

Richland County Bar Association
Annual Ethics CLE

Friday, October 21, 2022

8:15 am – 12:15 pm

University of South Carolina School of Law

Hon. Karen J. Williams Courtroom

2022 Richland County Bar Association Annual Ethics CLE

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2022 Richland County Bar Association Annual Ethics CLE

Friday, October 21, 2022

Course # 921909

AGENDA

8:15 – 8:30 am

Introduction

Justice John Cannon Few, Supreme Court of South Carolina

8:30 – 9:15 am

Ethics 2022 – Year in Review

Michael J. Virzi, Esquire, University of South Carolina
School of Law

9:15 – 10:15 am

***A Baker's Dozen – Thirteen Potentially Obscure,
Misunderstood, or Misapplied Issues Under the SC Rules
of Professional Conduct***

William O. Higgins, Esquire, Graybill, Lansche & Vinzani

10:15 – 10:20 am

South Carolina Bar Foundation

Megan Seiner

SC Supreme Court Historical Society

Robert M. Wilcox

10:20 – 10:30 am

Break

10:30 – 11:15 am

Ethics and Trust Accounts

Desa Ballard, Esquire

11:15 – 12:15 pm

***Lifting the Curtain: An Open (and Sometimes Irreverent)
Reflection on Anxiety and Depression***

William Jordan, Assistant United States Attorney, District
of South Carolina

Faculty Biographies

Desa Ballard

Desa Ballard began her private practice in 1997 after 10 years with a national law firm and 4 years with the South Carolina Judicial Department. She is the senior attorney at Ballard & Watson, Attorneys at Law. Her firm focuses its practices on ethics, professional responsibility, appellate court litigation, and civil litigation. She is licensed to practice law in South Carolina and the District of Columbia. She is a founding member of the South Carolina Association of Ethics Counsel (SCAEC).

Justice John Cannon Few

Justice John Cannon Few graduated from Duke University with an A.B. in English and Economics and went on to attend the University of South Carolina School of Law, where he was a member of The Order of Wig and Robe and The Order of the Coif. He also served as Student Works Editor of the South Carolina Law Review and received his Juris Doctor degree in 1988. He began his legal career as law clerk to the late Honorable G. Ross Anderson Jr., United States District Judge and practiced law in Greenville from 1989 until 2000. He served as a trial judge on the Circuit Court of South Carolina from July 2000 until February 2010 and then became the Chief Judge of the South Carolina Court of Appeals, a position he held until February 2016 when he was sworn in as a Justice on the Supreme Court of South Carolina.

Justice Few is a frequent public speaker. In 1996, he gave a speech entitled "Citizen Participation in the Legal System," for which he was awarded first place in the ABA's nationwide Edward R. Finch Law Day speech contest. He has given numerous speeches to bar associations and civic groups throughout the country, including a December 2012 commencement speech entitled "What it Means to be a Lawyer," to the graduates of the Charleston School of Law. In April 2016, he delivered the commencement speech to Lander University. He has given a speech entitled "The Courage of a Lawyer" to lawyers' groups in South Carolina, North Carolina, Georgia, Florida, Arizona, and California. Justice Few wrote an article based on the speech that appeared under the same name in the Winter 2013 edition of the ABA's "Litigation" journal.

Justice Few served on the faculty at the National Judicial College in Reno, Nevada, from 2005 to 2009. He was an Adjunct Professor of Law and later a Distinguished Visiting Professor at the Charleston School of Law from 2008 to 2012 and is now an Adjunct Professor at the University of South Carolina School of Law. Justice Few is a Fellow in Liberty Fellowship, and as a part of Liberty Fellowship is a member of the moderator corps at The Aspen Institute. He completed the Diversity Leaders Initiative through The Riley Institute at Furman University and was awarded an honorary Doctor of Laws degree from the Charleston School of Law in 2012.

Justice Few has always been active in community service, even outside of his primary employment in public service. While he was a circuit judge, Justice Few served on the 2003-04 Governor's Water Law Review Committee and now chairs the South Carolina Access to Justice Commission.

William O. Higgins

Bill Higgins practices law in the Columbia office of Graybill, Lansche & Vinzani, LLC in the areas of commercial real estate law, tax law, business acquisitions, professional responsibility, legal ethics, and lawyer misconduct. He received his B.S. degree from Presbyterian College, his J.D. degree from the University of South Carolina School of Law, and his LL.M. degree in taxation from New York University School of Law. Active in the South Carolina Bar, he is a former chairperson of the Professional Responsibility Committee, the Ethics 2000 subcommittee, the Ethics Advisory Committee, and the Real Estate Practice Section Council. He currently serves on the Professional Responsibility Committee and the Ethics Advisory Committee. He is listed in Best Lawyers® in both Real Estate Law and Ethics and Professional Responsibility Law. He also teaches the Real Estate Transactions I course at the University of South Carolina School of Law.

William H. Jordan

Will Jordan is an Assistant United States Attorney in the District of South Carolina and serves as the Chief of the Civil Division. In that role, he oversees defense of the United States in civil lawsuits, including claims under the Federal Tort Claims Act, claims for employment discrimination, and *Bivens* claims filed against employees of the federal government. Will also oversees the Affirmative Civil Enforcement actions, through which the United States seeks to recover money lost due to fraud and other misconduct against the government and to impose civil penalties for violations of the nation's health, safety, and economic welfare laws. Will is a graduate of Davidson College and the University of South Carolina School of Law. He has served on the South Carolina Bar's Lawyers Helping Lawyers Commission.

Michael Virzi

Michael Virzi teaches first-year Legal Research, Analysis and Writing I & II and Professional Responsibility. He has also taught upper-level courses in Advanced Legal Writing and Fundamentals of Law Practice and Professionalism. Prior to becoming a full-time faculty member, Mr. Virzi taught as an adjunct professor at the School of Law and taught Business Law I and II as an adjunct professor in the Paralegal Studies program at Midlands Technical College. He came to the School of Law from the South Carolina Supreme Court's Office of Disciplinary Counsel where he investigated and prosecuted attorneys for ethical misconduct. Prior to working for the Disciplinary Counsel, Mr. Virzi practiced in the areas of commercial and business litigation and creditors' rights. He received his BA in Political Science from the University of South Carolina in 1991 and graduated cum laude from the University of South Carolina School of Law in 2000. He is a member of the South Carolina Bar, the North Carolina Bar (inactive), the U.S. District Courts of North and South Carolina, and the U.S. Court of Appeals for the Fourth Circuit. Mr. Virzi has served on the South Carolina Bar's Professional Responsibility Committee since 2011 and the Ethics Advisory Committee since 2003, including as Chair from 2007–2010. He is a member of several state and national organizations involving legal ethics and is a frequent CLE speaker and law school guest lecturer on the topics of legal ethics and the lawyer discipline process.

