

2019
West Virginia State Bar
Annual Meeting



April 7-8, 2019
Charleston, WV

2019 ANNUAL MEETING SPEAKER SCHEDULE

SUPPORTING LAWYERS IN THE 21ST CENTURY (Law Office Management)

9:10 – 10:00 a.m.

Judge Adrienne Nelson

THE LAWYER WELL-BEING MOVEMENT: WHAT IT MEANS FOR ALL OF US

10:00 – 10:50 a.m. (Attorney Wellness)

Terry Harrell & Chief Justice Elizabeth Walker

10:50 – 11:00 a.m.

Sponsor Break

CRISIS MANAGEMENT FOR ATTORNEYS AND THEIR CLIENTS – PART I

(Law Office Management)

11:10 – noon

Bruce Hennes

Noon – 1:30 p.m.

Lunch on your own

CRISIS MANAGEMENT FOR ATTORNEYS AND THEIR CLIENTS – PART II

(Law Office Management)

1:30 – 2:20 p.m.

Bruce Hennes

IMPACT OF #metoo MOVEMENT ON SEXUAL HARRASSMENT LITIGATION

(Elimination of Bias)

2:20 – 3:10 p.m.

Brian Moore & Katherine Capito

3:10 – 3:30 p.m.

Sponsor Break

KEEP CALM AND TURN YOUR PHONES OFF: DOS AND DON'TS FROM THE BENCH

(General)

3:30 – 4:20 p.m.

Judge Joanna Tabit

Supporting Lawyers in the 21st Century



Justice Adrienne Nelson

Oregon Supreme Court

Justice Adrienne Nelson was appointed to the Oregon Supreme Court on January 2, 2018, making her the first African American to sit on the state's highest court and on any appellate state court. Her election to a six-year term in November 2018 made her the first African American woman elected statewide in Oregon. In 2006, she was appointed as a trial judge on the Multnomah County Circuit Court in Portland, Oregon, making her the second African American female judge in the state of Oregon. Justice Nelson is a sought-after speaker on a variety of topics including diversity, inclusion, equity, community engagement, leadership and professional development.

Throughout her career, Justice Nelson has been involved in many national, state, local, and specialty bar associations, often serving in a leadership capacity. In the Portland community, she sits on the Reed College Board of Trustees and the Oregon Community Foundation Portland Leadership Council where she chairs the Outreach to the Black Community committee. She also sits on the Girl Scouts Beyond the Bars (GSBB) Advisory Board and the Self-Enhancement, Inc. (SEI) Board of Directors both of which she formerly chaired.

In addition, Justice Nelson serves as a mentor to many people. She is often recognized by a wide variety of community and professional organizations for her service and mentorship to others. Justice Nelson is a connector and encourager, helping people succeed by living their best lives.

CHECKLIST FOR BUYING A LAW PRACTICE

1. Discuss the following issues with the selling lawyer:

- Why is the lawyer selling his or her practice?
- Inquire into the profitability of the practice – is there a consistent income stream or peaks and valleys? What type of fee arrangements does the selling lawyer have with clients? Flat fees? Hourly fees? Contingent? Hybrid fee arrangement?
- Do the selling lawyer's clients have discrete (one and done) legal matters or do they require ongoing legal services? For example: corporate clients who must hold annual meetings and prepare minutes or estate planning clients who request periodic updates to their documents?
- Does the selling lawyer track how clients are referred to his or her office? Can the selling lawyer provide referral statistics that reveal referral sources? What percentage of new business comes from the selling lawyer's past or present client base?
- Will the selling lawyer commit to stay for 6 to 12 months to help transition or mentor the buying lawyer?
- What is the selling lawyer's assessment of his or her staff, if any? What skills do staff possess? How knowledgeable are they? Are they likely to remain through and after the transition?
- What is the selling lawyer's malpractice and discipline record? Does the selling lawyer have excess coverage with the Professional Liability Fund (PLF) or another carrier? (All lawyers in private practice in Oregon are required to carry minimum coverage of \$300,000 indemnity/\$50,000 claims expense annually under the PLF primary claims made plan. For more information, visit the PLF website, <https://www.osbplf.org/about-plf/overview.html>.)
- Is the selling lawyer involved in any state or local bar sections or committees? Other activities in the community?
- What systems does the selling lawyer use for opening files, case management, calendaring, conflict checking, trust accounting, and closing files?
- What does the selling lawyer recommend for integrating clients, staff, technology, office systems, and operational management when the firm transitions to the buying lawyer?
- Will the sale of the practice include the selling lawyer's closed files? If so, where and how are the closed files stored? (Paper files in bankers boxes or scanned PDFs on the selling lawyer's computer system?) How many years' worth or total boxes of closed files does the selling lawyer have?
- Does the selling lawyer retain original wills? If so, 40 years must elapse before any original will can be disposed of. ORS 112.815 provides: "An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if: (1) The attorney is licensed to practice law in the state of Oregon; (2) At least 40 years has elapsed since execution of the will; (3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and (4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise."
- Can the selling lawyer provide a list of personal and professional references, including legal staff and lawyers?

2. Independently research the selling lawyer:

- Check his or her discipline history on the Oregon State Bar website. (Find the selling lawyer in the online Member Directory and select "Show Discipline History.") To

CHECKLIST FOR BUYING A LAW PRACTICE

review disciplinary files of the selling lawyer, complete the request form available here https://www.osbar.org/secured/review_request.asp.

- Ask the selling lawyer to request a list of his or her legal malpractice claims history from the PLF and provide it to you. NOTE: Although it is helpful to discuss and look over the lawyer's malpractice claims history, please keep in mind some important things. (1) The only information that the PLF will provide to the lawyer is a list with the date of the malpractice claim, the claimant, and the amount of money paid on the claim. (2) If the claim is a currently pending, the lawyer who is the subject of the claim will be unable to discuss the facts of the case with you or anyone else. (3) In addition, the PLF wants all lawyers to be mindful that malpractice claims are not necessarily an indicator of a lawyer's legal skills or character. Professionally, the odds are that every lawyer will have one or more malpractice claims during the course of his or her career.
- Talk to people who have interacted or worked with the selling lawyer, including co-counsel, opposing counsel, committee or bar group volunteers, or community members.
- Speak to personal and professional references provided by the selling lawyer.
- Observe the selling lawyer in court or administrative venues, if possible.

3. Assess the condition of selling lawyer's files:

- The buying lawyer cannot review the selling lawyer's files. However, the buying lawyer can request the following *if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients* - ORPC 1.6(b)(6):
 - The identity of the clients
 - The identity of the adverse parties
 - The nature and extent of legal services involved in each case
 - Fee and payment information
- The buying lawyer has the same responsibilities as the selling lawyer to preserve client confidentiality regardless of the outcome of the contemplated transaction. ORPC 1.6(b)(6).
- The buying lawyer can independently determine how many active cases the selling lawyer has pending in state or federal court by searching OJCIN or PACER databases.
- To determine if the selling lawyer is associated with any business entities in Oregon – as registered agent or otherwise - the buying lawyer can search the Oregon Secretary of State (SOS) Business Registry Database: http://egov.sos.state.or.us/br/pkg_br_web_assoc_name_srch.main.
- The buying lawyer may wish to conduct court and business registry searches in other states where the selling lawyer is admitted.
- The buying lawyer may also be able to assess the condition of the selling lawyer's files by evaluating the selling lawyer's office systems or lack thereof (see next item).

4. Ask the selling lawyer or the selling lawyer's staff to walk you through the selling lawyer's office systems and technology. Assess the effectiveness of the following:

- File management – opening, maintaining, organizing, closing, and storing files
- Calendaring and docketing – entering and tracking dates and deadlines
- Task management – tracking client projects

CHECKLIST FOR BUYING A LAW PRACTICE

- Conflict systems – performing, clearing, and documenting conflict checks
 - Trust accounting – recordkeeping, tracking funds, disbursing funds, reconciling accounts
 - Billing and collection – keeping time records, invoicing clients, aging of accounts receivables, collection issues (if any)
 - Technology – assessing hardware and software. For hardware, evaluate age, general condition, availability of support/repair contracts, and ownership. If any equipment is leased, review lease terms and cost. For software, identify age, version, license/ownership status. If any cloud computing programs are used, determine the monthly/yearly subscription fees and if ownership can be transferred to another user.
5. Assess the condition of the business and the financial aspects of the practice:
- Request access to income tax returns, balance sheets, profit and loss reports, or other records documenting income, expenses, assets, and liabilities of the firm for the last 3-5 years.
 - Request access to payroll tax returns, account receivables, collection accounts, business loans, lines of credits, and third-party/vendor agreements, including leases.
 - Search Oregon Secretary of State UCC filings for secured liens on property owned by the selling lawyer: <https://secure.sos.state.or.us/ucc/searchHome.action>.
6. Screen for possible conflicts of interest with the clients of the selling lawyer.
7. Consider hiring a business attorney and a business valuation expert.
8. Review the checklist and resources for lawyers selling a practice, available on the PLF website, www.osbplf.org. Select Practice Management > Forms > Selling a Law Practice. This will help you become familiar with the ethical requirements that apply to sale of a law practice, including the process for notifying clients. It is also helpful to look at the purchase of a practice from the seller's perspective.
9. Review the Checklist for Sale of a Small Business, available on the PLF website, www.osbplf.org. Select Practice Management > Forms > Business. This checklist has some points that are applicable to sale of a law practice that may be helpful to a potential buyer.

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CHECKLIST FOR CLOSING YOUR OWN OFFICE

1. Finalize as many active files as possible.
2. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their cases. The letter should explain how and where they can pick up copies of their files and should give a time deadline for doing this. (See sample *Letter Advising That Lawyer Is Closing His/Her Office*, provided on the PLF website.)
3. For cases with pending court dates, depositions, or hearings, discuss with the clients how to proceed. When appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and your client.
4. For cases before administrative bodies and courts, obtain the clients' permission to submit a motion and order to withdraw as attorney of record. Review ORPC 1.16.
5. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
6. Pick an appropriate date to check whether all cases either have a motion and order allowing your withdrawal as attorney of record or have a Substitution of Attorney filed with the court.
7. Make copies of files for clients with open matters. Retain your original files. All clients should either pick up the copy of their files (and sign a receipt acknowledging that they received them) or sign an authorization for you to release the files to their new attorneys. (Sample *Acknowledgment of Receipt of File* and *Authorization for Transfer of Client File* available at www.osbplf.org.) If a client is picking up the file, return original documents to the client and keep copies in your file.
8. Remind clients of your file retention and destruction policy. Tell them where you will be storing your client file records and who they can contact should they need an additional copy of their file. If your fee agreement or engagement letter did not notify your client about your file retention and destruction policy, you should obtain all clients' permission to destroy the files after approximately 10 years. The PLF recommends that closed files be kept for 10 years or longer. (See *File Retention and Destruction* available at www.osbplf.org.) If a closed file is to be stored by another attorney, get the client's permission to allow the attorney to store the file for you and provide the client with the attorney's name, address, and phone number.
9. Send the name, address, and phone number of the person who will be retaining your closed files to the OSB Regulatory Services, P.O. Box 231935, Tigard, OR 97281-1935. Also send them your name, current address, and phone number.
10. If you are a sole practitioner, ask the telephone company for a new phone number to be given out when your disconnected phone number is called. This eliminates the problem created when clients call your phone number, get a recording stating that the number is disconnected, and do not know where else to turn for information. In the alternative, arrange for your telephone number to have a recorded announcement about your closed office for 30 to 60 days after you close your office.
11. If you are a notary and resign your commission, file a resignation with the Oregon Secretary of State:

“A notary public whose commission was terminated because of resignation shall arrange for the storage of his/her notarial records, in any form and at any location within 30 days following resignation. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records pursuant to OAR 160-100-320(1).

A notary public shall store such records for a period of seven years after the date of resignation. After the seven-year period, the notary public may destroy such records pursuant to OAR 160-100-320(3).”

A notary resignation form is available on the Oregon Secretary of State’s Web site at <http://sos.oregon.gov/business/Documents/notary-forms/termination-of-notary-public-commission.pdf>.

12. If you are a registered agent for Oregon businesses, deliver a signed, written statement of resignation to the Corporation Division and give notice to the affected businesses.

Businesses must designate a new registered agent and provide that information to the Corporation Division. Failure to do so will result in the administrative dissolution of the business.

For more information and forms, see <http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx>.

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CHECKLIST FOR CLOSING ANOTHER ATTORNEY'S OFFICE

The term "Closing Attorney" refers to the attorney whose office is being closed.

1. Check the calendar and active files to determine which items are urgent or scheduled for hearings, trials, depositions, court appearances, and so on. Tip: In addition to checking the Closing Attorney's personal calendar, consider searching OJCIN and Oregon eCourt calendars on the Oregon Judicial Department (OJD) Web site, <http://courts.oregon.gov/OJD/OnlineServices/calendars/Pages/index.aspx>. To search court calendars, enter the Closing Attorney's name in the Attorney: field and choose -All Courts- or select a specific court.
2. Contact clients for matters that are urgent or immediately scheduled for hearing, court appearances, or discovery. Obtain permission for reset. (If making these arrangements poses a conflict of interest for you and your clients, retain another attorney to take responsibility for obtaining extensions of time and other immediate needs.)
3. Contact courts and opposing counsel immediately for files that require discovery or court appearances. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.
4. Open and review all unopened mail. Review all mail that is not filed and match it to the appropriate files.
5. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
6. Determine whether the Closing Attorney stored files online. Locate the user name and password, retrieve the digital data, and arrange for the cloud storage provider to close the account.
7. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney and/or pick up a copy of the open file. Provide clients with a date by which they should pick up copies of their files. Inform clients that new counsel should be chosen immediately. (See sample *Letter Advising That Lawyer Is Unable to Continue in Practice*, provided on the PLF website.)
8. For cases before administrative bodies and courts, obtain permission from the clients to submit a motion and order to withdraw the Closing Attorney as attorney of record. Review ORPC 1.16.
9. If the client is obtaining a new attorney, be certain that a Substitution of Attorney is filed.
10. Select an appropriate date to check whether all cases have either a motion and order allowing withdrawal of the Closing Attorney or a Substitution of Attorney filed with the court.
11. Make copies of files for clients. Retain the Closing Attorney's original files. All clients should either pick up a copy of their files (and sign a receipt acknowledging that they received it) or sign an authorization for you to release a copy to a new attorney. If the client is picking up a copy of the file and the file contains original documents that the client needs (such as a title to property), return the original documents to the client and keep copies for the Closing Attorney's file.
12. Advise all clients where their closed files will be stored and whom they should contact in order to retrieve another copy of their file.

13. Send the name, address, and phone number of the person who will be retaining the closed files to OSB Regulatory Services, P.O. Box 231935, Tigard, OR 97281-1935.
14. If the Closing Attorney was a sole practitioner, arrange for a forwarding phone number. In the alternative, record an appropriate announcement on the Closing Attorney's outgoing voicemail and maintain it for 30 to 60 days after the office is closed. This eliminates the problem created when clients call the Closing Attorney's office and hear a recording stating that the number is disconnected, and do not know where to turn for information.
15. Contact the PLF and the Closing Attorney's excess carrier, if applicable, about extended reporting coverage.
16. If the Closing Attorney is a notary and wishes to resign his or her commission, he or she must file a Termination of Notary Public Commission Due to Resignation with the Oregon Secretary of State (SOS):

"A notary public whose commission was terminated because of resignation shall arrange for the storage of his/her notarial records, in any form and at any location within 30 days following resignation. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records pursuant to OAR 160-100-320(1).

A notary public shall store such records for a period of seven years after the date of resignation. After the seven-year period, the notary public may destroy such records pursuant to OAR 160-100-320(3)."

A notary resignation form is available on the SOS Web site at <http://sos.oregon.gov/business/Documents/notary-forms/termination-of-notary-public-commission.pdf>.

17. If the Closing Attorney is a registered agent for Oregon businesses, deliver a signed, written statement of resignation to the Corporation Division and give notice to the affected businesses.

Businesses must designate a new registered agent and provide that information to the Corporation Division. Failure to do so will result in the administrative dissolution of the business.

For more information and forms, see <http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx>.
18. If the Closing Attorney died, you may wish to speak to family members about submitting memorial notices or obituaries to appropriate publications. *In Memoriam* notices may be submitted to the Editor of the *Oregon State Bar Bulletin*, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281-1935. Family members should also be advised that if the Closing Attorney is a notary, Oregon law requires an heir or personal representative to file the Closing Attorney's notarial records with the SOS within 30 days of death. The notary seal should be destroyed. A Termination of Notary Public Commission Due to Death is available on the SOS Web site at <http://sos.oregon.gov/business/Documents/notary-forms/termination-of-notary-public-commission.pdf>.
19. (*optional*) If you have authorization to handle the Closing Attorney's financial matters, look around the office for checks or funds that have not been deposited. Determine

whether funds should be deposited or returned to clients. (Some of the funds may be for services already rendered.) Get instructions from clients concerning any funds in their trust accounts. These funds should be either returned to the clients or forwarded to their new attorneys. Prepare a final billing statement showing any outstanding fees due and/or any money in trust. (To withdraw money from the Closing Attorney's accounts, you will probably need: (1) to be an Authorized Signer on the accounts; (2) to have a written agreement such as the sample provided on the PLF website; or (3) to have a limited power of attorney. If none of these have been done and the Closing Attorney is dead, disabled, impaired, or incapacitated, you may have to request the Oregon State Bar Board of Governors to petition the court to take jurisdiction over the practice and the accounts pursuant to ORS 9.705 to 9.755. If the Closing Attorney is deceased, another alternative is to petition the court to appoint a personal representative under the probate statutes.) Money from clients for services rendered by the Closing Attorney should go to the Closing Attorney or his/her estate.

20. *(optional)* If you are authorized to do so, handle financial matters, pay business expenses, and liquidate or sell the practice.
21. *(optional)* If your responsibilities include sale of the practice, you may want to advertise in the local bar newsletter, the *Oregon State Bar Bulletin*, and other appropriate places.
22. *(optional)* If your arrangement with the Closing Attorney or estate is that you are to be paid for closing the practice, submit your bill.
23. *(optional)* If your arrangement is to represent the Closing Attorney's clients on their pending cases, obtain each client's consent to represent the client and check for conflicts of interest.

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**CHECKLIST FOR LAWYERS PLANNING TO PROTECT CLIENTS'
INTERESTS IN THE EVENT OF THE LAWYER'S
DEATH, DISABILITY, IMPAIRMENT, OR INCAPACITY**

1. Use retainer agreements that state you have arranged for an Assisting Attorney to close your practice in the event of death, disability, impairment, or incapacity and have arranged for an Authorized Signer to issue refunds from your Lawyer Trust Account. (See sample *Retainer Agreement* available at www.osbplf.org.)
2. Have a thorough and up-to-date office procedure manual that includes information on:
 - a. How to check for a conflict of interest;
 - b. How to use the calendaring system;
 - c. How to generate a list of active client files, including client names, addresses, and phone numbers;
 - d. Where client ledgers for your lawyer trust account are kept; or alternatively, how to pull client trust account balances from your trust accounting software.
 - e. How the open/active files are organized;
 - f. How the closed files are organized and assigned numbers;
 - g. Where the closed files are kept and how to access them;
 - h. The office policy on keeping original client documents;
 - i. Where original client documents are kept;
 - j. Where the safe deposit box is located and how to access it;
 - k. The bank name, address, account signers, and account numbers for all law office bank accounts;
 - l. The location of all law office bank account records (trust and general);
 - m. Where to find, or who knows about, the computer passwords;
 - n. How to access your voice mail (or answering machine) and the access code numbers; and
 - o. Where the post office or other mail service box is located and how to access it.
3. Make sure all your file deadlines (including follow-up deadlines) are calendared.
4. Document your files.
5. Keep your time and billing records up-to-date.
6. Avoid keeping original client documents, such as wills and other estate planning documents.
7. Have a written agreement with an attorney who will close your practice (the "Assisting Attorney") that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict-of-interest issues.
8. If your written agreement authorizes the Assisting Attorney to sign general account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In some instances, you and the Assisting Attorney will have to sign bank forms authorizing the Assisting Attorney to have access to your general account. (See *The Duty to Plan Ahead, Implementing the Plan*, in Chapter 1 of the PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests*.)

9. If your written agreement provides for an Authorized Signer for your trust account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only on the happening of a specific event. In most instances, you and the Authorized Signer will have to sign bank forms providing for access to your trust account. (See *The Duty to Plan Ahead, Access to the Trust Account*, in Chapter 1 of the PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests*.) Choose your Authorized Signer wisely; he or she will have access to your clients' funds.
10. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of office changes.
11. Introduce your Assisting Attorney and/or Authorized Signer to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney and/or Authorized Signer if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Assisting Attorney and/or Authorized Signer knows whom to contact (the landlord, for example) to gain access to your office.
12. Inform your spouse, partner, or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact the Assisting Attorney and/or Authorized Signer.
13. Forward the name, address, and phone number of your Assisting Attorney to the Professional Liability Fund each year:

Professional Liability Fund
Attention: Director of Personal and Practice Management Assistance
16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224
PO Box 231600, Tigard, OR 97281-1600

(See *Notice of Designated Assisting Attorney* provided in Chapter 4 of the PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests*.) This will enable the Professional Liability Fund to locate the Assisting Attorney in the event of your death, disability, impairment, or incapacity.
14. Renew your written agreement with your Assisting Attorney and/or Authorized Signer annually.
15. Review your retainer agreement each year to make sure that the name of your Assisting Attorney is current.
16. Fill out the Law Office List of Contacts practice aid provided in Chapter 4 of the PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests*. Make sure your Assisting Attorney has a copy.

Call the Professional Liability Fund's practice management advisors at 503-639-6911 or 800-452-1639 for assistance or answers to any questions. The PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* is available online at www.osbplf.org or by calling the PLF at the above number.

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LAW OFFICE LIST OF CONTACTS

ATTORNEY NAME: _____ Social Security #: _____

OR State Bar #: _____ Federal Employer ID #: _____ State Tax ID #: _____

Date of Birth: _____

Office Address: _____

Office Phone: _____

Home Address: _____

Home Phone: _____

SPOUSE/PARTNER:

Name: _____

Work Phone: _____

Employer: _____

OFFICE MANAGER:

Name: _____

Home Address: _____

Home Phone: _____

PASSWORDS (FOR COMPUTER SYSTEM, SOFTWARE PROGRAMS, MOBILE DEVICES, WEBSITES, CLOUD-BASED ACCOUNTS, eFILING, VOICEMAIL, OTHER):

(Name of person who knows passwords or location where passwords are stored, such as a safe deposit box)

Name: _____

Home Address: _____

Home Phone: _____

POST OFFICE OR OTHER MAIL SERVICE BOX:

Location: _____

Box No.: _____
Obtain Key From: _____
Address: _____

Phone: _____
Other Signatory: _____
Address: _____

Phone: _____

LEGAL ASSISTANT/SECRETARY:

Name: _____
Home Address: _____

Home Phone: _____

BOOKKEEPER:

Name: _____
Home Address: _____

Home Phone: _____

LANDLORD:

Name: _____
Address: _____

Phone: _____

PERSONAL REPRESENTATIVE:

Name: _____
Address: _____

Phone: _____

ATTORNEY:

Name: _____
Address: _____

Phone: _____

ACCOUNTANT:

Name: _____
Address: _____

Phone: _____

ATTORNEYS TO HELP WITH PRACTICE CLOSURE:

First Choice: _____
Address: _____

Phone: _____

Second Choice: _____
Address: _____

Phone: _____

Third Choice: _____
Address: _____

Phone: _____

LOCATION OF WILL AND/OR TRUST:

Access Will and/or Trust
by Contacting:

Address:

Phone:

PROFESSIONAL CORPORATIONS:

Corporate Name:

Date Incorporated:

Location of Corporate
Minute Book:

Location of Corporate
Seal:

Location of Corporate
Stock Certificate:

Location of Corporate
Tax Returns:

Fiscal Year-End
Date:

Corporate Attorney:

Address:

Phone:

PROCESS SERVICE COMPANY:

Name:

Address:

Phone:

Contact:

OFFICE-SHARER OR OF COUNSEL:

Name: _____

Address: _____

Phone: _____

Name: _____

Address: _____

Phone: _____

OFFICE PROPERTY/LIABILITY COVERAGE:

Insurer: _____

Address: _____

Phone: _____

Policy No.: _____

Contact Person: _____

OTHER IMPORTANT CONTACTS:

Name: _____

Address: _____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

Phone: _____

Reason for Contact: _____

Name: _____

Address: _____

Phone: _____

Reason for Contact: _____

GENERAL LIABILITY COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LEGAL MALPRACTICE – PRIMARY COVERAGE:

Provider: Professional Liability Fund
Address: P.O. Box 231600
Tigard, Oregon 97281-1600
Phone: 503-639-6911 or 800-452-1639

LEGAL MALPRACTICE – EXCESS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

VALUABLE PAPERS COVERAGE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

OFFICE OVERHEAD/DISABILITY INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

HEALTH INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Persons Covered: _____
Contact Person: _____

DISABILITY INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

LIFE INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

WORKERS' COMPENSATION INSURANCE:

Insurer: _____
Address: _____

Phone: _____
Policy No.: _____
Contact Person: _____

CLOUD-BASED STORAGE:

Cloud Provider: _____ Account No.: _____

Address: _____

Phone: _____

Location of Password (if not included on page one): _____

Cloud Provider: _____ Account No.: _____

Address: _____

Phone: _____

Location of Password (if not included on page one): _____

STORAGE LOCKER LOCATION: (Continued on next page)

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

STORAGE LOCKER LOCATION: (Continued)

Items Stored: _____

Where Inventory of Files Can Be Found: _____

Storage Company: _____ Locker No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Items Stored: _____

Where Inventory of Files Can Be Found: _____

SAFE DEPOSIT BOXES: (Continued on next page)

Institution: _____

Box No.: _____

Address: _____

Phone: _____

Obtain Key From: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

Items Stored: _____

SAFE DEPOSIT BOXES: (Continued)

Institution:	
Box No.:	
Address:	
Phone:	
Obtain Key From:	
Address:	
Phone:	
Other Signatory:	
Address:	
Phone:	
Items Stored:	
Institution:	
Box No.:	
Address:	
Phone:	
Obtain Key From:	
Address:	
Phone:	
Other Signatory:	
Address:	
Phone:	
Items Stored:	

LEASES:

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

Item Leased: _____

Lessor: _____

Address: _____

Phone: _____

Expiration Date: _____

LAWYER TRUST ACCOUNT: (Continued on next page)

IOLTA: _____

Institution: _____

Address: _____

Phone: _____

LAWYER TRUST ACCOUNT: (Continued)

Account No.: _____
Other Signatory: _____
Address: _____

Phone: _____

INDIVIDUAL TRUST ACCOUNT:

Name of Client: _____
Institution: _____
Address: _____

Phone: _____
Account No.: _____
Other Signatory: _____
Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT: (Continued on next page)

Institution: _____
Address: _____

Phone: _____
Account No.: _____
Other Signatory: _____
Address: _____

Phone: _____

Institution: _____
Address: _____

Phone: _____

GENERAL OPERATING ACCOUNT: (Continued)

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

BUSINESS CREDIT CARD:

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

Institution: _____

Address: _____

Phone: _____

Account No.: _____

Other Signatory: _____

Address: _____

Phone: _____

MAINTENANCE CONTRACTS:

Item Covered: _____

Vendor: _____

Address: _____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

Phone: _____

Expiration: _____

Item Covered: _____

Vendor: _____

Address: _____

Phone: _____

Expiration: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES: (Continued on next page)

State of: _____

Bar Address: _____

Phone: _____

Bar ID No.: _____

State of: _____

Bar Address: _____

Phone: _____

Bar ID No.: _____

ALSO ADMITTED TO PRACTICE IN THE FOLLOWING STATES: (Continued)

State of: _____

Bar Address: _____

Phone: _____

Bar ID No.: _____

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CHECKLIST FOR LAWYERS PLANNING TO SELL THEIR LAW PRACTICES

Screen the Buying Lawyer

1. Screen the buying lawyer for skills, experience, and competence. Ask for a resume, personal and professional references, and names of staff and other lawyers with whom the transitioning lawyer has worked. You may want to observe the buying lawyer's court or administrative appearances.
2. Verify the buying lawyer's bar admission.
3. Research the buying lawyer's reputation. Talk to people with whom the buying lawyer has had contact as co-counsel, as an adversary, through participation in bar groups, in the community, or elsewhere. Speak to personal and professional references provided to you by the buying lawyer.
4. Research the buying lawyer's discipline history on the Oregon State Bar website. (Find the lawyer in the online Member Directory and select "Show Discipline History.") To review disciplinary files of the buying lawyer, complete the request form available here https://www.osbar.org/secured/review_request.asp.
5. Ask the buying lawyer to request a list of his or her legal malpractice claims history from the Professional Liability Fund (PLF) and provide it to you. NOTE: Although it is helpful to discuss and look over the lawyer's malpractice claims history, please keep in mind some important things. (1) The only information that the PLF will provide to the lawyer is a list with the date of the malpractice claim, the claimant, and the amount of money paid on the claim. (2) If the claim is a currently pending, the lawyer who is the subject of the claim will be unable to discuss the facts of the case with you or anyone else. (3) In addition, the PLF wants all lawyers to be mindful that malpractice claims are not necessarily an indicator of the lawyer's legal skills or character. Professionally, the odds are that every lawyer will have one or more malpractice claims during the course of his or her career.
6. Discuss the following issues with the buying lawyer:
 - a. Why does the buying lawyer want to purchase a law practice?
 - b. What is the buying lawyer's experience?
 - c. What are the buying lawyer's professional goals?
 - d. What is the buying lawyer's philosophy toward clients and the practice of law?
 - e. What kind of office systems has the buying lawyer used? What technology is he/she familiar with?
 - f. Does the buying lawyer have an existing client base and office systems that need to be incorporated into the selling lawyer's practice as part of the transition?
 - g. Does the buying lawyer have excess coverage with the PLF or another carrier? (All lawyers in private practice in Oregon are required to carry minimum coverage of \$300,000 indemnity/\$50,000 claims expense annually under the PLF primary claims made plan. For more information, visit the PLF website, <https://www.osbplf.org/about-plf/overview.html>.)
 - h. Is the buying lawyer involved in any state or local bar sections or committees? Other activities in the community?

Understand Your Obligations Under the Rules of Professional Conduct

1. Oregon lawyers may sell all or part of a law practice, including goodwill. ORPC 1.17(a).

CHECKLIST FOR LAWYERS PLANNING TO SELL THEIR LAW PRACTICES

2. There is no prohibition against payments to a selling lawyer for the sale of a law practice in accordance with ORPC 1.17. ORPC 1.5(e).
3. It is permissible for a selling lawyer to reveal the following information to a potential buyer of the practice provided it does not compromise the attorney-client privilege or otherwise prejudice any of the clients:
 - a. The client's identity;
 - b. The identities of any adverse parties;
 - c. The nature and extent of the legal services involved; and
 - d. Fee and payment information.

See ORPC 1.6(b)(6) for complete details.

4. Potential buying lawyers should screen for possible conflicts of interest involving the selling lawyer's clients.
5. Provide written notice of the proposed sale to each of your current clients whose legal work is subject to the transfer. ORPC 1.17(b). The notice must include the following information:
 - a. That a sale is proposed;
 - b. The identity of the buying lawyer or law firm, including office address and brief description of the size and nature of the buying lawyer's or law firm's practice;
 - c. That the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the lawyer or law firm;
 - d. That the client's legal work will be transferred to the buying lawyer or law firm, who will then take over the presentation and act on the client's behalf, if the client does not object to the transfer with forty-five (45) days after the date the notice was mailed; and
 - e. Whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.
6. Send the notices by certified mail, return receipt requested, to the clients' last known addresses. ORPC 1.17(b).
7. If certified mail is not effective to give a client notice, the selling lawyer must take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required. ORPC 1.17(d).
8. The notice may describe the buying lawyer's or law firm's qualifications, including the selling lawyer's opinion of the buying lawyer's or law firm's suitability and competence to assume representation of the client, *but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion*. ORPC 1.17(c).
9. A client's consent to the transfer of its legal work to the buying lawyer or law firm will be *presumed* if no objection is received within forty-five (45) days after the date the notice was mailed.
10. If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made. ORPC 1.17(f)

CHECKLIST FOR LAWYERS PLANNING TO SELL THEIR LAW PRACTICES

11. *Practice Tip:* Selling lawyers should prepare a current client list to use in monitoring the progress of transferring clients. If any client objects to the transfer of its legal work, a note can be made on the current client list. This same list can be used to track the preparation and submission of substitutions of counsel for clients whose work is transferred without objection.
12. If a client objects to the transfer of its legal work, the selling lawyer should review ORPC 1.16 – Declining or Terminating Representation – if the selling lawyer intends to withdraw prior to concluding the client’s matter. Also, see OSB Formal Opinion 2011-185 – Withdrawal from Litigation: Client Confidences.
13. The fees charged clients shall not be increased by reason of the sale except upon agreement of the client. ORPC 1.17(g).
14. The sale of a law practice may be conditioned on the selling lawyer’s ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted. ORPC 1.17(h). The selling lawyer may wish to include terms in the sales agreement that permit the selling lawyer to continue working on the legal matters of any clients who object to the transfer of their work
15. A buying lawyer or law firm may use in a firm name the names or names of one or more of the retiring, deceased, or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.
See ORPC 7.1 and 7.5(a).

Preparing for and Selling Your Law Practice

1. Consider hiring a business attorney and a business valuation expert who can assist you in the valuation of your business. See the PLF practice aid, *Resources for Lawyers Planning to Sell Their Law Practices*, available on the PLF web site, www.osbplf.org. Consider such factors as:
 - a. Terms of payment;
 - b. Geography;
 - c. Nature of the practice;
 - d. History of client retention by the selling firm;
 - e. Size of practice;
 - f. Whether the client base will remain with the buying attorney for a designated period of time; and
 - g. Whether an earn-out or pay-out based on collections can be created assuring the buyer that payments will be made only for designated revenues received.
2. Determine sales price and terms.
3. Prepare a sales timeline that complies with ORPC 1.17.
4. Advertise the sale of your practice in the *Oregon State Bar Bulletin*, online in the Oregon State Bar Career Center, <http://www.osbar.org/osbcenter/careerintro.html>, in your local bar newsletter, and other sites as desired.

CHECKLIST FOR LAWYERS PLANNING TO SELL THEIR LAW PRACTICES

5. If office furniture, equipment, or library materials are not included in the sale of your practice, place a separate ad for these items in the *Oregon State Bar Bulletin*, your local bar newsletter, or on the Web through resources such as Craigslist, <http://geo.craigslist.org/iso/us/or>.

Resources

1. Review the following PLF materials for other pertinent steps:
 - Closing Your Law Office – Checklists, sample letters, resources
 - File Management – File Retention Guidelines (also in Closing Your Law Office)
 - Retiring from Law Practice – Checklist, resources
 - Selling Your Law Practice – Resources for Lawyers Planning to Sell Their Law Practices
 - Trust Accounting – Closing Your IOLTA Account (also in Closing Your Law Office)

These resources are available on the PLF Web site, www.osbplf.org. Select Practice Management, then Forms.

2. The Oregon Rules of Professional Conduct (ORPCs) may be found at <http://www.osbar.org/docs/rulesregs/orpc.pdf>.
3. The Oregon State Bar Formal Ethics Opinion Library is available here: <http://www.osbar.org/ethics/toc.html>.
4. Review the Checklist for Buying a Law Practice, also available on the PLF website, www.osbplf.org, to learn about the sale of a law practice from the buyer's perspective. Select Practice Management, then Forms.
5. Call the PLF practice management advisors at 503-639-6911 or 800-452-1639 for assistance or answers to any questions.

IMPORTANT NOTICES

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**NOTICE OF DESIGNATED
ASSISTING ATTORNEY**

I, _____, have authorized the following attorneys to assist with the closure of my practice:

Name of Authorized Assisting Attorney: _____

Address: _____

Phone Number: _____

Name of Assisting Attorney's Alternate: _____

Address: _____

Phone Number: _____

I, _____, have made arrangements with my financial institution to have an authorized signer on my Lawyer Trust Account:

Name of Authorized Signer on Lawyer Trust Account: _____

Address: _____

Phone Number: _____

[Planning Attorney]

[Date]

[Assisting Attorney]

[Date]

[Alternate Assisting Attorney]

[Date]

[Authorized Signer on Lawyer Trust Account]

[Date]

Mail this form to:

Director of Personal and Practice Management Assistance
Professional Liability Fund
PO Box 231600, Tigard, OR 97281-1600

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NOTICE OF DESIGNATED AUTHORIZED SIGNER

I, _____, have authorized the following [attorneys] to sign on my lawyer trust account(s) upon the closure of my practice:

Name of Authorized Signer for Trust Account(s): _____

Address: _____

Phone Number: _____

Name of Authorized Signer's Alternate: _____

Address: _____

Phone Number: _____

[Planning Attorney]

[Date]

[Authorized Signer]

[Date]

[Alternate Authorized Signer]

[Date]

[NOTE: This form may be used in lieu of, or in addition to, the Notice of Designated Assisting Attorney. If you have selected an Assisting Attorney to help in the closure of your practice and added someone as an Authorized Signer on your lawyer trust account, you should communicate your choices to your family, the Assisting Attorney, the Authorized Signer, and any designated alternates to avoid confusion. Please provide a copy of this form to the Professional Liability Fund so that they will know whom to contact if there are questions regarding your lawyer trust account.]

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Oregon State Bar Bulletin — NOVEMBER 2014

November Issue ▼

Bar Counsel

**The "Graying" of the Profession:
The Ethical Implications of Aging**
By Amber Hollister

"When I was younger, I could remember anything, whether it had happened or not; but my faculties are decaying now and soon I shall be so I cannot remember any but the things that never happened."

— Autobiography of Mark Twain

The lucky among us age. Approximately one-quarter of active Oregon bar members are 60 or older now as of this writing. Unquestionably, this depth of experience and wisdom strengthens Oregon's legal community. But with advancing age may come unexpected accidents, illnesses and cognitive issues. Given those potential challenges, what are the ethical implications of aging for lawyers, their supervisors and their colleagues?

Attorneys typically retain their formidable intellects as the decades fly by. But, on occasion, partners or colleagues may realize an attorney is experiencing memory or cognitive issues. Ethics issues associated with aging are bound to arise. It may seem easier to ignore a problem and hope it will solve itself. But overlooking a colleague's possible cognitive deficit may be an unwise choice that leads to unintended consequences.

As ABA Formal Ethics Opinion No. 03-429 explains, "Impaired lawyers have the same obligations under the [Rules of Professional Conduct] as other lawyers. Simply stated, mental impairment does not lessen a lawyer's obligation to provide clients with competent representation." A bedrock principle of professional responsibility is that lawyers must provide competent and diligent representation to clients. A lawyer who is coping with any form of mental impairment or diminished capacity may lack the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." RPC 1.1. Alternately, the lawyer may neglect a legal matter entrusted to the lawyer, fail to keep clients reasonably informed about the status of a matter or fail to respond promptly to client inquiries. RPC 1.3; 1.4. All of these problems may lead to disciplinary complaints or client harm.

At some point, a cognitive impairment may become so serious that it triggers a lawyer's ethical obligation to stop representing clients. Rule 1.16(a)(2) plainly states that a lawyer must not commence representation of a client or continue representation of a client if the lawyer's "physical or mental condition materially impairs the lawyer's ability to represent the client." But an impaired attorney may not always realize when it is time to cease representation. As noted in a recent North Carolina ethics opinion, "Unfortunately, an impaired lawyer may not be aware or may deny that his impairment is negatively impacting his ability to represent clients." N.C. State Bar Ethics Comm., Op. 2013-8. When that happens, what comes next?

The Duty of Law Firm Supervisors

Once a lawyer's partners or supervising lawyers realize that a lawyer is confused, experiencing significant memory loss or otherwise materially impaired, they must take steps to protect the interests of firm clients or risk violating their own ethical obligations. RPC 5.1(b). Establishing internal firm policies and procedures designed to provide "reasonable assurance" that all lawyers in the firm meet their ethical obligations, such as tickle systems, legal assistant participation and reliable conflict checks, is a good first step to prevent potential problems. See Comment [2] to ABA Model Rule 5.1; OSB Formal Ethics Op 2007-178. But when generalized measures are not enough to prevent client harm, supervisors of an impaired lawyer must take further action. Partners and other supervisory lawyers, including firm directors or managers, will be deemed personally responsible for an impaired lawyer's misconduct if they know "...of conduct at a time when its consequences can be avoided or mitigated but fail[] to take reasonable remedial action." RPC 5.1(b); RPC 1.0(h) (defining *knows* to mean actual knowledge of the fact in question, although a person's knowledge may be inferred from circumstances).



An impaired lawyer's mental condition might be hard to gauge. Cognitive impairments may change on a day-to-day basis, or be episodic in nature. For this reason, ABA Formal Ethics Opinion No. 03-429 suggests that when confronted with evidence of a lawyer's apparent mental impairment, "it may be helpful for partners or supervising lawyers to consult with an experienced psychiatrist, psychologist or other appropriately trained mental health professional." After all, not all conditions may interfere with a lawyers' ability to provide competent and diligent representation. Other conditions may improve or resolve with treatment.

Depending on the nature and severity of the impairment, it may very well be possible to accommodate a cognitive impairment by changing the type of legal work a lawyer performs or increasing the supervision or support provided to the lawyer.¹ As ABA Formal Ethics Opinion No. 03-429 explains:

A lawyer who, because of his mental impairment is unable to perform tasks under strict deadlines or other pressures, might be able to function in compliance with the [Rules of Professional Conduct] if he can work in an unpressured environment. In addition, the type of work involved, as opposed to the circumstances under which the work occurs, might need to be examined when considering the effect that an impairment might have on a lawyer's performance.

But, ultimately, the lawyer must be able to exercise the professional judgment necessary to continue the practice of law.

Next Steps

When a lawyer discovers that a colleague may be experiencing a cognitive impairment that impacts the colleague's ability to practice law, there are several options. The lawyer may choose to have a frank conversation with the colleague about the lawyer's concerns. Hearing from trusted and respected colleagues may be enough to convince the lawyer to get help. The Oregon Attorney Assistance Program is available to provide confidential advice and counsel in these sensitive situations.

Making a confidential referral to the State Lawyer's Assistance Committee (SLAC) may also be an appropriate step. SLAC has the authority to investigate an alleged impairment; if a lawyer's ability to practice is impaired, SLAC can direct the lawyer to undergo treatment recommended by medical professionals or obtain practice management assistance. ORS 9.568. Lawyers who do not cooperate with SLAC may be referred to discipline for noncooperation. RPC 8.1(c).

Depending on the circumstances, a lawyer may have an obligation to alert disciplinary counsel regarding another lawyer who is experiencing a serious cognitive impairment, but refuses to withdraw from representing clients. As detailed in last month's bar counsel column, "Other People's Mistakes: Dealing with Missteps by Colleagues and Opposing Counsel," the Rules of Professional Conduct require attorneys to report other attorneys to the bar when they "know" another attorney has committed a violation of an ethical rule that "raises a substantial question as to that lawyer's honest, trustworthiness or fitness as a lawyer on other respects." RPC 8.3(a).

The duty to report would likely be implicated when a lawyer knows another "lawyer's physical or mental condition materially impairs the ability to represent [a] client" but has refused to withdraw from the representation. RPC 1.16(a)(2). Under such circumstances, there is likely a substantial question about the lawyer's "fitness as a lawyer." RPC 8.3(a).

Planning for a Graceful Exit

All lawyers want to execute a graceful exit from the legal profession. To this end, lawyers should plan now for the possibility that they may unexpectedly become incapacitated. As the Legal Ethics Committee explains in OSB Legal Ethics Op 2005-129, a lawyer's duty of competent representation includes arranging to safeguard clients' interests in the event of the lawyer's impairment, incapacity or death. RPC 1.1.

This duty is especially pressing for a lawyer who has no partners, associates or employees. Absent advance planning, if a sole practitioner with no staff becomes incapacitated there may be a significant lapse of time after the problem arises during which the lawyer's clients' needs are not met. As the committee explains, "The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such circumstances."

The committee notes the most basic plan could be simply to direct another person to initiate custodianship proceedings in the event of the lawyer's incapacity or death so the court can appoint a custodian to take over and wind-up the law practice. See ORS 9.705-9.755. But having a more comprehensive plan is encouraged, and will often do more to protect clients' interests. The Professional Liability Fund's guide, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, provides detailed information about the steps practicing attorneys can take to plan for possible incapacity, including age-related impairments. The guide is available at no cost to members on BarBooks online or as a hard copy from the Professional Liability Fund.

After devoting their considerable time, talents and energy to the legal profession, lawyers want to make a dignified exit from the practice of law. Being aware of the ethics issues associated with aging can help all lawyers achieve this goal.

To read more on this subject, see "[Ready or Not: When Colleagues Experience Cognitive Decline](#)" in this issue of the Bulletin.

Endnote

1. Whether a lawyer experiencing an impairment is entitled to accommodations under the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended, or its state law equivalent, ORS Chapter 659A, is outside the scope of this article.

ABOUT THE AUTHOR

Amber Hollister is deputy general counsel for the Oregon State Bar. She can be reached at (503) 620-0222, or toll-free in Oregon at (800) 452-8260, ext. 312, or by email at ahollister@osbar.org.

[Ethics opinions are published and updated on the bar's website here.](#)

[An archive of Bar Counsel articles is available here.](#)

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FORMAL OPINION NO 2005-129

[REVISED 2014]

Competent Representation, Information Relating to the Representation of a Client: Responsibilities on Death of a Sole Practitioner

Facts:

Lawyer is a sole practitioner with no partners, associates, or employees. Lawyer's files contain information relating to the representation of clients.

Questions:

1. Must Lawyer take steps to safeguard the interests of Lawyer's clients, and the information relating to their representations, if Lawyer dies or is disabled?
2. If Lawyer makes arrangements for a successor lawyer to disburse his or her files if Lawyer dies or becomes disabled, what steps must or may the successor lawyer undertake?

Conclusions:

1. See discussion.
2. See discussion.

Discussion:

Oregon RPC 1.1 provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Oregon RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the

disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).¹

¹ Oregon RPC 1.6(b) provides:

A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except

ORS 9.705 to 9.755 set forth a statutory scheme pursuant to which a nonperforming lawyer's law practice may be placed under the jurisdiction of the court and steps taken to protect the interests of the nonperforming lawyer's clients. For a lawyer who has no partners, associates, or employees, however, there could well be a significant lapse of time after the lawyer's death or disability during which the lawyer's telephone would go unanswered, mail would be unopened, deadlines would not be met, and the like.

The duty of competent representation includes, at a minimum, making sure that someone will step in to avoid client prejudice in such

to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

(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 Oregon RPC 5.3:

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

circumstances. The person may, but need not, be a lawyer. Depending on the circumstances, it may be sufficient to instruct the person that if the lawyer dies or becomes disabled, the person should contact the presiding judge of the county circuit court so that the procedure set forth in ORS 9.705 to 9.755 can be commenced.² The person also should be instructed, however, about the lawyer's duties to protect information relating to the representation of a client pursuant to Oregon RPC 1.6. *Cf.* OSB Formal Ethics Op No 2005-50 (rev 2014); OSB Formal Ethics Op No 2005-44; OSB Formal Ethics Op No 2005-23 (rev 2014).

A lawyer may, however, go further than this and may specifically arrange for another lawyer to come in and disburse the lawyer's files if the lawyer dies or becomes disabled. Nothing in ORS 9.705 to 9.755 makes it the exclusive means of handling such circumstances. Like a court-appointed custodial lawyer, a voluntary lawyer must be mindful of the need to protect the client's confidential information. Also like a court-appointed custodial lawyer, the voluntary lawyer must promptly inform the clients of the sole practitioner that the voluntary lawyer has possession of the client's files and must inquire what the clients wish the voluntary lawyer to do with the files. Unlike the court-appointed custodial lawyer, however, the voluntary lawyer may offer in writing to take over the work of the lawyer's clients, if the voluntary lawyer complies with Oregon RPC 7.3 on solicitation of clients.³ *Cf.* ORS 9.730; OSB Formal Ethics Op No 2005-127 (rev 2015).

² There may be circumstances, however, in which the lawyer must do more. This would be true if, for example, a client were to request that particular steps be taken. It would also be true if the lawyer learns in advance that he or she would be able to continue practicing law for only a limited additional time. In this event, the lawyer should begin the process of notifying the lawyer's clients as soon as possible to inquire how each client wishes to have his or her files handled.

³ The voluntary lawyer could not do so if, for example, the voluntary lawyer is not qualified to handle the work in question or if doing so would create conflict-of-interest problems under Oregon RPC 1.7. *Cf.* Oregon RPC 1.1; OSB Formal Ethics Op No 2005-119; OSB Formal Ethics Op No 2005-110. With regard to the sale of a law practice, see Oregon RPC 1.17.

Approved by Board of Governors, April 2014.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 7.2 to § 7.2-8 (competence) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 16, 59–60 (2000) (supplemented periodically); ABA Model RPC 1.1; and ABA Model RPC 1.6.

Oregon State Bar Bulletin — JUNE 2015

June Issue ▼

Bar Counsel

Dreaming of Retirement?:

Plan an Exit Strategy

By Helen Hierschbiel

During my 24 years as a lawyer, I have heard many sad stories from clients. One involved a woman, Sara, who was getting a divorce from her abusive husband after 40 years of marriage. Although she was strong in her decision to finally leave her husband, she was insecure and scared about what the future held. She was 65 years old and had never hired a lawyer. With her children's help, Sara hired Jim, a lawyer with many years of experience, whom she felt understood and would be a strong advocate for her. Sara's trust in Jim helped build her confidence in herself. Jim filed the petition for dissolution and served the husband. Then, just one month after Sara hired him, Jim told Sara that he would be retiring in a month and his partner Jane would be taking over his practice. Sara was stunned. She met with Jane, but did not feel the same connection or trust that she had with Jim. In the course of a month, Sara went from feeling good about taking the first difficult steps toward beginning her new life to feeling defeated.

With all the planning needed for retirement, it can be easy for lawyers to overlook client needs. In Sara's case, Jim should have disclosed his intent to retire before undertaking the representation. Lawyers are required to explain matters to the extent reasonably necessary to permit clients to make informed decisions. RPC 1.4(b). One of the most important decisions a client makes is whom to hire, and whether the lawyer plans to withdraw within a couple of months is certainly relevant — if not critical — information for a client to have before making that decision. Understandably, Jim may have been interested in signing on new clients, so that he could pass on a vibrant practice to his partner. Not disclosing material information about the lawyer or the lawyer's services to a new client, however, may also violate RPC 7.1(a).



Selling a Law Practice

The historical prohibition against selling all or part of a law practice has fallen away, provided that lawyers follow the provisions of Oregon RPC 1.17. The rule carries forward the traditional notions that the practice of law is a profession, not merely a business, and that clients are not commodities. See ABA Model Rule 1.17, Comment (1).

Hence, one critical element of the rule is the requirement to notify current clients. The selling lawyer must send notice, by certified mail, return receipt requested, to all current clients at least 45 days prior to the transfer. (ABA Model Rule 1.17 requires 90 days' notice.) The notice must include the following information: 1) that a sale is proposed; 2) the name and address of the buyer; 3) a brief description of the size and nature of the buyer's law practice; 4) that the client may object to the transfer of his or her file, and instead take possession of the file and any other client property, and retain other counsel; 5) that if the client does not object within 45 days, the file and property will be transferred to the buyer, who will then take over representation; and 6) whether the selling lawyer plans to withdraw even if the client objects to the transfer. RPC 1.17(b). If certified mail does not provide effective notice to the client, then the selling lawyer must take reasonable steps to give the client actual notice of the sale and the information required in RPC 1.17(b).

