

*Recognizing, Helping and Reporting  
Lawyers with Mental Health  
Impairments*

Presented by

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# Goals

- Recognizing behaviors and symptoms indicating mental impairment
- Tips for reporting and obtaining assistance for lawyers with clients with mental health issues and impairments

# What Is Attorney Impairment?

- An attorney or judge who suffers from:
  - alcoholism, drug addiction, substance abuse, chemical dependency, mental illness, or senility or dementia due to age or illness, that:
  - materially impairs the lawyer's ability to represent the client or serve in a judicial capacity.
- ABA Formal Op. 03-431

# JDs, not Drs.

Lawyers are not health professionals, nor do they have any professional obligation to recognize or address such problems that do not impair another lawyer's functioning as a lawyer.

- [ABA Formal Op. 03-431](#)

# Progressive Continuum of Behaviors Suggesting Impairment

More than just a bad hair day!



# Unresponsive - neglectful behavior:

- Not returning phone calls to the clients or opposing counsel;
- Not available when clients or opposing counsel attempt to reach at the office;
- Voicemail full;
- Not following through in delivering work product requested and promised;

# Unresponsive-Neglectful behavior continued...

- Tends to disappear or vanish for periods of time;
- Missed deadline and/or court appearances;
- High absenteeism or fired from previous employment;
- Phones disconnected;
- Office vacated/closed

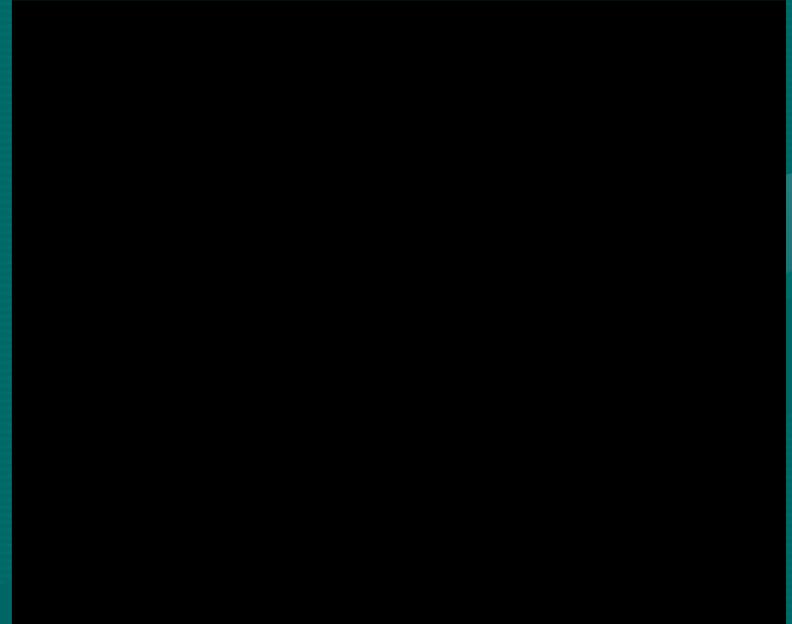
# Physical Signs of Impairment:

- Behaves jumpy, irritable, agitated, very quick to anger;
- Smells of alcohol, especially in the morning or early afternoon;
- Bloodshot eyes, disheveled appearance;
- Exhibits obvious signs of intoxication or cognitive impairments (slurred or impaired speech, unsteady feet, difficulty tracking conversation, nodding off/falling asleep during work or client meeting)



# Mood Disorder: disturbance of mood which affects all aspects of life and perception

- Anxiety
- Depression
- Bipolar (Manic Stage)



# Signs of Anxiety Disorder

- Excessive Anxiety or Worry
  - More days than not
  - At least six months
- Irritability
- Restlessness, Keyed-Up, On edge
- Muscle tension
- Sleep disturbance; easily fatigued
- Panic attacks

# Signs of Depression

- Feeling Sad, Hopeless, Worthless
- Changes in
  - Energy (agitation or lethargy)
  - Sleep Habits (insomnia or sleeping too much)
  - Eating (eating too much or too little)
- Recurrent Thoughts of Death or Suicide

# Myths and realities: Our beliefs about suicide

True or false?