Ethics 2022 – Year in Review

By Michael Virzi

RCBA Free Legal Ethics Seminar

October 21, 2022

I. Rule Change Proposals

**Petition (pending)
to amend Comment 4 to Rule 5.5**

Rule 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

...

Comment:

...

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b). On the other hand, a lawyer admitted in another jurisdiction does not establish a presence in this jurisdiction for the practice of law when the lawyer is physically located in this jurisdiction, temporarily or permanently, if the lawyer's work is limited to that which the lawyer is authorized to perform by the jurisdiction in which the lawyer is admitted and the lawyer does not hold out to the public that the lawyer has a professional presence in this jurisdiction.

**Petition (pending)
to amend Rules 7.1 – 7.5**

The petition asks for sweeping changes to the lawyer advertising and communication rules, consistent with recent changes to the ABA Model Rules and certain Ethics Advisory Opinions.

**Proposal (HOD January Agenda)
to amend Rule 5.4**

Rule 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not agree or contract to share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
- (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provision of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (4) a lawyer or a law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; or
- (5) after legal fees are paid to a lawyer or law firm, a lawyer or law firm is permitted to share legal fees with a nonlawyer provided no agreement or contract to share a portion of the legal fees was made before the legal fees are paid to the lawyer or law firm.

...

COMMENT

...

[3] Paragraph (a)(5) recognizes the distinction between legal fees that have been paid to a lawyer or law firm and those that are unpaid. Once legal fees are paid to a lawyer or law firm the limitation on sharing legal fees with nonlawyers to protect the lawyer's professional independence of judgment is no longer necessary.

II. Ethics Advisory Opinions

EAO 22-01

Prospective Client Rule – 1.18

Lawyer receives an email from Sender describing a dispute and asking whether Sender has “a legitimate claim.” Lawyer and Lawyer’s client are involved in the matter and adverse to Sender. Lawyer inquires whether she has a duty to keep the information in the email confidential.

The Committee concluded the lawyer does not because Sender is not a current client, former client, or under Rule 1.18 a “prospective client.” The Committee reasoned that the Sender “could not have had a reasonable expectation that Lawyer was likely to form an attorney-client relationship,” and therefore is not a “prospective client” under (a) entitled to confidentiality under (b).

EAO 22-02

The Forbidden Word: “expert” – 7.4

“Lawyer may not participate in any way in marketing via Expertise.com.”

EAO 22-03

Duty to Report Former Client’s Conduct – 1.6 & 1.9

Lawyer has no duty to report or otherwise act on information received after the representation terminated about a former client’s unlawful conduct that occurred during the representation (and did not involve the use of lawyer’s services in committing a crime). Rule 1.6 provides no exception and therefore Rule 1.9 prohibits disclosure of the newly-acquired information.

EAO 22-04

Stop-payment Costs – 1.5 & 1.15

When Lawyer is required to stop payment on a check to a third party and re-issue a new check, Lawyer may deduct the cost of stopping payment from the amount re-sent.

EAO 22-05

Representing a Forger in Probate Court – 1.everything, 3.everything, etc.

Yes, you can, but it would be pointless.

EAO 22-06

Ghostwriting Pleadings – 1.2

Ghostwriting is A-okay. Pleadings do not need to disclose that they were ghost-written by a lawyer.

III. Bar Admissions

In re Anonymous Applicant for Admission to the South Carolina Bar

June 29, 2022

Petition for Admission Granted subject to 1-year delay

Applicant lied on his law school application about prior criminal charges and school discipline:

1. After admission, Applicant disclosed a charge of being a minor in possession of alcohol, claiming he had forgotten it happened.
2. A year later in law school, he disclosed an additional criminal charge of hindering police. However, Applicant gave a different explanation of the circumstances to the law school than appeared in the police reports from the incident. His later explanation to the Committee on Character and Fitness more closely resembled the police report.
3. Later still in law school, Applicant disclosed a prior charge of careless driving.
4. Just prior to his Character and Fitness hearing, Applicant disclosed that he was disciplined by his undergraduate university for participating in a fraternity prank that involved stealing bicycles.

After learning he passed the bar exam, Applicant edited his LinkedIn profile to state that he was an “associate attorney” at the firm that hired him as a law clerk pending his admission to the bar.

The court repeatedly acknowledged that the infractions were relatively minor and did not suggest unfitness to practice law, but the willful failure to disclose them warranted delayed admission:

In recent years, this Court has been presented with a growing number of bar applicants who omit from their law school applications information that is plainly required to be disclosed. Despite warnings in law school of the consequences of nondisclosure, too many applicants never amend, or never fully amend, their law school applications to include all relevant matters. Predictably, the issue of nondisclosure often resurfaces at the time an applicant submits a petition for admission to practice law. Often, the undisclosed conduct itself would not necessarily have disqualified an applicant from admission to law school, but false and misleading nondisclosures most certainly impact this Court's evaluation of an applicant's character and fitness to practice law. When applicants are confronted about incidents they failed to disclose on their law school applications, this Court and the Committee receive a familiar refrain of unpersuasive excuses.⁷ Although this Court imposes repercussions for these nondisclosures in individual cases, bar admissions matters are nonpublic, and this Court's decisions in those matters are not published. Accordingly, too many potential applicants continue to interpret application instructions and early warnings in law school of the consequences of nondisclosure as empty threats.

⁷ These excuses range from "I forgot," to "I couldn't find any records," to "I thought I didn't have to disclose it because it was sealed/expunged," to inappropriately expansive interpretations of "minor parking or traffic violations." relating to social media content, particularly as it relates to ensuring no information or communication is false, fraudulent, or misleading in any way.

IV. Discipline Cases

In re Hopkins

July 7, 2021

November 7, 2021

3-year suspension after reconsideration of mitigation

Lawyer transferred \$95,000 from his trust account over nine months to cover law firm expenses. He repaid the money over the next four months and fully cooperated with ODC's investigation. The court disbarred him on July 7, 2021, and he filed a motion to reconsider in light of his mitigation evidence, including evidence of mental and physical conditions he had been suffering and five character affidavits from long-serving, well-respected Bar members attesting to his remorse, character, fitness to practice, and history of service to the community and the profession.