Another key element is that the fees charged to clients cannot be increased as a result of the sale of the law practice unless the client agrees. See RPC 1.17(g).

Oregon RPC 1.17 allows lawyers to do some things in conjunction with the sale of a law practice that they would not otherwise be allowed to do under the rules of professional conduct. For example, the sale of a law practice can be conditioned on the selling lawyer ceasing to engage in the private practice of law for a reasonable period of time within the geographic area the practice has served. RPC 1.17(h). Normally, agreements that restrict a lawyer's right to practice are prohibited. RPC 5.6.

In addition, the selling lawyer may include in the notice to clients his or her opinion about the buyer's suitability or competence to represent the client. RPC 1.17(c). This is a specific exception to the general prohibition of lawyers giving something of value to a person for recommending the lawyer's services. RPC 7.2(b)(3).

Lawyers selling their practice may also disclose information relating to the representation of a client to the extent they reasonably believe is necessary to facilitate the sales transaction. RPC 1.6(b)(6). However, lawyers may only disclose information necessary to detect and resolve conflicts, such as the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information. Moreover, lawyers may not disclose even this information if doing so would compromise privilege or cause some other prejudice to the clients. Disclosure of the file materials themselves requires client consent. See RPC 1.17(b); ABA Model Rule 1.17 Comment (7).

Finally, a lawyer's estate or representative may sell — and receive payment for — the lawyer's practice even after his death, disability or disappearance, notwithstanding the general prohibition against sharing legal fees with a nonlawyer. See RPC 5.4(a)(2).

Note that this rule does not apply to retirement from a law partnership and therefore would not have applied to Jim. Model Rule Comment 14.

Several resources exist for lawyers interested in selling their law practices. The Professional Liability Fund has a checklist for lawyers planning to sell their practice, as well as a resource guide, both of which you can find at www.osbplf.org/practice-management/forms.html. In addition, the Oregon State Bar sponsored a CLE program in November 2013 titled [Buying, Selling or Transferring a Solo or Small Firm Practice](#). See also "[Succeeding at Succession](#)" by Cliff Collins.

Other Exit Options

Some lawyers may choose not to sell their practices but to wind down and close them. There are ethical considerations for lawyers contemplating this exit option as well. Lawyers in this situation likely will not want to take on new cases that they cannot finish prior to their planned retirement date. To the extent that they do take new cases, they should apprise prospective clients of their future retirement plans. See RPC 1.4.

For existing clients, lawyers will need to decide whether to finish the work the client hired them to do or seek to withdraw from the representation. A lawyer is required to withdraw if the lawyer's physical or mental condition is such that the lawyer can no longer effectively represent the client. See RPC 1.16(a)(2). But lawyers are also permitted to withdraw for any of the reasons listed in RPC 1.16(b). Although retirement is not specifically listed, RPC 1.16(b)(1) allows withdrawal when it can be accomplished without material adverse effect on the interests of the client. In addition, RPC 1.16(b)(7) allows for withdrawal whenever good cause exists.

Upon withdrawal, RPC 1.16(d) requires that the lawyer take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees or expenses that have not been earned or incurred.

What notice is reasonable and what steps are reasonably practicable to protect clients' interests will depend on the particular case. Reasonable notice may not be possible in litigation matters if there are short and sensitive timelines that cannot be extended. In such cases, lawyers may not be allowed to withdraw. On the other hand, if there is sufficient time for the client to hire substitute counsel and any existing deadlines are either far in the future or easily continued without prejudice to the client, then withdrawal is a reasonable option.

Cleaning Up

While it is easy enough to return files to clients whose matters have just recently closed, what should lawyers do with files that have been closed for years? Can they simply shred them? It depends. If the file contains original documents, such as a deed or will, then those originals must be returned to the client. Ideally, lawyers should deliver all original documents prepared for or received from a client at the termination of the representation. Additionally, lawyers should spell out in either their engagement or disengagement letters how long they will keep the other file materials. If they have done this, then the file can be destroyed at the expiration of the time period identified without further notice to the client. Otherwise, destroying the file without giving the client the option to retrieve materials puts the lawyer at risk of violating responsibilities to safeguard client property. RPC 1.15-1(a).

Trust accounts also must be properly handled. Any money left in the lawyer's trust account should be returned to its rightful owner. If an owner cannot be identified or does not claim the funds, the lawyer should consider whether the money qualifies as "abandoned" under the Uniform Disposition of Unclaimed Property Act, ORS 98.302-98.436. If so, it should be disbursed to the Oregon State Bar. See ORS 98.386 and OSB Formal Ethics Op No 2005-48. Once all trust account funds are disbursed, the account may be closed; records of trust account funds, however, must be retained five years after termination of the representation. See RPC 1.15-1(a).

Again, the PLF is a great resource for materials on closing a law practice. Search for PLF Forms on the PLF website under the category "Closing Your Law Office." Among the documents listed is the [PLF Retention and Destruction Guide](#), which provides information about how long files should be retained.

Exiting with No Plan

As good as lawyers may be at counseling their clients about planning for the unexpected, they don't always plan so well for themselves. Sometimes the sudden death or disability of a lawyer precludes continuation of the law practice. ORS 9.705-9.755 sets forth a process by which a lawyer's practice may be placed under the jurisdiction of the court and steps taken to protect the interests of the clients. The bar recently sought changes to this statute to streamline the process and provide for custodianship and disposition of wills and trust accounts.

Even though the custodianship process exists, it is best for lawyers to plan for the unexpected in order to minimize harm to clients. Although Oregon does not have a specific rule that requires planning ahead, it is arguable that the duty of competent representation (RPC 1.1) requires lawyers to at least appoint someone to step in and safeguard the clients' interests in the event the lawyer

suddenly dies or becomes disabled. See OSB Formal Op No 2005-129. For help with planning ahead, take a look at the PLF handbook, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*.

[In the End](#)

Sara's story had a happy ending. She found a new lawyer, Martina, to represent her. Martina also saw retirement on the horizon, but assured Sara that she would see the case through to the end. Martina stayed true to her promise and was a great advocate for Sara both in and outside the courtroom. Sara now lives a happy life, free from abuse and secure in her future.

ABOUT THE AUTHOR

Helen Hierschbiel is general counsel for the Oregon State Bar. She can be reached at (503) 620-0222, or (800) 452-8260, ext. 413, or by email at hhierschbiel@osbar.org.

[Ethics opinions are published and updated on the bar's website here.](#)

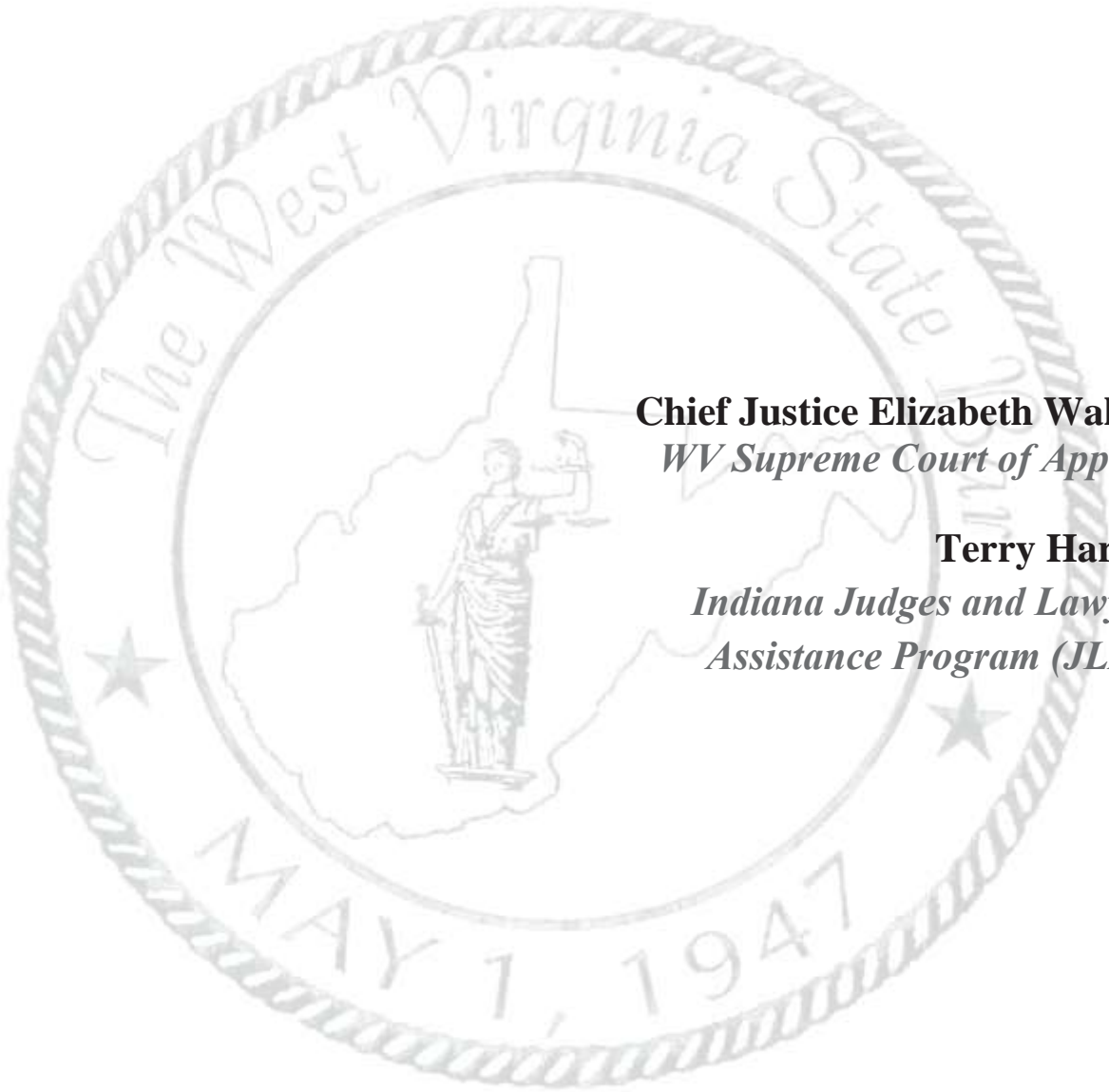
[An archive of Bar Counsel articles is available here.](#)

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— [return to Table of Contents](#)

***The Lawyer Well-Being Movement:
What it means for all of us***



Chief Justice Elizabeth Walker
WV Supreme Court of Appeals

Terry Harrell
*Indiana Judges and Lawyers
Assistance Program (JLAP)*



WEST VIRGINIA JUDICIARY

Chief Justice Elizabeth D. Walker

Search Search



Chief Justice Elizabeth "Beth" D. Walker was elected to the Supreme Court of Appeals of West Virginia on May 10, 2016, becoming the first Justice elected in a non-partisan race. She took office on January 1, 2017.

Chief Justice Walker was raised in Huron, Ohio. She is a 1987 *summa cum laude* graduate of Hillsdale College in Hillsdale, Michigan. She earned her law degree in 1990 from The Ohio State University, where she was Articles Editor for *The Ohio State Law Journal*. During her years of private practice, she participated in courses offered by the Program on Negotiation at Harvard Law School, including its Mediation Workshop.

Immediately after graduating from law school, Chief Justice Walker moved to West Virginia and joined the law firm of Bowles Rice McDavid Graff & Love (now Bowles Rice) in Charleston. During her twenty-two years at Bowles Rice, she concentrated her statewide practice on labor and employment law and mediation. Chief Justice Walker served on the firm's Executive Committee and in several other leadership roles.

After moving from Charleston to Morgantown in 2011, Chief Justice Walker became Associate General Counsel for the West Virginia United Health System (also known as West Virginia University Medicine). In that role, she advised WVU Medicine's hospitals and other affiliates regarding labor and employment matters from 2012 until she resigned in 2016 to take office.

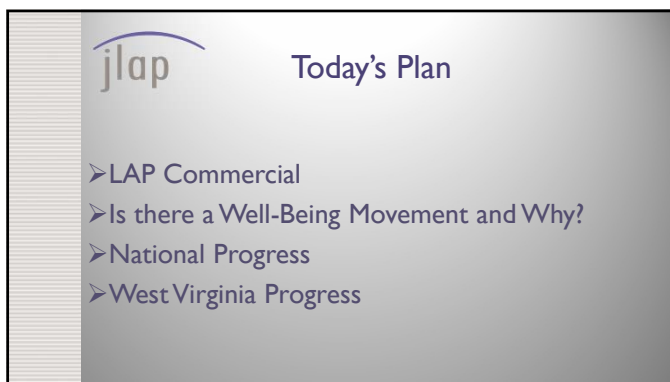
In 2012, Chief Justice Walker was elected a Fellow of the College of Labor and Employment Lawyers. She is a 1999 graduate of Leadership West Virginia.

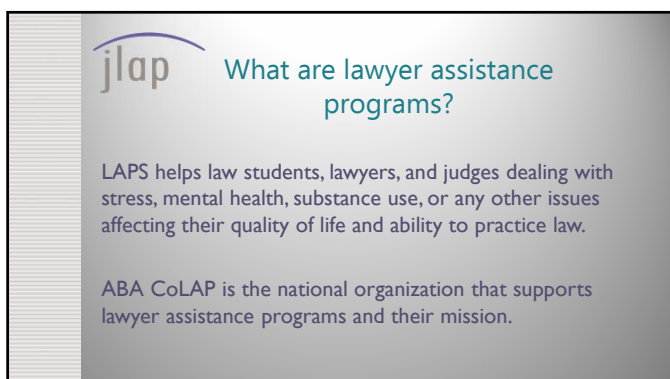
A lifelong Girl Scout, Chief Justice Walker is former chairwoman and current member of the board of directors of Girl Scouts of Black Diamond Council. She has been an active community volunteer and served as chairwoman of the boards of Leadership West Virginia and Kanawha Pastoral Counseling Center.

She is married to Mike Walker and stepmother to Jennifer. They live in Charleston.

Terry L. Harrell completed her law degree at Maurer School of Law and her Master of Social Work Degree (MSW) at Indiana University. Terry is a Licensed Clinical Social Worker (LCSW), a Licensed Clinical Addictions Counselor (LCAC) in Indiana and has a nationally recognized Master Addictions Counselor certification from NAADAC. She has worked in a variety of mental health settings including inpatient treatment, crisis services, adult outpatient treatment, wrap-around services for severely emotionally disturbed adolescents, and management. Terry has been with the Indiana Judges and Lawyers Assistance Program (JLAP) since 2000 and became the Executive Director in 2002. Locally, Terry is active with the Indiana State Bar Association and is a Fellow of the Indiana Bar Foundation. From 2014-2017 she served as Chair of the American Bar Association's Commission on Lawyer Assistance Programs. She is currently the Chair of the ABA Working Group to Advance Well-Being in the Legal Profession and serves on the ABA National Task Force on Lawyer Well Being. For her own well-being Terry enjoys walking, running, and spending time with her therapy dog, Gus.







jlap We're More Than You Think



A word cloud featuring various terms related to mental health and life challenges. The most prominent words are 'depression', 'stress', 'anxiety', and 'burnout'. Other visible words include 'retirement', 'compassion fatigue', 'relationship issues', 'suicide', 'gambling', 'caregiver issues', 'sexual addiction', 'substance use', 'career transitions', 'physical impairments', 'eating disorders', 'grief', 'dementia', 'ADD', 'aging', 'trauma', and 'ADHD'.

jlap LAPS Provide



A word cloud listing services provided by LAPS. The central and largest word is 'consultation'. Other prominent words include 'individual support', 'education', 'support groups', 'intervention', 'referrals', and 'monitoring'.

jlap **CONFIDENTIALITY**

Whether you are calling for yourself or out of concern for a colleague or friend, no one will know about your call unless you give your permission.

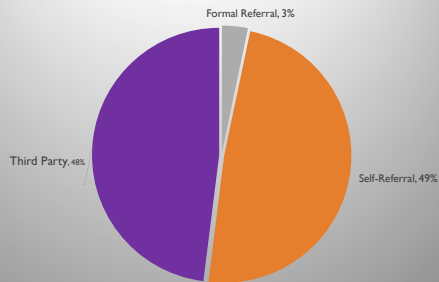


LAPS Provides a Safe Place to Seek Help

The majority of the people working with JLAP come to us voluntarily. On average, less than 10% of our cases are formal referrals, and the remainder are either self-referred or are referred by a concerned friend, family member, or colleague.



How People Found Us





The Lawyer Well-Being Movement

jlap

Study of the Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

Journal of Addiction Medicine 2016

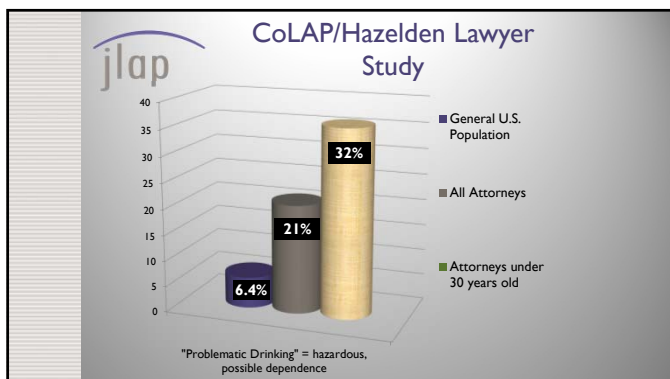
jlap

QUIZ!!!



The rate of problem/hazardous drinking in the general US population is about 6.4%.

1. What is the rate of problem drinking in the general lawyer population?

2. Are rates of problem drinking higher in older lawyers or younger lawyers?



jlap **AUDIT C - Consumption**
(Briefer Screen for AUD)

AUDIT C (consumption only)


- 36% lawyers = problem drinkers
- More than double the rate of physicians (15%)

jlap **Lawyer Study – Mental Health Snapshot**

- 28% depression
- 19% severe anxiety

jlap **Lawyer Study – Mental Health Snapshot**

- 28% Depression
- 19% Severe Anxiety





Lawyer Study: Mental Health over Career

- Anxiety – 61%
- Depression – 46%
- Suicidal Thoughts – 12%



Barriers to Seeking Help

- Not wanting others to find out they needed help
- Concerns about privacy and confidentiality
- STIGMA



2016 ABA Annual Meeting

- The time to act is NOW!
 - CoLAP
 - NOBC
 - APRL





**National Task Force on
Lawyer Well-Being:**
“...seeking to create a **MOVEMENT**
towards improving the health and
well-being of the legal profession.”



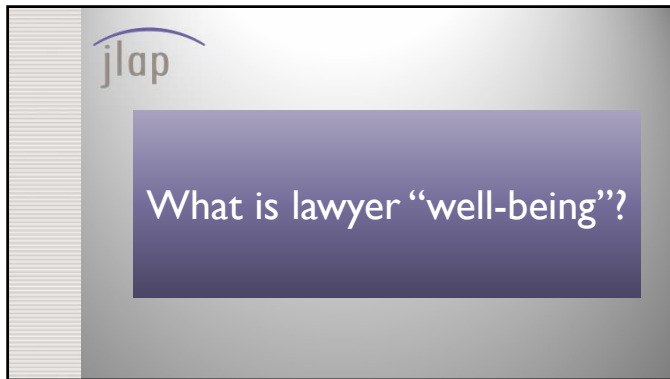
National Task Force on Lawyer Well-Being

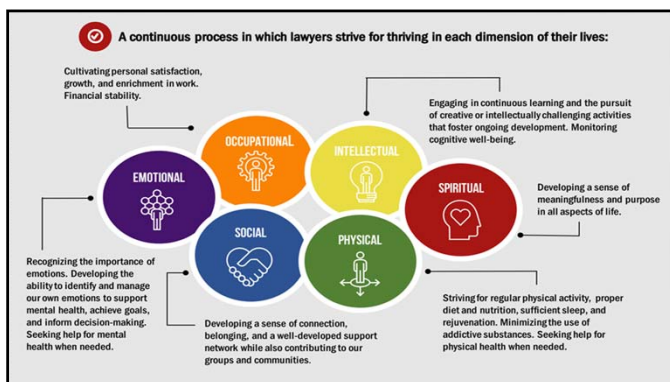
- Conference of Chief Justices
- ABA Center for Professional Responsibility
- ABA Young Lawyers Section
- ABA Law Practice Division
- National Conference of Bar Examiners
- Authors of the law student and lawyer research

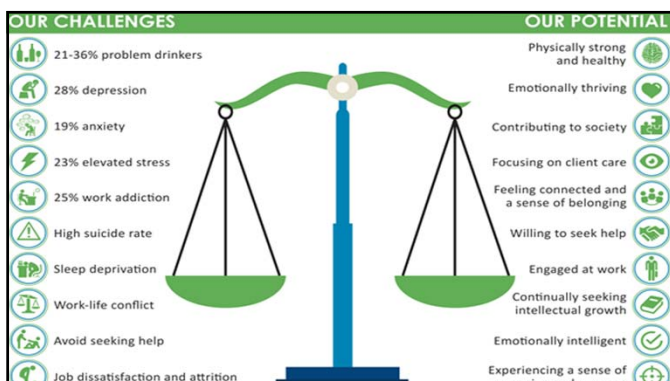


**The Path to Lawyer Well-Being:
Practical Recommendations for Positive
Change**

- Focused on impairment *and* well-being
- 44 recommendations directed at changing culture of legal profession
- Addressed to legal stakeholders:
 - Judges
 - Regulators
 - Legal Employers
 - Law Schools
 - Bar Associations
 - Professional Liability Carriers
 - Lawyers Assistance Programs









Three Reasons to Take Action

- Organizational effectiveness:
 - It's good for business!
- Ethical integrity and professionalism:
 - It's good for clients!
 - Rule 1.1 – competence
 - Rule 1.3 – diligence
 - Rules 4.1 through 4.4 – transactions with persons other than clients
- Humanitarian reasons:
 - It's good for lawyers and their families!



Top 10 Skills Needed in Young Lawyers

- | | |
|---|--|
| • Keeping confidentiality | • Responding promptly |
| • Arriving on time | • Diligence |
| • Honoring commitments | • Having a strong work ethic |
| • Integrity and trustworthiness | • Paying attention to detail |
| • Treating others with courtesy and respect | • Listening attentively and respectfully |

*The Whole Lawyer and the Character Quotient



Five core steps for a sustainable culture in the legal profession:

1. Identify stakeholders and their roles
2. Diminish stigma associated with seeking help
3. Emphasize that well-being is a part of competence
4. Educate on well-being/mental health/substance use disorders
5. Make health and well-being a top priority throughout the profession



GENERAL RECOMMENDATIONS



General Recommendation: **Acknowledge the Problems and Take Responsibility**

In order to transform passive denial to
proactive support for change:

- Every sector must support lawyer well-being.
- Every one of us must take a leadership role
within our sphere of influence.



General Recommendation: **Create a Profession-Wide Action Plan**

- Develop a National Action Plan that continues the
effort.
- Create state-level action plan, led by state
Supreme Court.
- Create an organized coalition to plan, fund,
instigate, motivate, and sustain long-term change.



General Recommendation:
Leaders Should Demonstrate a Personal Commitment To Well-Being

- Change requires buy-in and role modeling from top leadership.
- Leaders can create and support change through their own demonstrated commitment to well-being.

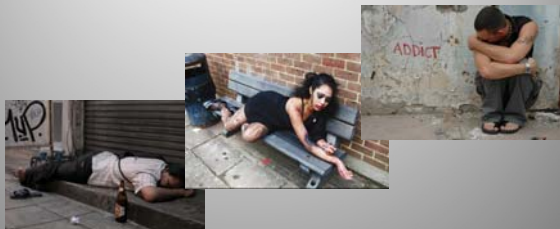


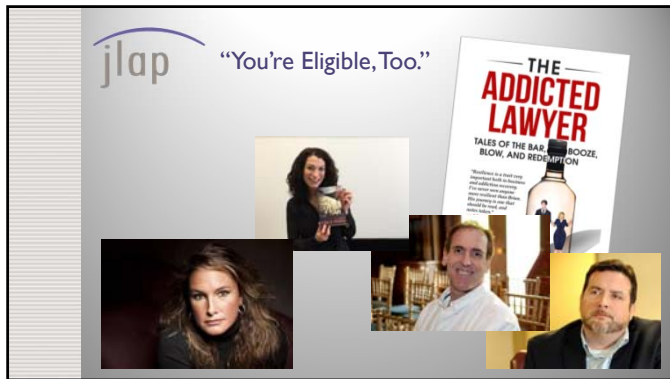
General Recommendation:
Facilitate, Destigmatize, and Encourage Help-Seeking Behaviors

- Minimize the stigma of mental health and substance use disorders.
- Stigma prevents lawyers from seeking help.
- Research shows - the most effective way to reduce stigma is direct contact with someone who has personally experienced a relevant disorder.



Why Should We Care?







jlap General Recommendation:
Partner With Lawyer Assistance Programs

- Lawyer assistance programs are and know experts and are indispensable partners in educating and empowering the profession to address the well-being crisis.
- Partner with and ensure stable and sufficient funding for:
 - ABA's Commission on Lawyer Assistance Programs (CoLAP)
 - State-based lawyer assistance programs
 - Local lawyer assistance programs



General Recommendation:
Begin a Dialogue About Suicide Prevention

- Lawyers have high rates of suicide.
- Suicide is a highly stigmatized topic.
- Stakeholders must lead discussions about this topic.
- Sponsor awareness programs regarding signs of suicidality.



**RECOMMENDATIONS FOR
 BAR ASSOCIATIONS**



Bar Association Recommendation:
**Adopt Practices that Highlight
 Well-Being**

- Sponsor high quality programming, in collaboration with the LAP.
- Create a "Lawyer Well-Being" committee.
- Conduct empirical research on well-being as part of annual surveys.
- Serve as an example of best practices relating to lawyer well-being at events.



ABA Working Group to Advance Well-Being
in the Legal Profession
(Aug 2017)

- Resolution on Lawyer Well-Being Feb 2018
- Toolkit – Aug 2018
- Pledge to Lawyer Well-Being – Sept 2018
- Guidance for Lawyer Well-Being Policies
- Possible Engagement vs. Burnout Scales for Lawyers



Mission of This Campaign ...

To better support the vital role that lawyers play in the functioning of society, the economy, and government, and to ensure the long-term health and well-being of our members and our profession, our mission is to reduce the incidence of problematic substance use and mental health disorders, challenge the stigma surrounding those issues, and improve the overall well-being of the profession.

- 1. Provide Enhanced and Robust Education to Attorneys and Staff on Topics Related to Well-Being, Mental Health, and Substance Use Issues.**



- 2. Challenge the Status Quo of Drinking by De-Emphasizing the Role of Alcohol at Events, and Ensuring there are Always Non-Alcoholic Alternatives when Alcohol is Served.**



- 3. Develop Visible Partnerships with Others Committed to Reducing Substance Use and Mental Health Problems in the Profession, Including Healthcare Insurers, Lawyer Assistance Programs, EAPs, and Other Experts.**



- 4. Provide Confidential Access to Substance Use and other Mental Health Experts and Resources to All Employees, Including Free, In-House, Self-Assessment Tools.**

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5. **Develop a Proactive Written Protocol and Leave Policy for Assessment and Treatment of Substance Use and Mental Health Problems, including a Defined Back-to-Work Policy Following Treatment.**



6. **Actively and Consistently Promote and Encourage Help-Seeking and Self-Care as Core Values, by Supporting Programs to Promote Greater Physical and Emotional Well-Being.**






Support a Colleague

RUOK?


7. Highlight the Adoption of this Well-Being Framework to Attract and Retain the Best Lawyers and Staff.





Resources

- National Task Force Report: <https://ambar.org/lawyerwellbeingreport>
- ABA Working Group: <https://ambar.org/lawyerwellbeing>
- Well-Being Toolkit: <http://ambar.org/wellbeingtoolkit>



Lawyer Well-Being in West Virginia

CHIEF JUSTICE BETH WALKER

2019 WEST VIRGINIA STATE BAR ANNUAL MEETING

West Virginia Task Force on Lawyer Well-Being

- Established March 21, 2018 by Court Order
- One of 21 state initiatives (as of January 2019)
- Duties
 - Study the national report
 - Identify recommendations of national report to implement
 - Recommend any necessary rule changes

WV Task Force Members

Robert Albury	Michele Grinberg
Hon. Michael J. Aloï	Brad Hall, MD
Charles F. Bagley, III	Madeleine Jaeck
Dean Gregory Bowman	Karen E. Kahle
Rachael Cipoletti	John R. McGhee, Jr.
Hon. Bridge Cohee	Chris Newbold
Dana F. Eddy	Meshea L. Poore
Mark Gaydos	Hon. Debra H. Scudiere
Brian A. Glasser	Teresa A. Tarr
	Hon. Beth Walker, Chair

2018 West Virginia Lawyer Well-Being Survey

- 1,346 lawyers (including judges) completed the online survey through the web host Survey Monkey.
- Online survey completed in December 2018.
- Mark Blankenship Enterprises (MBE) was responsible for the data analysis and interpretations presented to the Task Force and summarized in this presentation. MBE was not solely responsible for sampling frame, questionnaire design or survey administration.
- Some totals in this presentation may not equal 100% as a result of rounding.

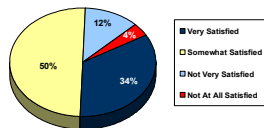
Selected Highlights of Key Findings

2018 West Virginia Lawyer Well-Being Survey



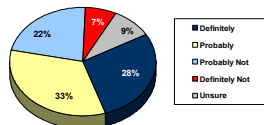
Over eight in ten (84%) say they are very/somewhat satisfied with their professional life – 16% are not.

"Generally how satisfied are you with your professional life?"



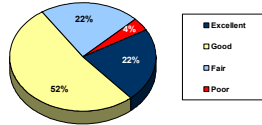
Nearly one-third (29%) would likely NOT become a lawyer if they had to do it all over again.

"If you had to do it all over again, would you become a lawyer?"



Two in ten describe their overall well-being as excellent while one-fourth say it is fair/poor.

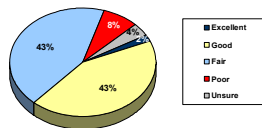
"How would you generally describe your well-being - meaning overall physical and mental health?"



MBE

Over half describe the overall well-being of other West Virginia lawyers as fair/poor.

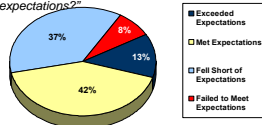
"How would you generally describe your well-being - meaning overall physical and mental health - of the West Virginia lawyers you know?"



MBE

45% say professional experiences have fallen short or not met law school expectations.

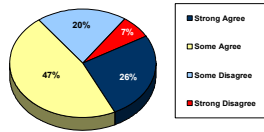
"Thinking about your expectations before law school of what life would be like as a lawyer, how has your actual work as a lawyer compared to those expectations?"



MBE

Nearly half (47%) only somewhat agree they are optimistic about professional future.

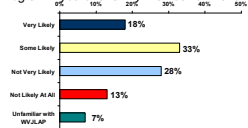
"Do you agree or disagree with the following statement?"
I am optimistic about my professional future.



MBE

41% are unlikely to contact WVJLAP for help.

"How likely would you be to contact the WV Judicial and Lawyer Assistance Program if you or a family member or friend needed help?"

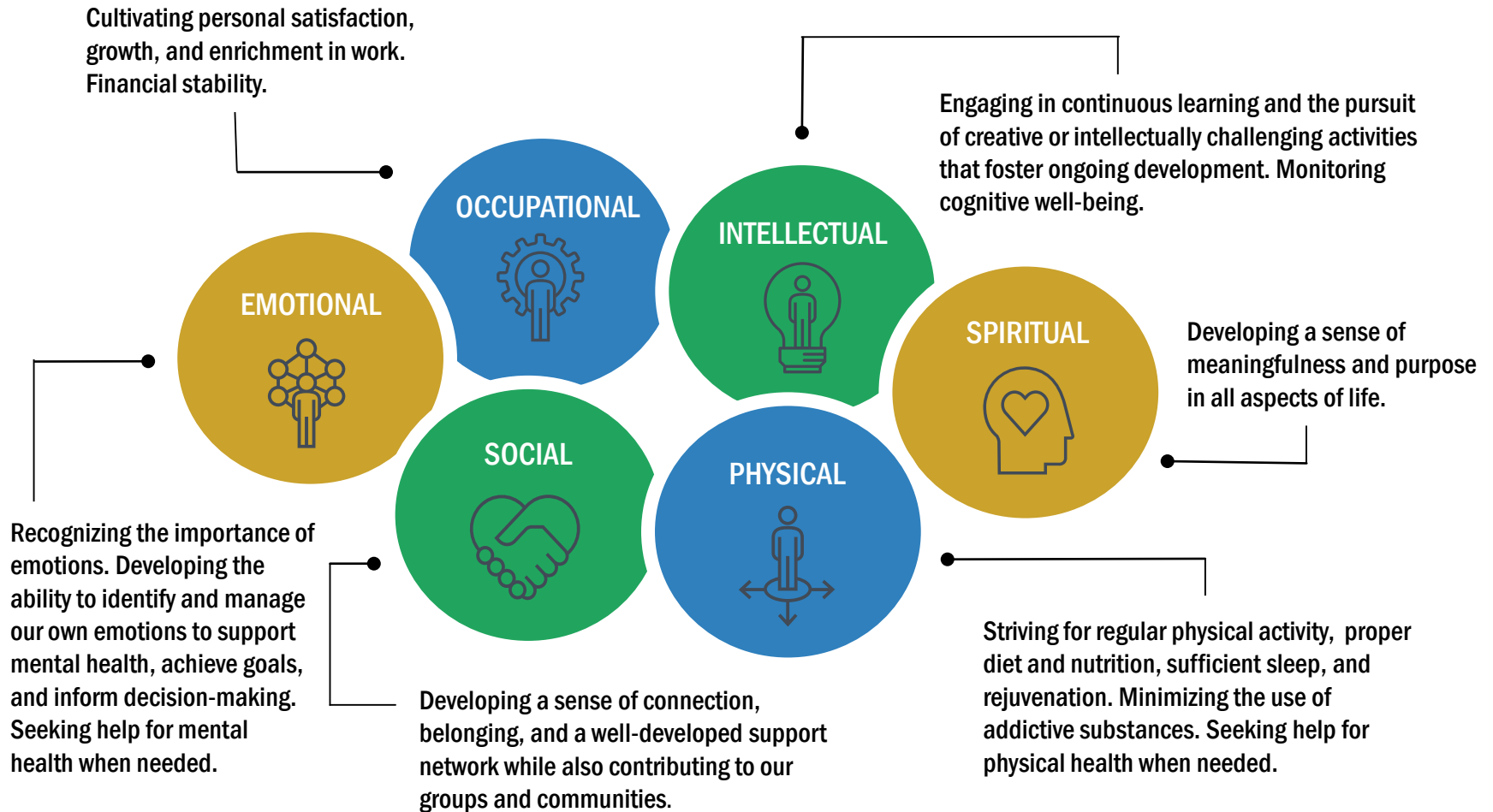


MBE

THANK YOU!!
Questions?

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



OUR CHALLENGES



21-36% problem drinkers



28% depression



19% anxiety



23% elevated stress



25% work addiction



High suicide rate



Sleep deprivation



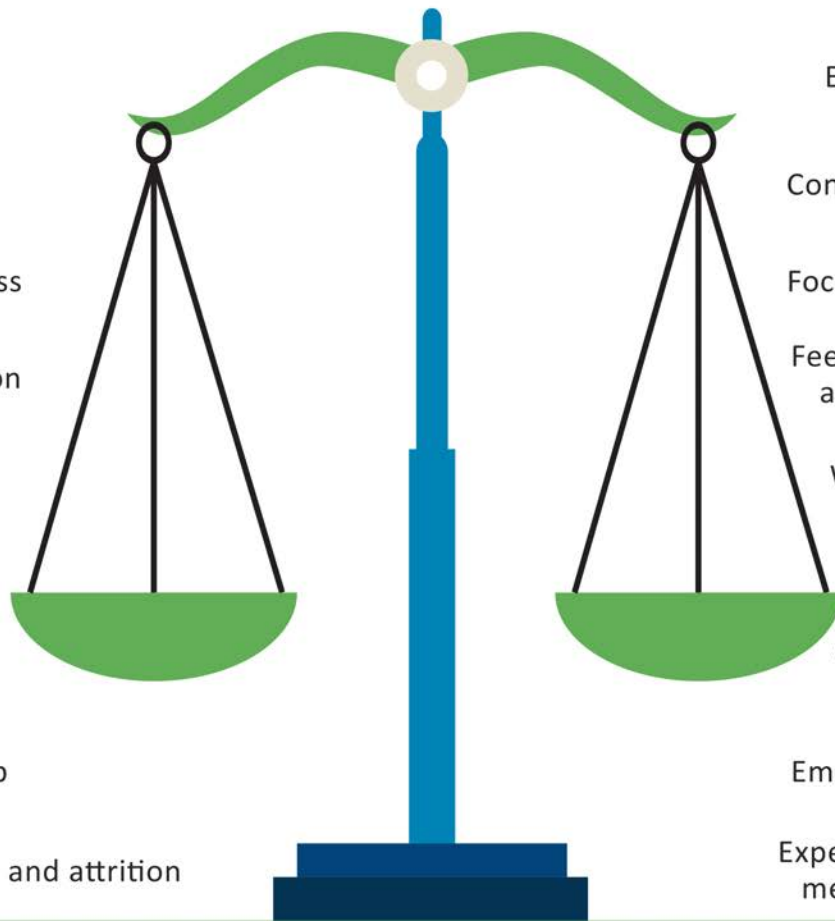
Work-life conflict



Avoid seeking help



Job dissatisfaction and attrition



OUR POTENTIAL

Physically strong
and healthy



Emotionally thriving



Contributing to society



Focusing on client care



Feeling connected and
a sense of belonging



Willing to seek help



Engaged at work



Continually seeking
intellectual growth



Emotionally intelligent



Experiencing a sense of
meaning and purpose



TASK FORCE CHAIRS

Bree Buchanan
James C. Coyle

ENTITIES REPRESENTED:

ABA LAW PRACTICE DIVISION
ABA CPR PROFESSIONALISM
ABA/HAZELDEN STUDY
APRL
ALPS
CoLAP
CONFERENCE OF CHIEF JUSTICES
NCBE
NOBC

TASK FORCE MEMBERS:

Anne Brafford
Don Campbell
Josh Camson
Charles Gruber
Terry Harrell
David Jaffee
Tracy Kepler
Patrick Krill
Chief Justice Donald Lemons
Sarah Myers
Chris Newbold
Jayne Reardon
Judge David Shaheed
Lynda Shely
William Sleese

STAFF ATTORNEY:

Jonathan White

NATIONAL TASK FORCE ON LAWYER WELL-BEING

Creating a Movement To Improve
Well-Being in the Legal Profession

August 14, 2017

Enclosed is a copy of *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* from the National Task Force on Lawyer Well-Being. The Task Force was conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). It is a collection of entities within and outside the ABA that was created in August 2016. Its participating entities currently include the following: ABA CoLAP; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Wellbeing Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; National Conference of Chief Justices; and National Conference of Bar Examiners. Additionally, CoLAP was a co-sponsor of the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers and of the 2016 Survey of Law Student Well-Being.

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

This report's recommendations focus on five central themes: (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The members of this Task Force make the following recommendations after extended deliberation. We recognize this number of recommendations may seem overwhelming at first. Thus we also provide proposed state action plans with simple checklists. These help each stakeholder inventory their current system and explore the recommendations relevant to their group. We invite you to read this report, which sets forth the basis for why the legal profession is at a tipping point, and we present these recommendations and action plans for building a more positive future. We call on you to take action and hear our clarion call. The time is now to use your experience, status, and leadership to construct a profession built on greater well-being, increased competence, and greater public trust.

Sincerely,

Bree Buchanan, Esq.
Task Force Co-Chair
Director
Texas Lawyers Assistance Program
State Bar of Texas

James C. Coyle, Esq.
Task Force Co-Chair
Attorney Regulation Counsel
Colorado Supreme Court

"Lawyers, judges and law students are faced with an increasingly competitive and stressful profession. Studies show that substance use, addiction and mental disorders, including depression and thoughts of suicide—often unrecognized—are at shockingly high rates. As a consequence the National Task Force on Lawyer Well-being, under the aegis of CoLAP (the ABA Commission on Lawyer Assistance programs) has been formed to promote nationwide awareness, recognition and treatment. This Task Force deserves the strong support of every lawyer and bar association."

*David R Brink**
Past President
American Bar Association

* David R. Brink (ABA President 1981-82) passed away in July 2017 at the age of 97. He tirelessly supported the work of lawyer assistance programs across the nation, and was a beacon of hope in the legal profession for those seeking recovery.

THE PATH TO LAWYER WELL-BEING:

Practical Recommendations
For Positive Change

[THE REPORT OF THE
NATIONAL TASK FORCE ON
LAWYER WELL-BEING]

August 2017

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Task Force Member Biographies and Acknowledgments

THE PATH TO LAWYER WELL-BEING: Practical Recommendations For Positive Change

Although the legal profession has known for years that many of its students and practitioners are languishing, far too little has been done to address it. Recent studies show we can no longer continue to ignore the problems. In 2016, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published their study of nearly 13,000 currently-practicing lawyers [the “Study”]. It found that between 21 and 36 percent qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively.¹ The parade of difficulties also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis,” complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception.² Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression. The budding impairment of many of the future generation of lawyers should be alarming to everyone. Too many face less productive, less satisfying, and more troubled career paths.

Additionally, 15 law schools and over 3,300 law students participated in the Survey of Law Student Well-Being, the results of which were released in 2016.³ It found

that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended.

The results from both surveys signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture. The analysis of the problem cannot end there, however. The studies reflect that the majority of lawyers and law students do not have a mental health or substance use disorder. But that does not mean that they’re thriving. Many lawyers experience a “profound ambivalence” about their work,⁴ and different sectors of the profession vary in their levels of satisfaction and well-being.⁵

Given this data, lawyer well-being issues can no longer be ignored. Acting for the benefit of lawyers who are functioning below their ability and for those suffering due to substance use and mental health disorders, the National Task Force on Lawyer Well-Being urges our profession’s leaders to act.

¹P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

²A. M. Brafford, *Building the Positive Law Firm: The Legal Profession At Its Best* (August 1, 2014) (Master’s thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), available at http://repository.upenn.edu/mapp_capstone/62/.

³J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

⁴See D. L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 1 (2013).

⁵J. M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225 (2011); L. S. Krieger & K. M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. 554 (2015).

REASONS TO TAKE ACTION

We offer three reasons to take action: organizational effectiveness, ethical integrity, and humanitarian concerns.

First, lawyer well-being contributes to organizational success—in law firms, corporations, and government entities. If cognitive functioning is impaired as explained above, legal professionals will be unable to do their best work. For law firms and corporations, lawyer health is an important form of human capital that can provide a competitive advantage.⁶

For example, job satisfaction predicts retention and performance.⁷ Gallup Corporation has done years of research showing that worker well-being in the form of engagement is linked to a host of organizational success factors, including lower turnover, high client satisfaction,



Reasons to Improve Attorney Well-Being

- ✓ Good for business
- ✓ Good for clients
- ✓ The right thing to do

and higher productivity and profitability. The Gallup research also shows that few organizations fully benefit from their human capital because most employees (68 percent) are not engaged.⁸ Reducing turnover is especially important for law firms, where turnover rates can be high. For example, a 2016 survey by Law360 found that over 40 percent of lawyers reported that they were likely or very likely to leave their current law firms in the next year.⁹ This high turnover rate for law firms is expensive—with estimated costs for larger firms of \$25 million every year.¹⁰ In short, enhancing lawyer health and well-being is good business and makes sound financial sense.

Second, lawyer well-being influences ethics and professionalism. Rule 1.1 of the ABA's Model Rules of Professional Conduct requires lawyers to "provide competent representation." Rule 1.3 requires diligence in client representation, and Rules 4.1 through 4.4 regulate working with people other than clients. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline. But it will not enable them to live up to the aspirational goal articulated in the Preamble to the ABA's Model Rules of Professional Conduct, which calls lawyers to "strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

Troubled lawyers can struggle with even minimum competence. At least one author suggests that 40 to 70 percent of disciplinary proceedings and malpractice claims against lawyers involve substance use or depression, and often both.¹¹ This can be explained, in part, by declining mental capacity due to these conditions. For example, major depression is associated

⁶ C. Keyes & J. Grzywacz, *Health as a Complete State: The Added Value in Work Performance and Healthcare Costs*, 47 J. OCCUPATIONAL & ENVTL. MED. 523 (2005).

⁷ T. A. Judge & R. Klinger, *Promote Job Satisfaction through Mental Challenge*, in HANDBOOK OF PRINCIPLES OF ORGANIZATIONAL BEHAV. (E. A. Locke ed., 2009).

⁸ J. K. HARTE, F. L. SCHMIDT, E. A. KILLHAM, & J. W. ASPLUND, Q12 META-ANALYSIS, GALLUP CONSULTING (2006), https://strengths.gallup.com/private/resources/q12meta-analysis_flyer_gen_08%2008_bp.pdf; see also Brafford, *supra* note 2, for a summary of studies linking engagement and other positive employee states to business success factors.

⁹ C. Violante, *Law360's 2016 Lawyer Satisfaction Survey: By the Numbers*, Law360, Sept. 4, 2016, <https://www.law360.com/articles/833246/law360-s-2016-lawyer-satisfaction-survey-by-the-numbers>.

¹⁰ M. Levin & B. MacEwen, *Assessing Lawyer Traits & Finding a Fit for Success Introducing the Sheffield Legal Assessment* (2014) (unpublished), available at <http://therightprofile.com/wp-content/uploads/Attorney-Trait-Assessment-Study-Whitepaper-from-The-Right-Profile.pdf> (discussing associate turnover statistics and estimated cost of turnover in large law firms).

¹¹ D. B. Marlowe, *Alcoholism, Symptoms, Causes & Treatments*, in STRESS MANAGEMENT FOR LAWYERS 104-130 (Amiram Elwork ed., 2d ed., 1997) (cited in M. A. Silver, *Substance Abuse, Stress, Mental Health and The Legal Profession*, NEW YORK STATE LAW. ASSISTANT TRUST (2004), available at <http://www.nylat.org/documents/courseinbox.pdf>).

with impaired executive functioning, including diminished memory, attention, and problem-solving. Well-functioning executive capacities are needed to make good decisions and evaluate risks, plan for the future, prioritize and sequence actions, and cope with new situations. Further, some types of cognitive impairment persist in up to 60 percent of individuals with depression even after mood symptoms have diminished, making prevention strategies essential.¹² For alcohol abuse, the majority of abusers (up to 80 percent) experience mild to severe cognitive impairment.¹³ Deficits are particularly severe in executive functions, especially in problem-solving, abstraction, planning, organizing, and working memory—core features of competent lawyering.

Third, from a humanitarian perspective, promoting well-being is the right thing to do. Untreated mental health and substance use disorders ruin lives and careers. They affect too many of our colleagues. Though our profession prioritizes individualism and self-sufficiency, we all contribute to, and are affected by, the collective legal culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.

DEFINING “LAWYER WELL-BEING”

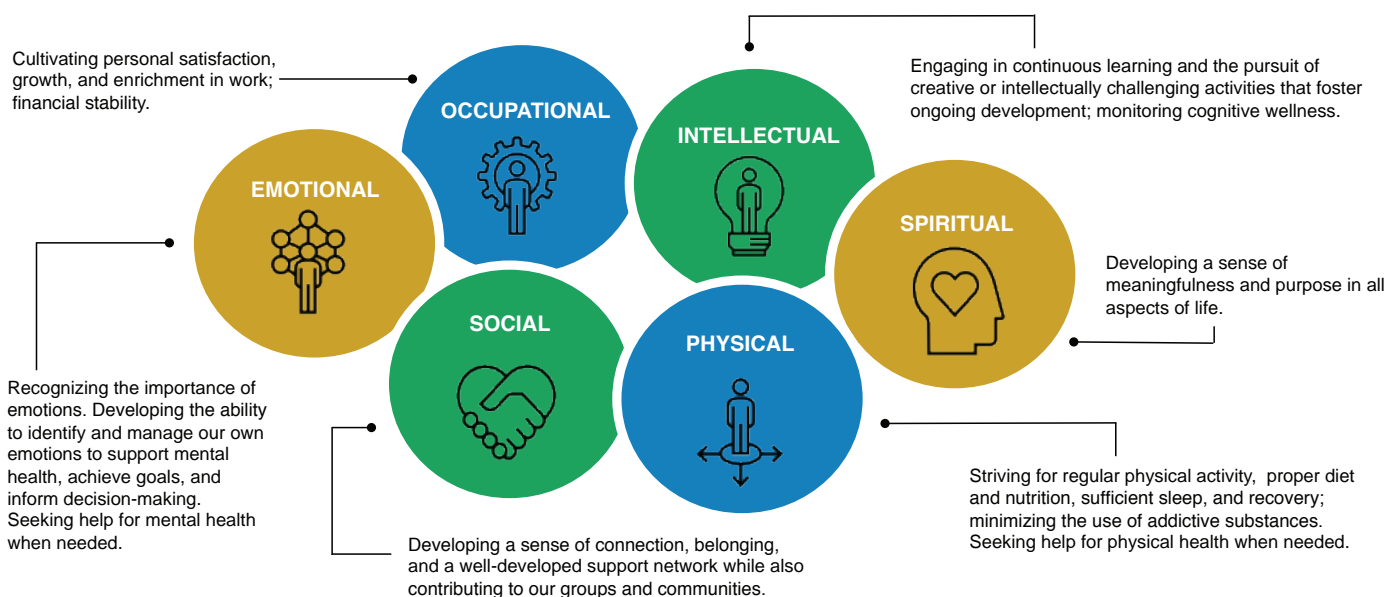
We define lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer well-being is part of a lawyer’s

“Well-Being”: A Continuous process toward thriving across all life dimensions.

ethical duty of competence. It includes lawyers’ ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long term well-being. This definition highlights that complete health

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



¹²P. L. Rock, J. P. Roiser, W. J. Riedel, A. D. Blackwell, *A Cognitive Impairment in Depression: A Systematic Review and Meta-Analysis*, 44 PSYCHOL. MED. 2029 (2014); H. R. Snyder, *Major Depressive Disorder is Associated with Broad Impairments on Neuropsychological Measures of Executive Function: A Meta-Analysis and Review*, 139 PSYCHOL. BULL. 81 (2013).

¹³C. Smeraldi, S. M. Angelone, M. Movalli, M. Cavicchioli, G. Mazza, A. Notaristefano, & C. Maffei, *Testing Three Theories of Cognitive Dysfunction in Alcohol Abuse*, 21 J. PSYCHOPATHOLOGY 125 (2015).¹⁴The WHO’s definition of “health” can be found at: <http://www.who.int/about/mission/en>. The definition of “mental health” can be found at: http://www.who.int/features/factfiles/mental_health/en/.

is not defined solely by the absence of illness; it includes a positive state of wellness.

