

ETHICS

THE ETHICAL LAWYER AND THE CHAMBER OF SECRETS:
HOW TO ETHICALLY WORK WITH SELF-REPRESENTED LITIGANTS AND
UNDERSTANDING ETHICS INVESTIGATIONS

BACKGROUND

- Aunt Petunia, Harry's mean aunt, went to law school and worked as a barrister before she married Vernon, Harry's mean uncle.
- When their son Dudley was born, Vernon insisted that Petunia give up her profession and stay at home to raise their son properly. Loving Dudley more than anything, she agreed that this was the best thing to do.
- After years of putting up with wizardry, taking care of Harry without financial help, Vernon's insistence she does not work, and his other controlling ways, Petunia decided to end her marriage to Vernon.
- Petunia ended up moving to the United States, specifically to Minnesota, because she heard there are no wizards here.
- Petunia is hired by a county attorney's office where she is assigned to child support, the best job in any county attorney's office.

BACKGROUND CONTINUED...

- Vernon refused to move to the United States and ended up with custody of Dudley citing that the British school system was better than that of the United States.
- Vernon took up with a neighbor before the divorce, whose daughter goes to Hogwarts along with Harry.
- Harry thought Petunia knew about the neighbor and told her all about it.

BACKGROUND CONTINUED...

- Needless to say, Petunia was very hurt and angry with Vernon.
- Vernon has not paid the spousal support to Petunia.
- Vernon also won't let their only son, Dudley, who is now almost 16 years old, visit his mom in Minnesota, despite Dudley wanting to visit.
- Petunia has done her best to leave her past behind her but her anger and frustration with Vernon, her ongoing financial struggles and her hatred of wizards impact her actions and decision making, even at work.
- Petunia has worked for the County Attorney's Office for about 5 year as our story picks up...

PETUNIA'S ETHICAL DELIMMAS

- Petunia's office receives a new establishment case. It's a typical referral from MFIP.
- Mom and baby are on MFIP. Dad lived with Mom before and during the pregnancy. They signed a ROP at the hospital.
- When the baby was about 8 months old, Mom and Dad broke up. Dad moved out and the baby stayed with Mom. It's been 2 years since Dad moved out.
- Mom had applied for MFIP and the IV-D case is opened.
- Establishment pleadings are drafted and signed.

PETUNIA'S DELIMMAS

- Dad is served with the establishment pleadings, and sends back the request for hearing saying he disagrees with the child support because he doesn't get to see his child and he can't drive.
- The day after the county receives the request for hearing, Dad calls and states his opinion again, asking for the case to be dismissed.
- Not satisfied with any answers he is getting, he escalates his complaint to the County Commissioner who asks Petunia to get involved.
- Annoyed that another squeaky wheel is getting the grease, Petunia gets the file and looks at Mom's affidavit.

PETUNIA'S DELIMMAS

- The affidavit states that Dad walked out on her to carry on with her former best friend. He has never contributed any money to the household since he left.
- Mom says that dad is a landscaper, and during the winter he could have plowed snow like his buddies (he owns a truck with a snowplow blade), but he doesn't and hangs out at the local bar instead.
- The DEED Wage Match shows that Dad works 8 months per year, and has done so the last 4 years.
- Petunia also sees that Dad has a suspended driver's license for child support in another county. Mom's affidavit doesn't say anything about another child.

PETUNIA'S DELIMMAS

- The county used the DEED Wage Match for 8 months, and then used a combo of unemployment and the salary survey and imputed income to Dad assuming snowplowing in the winter.
- Petunia didn't sign the pleadings, and she isn't sure the CSO or the attorney knew about the suspended license at the time of the pleadings. They also seem to have missed the non-joint child in the other county.
- The case notes all say that Dad swears at people and hangs up on them, and even went so far as to threaten one of the CSOs with slashing her tires in the parking lot of the office.

EMOTION: ANGER

- Petunia calls Dad. She doesn't get ahold of him, but states in a message that he will get a hearing notice. Dad never calls back.
- The morning of the hearing, the CSO and Petunia sit down to meet with Dad to find out his situation.
- Dad is rude, loud, won't listen. She wonders if she needs to call the bailiff.
- Nothing gets worked out because Dad won't participate. He leaves the building yelling that everyone can go fly a kite.
- The hearing is up next on the court calendar.

QUESTION

What should Petunia do with the information that is different from the pleadings about the non-joint child, the lack of a driver's license, and how the income was imputed based on an assumption that he could plow snow?

