	Number of Violations
1.1	5
1.2	3
1.3	12
1.4	16
1.4(a)	1
1.4(b)	1
1.5	2
1.8(a)	2
1.9	1
1.15	12
1.15(b)	2
1.16(d)	5

Alabama Rules of Professional Conduct Most Violated Rules	Number of Violations
3.1(a)	1
4.1	1
5.1	2
5.3	2
5.5	1
5.5(a)(1)	1
8.1	1
8.1(b)	4
8.4(a)	3
8.4(c)	4
8.4(d)	15
8.4(g)	18

Competence



Rule 1.1 - Competence

- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation.

Staying Informed



My desire to be well-informed is currently
at odds with my desire to remain sane.

Legal Knowledge: Fastcase

Fastcase & LegalResearch.com

Our latest partnership that brings on-demand legal research and writing services to current Fastcase users



The Scoop

Appellate Court Information

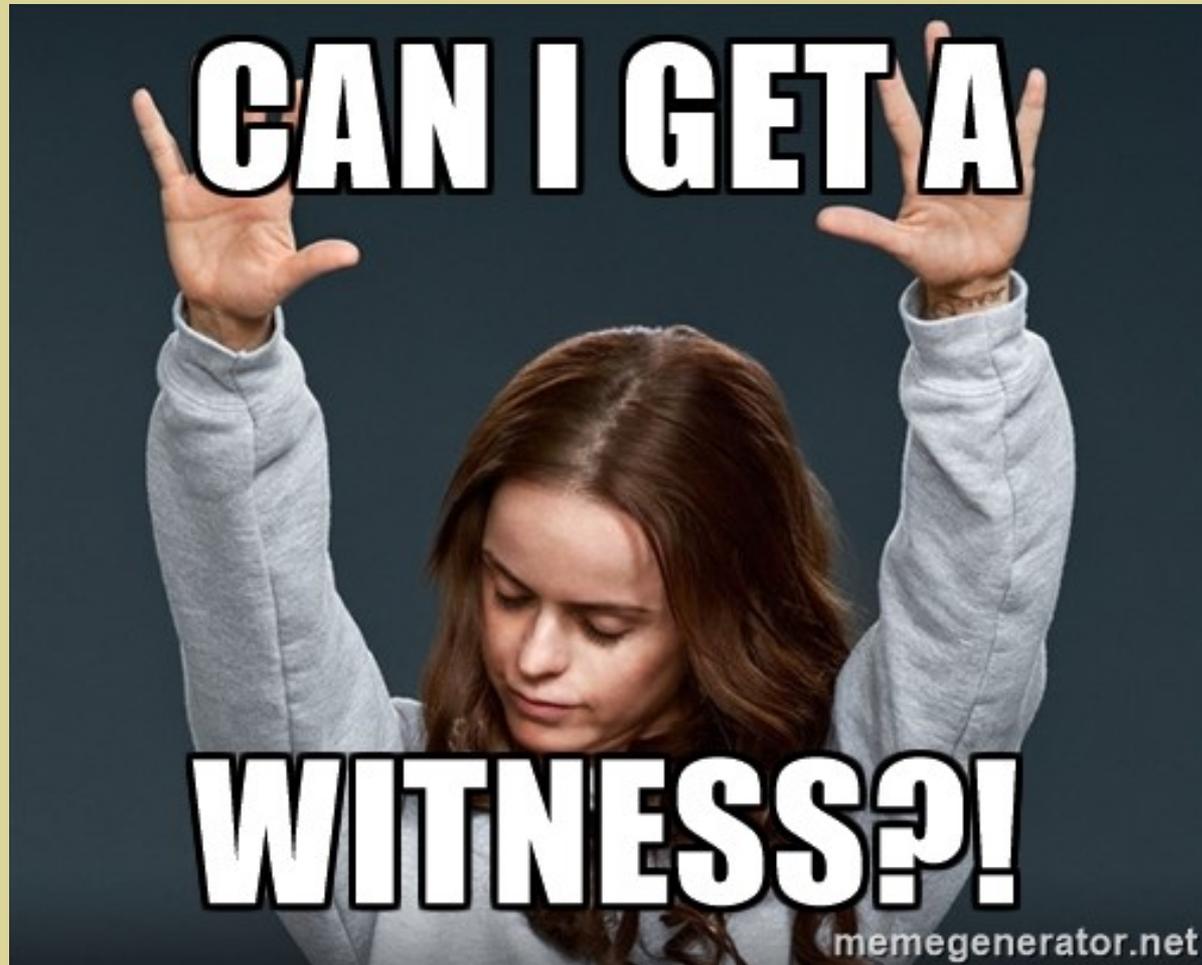
- [Click here](#) to view the Supreme Court of Alabama decisions and opinions from Apr. 2
- [Click here](#) to view the Criminal Appeals decisions and opinions from Apr. 2
- [Click here](#) to view the Civil Appeals decisions and opinions from Apr. 2