To arrive at this definition, the Task Force consulted other prominent well-being definitions and social science research, which emphasize that well-being is not limited to: (1) an absence of illness, (2) feeling happy all the time, or (3) intra-individual processes—context matters. For example, the World Health Organization (WHO) defines “health” as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” It defines “mental health” as “a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.”¹⁴

Social science research also emphasizes that “well-being” is not defined solely by an absence of dysfunction; but nor is it limited to feeling “happy” or filled with positive emotions. The concept of well-being in social science research is multi-dimensional and includes, for example, engagement in interesting activities, having close relationships and a sense of belonging, developing confidence through mastery, achieving goals that matter to us, meaning and purpose, a sense of autonomy and control, self-acceptance, and personal growth. This multi-dimensional approach underscores that a positive state of well-being is not synonymous with feeling happy or experiencing positive emotions. It is much broader.

Another common theme in social science research is that well-being is not just an intra-personal process: context powerfully influences it.¹⁵ Consistent with this view, a study of world-wide survey data found that five factors constitute the key elements of well-being: career, social relationships, community, health, and finances.¹⁶

The Task Force chose the term “well-being” based on the view that the terms “health” or “wellness” connote only physical health or the absence of illness. Our definition of “lawyer well-being” embraces the multi-dimensional

concept of mental health and the importance of context to complete health.

OUR CALL TO ACTION

The benefits of increased lawyer well-being are compelling and the cost of lawyer impairment are too great to ignore. There has never been a better or more important time for all sectors of the profession to get serious about the substance use and mental health of ourselves and those around us. The publication of this report, in and of itself, serves the vital role of bringing conversations about these conditions out in the open. In the following pages, we present recommendations for many stakeholders in the legal profession including the judiciary, regulators, legal employers, law schools, bar associations, lawyers’ professional liability carriers, and lawyer assistance programs. The recommendations revolve around five core steps intended to build a more sustainable culture:

- (1) Identifying stakeholders and the role that each of us can play in reducing the level of toxicity in our profession.
- (2) Ending the stigma surrounding help-seeking behaviors. This report contains numerous recommendations to combat the stigma that seeking help will lead to negative professional consequences.
- (3) Emphasizing that well-being is an indispensable part of a lawyer’s duty of competence. Among the report’s recommendations are steps stakeholders can take to highlight the tie-in between competence and well-being. These include giving this connection formal recognition through modifying the Rules of Professional Conduct or their comments to reference well-being.
- (4) Expanding educational outreach and programming on well-being issues. We need to educate lawyers, judges, and law students on well-being issues. This includes instruction in recognizing mental health and

¹⁴The WHO’s definition of “health” can be found at: <http://www.who.int/about/mission/en>. The definition of “mental health” can be found at: http://www.who.int/features/factfiles/mental_health/en/

¹⁵E.g., I. Prilleltensky, S. Dietz, O. Prilleltensky, N. D. Myers, C. L. Rubenstein, Y. Jin, & A. McMahon, *Assessing Multidimensional Well-Being: Development and Validation of the I COPPE Scale*, 43 J. CMTY. PSYCHOL. 199 (2015).

¹⁶T. RATH & J. HARTEY, WELL-BEING: THE FIVE ESSENTIAL ELEMENTS (2010).

substance use disorders as well as navigating the practice of law in a healthy manner. To implement this recommendation effectively, more resources need to be devoted to promoting well-being.

- (5) Changing the tone of the profession one small step at a time. This report contains a number of small-scale recommendations, such as allowing lawyers to earn continuing legal education (CLE) credit for well-being workshops or de-emphasizing alcohol at bar association social events. These small steps can start the process necessary to place health, resilience, self-care, and helping others at the forefront of what it means to be a lawyer. Collectively, small steps can lead to transformative cultural change in a profession that has always been, and will remain, demanding.

Historically, law firms, law schools, bar associations, courts, and malpractice insurers have taken a largely hands-off approach to these issues. They have dealt with them only when forced to because of impairment that can no longer be ignored. The dedication and hard work of lawyer assistance programs aside, we have not done enough to help, encourage, or require lawyers to be, get, or stay well. However, the goal of achieving increased lawyer well-being is within our collective reach. The time to redouble our efforts is now.

RECOMMENDATIONS

Below, the Task Force provides detailed recommendations for minimizing lawyer dysfunction, boosting well-being, and reinforcing the importance of well-being to competence and excellence in practicing law. This section has two main parts. Part I provides general recommendations for all stakeholders in the legal community. Part II provides recommendations tailored to a specific stakeholder: (1) judges, (2) regulators, (3) legal employers, (4) law schools, (5) bar associations, (6) lawyers' professional liability carriers, and (7) lawyer assistance programs.



“None of us got where we are solely by pulling ourselves up by our bootstraps. We got there because somebody bent down and helped us pick up our boots.” — Thurgood Marshall

First, we recommend strategies for all stakeholders in the legal profession to play a part in the transformational process aimed at developing a thriving legal profession.

1. ACKNOWLEDGE THE PROBLEMS AND TAKE RESPONSIBILITY.

Every sector of the legal profession must support lawyer well-being. Each of us can take a leadership role within our own spheres to change the profession’s mindset from passive denial of problems to proactive support for change. We have the capacity to make a difference.

For too long, the legal profession has turned a blind eye to widespread health problems.

For too long, the legal profession has turned a blind eye to widespread health problems. Many in the legal profession have behaved, at best, as if their colleagues’ well-being is none of their business. At worst, some appear to believe that supporting well-being will harm professional success. Many also appear to believe that lawyers’ health problems are solely attributable to their own personal failings for which they are solely responsible.

As to the long-standing psychological distress and substance use problems, many appear to believe that the establishment of lawyer assistance programs—a

necessary but not sufficient step toward a solution—has satisfied any responsibility that the profession might have. Lawyer assistance programs have made incredible strides; however, to meaningfully reduce lawyer distress, enhance well-being, and change legal culture, all corners of the legal profession need to prioritize lawyer health and well-being. It is not solely a job for lawyer assistance programs. Each of us shares responsibility for making it happen.

2. USE THIS REPORT AS A LAUNCH PAD FOR A PROFESSION-WIDE ACTION PLAN.

All stakeholders must lead their own efforts aimed at incorporating well-being as an essential component of practicing law, using this report as a launch pad. Changing the culture will not be easy. Critical to this complex endeavor will be the development of a National Action Plan and state-level action plans that continue the effort started in this report. An organized coalition will be necessary to plan, fund, instigate, motivate, and sustain long-term change. The coalition should include, for example, the Conference of Chief Justices, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the ABA, state bar associations as a whole and specific divisions (young lawyers, lawyer well-being, senior lawyers, etc.), the Commission on Lawyer Assistance Programs, state lawyer assistance programs, other stakeholders that have contributed to this report, and many others.

3. LEADERS SHOULD DEMONSTRATE A PERSONAL COMMITMENT TO WELL-BEING.

Policy statements alone do not shift culture. Broad-scale change requires buy-in and role modeling from top

¹⁷E. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP (2010); R. R. Sims & J. Brinkmann, *Leaders As Moral Role Models*, 35 J. BUS. ETHICS 327 (2002).

leadership.¹⁷ Leaders in the courts, regulators' offices, legal employers, law schools, and bar associations will be closely watched for signals about what is expected. Leaders can create and support change through their own demonstrated commitment to core values and well-being in their own lives and by supporting others in doing the same.¹⁸

4. FACILITATE, DESTIGMATIZE, AND ENCOURAGE HELP-SEEKING BEHAVIORS.

All stakeholders must take steps to minimize the stigma of mental health and substance use disorders because the stigma prevents lawyers from seeking help.

Research has identified multiple factors that can hinder seeking help for mental health conditions: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules.¹⁹

The Study identified similar factors. The two most common barriers to seeking treatment for a substance use disorder that lawyers reported were not wanting others to find out they needed help and concerns regarding privacy or confidentiality. Top concerns of law students in the Survey of Law Student Well Being were fear of jeopardizing their academic standing or admission to the practice of law, social stigma, and privacy concerns.²¹

Research also suggests that professionals with hectic, stressful jobs (like many lawyers and law students) are more likely to perceive obstacles for accessing treatment, which can exacerbate depression. The result of these barriers is that, rather than seeking help early, many wait until their symptoms are so severe that they interfere with daily functioning. Similar dynamics likely apply for aging lawyers seeking assistance.

Removing these barriers requires education, skill-building, and stigma-reduction strategies. Research shows that the most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder. Ideally, this person should be a practicing lawyer or law student (depending on the audience) in order to create a personal connection that lends credibility and combats stigma.²² Viewing video-taped narratives also is useful, but not as effective as in-person contacts.

The military's "Real Warrior" mental health campaign can serve as one model for the legal profession. It is designed to improve soldiers' education about mental health disorders, reduce stigma, and encourage help-seeking. Because many soldiers (like many lawyers) perceive seeking help as a weakness, the campaign also has sought to re-frame help-seeking as a sign of strength that is important to resilience. It also highlights cultural values that align with seeking psychological help.²³

5. BUILD RELATIONSHIPS WITH LAWYER WELL-BEING EXPERTS.

5.1. Partner With Lawyer Assistance Programs.

All stakeholders should partner with and ensure stable and sufficient funding for the ABA's Commission on Lawyer Assistance Programs (CoLAP) as well as

¹⁸L. M. Sama & V. Shoaf, *Ethical Leadership for the Professions: Fostering a Moral Community*, 78 J. BUS. ETHICS 39 (2008).

¹⁹T. W. Britt, T. M. Greene-Shortridge, S. Brink, Q. B. Nguyen, J. Rath, A. L. Cox, C. W. Hoge, C. A. Castro, *Perceived Stigma and Barriers to Care for Psychological Treatment: Implications for Reactions to Stressors in Different Contexts*, 27 J. SOC. & CLINICAL PSYCHOL. 317 (2008); S. Ey, K. R. Henning, & D. L. Shaw, *Attitudes and Factors Related to Seeking Mental Health Treatment among Medical and Dental Students*, 14 J. C. STUDENT PSYCHOTHERAPY 23 (2000); S. E. Hanisch, C. D. Twomey, A. H. Szeto, U. W. Birner, D. Nowak, & C. Sabariego, *The Effectiveness of Interventions Targeting the Stigma of Mental Illness at the Workplace: A Systematic Review*, 16 BMC PSYCHIATRY 1 (2016); K. S. Jennings, J. H. Cheung, T. W. Britt, K. N. Goguen, S. M. Jeffers, A. L. Peasley, & A. C. Lee, *How Are Perceived Stigma, Self-Stigma, and Self-Reliance Related to Treatment-Seeking? A Three-Path Model*, 38 PSYCHIATRIC REHABILITATION J. 109 (2015); N. G. Wade, D. L. Vogel, P. Armistead-Jehle, S. S. Meit, P. J. Heath, H. A. Strass, *Modeling Stigma, Help-Seeking Attitudes, and Intentions to Seek Behavioral Healthcare in a Clinical Military Sample*, 38 PSYCHIATRIC REHABILITATION J. 135 (2015).

²⁰Krill, Johnson, & Albert, *supra* note 1, at 50.

²¹Organ, Jaffe, & Bender, *supra* note 3, at 141.

²²P. W. Corrigan, S. B. Morris, P. J. Michaels, J. D. Rafacz, & N. Rüsche, *Challenging the Public Stigma of Mental Illness: a Meta-Analysis of Outcome Studies*, 63 PSYCHIATRIC SERV. 963 (2012).

²³Wade, Vogel, Armistead-Jehle, Meit, Heath, Strass, *supra* note 19. The Real Warrior website can be found at www.realwarriors.net.



for state-based lawyer assistance programs. ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment.²⁴ Many lawyer assistance programs employ teams of experts that are well-qualified to help lawyers, judges, and law students who experience physical or mental health conditions. Lawyer assistance programs' services are confidential, and many include prevention, intervention, evaluation, counseling, referral to professional help, and on-going monitoring. Many cover a range of well-being-related topics including substance use and mental health disorders, as well as cognitive impairment, process addictions, burnout, and chronic stress. A number also provide services to lawyer discipline and admissions processes (e.g., monitoring and drug and alcohol screening).²⁵

Notably, the Study found that, of lawyers who had reported past treatment for alcohol use, those who had used a treatment program specifically tailored to legal professionals reported, on average, significantly lower scores on the current assessment of alcohol use.²⁶ This at least suggests that lawyer assistance programs, which are specifically tailored to identify and refer lawyers to treatment providers and resources, are a better fit than general treatment programs.

Judges, regulators, legal employers, law schools, and bar associations should ally themselves with lawyer assistance programs to provide the above services. These stakeholders should also promote the services of state lawyer assistance programs. They also should emphasize the confidential nature of those services to reduce barriers to seeking help. Lawyers are reluctant

to seek help for mental health and substance use disorders for fear that doing so might negatively affect their licenses and lead to stigma or judgment of peers.²⁷ All stakeholders can help combat these fears by clearly communicating about the confidentiality of lawyer assistance programs.

We also recommend coordinating regular meetings with lawyer assistance program directors to create solutions to the problems facing the profession. Lawyer assistance programs can help organizations establish confidential support groups, wellness days, trainings, summits, and/or fairs. Additionally, lawyer assistance programs can serve as a resource for speakers and trainers on lawyer well-being topics, contribute to publications, and provide guidance to those concerned about a lawyer's well-being.

5.2. Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts.

We also recommend partnerships with lawyer well-being committees and other types of organizations and consultants that specialize in relevant topics. For example, the American Bar Association's Law Practice Division established an Attorney Well-Being Committee in 2015. A number of state bars also have well-being committees including Georgia, Indiana, Maryland, South Carolina, and Tennessee.²⁸ The Florida Bar Association's Young Lawyers Division has a Quality of Life Committee "for enhancing and promoting the quality of life for young lawyers."²⁹ Some city bar associations also have well-being initiatives, such as the Cincinnati Bar Association's Health and Well-Being Committee.³⁰ These committees can serve as a resource for education, identifying speakers and trainers, developing materials, and contributing to publications. Many high-quality consultants are also available on well-being subjects.

²⁴The ABA Commission on Lawyer Assistance Programs' (CoLAP) website provides numerous resources, including help lines and a directory of state-based law assistant programs. See http://www.americanbar.org/groups/lawyer_assistance.html.

²⁵COMM'N ON LAWYER ASSISTANCE PROGRAMS, AM. BAR ASS'N, 2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS 34-37 (2014).

²⁶Krill, Johnson, & Albert, *supra* note 1, at 50.

²⁷*Id.* at 51.

²⁸The State Bar of Georgia, "Lawyers Living Well," <https://www.gabar.org/wellness/>; The Indiana State Bar Association Wellness Committee, <https://inbar.site-ym.com/members/group.aspx?id=134020>; Maryland State Bar Association Wellness Committee, <http://www.msba.org/Wellness/default.aspx>; South Carolina Bar Lawyer Wellness Committee, <http://discussions.scbar.org/public/wellness/index.html>; Tennessee Bar Association Attorney Well Being Committee, <http://www.tba.org/committee/attorney-well-being-committee>.

²⁹The Fla. Bar Ass'n, Young Lawyers Division, Committees, Quality of Life, <https://flayld.org/board-of-governors/committees/> (last visited June 8, 2017).

³⁰Cincinnati Bar Ass'n Health and Well-Being Committee, <http://www.cincybar.org/groups/health-and-well-being.php> (last visited June 28, 2017).



Care should be taken to ensure that they understand the particular types of stress that affect lawyers.

6. FOSTER COLLEGIALLY AND RESPECTFUL ENGAGEMENT THROUGHOUT THE PROFESSION.

We recommend that all stakeholders develop and enforce standards of collegiality and respectful engagement. Judges, regulators, practicing lawyers, law students, and professors continually interact with each other, clients, opposing parties, staff, and many others.³¹ Those interactions can either foment a toxic culture that contributes to poor health or can foster a respectful culture that supports well-being. Chronic incivility is corrosive. It depletes energy and motivation, increases burnout, and inflicts emotional and physiological damage. It diminishes productivity, performance, creativity, and helping behaviors.³²

Civility appears to be declining in the legal profession. For example, in a 1992 study, 42 percent of lawyers and 45 percent of judges believed that civility and professionalism among bar members were significant problems. In a 2007 survey of Illinois lawyers, 72 percent of respondents categorized incivility as a serious or moderately serious problem³³ in the profession. A recent study of over 6,000 lawyers found that lawyers did not generally have a positive view of lawyer or judge professionalism.³⁴ There is evidence showing that

women lawyers are more frequent targets of incivility and harassment.³⁶ Legal-industry commentators offer a host of hypotheses to explain the decline in civility.³⁷ Rather than continuing to puzzle over the causes, we acknowledge the complexity of the problem and invite further thinking on how to address it.

Incivility appears to be on the rise.

As a start, we recommend that bar associations and courts adopt rules of professionalism and civility, such as those that exist in many jurisdictions.³⁸ Likewise, law firms should adopt their own professionalism standards.³⁹ Since rules alone will not change culture, all stakeholders should devise strategies to promote wide-scale, voluntary observance of those standards. This should include an expectation that all leaders in the profession be a role model for these standards of professionalism.

Exemplary standards of professionalism are inclusive. Research reflects that organizational diversity and inclusion initiatives are associated with employee well-being, including, for example, general mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement,

³¹See C. B. Preston & H. Lawrence, *Incentivizing Lawyers to Play Nice: A National Survey on Civility Standards and Options for Enforcement*, 48 U. MICH. J.L. REFORM 701 (2015); AM. BAR ASS'N RESOL. 108 (August 2011), http://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/civility.authcheckdam.pdf; AM. BAR ASS'N RESOL. 105B (August 2014), http://www.americanbar.org/news/reporter_resources/aba-2014-annual-meeting/2014-annual-meeting-house-of-delegates-resolutions/105b.html.

³²J. E. Dutton & E. D. Heaphy, *The Power of High-Quality Connections*, in *POSITIVE ORGANIZATIONAL SCHOLARSHIP: FOUNDATIONS OF A NEW DISCIPLINE* 263-278 (K. S. Cameron, J. E. Dutton, & R. E. Quinn eds., 2003); C. M. Pearson & C. L. Porath, *On the Nature, Consequences and Remedies of Workplace Incivility: No Time for "Nice"? Think Again*, 19 ACAD. OF MGMT. EXECUTIVE 7 (2005); B. M. Walsh, V. J. Magley, D. W. Reeves, K. A. Davies-Schrlis, M. D. Marmet, & J. A. Gallus, *Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief*, 27 J. BUS. PSYCHOL. 407 (2012).

³³S. S. DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

³⁴D. E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility As An Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99 (2012); see also IL. SUP. CT. COMM'N ON PROFESSIONALISM, *Survey on Professionalism, A Study of Illinois Lawyers 2007 & Survey on Professionalism, A Study of Illinois Lawyers 2014* (2007 & 2014); L. Brodoff & T. M. Jaasko-Fisher, *WSBA Civility Study*, NW LAWYER, Dec. 2016/Jan. 2017, at 22, available at http://nwlawyer.wsba.org/nwlawyer/dec_2016_jan_2017?pg=22#pg22.

³⁵Krieger & Sheldon, *supra* note 5.

³⁶L. M. Cortina, K. A. Lonsway, V. J. Magley, L. V. Freeman, L. L. Collinsworth, M. Hunter, & L. F. Fitzgerald, *What's Gender Got to Do with It? Incivility in the Federal Courts*, 27 LAW & SOC. INQUIRY 235 (2002); see also L. M. Cortina, D. Kabat-Farr, E. A. Leskinen, M. Huerta, & V. J. Magley, *Selective Incivility as Modern Discrimination in Organizations: Evidence and Impact*, 30 J. MGMT. 1579 (2013).

³⁷E.g., Campbell, *supra* note 34; A. T. Kronman, *THE LOST LAWYER* (1993); J. Smith, *Lawyers Behaving Badly Get a Dressing Down from Civility Cops*, WALL ST. J., Jan. 27, 2013, at A1; Walsh, Magley, Reeves, Davies-Schrlis, Marmet, & Gallus, *supra* note 32.

³⁸Examples of professionalism codes can be found on the ABA Center for Professional Responsibility's website: https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standingcommitteeonprofessionalism2/professionalism_codes.html; see also AM. BAR ASS'N RESOL. 108 (2011), available at http://www.americanbar.org/content/dam/aba/directories/policy/2011_am_108.authcheckdam.pdf.

³⁹See C. B. Preston & H. Lawrence, *Incentivizing Lawyers to Play Nice: A National Survey on Civility Standards and Options for Enforcement*, 48 U. MICH. J.L. REFORM 701 (2015).



perceptions of organizational fairness, and intentions to remain on the job.⁴⁰ A significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included, and supported by others. A weak sense of belonging is strongly associated with depressive symptoms.⁴¹ Unfortunately, however, a lack of diversity and inclusion is an entrenched problem in the legal profession.⁴² The issue is pronounced for women and minorities in larger law firms.⁴³

6.1. Promote Diversity and Inclusivity.

Given the above, we recommend that all stakeholders urgently prioritize diversity and inclusion. Regulators and bar associations can play an especially influential role in advocating for initiatives in the profession as a whole and educating on why those initiatives are important to individual and institutional well-being. Examples of relevant initiatives include: scholarships, bar exam grants for qualified applicants, law school orientation programs that highlight the importance of diversity and inclusion, CLE programs focused on diversity in the legal profession, business development symposia for women- and minority-owned law firms, pipeline programming for low-income high school and college students, diversity clerkship programs for law students, studies and reports on the state of diversity within the state's bench and bar, and diversity initiatives in law firms.⁴⁴

6.2. Create Meaningful Mentoring and Sponsorship Programs.

Another relevant initiative that fosters inclusiveness and respectful engagement is mentoring. Research has shown that mentorship and sponsorship can aid well-being and career progression for women and diverse professionals. They also reduce lawyer isolation.⁴⁵ Those who have participated in legal mentoring report a stronger sense of personal connection with others in the legal community, restored enthusiasm for the legal profession, and more resilience—all of which benefit both mentors and mentees.⁴⁷ At least 35 states and the District of Columbia sponsor formal mentoring programs.⁴⁸

7. ENHANCE LAWYERS' SENSE OF CONTROL.

Practices that rob lawyers of a sense of autonomy and control over their schedules and lives are especially harmful to their well-being. Research studies show that high job demands paired with a lack of a sense of control breeds depression and other psychological disorders.⁴⁹ Research suggests that men in jobs with such characteristics have an elevated risk of alcohol abuse.⁵⁰ A recent review of strategies designed to prevent workplace depression found that those designed to improve the perception of control were among the

⁴⁰E.g., M. M. Barak & A. Levin, *Outside of the Corporate Mainstream and Excluded from the Work Community: A Study of Diversity, Job Satisfaction and Well-Being*, 5 COMM., WORK & FAM. 133 (2002); J. Hwang & K. M. Hopkins, *A Structural Equation Model of the Effects of Diversity Characteristics and Inclusion on Organizational Outcomes in the Child Welfare Workforce*, 50 CHILD. & YOUTH SERVS. REV. 44 (2015); see generally G. R. Ferris, S. R. Daniels, & J. C. Sexton, *Race, Stress, and Well-Being in Organizations: An Integrative Conceptualization*, in THE ROLE OF DEMOGRAPHICS IN OCCUPATIONAL STRESS AND WELL-BEING 1-39 (P. L. Perrewé, C. C. Rosen, J. B. Halbesleben, P. L. Perrewé eds., 2014).

⁴¹W. D. Cockshaw & I. M. Shochet, *The Link Between Belongingness and Depressive Symptoms: An Exploration in the Workplace Interpersonal Context*, 45 AUSTRAL. PSYCHOL. 283 (2010); W. D. Cockshaw, I. M. Shochet & P. L. Obst, *Depression and Belongingness in General and Workplace Contexts: A Cross-Lagged Longitudinal Investigation*, 33 J. SOC. & CLINICAL PSYCHOL. 448 (2014).

⁴²D. L. Rhode, *Law Is The Least Diverse Profession in The Nation. And Lawyers Aren't Doing Enough to Change That*, WASH. POST, *Post Everything*, May 27, 2015, available at https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.a79ad124eb5cl; see also Aviva Culyer, *Diversity in the Practice of Law: How Far Have We Come?*, G.P. SOLO, Sept./Oct. 2012, available at http://www.americanbar.org/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come.html.

⁴³L. S. RIKLEEN, NAT'L ASSOC. WOMEN LAWYERS, REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2015), available at <http://www.nawl.org/2015nawlsurvey>; S. A. SCHARFL, R. LIEBENBERG, & C. AMALFE, NAT'L ASSOC. WOMEN LAWYERS, REPORT OF THE EIGHTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2014), available at <http://www.nawl.org/p/bl/et/blogid=10&blogid=56>; see also FLA. BAR ASS'N YOUNG LAW. DIVISION COMM'N ON WOMEN, <https://flayld.org/commission-on-women/>.

⁴⁴See C. U. Stacy, *Trends and Innovations Boosting Diversity in the Law and Beyond*, L. PRAC. TODAY, March 14, 2016, available at <http://www.lawpracticetoday.org/article/trends-and-innovations-boosting-diversity-in-the-law-and-beyond>; IL. SUP. CT. COMM'N ON PROFESSIONALISM, DIVERSITY & INCLUSION TOOLKIT, <https://www.2civility.org/programs/cle/cle-resources/diversity-inclusion>.

⁴⁵Ferris, Daniels, & Sexton, *supra* note 40; A. Ramaswami, G. F. Dreher, R. Bretz, & C. Wiethoff, *The Interactive Effects of Gender and Mentoring on Career Attainment: Making the Case for Female Lawyers*, 37 J. CAREER DEV. 692 (2010).

⁴⁶R. NERISON, LAWYERS, ANGER, AND ANXIETY: DEALING WITH THE STRESSES OF THE LEGAL PROFESSION (2010).

⁴⁷D. A. Cotter, *The Positives of Mentoring*, YOUNG LAW. DIV., AM. BAR ASS'N (2017), available at http://www.americanbar.org/publications/tyl/topics/mentoring/the_positives_mentoring.html; M. M. Heekin, *Implementing Psychological Resilience Training in Law Incubators*, 1 J. EXPERIENTIAL LEARNING 286 (2016).

⁴⁸Of the 35 programs, seven are mandatory (GA, NV, NM, OR, SC, UT, and WY) and some are approved for CLE credits. See the American Bar Association for more information: http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/mentoring.html.

⁴⁹J-M Woo & T. T. Postolache, *The Impact of Work Environment on Mood Disorders and Suicide: Evidence and Implications*, 7 INT'L J. DISABILITY & HUMAN DEV. 185 (2008); J. M. Griffin, R. Fuhrer, S. A. Stansfeld, & M. Marmot, *The Importance of Low Control at Work and Home on Depression and Anxiety: Do These Effects Vary by Gender and Social Class?*, 54 SOC. SCI. & MED. 783 (2002).

⁵⁰A. J. Crum, P. Salovey, & S. Achor, *Rethinking Stress: The Role of Mindsets in Determining the Stress Response*, 10 J. PERSONALITY & SOC. PSYCHOL. 716 (2013).



most effective.⁵¹ Research confirms that environments that facilitate control and autonomy contribute to optimal functioning and well-being.⁵²

We recommend that all stakeholders consider how long-standing structures of the legal system, organizational norms, and embedded expectations might be modified to enhance lawyers' sense of control and support a healthier lifestyle. Courts, clients, colleagues, and opposing lawyers all contribute to this problem. Examples of the types of practices that should be reviewed include the following:

- Practices concerning deadlines such as tight deadlines for completing a large volume of work, limited bases for seeking extensions of time, and ease and promptness of procedures for requesting extensions of time;
- Refusal to permit trial lawyers to extend trial dates to accommodate vacation plans or scheduling trials shortly after the end of a vacation so that lawyers must work during that time;
- Tight deadlines set by clients that are not based on business needs;
- Senior lawyer decision-making in matters about key milestones and deadlines without consulting other members of the litigation team, including junior lawyers;
- Senior lawyers' poor time-management habits that result in repeated emergencies and weekend work for junior lawyers and staff;
- Expectations of 24/7 work schedules and of prompt response to electronic messages at all times; and
- Excessive law school workload, controlling teaching styles, and mandatory grading curves.

8. PROVIDE HIGH-QUALITY EDUCATIONAL PROGRAMS ABOUT LAWYER DISTRESS AND WELL-BEING.

All stakeholders should ensure that legal professionals receive training in identifying, addressing, and supporting fellow professionals with mental health and substance use disorders. At a minimum, training should cover the following:

- The warning signs of substance use or mental health disorders, including suicidal thinking;
- How, why, and where to seek help at the first signs of difficulty;
- The relationship between substance use, depression, anxiety, and suicide;
- Freedom from substance use and mental health disorders as an indispensable predicate to fitness to practice;
- How to approach a colleague who may be in trouble;
- How to thrive in practice and manage stress without reliance on alcohol and drugs; and
- A self-assessment or other check of participants' mental health or substance use risk.

As noted above, to help reduce stigma, such programs should consider enlisting the help of recovering lawyers who are successful members of the legal community. Some evidence reflects that social norms predict problem drinking even more so than stress.⁵³ Therefore, a team-based training program may be most effective because it focuses on the level at which the social norms are enforced.⁵⁴

Given the influence of drinking norms throughout the profession, however, isolated training programs are not sufficient. A more comprehensive, systemic campaign is likely to be the most effective—though certainly the most challenging.⁵⁵ All stakeholders will be critical players in such an aspirational goal. Long-term strategies should consider scholars' recommendations to incorporate mental health and substance use disorder training into broader health-promotion programs to help skirt the stigma that may otherwise deter attendance.

⁵¹S. Joyce, M. Modini, H. Christensen, A. Mykletun, R. Bryant, P. B. Mitchell, & S. B. Harvey, *Workplace Interventions for Common Mental Disorders: A Systematic Meta-Review*, 46 PSYCHOL. MED. 683, 693 (2016).

⁵²Y.-L. Su & J. Reeve, *A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy*, 23 EDUC. PSYCHOL. REV. 159 (2011).

⁵³D. C. Hodgins, R. Williams, & G. Munro, *Workplace Responsibility, Stress, Alcohol Availability and Norms as Predictors of Alcohol Consumption-Related Problems Among Employed Workers*, 44 SUBSTANCE USE & MISUSE 2062 (2009).

⁵⁴C. Kolar & K. von Treuer, *Alcohol Misuse Interventions in the Workplace: A Systematic Review of Workplace and Sports Management Alcohol Interventions*, 13 INT'L J. MENTAL HEALTH ADDICTION 563 (2015); e.g., J. B. Bennett, W. E. K. Lehman, G. S. Reynolds, *Team Awareness for Workplace Substance Abuse Prevention: The Empirical and Conceptual Development of a Training Program*, 1 PREVENTION SCI. 157 (2000).

⁵⁵Kolar & von Treuer, *supra* note 54.



Research also suggests that, where social drinking has become a ritual for relieving stress and for social bonding, individuals may resist efforts to deprive them of a valued activity that they enjoy. To alleviate resistance based on such concerns, prevention programs should consider making “it clear that they are not a temperance movement, only a force for moderation,” and that they are not designed to eliminate bonding but to ensure that drinking does not reach damaging dimensions.⁵⁶

Additionally, genuine efforts to enhance lawyer well-being must extend beyond disorder detection and treatment. Efforts aimed at remodeling institutional and organizational features that breed stress are

Well-being efforts must extend beyond detection and treatment and address root causes of poor health.

crucial, as are those designed to cultivate lawyers’ personal resources to boost resilience. All stakeholders should participate in the development and delivery of educational materials and programming that go beyond detection to include causes and consequences of distress. These programs should be eligible for CLE credit, as discussed in Recommendation 20.3. **Appendix B** to this report offers examples of well-being-related educational content, along with empirical evidence to support each example.

9. GUIDE AND SUPPORT THE TRANSITION OF OLDER LAWYERS.

Like the general population, the lawyer community is aging and lawyers are practicing longer.⁵⁷ In the Baby Boomer generation, the oldest turned 62 in 2008, and the youngest will turn 62 in 2026.⁵⁸ In law firms, one estimate indicates that nearly 65 percent of equity partners will retire over the next decade.⁵⁹ Senior lawyers can bring much to the table, including their wealth of experience, valuable public service, and mentoring of new lawyers. At the same time, however, aging lawyers have an increasing risk for declining physical and mental capacity. Yet few lawyers and legal organizations have sufficiently prepared to manage transitions away from the practice of law before a crisis occurs. The result is a rise in regulatory and other issues relating to the impairment of senior lawyers. We make the following recommendations to address these issues:



Planning Transition of Older Lawyers

1. Provide education to detect cognitive decline.
2. Develop succession plans.
3. Create transition programs to respectfully aid retiring professionals plan for their next chapter.

⁵⁶R. F. Cook, A. S. Back, J. Trudeau, & T. McPherson, *Integrating Substance Abuse Prevention into Health Promotion Programs in the Workplace: A Social Cognitive Intervention Targeting the Mainstream User*, in PREVENTING WORKPLACE SUBSTANCE ABUSE: BEYOND DRUG TESTING TO WELLNESS 97 (W. K. Lehman, J. B. Bennett eds., 2003).

⁵⁷A recent American Bar Association report reflected that, in 2005, 34 percent of practicing lawyers were age fifty-five or over, compared to 25 percent in 1980. See LAWYER DEMOGRAPHICS, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR (2016), available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf.

⁵⁸E. A. McNickle, A Grounded Theory Study of Intrinsic Work Motivation Factors Influencing Public Utility Employees Aged 55 and Older as Related to Retirement Decisions (2009) (doctoral dissertation, Capella University) (available from ProQuest Dissertations and Theses Database).

⁵⁹M. P. Shannon, *A Short Course in Succession Planning*, 37 L. PRAC. MAG. (2011), available at http://www.americanbar.org/publications/law_practice_magazine/2011/may_june/a_short_course_in_succession_planning.html.



First, all stakeholders should create or support programming for detecting and addressing cognitive decline in oneself and colleagues.

Second, judges, legal employers, bar associations, and regulators should develop succession plans, or provide education on how to do so, to guide the transition of aging legal professionals. Programs should include help for aging members who show signs of diminished cognitive skills, to maintain their dignity while also assuring they are competent to practice.⁶⁰ A model program in this regard is the North Carolina Bar Association's Senior Lawyers Division.⁶¹

Third, we recommend that legal employers, law firms, courts, and law schools develop programs to aid the transition of retiring legal professionals. Retirement can enhance or harm well-being depending on the individual's adjustment process.⁶² Many lawyers who are approaching retirement age have devoted most of their adult lives to the legal profession, and their identities often are wrapped up in their work. Lawyers whose self-esteem is contingent on their workplace success are likely to delay transitioning and have a hard time adjusting to retirement.⁶³ Forced retirement that deprives individuals of a sense of control over the exit timing or process is particularly harmful to well-being and long-term adjustment to retirement.⁶⁴

To assist stakeholders in creating the programming to guide and support transitioning lawyers, the Task Force sets out a number of suggestions in **Appendix C**.

10. DE-EMPHASIZE ALCOHOL AT SOCIAL EVENTS.

Workplace cultures or social climates that support alcohol consumption are among the most consistent predictors of employee drinking. When employees drink

together to unwind from stress and for social bonding, social norms can reinforce tendencies toward problem drinking and stigmatize seeking help. On the other hand, social norms can also lead colleagues to encourage those who abuse alcohol to seek help.⁶⁵

In the legal profession, social events often center around alcohol consumption (e.g., "Happy Hours," "Bar Reviews," networking receptions, etc.). The expectation of drinking is embedded in the culture, which may contribute to over-consumption. Legal employers, law schools, bar associations, and other stakeholders that plan social events should provide a variety of alternative non-alcoholic beverages and consider other types of activities to promote socializing and networking. They should strive to develop social norms in which lawyers discourage heavy drinking and encourage others to seek help for problem use.

11. UTILIZE MONITORING TO SUPPORT RECOVERY FROM SUBSTANCE USE DISORDERS.

Extensive research has demonstrated that random drug and alcohol testing (or "monitoring") is an effective way of supporting recovery from substance use disorders and increasing abstinence rates. The medical profession has long relied on monitoring as a key component of its treatment paradigm for physicians, resulting in long-term recovery rates for that population that are between 70-96 percent, which is the highest in all of the treatment outcome literature.⁶⁶ One study found that 96 percent of medical professionals who were subject to random drug tests remained drug-free, compared to only 64 percent of those who were not subject to mandatory testing.⁶⁷ Further, a national survey of physician health programs found that among medical professionals who completed their prescribed treatment requirements (including monitoring), 95 percent were licensed and actively

⁶⁰See generally W. SLEASE ET AL., NOBC-APRL-COLAP SECOND JOINT COMMITTEE ON AGING LAWYERS, FINAL REPORT (2014), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_nobc_aprl_colap_second_joint_committee_aging_lawyers.authcheckdam.pdf.

⁶¹Senior Lawyers Division, N. C. Bar Ass'n, <https://www.ncbar.org/members/divisions/senior-lawyers/>.

⁶²N. Houliort, C. Fernet, R. J. Vallerand, A. Laframboise, F. Guay, & R. Koestner, *The Role of Passion for Work and Need for Satisfaction in Psychological Adjustment to Retirement*, 88 J. VOCATIONAL BEHAVIORS 84 (2015).

⁶³*Id.*

⁶⁴E. Dingemans & K. Henkens, *How Do Retirement Dynamics Influence Mental Well-Being in Later Life? A 10-Year Panel Study*, 41 SCANDINAVIAN J. WORK, ENV'T & HEALTH 16 (2015); A. M. Muratore & J. K. Earl, *Improving Retirement Outcomes: The Role of Resources, Pre-Retirement Planning and Transition Characteristics*, 35 AGEING & SOC. 2100 (2015).

⁶⁵J. B. Bennett, C. R. Patterson, G. S. Reynolds, W. L. Wiitala, & W. K. Lehman, *Team Awareness, Problem Drinking, and Drinking Climate: Workplace Social Health Promotion in a Policy Context*, 19 AM. J. HEALTH PROMOTION 103 (2004).

⁶⁶R. L. DuPont, A. T. McLellan, W. L. White, L. Merlo & M. S. Gold, *Setting the Standard for Recovery: Physicians Health Programs Evaluation Review*, 36 J. SUBSTANCE ABUSE TREATMENT 159 (2009).

⁶⁷J. Shore, *The Oregon Experience with Impaired Physicians on Probation: An Eight Year Follow-Up*, 257 J. AM. MED. ASS'N 2931 (1987).



working in the health care field at a five year follow-up after completing their primary treatment program.⁶⁸ In addition, one study has found that physicians undergoing monitoring through physician health programs experienced lower rates of malpractice claims.⁶⁹

Such outcomes are not only exceptional and encouraging, they offer clear guidance for how the legal profession could better address its high rates of substance use disorders and increase the likelihood of positive outcomes. Although the benefits of monitoring have been recognized by various bar associations, lawyer assistance programs, and employers throughout the legal profession, a uniform or “best practices” approach to the treatment and recovery management of lawyers has been lacking. Through advances in monitoring technologies, random drug and alcohol testing can now be administered with greater accuracy and reliability—as well as less cost and inconvenience—than ever before. Law schools, legal employers, regulators, and lawyer assistance programs would all benefit from greater utilization of monitoring to support individuals recovering from substance use disorders.

12. BEGIN A DIALOGUE ABOUT SUICIDE PREVENTION.

It is well-documented that lawyers have high rates of suicide.⁷⁰ The reasons for this are complicated and varied, but some include the reluctance of attorneys to ask for help when they need it, high levels of depression amongst legal professionals, and the stressful nature of the job.⁷¹ If we are to change these statistics, stakeholders need to provide education and take action. Suicide, like mental health or substance use disorders, is a highly stigmatized topic. While it is an issue that touches many of us, most people are uncomfortable discussing suicide. Therefore, stakeholders must make a concerted effort towards suicide prevention to demonstrate to the legal community that we are not

afraid of addressing this issue. We need leaders to encourage dialogue about suicide prevention.

One model for this is through a “Call to Action,” where members of the legal community and stakeholders from lawyer assistance programs, the judiciary, law firms, law schools, and bar associations are invited to attend a presentation and community discussion about the issue.



Call to Action

- ✓ **Organize “Call to Action” events to raise awareness.**
- ✓ **Share stories of those affected by suicide.**
- ✓ **Provide education about signs of depression and suicidal thinking.**
- ✓ **Learn non-verbal signs of distress.**
- ✓ **Collect and publicize available resources.**

When people who have been affected by the suicide of a friend or colleague share their stories, other members of the legal community begin to better understand the impact and need for prevention.⁷² In addition, stakeholders can schedule educational presentations that incorporate information on the signs and symptoms of suicidal thinking along with other mental health/

⁶⁸R. L. DuPont, A. T. McLellan, G. Carr, M. Gendel, & G. E. Skipper, *How Are Addicted Physicians Treated? A National Survey of Physician Health Programs*, 37 J. SUBSTANCE ABUSE TREATMENT 1 (2009).

⁶⁹E. Brooks, M. H. Gendel, D. C. Gundersen, S. R. Early, R. Schirmacher, A. Lembitz, & J. H. Shore, *Physician Health Programs and Malpractice Claims: Reducing Risk Through Monitoring*, 63 OCCUPATIONAL MED. 274 (2013).

⁷⁰R. Flores & R. M. Arce, *Why Are Lawyers Killing Themselves?*, CNN, Jan. 20, 2014, <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>. If you or someone you know is experiencing suicidal thinking, please seek help immediately. The National Suicide Prevention Lifeline can be reached at 1-800-273-8255, <https://suicidepreventionlifeline.org>.

⁷¹*Id.*

⁷²The Colorado Lawyer Assistance Program sponsored one such Call to Action on January 21, 2016, in an effort to generate more exposure to this issue so the legal community better understands the need for dialogue and prevention.



substance use disorders. These can occur during CLE presentations, staff meetings, training seminars, at law school orientations, bar association functions, etc. Stakeholders can contact their state lawyer assistance programs, employee assistance program agencies, or health centers at law schools to find speakers, or referrals for counselors or therapists so that resources are available for family members of lawyers, judges, and law students who have taken their own life.

It's important for all stakeholders to understand that, while lawyers might not tell us that they are suffering, they will show us through various changes in behavior and communication styles. This is so because the majority of what we express is non-verbal.⁷³ Becoming better educated about signs of distress will enable us to take action by, for example, making health-related inquiries or directing them to potentially life-saving resources.

13. SUPPORT A LAWYER WELL-BEING INDEX TO MEASURE THE PROFESSION'S PROGRESS.

We recommend that the ABA coordinate with state bar associations to create a well-being index for the legal profession that will include metrics related to lawyers, staff, clients, the legal profession as a whole, and the broader community. The goal would be to optimize the well-being of all of the legal profession's stakeholders.⁷⁴ Creating such an index would correspond with a growing worldwide consensus that success should not be measured solely in economic terms. Measures of well-

being also have an important role to play in defining success and informing policy.⁷⁵ The index would help track progress on the transformational effort proposed in this report. For law firms, it also may help counter-balance the "profits per partner metric" that has been published by *The American Lawyer* since the late 1980s, and which some argue has driven the profession away from its core values. As a foundation for building the well-being index, stakeholders could look to, for example, criteria used in *The American Lawyer's* Best Places to Work survey, or the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession.⁷⁶

⁷³ALBERT MEHRABIAN, SILENT MESSAGES: IMPLICIT COMMUNICATION OF EMOTIONS AND ATTITUDES (1972).

⁷⁴See R. E. FREEMAN, J. S. HARRISON, & A. WICKS, MANAGING FOR STAKEHOLDERS: SURVIVAL, REPUTATION, AND SUCCESS (2007); J. MACKEY & R. SISODIA, CONSCIOUS CAPITALISM: LIBERATING THE HEROIC SPIRIT OF BUSINESS (2014).

⁷⁵L. Fasolo, M. Galetto, & E. Turina, *A Pragmatic Approach to Evaluate Alternative Indicators to GDP*, 47 QUALITY & QUANTITY 633 (2013); WORLD HAPPINESS REPORT (J. Helliwell, R. Layard, & J. Sachs eds., 2013), available at http://unsdsn.org/wp-content/uploads/2014/02/WorldHappinessReport2013_online.pdf; G. O'Donnell, *Using Well-Being as a Guide to Public Policy*, in WORLD HAPPINESS REPORT.

⁷⁶The Tristan Jepson Memorial Foundation's Guidelines are available at http://tjmf.client.fatbeehive.com.au/wp/wp-content/uploads/TJMFmentalHealthGuidelines_A4_140427.pdf.





“A tree with strong roots laughs at storms.” — Malay Proverb

Judges occupy an esteemed position in the legal profession and society at large. For most, serving on the bench is the capstone of their legal career. The position, however, can take a toll on judges’ health and well-being. Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily.⁷⁷ Some report lying awake at night worrying about making the right decision or the consequences of that decision.⁷⁸ Other judges face the stress of presiding over criminal cases with horrific underlying facts.⁷⁹

Also stressful is the increasing rate of violence against judges inside and outside the courthouse.⁸⁰ Further, many judges contend with isolation in their professional lives and sometimes in their personal lives.⁸¹ When a judge is appointed to the bench, former colleagues who were once a source of professional and personal support can become more guarded and distant.⁸² Often, judges do not have feedback on their performance. A number take the bench with little preparation, compounding the sense of going it alone.⁸³ Judges also cannot “take off the robe” in every day interactions outside the courthouse because of their elevated status in society, which can contribute to social isolation.⁸⁴ Additional stressors include re-election in certain jurisdictions.⁸⁵ Limited judicial resources coupled with time-intensive, congested dockets are a pronounced problem.⁸⁶ More recently, judges have reported a sense of diminishment

in their estimation among the public at large.⁸⁷ Even the most astute, conscientious, and collected judicial officer can struggle to keep these issues in perspective.

We further recognize that many judges have the same reticence in seeking help out of the same fear of embarrassment and occupational repercussions that lawyers have. The public nature of the bench often heightens the sense of peril in coming forward.⁸⁸ Many judges, like lawyers, have a strong sense of perfectionism and believe they must display this perfectionism at all times.⁸⁹ Judges’ staff can act as protectors or enablers of problematic behavior. These are all impediments to seeking help. In addition, lawyers, and even a judge’s colleagues, can be hesitant to report or refer a judge whose behavior is problematic for fear of retribution.

In light of these barriers and the stressors inherent in the unique role judges occupy in the legal system, we make the following recommendations to enhance well-being among members of the judiciary.

14. COMMUNICATE THAT WELL-BEING IS A PRIORITY.

The highest court in each state should set the tone for the importance of the well-being of judges. Judges are not immune from suffering from the same stressors as lawyers, and additional stressors are unique to work as a jurist.

⁷⁷A. Resnick, K. Myatt, & P. Marotta, *Surviving Bench Stress*, 49 FAM. CT. REV. 610, 610-11 (2011).

⁷⁸*Id.* at 611-12.

⁷⁹M. K. Miller, D. M. Flores, & A. N. Dolezilek, *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE 60, 61, 64 (2007); J. Chamberlain & M. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCHIATRY L. 214, 215 (2009).

⁸⁰Miller, Flores, & Dolezilek, *supra* note 79, at 60-61; see also T. FAUTSKO, S. BERSON, & S. SWENSEN, NAT’L CTR. FOR STATE CTS., STATUS OF COURT SECURITY IN STATE COURTS – A NATIONAL PERSPECTIVE (2013), available at http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/184#img_view_container.

⁸¹I. Zimmerman, *Helping Judges in Distress*, 90 JUDICATURE 10, 13 (2006).

⁸²*Id.*

⁸³C. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 JUDICATURE 244-45 (2004).

⁸⁴Resnick, Myatt, & Marotta, *supra* note 77, at 610.

⁸⁵*Id.* at 610-11; Zimmerman, *supra* note 81, at 11-12.

⁸⁶Resnick, Myatt, Marotta, *supra* note 77, at 610.

⁸⁷*Judges Are Feeling Less Respected*, NAT’L JUDICIAL C. (2017), available at <http://www.judges.org/judges-feeling-less-respected/>.

⁸⁸S. KRAUSS, N. STEK, W. DRESSEL, AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, HELPING JUDGES, MODULE 1 – OVERVIEW OF A JUDICIAL ASSISTANCE PROGRAM (2010); Zimmerman, *supra* note 81, at 13.

⁸⁹R. L. Childers, *Got Stress? Using CoLAP and Its New Judicial Assistance Project*, JUDGES JOURNAL (2006); Chamberlain & Miller, *supra* note 79, at 220.

15. DEVELOP POLICIES FOR IMPAIRED JUDGES.

It is essential that the highest court and its commission on judicial conduct implement policies and procedures for intervening with impaired members of the judiciary. For example, the highest court should consider adoption of policies such as a Diversion Rule for Judges in appropriate cases. Administrative and chief judges also should implement policies and procedures for intervening with members of the judiciary who are impaired in compliance with Model Rule of Judicial Conduct 2.14. They should feel comfortable referring members to judicial or lawyer assistance programs. Educating judicial leaders about the confidential nature of these programs will go a long way in this regard. Judicial associations and educators also should promote CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges.⁹⁰

16. REDUCE THE STIGMA OF MENTAL HEALTH AND SUBSTANCE USE DISORDERS.

As reflected in Recommendation 4, the stigma surrounding mental health and substance use disorders poses an obstacle to treatment. Judges are undisputed leaders in the legal profession. We recommend they work to reduce this stigma by creating opportunities for open dialogue. Simply talking about these issues helps combat the unease and discomfort that causes the issues to remain unresolved. In a similar vein, we encourage judges to participate in the activities of lawyer assistance programs, such as volunteering as speakers and serving as board members. This is a powerful way to convey to lawyers, law students, and other judges the importance of lawyer assistance programs and to encourage them to access the programs' resources.

17. CONDUCT JUDICIAL WELL-BEING SURVEYS.

This report was triggered in part by the Study and the Survey of Law Student Well-Being. No comparable research has been conducted of the judiciary. We recommend that CoLAP and other concerned entities conduct a broad-based survey of the judiciary to

determine the state of well-being and the prevalence of issues directly related to judicial fitness such as burnout, compassion fatigue, mental health, substance use disorders and help-seeking behaviors.

18. PROVIDE WELL-BEING PROGRAMMING FOR JUDGES AND STAFF.

Judicial associations should invite lawyer assistance program directors and other well-being experts to judicial conferences who can provide programming on topics related to self-care as well as resources available to members of the judiciary experiencing mental health or



- ✓ Design well-being education specifically for judges.
- ✓ Connect judges for support and mentoring.
- ✓ Publish well-being resources tailored to judges.

substance use disorders. Topics could include burnout, secondary traumatic stress, compassion fatigue, strategies to maintain well-being, as well as identification of and intervention for mental health and substance use disorders.

Judicial educators also should make use of programming that allows judges to engage in mutual support and sharing of self-care strategies. One such example is roundtable discussions held as part of judicial conferences or establishing a facilitated mentoring

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.



program or mentoring circle for judicial members. We have identified isolation as a significant challenge for many members of the judiciary. Roundtable discussions and mentoring programs combat the detrimental effects of this isolation.⁹¹

Judicial associations and educators also should develop publications and resources related to well-being, such as guidebooks. For example, a judicial association could create wellness guides such as “A Wellness Guide for Judges of the California State Courts.” This sends the signal that thought leaders in the judiciary value well-being.

19. MONITOR FOR IMPAIRED LAWYERS AND PARTNER WITH LAWYER ASSISTANCE PROGRAMS

Judges often are among the first to detect lawyers suffering from an impairment. Judges know when a lawyer is late to court regularly, fails to appear, or appears in court under the influence of alcohol or drugs. They witness incomprehensible pleadings or cascading requests for extensions of time. We believe judges have a keen pulse on when a lawyer needs help. With the appropriate training, judges’ actions can reduce client harm and save a law practice or a life. We make the following recommendations tailored to helping judges help the lawyers appearing before them.