ODC had not forwarded the mitigation information to the Commission or the Court. Upon reconsideration, the court issued a three-year suspension, retroactive to the July 7 disbarment date.

In re Haley

November 10, 2021

Reciprocal Public Reprimand

Lawyer, who is licensed in Virginia and South Carolina, was disciplined in North Carolina for failing to disclose a prior disciplinary suspension in South Carolina (and reciprocal suspension in Virginia) in a pro hac vice application to a North Carolina court.

In re Holmes

December 15, 2021

Disbarment

Lawyer pled guilty in 2003 to conspiracy and possession with intent to distribute cocaine. At the time, lawyers were not required to self-report criminal charges. The conviction was anonymously reported to ODC in 2016, and Lawyer failed to participate in the investigation and disciplinary prosecution of the matter except to ask for a stay of the matter due to "unspecified health and business problems" and later to tell ODC that he would not participate in the disciplinary hearing.

In re Misocky

January 19, 2022

Disbarment by agreement

Lawyer participated in a conspiracy to commit forgery, counterfeiting, and identity theft involving clients. Lawyer then failed to respond to and cooperate with ODC's investigations of these crimes and of Lawyer's failures in several client matters and with the North Carolina Bar's investigation of her mishandling client funds there.

In re Harley
February 9, 2022
Public Reprimand by agreement

Several clients fired Lawyer and, unsatisfied with the partial retainer refunds, requested accountings of their retainers and Lawyers' fees. Lawyer failed to comply with each of these requests. Lawyer also failed to cooperate with ODC's investigation of this and two other matters. The opinion also cites Rule 1.3 for Lawyer's failure to act with diligence and promptness in providing an expert affidavit to a "client."

In re Lindler
March 2, 2022
Reciprocal Disbarment by agreement

Lawyer was disbarred in North Carolina for failing to pay income tax for 7 years, failing to remit employment taxes for 13 years,

In re Wilson
April 13, 2022
Public Reprimand by agreement

Lawyer was charged with first-degree CDV, pled no contest to third-degree simple assault, and was sentenced to 30 days in jail, suspended upon payment of a \$500 fine.

In re Guyton
April 13, 2022
Public Reprimand and Fine by agreement

Lawyer laundered his personal contributions to political campaigns in excess of statutory limits through dummy LLCs, for which he was sanctioned \$33,000 by the State Ethics Commission.

In re DuPree
April 13, 2022
Nine-month Suspension by agreement

Lawyer was arrested for third-degree assault and battery, completed PTI and the arrest record was expunged. Lawyer self-reported the arrest, spent 45 days in in-patient alcohol treatment and was continuing outpatient treatment, Alcoholics Anonymous, and the Lawyers Helping Lawyers program.

RICHLAND COUNTY BAR FREE ETHICS SEMINAR

“A BAKER’S DOZEN – THIRTEEN POTENTIALLY
OBSCURE, MISUNDERSTOOD, OR MISAPPLIED
ISSUES UNDER THE SOUTH CAROLINA RULES
OF PROFESSIONAL CONDUCT”

OCTOBER 21, 2022

William O. Higgins, Esquire
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GRAYBILL, LANSCH & VINZANI, LLC

1. “Obtaining informed consent may be more complicated than you think.”

Rule 1.0(g):

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

See Comments 6 and 7 to Rule 1.0.

See Comments 16-20 to Rule 1.7.

2. “Nothing in the Rules of Professional Conduct requires me to maintain competence with respect to technology.”

Well...are you sure about that?

See Comment 6 to Rule 1.1:

“...a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client....”

See also Rule 1.6(c):

“...a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” See also Comments 20 and 21 to Rule 1.6.

3. “Limiting the scope of your representation may be more complicated than you think.”

Rule 1.2(b) allows a lawyer to limit the scope of representation “if the limitation is reasonable under the circumstances and the client gives informed consent.”

4. “Splitting fees with Lawyers outside your Firm may be more complicated than you realize.”

Rule 1.5(e) requires:

1. That the division of the fee be in proportion to the services performed, or each lawyer must assume joint responsibility for the representation;
2. That the client agree to the arrangement, including each lawyer's share, and that the agreement be confirmed in writing; and
3. That the total fee be reasonable.

5. “I can disclose that client information – it’s of public record.”

Rule 1.6 contains no “public record” exception to your duty not to reveal information relating to the representation of a client.

6. “Having a third-party pay your fees may be more complicated than you realize.”

Rule 1.8(f) requires:

1. The client’s informed consent;
2. No interference with your independence of professional judgment or with the client-lawyer relationship; and
3. Maintaining client confidentiality as required by Rule 1.6.

7. “Screening, what screening?”

South Carolina’s version of Rule 1.10, unlike the Model Rules, does not provide for screening of lateral hires.

8. “Have you given the mandatory notice to the financial institution that holds your trust account requiring the institution to give ODC notice of any NSF items?”

See Rule 1.15(h).

Also consider two non-RPC Rules related to trust accounts:

SC Appellate Court Rule 412 – IOLTA Rules

SC Appellate Court Rule 417 – Financial Recordkeeping

9. “Firing a client may entail more than you realize.”

Rule 1.16(d) requires you to “take steps to the extent reasonably practicable to protect” the former client’s interests, even if you’ve been “unfairly discharged by the client” (see Comment 9 to Rule 1.16).

10. “Prospective client, what prospective client?”

A quick look at Rule 1.18.

11. “Pay attention to the titles you attach to your non-lawyer employees.”

Rule 5.4(d)(2) prohibits a lawyer from practicing in the form of a professional corporation or association..., if:

“A nonlawyer is a corporate director or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation.”

12. “The forbidden four.”

Rule 7.4(b) prohibits the use of “any form of the words ‘certified’, ‘specialist’, ‘expert’, or ‘authority’ in lawyer advertising for lawyers who are not certified under Appellate Court Rule 408, subject to very limited exceptions for patent, trademark, and admiralty lawyers.

13. “When am I required to report another lawyer’s violation of the SC Rules of Professional Conduct?”

Rule 8.3(c) imposes an obligation to report another lawyer’s violation of the SC Rules of Professional Conduct only if you “know that another lawyer has committed a violation of the SC Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”

Thank You!



ETHICS AND TRUST ACCOUNTS

Desa Ballard

Ballard & Watson

October 20, 2022



RULE 1.15

SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a 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.

HIDDEN
SECRET

- A lawyer shall comply with Rule 417, SCACR (Financial Recordkeeping).