What should Petunia do the information that's different from the pleadings?

- a. Do nothing. Tell the court that Dad left and the county rests on its pleadings. If Dad cared, he would have stayed.
- b. Ask for a continuance to get more information and secure Dad's involvement in the case.
- c. Let the judicial officer know about the nonjoint child and the lack of a driver's license and ask that support be imputed differently based on no driver's license = no snowplowing.
- d. Actively argue the case, calling witnesses and requesting imputation, saying nothing about the non-joint child. Dad isn't there to testify as to that child and mom doesn't know about the non-joint child.

DISCUSSION

- a. Do nothing.
- b. **Correct Answer - Ask for a continuance to get more information and secure Dad's involvement in the case.**
- c. **Correct Answer - Go into the hearing and inform the court about the non-joint child and lack of the driver's license.**
- d. Go into the hearing and actively argue the case, calling witnesses and requesting imputation, saying nothing about the non-joint child.

EMOTION: SYMPATHY

- Dad wasn't there to testify as to the non-joint child and Petunia knows mom doesn't know about the non-joint child.
- She feels sympathy for Mom. She understands from her own situation how devastating finding out about the other woman can be. She also understands how it feels to not get any financial support.

QUESTION

What can Petunia tell Mom?

What can Petunia tell Mom?

- a. Nothing. Tell Mom the county can't say anything, it is up to her to talk to Dad to find out information.
- b. Tell Mom everything she wants to know. Dad should have told her a long time ago. She is entitled to this information.
- c. Tell Mom the age of the child and the initials of the child, as the pleadings should have included this information in the first place.
- d. Instruct Mom on how to get a copy of the establishment order for the other child and give her some money to pay for it, as Mom says she has no money to pay for the copy.

DISCUSSION

- a. Nothing. Tell Mom the county can't say anything, it is up to her to talk to Dad to find out this information.
- b. Tell Mom everything she wants to know. He should have told her a long time ago. She is entitled to this information.
- c. **Correct Answer - Tell Mom the age of the child and the initials of the child, as the pleadings should have included this information in the first place.**
- d. Instruct Mom on how to get a copy of the establishment order for the other child and give her some money to pay for it, as Mom says she has no money to pay for the copy. Mom would qualify for an IFP based on MFIP.

DISABILITY

- The court continues the hearing.
- Shortly before the continued hearing, Petunia checks the other child support file. She sees again that Dad doesn't have a driver's license but notices in another part of the file a medical statement that diagnoses Dad with Epilepsy and reports that he has had seizures as recently as two months ago. There's also a doctor's form that was sent to the Department of Public Safety to cancel Dad's driver's license because of the seizures.
- Petunia knows that without a driver's license, Dad can't drive a snowplow in the winter but the child support calculations are based on year-round employment, which includes snowplowing.
- Not having that snowplow income would make a significant difference in Dad's income and the child support calculation.

QUESTION

What should Petunia do with the information about Dad's disability?

What should Petunia do with the information about Dad's disability?

- a. Do nothing. The pleadings indicate that Dad is capable of working during the winter and the income can be imputed to him.
- b. Prepare alternative calculations without sharing them with anyone unless Dad raises the issue at the hearing.
- c. Submit a supplemental affidavit from the CSO with the information that the County has learned that Dad is not able to work plowing snow and submit revised calculations to remove the imputed income.
- d. Call Mom and ask her about Dad's health.

ANSWER

- a. Do Nothing. The pleadings indicate that Dad is capable of working during the winter and the income can be imputed to him.
- b. Prepare alternative calculations without sharing them with anyone unless Dad raises the issue at the hearing.
- c. **Correct Answer - Submit a supplemental affidavit from the CSO with the information that the County has learned that Dad is not able to work plowing snow and submit revised calculations to remove the imputed income.**
- d. Call Mom and ask her about Dad's health.

INCAPACITY

- After hearing Petunia's request to submit a supplemental affidavit, the court decides it is best to continue the hearing again and asks Petunia to find a date that works for both parties and inform the Court of available dates within the next 30 days to set a date certain.
- Both parties leave the Courthouse without talking to Petunia about a new hearing date.
- She tries for a few days to get a hold of Dad without any luck. After further investigation, Petunia learns from Dad's sister, who is returning his messages, that Dad is in treatment for chemical dependency issues. Dad's sister tells her the doctors believe he was self-medicating to deal with his Epilepsy. Dad's sister is not sure how long he will be in treatment and it could be anywhere from 3 more weeks to 6 months.