Consistent with Recommendation 5.1, judges should become familiar with lawyer assistance programs in their state. They should learn how best to make referrals to the program. They should understand the confidentiality protections surrounding these referrals. Judges also should invite lawyer assistance programs to conduct educational programming for lawyers in their jurisdiction using their courtroom or other courthouse space.

Judges, for example, can devote a bench-bar luncheon at the courthouse to well-being and invite representatives of the lawyers assistance program to the luncheon.

Judicial educators should include a section in bench book-style publications dedicated to lawyer assistance programs and their resources, as well as discussing how to identify and handle lawyers who appear to have mental health or substance use disorders. Further, judges and their staff should learn the signs of mental health and substance use disorders, as well as strategies for intervention, to assist lawyers in their courtrooms who may be struggling with these issues. Judges can also advance the well-being of lawyers who appear before them by maintaining courtroom decorum and de-escalating the hostilities that litigation often breeds.

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.

⁹¹For more information on judicial roundtables, see AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, JUDICIAL ROUNDTABLES, available at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lc_colap_Judicial_Roundtable_Protocols.authcheckdam.pdf.





*“You can do what I cannot do. I can do what you cannot do.
Together we can do great things.” — Mother Teresa*

Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible. We broadly define “regulators” to encompass all stakeholders who assist the highest court in each state in regulating the practice of law.⁹² This definition includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.

Courts and their regulators frequently witness the conditions that generate toxic professional environments, the impairments that may result, and the negative professional consequences for those who do not seek help. Regulators are well-positioned to improve and adjust the regulatory process to address the conditions that produce these effects. As a result, we propose that the highest court in each state set an agenda for action and send a clear message to all participants in the legal system that lawyer well-being is a high priority.

Transform the profession’s perception of regulators from police to partner.

To carry out the agenda, regulators should develop their reputation as partners with practitioners. The legal profession often has a negative perception of regulators,

who typically appear only when something has gone awry. Regulators can transform this perception by building their identity as partners with the rest of the legal community rather than being viewed only as its “police.”

Most regulators are already familiar with the 1992 Report of the Commission on Evaluation of Disciplinary Enforcement—better known as the “McKay Commission Report.”⁹³ It recognized and encouraged precisely what we seek to do through this report: to make continual improvements to the lawyer regulation process to protect the public and assist lawyers in their professional roles. Accordingly, we offer the following recommendations to ensure that the regulatory process proactively fosters a healthy legal community and provides resources to rehabilitate impaired lawyers.

20. TAKE ACTIONS TO MEANINGFULLY COMMUNICATE THAT LAWYER WELL-BEING IS A PRIORITY.

20.1. Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.

In 2016, the Conference of Chief Justices adopted a resolution recommending that each state’s highest court consider the ABA’s proposed Model Regulatory Objectives.⁹⁴ Among other things, those objectives sought to encourage “appropriate preventive or wellness programs.” By including a wellness provision, the ABA recognized the importance of the human element in the practice of law: To accomplish all other listed objectives, the profession must have healthy, competent lawyers. The Supreme Court of Colorado already has adopted

⁹²See AM. BAR ASS’N RESOL. 105 (February 2016).

⁹³AM BAR ASS’N COMM’N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, LAWYER REGULATION FOR A NEW CENTURY: REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT (1992), available at http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html.

⁹⁴RESOL. 105, *supra* note 92.

a version of the ABA's Regulatory Objectives. In doing so, it recommended proactive programs offered by the Colorado Lawyer Assistance Program and other organizations to assist lawyers throughout all stages of their careers to practice successfully and serve their clients.⁹⁵ The Supreme Court of Washington also recently enacted regulatory objectives.⁹⁶

We recommend that the highest court in each U.S. jurisdiction follow this lead. Each should review the ABA and Colorado regulatory objectives and create its own objectives that specifically promote effective lawyer assistance and other proactive programs relating to well-being. Such objectives will send a clear message that the court prioritizes lawyer well-being, which influences competent legal services. This, in turn, can boost public confidence in the administration of justice.

20.2. Modify the Rules of Professional Conduct to Endorse Well-Being As Part of a Lawyer's Duty of Competence.

ABA Model Rule of Professional Conduct 1.1 (Competence) states that lawyers owe a duty of competence to their clients. "Competent" representation is defined to require "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."⁹⁷ We recommend revising this Rule and/or its Comments to more clearly include lawyers' well-being in the definition of "competence."

One alternative is to include language similar to California's Rule of Professional Conduct 3-110, which defines "competence" to include the "mental, emotional, and physical ability reasonably necessary" for the representation.⁹⁸ A second option is to amend the Comments to Rule 1.1 to clarify that professional competence requires an ability to comply with all of the Court's essential eligibility requirements (see Recommendation 21.2 below).

Notably, we do not recommend discipline solely for a

lawyer's failure to satisfy the well-being requirement or the essential eligibility requirements. Enforcement should proceed only in the case of actionable misconduct in the client representation or in connection with disability proceedings under Rule 23 of the ABA Model Rules for Disciplinary Enforcement. The goal of the proposed amendment is not to threaten lawyers with discipline for poor health but to underscore the importance of well-being in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.

20.3. Expand Continuing Education Requirements to Include Well-Being Topics.

We recommend expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow credit for other well-being-related topics that affect lawyers' professional capabilities.

In 2017, the ABA proposed a new Model Continuing Legal Education (MCLE) Rule that recommends mandatory mental health programming. The Model Rule requires lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of "mental health and substance use disorders." We recommend that all states adopt this provision of the Model Rule. Alternatively, states could consider authorizing ethics credit (or other specialized credits) for CLE programs that address these topics. California and Illinois are examples of state bars that already have such requirements.⁹⁹

The ABA's new Model Rule also provisionally recommends that states grant CLE credit for "Lawyer Well-Being Programming." The provision encompasses a broader scope of topics than might fall under a narrow definition of mental health and substance use

⁹⁵Washington Courts, Suggested Amendments to General Rules (2017), http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=549.

⁹⁷MODEL RULES PROF. CONDUCT R. 1.1 (2017), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html.

⁹⁸CAL. RULES PROF'L CONDUCT R. 3-110, available at <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-3-110>.

⁹⁹See RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017); ILL. SUP. CT. R. 794(d)(1) (2017).



disorders. Tennessee is one example of a pioneering state that authorizes credit for a broad set of well-being topics. Its CLE Regulation 5H authorizes ethics and professionalism credit for programs that are designed, for example, to: enhance optimism, resilience, relationship skills, and energy and engagement in their practices; connect lawyers with their strengths and values; address stress; and to foster cultures that support outstanding professionalism.¹⁰⁰ We recommend that regulators follow Tennessee's lead by revising CLE rules to grant credit for similar topics.

20.4. Require Law Schools to Create Well-Being Education for Students as An Accreditation Requirement.

In this recommendation, the Task Force recognizes the ABA's unique role as accreditor for law schools through the Council of the Section of Legal Education and Admissions to the Bar of the ABA.¹⁰¹ The Task Force recommends that the Council revise the Standards and Rules of Procedure for Approval of Law Schools to require law schools to create well-being education as a criterion for ABA accreditation. The ABA should require law schools to publish their well-being-related resources on their websites. These disclosures can serve as resources for other law schools as they develop and improve their own programs. Examples of well-being education include a mandatory one credit-hour course on well-being topics or incorporating well-being topics in to the professional responsibility curriculum.

A requirement similar to this already has been implemented in the medical profession for hospitals that operate residency programs. Hospitals that operate Graduate Medical Education programs to train residents must comply with the Accreditation Council for Graduate Medical Education (ACGME) Program Requirements. The ACGME requires hospitals to “be committed to and

responsible for . . . resident well-being in a supportive educational environment.”¹⁰² This provision requires that teaching hospitals have a documented strategy for promoting resident well-being and, typically, hospitals develop a wellness curriculum for residents.

21. ADJUST THE ADMISSIONS PROCESS TO SUPPORT LAW STUDENT WELL-BEING.

To promote law student well-being, regulations governing the admission to the practice of law should facilitate the treatment and rehabilitation of law students with impairments.

21.1. Re-Evaluate Bar Application Inquiries About Mental Health History.

Most bar admission agencies include inquiries about applicants' mental health as part of fitness evaluations for licensure. Some critics have contended that the deterrent effect of those inquiries discourages persons in need of help from seeking it. Not everyone agrees with that premise, and some argue that licensing of professionals necessarily requires evaluation of all risks that an applicant may pose to the public. Over the past several decades, questions have evolved to be more tightly focused and to elicit only information that is current and germane. There is continuing controversy over the appropriateness of asking questions about mental health at all. The U.S. Department of Justice has actively encouraged states to eliminate questions relating to mental health, and some states have modified or eliminated such questions.¹⁰³ In 2015, the ABA adopted a resolution that the focus should be directed “on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner.”¹⁰⁴ We recommend that each state follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment history.

¹⁰⁰TENN. COMM'N ON CONTINUING LEGAL EDUC., REG. 5H (2008), available at <http://www.cletrn.com/images/Documents/Regulations2013.04.16.pdf>.

¹⁰¹See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, available at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf.

¹⁰²ACCREDITATION COUNSEL FOR GRADUATE MEDICAL EDUCATION, CGME COMMON PROGRAM REQUIREMENTS, § VI.A.2, available at https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/CPRs_07012016.pdf

¹⁰³D. Hudson, *Honesty Is the Best Policy for Character and Fitness Screenings*, A.B.A. J., June 1, 2016, available at http://www.abajournal.com/magazine/article/honesty_is_the_best_policy_for_character_and_fitness_screenings.

¹⁰⁴AM. BAR ASS'N RESOL. 102 (August 2015).



21.2. Adopt Essential Eligibility Admission Requirements.

Promoting lawyer well-being includes providing clear eligibility guidelines for lawyers with mental or physical impairments. Regulators in each state should adopt essential eligibility requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether or not an individual has the required abilities, with or without reasonable accommodations.

At least fourteen states have essential eligibility requirements for admission to practice law.¹⁰⁵ These requirements help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law. Essential eligibility requirements also aid participants in lawyer disability and reinstatement proceedings, when determinations must be made of lawyers' capacity to practice law.

21.3. Adopt a Rule for Conditional Admission to Practice Law With Specific Requirements and Conditions.

Overly-rigid admission requirements can deter lawyers and law students from seeking help for substance use and mental health disorders. To alleviate this problem, states should adopt conditional admission requirements, which govern applicants for admission to the practice of law who have successfully undergone rehabilitation for substance use or another mental disorder, but whose period of treatment and recovery may not yet be sufficient to ensure continuing success.¹⁰⁶ Conditional admission programs help dismantle the stigma of mental health and substance use disorders as "scarlet letters." Especially for law students, they send a meaningful message that even in the worst circumstances, there is

Rigid admission requirements can deter help-seeking.

hope: seeking help will not block entry into their chosen profession.

21.4. Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.

At present, no state publishes data showing the number of applications for admission to practice law that are actually denied or delayed due to conduct related to substance use and other mental health disorders. From informal discussions with regulators, we know that a low percentage of applications are denied. Publication of this data might help alleviate law students' and other applicants' fears that seeking help for such disorders will inevitably block them from practicing law. Accordingly, we recommend that boards of bar examiners collect and publish such data as another means of encouraging potential applicants to seek help immediately and not delay until after their admission.

22. ADJUST LAWYER REGULATIONS TO SUPPORT WELL-BEING.

22.1. Implement Proactive Management-Based Programs (PMBP) That Include Lawyer Well-Being Components.

PMBP programs encourage best business practices and provide a resource-based framework to improve lawyers' ability to manage their practice. Such programs

¹⁰⁵See, e.g., SUP. CT. OF OHIO, OFF. OF BAR ADMISSIONS, OHIO ESSENTIAL ELIGIBILITY REQUIREMENTS; available at http://www.supremecourt.ohio.gov/AttySvcs/admissions/pdf/ESSENTIAL_ELIGIBILITY_REQUIREMENTS.pdf; MINN. RULES FOR ADMISSION TO THE BAR, RULE 5, available at https://www.revisor.leg.state.mn.us/court_rules/rule.php?type=pr&subtype=admi&id=5; COLO. R. CIV. PROC. 208.1(5), available at http://www.coloradosupremecourt.com/Future%20Lawyers/FAQ_CharacterFitness.asp; WASH. ADMISSION AND PRACTICE RULES, RULE 20(e), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr; IDAHO BAR COMM'N RULE 201. Other states to adopt essential eligibility requirements include Florida, Illinois, Kentucky, Massachusetts, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming.

¹⁰⁶About a quarter of all jurisdictions already have conditional admission rules for conduct resulting from substance use or other mental disorders. See 2016 NAT'L CONF. OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS, Chart 2: Character and Fitness Determinations (2016). Those states include Arizona, Connecticut, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming. Additionally, Guam allows conditional admission for conduct related to substance abuse.



are designed to alleviate practice stress, improve lawyer-client relationships, and enhance career satisfaction.¹⁰⁷ Further, PMBP programs allow regulators to engage with the profession in a service-oriented, positive manner, reducing the anxiety, fear, and distrust that often accompanies lawyers' interactions with regulators.¹⁰⁸ Transforming the perception of regulators so that they are viewed as partners and not only as police will help combat the culture of stress and fear that has allowed mental health and substance use disorders to proliferate.

22.2. Adopt A Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.

We recommend that regulators adopt centralized intake systems. These allow expedited methods for receipt and resolution of grievances and help reduce the stress associated with pending disciplinary matters. With specialized training for intake personnel, such systems also can result in faster identification of and possible intervention for lawyers struggling with substance use or mental health disorders.¹⁰⁹

22.3. Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information From Regulators to Lawyer Assistance Programs.

Regulators' information-sharing practices can contribute to the speed of help to lawyers in need. For example, admissions offices sometimes learn that applicants are suffering from a substance use or other mental health disorder. Other regulators may receive similar information during investigations or prosecutions of lawyer regulation

matters that they consider to be confidential information. To facilitate help for lawyers suffering from such disorders, each state should simplify its confidentiality rules to allow admissions offices and other regulators to share such information immediately with local lawyer assistance programs.

Allowing this one-way flow of information can accelerate help to lawyers who need it. To be clear, the recommended information sharing would be one-way. As always, the lawyer assistance programs would be precluded from sharing any information with any regulators or others.

22.4. Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven Successful in Promoting Well-Being.

Discipline does not make an ill lawyer well. We recommend that regulators adopt alternatives to formal disciplinary proceedings that rehabilitate lawyers with impairments. Diversion programs are one such alternative, and they have a direct and positive impact

Discipline does not make an ill lawyer well.

on lawyer well-being. Diversion programs address minor lawyer misconduct that often features an underlying mental health or substance use disorder.¹¹⁰ When lawyers enter a diversion program, they agree to follow

¹⁰⁷S. Fortney & T. Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L. J. 152 (2012).

¹⁰⁸L. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016).

¹⁰⁹The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement, Rule 1, defines a Central Intake Office as the office that "receive[s] information and complaints regarding the conduct of lawyers over whom the court has jurisdiction" and determines whether to dismiss the complaint or forward it to the appropriate disciplinary agency. The Model Rules for Lawyer Disciplinary Enforcement are available at http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement.html.

¹¹⁰Title 6 of Washington's Rules for Enforcement of Lawyer Conduct provides an excellent overview of when diversion is appropriate and procedures for diversion. It is available through the Washington State Courts website at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ELC. Some of the many jurisdictions to adopt such programs are Arizona, Colorado, the District of Columbia, Florida, Illinois, Iowa, Kansas, Louisiana, New Hampshire, New Jersey, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.



certain conditions to continue practicing law. Those conditions can include training, drug or alcohol testing, peer assistance, and treatment. Monitoring plays a central role in ensuring compliance with the diversion agreement and helps lawyers successfully transition back to an unconditional practice of law and do so healthy and sober. By conditioning continued practice on treatment for an underlying mental health disorder or substance use disorder, diversion agreements can change a lawyer's life.

In addition, probation programs also promote wellness. Lawyer misconduct that warrants a suspension of a lawyer's license may, under certain circumstances, qualify for probation. In most jurisdictions, the probation period stays the license suspension and lawyers may continue practicing under supervision and specified conditions that include training, testing, monitoring, and treatment. Once again, this places a lawyer facing a mental health or substance use crisis on the path to better client service and a lifetime of greater well-being and sobriety.

23. ADD WELL-BEING-RELATED QUESTIONS TO THE MULTISTATE PROFESSIONAL RESPONSIBILITY EXAM (MPRE).

A 2009 survey reflected that 22.9 percent of professional responsibility/legal ethics professors did not cover substance use and addiction at all in their course, and 69.8 percent addressed the topic in fewer than two hours.¹¹¹ Notwithstanding the pressure to address myriad topics in this course, increased attention must be

given to reduce these issues among our law students. The National Conference of Bar Examiners should consider adding several relevant questions to the MPRE, such as on the confidentiality of using lawyer assistance programs, the frequency of mental health and substance use disorders, and the tie-in to competence and other professional responsibility issues.¹¹² Taking this step underscores both the importance of the topic and the likelihood of students paying closer attention to that subject matter in their course. In addition, professional responsibility casebook authors are encouraged to include a section devoted to the topic, which will in turn compel instructors to teach in this area.

¹¹¹A. M. PERLMAN, M. RAYMOND & L. S. TERRY, A SURVEY OF PROFESSIONAL RESPONSIBILITY COURSES AT AMERICAN LAW SCHOOLS IN 2009, <http://www.legalethicsforum.com/files/pr-survey-results-final.pdf>.

¹¹²See Krill, Johnson, & Albert, *supra* note 1, for the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation Study; Organ, Jaffe, Bender, *supra* note 3, for *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*.





“Self-care is not selfish. You cannot serve from an empty vessel.” — Eleanor Brown

Legal employers, meaning all entities that employ multiple practicing lawyers, can play a large role in contributing to lawyer well-being. While this is a broad and sizable group with considerable diversity, our recommendations apply fairly universally. A specific recommendation may need to be tailored to address the realities particular to each context, but the crux of each recommendation applies to all.

24. ESTABLISH ORGANIZATIONAL INFRASTRUCTURE TO PROMOTE WELL-BEING.

24.1. Form A Lawyer Well-Being Committee.

Without dedicated personnel, real progress on well-being strategies will be difficult to implement and sustain.¹¹³ Accordingly, legal employers should launch a well-being initiative by forming a Lawyer Well-Being Committee or appointing a Well-Being Advocate. The advocate or committee should be responsible for evaluating the work environment, identifying and addressing policies and procedures that create the greatest mental distress among employees, identifying how best to promote a positive state of well-being, and tracking progress of well-being strategies. They should prepare key milestones, communicate them, and create accountability strategies.¹¹⁴ They also should develop strategic partnerships with lawyer assistance programs and other well-being experts and stay abreast of developments in the profession and relevant literature.

24.2. Assess Lawyers' Well-Being.

Legal employers should consider continually assessing the state of well-being among lawyers and staff and

whether workplace cultures support well-being. An assessment strategy might include an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being, stressors in the firm that significantly affect well-being, and organizational support for improving well-being in the workplace. Attitudes are formed not only by an organization's explicit messages but also implicitly by how leaders and lawyers actually behave. Specifically related to the organizational climate for support for mental health or substance use disorders, legal employers should collect information to ascertain, for example, whether lawyers:

- Perceive that you, their employer, values and supports well-being.
- Perceive leaders as role modeling healthy behaviors and empathetic to lawyers who may be struggling.
- Can suggest improvements to better support well-being.
- Would feel comfortable seeking needed help, taking time off, or otherwise taking steps to improve their situation.
- Are aware of resources available to assist their well-being.
- Feel expected to drink alcohol at organizational events.
- Feel that substance use and mental health problems are stigmatized.
- Understand that the organization will reasonably accommodate health conditions, including recovery from mental health disorders and addiction.

¹¹³Companies with dedicated wellness personnel achieve, on average, a 10 percent higher rate of employee participation. See OPTUM HEALTHCARE, WELLNESS IN THE WORKPLACE 2012: AN OPTUM RESEARCH UPDATE (Resource Center for Health & Wellbeing White Paper 2012), available at <https://broker.uhc.com/assets/wellness-in-the-workplace-2012-WP.pdf>.

¹¹⁴For guidance on developing their own strategic plan, Well-Being Committees could look to the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession, see *supra* note 76. They might also consider creating an information hub to post all well-being related resources. Resources could include information about the growing number of mental health apps. See, e.g., R. E. Silverman, *Tackling Workers' Mental Health, One Text at a Time*, WALL ST. J., July 19, 2016, available at <https://www.wsj.com/articles/tackling-workers-mental-health-one-text-at-a-time-1468953055>; B. A. Clough & L. M. Casey, *The Smart Therapist: A Look to the Future of Smartphones and eHealth Technologies in Psychotherapy*, 46 PROF. PSYCHOL. RES. & PRAC. 147 (2015).

As part of the same survey or conducted separately, legal employers should consider assessing the overall state of lawyers' well-being. Surveys are available to measure concepts like depression, substance use, burnout, work engagement, and psychological well-being. The Maslach Burnout Inventory (MBI) is the most widely used burnout assessment. It has been used to measure burnout among lawyers and law students.¹¹⁵ Programs in the medical profession have recommended a bi-annual distribution of the MBI.¹¹⁶

Legal employers should carefully consider whether internal staff will be able to accurately conduct this type of assessment or whether hiring an outside consultant would be advisable. Internal staff may be more vulnerable to influence by bias, denial, and misinterpretation.

25. ESTABLISH POLICIES AND PRACTICES TO SUPPORT LAWYER WELL-BEING.

Legal employers should conduct an in-depth and honest evaluation of their current policies and practices that relate to well-being and make necessary adjustments. This evaluation should seek input from all lawyers and staff in a safe and confidential manner, which creates transparency that builds trust. **Appendix D** sets out example topics for an assessment.

Legal employers also should establish a confidential reporting procedure for lawyers and staff to convey concerns about their colleagues' mental health or substance use internally, and communicate how lawyers and staff can report concerns to the appropriate disciplinary authority and/or to the local lawyer assistance program. Legal employers additionally should establish a procedure for lawyers to seek confidential help for themselves without being

penalized or stigmatized. CoLAP and state lawyer assistance programs can refer legal employers to existing help lines and offer guidance for establishing an effective procedure that is staffed by properly-trained people.¹¹⁷ We note that the ABA and New York State Bar Association have proposed model law firm policies for handling lawyer impairment that can be used for guidance.¹¹⁸ The ABA has provided formal guidance on managing lawyer impairment.¹¹⁹

25.1. Monitor For Signs of Work Addiction and Poor Self-Care.

Research reflects that about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally.¹²⁰ Numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction. Therefore, we recommend that legal employers monitor for work addiction and avoid rewarding extreme behaviors that can ultimately harm their health. Legal employers should expressly encourage lawyers to make time to care for themselves and attend to other personal obligations. They may also want to consider promoting physical activity to aid health and cognitive functioning.

25.2. Actively Combat Social Isolation and Encourage Interconnectivity.

As job demands have increased and budgets have tightened, many legal employers have cut back on social activities. This could be a mistake. Social support from colleagues is an important factor for coping with stress and preventing negative consequences like burnout.¹²¹ Socializing helps individuals recover from work demands

¹¹⁵See, e.g., S. E. Jackson, J. A. Turner, & A. P. Brief, *Correlates of Burnout Among Public Service Lawyers*, 8 J. ORG. BEHAV. 339 (1987); see also R. Durr, *Creating 'Whole Lawyers': Wellness, Balance, and Performance Excellence At Northwestern University School of Law*, NW. SCH. OF L. (2015), available at http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2015/May/Conference/Materials/8_wellbeing_program_catalog_2014_2015%204%203%2015%20version.authcheckdam.pdf.

¹¹⁶J. Eckleberry-Hunt, A. Van Dyke, D. Lick, & J. Tucciarone, *Changing the Conversation from Burnout to Wellness: Physician Well-being in Residency Training Programs*, 1 J. GRADUATE MED. EDUC. 225 (2009). The MBI is available at <http://www.mindgarden.com/117-maslach-burnout-inventory>.

¹¹⁷CoLAP's website provides help-line information and a directory of state-based lawyer assistance programs: http://www.americanbar.org/groups/lawyer_assistance.html.

¹¹⁸AM. BAR ASS'N RESOL. 118, MODEL LAW FIRM/LEGAL DEPARTMENT IMPAIRMENT POLICY & GUIDELINES (Aug. 1990), available at <https://www.texasbar.com/AM/Template.cfm?Section=Employers1&Template=/CM/ContentDisplay.cfm&ContentID=15131>; NEW YORK STATE BAR ASSOCIATION LAWYER ASSISTANCE COMMITTEE MODEL POLICY, N. Y. STATE BAR ASS'N (2010), available at https://www.nassaubar.org/UserFiles/Model_Policy.pdf.

¹¹⁹AM. BAR ASS'N FORMAL OPINION 03-429 (2003), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03_429.authcheckdam.pdf.

¹²⁰Brafford, *supra* note 2.

¹²¹C. Maslach, W. B. Schaufeli, & M. P. Leiter, *Job Burnout*, 52 ANN. REV. OF PSYCHOL. 397, 415 (2001); T. Reuter & R. Schwarzer, *Manage Stress at Work Through Preventive and Proactive Coping*, in Locke, *supra* note 7.



and can help stave off emotional exhaustion.¹²² It inhibits lawyers feeling isolated and disconnected, which helps with firm branding, messaging, and may help reduce turnover. We recommend deemphasizing alcohol at such events.

26. PROVIDE TRAINING AND EDUCATION ON WELL-BEING, INCLUDING DURING NEW LAWYER ORIENTATION.

We recommend that legal employers provide education and training on well-being-related topics and recruit experts to help them do so. A number of law firms already offer well-being related programs, like meditation, yoga sessions, and resilience workshops.¹²³ We also recommend orientation programs for new lawyers that incorporate lawyer well-being education and training.¹²⁴ Introducing this topic during orientation will signal its importance to the organization and will start the process of developing skills that may help prevent well-being problems. Such programs could:

- Introduce new lawyers to the psychological challenges of the job.¹²⁵
- Reduce stigma surrounding mental health problems.
- Take a baseline measure of well-being to track changes over time.
- Provide resilience-related training.
- Incorporate activities focused on individual lawyers' interests and strengths, and not only on organizational expectations.¹²⁶

Further, law firms should ensure that all members and staff know about resources, including lawyer assistance

programs, that can assist lawyers who may experience mental health and substance use disorders. This includes making sure that members and staff understand confidentiality issues pertaining to those resources.

26.1. Emphasize a Service-Centered Mission.

At its core, law is a helping profession. This can get lost in the rush of practice and in the business aspects of law. Much research reflects that organizational cultures that focus chiefly on materialistic, external rewards can damage well-being and promote a self-only focus. In fact, research shows that intrinsic values like relationship-

Work cultures that constantly emphasize competitive, self-serving goals can harm lawyer well-being.

development and kindness are stifled in organizations that emphasize extrinsic values like competition, power, and monetary rewards.¹²⁷ Work cultures that constantly emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors from lawyers that harm organizations and individual well-being. This can be psychologically draining. Research of Australian lawyers found that 70 percent reported that the practice of law is bottom-line driven.¹²⁸ Lawyers who reported that the practice of law was primarily about generating profits were more likely to be depressed.¹²⁹ This affects the

¹²²M. J. Tews, J. W. Michel, & K. Stafford, *Does Fun Pay? The Impact of Workplace Fun on Employee Turnover and Performance*, 54 CORNELL HOSPITALITY QUARTERLY, 370 (2013).

¹²³E.g., C. Bushey, *Kirkland & Ellis to Offer Wellness Training to All U.S. Lawyers*, CRAIN'S CHICAGO BUS., May 2, 2016, available at <http://www.chicagobusiness.com/article/20160502/NEWS04/160509972/kirkland-ellis-to-offer-wellness-training-to-all-u-s-lawyers>; N. Rodriguez, *What the Army Can Teach BigLaw about Bouncing Back*, LAW360, Feb. 17, 2017, https://www.law360.com/in-depth/articles/891995?nl_pk=972d8116-f9f0-4582-a4c6-0ab3cf4a034c&utm_source=newsletter&utm_medium=email&utm_campaign=in-depth (identifying Goodwin Procter LLP, O'Melveny & Myers LLP, Morgan Lewis & Bockius LLP, Fish & Richardson PC, Drinker Biddle & Reath LLP, Quarles & Brady LLP, and Neal Gerber & Eisenberg LLP as having hosted resilience workshops).

¹²⁴See A. M. Saks, & J. A. Gruman, *Organizational Socialization and Positive Organizational Behaviour: Implications for Theory, Research, and Practice*, 28 CANADIAN J. ADMIN. SCI. 14 (2011).

¹²⁵See generally J. P. Wanous & A. E. Reichers, *New Employee Orientation Programs*, 10 HUMAN RESOURCE MGMT. REV. 435 (2000), available at <http://homepages.se.edu/cvonbergen/files/2013/01/New-Employee-Orientation-Programs.pdf>.

¹²⁶See D. M. Cable, F. Gino, & B. R. Staats, *Reinventing Employee Onboarding*, M.I.T. SLOAN MGMT. REV. (2013), available at <http://sloanreview.mit.edu/article/reinventing-employee-onboarding>.

¹²⁷T. Kasser, *Materialistic Values and Goals*, 67 ANN. REV. OF PSYCHOL. 489 (2015); T. Kasser, *Teaching about Values and Goals: Applications of the Circumplex Model to Motivation, Well-Being, and Prosocial Behavior*, 41 TEACHING PSYCHOL. 365 (2014).

¹²⁸A. J. Bergin & N. L. Jimmieson, *Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets*, 21 PSYCHIATRY, PSYCHOL. & L. 427 (2014).

¹²⁹A. D. Joudrey & J. E. Wallace, *Leisure as a Coping Resource: A Test of the Job Demand-Control-Support Model*, 62 HUMAN RELATIONS 195 (2009).

¹³⁰A. Hansen, Z. Byrne, & C. Kiersch, *How Interpersonal Leadership Relates to Employee Engagement*, 29 J. MANAGERIAL PSYCHOL. 953 (2014).



bottom line since poor mental health can cause disability and lost productivity.

Consequently, we recommend that legal employers evaluate what they prioritize and value, and how those values are communicated. When organizational values evoke a sense of belonging and pride, work is experienced as more meaningful.¹³⁰ Experiencing work as meaningful is the biggest contributor to work engagement—a form of work-related well-being.¹³¹

26.2. Create Standards, Align Incentives, and Give Feedback.

Contextual factors (i.e., the structure, habits, and dynamics of the work environment) play an enormous role in influencing behavior change. Training alone is almost never enough. To achieve change, legal employers will need to set standards, align incentives, and give feedback about progress on lawyer well-being topics.¹³²

Currently, few legal employers have such structural supports for lawyer well-being. For example, many legal employers have limited or no formal leader development programs, no standards set for leadership skills and competencies, and no standards for evaluating leaders' overall performance or commitment to lawyer well-being. Additionally, incentive systems rarely encourage leaders to develop their own leadership skills or try to enhance the well-being of lawyers with whom they work. In law firms especially, most incentives are aligned almost entirely toward revenue growth, and any feedback is similarly narrow. To genuinely adopt lawyer well-being as a priority, these structural and cultural issues will need to be addressed.

¹³⁰A. Hansen, Z. Byrne, & C. Kiersch, *How Interpersonal Leadership Relates to Employee Engagement*, 29 J. MANAGERIAL PSYCHOL. 953 (2014).

¹³¹A. M. BRAFFORD, POSITIVE PROFESSIONALS: CREATING HIGH-PERFORMING, PROFITABLE FIRMS THROUGH THE SCIENCE OF ENGAGEMENT. (American Bar Association, forthcoming November 2017.); D. R. May, R. L. Gilson, & L. M. Harter, *The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work*, 77 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 11 (2004).

¹³²R. A. NOE, EMPLOYEE TRAINING AND DEVELOPMENT (McGraw-Hill 2013).





“Well-being is a combination of feeling good as well as actually having meaning, good relationships, and accomplishment.” — Martin Seligman

Law students start law school with high life satisfaction and strong mental health measures. But within the first year of law school, they experience a significant increase in anxiety and depression.¹³³ Research suggests that law students are among the most dissatisfied, demoralized, and depressed of any graduate student population.¹³⁴

The 2016 Survey of Law Student Well-Being found troublesome rates of alcohol use, anxiety, depression, and illegal drug use at law schools across the country.

42% of students needed help for poor mental health but only about half sought it out.

Equally worrisome is students' level of reluctance to seek help for those issues. A large majority of students (about 80 percent) said that they were somewhat or very likely to seek help from a health professional for alcohol, drug, or mental health issues, but few actually did.¹³⁵ For example, while 42 percent thought that they had needed help for mental health problems in the prior year, only about half of that group actually received counseling from a health professional.¹³⁶ Only four percent said they had ever received counseling for alcohol or drug issues—even though a quarter were at risk for problem drinking.¹³⁷

The top factors that students reported as discouraging them from seeking help were concerns that it would threaten their bar admission, job, or academic status; social stigma; privacy concerns; financial reasons; belief that they could handle problems on their own; and not having enough time. Students' general reluctance to seek help may be one factor explaining why law student wellness has not changed significantly since the last student survey in the 1990s.¹³⁸ It appears that recommendations stemming from the 1993 survey either were not implemented or were not successful.¹³⁹

The Survey of Law Student Well-Being did not seek to identify the individual or contextual factors that might be contributing to students' health problems. It is important to root out such causes to enable real change. For example, law school graduates cite heavy workload, competition, and grades as major law school stressors.¹⁴⁰ Others in the legal community have offered additional insights about common law school practices, which are discussed below. Law school well-being initiatives should not be limited to detecting disorders and enhancing student resilience. They also should include identifying organizational practices that may be contributing to the problems and assessing what changes can be made to support student well-being. If legal educators ignore the impact of law school stressors, learning is likely to be suppressed and illness may be intensified.¹⁴¹

The above reflects a need for both prevention strategies to address dysfunctional drinking and misuse of substances as well as promotion strategies that identify aspects of legal education that can be revised to support

¹³³L. S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113-15 (2002).

¹³⁴A. A. Patthoff, *This is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015).

¹³⁵Organ, Jaffe, & Bender, *supra* note 3, at 143.

¹³⁶*Id.* at 140.

¹³⁷*Id.*

¹³⁸ASS'N AM. L. SCH. SPECIAL COMM. ON PROBLEMS OF SUBSTANCE ABUSE IN THE L. SCHS. (1993).

¹³⁹*Id.* at vi-vii.

¹⁴⁰R. A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010).

¹⁴¹Patthoff, *supra* note 134, at 424.

well-being. The recommendations below offer some ideas for both.

27. CREATE BEST PRACTICES FOR DETECTING AND ASSISTING STUDENTS EXPERIENCING PSYCHOLOGICAL DISTRESS.

Ignoring law school stressors can suppress learning and intensify illness.

Law schools should develop best practices for creating a culture in which all associated with the school take responsibility for student well-being. Faculty and administrators play an important role in forming a school's culture and should be encouraged to share responsibility for student well-being.

27.1. Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.

Faculty have significant sway over students but generally students are reluctant to approach them with personal problems, especially relating to their mental health. Students' aversion to doing so may be exacerbated by a perception that faculty members must disclose information relating to students' competence to practice to the state bar. To help remove uncertainty and encourage students to ask for help, law schools should consider working with lawyer assistance programs on training faculty on how to detect students in trouble, how to have productive conversations with such students, what and when faculty need to report information relating to such students, as well as confidentiality surrounding these services.¹⁴² Students should be educated about

faculty's reporting requirements to add clarity and reduce student anxiety when interacting with faculty.

Additionally, faculty members should be encouraged to occasionally step out of their formal teaching role to convey their respect and concern for students, to acknowledge the stressors of law school, and to decrease stigma about seeking help for any health issues that arise. Faculty should consider sharing experiences in which students confronted similar issues and went on to become healthy and productive lawyers.

To support this recommendation, deans of law schools must be engaged. The well-being of future lawyers is too important to relegate to student affairs departments. For faculty to take these issues seriously, it must be clear to them that deans value the time that faculty spend learning about and addressing the needs of students outside the classroom. With the full backing of their deans, deans of students should provide training and/or information to all faculty that includes talking points that correspond to students' likely needs—e.g., exam scores, obtaining jobs, passing the bar, accumulating financial debt, etc. Talking points should be offered only as a guideline. Faculty should be encouraged to tailor conversations to their own style, voice, and relationship with the student.

Law schools should consider inviting law student and lawyer well-being experts to speak at faculty lunches, colloquia, and workshops to enhance their knowledge of this scholarship.¹⁴³ Such programming should include not just faculty but teaching assistants, legal writers, peer mentors, and others with leadership roles in whom law students may seek to confide. Many of these experts are members of the Association of American Law Schools section on Balance in Legal Education.¹⁴⁴ Their scholarship is organized in an online bibliography divided into two topics: Humanizing the Law School Experience and Humanizing the Practice of Law.¹⁴⁵

¹⁴²See Organ, Jaffe, & Bender, *supra* note 3, at 153. At American University Washington College of Law, as but one example likely among many, the dean of students invites faculty no less than every other year to meet with the University Counseling director and D.C. Bar Lawyer Assistance Program manager to discuss trends, highlight notable behaviors, discuss how to respond to or refer a student, and the importance of tracking attendance.

¹⁴³See J. Bibbelhausen, K. M. Bender, R. Barrett, *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students*, 41 WM. MITCHELL L. REV. 918 (2015).

¹⁴⁴Balance in Legal Educ. Sec., Ass'n Am. L. Sch., https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=9fb324e8-e515-4fd3-b6db-a1723feeb799.

¹⁴⁵*Id.* at Bibliography.



27.2. Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.

While law students may occasionally miss class due to personal conflicts, their repeated absence often results from deteriorating mental health.¹⁴⁶ Creating a system to monitor for chronic absences can help identify students for proactive outreach. Consequently, law schools should adhere to a consistent attendance policy that includes a timely reporting requirement to the relevant law school official. Absent such a requirement, deans of students may be left with only a delayed, reactive approach.

If faculty members are reluctant to report student absences, a system can be created to ensure that a report cannot be traced to the faculty member. Several law schools have adopted “care” networks or random check-ins whereby someone can report a student as potentially needing assistance.¹⁴⁷ In these programs, the identity of the person who provided the report is kept confidential.

Certain models on this issue include the American University Washington College of Law, which implements random “check-in” outreach, emailing students to visit the Student Affairs office for brief conversations. This method allows for a student about whom a concern has been raised to be folded quietly into the outreach.¹⁴⁸ Georgetown Law School allows anyone concerned about a student to send an email containing only the student’s name, prompting relevant law school officials to check first with one another and then investigate to determine if a student meeting is warranted.¹⁴⁹ The University of Miami School of Law uses an online protocol for a student to self-report absences in advance, thus enabling the dean of students to follow up as appropriate if personal problems are indicated.¹⁵⁰

27.3. Provide Mental Health and Substance Use Disorder Resources.

Law schools should identify and publicize resources so that students understand that there are resources available to help them confront stress and well-being crises. They should highlight the benefits of these resources and that students should not feel stigmatized for seeking help. One way to go about this is to have



Develop Student Resources

- ✓ **Create and publicize well-being resources designed for students.**
- ✓ **Counter issues of stigma.**
- ✓ **Include mental health resources in every course syllabus.**
- ✓ **Organize wellness events.**
- ✓ **Develop a well-being curriculum.**
- ✓ **Establish peer mentoring.**

every course syllabus identify the law school’s mental health resources. The syllabus language should reflect an understanding that stressors exist.¹⁵¹ Law schools also can hold special events, forums, and conversations that coincide with national awareness days, such as mental health day and suicide prevention day.

¹⁴⁶See Organ, Jaffe, & Bender, *supra* note 3, at 152.

¹⁴⁷*Id.*

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰*Id.*

¹⁵¹One example of such a provision is: “Mental Health Resources: Law school is a context where mental health struggles can be exacerbated. If you ever find yourself struggling, please do not hesitate to ask for help. If you wish to seek out campus resources, here is some basic information: [Website]. [Law School Name] is committed to promoting psychological wellness for all students. Our mental health resources offer support for a range of psychological issues in a confidential and safe environment. [Phone; email; address; hotline number].”



Developing a well-being curriculum is an additional way to convey that resources are available and that the law school considers well-being a top priority. Northwestern University's Pritzker School of Law has accomplished the latter with well-being workshops, mindfulness and resilience courses, and meditation sessions as part of a larger well-being curriculum.¹⁵²

Another noteworthy way to provide resources is to establish a program where law students can reach out to other law students who have been trained to intervene and help refer students in crisis. Touro Law School established a "Students Helping Students" program in 2010 where students volunteer to undergo training to recognize mental health problems and refer students confronting a mental health crisis.¹⁵³

28. ASSESS LAW SCHOOL PRACTICES AND OFFER FACULTY EDUCATION ON PROMOTING WELL-BEING IN THE CLASSROOM.

Law school faculty are essential partners in student well-being efforts. They often exercise powerful personal influence over students, and their classroom practices contribute enormously to the overall law school experience. Whether faculty members exercise their influence to promote student well-being depends, in part, on support of the law school culture and priorities. To support their involvement, faculty members should be invited into strategic planning to develop workable ideas. Framing strategies as helping students develop into healthy lawyers who possess grit and resilience may help foster faculty buy-in. Students' mental resilience can be viewed as a competitive advantage during their job searches and as support along their journeys as practicing lawyers toward sustainable professional and personal identities.

Educating law school faculty on how classroom practices can affect student well-being is one place to start the process of gaining faculty buy-in. For example, law professor Larry Krieger and social scientist Kennon

Sheldon identified potential culprits that undercut student well-being, including hierarchical markers of worth such as comparative grading, mandatory curves, status-seeking placement practices, lack of clear and timely feedback, and teaching practices that are isolating and intimidating.¹⁵⁴

Evaluate classroom practices for their impact on student well-being.

Because organizational practices so significantly influence student well-being, we recommend against focusing well-being efforts solely on detecting dysfunction and strengthening students' mental toughness. We recommend that law schools assess their classroom and organizational practices, make modifications where possible, and offer faculty programming on supporting student well-being while continuing to uphold high standards of excellence. Harmful practices should not be defended solely on the ground that law school has always been this way. Teaching practices should be evaluated to assess whether they are necessary to the educational experience and whether evidence supports their effectiveness.

29. EMPOWER STUDENTS TO HELP FELLOW STUDENTS IN NEED.

As noted above, students often are reluctant to seek mental health assistance from faculty members. Empowering students to assist each other can be a helpful alternative. One suggestion is to create a peer mentoring program that trains student mentors to provide support to fellow students in need. The ideal mentors would be students who are themselves in

¹⁵²Northwestern Law's well-being curriculum can be found at <http://www.law.northwestern.edu/law-school-life/student-services/wellness/curriculum/>.

¹⁵³TOURO L. SCH. STUDENTS HELPING STUDENTS (2017), available at <https://www.tourolaw.edu/uploads/Students%20Helping%20Students%20Spring17.pdf>.

¹⁵⁴See K. M. Sheldon & L. S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883 (2007); K. M. Sheldon & L. S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & THE LAW 261 (2004).



recovery. They should be certified by the local lawyer assistance program or another relevant organization and should be covered by the lawyer assistance program's confidentiality provisions. Peer mentors should not have a direct reporting obligation to their law school dean of students. This would help ensure confidentiality in the peer mentoring relationship and would foster trust in the law school community.¹⁵⁵

30. INCLUDE WELL-BEING TOPICS IN COURSES ON PROFESSIONAL RESPONSIBILITY.

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

31. COMMIT RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS.

Law schools should have, at a minimum, a part-time, onsite professional counselor. An onsite counselor provides easier access to students in need and sends a symbolic message to the law school community that seeking help is supported and should not be stigmatized. Although the value of such a resource to students should justify the necessary budget, law schools also could explore inexpensive or no-cost assistance from lawyer assistance programs. Other possible resources may be available from the university or private sector.

32. FACILITATE A CONFIDENTIAL RECOVERY NETWORK.

Law schools should consider facilitating a confidential network of practicing lawyers in recovery from substance

use to connect with law students in recovery. Law students are entering a new community and may assume that there are few practicing lawyers in recovery. Facilitating a confidential network will provide an additional support network to help students manage the challenges of law school and maintain health. Lawyers Concerned for Lawyers is an example of a legal peer assistance group that exists in many regions that may be a confidential network source.

33. PROVIDE EDUCATION OPPORTUNITIES ON WELL-BEING-RELATED TOPICS.

33.1. Provide Well-Being Programming During the 1L Year.

We agree with the Survey of Law Student Well-Being report's recommendation that law schools should incorporate well-being topics into student orientation.¹⁵⁶ We recommend that during 1L orientation, law schools should include information about student well-being and options for dealing with stress. Communications should convey that seeking help is the best way to optimize their studies and to ensure they graduate and move successfully into law practice. Other vulnerable times during which well-being-related programming would be particularly appropriate include the period before fall final exams, the period when students receive their first set of law school grades (usually at the start of spring semester), and the period before spring final exams. The Task Force commends Southwestern Law School's IL "Peak Performance Program" and its goal of helping new law students de-stress, focus, and perform well in law school.¹⁵⁷ This voluntary program is the type of programming that can have a transformative effect on law student well-being.

33.2. Create A Well-Being Course and Lecture Series for Students.

To promote a culture of well-being, law schools should create a lecture series open to all students and a course designed to cover well-being topics in depth. Well-being

¹⁵⁵The University of Washington School of Law offers a "Peer Support Program" that includes peer counseling, that offers stress management resources, and support for multicultural engagement. More information on the program can be found at <https://www.law.uw.edu/wellness/resources/>.

¹⁵⁶Organ, Jaffe, & Bender, *supra* note 3, at 148.

¹⁵⁷Southwestern Law School, Mindfulness, Peak Performance, and Wellness Programs, <http://www.swlaw.edu/student-life/support-network/mindfulness-peak-performance-and-wellness-programs>.



has been linked to improved academic performance, and, conversely, research reflects that well-being deficits connect to impaired cognitive performance. Recent research also has found that teaching well-being skills enhances student performance on standardized tests, and improves study habits, homework submission,



Effects of Student Well-Being

- ✓ Better academic performance and cognitive functioning
- ✓ Enhanced test performance
- ✓ Improved study habits and homework quality
- ✓ Long-term academic success

grades, and long-term academic success, as well as adult education attainment, health, and wealth.¹⁵⁸ A well-being course can, for example, leverage research findings from positive psychology and neuroscience to explore the intersection of improved well-being, enhanced performance, and enriched professional identity development for law students and lawyers. Further knowledge of how to maintain well-being can enhance competence, diligence, and work

relationships—all of which are required by the ABA's Model Rules of Professional Conduct. The content of a well-being course could be guided by education reform recommendations. **Appendix E** provides content suggestions for such a course.

34. DISCOURAGE ALCOHOL-CENTERED SOCIAL EVENTS.

Although the overwhelming majority of law students are of legal drinking age, a law school sends a strong message when alcohol-related events are held or publicized with regularity. Students in recovery and those thinking about it may feel that the law school does not take the matter seriously and may be less likely to seek assistance or resources. A law school can minimize the alcohol provided; it can establish a policy whereby student organizations cannot use student funds for the purchase of alcohol.¹⁵⁹ Events at which alcohol is not the primary focus should be encouraged and supported. Further, law school faculty should refrain from drinking alcohol at law school social events.

35. CONDUCT ANONYMOUS SURVEYS RELATING TO STUDENT WELL-BEING.

Recommendation 24 for legal employers suggests regular assessment of lawyer well-being. That same Recommendation applies in the law school context.

¹⁵⁸A. Adler & M. E. P. Seligman, *Using Wellbeing for Public Policy: Theory, Measurement, and Recommendations*, 6 INT'L J. WELLBEING, 1, 17 (2016); M. A. White & A. S. Murray, *Building a Positive Institution*, in EVIDENCE-BASED APPROACHES IN POSITIVE EDUC. IN SCHS.: IMPLEMENTING A STRATEGIC FRAMEWORK FOR WELL-BEING IN SCHS. 1, 8 (M. A. White & A. S. Murray eds., 2015).

¹⁵⁹At a minimum, permission should be sought from the dean of students to serve alcohol at school-sponsored, school-located events, so administration is aware. Off-campus events should be only on a cash basis by the establishment. Professional networking events, and on campus events should be focused on the program or speaker, and not on drink specials or offers of free alcohol. Publicity of these events should avoid mention of discounted drink specials that could detract from the professional networking environment. In all instances, providing alcohol should be limited to beer and wine. Open bars not regulated by drink tickets or some other manner of controlling consumption should not be permitted.





“When we look at what has the strongest statistical relationship to overall [life satisfaction], the first one is your career well-being, or the mission, purpose and meaning of what you’re doing when you wake up each day.” — Tom Rath

Bar associations are organized in a variety of ways, but all share common goals of promoting members’ professional growth, quality of life, and quality of the profession by encouraging continuing education, professionalism (which encompasses lawyer competence, ethical conduct, eliminating bias, and enhancing diversity), pro bono and public service. Bar members who are exhausted, impaired, disengaged, or overly self-interested will not live up to their full potential as lawyers or positive contributors to society. Below are recommendations for bar associations to foster positive change in the well-being of the legal community which, in turn, should benefit lawyers, bar associations, and the general public.

36. ENCOURAGE EDUCATION ON WELL-BEING TOPICS IN COORDINATION AND IN ASSOCIATION WITH LAWYER ASSISTANCE PROGRAMS.

36.1. Sponsor High-Quality CLE Programming on Well-Being-Related Topics.

In line with Recommendation 8, bar associations should develop and regularly offer educational programming on well-being-related topics. Bar leadership should recommend that all sections adopt a goal of providing at least one well-being related educational opportunity at all bar-sponsored events, including conferences, section retreats, and day-long continuing legal education events.

36.2. Create Educational Materials to Support Individual Well-Being and “Best Practices” for Legal Organizations.

We recommend that bar associations develop “best practice” model policies on well-being-related topics, for example practices for responding to lawyers in distress, succession planning, diversity and inclusion, mentoring practices, work-life balance policies, etc.

36.3 Train Staff to Be Aware of Lawyer Assistance Program Resources and Refer Members.

Educating bar association staff regarding lawyer assistance programs’ services, resources, and the confidentiality of referrals is another way to foster change in the legal community. Bar association staff can further promote these resources to their membership. A bar association staff member may be the person who coordinates a needed intervention for a lawyer facing a mental health or substance use crisis.

37. SPONSOR EMPIRICAL RESEARCH ON LAWYER WELL-BEING AS PART OF ANNUAL MEMBER SURVEYS.

Many bar associations conduct annual member surveys. These surveys offer an opportunity for additional research on lawyer well-being and awareness of resources. For example, questions in these surveys can gauge awareness of support networks either in law firms or through lawyer assistance programs. They can survey lawyers on well-being topics they would like to see addressed in bar journal articles, at bar association events, or potentially through continuing legal education courses. The data gathered can inform bar associations’ outreach and educational efforts.