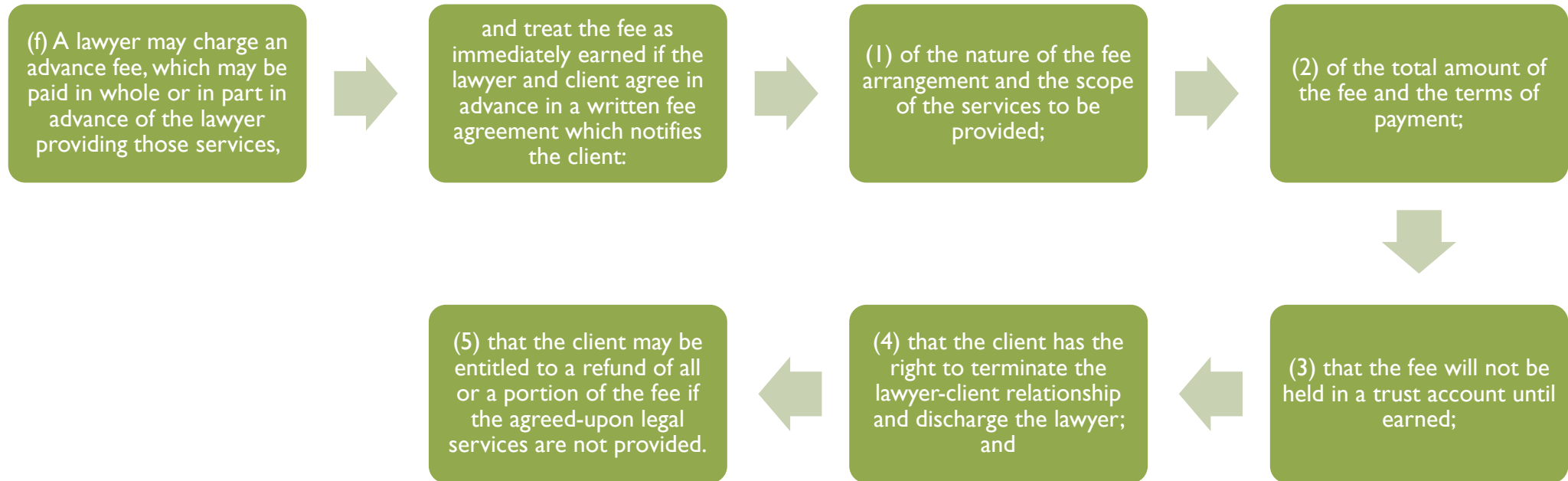
HOW TO OPEN A TRUST ACCOUNT

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose.

WHAT GOES IN?

(c) A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the lawyer and the client have entered into a written agreement concerning the handling of fees paid in advance pursuant to Rule 1.5(f).

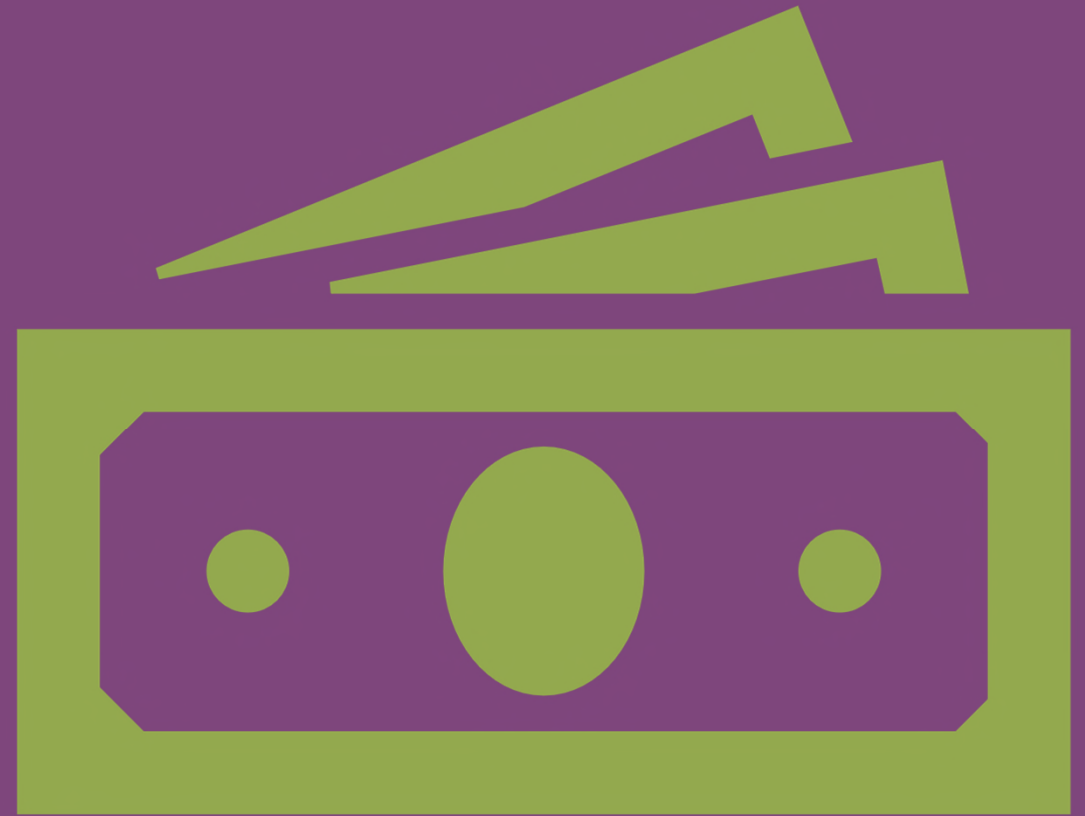
WHAT'S IN RULE 1.5?



WHAT GOES IN. . .

(f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed **have been deposited** in the account and are **collected funds**.

COLLECTED FUNDS



COMMENT 6

[6] Based on the lawyer's relationship with the depository institution or other considerations, deposited funds of various types may be made "**available**" for immediate withdrawal by the depository institution; however, lawyers should be aware that "**available funds**" **are not necessarily collected funds** since the credit given for the available funds may be revoked if the deposited item does not clear.