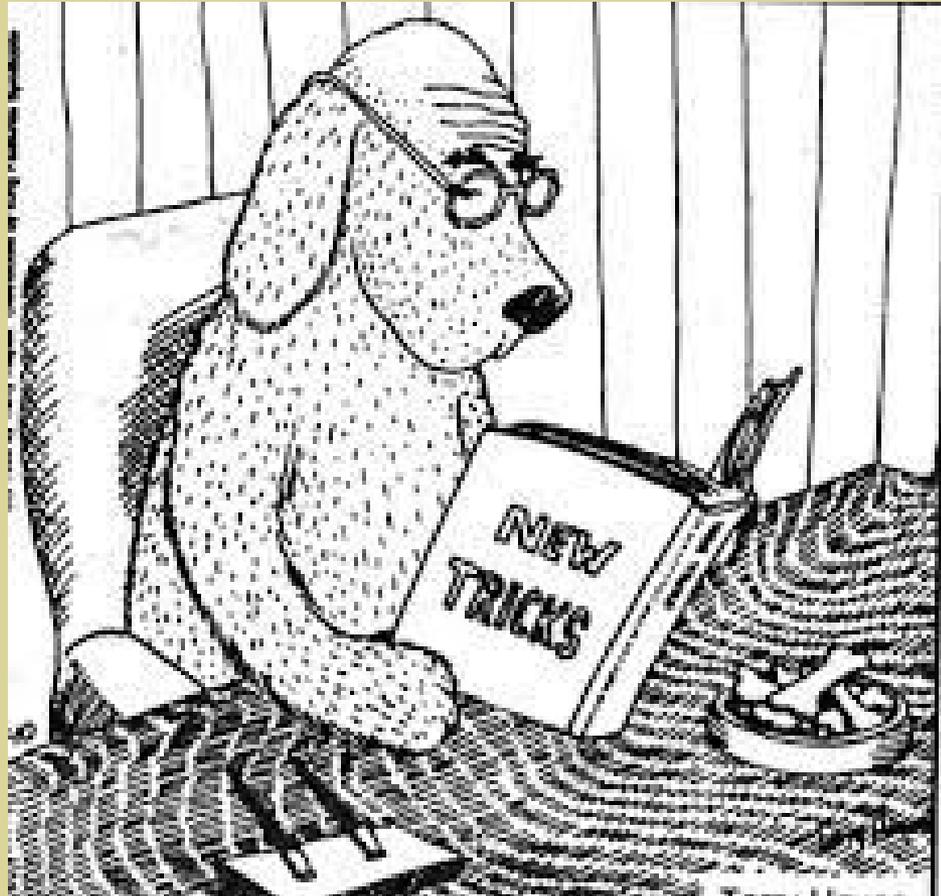
The Supreme Court of Alabama will hold Oral Arguments May 5, 2021 at 10:00 a.m. Review the docket [here](#).

Zoom and Notarization



Virtual Witnessing?





Video Conferencing



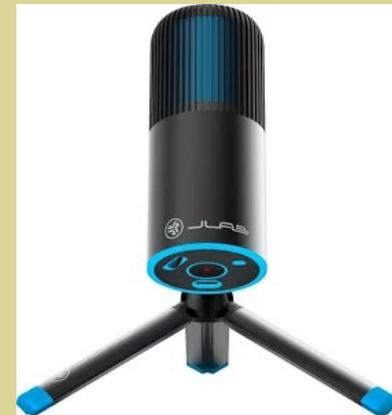
Equipment



Web Camera



Microphone



Ring Light



Set up your meeting space



Background fails



Check your angle



Check your angle



Improper Lighting



Name



Dressing for success



Judge, I am not a cat



Preparing your clients and witnesses for Zoom





S **C** **O** **P** **E**

Rule 1.2 – Scope of Representation

- A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued.

Rule 1.3 – Diligence

- A lawyer shall not willfully neglect a legal matter entrusted to him.