1. People who talk about committing suicide never do.
2. Asking people about their thoughts or plans to kill themselves encourages them to go ahead.
3. Suicide usually happens without any warning.
4. Suicidal people are fully intent on dying.
5. People who attempt or commit suicide are mentally ill.
6. People who use alcohol or drugs rarely commit suicide.
7. People who attempt suicide more than once never kill themselves. They are just looking for attention.
8. Children never attempt suicide.
9. Only a trained mental health expert can effectively prevent suicide.

# Bipolar Disorder

- A mood disorder characterized by both depressive episodes and manic episodes.



# Signs of Manic Phase

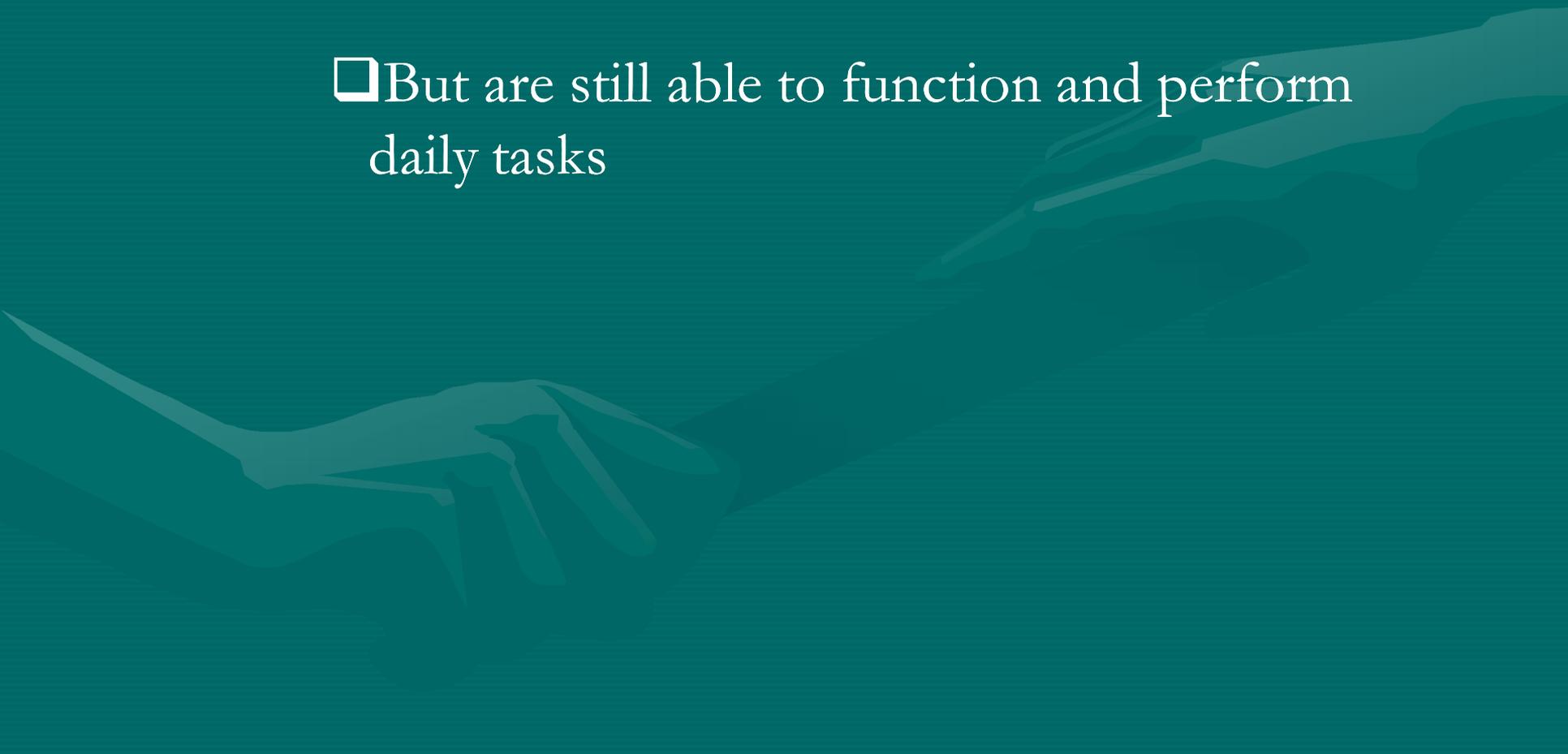
- Persistently Elevated Mood: Elated, Euphoric, Expansive
- Grandiosity, Inflated Self-Esteem
- Hyper-talkative
- Racing thoughts - flight of ideas
- Decreased need for sleep, distractible
- Danger to self and others