THE EASY ONES

in cash or other items treated by the depository institution as equivalent to cash;



(ii) by verified and documented electronic funds transfer;



(iii) by a properly endorsed government check;



(iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed \$50,000;

THE HARDER ONES

(v) by any other instrument payable at or through a depository institution, but only if the amount of such other instrument **does not exceed \$5,000** and the lawyer has a reasonable and prudent belief that the deposit of such other instrument will be collected promptly; or

(vi) by any other instrument payable at or through a depository institution and **at least ten (10) days have passed** since the date of deposit without notice to the lawyer that the credit for, or collection of, such other instrument has been delayed or is impaired.

DOUBLE JEOPARDY

If the actual collection of deposits described in Subsections (i) through (vi) above does not occur, the lawyer shall, as soon as practical but in no event more than five (5) business days after notice of noncollection, deposit **replacement funds** in the account.

AT THE LAWYER'S RISK

COMMENT 7

The lawyer's risk includes deposited instruments that are forged, stolen, or counterfeit. If any of the deposits fail for any reason, the lawyer, upon receipt of notice or actual knowledge, must promptly act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such items personally pays the amount of any failed deposit within five (5) business days of receipt of notice that the deposit has failed, the lawyer will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

MANDATORY IOLTA

- (h) Every lawyer maintaining a law office trust account shall file with the financial institution a written directive requiring the institution to report to the Office of Disciplinary Counsel when any properly payable instrument drawn on the account is presented for payment against insufficient funds. **No law office trust account shall be maintained** in a financial institution that does not agree to make such reports. The inadvertent failure of the institution to provide the report required by this rule shall not be construed to establish a breach of duty of care, or contract with, the Court or any third party who may sustain a loss as a result of an overdraft of a lawyer trust account.

A TRAP TO WATCH FOR – PART 1

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly **notify the client or third person**. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

DISPUTES? PART 2

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

DISPUTE – PART 3

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer **until the dispute is resolved**. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

COMMENT 3

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

COMMENT 4

- Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

ELECTRONIC FILING FEES

[9] In order to pay recording fees, submission fees, filing fees, or similar fees on behalf of a client or third party, a lawyer may authorize the **electronic transfer of funds** from the lawyer's **trust** account to a government agency or a vendor duly authorized by a government agency to collect such fees. Such authorization may include granting the government agency or its duly authorized vendor the right to **debit the funds authorized by the lawyer from the lawyer's trust account**, subject to the requirements of Rule 1.15(f).

UNIDENTIFIED FUNDS

[12] A lawyer's obligations with regard to identified but unclaimed funds are set forth in the Uniform Unclaimed Property Act, S.C. Code Ann. § 27-18-10, et seq.

PERSONAL AND CONFIDENTIAL FROM OFFICE OF DISCIPLINARY COUNSEL

- Don't panic.
- Backtrack and figure out what happened.
- Fix it, if you can.
- Get an explanation from the bank if the bank screwed it up.
- Response letter to ODC – what happened.
- **MOST IMPORTANT:** What steps you have taken to make sure it doesn't happen again.



Home Supreme Court ▾ Court of Appeals ▾ Trial Courts ▾ Court Officials ▾ Opinions/Orders ▾
Calendar ▾

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a 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. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation. A lawyer shall comply with Rule 417, SCACR (Financial Recordkeeping).

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the lawyer and the client have entered into a written agreement concerning the handling of fees paid in advance pursuant to Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.

(2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:

- (i) in cash or other items treated by the depository institution as equivalent to cash;
- (ii) by verified and documented electronic funds transfer;
- (iii) by a properly endorsed government check;
- (iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed \$50,000;
- (v) by any other instrument payable at or through a depository institution, but only if the amount of such other instrument does not exceed \$5,000 and the lawyer has a reasonable and prudent belief that the deposit of such other instrument will be collected promptly; or
- (vi) by any other instrument payable at or through a depository institution and at least ten (10) days have passed since the date of deposit without notice to the lawyer that the credit for, or collection of, such other instrument has been delayed or is impaired.

If the actual collection of deposits described in Subsections (i) through (vi) above does not occur, the lawyer shall, as soon as practical but in no event more than five (5) business days after notice of noncollection, deposit replacement funds in the account.

(g) A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

(h) Every lawyer maintaining a law office trust account shall file with the financial institution a written directive requiring the institution to report to the Office of Disciplinary Counsel when any properly payable instrument drawn on the account is presented for payment against insufficient funds. No law office trust account shall be maintained in a financial institution that does not agree to make such reports. The inadvertent failure of the institution to provide the report required by this rule shall not be construed to establish a breach of duty of care, or contract with, the Court or any third party who may sustain a loss as a result of an overdraft of a lawyer trust account.

(i) Absent any obligation to retain a client's file which is imposed by law, court order, or rules of a tribunal, a lawyer shall securely store a client's file for a minimum of six (6) years after completion or termination of the representation unless:

- (1) the lawyer delivers the file to the client or the client's designee; or
- (2) the client authorizes destruction of the file in a writing signed by the client, and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.

If the client does not request the file within six (6) years after completion or termination of the representation, the file may be deemed abandoned by the client and may be destroyed unless there are pending or threatened legal proceedings known to the lawyer that relate to the matter. A lawyer who elects to destroy files shall do so in a manner which protects client confidentiality.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with prudent accounting practice and must comply with any recordkeeping rules established by law or court order. See, e.g., Rule 417, SCACR (Financial Recordkeeping).

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The requirement in Rule 1.15(f)(1) that funds be deposited and collected in the lawyer's trust account prior to disbursement is fundamental to proper trust accounting.

[6] Based on the lawyer's relationship with the depository institution or other considerations, deposited funds of

various types may be made "available" for immediate withdrawal by the depository institution; however, lawyers should be aware that "available funds" are not necessarily collected funds since the credit given for the available funds may be revoked if the deposited item does not clear.

[7] Subsections (i) through (vi) of Rule 1.15(f)(2) represent categories of trust account deposits which carry a limited risk of failure so that disbursements may be made in reliance on such deposits without violating the fundamental rule of disbursing only on collected funds. In any of those circumstances, however, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. The lawyer's risk includes deposited instruments that are forged, stolen, or counterfeit. If any of the deposits fail for any reason, the lawyer, upon receipt of notice or actual knowledge, must promptly act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such items personally pays the amount of any failed deposit within five (5) business days of receipt of notice that the deposit has failed, the lawyer will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

[8] A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than Subsections (i) through (vi) of Rule 1.15(f)(2) may be grounds for a finding of professional misconduct.