INCAPACITY

- Petunia gets frustrated that this case is not moving along and would like to just do the hearing and get it over with. There are federal timeframes in this American system!
- She doesn't know for sure when Dad will be available and would like to just set the hearing 30 days out and be done.
- Dad knew the Court wanted to set the continued hearing out 30 days when he was at the courthouse and she's pretty sure that Dad's sister will tell him her call to set need to set a new date.

QUESTION

What should Petunia do about setting the next Court date?

What should Petunia do about setting the next Court date?

- a. Tell the Court she couldn't reach Dad and set a new date that works for her and mom. Afterall, she doesn't represent Dad and he was aware of what the Court wanted to do.
- b. Keep trying to reach Dad and wait for the Judge's clerk to follow-up with her on setting the new date.
- c. Tell the Court and Mom that Dad is in CD treatment for chemical dependency issues related to his epilepsy and she doesn't know when he will be out.
- d. Inform the Court that she has become aware that dad will likely be unavailable for a continued hearing in 30 days and ask the Court for a flexible date 60 days out to be adjusted if Dad is still not available.

DISCUSSION

- a. Tell the Court she couldn't reach Dad and set a new date that works for her and mom because she doesn't represent Dad and he was aware of what the Court wanted to do.
- b. Keep trying to reach Dad and wait for the Judge's clerk to follow-up with her on setting the new date.
- c. Tell the Court and Mom that Dad is in CD treatment for chemical dependency issues related to his epilepsy and she doesn't know when he will be out.
- d. **Correct Answer - Inform the Court that she has become aware that dad will likely be unavailable for a continued hearing in 30 days and ask the Court for a flexible date 60 days out to be adjusted if Dad is still not available.**

- When she hears about what will now be an extended continuance, Mom is very upset about the entire process.
- Mom approaches Petunia in tears asking why Dad is getting breaks and she ends up getting screwed. At one point Mom says to Petunia "I thought you were my lawyer! Why do you keep helping him?"
- Petunia takes Mom into a conference room to calm down and further discuss the matter.

QUESTION

What things should Petunia tell Mom?

What things should Petunia tell Mom?

- a. “You should submit any evidence and witnesses you have that Dad is faking his seizures or that he’s still driving the snowplow even though he doesn’t have a valid driver’s license. The Court can consider the income if he’s earning it.”
- b. “I’m not your attorney. I represent the County and our interests don’t always match up. You can hire an attorney or go to the self-help center to get some brief legal advice if you feel you need additional advice and information.”
- c. “You can sit here until you calm down but I’m not going to discuss this with you anymore.”

DISCUSSION

- a. “You should submit any evidence and witnesses you have that Dad is faking his seizures or that he’s still driving the snowplow even though he doesn’t have a valid driver’s license. The Court can consider the income if he’s earning it.”
- b. **Correct Answer - “I’m not your attorney. I represent the County and our interests don’t always match up. You can hire an attorney or go to the self-help center to get some brief legal advice should if you feel you need additional advice and information.”**
- c. “You can sit here until you calm down but I’m not going to discuss this with you anymore.”

DIVERSITY, RACE AND RELIGION

- During the meeting prior to the second hearing, Petunia hears Mom mumbling during a conversation and realizes that Mom is mumbling about setting a spell. A spell that Petunia has heard because of her sister and her nephew.
- Petunia is furious that she’s again forced to deal with a wizard, especially given the fact that Mom didn’t reveal this to her before.
- Petunia politely asks Mom if she’s a wizard and Mom reveals that she is half wizard and that’s she’s been earning money casting spells for her friends and neighbors, income which has not been reported to the County and dramatically changes the child support calculation.
- Petunia has a blinding hate for all wizards and would love to see this become public and get her denied child support.

QUESTION

What should Petunia do with the information that Petunia has additional income?

What should Petunia do with the information that Mom has additional income?

- a. Immediately report Mom to the welfare fraud department.
- b. Prepare a supplemental affidavit from the CSO outlining that Mom has been working as an independent contractor and earning income and revise the calculations to account for that income.
- c. Call Dad and ask about anything he knows about Mom's wizard heritage.
- d. Contact Petunia's neighbors, threatening them that they must sign affidavits about the funds they pay her or they can be prosecuted.

DISCUSSION

- a. Immediately report Mom to the welfare fraud department.
- b. Correct Answer - Prepare a supplemental affidavit from the CSO outlining that Mom has been working as an independent contractor and earning income and revise the calculations to account for that income.**
- c. Call Dad and ask about anything he knows about Mom's wizard heritage.
- d. Contact Petunia's neighbors, threatening them that they must sign affidavits about the funds they pay her or they can be prosecuted.