38. LAUNCH A LAWYER WELL-BEING COMMITTEE.

We recommend that bar associations consider forming Lawyer Well-Being Committees. As noted in Recommendation 5.2, the ABA and a number of state bar associations already have done so. Their work supplements lawyer assistance programs with a more expansive approach to well-being. These committees typically focus not only on addressing disorders and ensuring competence to practice law but also on optimal functioning and full engagement in the profession. Such committees can provide a valuable service to members by, for example, dedicating attention to compiling resources, high-quality speakers, developing and compiling educational materials and programs, serving as a clearinghouse for lawyer well-being information, and partnering with the lawyer assistance program, and other state and national organizations to advocate for lawyer well-being initiatives.

The South Carolina Bar's Lawyer Wellness Committee, launched in 2014 and featuring a "Living Above the Bar" website, is a good model for well-being committees. In 2016, the ABA awarded this Committee the E. Smythe Gambrell Professionalism Award, which honors excellence and innovation in professionalism programs.¹⁶⁰

39. SERVE AS AN EXAMPLE OF BEST PRACTICES RELATING TO LAWYER WELL-BEING AT BAR ASSOCIATION EVENTS.

Bar associations should support members' well-being and role model best practices in connection with their own activities and meetings. This might include, for example, organizing functions to be family-friendly, scheduling programming during times that do not interfere with personal and family time, offering well-being-related activities at events (e.g., yoga, fun runs, meditation, providing coffee or juice bars, organizing Friends of Bill/support group meetings), providing well-being-related education and training to bar association leaders, and including related programming at conferences and other events. For instance, several bar associations around the country sponsor family-friendly fun runs, such as the Maricopa County Bar Association annual 5k Race Judicata.

¹⁶⁰The South Carolina Bar's lawyer well-being website is available at <http://discussions.scbar.org/public/wellness/index.html>.





"If any organism fails to fulfill its potentialities, it becomes sick." — William James

Lawyers' professional liability (LPL) carriers have a vested interest from a loss prevention perspective to encourage lawyer well-being. Happier, healthier lawyers generally equate to better risks. Better risks create stronger risk pools. Stronger risk pools enjoy lower frequency and often less severe claims. Fewer claims increases profitability. For lawyers, the

Happier, healthier lawyers equate to better risk, fewer claims, and greater profitability.

stronger the performance of the risk pool, the greater the likelihood of premium reduction. Stakeholders interested in lawyer well-being would be well-served to explore partnerships with lawyers' professional liability carriers, many of whom enjoy bar-related origins with their respective state bar and as members of the National Association of Bar-Related Insurance Carriers (or NABRICOs). Even commercial carriers active in the lawyers' malpractice market enjoy important economic incentives to support wellness initiatives, and actively assess risks which reflect on the likelihood of future claims.¹⁶¹ Below are several recommendations for LPL carriers to consider in their pursuit of improving lawyer well-being.

40. ACTIVELY SUPPORT LAWYER ASSISTANCE PROGRAMS.

In certain jurisdictions, lawyers' professional liability carriers are amongst the most important funders of lawyer assistance programs, appreciating that an ounce of prevention is worth a pound of cure. An impaired or troubled attorney who is aided before further downward spiral harms the lawyer's ability to engage in high-quality professional services can directly prevent claims. Thus, LPL carriers are well-served to understand lawyer assistance program needs, their impact, and how financial and marketing support of such programs can be a worthy investment. At the same time, where appropriate, lawyer assistance programs could prepare a case for support to LPL carriers on how their activities affect attorneys, much like a private foundation examines the impact effectiveness of grantees. If the case for support is effectively made, support may follow.

41. EMPHASIZE WELL-BEING IN LOSS PREVENTION PROGRAMS.

Most LPL carriers, as a means of delivering value beyond just the promise of attorney protection in the event of an error or omission, are active in developing risk management programs via CLE, law practice resources, checklists, and sample forms designed to reduce the susceptibility of an attorney to a claim. These resources often center on topics arising from recent claims trends, be it law practice management tips, technology traps, professionalism changes, or ethical infrastructure challenges. LPL carriers should consider paying additional attention to higher level attorney wellness issues, focusing on how such programs promote the emotional and physical foundations from which lawyers can thrive in legal service delivery. Bar associations are increasingly exploring well-being programs as a member benefit, and LPL carriers could be helpful in providing financial support or thought leadership in the development of such programs.

¹⁶¹Examples of LPL carriers serving the market from the commercial side include CNA, AON, Liberty Mutual, Hartford, among others.

42. INCENTIVIZE DESIRED BEHAVIOR IN UNDERWRITING LAW FIRM RISK.

The process of selecting, structuring, and pricing LPL risk is part art, part science. Underwriters, in addition to seeking core LPL information such as area of practice, claim frequency, claim severity, firm size, firm longevity and firm location, are also working to appreciate and understand the firm's complete risk profile. The more effectively a firm can illustrate its profile in a positive manner, the more desirable a firm will be to a carrier's risk pool. Most states permit carriers flexibility in applying schedule rating credits or debits to reflect the individual risk characteristics of the law firm. LPL carriers should more actively explore the application of lawyer well-being premium credits, much like they currently do for internal risk management systems, documented attorney back-up systems, and firm continuity.

43. COLLECT DATA WHEN LAWYER IMPAIRMENT IS A CONTRIBUTING FACTOR TO CLAIMS ACTIVITY.

LPL carriers traditionally track claims based on area of practice or the nature of the error. LPL carriers do

not ordinarily track when substance abuse, stress, depression, or mental health are suspected to be contributing factors to the underlying claim. This is primarily due to the fact that most LPL claims adjusters, usually attorneys by trade, lack sufficient (or usually any) clinical training to make such a determination. That being said, anecdotal evidence suggests the impact is substantial. Thus, LPL carriers should consider whether a "common sense" assessment of instances where attorney impairment is suspected to be a contributing factor to the underlying claim. Such information would be helpful to lawyer assistance programs and as an important data point for what bar counsel or disciplinary units similarly see when investigating bar grievances. LPL carriers are in a prime position to collect data, share such data when appropriate, and assess the manner in which lawyer impairment has a direct correlation to claims activity.





"It is under the greatest adversity that there exists the greatest potential for doing good, both for oneself and others." — Dalai Lama

Because lawyer assistance programs are so well-positioned to play a pivotal role in lawyer well-being, they should be adequately funded and organized to ensure that they can fulfill their potential.

Lawyer assistance programs should be supported to fulfill their full potential.

This is not consistently the case. While a lawyer assistance program exists in every state, according to the 2014 Comprehensive Survey of Lawyer Assistance Programs their structures, services, and funding vary widely. Lawyer assistance programs are organized either as agencies within bar associations, as independent agencies, or as programs within the state's court system.¹⁶² Many operate with annual budgets of less than \$500,000.¹⁶³ About one quarter operate without any funding and depend solely on volunteers.¹⁶⁴ The recommendations below are designed to equip lawyer assistance programs to best serve their important role in lawyer well-being.

44. LAWYERS ASSISTANCE PROGRAMS SHOULD BE APPROPRIATELY ORGANIZED AND FUNDED.

44.1 Pursue Stable, Adequate Funding.

Lawyer assistance programs should advocate for stable, adequate funding to provide outreach, screening, counseling, peer assistance, monitoring, and preventative education. Other stakeholders should ally themselves with lawyer assistance programs in pursuit of this funding.

44.2 Emphasize Confidentiality.

Lawyer assistance programs should highlight the confidentiality of the assistance they provide. The greatest concern voiced by lawyer assistance programs in the most recent CoLAP survey was under-utilization of their services stemming from the shame and fear of disclosure that are bound up with mental health and substance use disorders.¹⁶⁵ Additionally, lawyer assistance programs should advocate for a supreme court rule protecting the confidentiality of participants in the program, as well as immunity for those making good faith reports, volunteers, and staff.

44.3 Develop High-Quality Well-Being Programming.

Lawyer assistance programs should collaborate with other organizations to develop and deliver programs on the topics of lawyer well-being, identifying and treating substance use and mental health disorders, suicide prevention, cognitive impairment, and the like.¹⁶⁶ They should ensure that all training and other education efforts emphasize the availability of resources and the

¹⁶²2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS, *supra* note 25, at 3.

¹⁶³*Id.* at 5.

¹⁶⁴*Id.* at 27.

¹⁶⁵*Id.* at 49-50.

¹⁶⁶Accommodating adult learning should inform program development. The Illinois Supreme Court Commission on Professionalism offers a number of resources through its "Strategies for Teaching CLE" web page, <https://www.2civility.org/programs/cle/cle-resources/strategies-for-teaching-cle/>. See also K. TAYLOR & C. MARIENAU, FACILITATING LEARNING WITH THE ADULT BRAIN IN MIND: A CONCEPTUAL AND PRACTICAL GUIDE (2016); M. Silverthorn, *Adult Learning: How Do We Learn?*, ILL. SUP. CT. COMM'N ON PROFESSIONALISM, Dec. 4, 2014, <https://www.2civility.org/adult-learning/>.

confidentiality of the process.

Lawyer assistance programs should evaluate whether they have an interest in and funding to expand their programming beyond the traditional focus on treatment of alcohol use and mental health disorders. Some lawyer assistance programs already have done so. The 2014 Comprehensive Survey of Lawyer Assistance Programs reflects that some well-resourced lawyer assistance programs include services that, for example, address transition and succession planning, career counseling, anger management, grief, and family counseling.¹⁶⁷ Increasingly, lawyer assistance programs are expanding their services to affirmatively promote well-being (rather than seeking only to address dysfunction) as a means of preventing prevalent impairments.

This expansion is consistent with some scholars' recommendations for Employee Assistance Programs that encourage engagement in a broader set of prevention and health-promotion strategies. Doing so could expand the lawyer assistance programs' net to people who are in need but have not progressed to the level of a disorder. It also could reach people who may participate in a health-promotion program but would avoid a prevention program due to social stigma.¹⁶⁸ Health-promotion approaches could be incorporated into traditional treatment protocols. For example, "Positive Recovery" strategies strive not only for sobriety but also for human flourishing.¹⁶⁹ Resilience-boosting strategies have also been proposed for addiction treatment.¹⁷⁰

44.4 Lawyer Assistance Programs' Foundational Elements.

All lawyer assistance programs should include the following foundational elements to provide effective leadership and services to lawyers, judges, and law students:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals;
- A well-defined program mission and operating policies and procedures;
- Regular educational activities to increase awareness and understanding of mental health and substance use disorders;
- Volunteers trained in crisis intervention and assistance;
- Services to assist impaired members of the legal profession to begin and continue recovery;
- Participation in the creation and delivery of interventions;
- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities; and
- A helpline for individuals with concern about themselves or others.¹⁷¹

¹⁶⁷2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS, *supra* note 25, at 13.

¹⁶⁸R. F. Cook, A. S. Back, J. Trudeau, & T. McPherson, *Integrating Substance Abuse Prevention into Health Promotion Programs in the Workplace: A Social Cognitive Intervention Targeting the Mainstream User*, in PREVENTING WORKPLACE SUBSTANCE ABUSE: BEYOND DRUG TESTING TO WELLNESS 97-133 (J. B. Bennett, W. K. Lehman eds., 2003).

¹⁶⁹J. Z. POWERS, POSITIVE RECOVERY DAILY GUIDE: THRIVE IN RECOVERY (2015).

¹⁷⁰T. Alim, W. Lawson, A. Neumeister, et al., *Resilience to Meet the Challenge of Addiction: Psychobiology and Clinical Considerations*, 34 ALCOHOL RESEARCH: CURRENT REVIEWS 506 (2012).

¹⁷¹See AM. BAR ASS'N, MODEL LAWYER ASSISTANCE PROGRAM (Revised 2004), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_model_lawyer_assistance_program.authcheckdam.pdf; AM. BAR ASS'N, GUIDING PRINCIPLES FOR A LAWYER ASSISTANCE PROGRAM (1991), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_guiding_principles_for_assistance.authcheckdam.pdf.



“It always seems impossible until it’s done.” — Nelson Mandela

This Report makes a compelling case that the legal profession is at a crossroads. Our current course, one involving widespread disregard for lawyer well-being and its effects, is not sustainable. Studies cited above show that our members suffer at alarming rates from conditions that impair our ability to function at levels compatible with high ethical standards and public expectations. Depression, anxiety, chronic stress, burnout, and substance use disorders exceed those of many other professions. We have ignored this state of affairs long enough. To preserve the public’s trust and maintain our status as a self-regulating profession, we must truly become “our brothers’ and sisters’ keepers,” through a strong commitment to caring for the well-being of one another, as well as ourselves.

The members of the National Task Force for Lawyer Well-Being urge all stakeholders identified in this report to take action. To start, please review the State Action Plan and Checklist that follows in **Appendix A**. If you are a leader in one of these sectors, please use your authority to call upon your cohorts to come together and develop

a plan of action. Regardless of your position in the legal profession, please consider ways in which you can make a difference in the essential task of bringing about a

***We have the capacity
to create a better
future for our lawyers.***

culture change in how we, as lawyers, regard our own well-being and that of one another.

As a profession, we have the capacity to face these challenges and create a better future for our lawyers that is sustainable. We can do so—not in spite of—but in pursuit of the highest professional standards, business practices, and ethical ideals.

¹P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

²A. M. Brafford, *Building the Positive Law Firm: The Legal Profession At Its Best* (August 1, 2014) (Master’s thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), available at http://repository.upenn.edu/mapp_capstone/62/.

³J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

⁴See D. L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 1 (2013).

⁵J. M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225 (2011); L. S. Krieger & K. M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. 554 (2015).

National Task Force on Lawyer Well-Being State Action Plan & Checklist

Chief Justice (or Designee) "To Do List"

Gather all stakeholders

(Identify leaders in the jurisdiction with an interest in and commitment to well-being issues. Bring these leaders together in a Commission on Lawyer Well-Being. The attached list of potential stakeholder representatives offers guidance.)

Review the Task Force Report

Have Commission members familiarize themselves with the Task Force Report. It provides concrete recommendations for how to address lawyer well-being issues.

Do an inventory of recommendations

(Next, assess which recommendations can be implemented in the jurisdiction. This includes an assessment of the leadership and resources required to implement these recommendations.)

Create priorities

(Each jurisdiction will have its own priorities based on the inventory of recommendations. Which ones are the most urgent? Which ones will create the most change? Which ones are feasible?)

Develop an action plan

(Having inventoried the recommendations and prioritized them, now is the time to act. What does that path forward look like? Who needs to be involved? How will progress be measured?)

National Task Force on Lawyer Well-Being State Action Plan & Checklist

Checklist for Gathering the Stakeholders

Item 1 of the Plan above recommends the gathering of stakeholders as a first step. The National Task Force suggests the Chief Justice of each state create a Commission on Lawyer Well-Being in that state and appoint representatives from each stakeholder group to the Commission. Below is a checklist of potential stakeholder representatives the Chief Justice may consider in making appointments.

JUDICIAL

- ☐ Supreme Court Chief Justice or designated representative
- ☐ Other judge representatives

LAWYER ASSISTANCE PROGRAM (LAP)

- ☐ LAP Director
- ☐ Clinical director
- ☐ Lawyer representative to the LAP

LAW SCHOOLS

- ☐ Dean representative
- ☐ Faculty representative
- ☐ Law student representative

REGULATORS

- ☐ Admissions (or Board of Law Examiners) representative
- ☐ Mandatory CLE program representative
- ☐ CLE provider representative
- ☐ Regulation/Bar/Disciplinary Counsel representative

BAR ASSOCIATIONS

- ☐ Bar president
- ☐ Bar president-elect
- ☐ Executive director
- ☐ Young lawyer division representative
- ☐ Specialty bar representative

LAW FIRMS

- ☐ Sole practitioner
- ☐ Small firm representative (2-5 lawyers)
- ☐ Medium firm representative (6-15 lawyers)
- ☐ Large firm representative (16+ lawyers)
- ☐ In-house counsel representative
- ☐ Non-traditional lawyer representative

ALLIES

- ☐ ASAM representative (addiction psychiatrist)
- ☐ Organizational/behavioral psychologist
- ☐ Members of the public

Appendix to Recommendation 8: Example Educational Topics About Lawyer Distress and Well-Being

Recommendation 8 advises stakeholders to provide high-quality education programs and materials on causes and consequences of lawyer distress and well-being. Below is a list of example educational topics for such programming with empirical support.

8.1 Work Engagement vs. Burnout

The work engagement-burnout model can serve as a general organizing framework for stakeholders' efforts to boost lawyer well-being and curb dysfunction. Work engagement is a kind of work-related well-being. It includes high levels of energy and mental resilience, dedication (which includes a sense of meaningfulness, significance, and challenge), and frequently feeling positively absorbed in work.¹⁷² Work engagement contributes to, for example, mental health, less stress and burnout, job satisfaction, helping behaviors, reduced turnover, performance, and profitability.¹⁷³

Burnout is essentially the opposite of engagement. It is a stress response syndrome that is highly correlated with depression and can have serious psychological and physiological effects. Workers experiencing burnout feel emotionally and physically exhausted, cynical about the value of their activities, and uncertain about their capacity to perform well.¹⁷⁴

The work engagement-burnout model proposes the idea of a balance between resources and demands: Engagement arises when a person's resources (i.e., positive individual, job, and organizational factors, like autonomy, good leadership, supportive colleagues, feedback, interesting work, optimism, resilience) outweigh demands (i.e., draining aspects of the job, like work overload and conflicting demands). But when excessive demands or a lack of recovery from demands tip the scale, workers are in danger of burnout. Disengagement, alienation, and turnover become likely. Resources contribute to engagement; demands feed burnout. Using this framework as a guide, stakeholders should develop lawyer well-being strategies that focus on increasing individual and organizational resources and decreasing demands when possible.¹⁷⁵

The incidence of burnout vs. work engagement in the legal profession is unknown but has been well-studied in the medical profession. Research has found that 30-40 percent of licensed physicians, 49 percent of medical students, and 60 percent of new residents meet the definition of burnout, which is associated with an increased risk of depression, substance use, and suicidal thinking.¹⁷⁶ Burnout also undermines professionalism and quality of patient care by eroding honesty, integrity, altruism, and self-regulation.¹⁷⁷

The medical profession's work on these issues can serve as a guide for the legal profession. It has conducted

¹⁷²W. B. Schaufeli, *What is Engagement?*, in *EMPLOYEE ENGAGEMENT IN THEORY AND PRACTICE* (C. Truss, K. Alfes, R. Delbridge, A. Shantz, & E. Soane eds., 2013).

¹⁷³C. Bailey, A. Madden, K. Alfes, & L. Fletcher, *The Meaning, Antecedents and Outcomes of Employee Engagement: A Narrative Synthesis*, 19 INT'L J. MGMT. REV. 19 (2017); BRAFFORD, *supra* note 131; GALLUP, INC., *ENGAGEMENT AT WORK: ITS EFFECT ON PERFORMANCE CONTINUES IN TOUGH ECONOMIC TIMES* (2013), available at <http://www.gallup.com/services/176657/engagement-work-effect-performance-continues-tough-economic-times.aspx>.

¹⁷⁴Maslach, Schaufeli, & Leiter, *supra* note 121.

¹⁷⁵A. B. Bakker & E. Demerouti, *Job Demands-Resources Theory: Taking Stock and Looking Forward*, J. OCCUPATIONAL HEALTH PSYCHOL. (2016), advance online publication available at <http://dx.doi.org/10.1037/ocp0000056>; A. B. Bakker, *Top-Down and Bottom-Up Interventions to Increase Work Engagement*, in AM. PSYCHOL. ASS'N HANDBOOK OF CAREER INTERVENTION: VOL. 2. APPLICATIONS 427-38 (P. J. Hartung, M. L. Savickas, & W. B. Walsh eds., 2015); BRAFFORD, *supra* note 131.

¹⁷⁶L. Dyrbye, T. Shanafelt, *Physician Burnout: A Potential Threat to Successful Health Care Reform*, 305 J. AM. MED. ASS'N 2009 (2009); L. Dyrbye & T. Shanafelt, *A Narrative Review of Burnout Experienced by Medical Students and Residents*, 50 MED. EDUC. 132 (2016); J. J. Hakanen & W. B. Schaufeli, *Do Burnout and Work Engagement Predict Depressive Symptoms and Life Satisfaction? A Three-Wave Seven-Year Prospective Study*, 141 J. AFFECTIVE DISORDERS 415 (2012).

¹⁷⁷Dyrbye & Shanafelt, *supra* note 176; T. L. Schwenk, *Resident Depression: The Tip of a Graduate Medical Education Iceberg*, 314 J. AM. MED. ASS'N 2357 (2015).

hundreds of studies, has identified many individual and organizational contributors to burnout, and has proposed wellness strategies and resilience programs.¹⁷⁸ Bi-annually, the American Medical Association (AMA) co-sponsors an International Conference on Physician Health. The September 2016 conference was held in Boston with the theme, “Increasing Joy in Medicine.” The conference included 70 presentations, workshops, and plenary speaker sessions on a wide variety of well-being topics over a three-day period (See AMA website).

8.2 Stress

Stress is inevitable in lawyers’ lives and is not necessarily unhealthy.¹⁷⁹ Mild to moderate levels of stress that are within our capability can present positive challenges that result in a sense of mastery and accomplishment.¹⁸⁰ Much of our daily stress is governed by our beliefs about our coping abilities.¹⁸¹ When stress is perceived as a positive, manageable challenge, the stress response actually can enable peak performance.¹⁸² For example, in a study of a New Zealand law firm, researchers found that lawyers who frequently experience positive challenge reported the highest levels of work engagement. The researchers also found that, where lawyers felt overburdened by work, they were more likely to experience burnout.¹⁸³

This finding highlights the importance of positive challenge but also its paradoxical effect: Challenge contributes to work-related well-being, but it also can lead to negative

consequences like burnout when it becomes overwhelming. Stressors that pose the greatest risk of harm are those that are uncontrollable, ambiguous, unpredictable, and chronic that we perceive as exceeding our ability to cope.¹⁸⁴ Such stressors increase the rise of (or exacerbate) depression, anxiety, burnout, alcohol abuse, and physical conditions such as cardiovascular, inflammatory, and other illnesses that can affect lawyers’ health and capacity to practice.¹⁸⁵ For example, in a 2004 study of North Carolina lawyers, more than half had elevated levels of perceived stress, and this was the highest predictor of depression of all factors in the study.¹⁸⁶

Stress also is associated with cognitive decline, including impaired attention, concentration, memory, and problem-solving.¹⁸⁷ Stress also can harm one’s ability to establish strong relationships with clients and is associated with relational conflict, which can further undermine lawyers’ ability to competently represent and interact with clients. Both personal and environmental factors in the workplace contribute to stress and whether it positively fuels performance or impairs mental health and functioning.¹⁸⁸ Research reflects that organizational factors more significantly contribute to dysfunctional stress responses than individual ones, and that the most effective prevention strategies target both.¹⁸⁹

8.3 Resilience & Optimism

The American Psychological Association defines resilience

¹⁷⁸E.g., J. Brennan & A. McGrady, *Designing and Implementing a Resiliency Program for Family Medicine Residents*, 50 INT’L J. PSYCHIATRY MED. 104 (2015); J. Eckleberry-Hunt, A. Van Dyke, D. Lick, & J. Tucciarone, *Changing the Conversation from Burnout to Wellness: Physician Well-Being in Residency Training Programs*, 1 J. GRADUATE MED. EDUC. 225 (2009); R. M. Epstein & M. S. Krasner, *Physician Resilience: What It Means, Why It Matters, and How to Promote It*, 88 ACAD. MED. 301 (2013); A. Nedrow, N. A. Steckler, & J. Hardman, *Physician Resilience and Burnout: Can You Make the Switch?* 20 FAMILY PRAC. MGMT. 25 (2013).

¹⁷⁹A. ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (2007).

¹⁸⁰K. M. Keyes, M. L. Hatzenbuehler, B. F. Grant, & D. S. Hasin, *Stress and Alcohol: Epidemiologic Evidence*, 34 ALCOHOL RES.: CURRENT REV. 391 (2012).

¹⁸¹J. B. Avey, F. Luthans, & S. M. Jensen, *Psychological Capital: A Positive Resource for Combating Employee Stress and Turnover*, 48 HUMAN RES. MGMT. 677 (2009).

¹⁸²BRAFFORD, *supra* note 131; Crum, Salovey, Achor, *supra* note 50; K. McGonigal, *THE UPSIDE OF STRESS: WHY STRESS IS GOOD FOR YOU, AND HOW TO GET GOOD AT IT* (2015).

¹⁸³V. Hopkins & D. Gardner, *The Mediating Role of Work Engagement and Burnout in the Relationships Between Job Characteristics and Psychological Distress Among Lawyers*, 41 N. Z. J. PSYCHOL. 59 (2012).

¹⁸⁴R. M. Anthenelli, *Overview: Stress and Alcohol Use Disorders Revisited*, 34 ALCOHOL RES.: CURRENT REV. 386 (2012).

¹⁸⁵E.g., S. M. Southwick, G. A. Bonanno, A. S. Masten, C. Panter-Brick, & R. Yehuda, *Resilience Definitions, Theory, and Challenges: Interdisciplinary Perspectives*, 5 EUR. J. PSYCHOTRAUMATOLOGY 1 (2014); M. R. Frone, *Work Stress and Alcohol Use*, 23 ALCOHOL RES. & HEALTH 284 (1999); C. Hammen, *Stress and Depression*, 1 ANN. REV. CLINICAL PSYCHOL. 293 (2005); Keyes, Hatzenbuehler, Grant, & Hasin, *supra* note 180; J. Wang, *Work Stress as a Risk Factor for Major Depressive Episode(s)*, 35 PSYCHOL. MED. 865 (2005); J-M Woo & T. T. Postolache, *The Impact of Work Environment on Mood Disorders and Suicide: Evidence and Implications*, 7 INT’L J. DISABILITY & HUMAN DEV. 185 (2008).

¹⁸⁶M. H. Howerton, *The Relationship Between Attributional Style, Work Addiction, Perceived Stress, and Alcohol Abuse on Depression in Lawyers in North Carolina* (2004) (doctoral dissertation, Univ. of N.C. at Charlotte) (available from ProQuest Dissertations and Theses database).

¹⁸⁷B. S. McEwen, & R. M. Sapolsky, *Stress and Cognitive Function*, 5 CURRENT OPINION IN NEUROBIOLOGY 205–216 (1995); L. Schwabe & O. T. Wolf, *Learning Under Stress Impairs Memory Formation*, 93 NEUROBIOLOGY OF LEARNING & MEMORY 183 (2010); S. Shapiro, J. Astin, S. Bishop, & M. Cordova, *Mindfulness-Based Stress Reduction and Health Care Professionals: Results from a Randomized Controlled Trial*, 12 INT’L J. STRESS MGMT. 164 (2005).

¹⁸⁸J. C. QUICK, T. A. WRIGHT, J. A. ADKINS, D. L. NELSON, & J. D. QUICK, *PREVENTIVE STRESS MANAGEMENT IN ORGANIZATIONS* (2013).

¹⁸⁹Maslach, Schaufeli, & Leiter, *supra* note 121.

as a process that enables us to bounce back from adversity in a healthy way. It also has been defined as a “process to harness resources to sustain well-being”¹⁹⁰—a definition that connects resilience to the resource-balancing framework of the work engagement-burnout model discussed above. Our capacity for resilience derives from a host of factors, including genetics and childhood experiences that influence the neurobiology of our stress response—specifically, whether the stress response is both activated and terminated efficiently.¹⁹¹

But resilience also derives from a collection of psychological, social, and contextual factors—many of which we can change and develop. These include, for example, optimism, confidence in our abilities and strengths (self-efficacy), effective problem-solving, a sense of meaning and purpose, flexible thinking, impulse control, empathy, close relationships and social support, and faith/spirituality.¹⁹² A model for developing many of these psychological and social competencies is provided by the U.S. Army’s Master Resilience Training program.¹⁹³ As noted above, the medical profession also has designed resilience programs for physicians and residents that can serve as guides, and researchers have offered additional strategies.¹⁹⁴

Among the most important of the personal competencies is optimistic explanatory style, which is a habit of thought that allows people to put adverse events in a rational context and not be overwhelmed by catastrophic thinking. The principal strategy for building optimistic explanatory style is by teaching cognitive reframing based on cognitive-behavioral therapy research.¹⁹⁵ The core of the technique is to teach people to monitor and dispute their automatic

negative self-talk. Neurobiology scholars recently have argued that this capacity is so important to our regulation of stress that it constitutes the cornerstone of resilience.¹⁹⁶

This skill can benefit not only practicing lawyers but also law students.¹⁹⁷ Stanford Law, for example, has offered a 3-hour course teaching cognitive framing that has been popular and successful.¹⁹⁸ Lawyer assistance programs also could benefit from learning this and other resilience strategies, which have been used in addiction treatment.¹⁹⁹

Aside from individual-level skills and strengths, developing “structural resilience” also is important, if not more important. This requires leaders to develop organizations and institutions that are resource-enhancing to help give people the wherewithal to realize their full potential.²⁰⁰ Individual resilience is highly dependent on the context in which people are embedded. This means that initiatives to foster lawyer well-being should take a systemic perspective.

8.4 Mindfulness Meditation

Mindfulness meditation is a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. A rapidly growing body of research on meditation has shown its potential for help in addressing a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role.²⁰¹ One type of meditative practice is mindfulness—a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings. Research has found that mindfulness can reduce rumination, stress, depression, and anxiety.²⁰² It

¹⁹⁰ Southwick, Bonanno, Masten, Panter-Brick, & Yehuda, *supra* note 185.

¹⁹¹ Alim, Lawson, & Neumeister, et al., *supra* note 170.

¹⁹² K. J. Reivich, M. E. P. Seligman, & S. McBride, *Master Resilience Training in the U.S. Army*, 66 AM. PSYCHOLOGIST 25 (2011); C. D. Schetter & C. Dolbier, *Resilience in the Context of Chronic Stress and Health in Adults*, 5 SOC. PERSONAL PSYCHOL. COMPASS 634 (2011).

¹⁹³ *Id.*; R. R. SINCLAIR, & T. A. BRITT, BUILDING PSYCHOLOGICAL RESILIENCE IN MILITARY PERSONNEL: THEORY AND PRACTICE (2013).

¹⁹⁴ C. COOPER, J. FLINT-TAYLOR, & M. PEARN, BUILDING RESILIENCE FOR SUCCESS: A RESOURCE GUIDE FOR MANAGERS AND ORGANIZATIONS (2013); I. T. Robertson, C. L. Cooper, M. Sarkar, & T. Curran, *Resilience Training in the Workplace from 2003 to 2014: A Systematic Review*, 88 J. OCCUPATIONAL & ORG. PSYCHOL. 533 (2015).

¹⁹⁵ *Id.*

¹⁹⁶ R. Kalisch, M. B. Muler, & O. Tuscher, *A Conceptual Framework for the Neurobiological Study of Resilience*, 27 BEHAV. & BRAIN SCI. 1 (2014).

¹⁹⁷ C. Rosen, *Creating the Optimistic Classroom: What Law Schools Learn from Attribution Style Effects*, 42 MCGEORGE L. REV. 319 (2011).

¹⁹⁸ Stanford Law Professor Joe Bankman’s use of cognitive behavioral therapy concepts are described on the school’s website: <http://news.stanford.edu/2015/04/07/bank-man-law-anxiety-040715>. He has posted relevant materials to educate other law schools how to teach this skill: <http://www.colorado.edu/law/sites/default/files/Bankman%20-%20Materials%20for%20Anxiety%20Psychoeducation%20Course.pdf>.

¹⁹⁹ Alim, Lawson, & Neumeister, *supra* note 170.

²⁰⁰ BRAFFORD, *supra* note 131; Southwick, Bonanno, Masten, Panter-Brick, & Yehuda, *supra* note 185.

²⁰¹ R. Walsh & S. L. Shapiro (2006), *The Meeting of Meditative Disciplines and Western Psychology*, 61 AM. PSYCHOL. 227 (2006).

²⁰² E.g., S. G. Hoffman, A. T. Sawyer, A. A. Witt, & D. Oh, *The Effect of Mindfulness-Based Therapy on Anxiety and Depression: A Meta-Analytic Review*, 78 J. CONSULTING & CLINICAL PSYCHOL. 169 (2010); R. Teper, Z. V. Segal, & M. Inzlicht, *Inside the Mindful Mind: How Mindfulness Enhances Emotion Regulation Through Improvements in Executive Control*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 449

also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making.²⁰³ Multiple articles have advocated for mindfulness as an important practice for lawyers and law students.²⁰⁴ Evidence also suggests that mindfulness can enhance the sense of work-life balance by reducing workers' preoccupation with work.²⁰⁵

8.5 Rejuvenation Periods to Recover From Stress

Lawyers must have downtime to recover from work-related stress. People who do not fully recover are at an increased risk over time for depressive symptoms, exhaustion, and burnout. By contrast, people who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands.²⁰⁶ Recovery can occur during breaks during the workday, evenings, weekends, vacations, and even microbreaks when transitioning between projects.²⁰⁷ And the quality of employees' recovery influences their mood, motivation, and job performance.

Researchers have identified four strategies that are most effective for recovering from work demands: (1) psychological detachment (mentally switching off from work), (2) mastery experiences (challenges and learning experiences), (3) control (spending time off as we choose), and (4) relaxation.²⁰⁸ Falling into the second category is physical activity (exercise and sports), which may be an

especially effective form of recovery for people performing mentally demanding work—like lawyers. This is so because low-effort activities (e.g., watching TV) may actually increase subjective feelings of fatigue.²⁰⁹

Quality sleep is critically important in the recovery process.²¹⁰ Sleep deprivation has been linked to a multitude of health problems that decay the mind and body, including depression, cognitive impairment, decreased concentration, and burnout. Cognitive impairment associated with sleep-deprivation can be profound. For example, a study of over 5,000 people showed that too little sleep was associated with a decline over a five year-period in cognitive functioning, including reasoning, vocabulary, and global cognitive status. Research on short-term effects of sleep deprivation shows that people who average four hours of sleep per night for four or five days develop the same cognitive impairment as if they had been awake for 24 hours—which is the equivalent of being legally drunk.²¹¹ Given lawyers' high risk for depression, it is worth noting evidence that sleep problems have the highest predictive value for who will develop clinical depression.²¹²

8.6 Physical Activity

Many lawyers' failure to prioritize physical activity is harmful to their mental health and cognitive functioning. Physical exercise is associated with reduced symptoms of anxiety and low energy. Aerobic exercise has been found to be as effective at improving symptoms of depression

²⁰³A. P. Jha, E. A. Stanley, W. L. Kiyonaga, & L. Gelfand, *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 EMOTION 56 (2010); D. Levy, J. Wobbrock, A. W. Kaszniak, & M. Ostergren, *The Effects of Mindfulness Meditation Training on Multitasking in a High-Stress Environment*, *Proceedings of Graphics Interface Conference* (2012), available at <http://faculty.washington.edu/wobbrock/pubs/gi-12.02.pdf>; M. D. Mrazek, M. S. Franklin, D. T. Phillips, B. Baird, & J. W. Schooler, *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 PSYCHOL. SCI. 776 (2013); N. E. Ruedy & M. E. Schweizer, *In the Moment: The Effect of Mindfulness on Ethical Decision Making*, 95 J. BUS. ETHICS 73 (2010); F. Zeidan, S. K. Johnson, B. J. Diamond, Z. David, & P. Goolkasian, *Mindfulness Meditation Improves Cognition: Evidence of Brief Mental Training*, 19 CONSCIOUSNESS & COGNITION 597 (2010).

²⁰⁴E.g., W. S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002); Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 J. L. BUS. & ETHICS 35 (2014).

²⁰⁵A. Michel, C. Bosch, & M. Rexroth, *Mindfulness as a Cognitive-Emotional Segmentation Strategy: An Intervention Promoting Work-Life Balance*, 87 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 733 (2014).

²⁰⁶See, e.g., C. Fritz, A. M. Ellis, C. A. Demsky, B. C. Lin, & F. Gueros, *Embracing Work Breaks: Recovery from Work Stress*, 42 ORG. DYNAMICS 274 (2013); N. P. Rothbard & S. V. Patil, *Being There: Work Engagement and Positive Organizational Scholarship*, in THE OXFORD HANDBOOK OF POSITIVE ORGANIZATIONAL SCHOLARSHIP 56-68 (K. S. Cameron & G. M. Spreitzer eds., Oxford University Press 2012).

²⁰⁷S. Sonnentag, C. Niessen, & A. Neff, *Recovery: Nonwork Experiences that Promote Positive States*, in Cameron & Spreitzer, *supra* note 206.

²⁰⁸BRAFFORD, *supra* note 131; V. C. Hahn, C. Binnewies, S. Sonnentag, & E. J. Mojza, *Learning How to Recover from Job Stress: Effects of a Recovery Training Program on Recovery, Recovery-Related Self-Efficacy, and Well-Being*, 16 J. OCCUPATIONAL HEALTH PSYCHOL. 202 (2011).

²⁰⁹J. W. Rook & F. R. H. Zijlstra, *The Contribution of Various Types of Activities to Recovery*, 15 EUROPEAN J. WORK & ORGANIZATIONAL PSYCHOL. 218 (2006).

²¹⁰M. Soderstrom, J. Jeding, M. Ekstedt, A. Perski, & T. Akerstedt, *Insufficient Sleep Predicts Clinical Burnout*, 17 J. OCCUPATIONAL HEALTH PSYCHOL. 175 (2012).

²¹¹J. E. Ferrie, M. J. Shipley, T. N. Akbaraly, M. G. Marmot, M. Kivimaki, & A. Singh-Manoux, *Change in Sleep Duration and Cognitive Function: Findings from the Whitehall II Study*, 34 SLEEP 565-73 (2011); B. Fryer, *Sleep Deficit: The Performance Killer*, HARV. BUS. REV., Oct. 2006, available at <http://hbr.org/2006/10/sleep-deficit-the-performance-killer>; S. Maxon, *How Sleep Deprivation Decays the Mind and Body*, THE ATLANTIC, December 2013, available at <http://www.theatlantic.com/health/archive/2013/12/how-sleep-deprivation-decays-the-mind-and-body/282395>.

²¹²P. L. Franzen, & D. J. Buysse, *Sleep Disturbances and Depression: Risk Relationships for Subsequent Depression and Therapeutic Implications*, 10 DIALOGUES IN CLINICAL NEUROSCIENCE 473 (2008).

as antidepressant medication and psychotherapy.²¹³ In a review of strategies for preventing workplace depression, researchers found that interventions to increase physical activity were among the most effective.²¹⁴

Research also shows that physical exercise improves brain functioning and cognition. Physical activity, which stimulates new cell growth in the brain, can offset the negative effects of stress, which causes brain atrophy. Greater amounts of physical activity (particularly aerobic) have been associated with improvements in memory, attention, verbal learning, and speed of cognitive processing.²¹⁵ A growing body of evidence reflects that regular aerobic activity in middle age significantly reduces the risk of developing dementia and, in older age, can slow the progression of cognitive decline of those who already are diagnosed with Alzheimer's disease.²¹⁶

8.7 Leader Development and Training

Leader development and training is critically important for supporting lawyer well-being and optimal performance. Low-quality leadership is a major contributor to stress, depression, burnout, and other mental and physical health disorders.²¹⁷ Even seemingly low-level incivility by leaders can have a big impact on workers' health and motivation. Research found harmful effects from leaders, for example, playing favorites; criticizing unfairly; and failing to provide information, listen to problems, explain goals, praise good work, assist with professional development,

and show that they cared. On the other hand, positive leadership styles contribute to subordinates' mental health, work engagement, performance, and job satisfaction.²¹⁸ Many studies confirm that positive leader behaviors can be trained and developed.²¹⁹ Training is important for all levels of lawyers who supervise others. This is so because leaders with the most direct contact with subordinates have the most significant impact on their work experience.²²⁰ Subordinates' immediate leader drives almost 70 percent of their perceptions of the workplace.²²¹

8.8 Control and Autonomy

As noted in Recommendation 7, feeling a lack of control over work is a well-established contributor to poor mental health, including depression and burnout. A sense of autonomy is considered to be a basic psychological need that is foundational to well-being and optimal functioning.²²² Research confirms that leaders can be trained to be more autonomy-supportive.²²³ Other organizational practices that can enhance a sense of autonomy include, for example, structuring work to allow for more discretion and autonomy and encouraging lawyers to craft aspects of their jobs to the extent possible to best suit their strengths and interests.²²⁴

The benefits of autonomy-support are not limited to manager-subordinate relationships for legal employers. Research reflects that law students with autonomy-supportive professors and school cultures have higher well-being and performance.²²⁵ Lawyer-client relationships also

²¹³J.-H. Chu, J. Buckworth, T. E. Kirby, & C. F. Emery, *Effect of Exercise Intensity on Depressive Symptoms in Women*, 2 MENTAL HEALTH AND PHYSICAL ACTIVITY 37 (2009); M. P. Herring, M. L. Jacob, C. Suveg, & P. J. O'Connor, *Effects of Short-Term Exercise Training on Signs and Symptoms of Generalized Anxiety Disorder*, 4 MENTAL HEALTH & PHYSICAL ACTIVITY 71 (2011).

²¹⁴S. Joyce, M. Modini, H. Christensen, A. Mykletun, R. Bryant, P. B. Mitchell, & S. B. Harvey, *Workplace Interventions for Common Mental Disorders: A Systematic Meta-Review*, 46 PSYCHOL. MED. 683 (2016).

²¹⁵A. Kandola, J. Hendrikse, P. J. Lucassen, & M. Yücel, *Aerobic Exercise as A Tool to Improve Hippocampal Plasticity and Function in Humans: Practical Implications for Mental Health Treatment*, 10 FRONTIERS IN HUMAN NEUROSCIENCE 373 (2016).

²¹⁶*Id.*; J. E. Ahlskog, Y. E. Geda, N. R. Graff-Radford, & R. C. Petersen, *Physical Exercise as a Preventive or Disease-Modifying Treatment of Dementia and Brain Aging*, 86 MAYO CLINIC PROC. 876 (2011).

²¹⁷BRAFFORD, *supra* note 131; R. J. BURKE AND K. M. PAGE, RESEARCH HANDBOOK ON WORK AND WELL-BEING (2017); W. Lin, L. Wang, & S. Chen, *Abusive Supervision and Employee Well-Being: The Moderating Effect of Power Distance Orientation*, 62 APPLIED PSYCHOL.: AN INT'L REV 308 (2013); E. K. Kelloway, N. Turner, J. Barling, & C. Loughlin, *Transformational Leadership and Employee Psychological Well-Being: The Mediating Role of Employee Trust in Leadership*, 26 WORK & STRESS 39 (2012).

²¹⁸E.g., A. Amankwaa & O. Anku-Tsede, *Linking Transformational Leadership to Employee Turnover: The Moderating Role of Alternative Job Opportunity*, 6 INT'L J. BUS. ADMIN. 19 (2015); J. Perko, U. Kinnunen, & T. Feldt, *Transformational Leadership and Depressive Symptoms Among Employees: Mediating Factors*, 35 LEADERSHIP & ORG. DEV. J. 286 (2014); M. Y. Ghadi, M. Fernando, & P. Caputi, *Transformational Leadership and Work Engagement*, 34 LEADERSHIP & ORG. DEV. J. 532 (2013).

²¹⁹E.g., B. J. Avolio & B. M. Bass, *You Can Drag a Horse to Water, But You Can't Make It Drink Except When It's Thirsty*, 5 J. LEADERSHIP STUDIES 1 (1998); K. E. Kelloway, J. Barling, & J. Helleur, *Enhancing Transformational Leadership: The Roles of Training and Feedback*, 21 LEADERSHIP & ORG. DEV. J. 145 (2000).

²²⁰D. J. Therkelsen & C. L. Fiebich, *The Supervisor: The Linchpin of Employee Relations*, 8 J. COMM. MGMT. 120 (2003).

²²¹R. Beck & J. Harter, *Managers Account for 70% of Variance in Employee Engagement*, GALLUP BUS. J., April 21, 2015, available at <http://www.gallup.com/businessjournal/182792/managers-account-variance-employee-engagement.aspx>.

²²²BRAFFORD, *supra* note 131; Y.-L. Su & J. Reeve, *A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy*, 23 EDUC. PSYCHOL. REV. 159 (2011).

²²³*Id.*

²²⁴See G. R. Slemp & D. A. Vella-Brodrick, *Optimising Employee Mental Health: The Relationship Between Intrinsic Need Satisfaction, Job Crafting, and Employee Well-Being*, 15 J. HAPPINESS STUDIES 957 (2014); D. T. Ong & V. T. Ho, *A Self-Determination Perspective of Strengths Use at Work: Examining Its Determinant and Performance Implications*, 11 J. POSITIVE PSYCHOL. 15 (2016).

²²⁵E.g., Sheldon & Krieger, *supra* note 5; see also G. F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L.J. 367 (2008).

can be enhanced by autonomy-supportive behaviors by both parties. Lawyers respect client autonomy by, for example, taking full account of their perspectives, not interrupting, affording choice, offering information respectfully, providing a rationale for recommendations, sharing power in decision-making (when appropriate), and accepting clients' decisions.²²⁶ In the medical profession, this model of client-centered care has been found to result in better outcomes, patient satisfaction, and diminished risk of malpractice lawsuits.²²⁷

8.9 Conflict Management

Our legal system is adversarial—it's rooted in conflict. Even so, lawyers generally are not trained on how to constructively handle conflict and to adapt tactics based on context—from necessary work-related conflicts to inter-personal conflicts with clients, opposing counsel, colleagues, or loved ones.²²⁸ Conflict is inevitable and can be both positive and negative.²²⁹ But chronic, unmanaged conflict creates physical, psychological, and behavioral stress. Research suggests that conflict management training can reduce the negative stressful effects of conflict and possibly produce better, more productive lawyers.²³⁰

8.10 Work-Life Conflict

The stress of chronic work-life conflict can damage well-being and performance.²³¹ A study of a New Zealand law firm found that work-life conflict was the strongest predictor of lawyer burnout.²³² Similarly, a study of Australian lawyers found that preoccupation with work was the strongest predictor of depression.²³³ Research in the medical profession repeatedly has found that work-life

conflict contributes to burnout.²³⁴ A large scale study across a variety of occupations found that reports of work-life conflict increased the odds of poor physical health by 90 percent.²³⁵ On the other hand, work-life balance (WLB) benefits workers and organizations.²³⁶

WLB is a complex topic, but research provides guidance on how to develop a WLB-supportive climate. Adopting a formal policy that endorses flexibility is a threshold requirement. Such policies foster the perception of organizational support for flexibility, which is even more important to workers' experience of WLB than actual benefit use. Policies should not be restricted to work-family concerns and any training should emphasize support for the full range of work-life juggling issues. Narrow family-focused policies can create feelings of resentment by workers who have valued non-family commitment.

WLB initiatives cannot end with formal policies or people will doubt their authenticity and fear using them. For example, nearly all large firms report having a flexible schedule policy.²³⁷ But a recent survey of law firm lawyers found that use of flexibility benefits was highly stigmatizing.²³⁸ To benefit from WLB initiatives, organizations must develop a WLB-supportive climate. Research has identified multiple factors for doing so: (1) job autonomy, (2) lack of negative consequences for using WLB benefits, (3) level of perceived expectation that work should be prioritized over family, and (5) supervisor support for WLB. By far, the most important factor is the last. Supervisors communicate their support for WLB by, for example, creatively accommodating non-work-related needs, being empathetic with juggling efforts, and role modeling WLB behaviors.²³⁹

²²⁶G. C. Williams, R. M. Frankel, T. L. Campbell, & E. L. Deci, *Research on Relationship-Centered Care and Healthcare Outcomes from the Rochester Biopsychosocial Program: A Self-Determination Theory Integration*, 18 FAMILIES, SYS. & HEALTH 79 (2000).

²²⁷*Id.*; see also C. White, *The Impact of Motivation on Customer Satisfaction Formation: A Self-Determination Perspective*, 49 EUROPEAN J. MARKETING 1923 (2015).

²²⁸M. T. Colatrella, *A Lawyer for All Seasons: The Lawyer as Conflict Manager*, 49 SAN DIEGO L. REV. 93 (2012).

²²⁹A. Elwork & G. A. H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205 (1995).

²³⁰D. L. Haraway & W. M. Haraway, *Analysis of the Effect of Conflict-Management and Resolution Training on Employee Stress at a Healthcare Organization*, 83 HOSPITAL TOP-ICS 11 (2005); see also Colatrella, *supra* note 228.

²³¹BRAFFORD, *supra* note 131; D. A. MAJOR & R. BURKE, *HANDBOOK OF WORK-LIFE INTEGRATION AMONG PROFESSIONALS: CHALLENGES AND OPPORTUNITIES* (2013).

²³²Hopkins & Gardner, *supra* note 183.

²³³A. D. Joudrey & J. E. Wallace, *Leisure As A Coping Resource: A Test of the Job Demand-Control-Support Model*, 62 HUMAN RELATIONS 195 (2009).

²³⁴E.g., E. Amofo, N. Hanabali, A. Patel, & P. Singh, *What Are the Significant Factors Associated with Burnout in Doctors?*, 65 OCCUPATIONAL MED. 117 (2015).

²³⁵J. Goh, J. Pfefer, & S. A. Zenios, *Workplace Stressors & Health Outcomes: Health Policy for the Workplace*, 1 BEHAV. SCI. & POL'Y. 43 (2015).

²³⁶Major & Burke, *supra* note 231; S. L. Munn, *Unveiling the Work-Life System: The Influence of Work-Life Balance on Meaningful Work*

²³⁷Press Release, *National Association for Law Placement, NALP Press Release on Part-Time Schedules* (Feb. 21, 2013), http://www.nalp.org/part-time_feb2013.

²³⁸K. M. Managan, E. Giglia, & L. Rowen, *Why Lawyers Leave Law Firms and What Firms Can Do About It*, L. PRAC. TODAY, April 14, 2016, <http://www.lawpracticetoday.org/article/why-lawyers-leave-law-firms-and-what-firms-can-do-about-it>.

²³⁹L. B. Hammer, E. E. Kossek, N. L. Yragui, T. E. Bodner, & G. C. Hanson, *Development and Validation of Multidimensional Measure of Family Supportive Supervisor Behaviors (FSSB)*, 35 J. MGMT. 837 (2009); L. B. Hammer, S. E. Van Dyck, & A. M. Ellis, *Organizational Policies Supportive of Work-Life Integration*, in Major & Burke, *supra* note 231; E. E. Kossek, S. Pichler, T. Bodner, & L. B. Hammer, *Workplace Social Support and Work-Family Conflict: A Meta-Analysis Clarifying the Influence of General and Work-Family-Specific Supervisor and Organizational Support*, 64 PERSONNEL PSYCHOL. 289 (2011).

To support WLB, bar associations and regulators should work with legal employers to develop best practices and relevant training. Regulators and judges should consider whether any of their practices and policies can be modified to better support lawyer WLB.

8.11 Meaning and Purpose

Research has found that feeling that our lives are meaningful is important for physical and psychological wellness. It provides a buffer against stress.²⁴⁰ For example, meaning in life is associated with a reduced risk of anxiety, depression, substance use, suicidal ideation, heart attack, and stroke; slower cognitive decline in Alzheimer's patients; and lower overall mortality for older adults.²⁴¹

For many lawyers, an important part of building a meaningful life is through meaningful work. Experiencing our work as meaningful means that we believe that our work matters and is valuable. A large body of research shows that meaningfulness plays an important role in workplace well-being and performance.²⁴² Evidence suggests that the perception of meaningfulness is the strongest predictor of work engagement.²⁴³

Meaningfulness develops when people feel that their work corresponds to their values. Organizations can enhance the experience of fit and meaningfulness by, for example, fostering a sense of belonging; designing and framing

work to highlight its meaningful aspects; and articulating compelling goals, values, and beliefs.²⁴⁴

These same principles apply in law school. Studies in the college context have found that the majority of students want their educational experiences to be meaningful and to contribute to a life purpose.²⁴⁵ One study measured “psychological sense of community,” which was proposed as a foundation for students to find greater meaning in their educational experience. It was the strongest predictor of academic thriving in the study.²⁴⁶ Deterioration of law students’ sense of meaning may contribute to their elevated rate of psychological distress. Research reflects that, over the course of law school, many students disconnect from their values and become emotionally numb.²⁴⁷

8.12. Substance Use and Mental Health Disorders

Recommended content for training on substance use and mental disorders is outlined above in Recommendation 8 in the body of this report.