[9] In order to pay recording fees, submission fees, filing fees, or similar fees on behalf of a client or third party, a lawyer may authorize the electronic transfer of funds from the lawyer's trust account to a government agency or a vendor duly authorized by a government agency to collect such fees. Such authorization may include granting the government agency or its duly authorized vendor the right to debit the funds authorized by the lawyer from the lawyer's trust account, subject to the requirements of Rule 1.15(f).

[10] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[11] The Lawyers' Fund for Client Protection provides a means through the collective efforts of the Bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Under Rule 411, SCACR, each regular member of the Bar is required to make an annual contribution to this fund.

[12] A lawyer's obligations with regard to identified but unclaimed funds are set forth in the Uniform Unclaimed Property Act, S.C. Code Ann. § 27-18-10, et seq.

[13] A lawyer who destroys a client file pursuant to Paragraph (i) must do so in a manner which protects client confidentiality, such as by shredding paper copies of the file. This rule does not affect the lawyer's obligation to return the client file and other client property upon demand in accordance with Rule 1.15 or the lawyer's obligations pursuant to Rule 1.16(d).

[14] A lawyer may not destroy a file under Paragraph (i) if the lawyer knows or has reason to know that there are legal proceedings pending or threatened that relate to the matter for which the lawyer created the files. Examples include post-conviction relief and professional liability actions against the lawyer. Nothing in the rule prohibits a lawyer from converting files to an electronically stored format, provided the lawyer is capable of producing a paper version if necessary. Attorneys and firms should create file retention policies and clearly communicate those policies to clients.

Last amended by Order dated October 23, 2019.

**LIFTING THE CURTAIN: AN OPEN (AND
SOMETIMES IRREVERENT) REFLECTION
ON ANXIETY AND DEPRESSION**

**Will Jordan
Assistant United States Attorney
District of South Carolina**

I. INTRODUCTION

- a. Prevalence of depression, anxiety, and substance abuse in the legal profession
- b. Goals of presentation:
 - i. increase awareness
 - ii. decrease stigma

II. UNIQUE CHALLENGE IN THE LEGAL PROFESSION

- a. Image is everything

III. MY STORY

- a. Early practice
- b. Recognizing depression
- c. My experience with depression

IV. MY ADVICE

- a. No magic bullet
- b. Therapy
- c. Medication
- d. Self-Care

V. RESOURCES

- a. SC Bar's Lawyers Helping Lawyers (<https://www.scbar.org/lawyers/member-benefits-assistance/lawyers-helping-lawyers/>)
- b. National Institute of Mental Health Depression Brochure
- c. National Institute of Mental Health Anxiety Brochure
- d. National Alliance on Mental Illness (<https://www.nami.org/home>)
- e. National Suicide Prevention Lifeline (<https://suicidepreventionlifeline.org/>)

Depression



DEPARTMENT OF HEALTH & HUMAN SERVICES (U.S.)

NIH National Institute of Mental Health



What is depression?

Everyone feels sad or low sometimes, but these feelings usually pass with a little time. Depression (also called major depressive disorder or clinical depression) is different. It can cause severe symptoms that affect how you feel, think, and handle daily activities, such as sleeping, eating, or working. It is an illness that can affect anyone—regardless of age, race, income, culture, or education. Research suggests that genetic, biological, environmental, and psychological factors play a role in depression.

Depression may occur with other mental disorders and other illnesses, such as diabetes, cancer, heart disease, and chronic pain. Depression can make these conditions worse, and vice versa. Sometimes medications taken for these illnesses cause side effects that contribute to depression symptoms.

What are the different types of depression?

Two common forms of depression are:

- **Major depression**, which includes symptoms of depression most of the time for at least 2 weeks that typically interfere with one's ability to work, sleep, study, and eat.
- **Persistent depressive disorder** (dysthymia), which often includes less severe symptoms of depression that last much longer, typically for at least 2 years.

Other forms of depression include:

- **Perinatal depression**, which occurs when a woman experiences major depression during pregnancy or after delivery (postpartum depression). For more information, visit www.nimh.nih.gov/perinataldepression.
- **Seasonal affective disorder**, which comes and goes with the seasons, typically starting in late fall and early winter and going away during spring and summer. For more information, visit www.nimh.nih.gov/SAD.
- **Depression with symptoms of psychosis**, which is a severe form of depression where a person experiences psychosis symptoms, such as delusions (disturbing, false fixed beliefs) or hallucinations (hearing or seeing things that others do not see or hear). For more information about psychosis, visit www.nimh.nih.gov/psychosis.

Individuals diagnosed with bipolar disorder (formerly called manic depression or manic-depressive illness) also experience depression. For more information about this mood disorder, visit www.nimh.nih.gov/bipolardisorder.



What are the signs and symptoms of depression?

Common symptoms of depression include:

- Persistent sad, anxious, or “empty” mood
- Feelings of hopelessness or pessimism
- Feelings of irritability, frustration, or restlessness
- Feelings of guilt, worthlessness, or helplessness
- Loss of interest or pleasure in hobbies or activities
- Decreased energy, fatigue, or being “slowed down”
- Difficulty concentrating, remembering, or making decisions
- Difficulty sleeping, early morning awakening, or oversleeping
- Changes in appetite or unplanned weight changes
- Aches or pains, headaches, cramps, or digestive problems without a clear physical cause and that do not ease even with treatment
- **Suicide attempts or thoughts of death or suicide**

If you or someone you know is in immediate distress or is thinking about hurting themselves, call the National Suicide Prevention Lifeline toll-free at 1-800-273-TALK (8255) or the toll-free TTY number at 1-800-799-4TTY (4889). You also can text the Crisis Text Line (HELLO to 741741) or go to the National Suicide Prevention Lifeline website at <https://suicidepreventionlifeline.org>.

How is depression diagnosed?

To be diagnosed with depression, an individual must have five depression symptoms every day, nearly all day, for at least 2 weeks. One of the symptoms must be a depressed mood or a loss of interest or pleasure in almost all activities. Children and adolescents may be irritable rather than sad.

If you think you may have depression, talk to your health care provider. Primary care providers routinely diagnose and treat depression and refer individuals to mental health professionals, such as psychologists or psychiatrists.

During the visit, your provider may ask when your symptoms began, how long they last, how often they occur, and if they keep you from going out or doing your usual activities. It may help to make some notes about your symptoms before your visit. Certain medications and some medical conditions, such as viruses or a thyroid disorder, can cause the same depression symptoms. Your provider can rule out these possibilities by doing a physical exam, interview, and lab tests.

Find tips to help prepare for and get the most out of your visit at www.nimh.nih.gov/talkingtips. For additional resources, visit the Agency for Healthcare Research and Quality website at www.ahrq.gov/questions.