Keeping clients informed



Rule 1.4 - Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

What you cannot do



Does your client understand?

- Explain the process, players, facts, and terms to your client so they are informed and able to make competent decision regarding their case.
- Do not assume your client understands even basic terms.
- Ask follow up questions to gauge your client's understanding.
- Ensure your client has a basic understanding of how to use Zoom (practice with your client)

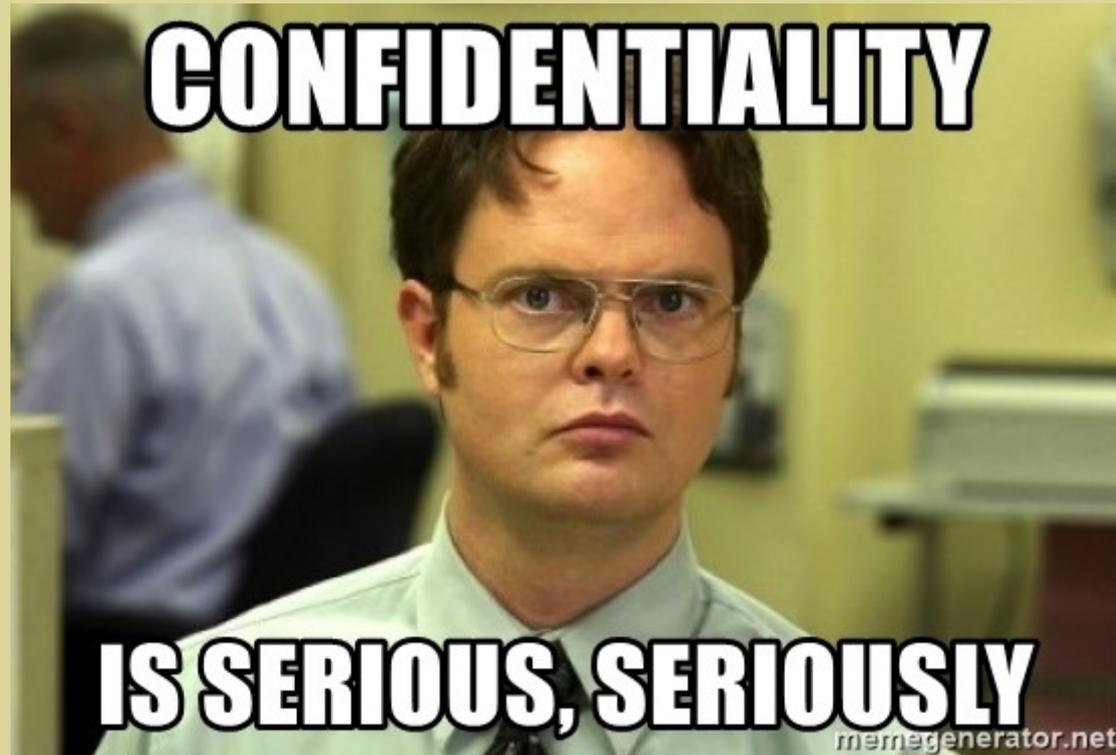
Fees



Rule 1.5 - Fees

- A lawyer shall not enter into an agreement for, or charge, or collect a clearly excessive fee.

Confidentiality



Rule 1.6

Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

Cyber Security



Zoom Security



Business with Clients



Rule 1.8–Prohibited Transaction

- A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client UNLESS:
 - Its fair
 - Client is given a reasonable opportunity to seek independent counsel
 - Client gives informed written consent

Conflict of Interest



Rule 1.9—Former Client

- A lawyer who has formally represented a client in a matter shall not thereafter:
- (a) represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation; or
- (b) use information relating to the representation to the disadvantage of the former client . . .

Investigating



Rule 4.1

Truthfulness in Statements to Others

- In the course of representing a client a lawyer shall not knowingly: (a) Make a false statement of material fact or law to a third person; or (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Catfishing



Rule 1.15 Safekeeping Property

- (a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Any funds while in the lawyer's trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.

IOLTA



Do you need a Trust Account?

- Rule 1.15(a)
 - Client and 3rd party funds shall be held separate from the lawyer's own property.
 - Funds shall be kept in a separate account... in the state where the lawyer's office is... (unless client consents otherwise.)
- Rule 1.15(j) – A lawyer shall maintain a separate account for client and 3rd party funds.
- Limited exceptions.