# Personality Disorders: What are they?

- Enduring patterns involving both the person's
  - inner thoughts/experiences
  - and behavior
  
- Which are
  - Very different from the expectations according to social norms
  - Extreme and inflexible set of personality traits

# People with Personality disorders

- ❑ May have problems with relationships
- ❑ But are still able to function and perform daily tasks



# Three Clusters of Personality Disorders

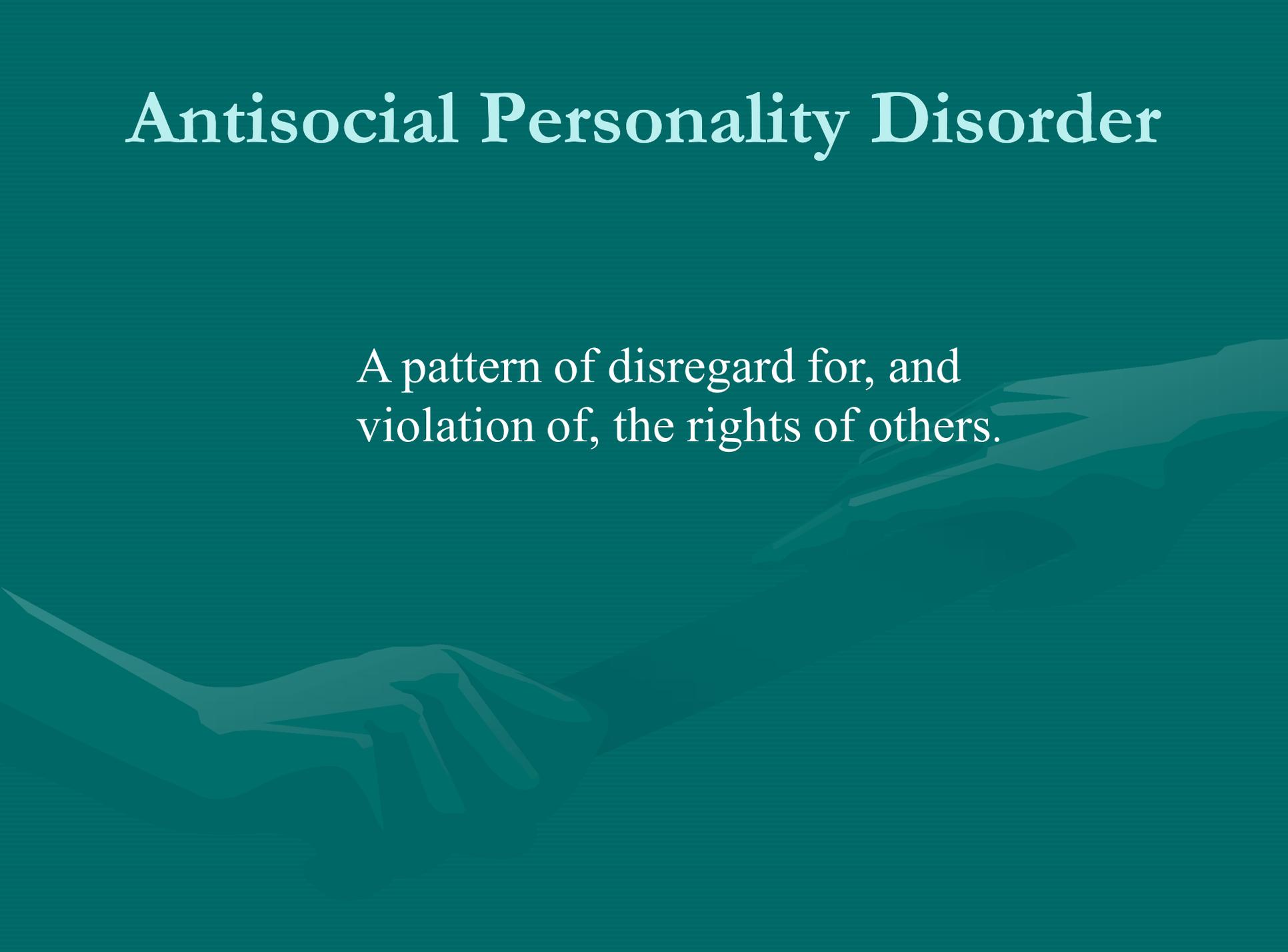
- A. Odd-Eccentric- want to isolate from people
- B. Dramatic, Emotional, Erratic- have problems in relationships
- C. Anxious and Fearful – reluctant to relate without reassurances