8.13. Additional Topics

Many topics are possible for programming aimed at boosting work engagement and overall well-being (through resource-development) and curbing stress and burnout (by limiting demands) or otherwise promoting lawyer well-being. Additional topics to consider include: psychological

²⁴⁰BRAFFORD, *supra* note 131; P. Halama, *Meaning in Life and Coping: Sense of Meaning as a Buffer Against Stress*, in MEANING IN POSITIVE AND EXISTENTIAL PSYCHOLOGY 239-50 (A. Batthyany and P. Russo-Netzer eds., 2014).

²⁴¹E. S. Kim, J. K. Sun, N. Park, C. Peterson, *Purpose in Life and Reduced Incidence of Stroke in Older Adults: The Health and Retirement Study*, 74 J. PSYCHOSOMATIC RES. 427 (2013); M. F. Steger, A. R. Fitch-Martin, J. Donnelly, & K. M. Rickard, *Meaning in Life and Health: Proactive Health Orientation Links Meaning in Life to Health Variables Among American Undergraduates*, 16 J. HAPPINESS STUDIES 583 (2015); M. F. Steger, P. Frazier, S. Oishi, M. Kaler, *The Meaning in Life Questionnaire: Assessing the Presence of and Search for Meaning in Life*, 53 J. COUNSELING PSYCHOL. 80 (2006).

²⁴²E.g., S. Albrecht, *Meaningful Work: Some Key Questions for Research and Practice*, in FLOURISHING IN LIFE, WORK AND CAREERS: INDIVIDUAL WELLBEING AND CAREER EXPERIENCES (R. J. Burke, K. M. Page, & C. Cooper eds., 2015); B. D. Rosso, K. H. Dekas, & A. Wrzesniewski, *On the Meaning of Work: A Theoretical Integration and Review*, 30 RES. IN ORGANIZATIONAL BEHAV. 91 (2010).

²⁴³D. R. May, R. L. Gilson, & L. M. Harter, *The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work*, 77 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 11 (2004); P. Fairlie, *Meaningful Work, Employee Engagement, and Other Key Employee Outcomes: Implications for Human Resource Development*, 13 ADVANCED IN DEVELOPING HUMAN RESOURCES 508 (2011).

²⁴⁴BRAFFORD, *supra* note 131; M. G. Pratt & B. E. Ashforth, *Fostering Meaningfulness*, in Cameron, Dutton, & Quinn, *supra* note 32; D. J. Cleavenger & T. P. Munyon, *It's How You Frame It: Transformational Leadership and the Meaning of Work*, 56 BUS. HORIZONS 351 (2013); W. Kahn & S. Fellows, *Employee Engagement and Meaningful Work*, in PURPOSE AND MEANING IN THE WORKPLACE 105-26 (B. J. Dik, Z. S. Byrne, & M. F. Steger eds., 2013).

²⁴⁵S. J. DeWitz, M. L. Woolsey, W. B. Walsh, *College Student Retention: An Exploration of the Relationship Between Self-Efficacy Beliefs, and Purpose in Life among College Students*, 50 J. C. STUDENT DEV. 19 (2009); HIGHER EDUC. RES. INST., *THE SPIRITUAL LIFE OF COLLEGE STUDENTS* (2005), available at http://spirituality.ucla.edu/docs/reports/Spiritual_Life_College_Students_Full_Report.pdf; see also J. K. Coffey, L. Wray-Lake, D. Mashek, & B. Branand, *A Longitudinal Examination of a Multidimensional Well-Being Model in College and Community Samples*, 17 J. HAPPINESS STUDIES 187 (2016).

²⁴⁶Eric James McIntosh, *Thriving in College: The Role of Spirituality and Psychological Sense of Community in Students of Color* (2012) (unpublished Ph.D. dissertation, Azusa Pacific University).

²⁴⁷Sheldon & Krieger, *supra* note 154.

capital (composed of optimism, self-efficacy, hope, and resilience),²⁴⁸ psychological hardiness (composed of commitment, control, and challenge),²⁴⁹ stress mindset,²⁵⁰ growth mindset,²⁵¹ grit,²⁵² effort-reward balance,²⁵³ transformational leadership,²⁵⁴ self-determination theory,²⁵⁵ strengths-based management,²⁵⁶ emotional intelligence and regulation,²⁵⁷ organizational fairness,²⁵⁸ nutrition,²⁵⁹ interpersonal skills,²⁶⁰ and political skills.²⁶¹

²⁴⁸E.g., Avey, Luthans, & Jensen, *supra* note 181.

²⁴⁹S. R. Maddi, S. Kahn, & K. L. Maddi, *The Effectiveness of Hardiness Training*, 50 CONSULTING PSYCHOL. J.: PRAC. & RES. 78 (1998).

²⁵⁰Crum, Salovey, Achor, *supra* note 50; McGonigal, *supra* note 182.

²⁵¹C. S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2008).

²⁵²A. DUCKWORTH, GRIT: THE POWER OF PASSION AND Perseverance (2016).

²⁵³A. Allisey, J. Rodwell, & A. Noblet, *Personality and the Effort-Reward Imbalance Model of Stress: Individual Differences in Reward Wensitivity*, 26 WORK & STRESS 230 (2012).

²⁵⁴M. Y. Ghadi, M. Fernando, & P. Caputi, *Transformational Leadership and Work Engagement*, 34 LEADERSHIP & ORG. DEV. J. 532 (2013).

²⁵⁵Krieger & Sheldon, *supra* note 5.

²⁵⁶D. O. Clifton & J. K. Harter, *Investing in Strengths*, in Cameron, Dutton, & Quinn, *supra* note 32.

²⁵⁷C. Miao, R. H., Humphrey, & S. Qian, *Leader Emotional Intelligence and Subordinate Job Satisfaction: A Meta-Analysis of Main, Mediator, and Moderator Effects*, 102 PERSONALITY AND INDIVIDUAL DIFFERENCES 13 (2016); K. Thory, *Teaching Managers to Regulate Their Emotions Better: Insights from Emotional Intelligence Training and Work-Based Application*, 16 HUMAN RESOURCE DEV. INT'L 4 (2013); R. E. Riggio, *Emotional Intelligence and Interpersonal Competencies*, in SELF-MANAGEMENT AND LEADERSHIP DEVELOPMENT 160-82 (M. G. Rothstein, R. J. Burke eds., 2010).

²⁵⁸J. Greenberg, *Positive Organizational Justice: From Fair to Fairer—and Beyond*, in EXPLORING POSITIVE RELATIONSHIPS AT WORK: BUILDING A THEORETICAL AND RESEARCH FOUNDATION 159-78 (J. E. Dutton & B. R. Ragins eds., 2007).

²⁵⁹T. RATH, EAT, MOVE, SLEEP (2013).

²⁶⁰J. Mencl, A. J. Wefald, & K. W. van Ittersum, *Transformational Leader Attributes: Interpersonal Skills, Engagement, and Well-Being*, 37 LEADERSHIP & ORG. DEV. J. 635 (2016).

²⁷⁰*Id.*; C. C. Rosen & D. C. Ganster, *Workplace Politics and Well-Being: An Allostatic Load Perspective*, in IMPROVING EMPLOYEE HEALTH AND WELL-BEING 3-23 (A. M. Rossi, J. A. Meurs, P. L. Perrewa eds., 2014); Ferris, Daniels, & Sexton, *supra* note 40.

Appendix to Recommendation 9: Guide and Support The Transition of Older Lawyers.

Recommendation 9 advised stakeholders to create programs for detecting and addressing cognitive decline in lawyers, develop succession plans for aging lawyers, and develop reorientation programs to support lawyers facing retirement. Such initiatives and programs may include the following:

- Gathering demographic information about the lawyer population, including years in practice, the nature of the practice, the size of the firm in which the lawyer's practice is conducted, and whether the lawyer has engaged in any formal transition or succession planning for the lawyer's practice;
- Working with medical professionals to develop educational programs, checklists, and other tools to identify lawyers who may be experiencing incapacity issues;
- Developing and implementing educational programs to inform lawyers and their staff members about incapacity issues, steps to take when concerns about a lawyer's incapacity are evident, and the importance of planning for unexpected practice interruptions or the cessation of practice;
- Developing succession or transition planning manuals and checklists, or planning ahead guidelines for lawyers to use to prepare for an unexpected interruption or cessation of practice;²⁶²
- Enacting rules requiring lawyers to engage in succession planning;
- Providing a place on each lawyer's annual license renewal statement for the lawyer to identify whether the lawyer has engaged in succession and transition planning and, if so, identifying the person, persons or firm designated to serve as a successor;
- Enacting rules that allow senior lawyers to continue to practice in a reduced or limited license or emeritus capacity, including in pro bono and other public service representation;
- Enacting disability inactive status and permanent retirement rules for lawyers whose incapacity does not warrant discipline, but who, nevertheless, should not be allowed to practice law;
- Developing a formal, working plan to partner with Judges and Lawyer Assistance Programs to identify, intervene, and assist lawyers demonstrating age-related or other incapacity or impairment.²⁶³
- Developing "re-orientation" programs to proactively engage lawyers in transition planning with topics to include:
 - financial planning;
 - pursuing "bridge" or second careers;
 - identity transformation;
 - developing purpose in life;
 - cognitive flexibility;
 - goal-setting;
 - interpersonal connection;
 - physical health;
 - self-efficacy;
 - perceived control, mastery, and optimism.²⁶⁴

²⁶²See, e.g., N. M. SUP. CT. LAW. SUCCESSION & TRANSITION COMM. SUCCESSION PLANNING HANDBOOK FOR N. M. LAW. (2014), available at <http://www.nmbar.org/NmbarDocs/forMembers/Succession/SuccessionHandbook.pdf>; W. VA. STATE BAR, SUCCESSION PLANS, available at <http://wvbar.org/wp-content/uploads/2012/04/succession.pdf>; WASH. STATE BAR ASS'N, SUCCESSION PLANNING, available at <http://www.wsba.org/Resources-and-Services/Ethics/Succession-Planning>.

²⁶³See generally W. Slease, et al., *supra* note 60.

²⁶⁴See, e.g., S. D. Asebedo & M. C. Seay, *Positive Psychological Attributes and Retirement Satisfaction*, 25 J. FIN. COUNSELING & PLANNING 161 (2014); Dingemans & Hengkens, *supra* note 64; Houliort, Fernet, Vallerand, Laframboise, Guay, & Koestner, *supra* note 62; Muratore & Earl, *supra* note 64.

Appendix to Recommendation 25:

Topics for Legal Employers' Audit of Well-Being Related Policies and Practices

Legal employers should consider topics like the following as part of their audits of current policies and practices to evaluate whether the organization adequately supports lawyer well-being.

MENTAL HEALTH & SUBSTANCE USE DISORDERS

- Is there a policy regarding substance use, mental health, and impairment? If so, does it need updating?
- Does the policy explain lawyers' ethical obligations relating to their own or colleagues' impairment?
- Is there a leave policy that would realistically support time off for treatment?
- Are there meaningful communications about the importance of well-being?
- Do health plans offered to employees include coverage for mental health and substance use disorder treatment?

LAW PRACTICE MANAGEMENT PRACTICES AFFECTING LAWYER WELL-BEING

- **Assessment of Well-Being:** Is there a regular practice established to assess work engagement, burnout, job satisfaction, turnover intentions, psychological well-being, or other indicators of well-being and to take action on the results?
- **Orientation Practices:** Are orientation practices established to set new lawyers up for success, engagement, and well-being?
- **Work-Life Balance-Related Policies & Practices:** Is there a policy that allows flexibility and an organizational climate that supports it? Is it a practice to recognize lawyers and staff who demonstrate a high standard of well-being?
- **Diversity/Inclusion-Related Policies & Practices:** Diversity and inclusion practices impact lawyer well-being. Are policies and practices in place with a specific mission that is adequately funded?²⁶⁵
- **24/7 Availability Expectations:** Do practices allow lawyers time for sufficient rejuvenation? Are response-time expectations clearly articulated and reasonable? Is there an effort to protect time for lawyers to recover from work demands by regulating work-related calls and emails during evenings, weekends, and vacations?²⁶⁶

²⁶⁵For example, a 2015 report found that most larger firms have some type of diversity training (80 percent) and all participating firms reported having a women's affinity group. But the report also found that affinity groups were "woefully underfunded" and lacking clear goals and missions. See L. S. RIKLEEN, REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT'L ASSOC. OF WOMEN LAWYERS FOUND. (2015), available at <http://www.nawl.org/2015nawlsurvey>.

²⁶⁶For example, McDonald's and Volkswagen—along with one in four U.S. companies—have agreed to stop sending emails to employees after hours. See Fritz, Ellis, Demsky, Lin, & Guros, *supra* note 206. In in the highly-demanding world of law, firms should consider the possibility of establishing new norms for lawyers that limit after-hours emails and calls to actual emergencies—especially to associates who have less work-related autonomy and, thus, are at a higher risk for fatigue and burnout.

- **Billing Policies & Practices:** Do billing practices encourage excessive work and unethical behavior?²⁶⁷
- **Compensation Practices:** Are compensation practices fair? And are they perceived as fair? Do they follow standards of distributive (fair outcome), procedural (fair process), interpersonal (treating people with dignity and respect), and informational (transparency) fairness? Perceived unfairness in important practices can devastate well-being and motivation. For example, a large-scale study found that people were 50 percent more likely to have a diagnosed health condition if they perceived unfairness at work.²⁶⁸ Further, high levels of interpersonal and informational fairness should not be ignored—they can reduce the negative effect of less fair procedures and outcomes.²⁶⁹
- **Performance Appraisal Practices:** Are performance appraisal practices fair and perceived as fair? Are observations about performance regularly noted to use in the review? Do multiple raters contribute? Are they trained on the process and to reduce common biases?²⁷⁰ Is feedback given in a two-way communication? Is specific, timely feedback given regularly, not just annually? Is feedback empathetic and focused on behavior not the person's worth? Is good performance and progress toward goals

regularly recognized? Is goal-setting incorporated?²⁷¹ Is performance feedback balanced and injected with positive regard and respect to improve likelihood of acceptance?²⁷² Are lawyers asked to describe when they feel at their best and the circumstances that contribute to that experience?²⁷³ Carefully managing this process is essential given evidence that bungled performance feedback harms well-being and performance.

- **Vacation Policies & Practices:** Is there a clear vacation policy? Does the organizational culture encourage usage and support detachment from work? In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was the strongest predictor of well-being among all activities measured in the study. It was a stronger predictor of well-being even than income level.²⁷⁴ This suggests that legal employers should encourage taking of vacation—or at least not discourage or unreasonably interfere with it.

²⁶⁷ABA COMM'N ON BILLABLE HOURS, AM. BAR ASS'N, THE CORROSIVE IMPACT OF EMPHASIS ON BILLABLE HOURS (2001-2002), available at http://ilta.personifycloud.com/webfiles/productfiles/914311/FMPG4_ABABillableHours2002.pdf.

²⁶⁸J. Goh, J. Pfefer, & S. A. Zenios, *Workplace Stressors & Health Outcomes: Health Policy for the Workplace*, 1 BEHAV. SCI. & POL'Y. 43 (2015); see also R. M. Herr, A. Loerbrooks, J. A. Bosch, M. Seegel, M. Schneider, & B. Schmidt, *Associations of Organizational Justice with Tinnitus and the Mediating Role of Depressive Symptoms and Burn-out—Findings from a Cross-Sectional Study*, 23 INT'L J. BEHAV. MED. 190 (2016).

²⁶⁹J. Greenberg, *Promote Procedural and Interactional Justice to Enhance Individual and Organizational Outcomes*, in Locke, *supra* note 7, 255-71; T. R. Tyler & E. A. Lind, *A Relational Model of Authority in Groups*, in *Advances in Experimental Social Psychology* 115-91 (M. P. Zanna ed., 1st ed., 1992).

²⁷⁰F. Luthans & A. Stajkovic, *Provide Recognition for Performance Improvement*, in Locke, *supra* note 7, 239-53.

²⁷¹A. N. Kluger, & N. DeNisi, *The Effects of Feedback Interventions on Performance: A Historical Review, a Meta-Analysis, and a Preliminary Feedback Intervention Theory*, 119 PSYCHOL. BULL. 254 (1996).

²⁷²O. Bouskila-Yam & A. N. Kluger, *Strengths-Based Performance Appraisal and Goal Setting*, 21 HUMAN RES. MGMT. REV. 137 (2011).

²⁷³A. N. Kluger & D. Nir, *The Feedforward Interview*, 20 HUMAN RESOURCES MGMT. REV. 235 (2010).

²⁷⁴Krieger & Sheldon, *supra* note 5.

Appendix to Recommendation 33.2: Creating a Well-Being Course and Lecture Series for Law Students

Recommendation 33.2 suggests that law schools design a lecture series dedicated to well-being topics. In 2007, the Carnegie Foundation for the Advancement of Teaching issued a report titled *Educating Lawyers: Preparation for the Profession of Law* (referred to as the “Carnegie Report”). The Carnegie Report describes three “apprenticeships” in legal education: (1) the intellectual apprenticeship, where students acquire a knowledge base; (2) the practice apprenticeship, where students learn practical legal skills; and (3) the professional identity apprenticeship, where students cultivate the attitudes and values of the legal profession.²⁷⁵ The 2016 *Foundations for Practice Report* by the Institute for the Advancement of the American Legal System recommends that law schools teach character attributes including courtesy, humility, respect, tact, diplomacy, sensitivity, tolerance, and compassion; and self-care and self-regulation skills such as positivity and managing stress; exhibiting flexibility, adaptability, and resilience during challenging circumstances; and decision-making under pressure. A well-being course can address the *Foundations for Practice Report* recommendations while helping law students develop a professional identity that encompasses

a commitment to physical and mental well-being.

Appendix B includes topics that could be incorporated into a well-being course for law students. The list below includes additional topics and provides suggested student readings in the footnotes:

- Basic Wellbeing and Stress Reduction;²⁷⁷
- Cognitive Well-being and Good Nutrition;²⁷⁸
- Restorative Practices, such as Mindfulness, Meditation, Yoga, and Gratitude;²⁷⁹
- The Impact of Substances such as Caffeine, Alcohol, Nicotine, Marijuana, Adderall, Ritalin, Cocaine, and Opiates on Cognitive Function;²⁸⁰
- “Active bystander” training that educates students about how to detect when their fellow students may be in trouble with respect to mental health disorders, suicidal thinking, or substance use and what action to take;
- Cultivating a Growth Mindset;²⁸¹
- Improving Pathway (strategies for identifying goals and plans for reaching them) and Agency (sustaining motivation to achieve objectives) Thinking;²⁸²

²⁷⁵SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING (2007).

²⁷⁶A. Gerkman & L. Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. 30, 33 (2016), available at <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient>.

²⁷⁷See L. S. KRIEGER, THE HIDDEN SOURCES OF LAW SCHOOL STRESS: AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS (2014); D. S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 828-37 (2013); M. Silver, *Work & Well-Being*, in LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL LEGAL EDUCATION (L. Wortham, A. Scheer, N. Maurer, & S. L. Brooks eds., 2016).

²⁷⁸D. S. Austin, *Food for Thought: The Neuroscience of Nutrition to Fuel Cognitive Performance*, OR. L. REV. (forthcoming 2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808100.

²⁷⁹Austin, *supra* note 277, at 837-847; see S. L. Rogers, *Mindfulness and the Importance of Practice*, 90 FLA. B. J. (April 2016); see S. L. Rogers, *Mindfulness in Law*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS (A. Ie, C. Ngoumen & E. Langer eds., 2014); see T. K. Brostoff, *Meditation for Law Students: Mindfulness Practice as Experiential Learning*, 41 L. & PSYCHOL. REV. (forthcoming 2017), online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2836923; see J. CHO & K. GIFFORD, THE ANXIOUS LAWYER: AN 8-WEEK GUIDE TO A JOYFUL AND SATISFYING LAW PRACTICE THROUGH MINDFULNESS AND MEDITATION (2016); see G. MUMFORD, THE MINDFUL ATHLETE: SECRETS TO PURE PERFORMANCE (2015); M. Silver, *supra* note 277.

²⁸⁰See D. S. Austin, *Drink Like a Lawyer: The Neuroscience of Substance Use and its Impact on Cognitive Wellness*, 15 NEV. L.J. 826 (2015).

²⁸¹D. S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. at 22-25 (forthcoming 2018), abstract available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2928329; see C. S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2008).

²⁸²Austin, *supra* note 280, at 826-27.

- Enhancing Emotion Regulation;²⁸³
- Fostering Optimism and Resilience;²⁸⁴
- Preparing for a Satisfying Legal Career;²⁸⁵
- Developing Strong Lawyering Values, such as Courage, Willpower, and Integrity;²⁸⁶
- Work Life Balance in the Law;²⁸⁷ and
- Lawyers as Leaders.²⁸⁸

Many resources for teaching well-being skills are available to legal educators in the online AALS Balance in Legal Education Bibliography.²⁸⁹ Expert guest speakers can be found in the AALS Balance in Legal Education section,²⁹⁰ and at local lawyer assistance programs and lawyer well-being committees.

²⁸³See S. Daicoff, *Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 79 (M. A. Silver ed., 2007); see D. S. Austin & R. Durr, *Emotion Regulation for Lawyers: A Mind is a Challenging Thing to Tame*, 16 WYO. L. REV. 826 (2015); M. A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147 (2009).

²⁸⁴See S. KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (10th ed., 2011); see S. ACHOR, THE HAPPINESS ADVANTAGE: THE SEVEN PRINCIPLES OF POSITIVE PSYCHOLOGY THAT FUEL SUCCESS AND PERFORMANCE AT WORK (2010); see S. ACHOR, BEFORE HAPPINESS: THE 5 HIDDEN KEYS TO ACHIEVING SUCCESS, SPREADING HAPPINESS, AND SUSTAINING POSITIVE CHANGE (2013); see A. DUCKWORTH, GRIT: THE POWER OF PASSION AND PERSEVERANCE (2016).

²⁸⁵See L. S. KRIEGER, A DEEPER UNDERSTANDING OF YOUR CAREER CHOICES: SCIENTIFIC GUIDANCE FOR A FULFILLING LIFE AND CAREER (2007); see N. LEVIT & D. O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW (2010); see P. H. Huang & R. Swedloff, *Authentic Happiness and Meaning at Law Firms*, 58 SYRACUSE L. REV. 335 (2008); M. Silver, *supra* note 260.

²⁸⁶See D. O. LINDER & N. LEVIT, THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW (2014); see G. Duhaime, *Practicing on Purpose: Promoting Personal Wellness and Professional Values in Legal Education*, 28 TOURO L. REV. 1207 (2012).

²⁸⁷L. L. Cooney, *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 47 SAN DIEGO L. REV. 421 (2010).

²⁸⁸See P. H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUSTON L. REV. (forthcoming 2017), abstract available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2907513; Austin, *supra* note 281, at 44-49.

²⁸⁹See AALS, *supra* note 145.

²⁹⁰See AALS, *supra* note 144.

BIOGRAPHIES OF TASK FORCE MEMBERS AND TASK FORCE REPORT AUTHORS AND EDITORS

The Report of the National Task Force on Lawyer Well-Being was primarily authored and edited by the Task Force members, whose biographies are below. The Task Force members were assisted in the creation of the Report by a team that included liaisons, contributing authors, peer reviewers, and individuals who contributed in a variety of other important capacities. Their biographies also are provided below.

BREE BUCHANAN (CO-CHAIR, EDITOR, AUTHOR)

Bree Buchanan, J.D., is Director of the Texas Lawyers Assistance Program of the State Bar of Texas. She serves as co-chair of the National Task Force on Lawyer Wellbeing and is an advisory member of the ABA Commission on Lawyers Assistance Programs (CoLAP). Ms. Buchanan is also the appointed chair of CoLAP for 2017-2018.

Ms. Buchanan, upon graduation from the University of Texas School of Law, practiced in the public and private sector with a focus on representing both adult and child victims of family violence. She worked on public policy initiatives and systems change at both the state and federal level as the Public Policy Director for the Texas Council on Family Violence and the National Domestic Violence Hotline. After this position, Ms. Buchanan was appointed Clinical Professor and Co-Director of the Children's Rights Clinic at the University of Texas School of Law.

Ms. Buchanan is a frequent speaker at CLE programs for national organizations, as well as for state and local bar entities. She is a graduate student at the Seminary of the Southwest where she is pursuing a Masters in Spiritual Direction, and is the proud parent of a senior at New York University. Ms. Buchanan tends to her own well-being by

engaging in a regular meditation practice, rowing, staying connected to 12-Step recovery, and being willing to ask for help when she needs it.

JAMES C. COYLE (CO-CHAIR, EDITOR, AUTHOR)

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court. Mr. Coyle oversees attorney admissions, attorney registration, mandatory continuing legal and judicial education, attorney discipline and diversion, regulation of the unauthorized practice of law, and inventory counsel matters. Mr. Coyle has been a trial attorney with the Office of Disciplinary Counsel or successor Office of Attorney Regulation Counsel since 1990. Prior to that, he was in private practice. He served on the National Organization of Bar Counsel (NOBC) board of directors from 2014 – 2016. Mr. Coyle was on the Advisory Committee to the ABA Commission on Lawyer Assistance Programs and is now a member of the Commission for the 2017 – 2018 term.

Mr. Coyle is active in promoting proactive regulatory programs that focus on helping lawyers throughout the stages of their careers successfully navigate the practice of law and thus better serve their clients. This includes working on and co-hosting the first ABA Center for Professional Responsibility (CPR)/NOBC/Canadian Regulators Workshops on proactive, risk-based regulatory programs, in Denver in May 2015, in Philadelphia in June 2016, and St. Louis in June 2017; participating in the NOBC Program Committee and International Committee, including as Chair of the Entity Regulation Subcommittee, now known as the Proactive Management-Based Programs Committee; and prior service on the NOBC Aging Lawyers and Permanent Retirement subcommittees. Mr. Coyle tends to his own well-being through gardening, exercise, and dreaming about retirement.

ANNE BRAFFORD (EDITOR-IN-CHIEF, AUTHOR)

Anne Brafford served as the Editor-in-Chief for the Task Force Report on Lawyer Well-Being. Anne is the Chairperson of the American Bar Association Law Practice Division's Attorney Well-Being Committee. She is a founding member of Aspire, an educational and consulting firm for the legal profession (www.aspire.legal). In 2014, Anne left her job as an equity partner at Morgan, Lewis & Bockius LLP after 18 years of practice to focus on thriving in the legal profession. Anne has earned a Master's degree in Applied Positive Psychology (MAPP) from the University of Pennsylvania and now is a PhD student in positive organizational psychology at Claremont Graduate University (CGU). Anne's research focuses on lawyer thriving and includes topics like positive leadership, resilience, work engagement, meaningful work, motivation, and retention of women lawyers. She also is an Assistant Instructor in the MAPP program for Dr. Martin Seligman and, for two years, was a Teaching Assistant at CGU for Dr. Mihaly Csikszentmihalyi, the co-founders of positive psychology. Look for her upcoming book to be published this fall by the American Bar Association's Law Practice Division called *Positive Professionals: Creating High-Performing, Profitable Firms Through The Science of Engagement*. It provides practical, science-backed advice on boosting work engagement for lawyers. Anne can be reached at abracford@aspire.legal, www.aspire.legal.

JOSH CAMSON (EDITOR, AUTHOR)

Josh Camson is a criminal defense attorney with Camson Law, LLC in Collegeville, Pennsylvania. He is a member of the Pennsylvania Bar Association Ethics Committee and the ABA Standing Committee on Professionalism. He is a former long-time staff writer for Lawyerist.com, a law practice management blog and the former editor of BitterLawyer.com, a comedy site for lawyers and law students.

CHARLES GRUBER (AUTHOR)

Charles A. Gruber is a solo practitioner in Sandy, Utah. He is a graduate of the University of Texas Law School. He is licensed to practice law in Utah and California. His areas of practice are personal injury, medical malpractice, and legal malpractice.

A former attorney with the Utah State Bar Office of Professional Conduct, Mr. Gruber represents and advises attorneys on ethics issues. A former member of the NOBC,

he currently is a member of APRL. He serves on the Board of Utah Lawyers Helping Lawyers. Utah Lawyers Helping Lawyers is committed to rendering confidential assistance to any member of the Utah State Bar whose professional performance is or may be impaired because of mental illness, emotional distress, substance abuse or any other disabling condition or circumstance.

Mr. Gruber tends to his own well being by trying to remember and follow the suggestions of the 11th step of the 12 Steps.

As we go through the day we pause, when agitated or doubtful, and ask for the right thought or action. We constantly remind ourselves we are no longer running the show, humbly saying to ourselves many times each day "They will be done". We are then in much less danger of excitement, fear, anger, worry, self-pity, or foolish decisions. We become much more efficient. We do not tire so easily, for we are not burning up energy foolishly as we did when we were trying to arrange life to suit ourselves. Big Book pg. 87-88.

TERRY HARRELL (AUTHOR)

Terry Harrell completed her undergraduate degree in psychology at DePauw University in 1986 and completed her law degree at Maurer School of Law in 1989. Following law school she practiced law with Ice Miller and then clerked for Judge William I. Garrard on the Indiana Court of Appeals.

In 1993 she completed her Master of Social Work Degree (MSW) at Indiana University. Terry is a Licensed Clinical Social Worker (LCSW), a Licensed Clinical Addictions Counselor (LCAC) in Indiana, and has a Master Addictions Counselor certification from NAADAC. In 1992 Terry began working for Midtown Community Mental Health Center. While there she worked in a variety of areas including inpatient treatment, crisis services, adult outpatient treatment, wrap around services for severely emotionally disturbed adolescents, and management. In 2000 Terry began working as the Clinical Director for JLAP and in 2002 became the Executive Director.

From 2007 through 2010 Terry served on the Advisory Committee to the American Bar Association's Commission on Lawyer Assistance Programs (CoLAP).

She served from 2010 through 2013 as a commissioner on CoLAP. She is past Chair of the Senior Lawyer Assistance Subcommittee for CoLAP and an active member of the CoLAP National Conference Planning Committee. In August 2014 Terry became the first ever LAP Director to be appointed Chair of the ABA Commission on Lawyer Assistance Programs. Locally, Terry is a member of the Indiana State Bar Association and is active with the Professional Legal Education Admission and Development Section, the Planning Committee for the Solo Small Firm Conference, and the Wellness Committee.

DAVID B. JAFFE (AUTHOR)

David Jaffe is Associate Dean for Student Affairs at American University Washington College of Law. In his work on wellness issues among law students over the last decade, he has served on the D.C. Bar Lawyer Assistance Program including as its chair, and continues to serve on the ABA Commission on Lawyer Assistance Programs (CoLAP) as co-chair of the Law School Assistance Committee. Jaffe co-authored “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns”, reporting the results of a survey he co-piloted in 2014. He also produced the “Getting Health, Staying Healthy” video that is used as a resource in many Professional Responsibility classes around the country, and is responsible for modernizing the “Substance Abuse & Mental Health Toolkit for Law Students and Those Who Care About Them”.

Jaffe has presented frequently on law student wellness, including to the National Conference of Bar Examiners, the ABA Academic Deans, the ABA Young Lawyers Division, CoLAP, AALS, the D.C. Bar, and NALSAP. He received the 2015 CoLAP Meritorious Service Award in recognition of his commitment to improving the lives of law students, and the 2009 Peter N. Kutulakis Award from the AALS Student Services Section for outstanding contributions to the professional development of law students. Jaffe states that he seeks self-care each day by being in the moment with each of his two daughters.

TRACY L. KEPLER (AUTHOR)

Tracy L. Kepler is the Director of the American Bar

Association’s Center for Professional Responsibility (CPR), providing national leadership in developing and interpreting standards and scholarly resources in legal and judicial ethics, professional regulation, professionalism and client protection. In that role, she manages and coordinates the efforts of 18 staff members and 13 entities including five ABA Standing Committees (Ethics, Professionalism, Professional Regulation, Client Protection, and Specialization), the ABA/BNA Lawyers’ Manual on Professional Conduct, the Center’s Coordinating Council and other Center working committees.

From 2014-2016, Ms. Kepler served as an Associate Solicitor in the Office of General Counsel for the U.S. Patent & Trademark Office (USPTO), where she concentrated her practice in the investigation, prosecution and appeal of patent/trademark practitioner disciplinary matters before the Agency, U.S. District Courts and Federal Circuit, provided policy advice on ethics and discipline related matters to senior management, and drafted and revised Agency regulations. From 2000-2014, she served as Senior Litigation Counsel for the Illinois Attorney Registration and Disciplinary Commission (ARDC), where she investigated and prosecuted cases of attorney misconduct.

From 2009-2016, Ms. Kepler served in various capacities, including as President, on the Board of the National Organization of Bar Counsel (NOBC), a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States and abroad. Ms. Kepler also taught legal ethics as an Adjunct Professor at American University’s Washington College of Law. Committed to the promotion and encouragement of professional responsibility throughout her career, Ms. Kepler has served as the Chair of the CPR’s CLE Committee and its National Conference Planning Committee, and is a frequent presenter of ethics related topics to various national, state and local organizations. She has also served as the NOBC Liaison to the ABA CPR Standing Committees, and to the ABA Commission on Lawyer Assistance Programs (CoLAP), where she was a Commission member, a member of its Advisory Committee, the Chair of its Education and Senior Lawyer Committees, and also a member of its National Conference Planning Committee. Ms. Kepler also participates as a

faculty member for the National Institute of Trial Advocacy (NITA) trial and deposition skills programs, and served as the Administrator of the NOBC-NITA Advanced Advocates Training Program from 2011-2015. She is a graduate of Northwestern University in Evanston, Illinois, and received her law degree from New England School of Law in Boston, Massachusetts.

PATRICK KRILL (AUTHOR)

A leading authority on the addiction and mental health problems of lawyers, Patrick is the founder of Krill Strategies, a behavioral health consulting firm exclusively for the legal profession. Patrick is an attorney, licensed and board certified alcohol and drug counselor, author, and advocate. His groundbreaking work in the field of attorney behavioral health includes initiating and serving as lead author of the first and only national study on the prevalence of attorney substance use and mental health problems, a joint undertaking of the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation that was published in *The Journal of Addiction Medicine*.

Patrick is the former director of the Hazelden Betty Ford Foundation's Legal Professionals Program, where he counseled many hundreds of legal professionals from around the country who sought to better understand and overcome the unique challenges faced on a lawyer's road to recovery. He has authored more than fifty articles related to addiction and mental health, and has been quoted in dozens of national and regional news outlets, including the *New York Times*, *Wall Street Journal*, *Washington Post*, *Chicago Tribune*, and countless legal industry trade publications and blogs. As a frequent speaker about addiction and its intersection with the law, Patrick has taught multiple graduate-level courses in addiction counseling, and has spoken, lectured, or conducted seminars for over one hundred organizations throughout the United States, including professional and bar associations, law firms, law schools, and corporations.

Patrick maintains his own wellbeing by prioritizing his personal relationships and exercising daily. Whether it be hiking, yoga, or weight lifting, his secret to managing stress is a dedication to physical activity. Patrick can be reached at patrick@prkrill.com, www.prkrill.com.

CHIEF JUSTICE DONALD W. LEMONS, SUPREME COURT OF VIRGINIA (AUTHOR)

Chief Justice Donald W. Lemons received his B.A. from the University of Virginia in 1970. Before entering law school, he served as a Probation Officer in Juvenile and Domestic Relations Court. In 1976, he earned his J.D. from the University of Virginia School of Law. From 1976 until 1978, he served as Assistant Dean and Assistant Professor of Law at the University of Virginia School of Law. Thereafter, he entered the private practice of the law in Richmond, Virginia. Chief Justice Lemons has served at every level of the court system in Virginia. He served as a substitute judge in General District Court and in Juvenile and Domestic Relations Court. In 1995, he was elected by the General Assembly to be a Judge in the Circuit Court of the City of Richmond. While serving in that capacity, Chief Justice Lemons started one of the first Drug Court dockets in Virginia. He was then elected by the General Assembly to serve as a Judge on the Court of Appeals of Virginia. In 2000, he was elected by the General Assembly as a Justice of the Supreme Court of Virginia. In 2014, the Justices of the Supreme Court of Virginia elected Justice Lemons to serve as the next Chief Justice, following the retirement of Chief Justice Cynthia D. Kinser on December 31, 2014. Chief Justice Lemons is also the Distinguished Professor of Judicial Studies at the Washington and Lee University School of Law, serves on the Board of Directors for the Conference of Chief Justices, is the former President of the American Inns of Court (2010 – 2014), and an Honorary Benchler of Middle Temple in London. He is married to Carol Lemons, and they have three children and six grandchildren. He and Carol reside in beautiful Nelson County, Virginia, in the foothills of the Blue Ridge Mountains.

SARAH MYERS (AUTHOR)

Sarah Myers is the Clinical Director of the Colorado Lawyer Assistance Program. She received her B.A. from the University of Richmond in Virginia, her M.A. from Naropa University in Boulder, Colorado, and her J.D. at the University of Denver in Colorado. She is a Colorado licensed attorney, licensed marriage and family therapist, and licensed addiction counselor. Ms. Myers is also a licensed post-graduate level secondary teacher, certified trauma and abuse psychotherapist, and certified LGTBQ

therapist. She has over 18 years of experience as a professor and teacher, psychotherapist, clinical supervisor, and program director.

Ms. Myers specializes in stress management, psychoneuroimmunology, and psychoeducation, topics that she presents to thousands of judges, lawyers, and law students each year. In addition, she has authored hundreds of articles on wellness concepts such as compassion fatigue, professional burnout, mental health support, and life-enhancing techniques for the legal community. Ms. Myers strives to “practice what she preaches” for self-care, which includes: simple meditation throughout the day to relax her nervous system, using humor and laughter to cope with difficult situations or personalities, cultivating positive relationships with friends and family, and engaging in hobbies such as gardening, caring for numerous pets (including a koi pond), yoga, learning new things, and reading science fiction and fantasy novels.

CHRIS L. NEWBOLD (AUTHOR)

Chris Newbold is Executive Vice President of ALPS Corporation and ALPS Property & Casualty Company. In his role as Executive Vice President, Mr. Newbold oversees bar association relations, strategic and operational planning, risk management activities amongst policyholders, human resources, and non-risk related subsidiary units. Internally at ALPS, Mr. Newbold has developed leading conceptual models for strategic planning which have driven proven results, ensured board and staff accountability, focused organizational energies, embraced change, integrated budgeting and human resource functions into the process and enabled a common vision for principal stakeholders. Externally, Mr. Newbold is a nationally-recognized strategic planning facilitator in the bar association and bar foundations worlds, conducts risk management seminars on best practices in law practice management and is well-versed in captive insurance associations and other insurance-related operations.

Mr. Newbold received his law degree from the University of Montana School of Law in 2001, and holds a bachelor's degree from the University of Wisconsin-Madison. Following his graduation from law school, he served one year as a law clerk for the Honorable Terry N. Trieweller of the Montana Supreme Court. He began his career at ALPS

as President and Principal Consultant of ALPS Foundation Services, a non-profit fundraising and philanthropic management consulting firm. Mr. Newbold is currently a member of the State Bar of Montana, the American Bar Association, and is involved in a variety of charitable activities. Mr. Newbold resides in Missoula, Montana, with his wife, Jennifer, and their three children, Cameron (11), Mallory (9) and Lauren (5).

JAYNE REARDON (EDITOR, AUTHOR)

Jayne Reardon is the Executive Director of the Illinois Supreme Court Commission on Professionalism. A tireless advocate for professionalism, Jayne oversees programs and initiatives to increase the civility and professionalism of attorneys and judges, create inclusiveness in the profession, and promote increased service to the public. Jayne developed the Commission's successful statewide Lawyer-to-Lawyer Mentoring Program which focuses on activities designed to explore ethics, professionalism, civility, diversity, and wellness in practice settings. She spearheaded development of an interactive digital and social media platform that connects constituencies through blogs, social networking sites and discussion groups. A frequent writer and speaker on topics involving the changing practice of law, Jayne asserts that embracing inclusiveness and innovation will ensure that the profession remains relevant and impactful in the future. Jayne's prior experience includes many successful years of practice as a trial lawyer, committee work on diversity and recruiting issues, and handling attorney discipline cases as counsel to the Illinois Attorney Registration and Disciplinary Commission Review Board.

Jayne graduated from the University of Notre Dame and the University of Michigan Law School. She is active in numerous bar and civic organizations. She serves as Chair of the American Bar Association's Standing Committee on Professionalism and is a Steering Committee member of the National Lawyer Mentoring Consortium. Jayne also is active in the ABA Consortium of Professionalism Initiatives, Phi Alpha Delta Legal Fraternity, Illinois State Bar Association, Women's Bar Association of Illinois, and the Chicago Bar Association. Jayne lives in Park Ridge, Illinois, with her husband and those of her four children who are not otherwise living in college towns and beyond.

HON. DAVID SHAHEED (AUTHOR)

David Shaheed became the judge in Civil Court 1, Marion County, Indiana, in August, 2007. Prior to this assignment, Judge Shaheed presided over Criminal Court 14, the Drug Treatment Diversion Court and Reentry Court. The Indiana Correctional Association chose Shaheed as 2007 Judge of the Year for his work with ex-offenders and defendants trying to recover from substance abuse.

Judge Shaheed has worked as a judicial officer in the Marion County Superior Court since 1994 starting as a master commissioner and being appointed judge by Governor Frank O'Bannon in September 1999. As a lawyer, Judge Shaheed was Chief Administrative Law Judge for the Indiana Unemployment Appeals Division; Legal Counsel to the Indiana Department of Workforce Development and served as Counsel to the Democratic Caucus of the Indiana House of Representatives in 1995. He was also co-counsel for the Estate of Michael Taylor, and won a 3.5 million dollar verdict for the mother of a sixteen year-old youth who was found shot in the head in the back seat of a police car.

Judge Shaheed is an associate professor for the School of Public and Environmental Affairs (SPEA) at Indiana University in Indianapolis. He is also a member of the ABA Commission on Lawyers Assistance Programs (CoLAP). Judge Shaheed was on the board of directors for Seeds of Hope, (a shelter for women in recovery), and former officer for the Indiana Juvenile Justice Task Force and the Interfaith Alliance of Indianapolis.

LYNDA C. SHELLEY (EDITOR, AUTHOR)

Lynda C. Shely, of The Shely Firm, PC, Scottsdale, Arizona, provides ethics advice to over 1400 law firms in Arizona and the District of Columbia on a variety of topics including conflicts of interest, fees and billing, trust account procedures, lawyer transitions, multi-jurisdictional practice, ancillary businesses, and ethics requirements for law firm advertising/marketing. She also assists lawyers in responding to initial Bar charges, performs law office risk management reviews, and trains law firm staff in ethics requirements. Lynda serves as an expert witness and frequently presents continuing legal education programs around the country. Prior to opening her own firm, she was the Director of Lawyer Ethics for the State Bar of Arizona. Prior to moving to Arizona, Lynda was an intellectual property associate with Morgan, Lewis & Bockius in Washington, DC.

Lynda received her BA from Franklin & Marshall College in Lancaster, PA and her JD from Catholic University in Washington, DC. Lynda was the 2015-2016 President of the Association of Professional Responsibility Lawyers. She serves on several State Bar of Arizona Committees, and as a liaison to the ABA Standing Committee on Ethics and Professional Responsibility. She is an Arizona Delegate in the ABA House of Delegates. Lynda has received several awards for her contributions to the legal profession, including the 2007 State Bar of Arizona Member of the Year award, the Scottsdale Bar Association's 2010 Award of Excellence, and the 2015 AWLA, Maricopa Chapter, Ruth V. McGregor award. She is a prior chair of the ABA Standing Committee on Client Protection and a past member of the ABA's Professionalism Committee and Center for Professional Responsibility Conference Planning Committee. Lynda was the 2008-2009 President of the Scottsdale Bar Association. She has been an adjunct professor at all three Arizona law schools, teaching professional responsibility.

WILLIAM D. SLEASE (AUTHOR)

William D. Slease is Chief Disciplinary Counsel for the New Mexico Supreme Court Disciplinary Board. In addition to his duties as Chief Disciplinary Counsel, he serves as an adjunct professor at the University of New Mexico School of Law where he has taught employment law, ethics and trial practice skills. He currently chairs the Supreme Court of the State of New Mexico's Lawyer's Succession and Transition Committee which has developed a comprehensive set of materials for lawyers to use in identifying and responding to incapacities that affect lawyers' abilities to practice law. He is a member and the 2016-17 President of the National Organization of Bar Counsel and previously served as the Chair of the NOBC-APRL-CoLAP Second Joint Committee on Aging Lawyers charged with studying and making recommendations for addressing the so-called "senior tsunami" of age-impaired lawyers. Bill takes care of his own wellness by spending time with his family, and by fishing for trout in the beautiful lakes and streams of New Mexico.

TASK FORCE LIAISONS

LINDA ALBERT

Linda Albert is a Licensed Clinical Social Worker and a Certified Alcohol and Drug Counselor. She received her Master's Degree from UW-Madison in Science and Social Work. Linda has worked over the past 34 years as an administrator, consultant, trainer, program developer and psychotherapist in a variety of settings including providing services to impaired professionals.

Linda served on the ABA Commission on Lawyer Assistance Programs heading up the Research section. She co-facilitated a research project on compassion fatigue and legal professionals resulting in two peer reviewed publications and multiple articles. She is co-author of the ABA, Hazelden Betty Ford collaborative national research study on the current rates of substance use, depression and anxiety within the legal community. Linda has done multiple presentations for conferences at the local, state and national level. She loves her work and is driven by the opportunity to make a positive contribution to the lives of the individuals and the fields of practice she serves. Currently Linda is employed by The Psychology Center in Madison, Wisconsin, where she works as a professional trainer, consultant, and psychotherapist.

DONALD CAMPBELL

Donald D. Campbell is a shareholder at Collins Einhorn Farrell in suburban Detroit, Michigan. Don's practice focuses on attorney grievance defense, judicial grievance matters, and legal malpractice defense. He has extensive experience in counseling and advising lawyers and judges regarding professional ethics. He is an adjunct professor of law at the University of Detroit School of Law, where he has taught professional responsibility and a seminar in business law and ethics. Prior to joining the Collins Einhorn firm, Don served as associate counsel with the Michigan Attorney Grievance Commission, the Michigan Supreme Court's arm for the investigation and prosecution of lawyer misconduct. He also previously served as an assistant prosecuting attorney in Oakland County, Michigan. He currently serves as the President of the Association of Professional Responsibility Lawyers (see APRL.net). Don tends to his well-being by cheering for the Detroit Lions (and he has been about as successful).

ERICA MOESER

Erica Moeser has been the president of the National Conference of Bar Examiners since 1994. She is a former chairperson of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, and has served as a law school site evaluator, as a member of the Section's Accreditation and Standards Review Committees, and as the co-chairperson of the Section's Bar Admissions Committee. She served as the director of the Board of Bar Examiners of the Supreme Court of Wisconsin from 1978 until joining the Conference. Ms. Moeser holds the following degrees: B.A., Tulane University, 1967; M.S., the University of Wisconsin, 1970; and J.D., the University of Wisconsin, 1974. She was admitted to practice law in Wisconsin in January 1975. Ms. Moeser holds honorary degrees from three law schools. Ms. Moeser has taught Professional Responsibility as an adjunct at the University of Wisconsin Law School. She was elected to membership in the American Law Institute in 1992.

In 2013 Ms. Moeser received the Kutak Award, honoring "an individual who has made significant contributions to the collaboration of the academy, the bench, and the bar," from the ABA Section of Legal Education and Admissions to the Bar.

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PAUL BURGOYNE, TERRY HARRELL, AND LYNDA SHELLEY

The Task Force gratefully acknowledges the contributions of Paul Burgoyne, immediate past president of the National Organization of Bar Counsel and Deputy Chief Disciplinary Counsel, The Disciplinary Board of the Supreme Court of Pennsylvania, as well as Terry Harrell, President of the ABA Commission on Lawyer Assistance Programs (ABA CoLAP), and Lynda Shely, past president of the Association of Professional Responsibility Lawyers (APRL), for their formal endorsement of the Task Force's formation in the spring of 2016 on behalf of their respective organizations.

JONATHAN WHITE (AUTHOR, EDITOR)

Jonathan White is the Task Force Staff Attorney and also served as a contributing author and editor to the Report. Mr. White is a staff attorney at the Colorado Supreme Court

Office of Attorney Regulation Counsel. He is the day-to-day project manager for the Colorado Supreme Court Advisory Committee's Proactive Management-Based Program (PMBP) Subcommittee. The subcommittee is developing a program to help Colorado lawyers better serve their clients through proactive practice self-assessments. The self-assessments also promote compliance with the Colorado Rules of Professional Conduct. Mr. White rejoined the Office of Attorney Regulation Counsel in November 2016 after previously working for the office as a law clerk in 2009 and 2010.

Mr. White practiced civil defense litigation for several years before rejoining the Office of Attorney Regulation Counsel. Mr. White also served as a judicial law clerk to the Honorable Christopher Cross and the Honorable Vincent White of the Douglas County District Court in Castle Rock, Colorado. He is a 2010 graduate of the University of Colorado Law School. While in law school, he was an articles editor for the Colorado Journal of International Environmental Law & Policy. The Journal published his note, "Drilling in Ecologically and Environmentally Troubled Waters: Law and Policy Concerns Surrounding Development of Oil Resources in the Florida Straits," in 2010. In 2009, fellow law students selected him to receive the annual Family Law Clinic Award in recognition of his work in the law school's clinical program.

Mr. White received his B.A. from Middlebury College in 2003. He recently volunteered as a reading tutor to elementary school students in the Denver Public Schools during the 2015-2016 academic year.

ED BRAFFORD, GRAPHIC DESIGNER

Edward Brafford donated his skills and talents to design the layout for the Task Force Report. Mr. Brafford designs for The Firefly Creative LLC (www.thefireflycreative.com) and can be reached at Ed@tffcreative.com.

CONTRIBUTING AUTHORS

DEBRA AUSTIN, PH.D.

Dr. Austin is a law professor and lawyer wellbeing advocate. She writes and speaks about how neuroscience and positive psychology research can help law students, lawyers, and judges improve their wellbeing and

performance. Her seminal work, *Killing Them Softly*, shines a bright light on lawyer depression, substance abuse, and suicide, and its application of neuroscience to the chronic stresses of law school and law practice depicts how law students and lawyers suffer cognitive damage that impairs them from doing precisely what their studies and practices require. *Drink Like a Lawyer* uses neuroscience research to demonstrate how self-medication with substances like alcohol, marijuana, and study drugs impairs law student and lawyer thinking. *Food for Thought* examines neuroscience research that explores the relationship between diet and increased risk of cognitive damage, such as dementia and Alzheimer's disease, and describes optimal nutrition habits that build and maintain a healthy lawyer brain. *Positive Legal Education* proposes a new field of inquiry and a new method of training lawyer leaders that will enhance lawyer effectiveness and wellbeing. Dr. Austin's presentations connect lawyer wellbeing to performance and ethical obligations, and they are accredited for general and ethics CLE in multiple states.