Limited Exceptions

- Exceptions:
 - Not engaged in active practice. See Ala. Code §34-3-6
 - Never hold funds for clients or 3rd parties
 - Judges; attorney generals; public defenders; U.S. Attorneys; District Attorneys
 - On duty with armed services or employed by local, state or federal government and not practicing
 - Corporate counsel or law professor and not practicing

General Trust Accounting Ledgers

IOLTA Trust Account General Ledger Black, White & Green, P.C. Trust General Ledger

Date	Check No.	Client	File No.	Payee	Description	Payment	Deposit	Balance
								13,251.14
01/05/03	820	Village Appliances	02-0250	AAA Court Reporters	Deposition Transcript	125.00		13,126.14
01/05/03	821	Jed Bartlett	02-1599	Capitol Medical Center	Copy Medical Records	30.00		13,096.14
01/05/03	822	Nora Jones	02-1598	Clerk of Court	Filing Fee	95.00		13,001.14
01/06/03	Dep. 03-01 Receipt #1234	Jayne Thomas	01-0023		Settlement Check		38,000.00	51,001.14
01/06/03	823	<u>Moviestore</u>	02-1423	Excelsior	Corporate	235.00		50,766.14

Individual Client – Trust Accounting Ledger

Client Trust Ledger Card Black, White & Green, P.C.

Name: Nora Jones Matter: Divorce File No. 02-1598
 Address: 123 Main Street Attorney: RLG
Anywhere, AL 36000

Date	Check No.	Payee	Description	Payment	Deposit	Balance
			Balance Forward			0.00
12/31/02	Dep. 02-57 Receipt #1233		Fee & Cost Deposit		1,500.00	1,500.00
01/05/03	822	Clerk of Court	Filing Fee	95.00		1,405.00
01/12/03	828	Thomas Magnum	Investigative Report	475.00		930.00
01/15/03	834	BW&G, P.C.	Fees	600.00		330.00
02/28/03	Dep. 03-12		Additional Fee & Cost Deposit		500.00	830.00
03/17/03	859	BW&G, P.C.	Copy costs	47.95		782.05
03/31/03	873	BW&G, P.C.	Fees	700.00		82.05
03/31/03	874	Nora Jones	Refund	82.05		0.00

Reconciliation

Reconciliation - Trust Ledger to Bank Statement

Statement Period: November 1, 2005 - November 30, 2005

Reconciliation Date: December 8, 2005

BALANCE SHOWN ON
THIS STATEMENT \$ 2,902.00

ADD UNCLEARED
DEPOSITS FROM OUT-
STANDING ITEMS
REPORT \$ 6,775.00

SUBTOTAL \$ 9,677.00

SUBTRACT UNCLEARED
CHECKS FROM
OUTSTANDING ITEMS
REPORT \$ 607.89

RECONCILED
STATEMENT
BALANCE \$ 9,060.11

ENDING
CHECKBOOK
BALANCE \$ 9,060.11

Rule 1.15 only applies to money



Not just money



File Retention

- Formal Opinion 2010-02: “Rule 1.6, Ala. R. Prof. C., embodies one of the most fundamental principles of our profession and requires that with few exceptions, a “lawyer shall not reveal information in relation to representation of a client.” The duty to maintain confidentiality includes a duty to segregate, protect and safeguard a client's file and the information it contains. The obligation to maintain a client's file contemporaneously organized in an orderly filing and indexing system is inherent in the duty of confidentiality and explicit in Rule 1.15. The failure to do so is a breach of 1.15 and may also rise to the level of a breach of 1.6. The principals of confidentiality, loyalty and fidelity are so fundamental to the practice of law that these rules must be enforced to eliminate even the risk of breach of these principles.”



Rule 1.16(d)

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.



Rule 8.4

- (d) Engage in conduct that is prejudicial to the administration of justice;
- (g) Engage in any other conduct that adversely reflects on his fitness to practice law.

Sound Legal Practice



10 objectives of sound legal practice

1. Developing a competent practice
2. Communicating in an effective, timely, professional manner and maintaining professional relations
3. Ensuring that confidentiality requirements are met
4. Avoiding conflicts of interest
5. Maintaining appropriate file and records management systems

10 objectives of sound legal practice

6. Managing the law firm/legal entity and staff appropriately
7. Charging appropriate fees and making appropriate disbursements
8. Ensuring that reliable trust account practices are in use
9. Working to improve the administration of justice and access to legal services
10. Wellness and inclusivity

Law Practice Management



Chris Colee to lead the Bar's dynamic new Law Practice Management Department. In this role, Chris will provide practice technology and management assistance to lawyers in Alabama including CLE programming and individual and firm-level consulting.