Does depression look the same in everyone?

Depression can affect people differently, depending on their age.

Children with depression may be anxious, cranky, pretend to be sick, refuse to go to school, cling to a parent, or worry that a parent may die.

Older children and teens with depression may get into trouble at school, sulk, be easily frustrated, feel restless, or have low self-esteem. They also may have other disorders, such as anxiety and eating disorders, attention-deficit hyperactivity disorder, or substance use disorder. Older children and teens are more likely to experience excessive sleepiness (called hypersomnia) and increased appetite (called hyperphagia). In adolescence, females begin to experience depression more often than males, likely due to the biological, life cycle, and hormonal factors unique to women.

Younger adults with depression are more likely to be irritable, complain of weight gain and hypersomnia, and have a negative view of life and the future. They often have other disorders, such as generalized anxiety disorder, social phobia, panic disorder, and substance use disorders.

Middle-aged adults with depression may have more depressive episodes, decreased libido, middle-of-the-night insomnia, or early morning awakening. They also may more frequently report having gastrointestinal symptoms such as diarrhea or constipation.

Older adults with depression commonly experience sadness or grief or may have other less obvious symptoms. They may report a lack of emotions rather than a depressed mood. Older adults also are more likely to have other medical conditions or pain that may cause or contribute to depression. In severe cases, memory and thinking problems (called pseudodementia) may be prominent.

How is depression treated?

Depression treatment typically involves medication, psychotherapy, or both. If these treatments do not reduce symptoms, brain stimulation therapy may be another treatment option. In milder cases of depression, treatment might begin with psychotherapy alone, and medication added if the individual continues to experience symptoms. For moderate or severe depression, many mental health professionals recommend a combination of medication and therapy at the start of treatment.

Choosing the right treatment plan should be based on a person's individual needs and medical situation under a provider's care. It may take some trial and error to find the treatment that works best for you. You can learn more about the different types of treatment, including psychotherapy, medication, and brain stimulation therapies, at www.nimh.nih.gov/depression. For information on finding a mental health professional and questions to ask when considering therapy, visit www.nimh.nih.gov/psychotherapies.

Medications

Antidepressants are medications commonly used to treat depression. They take time to work—usually 4 to 8 weeks—and symptoms such as problems with sleep, appetite, or concentration often improve before mood lifts. It is important to give medication a chance before deciding whether or not it works.

Please Note: Some individuals—especially children, teenagers, and young adults—may experience an increase in suicidal thoughts or behavior when taking antidepressants, particularly in the first few weeks after starting or when the dose is changed. All patients taking antidepressants should be watched closely, especially during the first few weeks of treatment.

Information about medications changes frequently. Visit the U.S. Food and Drug Administration (FDA) website at www.fda.gov/drugsatfda for the latest warnings, patient medication guides, and newly approved medications.

Treatment-resistant depression occurs when a person doesn't get better after trying at least two antidepressants. Esketamine is a newer FDA-approved medication for treatment-resistant depression delivered as a nasal spray in a doctor's office, clinic, or hospital. It often acts rapidly—typically within a couple of hours—to relieve depression symptoms. Individuals usually continue to take an oral antidepressant to maintain the improvement in depression.

Another option for treatment-resistant depression is to add a different type of medication that may make an antidepressant more effective, such as an antipsychotic or anticonvulsant medication or bupropion, an antidepressant that works differently from most.

Medications prescribed by your health care provider for depression can have side effects, but these may lessen over time. Talk to your provider about any side effects that you have. Do not stop taking medications without the help of a health care provider. If you abruptly stop taking your medicine, you may experience severe withdrawal symptoms.

FDA has not approved any natural products for depression. While research is ongoing, some people find natural products, including vitamin D and the herbal dietary supplement St. John's wort, to help depression. Do not use St. John's wort or other dietary supplements for depression before talking to your provider. For more information, visit the National Center for Complementary and Integrative Health website at www.nccih.nih.gov.

Psychotherapy

Psychotherapy (also called "talk therapy" or "counseling") teaches individuals with depression new ways of thinking and behaving and helps with changing habits that contribute to depression. Most psychotherapy occurs with a licensed, trained mental health professional in one-on-one sessions or with other individuals in a group setting. Two effective psychotherapies to treat depression include cognitive behavioral

therapy (CBT) and interpersonal therapy (IPT). The use of older forms of psychotherapy, such as dynamic therapy, for a limited time also may help some people with depression.

With CBT, people learn to challenge and change unhelpful thinking patterns and behavior to improve their depressive and anxious feelings. Recent advances in CBT include introducing mindfulness principles and the development of specialized forms of therapy targeting particular symptoms, such as insomnia.

IPT focuses on interpersonal and life events that impact mood and vice versa. The goal of IPT is to help people improve their communication skills within relationships, establish social support networks, and develop realistic expectations to help them deal with crises or other issues that may be contributing to or worsening their depression.

Brain Stimulation Therapy

Brain stimulation therapy, which involves activating or inhibiting the brain directly with electricity or magnetic waves, is another option for some people when other depression treatments have not been effective.

The most common forms of brain stimulation therapy include electroconvulsive therapy and repetitive transcranial magnetic stimulation. Other brain stimulation therapies are newer and, in some cases, still experimental. You can learn more about these therapies at www.nimh.nih.gov/braintherapies.

How can I find help?

The Substance Abuse and Mental Health Services Administration provides the Behavioral Health Treatment Services Locator, an online tool for finding mental health treatment and support groups in your area, available at <https://findtreatment.samhsa.gov>. For additional resources, visit www.nimh.nih.gov/findhelp.



How can I take care of myself?

Once you begin treatment, you should gradually start to feel better. Go easy on yourself during this time. Try to do things you used to enjoy. Even if you don't feel like doing them, they can improve your mood. Other things that may help:

- Try to get some physical activity. Just 30 minutes a day of walking can boost mood.
- Try to maintain a regular bedtime and wake-up time.
- Eat regular, healthy meals.
- Do what you can as you can. Decide what must get done and what can wait.
- Try to connect with other people, and talk with people you trust about how you are feeling.
- Postpone important life decisions until you feel better.
- Avoid using alcohol, nicotine, or drugs, including medications not prescribed for you.

How can I help a loved one who is depressed?

If someone you know has depression, help them see a health care provider or mental health professional. You also can:

- Offer support, understanding, patience, and encouragement.
- Invite them out for walks, outings, and other activities.
- Help them stick to their treatment plan, such as setting reminders to take prescribed medications.
- Make sure they have transportation to therapy appointments.
- Remind them that, with time and treatment, the depression will lift.