Dr. Austin teaches at the University of Denver Sturm College of Law. She received her Bachelor of Music Education from University of Colorado; her J.D. from University of San Francisco; and her Ph.D. in Education from University of Denver. She received the William T. Driscoll Master Educator Award in 2001. To maintain her wellbeing, Dr. Austin meditates, practices yoga, and cycles on the beautiful trails around Colorado.

HON. ROBERT L. CHILDERS

Judge Childers was the presiding judge of Division 9 of the Circuit Court of Tennessee for the 30th Judicial District from 1984 to 2017. He is a past president of the Tennessee Judicial Conference and the Tennessee Trial Judges Association. He has also served as a Special Judge of the Tennessee Supreme Court Workers' Compensation Panel and the Tennessee Court of Appeals. He served on the ABA Commission on Lawyer Assistance Programs (CoLAP) from 1999 to 2011, including serving as Chair of the Commission from 2007-2011. He is a founding member, past president and Master of the Bench of the Leo Bearman Sr. Inn of Court. The Memphis Bar Association recognized Judge Childers in 1986, 1999, and 2006 as Outstanding Judge of the Year, and he was recognized by the MBA Family Law Section in 2006. He was recognized as Outstanding

Judge of the Year by the Shelby County (TN) Deputy Sheriffs Association in 1990. He received the Judge Wheatcraft Award from the Tennessee Coalition Against Domestic and Sexual Violence for outstanding service in combating domestic violence in 2001. He has received the Distinguished Alumnus Award from the University of Memphis (2002), the Justice Frank F. Drowota III Outstanding Judicial Service Award from the Tennessee Bar Association (2012), and the Excellence in Legal Community Leadership Award from the Hazelden Foundation (2012). In 2017 he received the William M. Leech Jr. Public Service Award from the Fellows of the Tennessee Bar Association Young Lawyers Division.

Judge Childers is currently serving as president of the University of Memphis Alumni Association. He has been a faculty member at the National Judicial College at the University of Nevada-Reno, the Tennessee Judicial Conference Judicial Academy, and a lecturer at the Cecil C. Humphreys School of Law at the University of Memphis. He has also been a frequent lecturer and speaker at CLE seminars and before numerous schools, civic, church and business groups in Tennessee and throughout the nation.

COURTNEY WYLIE

Courtney recently joined the professional development team at Drinker Biddle & Reath LLP. In this position, she designs and implements programs for the firm's attorneys on leadership, professionalism, and lawyer well-being topics. Prior to joining DBR, Courtney Wylie worked at the University of Chicago Law School as the Associate Director of Student Affairs & Programs. In this position, she was primarily responsible for the Keystone Leadership and Professional Program and the Kapnick Leadership Development Initiative. Before that Courtney worked in both the private and public sector as an attorney.

Courtney is the current appointed ABA Young Lawyer's Division Liaison to the Commission on Lawyer Assistance Programs (COLAP) and an appointed Advisory Committee Member of (COLAP). Though an initial skeptic regarding meditation and exercise, she now makes an effort to make it part of her daily practice to remain healthy, positive, focused, and centered. She similarly regularly lectures on the importance of self-care for attorneys and law students.

PEER REVIEWERS

Carol M. Adinamis, Adinamis & Saunders, Past President Indiana State Bar Association, Indianapolis, IN

Harry Ballan, Dean and Professor of Law, Touro Law Center, Central Islip, NY

Michael Baron, MD, MPH, Medical Director, Tennessee Medical Foundation – Physician Health Program

Jonathan Beitner, Associate, Jenner & Block, Chicago, IL

Joan Bibelhausen, Executive Director, Lawyers Concerned for Lawyers, St. Paul, MN

Lowell Brown, Communications Division Director, State Bar of Texas, Austin, TX

Shannon Callahan, Senior Counsel, Seyfarth Shaw LLP, Chicago, IL

Anne Chambers, Director, Missouri Lawyers' Assistance Program, Jefferson City, MO

Robert Craghead, Executive Director, Illinois State Bar Association, Chicago and Springfield, IL

Pamela DeNueve, Law Firm Strategist, Washington, DC

Natasha Dorsey, Associate, Rimon Law, Chicago, IL

Douglas Ende, Chief Disciplinary Counsel, Washington State Bar Association, Seattle, WA

Barbara Ezyk, Executive Director, Colorado Lawyer Assistance Program, Denver, CO

Patrick Flaherty, Executive Director, Colorado & Denver Bar Associations, Denver, CO

Amy M. Gardner, Executive Coach and Consultant, Apochromatik, Chicago, IL

Tanya Gaul, Visiting Assistant Professor of Public Policy, Graduate Studies Program, Trinity College, Hartford, CT

Chip Glaze, Director, Lawyers & Judges Assistance Program, The Mississippi Bar, Jackson, MS

Doris Gundersen, M.D, Medical Director, Colorado Physician Health Program, and Forensic Psychiatrist, Denver, CO

Cecile (Cecie) B. Hartigan, Executive Director, New Hampshire Lawyers Assistance Program, Concord, NH

Will Hornsby, Staff Counsel, ABA Division for Legal Services, Chicago, IL
Jerome Larkin, Administrator, Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois, Chicago, IL

Jim Leipold, Executive Director, National Association for Law Placement, Washington, DC

Roseanne Lucianek, Director, ABA Division for Bar Services, Chicago, IL

Laura McClendon, MA, CEAP, Executive Director, Tennessee Lawyers Assistance Program, Nashville, TN

Anne McDonald, Executive Director, Kansas Lawyers Assistance Program, Topeka, KS

Robynn Moraites, Director, North Carolina Lawyer Assistance Program, Charlotte, NC

Vincent O'Brien, Executive Director, Colorado Bar Association CLE, Denver, CO

Hon. Randall T. Shepard, Chief Justice, Indiana Supreme Court (Ret.), Indianapolis, IN

Marjorie Silver, Director of Externship Programs and Professor of Law, Touro Law Center, Central Islip, NY

Mary Spranger, LCSW, WisLAP Manager, State Bar of Wisconsin, Madison, WI

Janet Stearns, Dean of Students and Lecturer, University of Miami School of Law, Coral Gables, FL

Nancy Stek, Assistant Director, New Jersey Lawyers Assistance Program, New Brunswick, NJ

Joseph (Buddy) E. Stockwell III, Executive Director, Louisiana Judges and Lawyers Assistance Program, Inc., Mandeville, LA

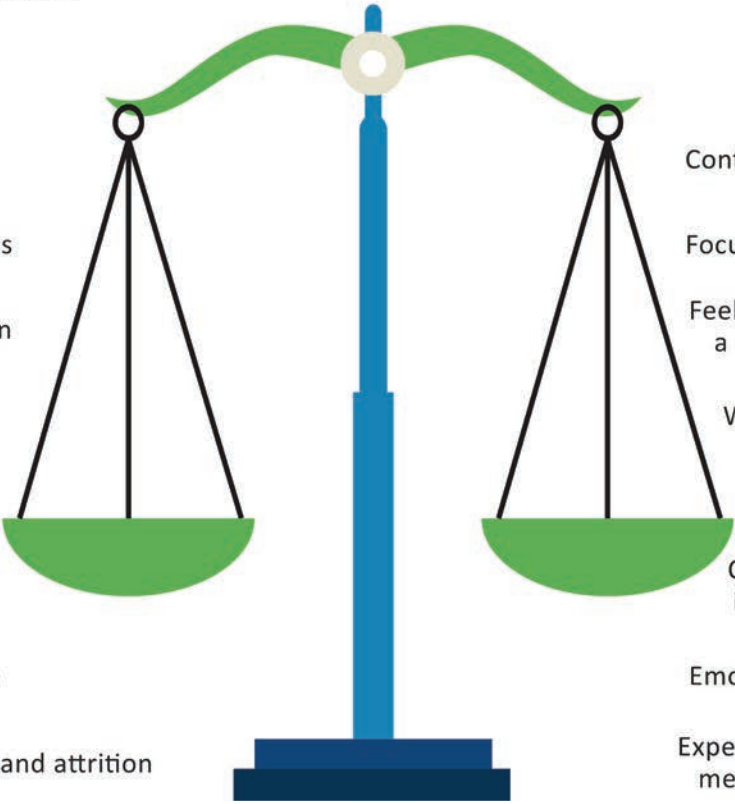
Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, Richmond, VA

Tish Vincent, MSW, JD, Program Administrator, Lawyers and Judges Assistance Program, Michigan Bar, Lansing, MI

Carol P. Waldhauser, EAP, SAP, Executive Director, Delaware Lawyers Assistance Program, Wilmington, DE

Elizabeth Winiarski, Associate, Jones Day, Chicago, IL

OUR CHALLENGES

- 
- 21-36% problem drinkers
 - 28% depression
 - 19% anxiety
 - 23% elevated stress
 - 25% work addiction
 - High suicide rate
 - Sleep deprivation
 - Work-life conflict
 - Avoid seeking help
 - Job dissatisfaction and attrition

OUR POTENTIAL

- Physically healthy
- Mentally thriving
- Contributing to society
- Focusing on client care
- Feeling connected and a sense of belonging
- Willing to seek help
- Engaged at work
- Continually seeking intellectual growth
- Emotionally intelligent
- Experiencing a sense of meaning and purpose

THE PATH TO LAWYER WELL-BEING:

Practical Recommendations
For Positive Change



You've got what it takes



Ask R U OK?

or something like this:

"How you travelling?"

No, I'm not OK.

Dig a bit deeper:

"What's been happening?"

"How long has that
been the case?"

"I'm ready to listen
if you want to talk."

Yes, I'm fine.

But your gut says
they're not:

"It's just that you don't seem
your old self lately."

"I'm always here if
you want to chat."

"Is there someone else
you'd rather talk to?"

Listen; don't judge

Encourage action and offer support:

"How can I help?"

"What would help take the pressure off?"

"What do you enjoy doing? Making time for that can really help."

"Have you thought about seeing a professional?"

Make time to check in:

"Let's chat again next week."

Visit ruok.org.au for more tips

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

Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW

Objectives: Rates of substance use and other mental health concerns among attorneys are relatively unknown, despite the potential for harm that attorney impairment poses to the struggling individuals themselves, and to our communities, government, economy, and society. This study measured the prevalence of these concerns among licensed attorneys, their utilization of treatment services, and what barriers existed between them and the services they may need.

Methods: A sample of 12,825 licensed, employed attorneys completed surveys, assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress.

Results: Substantial rates of behavioral health problems were found, with 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking. Men had a higher proportion of positive screens, and also younger participants and those working in the field for a shorter duration ($P < 0.001$). Age group predicted Alcohol Use Disorders Identification Test scores; respondents 30 years of age or younger were more likely to have a higher score than their older peers ($P < 0.001$). Levels of depression, anxiety, and stress among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively.

Conclusions: Attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations. Mental health distress is also significant. These data underscore the need for greater resources for lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions.

Key Words: attorneys, mental health, prevalence, substance use

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Send correspondence and reprint requests to Patrick R. Krill, JD, LLM, Hazelden Betty Ford Foundation, PO Box 11 (RE 11), Center City, MN 55012-0011. E-mail: pkrill@hazeldenbettyford.org.

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Little is known about the current behavioral health climate in the legal profession. Despite a widespread belief that attorneys experience substance use disorders and other mental health concerns at a high rate, few studies have been undertaken to validate these beliefs empirically or statistically. Although previous research had indicated that those in the legal profession struggle with problematic alcohol use, depression, and anxiety more so than the general population, the issues have largely gone unexamined for decades (Benjamin et al., 1990; Eaton et al., 1990; Beck et al., 1995). The most recent and also the most widely cited research on these issues comes from a 1990 study involving approximately 1200 attorneys in Washington State (Benjamin et al., 1990). Researchers found 18% of attorneys were problem drinkers, which they stated was almost twice the 10% estimated prevalence of alcohol abuse and dependence among American adults at that time. They further found that 19% of the Washington lawyers suffered from statistically significant elevated levels of depression, which they contrasted with the then-current depression estimates of 3% to 9% of individuals in Western industrialized countries.

While the authors of the 1990 study called for additional research about the prevalence of alcoholism and depression among practicing US attorneys, a quarter century has passed with no such data emerging. In contrast, behavioral health issues have been regularly studied among physicians, providing a firmer understanding of the needs of that population (Oreskovich et al., 2012). Although physicians experience substance use disorders at a rate similar to the general population, the public health and safety issues associated with physician impairment have led to intense public and professional interest in the matter (DuPont et al., 2009).

Although the consequences of attorney impairment may seem less direct or urgent than the threat posed by impaired physicians, they are nonetheless profound and far-reaching. As a licensed profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated (Rothstein, 2008). A scarcity of data on the current rates of substance use and mental health concerns among lawyers, therefore, has substantial implications and must be addressed. Although many in the profession have long understood the need for greater resources and support for attorneys struggling with addiction or other mental health concerns, the formulation of cohesive and informed strategies for addressing those issues has been handicapped by the

outdated and poorly defined scope of the problem (Association of American Law Schools, 1994).

Recognizing this need, we set out to measure the prevalence of substance use and mental health concerns among licensed attorneys, their awareness and utilization of treatment services, and what, if any, barriers exist between them and the services they may need. We report those findings here.

METHODS

Procedures

Before recruiting participants to the study, approval was granted by an institutional review board. To obtain a representative sample of attorneys within the United States, recruitment was coordinated through 19 states. Among them, 15 state bar associations and the 2 largest counties of 1 additional state e-mailed the survey to their members. Those bar associations were instructed to send 3 recruitment e-mails over a 1-month period to all members who were currently licensed attorneys. Three additional states posted the recruitment announcement to their bar association web sites. The recruitment announcements provided a brief synopsis of the study and past research in this area, described the goals of the study, and provided a URL directing people to the consent form and electronic survey. Participants completed measures assessing alcohol use, drug use, and mental health symptoms. Participants were not asked for identifying information, thus allowing them to complete the survey anonymously. Because of concerns regarding potential identification of individual bar members, IP addresses and geo-location data were not tracked.

Participants

A total of 14,895 individuals completed the survey. Participants were included in the analyses if they were currently employed, and employed in the legal profession, resulting in a final sample of 12,825. Due to the nature of recruitment (eg, e-mail blasts, web postings), and that recruitment mailing lists were controlled by the participating bar associations, it is not possible to calculate a participation rate among the entire population. Demographic characteristics are presented in Table 1. Fairly equal numbers of men (53.4%) and women (46.5%) participated in the study. Age was measured in 6 categories from 30 years or younger, and increasing in 10-year increments to 71 years or older; the most commonly reported age group was 31 to 40 years old. The majority of the participants were identified as Caucasian/White (91.3%).

As shown in Table 2, the most commonly reported legal professional career length was 10 years or less (34.8%), followed by 11 to 20 years (22.7%) and 21 to 30 years (20.5%). The most common work environment reported was in private firms (40.9%), among whom the most common positions were Senior Partner (25.0%), Junior Associate (20.5%), and Senior Associate (20.3%). Over two-thirds (67.2%) of the sample reported working 41 hours or more per week.

TABLE 1. Participant Characteristics

	n (%)
Total sample	12825 (100)
Sex	
Men	6824 (53.4)
Women	5941 (46.5)
Age category	
30 or younger	1513 (11.9)
31–40	3205 (25.2)
41–50	2674 (21.0)
51–60	2953 (23.2)
61–70	2050 (16.1)
71 or older	348 (2.7)
Race/ethnicity	
Caucasian/White	11653 (91.3)
Latino/Hispanic	330 (2.6)
Black/African American (non-Hispanic)	317 (2.5)
Multiracial	189 (1.5)
Asian or Pacific Islander	150 (1.2)
Other	84 (0.7)
Native American	35 (0.3)
Marital status	
Married	8985 (70.2)
Single, never married	1790 (14.0)
Divorced	1107 (8.7)
Cohabiting	462 (3.6)
Life partner	184 (1.4)
Widowed	144 (1.1)
Separated	123 (1.0)
Have children	
Yes	8420 (65.8)
No	4384 (34.2)
Substance use in the past 12 mos*	
Alcohol	10874 (84.1)
Tobacco	2163 (16.9)
Sedatives	2015 (15.7)
Marijuana	1307 (10.2)
Opioids	722 (5.6)
Stimulants	612 (4.8)
Cocaine	107 (0.8)

*Substance use includes both illicit and prescribed usage.

Materials

Alcohol Use Disorders Identification Test

The Alcohol Use Disorders Identification Test (AUDIT) (Babor et al., 2001) is a 10-item self-report instrument developed by the World Health Organization (WHO) to screen for hazardous use, harmful use, and the potential for alcohol dependence. The AUDIT generates scores ranging from 0 to 40. Scores of 8 or higher indicate hazardous or harmful alcohol intake, and also possible dependence (Babor et al., 2001). Scores are categorized into zones to reflect increasing severity with zone II reflective of hazardous use, zone III indicative of harmful use, and zone IV warranting full diagnostic evaluation for alcohol use disorder. For the purposes of this study, we use the phrase “problematic use” to capture all 3 of the zones related to a positive AUDIT screen.

The AUDIT is a widely used instrument, with well established validity and reliability across a multitude of populations (Meneses-Gaya et al., 2009). To compare current rates of problem drinking with those found in other populations, AUDIT-C scores were also calculated. The AUDIT-C is a subscale comprised of the first 3 questions of the AUDIT

TABLE 2. Professional Characteristics

	n (%)
Total sample	12825 (100)
Years in field (yrs)	
0–10	4455 (34.8)
11–20	2905 (22.7)
21–30	2623 (20.5)
31–40	2204 (17.2)
41 or more	607 (4.7)
Work environment	
Private firm	5226 (40.9)
Sole practitioner, private practice	2678 (21.0)
In-house government, public, or nonprofit	2500 (19.6)
In-house: corporation or for-profit institution	937 (7.3)
Judicial chambers	750 (7.3)
Other law practice setting	289 (2.3)
College or law school	191 (1.5)
Other setting (not law practice)	144 (1.1)
Bar Administration or Lawyers Assistance Program	55 (0.4)
Firm position	
Clerk or paralegal	128 (2.5)
Junior associate	1063 (20.5)
Senior associate	1052 (20.3)
Junior partner	608 (11.7)
Managing partner	738 (14.2)
Senior partner	1294 (25.0)
Hours per wk	
Under 10 h	238 (1.9)
11–20 h	401 (3.2)
21–30 h	595 (4.7)
31–40 h	2946 (23.2)
41–50 h	5624 (44.2)
51–60 h	2310 (18.2)
61–70 h	474 (3.7)
71 h or more	136 (1.1)
Any litigation	
Yes	9611 (75.0)
No	3197 (25.0)

focused on the quantity and frequency of use, yielding a range of scores from 0 to 12. The results were analyzed using a cut-off score of 5 for men and 4 for women, which have been interpreted as a positive screen for alcohol abuse or possible alcohol dependence (Bradley et al., 1998; Bush et al., 1998). Two other subscales focus on dependence symptoms (eg, impaired control, morning drinking) and harmful use (eg, blackouts, alcohol-related injuries).

Depression Anxiety Stress Scales-21 item version

The Depression Anxiety Stress Scales-21 (DASS-21) is a self-report instrument consisting of three 7-item subscales assessing symptoms of depression, anxiety, and stress. Individual items are scored on a 4-point scale (0–3), allowing for subscale scores ranging from 0 to 21 (Lovibond and Lovibond, 1995). Past studies have shown adequate construct validity and high internal consistency reliability (Antony et al., 1998; Clara et al., 2001; Crawford and Henry, 2003; Henry and Crawford, 2005).

Drug Abuse Screening Test-10 item version

The short-form Drug Abuse Screening Test-10 (DAST) is a 10-item, self-report instrument designed to screen and quantify consequences of drug use in both a clinical and

research setting. The DAST scores range from 0 to 10 and are categorized into low, intermediate, substantial, and severe-concern categories. The DAST-10 correlates highly with both 20-item and full 28-item versions, and has demonstrated reliability and validity (Yudko et al., 2007).

RESULTS

Descriptive statistics were used to outline personal and professional characteristics of the sample. Relationships between variables were measured through χ^2 tests for independence, and comparisons between groups were tested using Mann-Whitney *U* tests and Kruskal-Wallis tests.

Alcohol Use

Of the 12,825 participants included in the analysis, 11,278 completed all 10 questions on the AUDIT, with 20.6% of those participants scoring at a level consistent with problematic drinking. The relationships between demographic and professional characteristics and problematic drinking are summarized in Table 3. Men had a significantly higher proportion of positive screens for problematic use compared with women (χ^2 [1, *N* = 11,229] = 154.57, *P* < 0.001); younger participants had a significantly higher proportion compared with the older age groups (χ^2 [6, *N* = 11,213] = 232.15, *P* < 0.001); and those working in the field for a shorter duration had a significantly higher proportion compared with those who had worked in the field for longer (χ^2 [4, *N* = 11,252] = 230.01, *P* < 0.001). Relative to work environment and position, attorneys working in private firms or for the bar association had higher proportions than those in other environments (χ^2 [8, *N* = 11,244] = 43.75, *P* < 0.001), and higher proportions were also found for those at the junior or senior associate level compared with other positions (χ^2 [6, *N* = 4671] = 61.70, *P* < 0.001).

Of the 12,825 participants, 11,489 completed the first 3 AUDIT questions, allowing an AUDIT-C score to be calculated. Among these participants, 36.4% had an AUDIT-C score consistent with hazardous drinking or possible alcohol abuse or dependence. A significantly higher proportion of women (39.5%) had AUDIT-C scores consistent with problematic use compared with men (33.7%) (χ^2 [1, *N* = 11,440] = 41.93, *P* < 0.001).

A total of 2901 participants (22.6%) reported that they have felt their use of alcohol or other substances was problematic at some point in their lives; of those that felt their use has been a problem, 27.6% reported problematic use manifested before law school, 14.2% during law school, 43.7% within 15 years of completing law school, and 14.6% more than 15 years after completing law school.

An ordinal regression was used to determine the predictive validity of age, position, and number of years in the legal field on problematic drinking behaviors, as measured by the AUDIT. Initial analyses included all 3 factors in a model to predict whether or not respondents would have a clinically significant total AUDIT score of 8 or higher. Age group predicted clinically significant AUDIT scores; respondents 30 years of age or younger were significantly more likely to have a higher score than their older peers (β = 0.52, Wald [*df* = 1] = 4.12, *P* < 0.001). Number of years in the field

TABLE 3. Summary Statistics for Alcohol Use Disorders Identification Test (AUDIT)

	AUDIT Statistics			Problematic %*	P**
	n	M	SD		
Total sample	11,278	5.18	4.53	20.6%	
Sex					
Men	6012	5.75	4.88	25.1%	<0.001
Women	5217	4.52	4.00	15.5%	
Age category (yrs)					
30 or younger	1393	6.43	4.56	31.9%	<0.001
31–40	2877	5.84	4.86	25.1%	
41–50	2345	4.99	4.65	19.1%	
51–60	2548	4.63	4.38	16.2%	
61–70	1753	4.33	3.80	14.4%	
71 or older	297	4.22	3.28	12.1%	
Years in field (yrs)					
0–10	3995	6.08	4.78	28.1%	<0.001
11–20	2523	5.02	4.66	19.2%	
21–30	2272	4.65	4.43	15.6%	
31–40	1938	4.39	3.87	15.0%	
41 or more	524	4.18	3.29	13.2%	
Work environment					
Private firm	4712	5.57	4.59	23.4%	<0.001
Sole practitioner, private practice	2262	4.94	4.72	19.0%	
In-house: government, public, or nonprofit	2198	4.94	4.45	19.2%	
In-house: corporation or for-profit institution	828	4.91	4.15	17.8%	
Judicial chambers	653	4.46	3.83	16.1%	
College or law school	163	4.90	4.66	17.2%	
Bar Administration or Lawyers Assistance Program	50	5.32	4.62	24.0%	
Firm position					
Clerk or paralegal	115	5.05	4.13	16.5%	<0.001
Junior associate	964	6.42	4.57	31.1%	
Senior associate	938	5.89	5.05	26.1%	
Junior partner	552	5.76	4.85	23.6%	
Managing partner	671	5.22	4.53	21.0%	
Senior partner	1159	4.99	4.26	18.5%	

*The AUDIT cut-off for hazardous, harmful, or potential alcohol dependence was set at a score of 8.

**Comparisons were analyzed using Mann-Whitney *U* tests and Kruskal-Wallis tests.

approached significance, with higher AUDIT scores predicted for those just starting out in the legal profession (0–10 yrs of experience) ($\beta = 0.46$, Wald [$df = 1$] = 3.808, $P = 0.051$). Model-based calculated probabilities for respondents aged 30 or younger indicated that they had a mean probability of 0.35 (standard deviation [SD] = 0.01), or a 35% chance for scoring an 8 or higher on the AUDIT; in comparison, those respondents who were 61 or older had a mean probability of 0.17 (SD = 0.01), or a 17% chance of scoring an 8 or higher.

Each of the 3 subscales of the AUDIT was also investigated. For the AUDIT-C, which measures frequency and quantity of alcohol consumed, age was a strong predictor of subscore, with younger respondents demonstrating significantly higher AUDIT-C scores. Respondents who were 30 years old or younger, 31 to 40 years old, and 41 to 50 years old all had significantly higher AUDIT-C scores than their older peers, respectively ($\beta = 1.16$, Wald [$df = 1$] = 24.56, $P < 0.001$; $\beta = 0.86$, Wald [$df = 1$] = 16.08, $P < 0.001$; and $\beta = 0.48$, Wald [$df = 1$] = 6.237, $P = 0.013$), indicating that younger age predicted higher frequencies of drinking and quantity of alcohol consumed. No other factors were significant predictors of AUDIT-C scores. Neither the predictive model for the dependence subscale nor the harmful use subscale indicated significant predictive ability for the 3 included factors.

Drug Use

Participants were questioned regarding their use of various classes of both licit and illicit substances to provide a basis for further study. Participant use of substances is displayed in Table 1. Of participants who endorsed use of a specific substance class in the past 12 months, those using stimulants had the highest rate of weekly usage (74.1%), followed by sedatives (51.3%), tobacco (46.8%), marijuana (31.0%), and opioids (21.6%). Among the entire sample, 26.7% ($n = 3419$) completed the DAST, with a mean score of 1.97 (SD = 1.36). Rates of low, intermediate, substantial, and severe concern were 76.0%, 20.9%, 3.0%, and 0.1%, respectively. Data collected from the DAST were found to not meet the assumptions for more advanced statistical procedures. As a result, no inferences about these data could be made.

Mental Health

Among the sample, 11,516 participants (89.8%) completed all questions on the DASS-21. Relationships between demographic and professional characteristics and depression, anxiety, and stress subscale scores are summarized in Table 4. While men had significantly higher levels of depression ($P < 0.05$) on the DASS-21, women had higher levels of anxiety ($P < 0.001$) and stress ($P < 0.001$). DASS-21 anxiety,

TABLE 4. Summary Statistics for Depression Anxiety Stress Scale (DASS-21)

	DASS Depression				DASS Anxiety				DASS Stress			
	n	M	SD	P*	n	M	SD	P*	n	M	SD	P*
Total sample	12300	3.51	4.29		12277	1.96	2.82		12271	4.97	4.07	
Sex												
Men	6518	3.67	4.46	<0.05	6515	1.84	2.79	<0.001	6514	4.75	4.08	<0.001
Women	5726	3.34	4.08		5705	2.10	2.86		5705	5.22	4.03	
Age category (yrs)												
30 or younger	1476	3.71	4.15	<0.001	1472	2.62	3.18	<0.001	1472	5.54	4.61	<0.001
31–40	3112	3.96	4.50		3113	2.43	3.15		3107	5.99	4.31	
41–50	2572	3.83	4.54		2565	2.03	2.92		2559	5.36	4.12	
51–60	2808	3.41	4.27		2801	1.64	2.50		2802	4.47	3.78	
61–70	1927	2.63	3.65		1933	1.20	2.06		1929	3.46	3.27	
71 or older	326	2.03	3.16		316	0.95	1.73		325	2.72	3.21	
Years in field												
0–10 yrs	4330	3.93	4.45	<0.001	4314	2.51	3.13	<0.001	4322	5.82	4.24	<0.001
11–20 yrs	2800	3.81	4.48		2800	2.09	3.01		2777	5.45	4.20	
21–30 yrs	2499	3.37	4.21		2509	1.67	2.59		2498	4.46	3.79	
31–40 yrs	2069	2.81	3.84		2063	1.22	1.98		2084	3.74	3.43	
41 or more yrs	575	1.95	3.02		564	1.01	1.94		562	2.81	3.01	
Work environment												
Private firm	5028	3.47	4.17	<0.001	5029	2.01	2.85	<0.001	5027	5.11	4.06	<0.001
Sole practitioner, private practice	2568	4.27	4.84		2563	2.18	3.08		2567	5.22	4.34	
In-house: government, public, or nonprofit	2391	3.45	4.26		2378	1.91	2.69		2382	4.91	3.97	
In-house: corporation or for-profit institution	900	2.96	3.66		901	1.84	2.80		898	4.74	3.97	
Judicial chambers	717	2.39	3.50		710	1.31	2.19		712	3.80	3.44	
College or law school	182	2.90	3.72		188	1.43	2.09		183	4.48	3.61	
Bar Administration or Lawyers Assistance Program	55	2.96	3.65		52	1.40	1.94		53	4.74	3.55	
Firm position												
Clerk or paralegal	120	3.98	4.97	<0.001	121	2.10	2.88	<0.001	121	4.68	3.81	<0.001
Junior associate	1034	3.93	4.25		1031	2.73	3.31		1033	5.78	4.16	
Senior associate	1021	4.20	4.60		1020	2.37	2.95		1020	5.91	4.33	
Junior partner	590	3.88	4.22		592	2.16	2.78		586	5.68	4.15	
Managing partner	713	2.77	3.58		706	1.62	2.50		709	4.73	3.84	
Senior partner	1219	2.70	3.61		1230	1.37	2.43		1228	4.08	3.57	
DASS-21 category frequencies	n	%			n	%			n	%		
Normal	8816	71.7			9908	80.7			9485	77.3		
Mild	1172	9.5			1059	8.6			1081	8.8		
Moderate	1278	10.4			615	5.0			1001	8.2		
Severe	496	4.0			310	2.5			546	4.4		
Extremely severe	538	4.4			385	3.1			158	1.3		

*Comparisons were analyzed using Mann-Whitney *U* tests and Kruskal-Wallis tests.

depression, and stress scores decreased as participants' age or years worked in the field increased ($P < 0.001$). When comparing positions within private firms, more senior positions were generally associated with lower DASS-21 subscale scores ($P < 0.001$). Participants classified as nonproblematic drinkers on the AUDIT had lower levels of depression, anxiety, and stress ($P < 0.001$), as measured by the DASS-21. Comparisons of DASS-21 scores by AUDIT drinking classification are outlined in Table 5.

Participants were questioned regarding any past mental health concerns over the course of their legal career, and provided self-report endorsement of any specific mental health concerns they had experienced. The most common mental health conditions reported were anxiety (61.1%), followed by depression (45.7%), social anxiety (16.1%), attention deficit hyperactivity disorder (12.5%), panic disorder (8.0%), and bipolar disorder (2.4%). In addition, 11.5% of the participants reported suicidal thoughts at some point during their career, 2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.

Treatment Utilization and Barriers to Treatment

Of the 6.8% of the participants who reported past treatment for alcohol or drug use ($n = 807$), 21.8% ($n = 174$) reported utilizing treatment programs specifically tailored to legal professionals. Participants who had reported prior treatment tailored to legal professionals had significantly lower mean AUDIT scores ($M = 5.84$, $SD = 6.39$) than participants who attended a treatment program not tailored to legal professionals ($M = 7.80$, $SD = 7.09$, $P < 0.001$).

Participants who reported prior treatment for substance use were questioned regarding barriers that impacted their ability to obtain treatment services. Those reporting no prior treatment were questioned regarding hypothetical barriers in the event they were to need future treatment or services. The 2 most common barriers were the same for both groups: not wanting others to find out they needed help (50.6% and 25.7% for the treatment and nontreatment groups, respectively), and concerns regarding privacy or confidentiality (44.2% and 23.4% for the groups, respectively).

TABLE 5. Relationship AUDIT Drinking Classification and DASS-21 Mean Scores

		Nonproblematic	Problematic*	P**
		M (SD)	M (SD)	
DASS-21 total score		9.36 (8.98)	14.77 (11.06)	<0.001
DASS-21 subscale scores	Depression	3.08 (3.93)	5.22 (4.97)	<0.001
	Anxiety	1.71 (2.59)	2.98 (3.41)	<0.001
	Stress	4.59 (3.87)	6.57 (4.38)	<0.001

AUDIT, Alcohol Use Disorders Identification Test; DASS-21, Depression Anxiety Stress Scales-21.

*The AUDIT cut-off for hazardous, harmful, or potential alcohol dependence was set at a score of 8.

**Means were analyzed using Mann-Whitney *U* tests.

DISCUSSION

Our research reveals a concerning amount of behavioral health problems among attorneys in the United States. Our most significant findings are the rates of hazardous, harmful, and potentially alcohol dependent drinking and high rates of depression and anxiety symptoms. We found positive AUDIT screens for 20.6% of our sample; in comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure (Matano et al., 2003). Among physicians and surgeons, Oreskovich et al. (2012) found that 15% screened positive on the AUDIT-C subscale focused on the quantity and frequency of use, whereas 36.4% of our sample screened positive on the same subscale. While rates of problematic drinking in our sample are generally consistent with those reported by Benjamin et al. (1990) in their study of attorneys (18%), we found considerably higher rates of mental health distress.

We also found interesting differences among attorneys at different stages of their careers. Previous research had demonstrated a positive association between the increased prevalence of problematic drinking and an increased amount of years spent in the profession (Benjamin et al., 1990). Our findings represent a direct reversal of that association, with attorneys in the first 10 years of their practice now experiencing the highest rates of problematic use (28.9%), followed by attorneys practicing for 11 to 20 years (20.6%), and continuing to decrease slightly from 21 years or more. These percentages correspond with our findings regarding position within a law firm, with junior associates having the highest rates of problematic use, followed by senior associates, junior partners, and senior partners. This trend is further reinforced by the fact that of the respondents who stated that they believe their alcohol use has been a problem (23%), the majority (44%) indicated that the problem began within the first 15 years of practice, as opposed to those who indicated the problem started before law school (26.7%) or after more than 15 years in the profession (14.5%). Taken together, it is reasonable to surmise from these findings that being in the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder. Working from the assumption that a majority of new attorneys will be under the age of 40, that conclusion is further supported by the fact that the highest rates of problematic drinking were present among attorneys under the age of 30 (32.3%), followed by

attorneys aged 31 to 40 (26.1%), with declining rates reported thereafter.

Levels of depression, anxiety, and stress among attorneys reported here are significant, with 28%, 19%, and 23% experiencing mild or higher levels of depression, anxiety, and stress, respectively. In terms of career prevalence, 61% reported concerns with anxiety at some point in their career and 46% reported concerns with depression. Mental health concerns often co-occur with alcohol use disorders (Gianoli and Petrakis, 2013), and our study reveals significantly higher levels of depression, anxiety, and stress among those screening positive for problematic alcohol use. Furthermore, these mental health concerns manifested on a similar trajectory to alcohol use disorders, in that they generally decreased as both age and years in the field increased. At the same time, those with depression, anxiety, and stress scores within the normal range endorsed significantly fewer behaviors associated with problematic alcohol use.

While some individuals may drink to cope with their psychological or emotional problems, others may experience those same problems as a result of their drinking. It is not clear which scenario is more prevalent or likely in this population, though the ubiquity of alcohol in the legal professional culture certainly demonstrates both its ready availability and social acceptability, should one choose to cope with their mental health problems in that manner. Attorneys working in private firms experience some of the highest levels of problematic alcohol use compared with other work environments, which may underscore a relationship between professional culture and drinking. Irrespective of causation, we know that co-occurring disorders are more likely to remit when addressed concurrently (Gianoli and Petrakis, 2013). Targeted interventions and strategies to simultaneously address both the alcohol use and mental health of newer attorneys warrant serious consideration and development if we hope to increase overall well being, longevity, and career satisfaction.

Encouragingly, many of the same attorneys who seem to be at risk for alcohol use disorders are also those who should theoretically have the greatest access to, and resources for, therapy, treatment, and other support. Whether through employer-provided health plans or increased personal financial means, attorneys in private firms could have more options for care at their disposal. However, in light of the pervasive fears surrounding their reputation that many identify as a barrier to treatment, it is not at all clear that these individuals would avail themselves of the resources at their disposal while working in the competitive, high-stakes environment found in many private firms.

Compared with other populations, we find the significantly higher prevalence of problematic alcohol use among attorneys to be compelling and suggestive of the need for tailored, profession-informed services. Specialized treatment services and profession-specific guidelines for recovery management have demonstrated efficacy in the physician population, amounting to a level of care that is quantitatively and qualitatively different and more effective than that available to the general public (DuPont et al., 2009).

Our study is subject to limitations. The participants represent a convenience sample recruited through e-mails and

news postings to state bar mailing lists and web sites. Because the participants were not randomly selected, there may be a voluntary response bias, over-representing individuals that have a strong opinion on the issue. Additionally, some of those that may be currently struggling with mental health or substance use issues may have not noticed or declined the invitation to participate. Because the questions in the survey asked about intimate issues, including issues that could jeopardize participants' legal careers if asked in other contexts (eg, illicit drug use), the participants may have withheld information or responded in a way that made them seem more favorable. Participating bar associations voiced a concern over individual members being identified based on responses to questions; therefore no IP addresses or geo-location data were gathered. However, this also raises the possibility that a participant took the survey more than once, although there was no evidence in the data of duplicate responses. Finally, and most importantly, it must be emphasized that estimations of problematic use are not meant to imply that all participants in this study deemed to demonstrate symptoms of alcohol use or other mental health disorders would individually meet diagnostic criteria for such disorders in the context of a structured clinical assessment.

CONCLUSIONS

Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations. These levels of problematic drinking have a strong association with both personal and professional characteristics, most notably sex, age, years in practice, position within firm, and work environment. Depression, anxiety, and stress are also significant problems for this population and most notably associated with the same personal and professional characteristics. The data reported here contribute to the fund of knowledge related to behavioral health concerns among practicing attorneys and serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at prevention is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The confidential nature of lawyer-assistance programs should be more widely publicized in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need.

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WELL-BEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS

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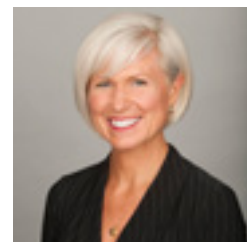
WELL-BEING TOOLKIT

For Lawyers & Legal Employers

August 2018

ABOUT THE AUTHOR

[Anne Brafford](#) (JD, MAPP, PhD in progress) is a former Big Law equity partner and the founder of Aspire, an educational and consultancy firm for the legal profession. She has a Master's degree in Applied Positive Psychology (MAPP) from U Penn and has completed her doctoral coursework in positive organizational psychology from Claremont Graduate University. Her focus is on the many aspects of law firm culture that boost engagement and well-being and avoid burnout, such as meaningful work, positive leadership, high-quality motivation, and more. Anne is the author of an ABA-published book titled [Positive Professionals](#), is the co-chair of the ABA Law Practice Division's Attorney Well-Being Committee, and was the Editor in Chief and co-author of the National Task Force on Lawyer Well-Being's recent report: [The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#). Anne also was appointed by 2017-2018 ABA President Hilarie Bass to the Presidential Working Group formed to investigate how legal employers can support healthy work environments. She recently was selected as a Trusted Advisor to the legal profession's Professional Development Consortium. Contact: abracford@aspire.legal.



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Why Do Law Professionals Need a Well-Being Toolkit?

Being a lawyer is an immense privilege. Our law degrees give us opportunities to contribute to the vitality of our government, business sector, community safety, and individual lives. Ideally, [lawyers design and create structures](#) as real and as important as architects, engineers, or builders that allow “human beings to live, interact, and prosper.” We help others navigate the law to enable them to build the world they want to live in. John Williams Davis, an American politician and lawyer, said, “True, we [lawyers] build no bridges. We raise no towers....[But] we take up other [people’s] burdens and by our efforts we make possible” a peaceful life in a peaceful state.

To serve these crucial functions, many lawyers work very hard and take on hefty responsibilities that often have major consequences for clients. The demands that flow from this privilege can mount and threaten our well-being. When we ignore signs of distress, the quality of our work and lives can plummet.

For too many lawyers, this is what already has occurred. [A 2016 study](#) of nearly 13,000 currently-practicing lawyers found that between 21 and 36 percent qualify as problem drinkers, approximately 28 percent experienced some level of depressive symptoms, and 18 percent experienced elevated anxiety. There also is [evidence](#) of suicide, work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis” at the top of firms, work-life conflict, incivility, a narrowing of values so that profit predominates, and chronic [loneliness](#).

THE LAWYER WELL-BEING MOVEMENT

Because too many lawyers aren’t thriving, multiple initiatives have been launched to take action. For example, in 2015, former Chair of the American Bar Association’s (ABA) Law Practice Division Tom Bolt successfully advocated for the creation of a new Attorney Well-Being Committee. Next, the National Task Force on Lawyer Well-Being was formed and, in 2017, it [issued a comprehensive report](#)

called *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. The report motivated ABA President Hilarie Bass to form a [Presidential Working Group to Advance Well-Being in the Legal Profession](#) focused on how legal employers can support healthy workplaces. This Toolkit is an extension of these and other efforts.

WE’RE IN THIS TOGETHER

We are happiest and healthiest when we adopt healthy work habits and lifestyle choices. Importantly, though, we won’t be successful on our own. Well-being is a *team sport*. For example, [research reflects](#) that, much more than individual employee traits and qualities, situational factors like workload, a sense of control and autonomy, adequate rewards, a sense of community, fairness, and alignment of values with our organizations influence whether people experience burnout or work engagement. [As one leading burnout scholar put it](#), “burnout is more of a social phenomenon than an individual one.” Leaders in the medical profession’s effort to combat wide-spread physical burnout agree, saying: “[Although burnout is a system issue](#), most institutions operate under the erroneous framework that burnout and professional





satisfaction are solely the responsibility of the individual.”

This means that, if we truly desire to improve well-being, we can't focus only on individual strategies like making lawyers more resilient to stress; it is equally important (if not more so) to focus on systemically improving our professional cultures to prevent problems from developing to begin with. We are interdependent in that our organizational and institutional cultures—to which we all contribute and which, in turn, shape us all—have a huge impact on our individual well-being. When our cultures support our well-being, we are better able to make good choices that allow us to thrive and be our best for our clients, colleagues, and organizations.

This Toolkit is designed to help lawyers and legal employers improve well-being holistically and systemically. This goal will require new choices, considerable effort, and changes that likely will upset the status quo. Positive change agents might meet with resistance—including complaints that there is no room, time, resources, or need for change. This Toolkit offers reasons for prioritizing lawyer well-being as well as information, strategies, and resources for implementing a plan for positive change.

ABOUT THIS TOOLKIT

Who should use this Toolkit? This Toolkit is primarily designed for use by lawyers and legal employers to



enhance individual and workplace well-being. It offers a variety of suggestions, keeping in mind that needs and resources vary widely.

How do I use the Toolkit? The Toolkit contains information and resources to get started on the path to well-being, including:

- An Introduction to why lawyer well-being should be a priority.
- A definition of Lawyer Well-Being.
- A definition of a Healthy Workplace.
- An 8-Step Action Plan for Legal Employers.
- Guidance for a Policy & Practice Audit to evaluate what supports and harms well-being.
- Recommendations for Activities & Events and for Education & Development to include as part of your Action Plan.
- Ideas for Assessments to track progress on well-being goals.
- Online Resources & Technology to help start and develop well-being initiatives.
- Book Recommendations.
- A list of Partners, which are organizations that already focus on lawyer well-being and can assist legal employers in their efforts.
- A list of Speakers and Consultants to contribute to well-being initiatives.
- An Activity Workbook that contains Worksheets with hands-on activities and checklists for enhancing well-being that can be used individually or collectively as part of organization-level initiatives.

The Toolkit should not be used as a substitute for seeking appropriate healthcare advice for wellness issues or [legal advice](#) for implementing new wellness programs.



THE BUSINESS, PROFESSIONAL, AND MORAL CASE FOR IMPROVING LAWYER WELL-BEING.

There are [at least three reasons](#) why it's important for legal employers to focus on lawyer well-being:

1. GOOD FOR BUSINESS

Organizational success depends on lawyer well-being, which [is an important form of human capital](#). Worker [mental health](#) and [alcohol use](#) disorders cost businesses' billions.

Additionally, work-related well-being in the form of employee engagement is linked to organizational [success factors](#), including lower turnover, higher client satisfaction and loyalty, and higher productivity and profitability. But [most workers \(67%\)](#) are not engaged, which means that organizations are not getting the full benefit of their people's talent. Low engagement also is linked to turnover—which often is problematic for law firms. For example, a 2016 [survey by Law360](#) found that over 40 percent of lawyers said that they were likely or very likely to leave their firms in the next year. This high [turnover rate is expensive](#)—with estimated costs for larger firms of \$25 million every year.

Improving engagement and other aspects of the workplace culture also is likely to help retain Millennials. A [key driver of work engagement](#) and psychological health is the experience of meaningful work, which is what [Millennials say they want](#). Report after report about Millennial lawyers say things akin to, “Millennials want to work, they're happy working, but they [want to find meaning in work](#).”

2. GOOD FOR CLIENTS

Well-being also is good for clients and the integrity of the profession. All state professional codes of conduct require lawyers to provide competent representation, which suffers when lawyers' health declines.

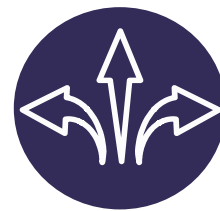
Troubled lawyers can struggle with even minimum

competence. This can be explained, in part, by [declining mental capacity](#) due to mental health conditions. For example, major depression and alcohol abuse is associated with impaired executive functioning, including diminished memory, attention, problem-solving, planning, and organizing—core features of competent lawyering.

Poor well-being also disables lawyers from living up to the vision conveyed in the [Preamble to the ABA's Model Rules](#) of Professional Conduct, which calls lawyers to “strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.”

3. THE RIGHT THING TO DO

Promoting lawyer well-being also is the right thing to do. For most of us, over [50% of our waking daily lives](#) is spent working. Given the dominance of work, enhancing the quality of our work lives can have an enormous impact on the quality of our lives as a whole. Additionally, untreated mental health and substance use disorders ruin lives and careers. Though our profession prioritizes individualism and self-sufficiency, we all contribute to, and are affected by, the collective work culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.



Reasons to Improve Attorney Well-Being

- ✓ Good for business
- ✓ Good for clients
- ✓ The right thing to do



Defining Lawyer Well-Being: A Multi-Dimensional Approach

Well-being cannot be defined just by the absence of illness but also encompasses a positive state of wellness. From a whole-health perspective, it can be viewed as a continuous process in which we work across multiple dimensions of wellness. The way we function in one dimension can enhance or impede the way we function in another dimension. The [report](#) of the National Task Force on Lawyer Well-Being identified six dimensions that make up full well-being for lawyers:

1. OCCUPATIONAL

Cultivating personal satisfaction, growth, and enrichment in work; financial stability.

2. EMOTIONAL

Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

3. PHYSICAL

Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.

4. INTELLECTUAL

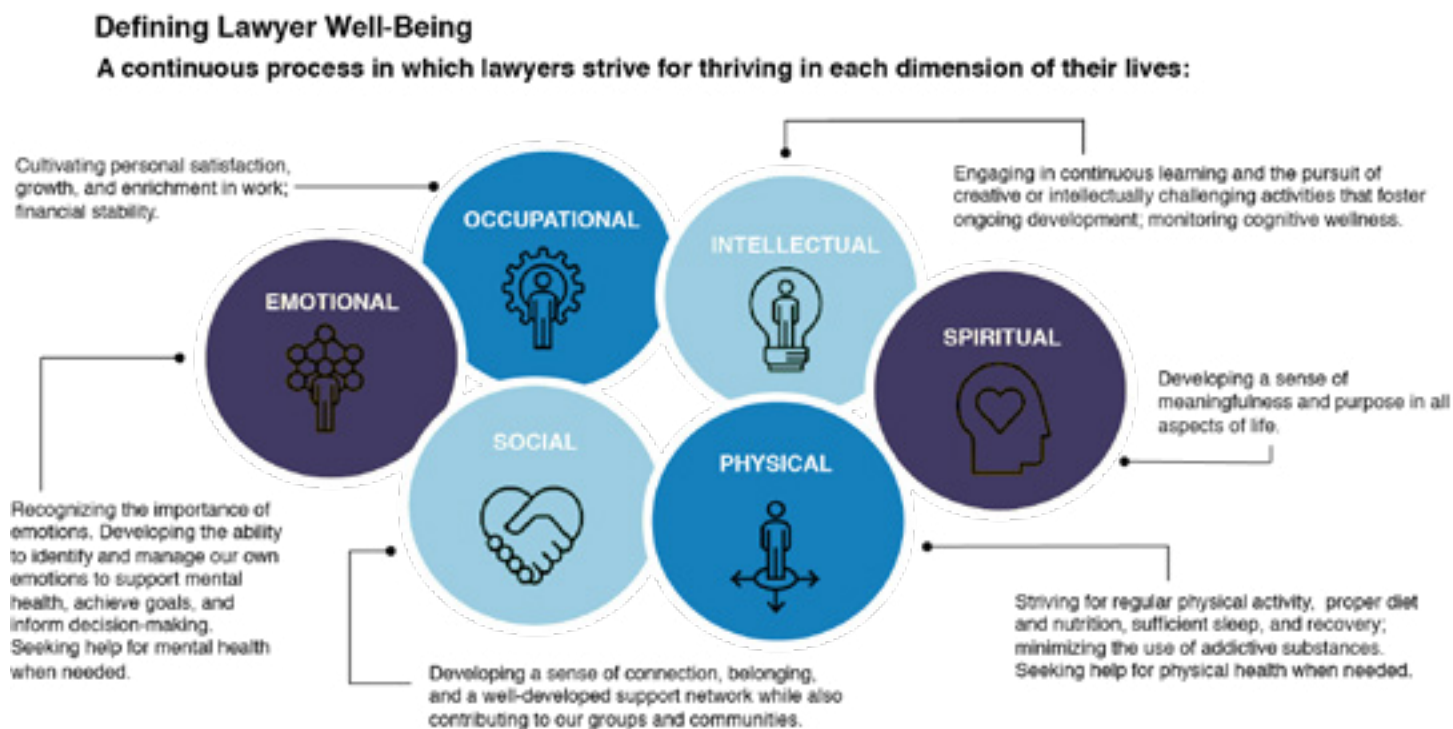
Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.

5. SPIRITUAL

Developing a sense of meaningfulness and purpose in all aspects of life.

6. SOCIAL

Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.





Like individual well-being, there's no single definition of a healthy workplace. Adapting the World Health Organization (WHO)'s definition of a [healthy workplace](#), the Toolkit defines it as follows:

A healthy workplace is one in which all organizational members collaborate to continually improve processes to protect and promote member well-being and organizational success. All seek alignment of organizational and member goals and needs so that they can grow and thrive together.