CONFUSION OF ROLE/SPECIAL OBLIGATIONS

- Petunia decides Dad deserves to get out of paying child support to Mom and wants to contact Dad to give him legal advice about how to defeat Mom's request.
- She knows that she can't give him direct legal advice.
- She also knows that the County Child Support Case Manager (Delores Umbridge) hates people who are half-wizards.
- Petunia gives Delores information to give to Dad, and Delores calls to give some insights on what he should be doing.

QUESTION

Was Petunia correct to not provide this information directly to help Dad?

Was Petunia correct to not provide this information directly to help Dad?

- a. Yes, Mom was scamming the system and deserves to have this all brought to light.
- b. Yes, since Petunia was the attorney, she can't give legal advice but it's ok if the Child Support Worker provides more information.
- c. Yes, Petunia doesn't represent Mom and has no duties to her.
- d. No, for more reasons than you can count.

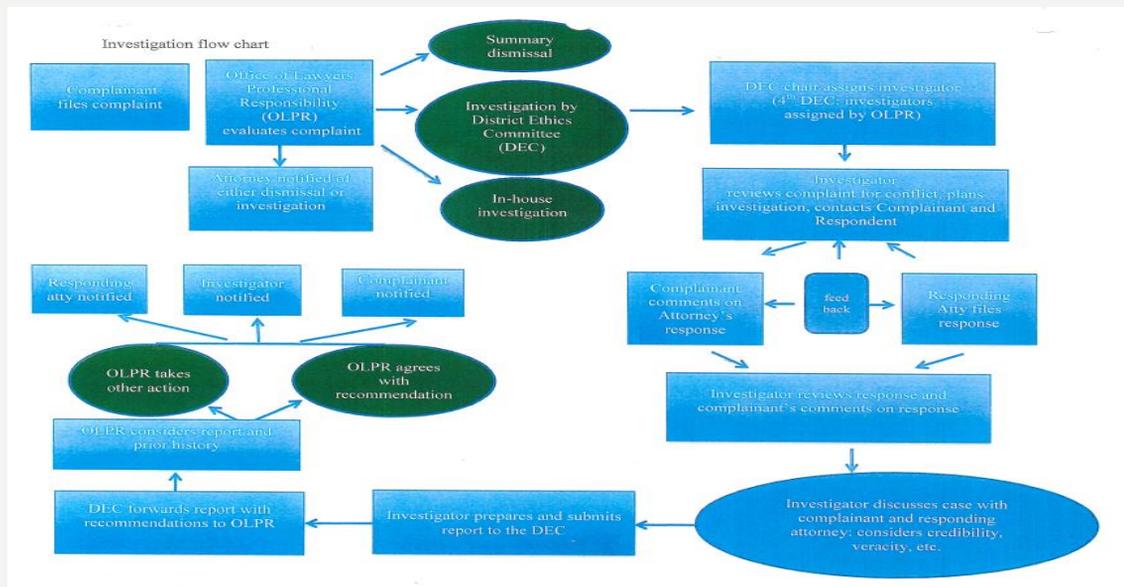
DISCUSSION

- a. Yes, Mom was scamming the system and deserves to have this all brought to light.
- b. Yes, since Petunia was the attorney, she can't give legal advice but it's ok if the Child Support Worker provides more information.
- c. Yes, Petunia doesn't represent Mom and has not duties to her.
- d. **Correct Answer - No, for more reasons than you can count.**

- Mom learns about what Petunia has done and files a complaint against Petunia with the Office of Lawyer's Professional Responsibility. Mom alleges that Petunia represented her in the child support hearing and revealed confidential information about her when she found out she was a wizard.

WHAT HAPPENS NOW?