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# Antisocial Personality Disorder

A pattern of disregard for, and violation of, the rights of others.

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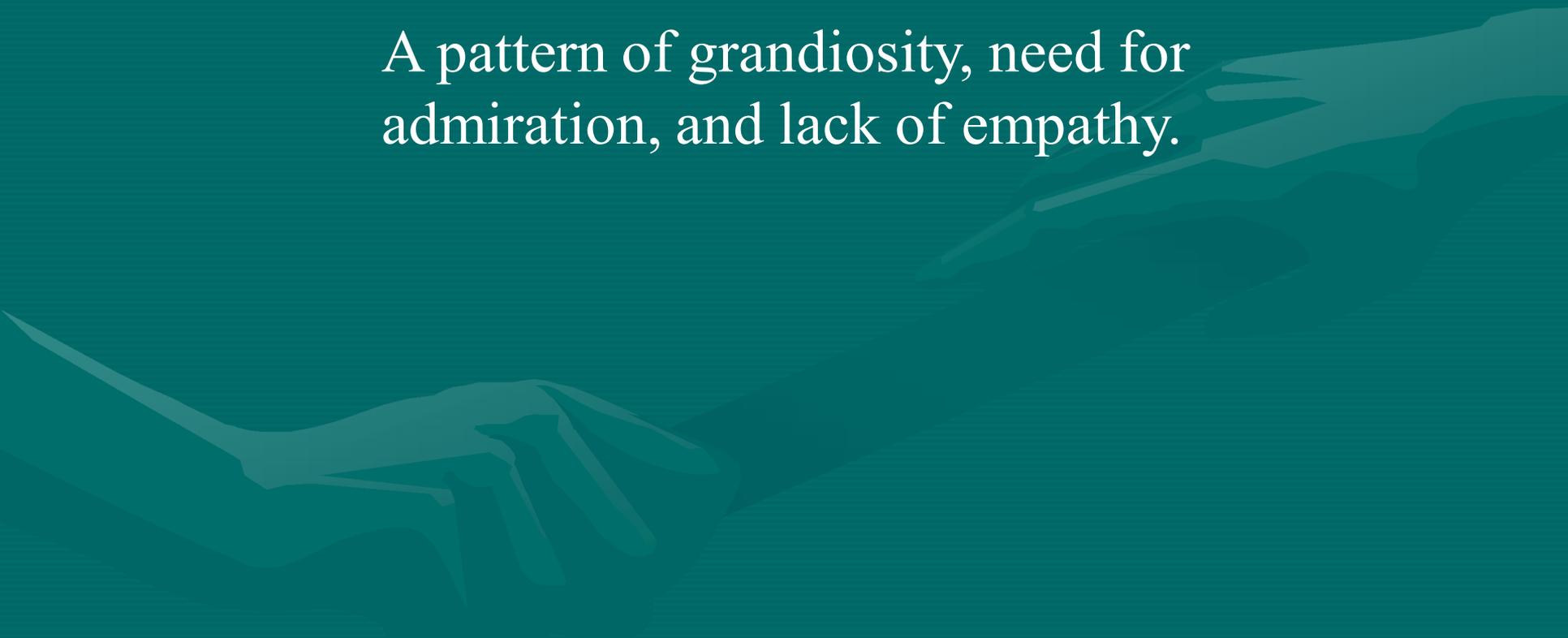
# Borderline Personality Disorder