Law Practice Management

- Chris Colee – Law Practice Management Coordinator
- Call: 334-517-2130
- Email: chris.colee@alabar.org

Member Benefits

Practice Resources



Member Benefits

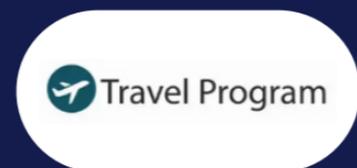
Legal Research



Insurance



Travel

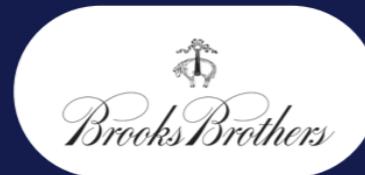
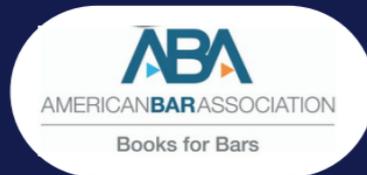


Member Benefits

Career Assistance & Marketing



Retail

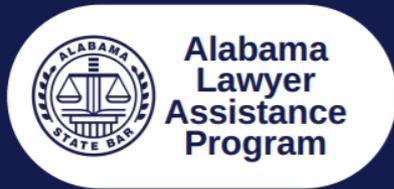


Member Benefits

Shipping



Wellness

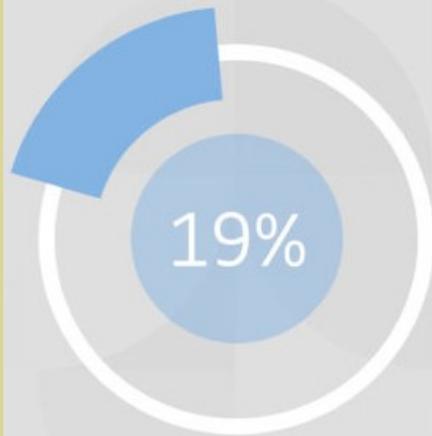


Lawyers and Mental Health

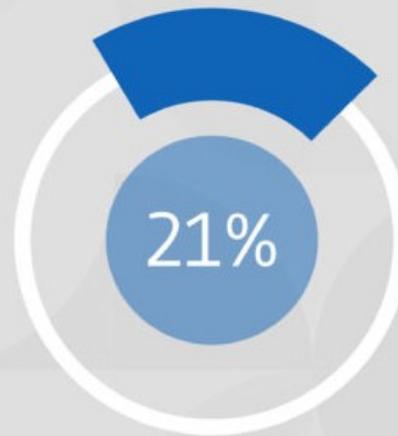


*"I can't remember—do I work at home or
do I live at work?"*

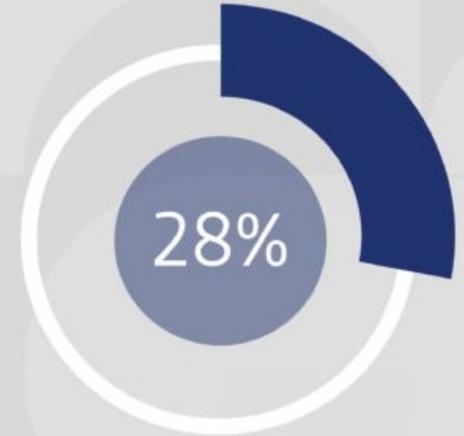
LAWYERS AND MENTAL HEALTH



19% HAVE SYMPTOMS
OF SEVERE ANXIETY



21% QUALIFY AS
PROBLEM DRINKERS



28% STRUGGLE
WITH DEPRESSION

Mental Health Statistics

- In the general population, 1 in 100 people are addicted to drugs or alcohol
- 2 in 100 attorneys are addicted to drugs or alcohol
- Lawyers are 3.6 times more likely to suffer from depression than non-lawyers
- Lawyers have the 7th highest suicide rate among any profession

Lawyer Assistance Program

- Jeremy Rakes – ALAP Director
- Call: 334-517-2238
- Email: jeremy.rakes@alabar.org
- 24 Hour Helpline: 334-224-6920

Questions?



HOW YOU FEEL



**WHEN THE JURY
LAUGHS AT YOUR JOKE**