OLPR INVESTIGATION PROCESS



Source: Office of Lawyers Professional Responsibility

Case Statistics Fiscal Year 2015

Files open at the start of 2015:	650
Complaints received in 2015:	1,210
Files closed in 2015:	1,332
Files open at the end of 2015:	528

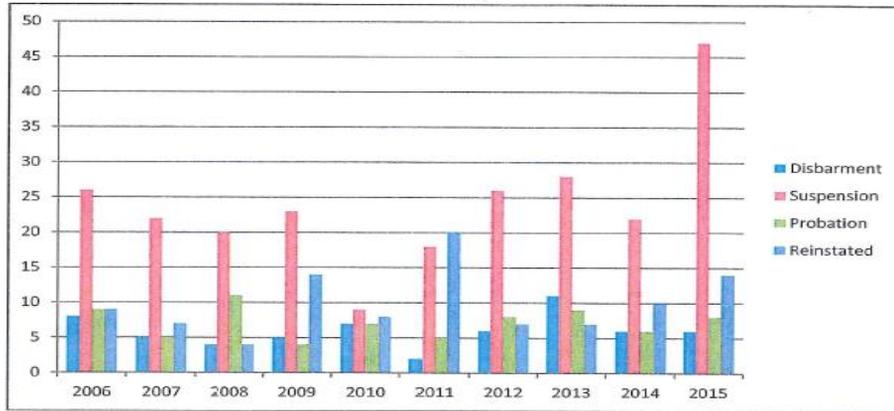
Source: Annual Report of the Lawyers of Professional Responsibility Board and Annual Report of the Office of Lawyers Professional Responsibility, July 2016

TABLE II
Supreme Court Dispositions and Reinstatements 2006-2015
Number of Lawyers

	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstate Denied	Disability	SC AD/Aff	Other	Total
2006	8	26	9	5	-	9	-	2	-	6*	67
2007	5	22	6	-	-	7	2	-	1	-	43
2008	4	20	11	2	-	4	2	2	-	-	45
2009	5	23	4	6	-	14	1	1	-	-	54
2010	7	9	7	3	1	8	2	4	-	-	41
2011	2	18	5	2	-	20	-	1	-	-	48
2012	6	26	8	1	1	7	-	-	-	-	49
2013	11	28	9	4	-	14	-	2	-	-	68
2014	6	22	6	5	-	10	1	0	0	1**	51
2015	6	47	8	4	-	14	-	1	-	-	80

Source: Annual Report of the Lawyers of Professional Responsibility Board and Annual Report of the Office of Lawyers Professional Responsibility, July 2016

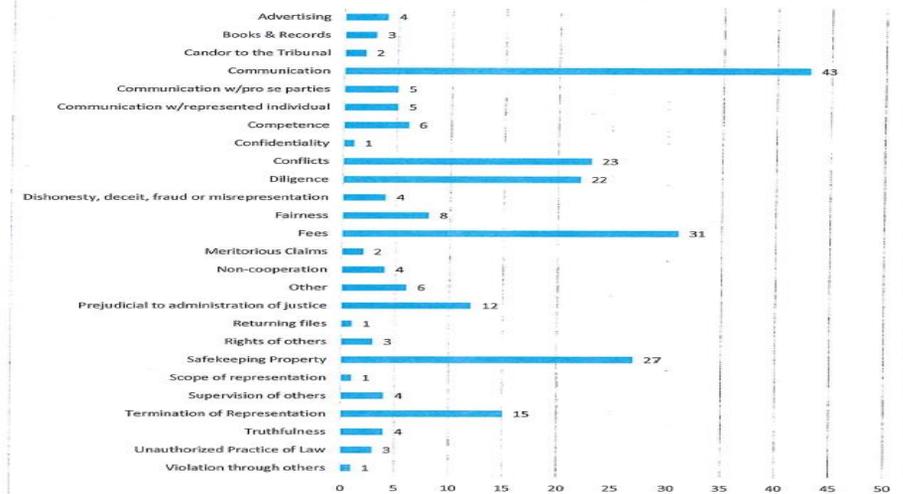
TABLE III
Disbarments, Suspensions, Probations and Reinstatements 2006-2015



* 3 Supreme Court stays, 2 reinstated to retired status, 1 conditional reinstatement pending.
 ** Reinstatement dismissed.

Source: Annual Report of the Lawyers of Professional Responsibility Board and Annual Report of the Office of Lawyers Professional Responsibility, July 2016