A pattern of instability in interpersonal relationships, self-image, moods and impulsivity.



# Narcissistic Personality Disorder

A pattern of grandiosity, need for admiration, and lack of empathy.



# Why Do You Need to Recognize the Symptoms of Impairment in Lawyers in Your Office ?

(... and others?)



# You Have a Duty to Monitor the Conduct of:

## **1. People You Supervise Directly**

- Staff
- Other Lawyers

**Model Rule 5.1, Responsibilities of Partners, Managers and Supervisory Lawyers**

## **2. If you Are a Partner or “Comparable Managerial Authority”**

- Everyone In Your Office (Including Staff)

**Model Rule 5.1(a)**

## **3. Fellow Members of the Bar**

**Model Rule 8.3, Reporting Professional Misconduct**

“But I didn’t know what he was doing.”

- Lack of awareness of misconduct by another person, either lawyer or non-lawyer, under a lawyer's supervision does not excuse a violation...
- A supervisory lawyer is required to take reasonable measures, given the level and extent of responsibility that the lawyer or non-lawyer possesses....

– RESTATEMENT (THIRD) OF THE LAW GOVERNING  
LAWYERS §11

# Special Duty of Managers for All People in the Office

- Direct: Office Must Have Measures Reasonably Assuring Staff's and Lawyers' Conduct Is Compatible with Lawyers' Obligations
- Vicarious: A supervisory lawyer is responsible for the misconduct of another lawyer in the office if the if the supervisor:
  - Orders It
  - Ratifies It
  - Ignores It
  - Unreasonably Fails to Mitigate Known Misconduct

– **Model Rule 5.1**

# The old “I didn’t know” defense....

- A lawyer affiliated with other lawyers in a law office is not privileged to attend only to his or her own activities and those of lawyers directly under the lawyer's supervision, while ignoring the activities of others within the office.
- To the contrary, a manager has a duty to ensure that the office has in place measures giving reasonable assurance that all lawyers in the office conform to the applicable lawyer code.

RESTATEMENT (THIRD) OF THE LAW GOVERNING  
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# Supervisor vs. Duty to Report

Ethics Rules Make a Distinction Between

**Supervising Liability**

**Model Rule 5.1**

and

**Duty to Report to Disciplinary Authorities**

**Model Rule 8.3**

# Duty to Report Misconduct of Another Lawyer

## Duty to Disclose Misconduct, if

- *You know* of a rule violation
- Your knowledge is *unprivileged, and*
- *Conduct raises a substantial question as to lawyer's honesty, trustworthiness or fitness*

Applies to misconduct by *any* lawyer (judge, partner, opposing counsel, etc.)

- **Model Rule 8.3**

# Duty Beyond the Rules

“Members of a Self-Regulating Profession should Offer Each Other “Gentle Correction.”

We are our brothers and sisters keepers!



# MLAP Confidentiality

- By Court Rule
  - Information and actions taken by MLAP shall be privileged and held in strictest confidence;
  - The information shall not be disclosed or required to be disclosed to any person or entity outside of MLAP.

# And...

## Exception to Rule 8.3

The duty to report professional misconduct specifically exempts disclosure of information gained by a lawyer or judge while participating in an approved Lawyers Assistance Program.

- **Model Rule 8.3 (c)**

# Montana Lawyer Assistance Program

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