Take comments about suicide seriously, and report them to your loved one's health care provider or therapist. **If they are in immediate distress or thinking about hurting themselves, call 911 for emergency services or go to the nearest hospital emergency room.**

Where can I find clinical trials for depression?

Clinical trials are research studies that look at new ways to prevent, detect, or treat diseases and conditions. Although individuals may benefit from being part of a clinical trial, participants should be aware that the primary purpose of a clinical trial is to gain new scientific knowledge so others may receive better help in the future.

Researchers at the National Institute of Mental Health (NIMH) and around the country conduct many studies with patients and healthy volunteers. Talk to your health care provider about clinical trials, their benefits and risks, and whether one is right for you. For more information, visit www.nimh.nih.gov/clinicaltrials.

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For More Information

NIMH website

www.nimh.nih.gov

MedlinePlus (National Library of Medicine)

<https://medlineplus.gov>

<https://medlineplus.gov/spanish> (en español)

ClinicalTrials.gov

www.clinicaltrials.gov

<https://salud.nih.gov/investigacion-clinica> (en español)

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National Institute
of Mental Health

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Generalized Anxiety Disorder:

When Worry Gets Out of Control



**National Institute
of Mental Health**

WHAT IS GAD?

Occasional anxiety is a normal part of life. You might worry about things like health, money, or family problems. But people with generalized anxiety disorder (GAD) feel extremely worried or feel nervous about these and other things—even when there is little or no reason to worry about them. People with GAD find it difficult to control their anxiety and stay focused on daily tasks.

The good news is that GAD is treatable. Call your doctor to talk about your symptoms so that you can feel better.



What are the signs and symptoms of GAD?

GAD develops slowly. It often starts during the teen years or young adulthood. People with GAD may:

- Worry very much about everyday things
- Have trouble controlling their worries or feelings of nervousness
- Know that they worry much more than they should
- Feel restless and have trouble relaxing
- Have a hard time concentrating
- Be easily startled
- Have trouble falling asleep or staying asleep
- Feel easily tired or tired all the time
- Have headaches, muscle aches, stomach aches, or unexplained pains
- Have a hard time swallowing
- Tremble or twitch
- Be irritable or feel “on edge”
- Sweat a lot, feel light-headed or out of breath
- Have to go to the bathroom a lot

Children and teens with GAD often worry excessively about:

- Their performance, such as in school or in sports
- Catastrophes, such as earthquakes or war



Adults with GAD are often highly nervous about everyday circumstances, such as:

- Job security or performance
- Health
- Finances
- The health and well-being of their children
- Being late
- Completing household chores and other responsibilities

Both children and adults with GAD may experience physical symptoms that make it hard to function and that interfere with daily life.

Symptoms may get better or worse at different times, and they are often worse during times of stress, such as with a physical illness, during exams at school, or during a family or relationship conflict.

What causes GAD?

GAD sometimes runs in families, but no one knows for sure why some family members have it while others don't. Researchers have found that several parts of the brain, as well as biological processes, play a key role in fear and anxiety. By learning more about how the brain and body function in people with anxiety disorders, researchers may be able to create better treatments. Researchers are also looking for ways in which stress and environmental factors play a role.

How is GAD treated?

First, talk to your doctor about your symptoms. Your doctor should do an exam and ask you about your health history to make sure that an unrelated physical problem is not causing your symptoms. Your doctor may refer to you a mental health specialist, such as a psychiatrist or psychologist.

GAD is generally treated with psychotherapy, medication, or both. Talk with your doctor about the best treatment for you.

Psychotherapy

A type of psychotherapy called cognitive behavioral therapy (CBT) is especially useful for treating GAD. CBT teaches a person different ways of thinking, behaving, and reacting to situations that help him or her feel less anxious and worried. For more information on psychotherapy, visit <http://www.nimh.nih.gov/psychotherapies>.

Medication

Doctors may also prescribe medication to help treat GAD. Your doctor will work with you to find the best medication and dose for you. Different types of medication can be effective in GAD:

- Selective serotonin reuptake inhibitors (SSRIs)
- Serotonin-norepinephrine reuptake inhibitors (SNRIs)
- Other serotonergic medication
- Benzodiazepines

Doctors commonly use SSRIs and SNRIs to treat depression, but they are also helpful for the symptoms of GAD. They may take several weeks to start working. These medications may also cause side effects, such as headaches, nausea, or difficulty sleeping. These side effects are usually not severe for most people, especially if the dose starts off low and is increased slowly over time. **Talk to your doctor about any side effects that you have.**

Buspirone is another serotonergic medication that can be helpful in GAD. Buspirone needs to be taken continuously for several weeks for it to be fully effective.

Benzodiazepines, which are sedative medications, can also be used to manage severe forms of GAD. These medications are powerfully effective in rapidly decreasing anxiety, but they can cause tolerance and dependence if you use them continuously. Therefore, your doctor will only prescribe them for brief periods of time if you need them.

Don't give up on treatment too quickly. Both psychotherapy and medication can take some time to work. A healthy lifestyle can also help combat anxiety. Make sure to get enough sleep and exercise, eat a healthy diet, and turn to family and friends who you trust for support.

For basic information about these and other mental health medications, visit <http://www.nimh.nih.gov/medications>. Visit the Food and Drug Administration's website (<http://www.fda.gov/>) for the latest information on warnings, patient medication guides, or newly approved medications.

What is it like to have GAD?

"I was worried all the time and felt nervous. My family told me that there were no signs of problems, but I still felt upset. I dreaded going to work because I couldn't keep my mind focused. I was having trouble falling asleep at night and was irritated at my family all the time.

I saw my doctor and explained my constant worries. My doctor sent me to someone who knows about GAD. Now I am working with a counselor to cope better with my anxiety. I had to work hard, but I feel better. I'm glad I made that first call to my doctor."

Where can I find more information?

To learn more about generalized anxiety disorder, visit:

MedlinePlus (National Library of Medicine)

<http://medlineplus.gov>

(En Español: <http://medlineplus.gov/spanish>)

For information on clinical trials, visit:

ClinicalTrials.gov

<http://www.clinicaltrials.gov>

(En Español: <http://salud.nih.gov/investigacion-clinica/>)

For more information on conditions that affect mental health, resources, and research, visit the NIMH website (<http://www.nimh.nih.gov>).

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