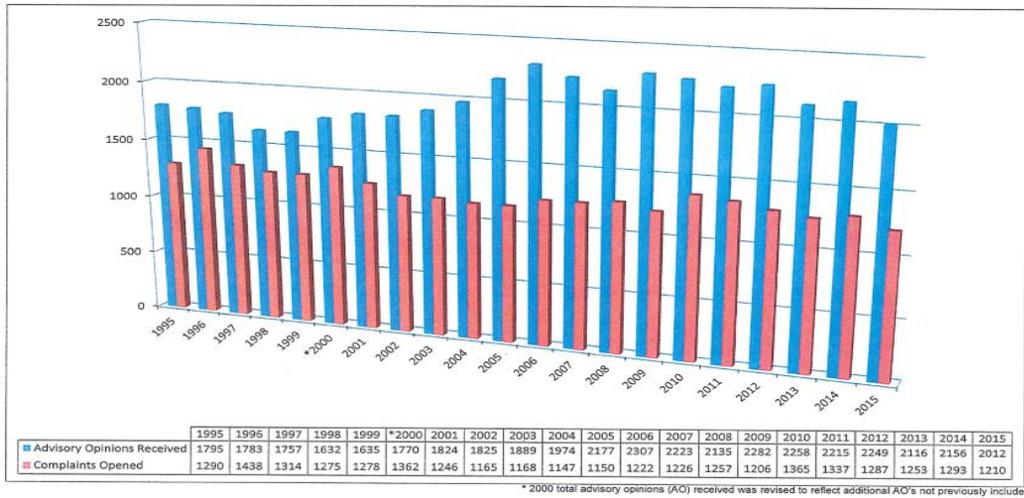
TABLE V
AREAS OF MISCONDUCT-ADMONITIONS (2015)*



*In 2015, the Office issued 112 admonitions involving 240 rule violations. This chart reflects the number of rule violations involved in those 112 admonitions, organized by area of misconduct.

Source: Annual Report of the Lawyers of Professional Responsibility Board and Annual Report of the Office of Lawyers Professional Responsibility, July 2016

TABLE IX
Advisory Opinion Requests Received
and
Number of Complaints Opened
1995 - 2016



Source: Annual Report of the Lawyers of Professional Responsibility Board and Annual Report of the Office of Lawyers Professional Responsibility, July 2016

During the investigation it is revealed that Petunia has some chemical dependency and mental health issues and that she sought help for those issues in the past. What impact does that have on the investigation? Are those records public and part of the investigation?

Rule 8.3

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of the applicable Code of Judicial Conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support, or counseling to lawyers who are chemically dependent or have mental disorders.

“The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys”

Journal of Addiction Medicine

February 1, 2016

By: Patrick R. Krill, J.D., LL.M., Ryan Johnson, M.A., and
Linda Albert, MSSW

12,825 licensed and employed attorneys were anonymously surveyed (self-report) regarding:

- Alcohol Use
- Drug Use
- Symptoms of depression, anxiety and stress

Summary Statistics Substance Use in the Past 12 months

Out of 12,825 Attorneys Surveyed	Number of Attorneys reporting use	Percentage of Sample Size Reporting Use
Alcohol	10,874	84.1%
Tobacco	2163	16.9%
Sedatives	2015	15.7%
Marijuana	1307	10.2%
Opioids	722	5.6%
Cocaine	107	0.8%

Source Data: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys", Journal of Addiction Medicine, February 1, 2016, By: Patrick R. Krill, J.D., LLM, Ryan Johnson, M.A., and Linda Albert, MSSW.

Summary Statistics for Alcohol Use Disorders Identification Test

	Number of Attorneys Participating	Percentage showing Problematic Use
Total Sample	11,278	20.6%
Men	6012	25.1%
Women	5217	15.5%

Source Data: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys", Journal of Addiction Medicine, February 1, 2016, By: Patrick R. Krill, J.D., LLM, Ryan Johnson, M.A., and Linda Albert, MSSW.

Summary Statistics for Alcohol Use Disorders Identification Test

	Number of Attorneys Participating	Percentage showing Problematic Use
Age (years)		
30 or younger	1393	31.9%
31-40	2877	25.1%
41-50	2345	19.1%
51-60	2548	16.2%
61-70	1753	14.4%
71 or older	297	12.1%

Source Data: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys", Journal of Addiction Medicine, February 1, 2016, By: Patrick R. Krill, J.D., LL.M., Ryan Johnson, M.A., and Linda Albert, MSSW.

Summary Statistics for Alcohol Use Disorders Identification Test

	Number of Attorneys Participating	Percentage showing Problematic Use
Private Firm	4712	23.4%
Solo Practice/Private	2262	19.0%
In-house: Government, public or non-profit	2198	19.2%
In-house: Corporate or for profit	828	17.8%
Judicial Chambers	653	16.1%
College or Law School	163	17.2%
Bar Administration or Lawyers Assistance Program	50	24.0%

Source Data: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys", Journal of Addiction Medicine, February 1, 2016, By: Patrick R. Krill, J.D., LL.M., Ryan Johnson, M.A., and Linda Albert, MSSW.



THANK YOU