The WHO proposes that healthy workplaces depend on an interaction among four areas:

1. Psychosocial work environment
2. Physical work environment
3. Personal resources of each organizational member
4. Community contribution

The psychosocial work environment--which can have a big impact on lawyer well-being--is an area of vulnerability for many legal employers. The Tristan Jepson Memorial Foundation, an Australian charitable organization focused on healthy legal workplaces, has published [Workplace Well-Being: Best Practice Guidelines](#) for promoting and protecting psychological well-being in the legal profession. The Guidelines aim to help legal employers create workplaces that fulfill 13 factors that have been identified by extensive research as critical to psychological health.

Also helpful is the [Guarding Minds@Work](#) website,

recommended by the WHO, which provides free resources including [a survey and supporting documents](#) to help employers assess and enhance these 13 factors:

1. ORGANIZATIONAL CULTURE

A culture characterized by trust, honesty, and fairness.

2. PSYCHOLOGICAL SUPPORT

Supervisors and coworkers are supportive of organizational members' psychological and mental health concerns, and respond appropriately.

3. CLEAR LEADERSHIP & EXPECTATIONS

There is effective leadership and support that helps organizational members know what they need to do, how their work contributes to the organization, and whether there are impending changes.

Healthy Workplace Dynamics





4. CIVILITY & RESPECT

Employees are respectful and considerate in their interactions with one another, as well as with clients and the public.

5. PSYCHOLOGICAL COMPETENCIES & REQUIREMENTS

There is a good fit between employees' interpersonal and emotional competencies and the requirements of the position they hold.

6. GROWTH & DEVELOPMENT

Employees receive encouragement and support in the development of their interpersonal, emotional, and job skills.

7. RECOGNITION & REWARD

There is appropriate acknowledgment and appreciation of organizational members' efforts in a fair and timely manner.

8. INVOLVEMENT & INFLUENCE

Organizational members are included in discussions about how their work is done and how important decisions are made.

9. WORKLOAD MANAGEMENT

Tasks and responsibilities can be accomplished successfully within the time available.

10. ENGAGEMENT

Organizational members feel connected to their work and are motivated to do their job well.

11. BALANCE

There is recognition of the need for balance between the demands of work, family, and personal life.

12. PSYCHOLOGICAL PROTECTION

Organizational members' psychological safety is ensured.

13. PROTECTION OF PHYSICAL SAFETY

Management takes appropriate action to protect the physical safety of organizational members.





Many legal employers already have started well-being initiatives and are looking for more guidance on where to go next. Others are unsure how to begin. Below are strategies and resources for both--for getting started as well as developing existing well-being initiatives.

Many private and government organizations have published resources to help guide employers' well-being programs. The medical profession in particular has made big strides in advancing well-being, and has created many resources that can benefit legal employers. Below, links are embedded to some of these resources, which include things like manuals, templates, fact sheets, and other practical tools.

1. ENLIST LEADERS

No organizational change effort will succeed without leader commitment, support, and role modeling of desired behaviors. Communicating the business case for well-being can help build leader buy-in.

2. LAUNCH A WELL-BEING COMMITTEE

As a first step, recruit a [Champion](#) or launch a Committee to lead your well-being agenda. The Committee should include a high-level leader who has the credibility and influence to make things happen. Your organization's Employee Assistance Program, health insurance carrier, and/or a local Lawyer Assistance Program may be interested in participating and contributing resources.

3. DEFINE WELL-BEING

It will be important to define well-being as a guide for your agenda. This subject may mean very different things to different people. The multi-dimensional definition of well-being proposed by the National Task Force on Attorney Well-Being (and set out above) is an excellent option.

4. CONDUCT A NEEDS ASSESSMENT

Among the first things a Well-Being Committee should do after defining well-being is to conduct a [needs assessment](#). Any organizational change effort is more likely to succeed if it grows out of an analysis of the gap between the desired and current state. A number of [needs assessment templates](#) created for other contexts are available on the Internet and can be adapted for legal employer well-being programs.

The assessment might include stakeholder interviews or surveys to understand challenges to well-being that dominate in your organization.

The assessment also should include an audit of policies and practices that influence lawyers' well-being. The Policies & Practices Audit section below provides recommendations and online resources to guide an audit. The list includes topics that are not routinely encompassed in discussions of well-being, such as on-boarding, diversity, work-life conflict, 24/7-availability expectations, billing practices, performance appraisals, compensation systems, and fairness. Research shows that these often-overlooked practices substantially contribute to cultures that can support or harm well-being.

5. IDENTIFY PRIORITIES

The best way to get started on well-being initiatives is to set a narrow set of priorities and to accumulate quick "small wins" that can build credibility and momentum. Too many change efforts try to do too much too soon. The result is paralysis and lack of progress. To avoid this fate, selectively choose priorities that are manageable and achievable.

6. CREATE & EXECUTE AN ACTION PLAN

Next, the Committee should begin to prepare and execute an action plan. This phase should include a discussion of concrete goals, obstacles to achieving them, and pathways for overcoming obstacles. This phase also should consider how the well-being



program will be sustained over the long-term. Ideas for activities and events to be included in the action plan are discussed below.

7. CREATE A WELL-BEING POLICY

As part of the action plan, consider creating a formal well-being policy. It will help convey that the organization prioritizes and values lawyers as people and establish expectations and intentions. Ideally, legal employers will invite broad review and comment on a draft of the policy.

The ABA Presidential Working Group currently is drafting a Model Impairment Policy for Legal Employers to guide management of lawyers with mental health and substance use disorders. Employers should incorporate impairment provisions into their policies but also will want to convey that the initiative broadly seeks to advance well-being and is not focused solely on detecting and treating mental health and substance use disorders.

Because this type of full well-being policy is new, legal employers will have an opportunity for considerable innovation. A well-being policy template created by the Government of South Australia's (GOSA) can be found [here](#). You'll need to

substantially tailor it to align with your organization's priorities, but it can serve as a starting place to rev up your thinking.

8. CONTINUALLY MEASURE, EVALUATE, & IMPROVE

To develop, improve, and justify your organization's well-being program, it will be important to continually evaluate the success of individual program elements (e.g., attendance/participation) and measure overall progress on well-being indicators (e.g., engagement). The [Kirkpatrick model](#) (and [related models](#)) is most often used to evaluate development programs. It recommends evaluating multiple factors as indicators of success. Possible measures include:

- Satisfaction with and attitudes toward well-being programs;
- Extent of learning new information and skills;
- Behavioral change growing out of the programs;
- Measures of lawyer well-being and organizational success. A list of possible measures appears below in the Assessment section. Also, GOSA has created a fact sheet to guide thinking on [measuring outcomes](#) of workplace well-being initiatives that can be used for brainstorming.

8-Step Well-Being Action Plan





Legal employers should consider topics like the following as part of their audits of current policies and practices to evaluate whether the organization adequately supports lawyer well-being.

(The checklist below originally appeared in the National Task Force report. The citations from the report have been omitted here to manage space.)

MENTAL HEALTH & SUBSTANCE USE DISORDERS

- Is there a policy regarding substance use, mental health, and impairment? If so, does it need updating?
- Does the policy explain lawyers' ethical obligations relating to their own or their colleagues' impairment?
- Is there a leave policy that would realistically support time off for treatment?
- Are there regular communications about the importance of well-being?
- Do health plans offered to employees include coverage for mental health and substance use disorder treatment?

MANAGEMENT PRACTICES AFFECTING LAWYER WELL-BEING

- **Assessment of Well-Being:** Is there a regular practice established to assess work engagement, burnout, job satisfaction, turnover intentions, psychological well-being, or other indicators of well-being and to take action on the results?
- **Orientation Practices:** Are orientation practices established to set new lawyers up for success, engagement, and well-being?
- **Work-Life Balance-Related Policies & Practices:** Is there a policy that allows flexibility and an organizational climate that supports it? Is

it a practice to recognize lawyers and staff who demonstrate a high standard of well-being?

- **Diversity/Inclusion-Related Policies & Practices:** Diversity and inclusion practices impact lawyer well-being. Are policies and practices in place with a specific mission that is adequately funded?
- **24/7 Availability Expectations:** Do practices allow lawyers time for sufficient rejuvenation? Are response-time expectations clearly articulated and reasonable? Is there an effort to protect time for lawyers to recover from work demands by discouraging work-related calls and emails during evenings, weekends, and vacations?
- **Billing Policies & Practices:** Do billing practices encourage excessive work and unethical behavior?
- Does the firm monitor the hours billed by its attorneys and follow up with lawyers whose hours are persistently and significantly higher or lower than typical? Abnormal hours sometimes reflect deeper issues that might warrant further questions.
- **Compensation Practices:** Are compensation practices fair? And are they perceived as fair? Do they follow standards of distributive (fair outcome), procedural (fair process), interpersonal (treating people with dignity and respect), and informational (transparency) fairness? Perceived unfairness in important practices can devastate well-being and motivation. For example, a large-scale study found that people were 50 percent more likely to have a diagnosed health condition if they perceived unfairness at work. Further, high levels of interpersonal and informational fairness should not be ignored—they can reduce the negative effect of less fair procedures and outcomes.



- Is the firm's approach to compensation holistic, or does it instead focus exclusively or primarily on hours?
- **Performance Appraisal Practices:** Carefully managing this process is essential given evidence that bungled performance feedback harms well-being and performance.
- Are performance appraisal practices fair and perceived as fair?
- Do multiple raters contribute? Are they trained on the process and to reduce common biases?
- Is specific, timely feedback given regularly, not just annually?
- Is feedback given in a two-way communication? Is it empathetic and focused on behavior, not the person's self-worth? Is it balanced and injected with positive regard and respect?
- Are good performance and progress toward goals regularly recognized?
- **Vacation Policies & Practices:** In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was a significant predictor of lawyer well-being--and was stronger even than income level in predicting well-being. This suggests that legal employers should try to encourage and protect vacations.
- Is there a clear vacation policy?
- Does the organizational culture encourage usage and support detachment from work?

which are discussed above in the section on the Definition of A Healthy Workplace.

- The [Developing Resilience](#) white paper published by Chartered Institute of Personnel and Development (CIPD) identifies a helpful and substantial list of individual-level and organizational-level strategies for boosting resilience at work
- The World Health Organization's (WHO) [Healthy Workplace Framework and Model](#). The model proposes five keys to workplace well-being, and the WHO has provided [guidance on implementing it](#) as well as supporting evidence.
- [Guarding Minds@Work](#), recommended by the WHO, is a free resource to employers for assessing and improving psychosocial health in the workplace. It has identified 13 evidence-based psychosocial factors that impact organizational and individual well-being as well as the financial bottom line. The 13 factors would provide a helpful guide for legal employers' audits and goal-setting. The website also provides a free assessment of workplace well-being that aligns with the 13 factors.
- Society for Human Resource Management (SHRM) [Practice Guidelines](#) for Creating a More Human Workplace Where Employees and Business Thrive and [The Seven Components](#) of an Effective Workplace.
- GOSA has created a framework for a [Healthy Workplaces Audit](#).

MORE GUIDANCE FOR SELECTING TOPICS FOR A POLICIES & PRACTICES AUDIT

Online resources also are available to help legal employers identify potential topics for a well-being policies and practices audit:

- Tristan Jepson Memorial Foundation's [Best Practice Guidelines](#) for the Legal Profession,



Your organization's well-being action plan will include elements that align with its priorities, such as activities, events, creation or redesign of practices and policies, and the like. Ideas for these elements of your action plan are identified below.



Policies & Practices. Revise/create policies and practices based on findings from your organization's needs assessment.

Training & Development. Offer periodic training workshops designed to build a thriving organizational culture that prioritizes lawyer well-being. Potential training topics are proposed in the next section.

Align Incentives. Organizational structure and dynamics play an enormous role in influencing behavior change. Training and policy-creation are important but are not enough. To achieve change, legal employers will need to set standards, align incentives, and give feedback about progress on lawyer well-being goals.

Incentive systems should encourage leaders to support well-being initiatives by, for example, developing their own leadership skills and supporting the well-being of their teams. If incentives are aligned solely with organizational revenue growth, lawyers' limited resources of time and attention will be spent only there--to the detriment of any other

organizational goal. To genuinely adopt lawyer well-being as a priority, such structural and cultural issues will need to be addressed. A GOSA fact sheet offers ideas for [incentives and rewards](#) to encourage support of well-being programs.

Well-Being Scorecard. To ensure sustainability of an organization's well-being initiative, the WHO recommends that it should be integrated into the overall strategic business plan, rather than existing in a separate silo, and it should be continually evaluated and improved. A tool to help legal employers do so is a Balanced Scorecard for the organization and individual leaders that measures financial and people-related goals together.

Onboarding. Design new-lawyer orientation programs to include well-being-related topics. This will signal that the organization prioritizes the issue and will help prepare newcomers for the challenges and opportunities of their new roles.

Knowledge Hub. Create a well-being knowledge hub to provide lawyers with ongoing, practical information and updates.

Book/Video Club. Create a book or video (TED talks are a great resource) "club" for reflection and discussion of enhancing individual well-being and fostering workplaces where people thrive.

Activity Workbook. At the end of the Toolkit is an Activity Workbook with hands-on activities, checklists, and reminders for enhancing various dimensions of well-being. Well-Being Committees can use the worksheets as part of its own education curriculum and activities.

Leader Development. Implement a leader development program. Leader behavior has a substantial impact on followers' well-being. Additionally, people monitor leaders closely for indicators of cultural norms. If leaders don't walk the talk of lawyer well-being, followers are not likely to either--and are likely to become cynical.



On-Staff Professional Coaches. [Professional coaches](#) collaborate with their clients to achieve goals, improve performance, and boost career satisfaction and happiness. [Law firms have become increasingly interested](#) in coaching, including hiring on-staff professional coaches. While direct partner contact is critical for associate growth, coaches could help shoulder some of the burden for developmental plans, career guidance, and feedback. Also, for lawyers experiencing a decline in mental health, they may feel more comfortable broaching the topic with someone identified as a coach rather than a clinician. Coaches may then be able to assist lawyers in getting the help they need sooner.

Well-Being Surveys. Use surveys to periodically assess indicators of well-being (e.g., engagement, burnout, comfort with help-seeking, etc.). A list of potential surveys is provided below in the Assessments section.

Well-Being Week. Establish an annual Well-Being Week with activities and prizes (a practice already adopted in the [medical profession](#)).

Well-Being Calendar. Create a Well-Being Calendar and organize relevant activities or information blasts. GOSA has created a [Health Events Calendar](#) that can be adapted to recognize similar national and local events in the U.S. Example events include [National Depression Screening Day \(October\)](#), [National Alcohol Screening Day \(April\)](#), [Mental Health Awareness Month](#) (May), [Love Your Lawyer Day](#) (November), and the [International Day of Happiness](#) (March, [World Gratitude Day](#) (September)). Additional ideas can be found listed [here](#) and on the [Days of the Year website](#), which is a clearinghouse for days of recognition.

Sweat & Learn. Get creative with CLEs and other training sessions to avoid adding to the long hours lawyers spend sitting. For example, I've heard about a popular CLE event that has been conducted in a spinning studio.

Individual Goal-Setting. As part of professional development plans or other goal-setting practices, ask lawyers to set well-being goals. Goals might relate to, for example, physical activity, nutrition, sleep, relationship quality, work-life balance, or meditation — to name just a few. Supervisors could monitor these goals in the same manner as other professional development goals. Mentors might consider giving a gift to mentees of a fun goal-setting journal and make goal-progress a cornerstone of their mentoring relationship.



Embed Well-Being into Meetings. Embed well-being into regular meetings by, for example:

- Include well-being as a permanent agenda item
- Incorporate engagement-boosting strategies, such as gratitude activities and shout-outs for good work.
- Encourage “walking meetings” outside rather than sitting in conference rooms.
- Set new norms for long meetings in which it's OK to stand in the back, walk around, or stretch.



Include Well-Being Topics in Organizational Transitions.

Incorporate well-being topics into orientation programs to welcome new lawyers or to elevate them to new roles. For example, give a realistic preview of the new role, identify common stressors, and train them on well-being strategies to help them succeed while staying healthy.

Leverage Technology. You can leverage the growing field of well-being technology in a number of ways: For example:

- *Mental Health Apps.* Among the many factors that can hinder lawyers from seeking help for mental-health conditions are a preference for self-reliance and a perceived lack of time to fit treatment into busy schedules. To help address this, consider informing lawyers about electronic mental-health tools or adding them to your organization's health plans. These include mental-health apps as well as therapy via smart phone.
- *Treadmill & Standing Desks.* Place treadmill desks in a conference room or empty office for use by all. Subsidize treadmill desks or standing desks.
- *Health-Promoting Give-Aways.* For office giveaways, give health-related technology prizes, like a Fitbit; a Spire Mindfulness Tracker; Muse: The Brain Sensing Headband; Pip (gives feedback about stress level); or a Bellabeat Leaf Health Tracker (activity, sleep, and stress tracker).
- *Review of Well-Being Apps.* Create a review of well-being-related smart phone apps, such as for guided meditation, nutrition, physical exercise, gratitude journals, time management, etc.
- *Engagement Technology.* Try tech tools designed to boost employee engagement, such as Celpax, emooter, Morale.me, Glint, and Awesome Boss.

WHAT ARE OTHER LEGAL EMPLOYERS DOING?

A number of law firms already have launched well-being initiatives. Below are a sampling of events and strategies that they've adopted.

Akin Gump Strauss Hauer & Feld has launched a ["Be Well" initiative](#) that provides on-site health screenings, access to a personal health care advocate, and access to programs relating to parenting support and financial well-being.

Hanna Brophy. Several law firm leaders from Hanna Brophy are participating in an online positive psychology course designed by Yale. Their goal is to improve the quality of their own well-being and serve as role models for positive cultural tone and well-being for other lawyers.

Drinker Biddle has launched DBR Well-Being 360, which includes the creation of a well-being committee, assessment of progress on well-being goals, educational programming, mindfulness training, and creation of a resource portal.

Hogan Lovells. A few offices of Hogan Lovells offer an [on-site psychologists](#) who visits once weekly and is available to lawyers and staff.

Norton Rose Fulbright has trained a team of employees to be [mental-health first-aid responders](#), who can spot warning signs of addiction or mental-health concerns and offer assistance.

Ogletree, Deakins, Nash, Smoak & Stewart and **Seyfarth Shaw**, among others, have introduced mindfulness [meditation programs](#).

ACTIVITIES & EVENTS

Reed Smith has launched a well-being initiative called [Wellness Works](#), which encompasses the topics of stress management, work-life balance, healthy habits, health mindfulness, physical fitness, and mental health and substance use awareness. The firm has developed an online information hub and plans to create individual pages for each office that will provide information about wellness programming options.

Salazar Jackson invites guest speakers on [wellness topics](#); offers a Zen Garden, a quiet room, outdoor patio areas for socializing, and free healthy snacks; and has implemented a project management platform to streamline work.

Crowell & Moring provides access to a smart phone app called [Virgin Pulse](#) that pairs with fitness trackers. If firm members achieve certain well-being-related milestones, they earn a discount on their insurance premiums.

**Does Your Firm Have A
Well-Being Program?**

Please tell us about it!
Email: abracford@aspire.legal





Education, training, and development will be an essential component of legal employers' well-being initiatives. To ensure high-quality, effective programs, consider partnering with, for example, Employee Assistance Programs, Lawyer Assistance Programs, insurance carriers, and expert consultants.

To support holistic lawyer well-being, programs should focus on fostering cultures and individual competencies that support lawyers' optimal health, motivation, and performance and not only on detecting and treating disorders. Focusing on both sides of the lawyer well-being coin is important for developing successful well-being programs. Many topics are possible for programming, and some ideas are provided below.

DETECTING WARNING SIGNS OF MENTAL HEALTH & ALCOHOL USE DISORDERS

As the American Association of Suicidology put it, [“Suicide prevention is everyone’s business.”](#) The same is true for other mental health and alcohol use disorders. Accordingly, legal employers should provide training on identifying, addressing, and supporting fellow professionals with mental health and substance use disorders. At a minimum, training should cover the following:

- The warning signs of substance use or mental health disorders, including suicidal thinking;
- How, why, and where to seek help at the first signs of difficulty;
- The relationship between substance use, depression, anxiety, and suicide;
- Freedom from substance use and mental health disorders as an indispensable predicate to fitness to practice;
- How to approach a colleague who may be in trouble;
- How to thrive in practice and manage stress without reliance on alcohol and drugs; and

- A self-assessment of participants' mental health or substance use risk.

Long-term strategies should consider scholars' recommendations to incorporate mental health and substance use disorder training into broader health-promotion programs to help skirt the stigma that may otherwise deter attendance.

FACILITATE, DESTIGMATIZE, AND ENCOURAGE HELP-SEEKING BEHAVIORS

An important area warranting considerable attention is the stigma of mental health and substance use disorders that prevents lawyers from seeking help. As the National Task Force report explained (see page 13), research reflecting the many factors that can hinder people from seeking help can help guide legal employers' strategies. These factors include:

- Failure to recognize symptoms
- Not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so
- A culture's negative view of such conditions
- Fear of adverse reactions by others whose opinions are important
- Feeling ashamed
- Viewing help-seeking as a sign of weakness





- Having a strong preference for self-reliance or a tendency toward perfectionism
- Fear of career repercussions and concerns about confidentiality
- Uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective
- Lack of time in busy schedules.

Research also suggests that professionals with hectic, stressful jobs (like many lawyers) are more likely to perceive obstacles for accessing treatment, which can exacerbate depression. The result of these barriers is that, rather than seeking help early, many wait until their symptoms are so severe that they interfere with daily functioning.

Removing these barriers requires education and stigma-reduction strategies. The most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder. Ideally, this person should be a practicing lawyer in order to create a personal connection that lends credibility and combats stigma. Viewing video-taped narratives also is useful, but not as effective as in-person contacts.

CAREFULLY IMPLEMENT PROGRAMS THAT ENCOURAGE HELP-SEEKING

Among the more [common employer-sponsored strategies](#) to detect and respond to mental health and alcohol use disorders include workplace-based public awareness campaigns that involve posting warning signs, referral resources and general anti-

stigma messages, and workplace-based screenings. These can be effective and definitely should be considered as part of organization's well-being programs. But, because such strategies can backfire, they should be implemented carefully and, preferably, with advice from experts in the field. [One researcher cautioned:](#)

“Anyone who creates a [depression-related public service announcement] targeting people with depression without considering how the mind of a person with depression operates is engaging in behavior akin to reckless endangerment.”

Research shows, for example, that:

- Because depressive symptoms can radically distort how people interpret information, campaigns to encourage help-seeking must be carefully worded to [avoid boomerang effects](#) that decrease the likelihood of help-seeking.
- For example, a depressed person might interpret a message that says: “It takes courage to ask for help. Melvin did” as this: “But, I can’t be strong anymore. I can’t ask for help. If others can and I can’t, I might as well kill myself.” They might interpret a message that says: “Call 1-800-XXX-XXXX for confidential information on where to get help” as this: ““Confidential? Why does it have to be confidential?”
- Messages that encourage people to seek help “for friends” rather than for themselves (called “[mistargeting](#)”) have had some success avoiding boomerang effects.
- Some public health campaigns [have backfired due to “bossy” language](#) that causes targets of the message to react negatively due to perceived threats to their autonomy (called “reactance”).





- [Anti-drinking campaigns](#) that emphasize the prevalence of alcohol use can backfire by reinforcing existing, excessive drinking norms.

Because of these dangers, organizations that plan to initiate campaigns to encourage help-seeking should consider consulting an outside expert before doing so. One of the leading researchers in the area is [Dr. Jason Siegel](#), a professor of psychology at Claremont Graduate University. He is the Director of the Depression and Persuasion Research Lab, which focuses on projects to reduce stigma toward mental illness and increase help-seeking of people with depression. Contact: jason.siegel@cgu.edu.

DE-EMPHASIZE ALCOHOL AT SOCIAL EVENTS

(See National Task Force Report, p. 19).

BEGIN A DIALOGUE ABOUT SUICIDE PREVENTION

(See National Task Force Report, p. 20).

ENHANCE LAWYERS' AUTONOMY & SENSE OF CONTROL

Practices that rob lawyers of a sense of autonomy and control over their schedules and lives are especially harmful to their well-being. A sense of autonomy is considered to be a basic psychological need that is foundational to well-being and optimal functioning. Research shows that high job demands paired with a lack of a sense of control [breeds depression and other psychological disorders](#). A recent [review of strategies designed to prevent workplace depression](#) found that those designed to improve the perception of control were among the most effective. Environments that [facilitate control and autonomy contribute to optimal functioning](#) and well-being. A few examples of the types of practices to review include the following:

- Excessive workload and controlling management;
- Tight deadlines not based on business needs;
- Senior lawyers making key decisions without consulting other members of the litigation team;

- Senior lawyers' poor time-management habits that result in repeated emergencies and weekend work for junior lawyers and staff;
- Expectations of 24/7 work schedules and of prompt response to messages at all times;
- Extent of discretion that lawyers have in deciding where, when, and how to perform their work.

ELEVATE THE FOCUS ON CLIENT CARE

One strategy for aligning organizational incentives with lawyer well-being and profitability at the same time is to elevate the focus on client care and connection. [Research reflects](#) that work cultures that emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors that harm organizations and individual well-being. This can be psychologically draining. For example, studies in [2013](#) and [2014](#) of Australian lawyers found that law firms' emphasis on profits and competitiveness was associated with depression and anxiety.

On the other hand, [research shows](#) that the experience of meaningfulness in and at work is a core contributor to work engagement. For most people, feeling that we are benefiting others or contributing to the greater good is the biggest driver of meaningfulness. For most of us, [regularly connecting with clients](#) and hearing how our work benefits them gives us a [powerful motivational](#) and well-being boost.

In practice, this might include more routine client satisfaction surveys and conversations and inviting clients to speak at formal and informal events about the positive impact of lawyers' work. Emphasizing client care aligns with lawyer well-being goals while also contributing to the bottom line. Ideas for what to include in client satisfaction surveys and how to conduct them can be found [here](#) and [here](#).



MORE TOPICS SUMMARIZED IN THE NATIONAL TASK FORCE REPORT

Additional evidence-based educational topics were summarized in Appendix B (pp. 50-57) of the [National Task Force Report](#). Condensed versions of those summaries are provided next, with the literature citations omitted.

WORK ENGAGEMENT & BURNOUT

Work engagement is a kind of work-related well-being that includes high levels of energy, mental resilience, and a sense of meaningful work. It contributes to, for example, mental health, less stress and burnout, job satisfaction, helping behaviors, reduced turnover, performance, and profitability. At the other end of the spectrum is burnout, which is a stress response syndrome that is highly correlated with depression. It can have serious psychological and physiological effects and harm performance and professionalism.

STRESS

Stress is inevitable in lawyers' lives and is not necessarily unhealthy. Mild to moderate levels of stress that are within our capability can present positive challenges that result in a sense of mastery and accomplishment. But when lawyers feel overburdened by their work, they are at much greater risk of burnout, depression, anxiety, alcohol abuse, and physical health conditions. Both personal and environmental factors in the workplace contribute to stress and whether it positively fuels performance or impairs mental health and functioning.

RESILIENCE & OPTIMISM

Resilience can be defined as a process that enables us to bounce back from adversity in a healthy way.

Our capacity for resilience derives from a host of factors, including a collection of psychological, social, and contextual factors that we can change and develop. These include, for example, optimism, confidence in our abilities and strengths (self-efficacy), effective problem-solving, a sense of meaning and purpose, flexible thinking, impulse control, empathy, close relationships and social support, and faith/spirituality.

Aside from individual-level skills and strengths, developing “structural resilience” also is important, if not more important.

This requires leaders to develop organizations and institutions that are resource-enhancing to help give people the wherewithal to realize their full potential. Individual resilience is highly dependent on the context in which people are embedded. This means that initiatives to foster lawyer well-being should take a systemic perspective.

MINDFULNESS MEDITATION

Mindfulness meditation is a practice that can help us change our mental habits and support resilience. It can aid our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. A rapidly growing body of research on meditation has shown its potential for help in addressing a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role.

One type of meditative practice is mindfulness—a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings. Research has found that mindfulness can reduce rumination, stress, depression, and anxiety. It also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced





burnout, and ethical and rational decision-making.

REJUVENATION PERIODS

Lawyers must have downtime to recover from work-related stress. People who do not fully recover are at an increased risk over time for depressive symptoms, exhaustion, and burnout. By contrast, people who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands.

Quality sleep is critically important in the recovery process. Sleep deprivation has been linked to a multitude of health problems that decay the mind and body, including depression, cognitive impairment, decreased concentration, and burnout.

PHYSICAL ACTIVITY

Many lawyers' failure to prioritize physical activity is harmful to their health and functioning. Physical exercise is associated with reduced symptoms of anxiety, depression, and low energy and enhanced brain functioning and cognition. It stimulates new cell growth in the brain, which can offset the negative effects of stress, which can cause brain atrophy.

LEADER DEVELOPMENT AND TRAINING

Leader development and training is critically important for supporting lawyer well-being and optimal performance. Low-quality leadership is a major contributor to stress, depression, burnout, and other mental and physical health disorders. Even seemingly low-level incivility by leaders can have a big impact on workers' health and motivation. Further, good leaders are made not born: Many studies confirm that positive leader behaviors can be trained and developed.

CONFLICT MANAGEMENT

Our legal system is adversarial—it's rooted in conflict. Even so, lawyers generally are not trained on how to constructively handle conflict and to

adapt tactics based on context—from necessary work-related conflicts to inter-personal conflicts with clients, opposing counsel, colleagues, or loved ones. Conflict is inevitable and can be both positive and negative. But chronic, unmanaged conflict creates physical, psychological, and behavioral stress. Research suggests that conflict management training can reduce the negative stressful effects of conflict and possibly produce better, more productive lawyers.

WORK-LIFE CONFLICT

The stress of chronic work-life conflict can damage well-being and performance. Evidence indicates that it is a strong predictor of burnout and significantly increases the risk of poor physical health. On the other hand, work-life balance (WLB) benefits workers and organizations. WLB is a complex topic, but research provides guidance on how to develop a WLB-supportive climate through policies and consistent support for WLB by leaders and direct supervisors.

MEANING & PURPOSE

A large body of research shows that feeling that our work is meaningful plays an important role in workplace well-being and performance. Evidence suggests that the perception of meaningfulness is the strongest predictor of work engagement. Meaningfulness develops, for example, when people feel that their work corresponds to their values. Organizations can enhance the experience of fit and meaningfulness by, for example, fostering a sense of belonging; designing and framing work to highlight its meaningful aspects; and articulating compelling goals, values, and beliefs.

ADDITIONAL TOPICS

Some additional topics to consider include:

- Psychological capital (composed of optimism, self-efficacy, hope, and resilience)
- Psychological hardiness (composed of



commitment, control, and challenge)

- Stress mindset
- Growth mindset
- Grit
- Effort-reward balance
- Transformational leadership
- Self-determination theory (a well-established motivational theory on which multiple [lawyer and law student well-being studies](#) have been based)
- Strengths-based management
- Emotional intelligence and regulation
- Organizational fairness
- Nutrition
- Interpersonal skills to foster high-quality relationships and avoid conflict
- Political skills (which have been show to enhance a sense of control and reduce stress),
- Time management/alignment (i.e., investing time in alignment with ones values and priorities)



Legal employers should consider periodically measuring well-being on an anonymous basis to track progress on well-being goals. As the old saying goes, “what gets measured gets done.” Further, evaluating which strategies are effective and which are not will be impossible without ongoing assessment.

DECIDING WHETHER TO ASSESS WELL-BEING

The Centers for Disease Control and Prevention (CDC) recommends that employers regularly [assess employee health](#) and provides an [Employee Health Assessment](#) and [Health and Safety Climate Survey](#) for doing so. (These surveys may need some revisions to be adapted to a legal employer context.) The CDC also has provided a [User Manual](#) for the Climate Survey, which includes guidance on how to distribute and use this type of survey effectively. As the CDC User Manual reflects, the feedback from well-being-related assessments can guide further investigation and interventions.

The medical profession has made much more progress than the legal profession on establishing programs to assess and advance well-being. For example, the [National Academy of Medicine](#) recommends using surveys to assess well-being and guide interventions. The Academy recognizes, however, the potential tension between maintaining confidentiality and a desire to help that arises when measuring sensitive areas, such as depression, suicide, and substance use disorders. In its view, especially given the unfortunate continued stigma about mental health, ensuring confidentiality is critical to participants and to collecting accurate results.

A possible way to address this tension that the Academy recommends is to take all participants to a new screen at the end of the survey that: (a) provides general information about mental health and substance use disorders, (b) encourages them to seek help if experiencing symptoms, and (c) gives information on resources for relevant services, including a suicide hot line.

CHOOSING SPECIFIC ASSESSMENTS

As the well-being movement in the legal profession continues, we hope to validate and recommend a set of well-being-related surveys specifically tailored to lawyers and legal employers. At this point, though, following the medical profession’s lead, we offer multiple existing surveys from which legal employers can choose. Legal employers may wish to hire external consultants to help select specific surveys that are the best fit for the organization’s priorities and to handle and analyze the data appropriately. This is the recommended course especially for surveys and other communications related to sensitive topics like mental health and alcohol abuse and help-seeking behaviors or attitudes.

POSSIBLE RISKS?

If legal employers have any concerns that collecting such information would create legal risks, they may wish to discuss these issues with their legal counsel or with Employee Assistance Programs and insurance carriers that have experience in this area.

ORGANIZATION-LEVEL SURVEYS

Legal employers should consider organization-level assessments and not only individual-level assessments of health and well-being. Legal employers will want to pay closer attention to organizational and cultural factors that can contribute to poor well-being, burnout, and departures.

13 FACTORS FOR WORKPLACE WELL-BEING

As noted above, the Tristan Jepson Memorial Foundation has identified 13 factors as part of its [Best Practice Guidelines](#) for promoting psychological well-being in the legal profession, and the Guarding Minds@Work provides [a survey and supporting documents](#) to help employers assess and enhance these 13 factors.



CDC HEALTHY CLIMATE SURVEY

As mentioned above, the CDC recommends the [Health and Safety Climate Survey](#) for assessing workplace well-being as well as a [User Manual](#).

INDIVIDUAL-LEVEL SURVEYS

For individual lawyers, taking time to engage in self-assessment is imperative to overall wellness. Many lawyers have a hard time paying attention to their own needs. This is probably due to many factors, including the tendency to focus on the needs of clients and others and a high need for achievement that drives long working hours at a fast pace with too little rest and rejuvenation.

Lawyers who pay more attention to their own needs will be happier and healthier, will be able to provide higher quality professional services, and will be better colleagues and family members. Lawyers who take the time to assess their values, goals, and level of well-being are able to make choices with greater clarity and confidence. They can also make better decisions about how they want to practice and live their lives. Since many lawyers are high-achievers by nature, they often tend to push themselves to do more work than their own personal resources allow.

The following individual-level assessments are designed and intended for personal use and guidance purposes only. Their results should not be viewed as a diagnosis of having or not having a mental health disorder. Participants should be informed that such surveys are not intended to take the place of a professional evaluation and that questions and concerns should be referred to a mental health professional.

DEPRESSION

The CDC recommends that employers assess employee [depression](#) and provides recommendations for [interventions](#) and [evaluating](#)

depression-related initiatives. As noted above, the CDC also has provided an assessment tool called the Employee Health Assessment, which includes a section on mental health. Three validated surveys that measure only depression are identified below:

- [The Patient Health Questionnaire-9](#) (PHQ-9) is a common screening tool for depression and suicidal thoughts. An [Instruction Manual](#) also is available. It does not diagnose clinical depression but helps identify people who are experiencing elevated depressive symptoms and are at risk for developing a disorder.
- [The Depression Anxiety Stress Scales-21](#) (DASS-21). This scale was used in the [2016 lawyer mental health study](#) referenced above.
- [The Center for Epidemiological Studies-Depression \(CES-D\) Scale](#). This also is a common screening tool for depression. To take it individually and immediately receive a feedback report, participants can be directed to the University of Pennsylvania's Authentic Happiness website where the CES-D Scale is available in the [Questionnaire Center](#).

ANXIETY

- [The General Anxiety Disorder \(GAD\) Scale](#) is a common assessment used to screen for anxiety. It is available in the [Screening Tools](#) section of the website offered by SAMHSA-HRSA Center for Integrated Health Solutions (CIHS).

ALCOHOL USE DISORDERS

- [The Alcohol Use Disorder Identification Test \(AUDIT\)](#) is a commonly used tool to screen for risk of alcohol use disorders. This was the scale used in the large-scale study of lawyers published in 2016 that is referenced above.

BURNOUT

- [The Maslach Burnout Inventory \(MBI\)](#) is the most frequently-used burnout scale, but users



must pay a license fee. A few free validated alternatives are offered below:

- [**Oldenburg Burnout Inventory.**](#) This is a validated burnout measure that's available for use and in the public domain. The scale appears at the end of the article you'll find in the hyper-link.
- [**Non-Proprietary Single-Item Burnout Measure.**](#) Scholars in the medical profession have validated a single-item burnout measure (to replace the MBI), which is freely-available for use. The article that is hyper-linked contains the measure and describes it, and it also is set out below:

☐ **Overall, based on your definition of burnout, how would you rate your level of burnout?**

1-I enjoy my work. I have no symptoms of burnout.

2-Occasionally I am under stress, and I don't always have as much energy as I once did, but I don't feel burned out.

3-I am definitely burning out and have one or more symptoms of burnout, such as physical and emotional exhaustion.

4-The symptoms of burnout that I'm experiencing won't go away. I think about frustration at work a lot.

5-I feel completely burned out and often wonder if I can go on. I am at the point where I may need some changes or may need to seek some sort of help.

Scoring Instructions: This item often is scored as ≤ 2 (no symptoms of burnout) vs. ≥ 3 (1 or more means there are burnout symptoms).

or mission that imbues work with importance; adequate resources to perform the work; opportunities to use strengths and to learn, grow, and develop; supervisors who care, provide recognition, and discuss progress; co-workers who value quality; meaningful opportunities to give input; and a close friendship with someone.

- [**Utrecht Work Engagement Scale \(UWES\).**](#) The scale and manual both are available in the hyper-linked document. The UWES is the engagement scale used in most academic research. While Gallup's Q12 is focused more on the preconditions that contribute to high motivation, the UWES measures the energetic state that results from supportive conditions. The 9-item version of the UWES scales appears in the hyper-linked document and is set out below, to which participants respond on a scale from 0-Never to 6-Always.

- ☐ At my work, I feel bursting with energy.
- ☐ At my job, I feel strong and vigorous.
- ☐ I am enthusiastic about my job.
- ☐ My job inspires me.
- ☐ When I get up in the morning, I feel like going to work.
- ☐ I feel happy when I am working intensely.
- ☐ I am proud on the work that I do.
- ☐ I am immersed in my work.
- ☐ I get carried away when I'm working.

WORK ENGAGEMENT

- [**Gallup's Q12.**](#) This is a popular, copyrighted measure. You can view the items in a [Gallup report](#) discussing the measure. The "Q12" asks 12 questions covering concepts like: job satisfaction; clear work expectations; a purpose

OVERALL WELL-BEING

- [**Workplace PERMA Profiler.**](#) In his popular book [Flourish](#), Dr. Martin Seligman--the founder of positive psychology--defined human flourishing as made up of six dimensions: Positive Emotions,



Engagement, Relationships, and Achievement (which form the acronym “PERMA”). The Workplace PERMA Profiler was created and validated to measure the PERMA factors in the workplace.

- **Subjective Well-Being (SWB)** is the most frequently-used measure of overall well-being or “happiness.” An SWB score typically is computed by creating a composite measure of (1) the Satisfaction with Life Scale (SWLS) and (2) a scale that measures the ratio of positive to negative emotions. The composite score is calculated like this: SWLS + (positive emotions - negative emotions). Higher [SWB is associated with many benefits](#)--including better psychological and physical health and occupational success. SWB was the measure of happiness used in a recent [lawyer well-being study](#) that measured factors contributing to the happiness of thousands of practicing lawyers.

The first component of SWB is the [Satisfaction with Life Scale \(SWLS\)](#). The second component of SWB is a measure of the ratio of positive to negative emotions, such as the [Scale of Positive and Negative Experience](#) (SPANE). Both scales are free to use so long as credit is given to the authors. [Because negative emotions are much stronger](#) than positive ones, it’s important to intentionally foster positive emotions to maintain a healthy “positivity ratio” of about 3:1 positive to negative emotions. A tendency toward positive emotions (called a [Positive Emotional Style](#)) is associated with psychological and physical health as well as occupational success and effective leadership.

- **The Wellness Assessment** is another overall well-being measure that asks for your perceived progress on your best life in terms of important relationships, community where you live, occupation, physical health and wellness, emotional and psychological well-being, and economic situation.

RESILIENCE

There’s no standard definition or measure of resilience and many scales are available--some of which require payment of a licensing fee. You can find a discussion of various options on the [Positive Psychology Program website](#).

- **Brief Resilience Scale.** This is a 6-item measure of resilience.

MEANINGFUL WORK

Work and Meaning Inventory (WAMI). The WAMI is a common survey for measuring the experience of meaningful work. It is free to use for noncommercial research and educational purposes without permission. [Research shows that the experience of meaningfulness](#) is associated with physical and mental health and is the biggest driver of work engagement.

OPTIMISM

Much evidence reflects that optimism is associated with physical and psychological health. There are two primary ways that optimism is measured:

- **Life Orientation Scale-Revised.** This scale measures trait or dispositional optimism. It measures your habits of thought when facing obstacles or considering the future.
- **Attributional Style Questionnaire (ASQ)** (aka Explanatory Style Questionnaire). This assessment measures explanatory style, which are your habits of thought when attributing the causes of good and bad events. It is the optimism measured used by research by positive psychology founder Dr. Martin Seligman and discussed in his popular book [Learned Optimism](#). It can be found in the [Questionnaire Center](#) of University of Pennsylvania’s Authentic Happiness website. There is [some evidence](#) that lawyers tend to have a pessimistic explanatory style, which is associated with depression.



LEADERSHIP

- **Transformational Leadership.** Transformational leadership is by far the most-studied leadership theory in the academic leadership literature. A common measure of transformational leadership is the [Multifactor Leadership Questionnaire](#). It's copyrighted and users must pay a licensing fee.
- **Leader-Member Exchange (LMX).** LMX also is a popular leadership theory that focuses on the quality of relationships between leaders and followers. This measure is freely available for non-commercial research and educational purposes without seeking permission. It can be found in this [article about LMX](#) that also describes the scale.
- **Leader Development Plan Template.** Claremont Graduate University's LeadLabs website offers a free [leader development plan template](#). It's an automated template that walks you through an exercise to identify your leadership strengths and goals.
- Rated you lower than you deserved on an evaluation.
- Yelled, shouted, or swore at you.
- Made insulting or disrespectful remarks about you.
- Ignored you or failed to speak to you (e.g., gave you "the silent treatment").
- Accused you of incompetence.
- Targeted you with anger outbursts or "temper tantrums."
- Made jokes at your expense.

INCIVILITY

[Workplace Incivility Scale.](#) This scale was developed by one of the leading experts in workplace civility, Dr. Lilia Cortina. The scale is contained in the research article available through the hyper-link and its 12 items are reprinted below:

During the PAST YEAR, were you ever in a situation in which any of your supervisors or co-workers:

- Paid little attention to your statements or showed little interest in your opinions.
- Doubted your judgment on a matter over which you had responsibility.
- Gave you hostile looks, stares, or sneers.
- Addressed you in unprofessional terms, either publicly or privately.
- Interrupted or "spoke over" you.



RESOURCES FOR CREATING & DEVELOPING WELL-BEING COMMITTEES

- The [Manual for Well-Being Ambassadors](#) and [slide deck](#) that the American Psychiatric Association created for the medical profession.
- The Government of South Australia's (GOSA) [Workplace Health and Wellbeing Toolkit](#): Step by Step Guide to Developing a Successful Workplace Program. The Guide provides a framework for starting and sustaining well-being initiatives. The website also includes links to a variety of [templates, fact sheets, and other tools](#).
- The National Academy of Medicine's Action Collaborative on Clinician Well-Being and Resilience [Knowledge Hub](#).
- A [Wellness Toolbox](#) created for medical residency programs to provide practical steps to create a culture that emphasizes full wellness.
- The American Medical Association's [Five Steps](#) to Create a Wellness Culture.
- [Work and Well-Being Toolkit for Physicians](#) prepared by University of Colorado's Behavioral Health and Wellness Program.
- Globoforce's [Ten-Step Guide](#) to Working More Human.
- [The Wellness Network for Law](#). Collection of resources related to lawyer well-being provided by an Australian-based group.
- [Patrick Krill Strategies](#) Website. Patrick Krill, who led the 2016 study on lawyer mental health and substance abuse, is the leading expert on such disorders in the legal profession. His website provides resources relating to those topics.
- [Guarding Minds at Work](#). In 2013, Canada adopted the National Standard of Canada for Psychological Health and Safety in the Workplace—a set of voluntary guidelines, tools, and resources to guide organizations

in promoting mental health and preventing psychological harm at work. Its website collects resources to support the Standard.

- Psychological Health and Safety: [An Action Guide for Employers](#). A handbook created by the Mental Health Commission of Canada for employers wanting to launch a workplace well-being initiative.

SMART PHONE & ONLINE APPS

- [Headspace](#): A popular meditation app.
- [10% Happier: Meditation for Fidgety Skeptics](#). A popular meditation app.
- [Calm](#): Mindfulness and meditation app.
- [Happify](#): App offering evidence-based solutions for better emotional health and wellbeing.
- [Stand Up!](#) Work break timer app. Prompts you to stand up according to a schedule you customize.
- [Happy Tapper Gratitude Journal](#): Gratitude App
- **Mental Health Apps.** The number of mental health-related apps is growing, including those targeting depression. A number of articles have tracked the trend and studies of effectiveness, such as:
 - ▶ Smart phone apps [can reduce depression](#).
 - ▶ [New apps designed to reduce depression](#), anxiety as easily as checking your phone.
 - ▶ Use and effectiveness of [mobile apps for depression](#).
- **Cognitive Reframing Training.** [Mood Gym](#) is a subscription-based online application created by academics to teach cognitive reframing—a key to mental health and resilience. Mood Gym has been recommended by a [scholar studying resident well-being](#) in hospitals, and other applications like this are becoming increasingly available.



LAWYER-SPECIFIC WELL-BEING BOOKS

Anne Brafford, *Positive Professionals: Creating High-Performing, Profitable Firms Through The Science of Engagement*

Heidi Brown, *The Introverted Lawyer: A Seven Step Journey Toward Authentically Empowered Advocacy*

Kevin Chandler, *The Lawyer's Light: Daily Meditations for Growth and Recovery*

Jeena Cho & Karen Gifford: *The Anxious Lawyer: An 8-Week Guide to a Happier, Saner Law Practice Using Meditation*

Andrew N. Elowitz & Marcia Watson Wasserman, *Lawyers as Managers: How to be a Champion for Your Firm and Employees*

Amiram Elwork, *Stress Management For Lawyers: How To Increase Personal & Professional Satisfaction In The Law*

Stewart Levine (Editor), *The Best Lawyer You Can Be* (compilation of chapters on lawyer well-being from multiple authors), forthcoming 2018

Michael F. Melcher, *The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction*

Rebecca Nerison, *Lawyer Anger and Anxiety: Dealing with the Stresses of the Legal Profession*

Hallie Neuman Love & Nathalie Martin, *Yoga For Lawyers: Mind-Body Techniques to Feel Better All The Time*

Scott L. Rogers, *The Six-Minute Solution: A Mindfulness Primer for Lawyers*

WELL-BEING BOOKS--GENERAL AUDIENCE

Shirzad Chamine, *Positive Intelligence: Why Only 20% of Teams and Individuals Achieve Their True Potential*

Cary Cooper and colleagues, *Resilience for Success: A Resource for Managers and Organizations*

Carol S. Dweck, *Mindset: The New Psychology of*

Success

Daniel Goleman & Richard Davidson, *Altered Traits*

Adam Grant, *Give and Take: Why Helping Others Drives Our Success*

Robert Kegan & Lisa Laskow Lahey, *Immunity to Change: How to Overcome It and Unlock the Potential in Yourself and Your Organization*

Alex Korb, *The Upward Spiral: Using Neuroscience to Reverse the Course of Depression, One Small Change at a Time*

Sonja Lyubomirsky, *The How of Happiness: A New Approach to Getting the Life You Want*

Cal Newport, *Deep Work: Rules for Focused Success in a Distracted World*

Suzann Pileggi Pawelski & James O. Pawelski, *Happy Together: Using the Science of Positive Psychology to Build Love That Lasts*

Christine Porath, *Mastering Civility: A Manifesto for the Workplace*

Jason Powers, *Positive Recovery Daily Guide: Thrive in Recovery*

Tom Rath, *Are You Fully Charged?*

Tom Rath, *Eat Move Sleep: How Small Choices Lead to Big Changes*

Karen Reivich & Andrew Shatte, *The Resilience Factor*

Martin E. P. Seligman, *Learned Optimism: How to Change Your Mind and Your Life*

Emily Esfahani Smith, *The Power of Meaning: Finding Fulfillment in a World Obsessed with Happiness*

Chade-Meng Tan, *Search Inside Yourself*

Caroline Webb, *How to Have a Good Day*

Paul J. Zak, *Trust Factor: The Science of Creating High-Performance Companies*



Below is a list of organizations focused on lawyer well-being that can partner with legal employers on their well-being initiatives. They can provide or recommend qualified speakers and provide other support and resources.

ABA CoLAP & STATE LAWYER ASSISTANCE PROGRAMS

The ABA's Commission on Lawyer Assistance Programs (CoLAP) provides support to people in the legal profession who are confronting alcoholism, substance use disorders, or mental health issues.

It carries out its mission by supporting the work of state and local Lawyer Assistance Programs (LAPs) that provide hands-on services and support to those in need. CoLAP and LAPs offer a variety of resources, guidance, and speakers--including on lawyer wellness topics, such as clinical substance abuse, mental health issues, and wellness and stress management for lawyers. [CoLAP's website](#) includes a directory so that legal employers can locate their local LAPs. Additionally, CoLAP hosts a [Speakers Bureau Directory](#), which is another source to locate speakers on wellness topics.

To make it even easier to contact your local LAP, the **Well-Being Partner Appendix** at the end of the Toolkit provides a list of Directors or other leaders of the state LAPs whom you can contact for support with your well-being initiatives.

ABA LP ATTORNEY WELL-BEING COMMITTEE

The mission of the ABA Law Practice Division's Attorney Well-Being Committee is to help the legal profession thrive by providing resources, education, and leadership on well-being-related topics. Contact: Anne Brafford, abafford@aspire.legal.

DAVE NEE FOUNDATION

[The Dave Nee Foundation](#) works to prevent suicide in the legal profession by educating law students/lawyers about depression, its prevalence in the legal profession, and the availability and effectiveness of treatment. Contact: info@daveneefoundation.org.

MINDFULNESS IN LAW SOCIETY

The Mindfulness in Law Society (MILS) is an education and support hub for mindfulness in the legal profession, bringing together lawyers, law students, faculty, judges, and other legal professionals across the nation, and supporting their interests in mindful lawyering. MILS offers and shares programming, resources and networking opportunities. Contact: Richard Reuben, Contact: ReubenMindfulness@gmail.com.

STANFORD LAW SCHOOL WELLNESS PROJECT

The goal of the Stanford Law School Wellness Project is to help respond to the explosion of interest in wellness at law schools and in the greater legal community. The Project launched a website to share ideas, teaching materials, articles and announcements. The Project also includes The WellnessCast, which is a podcast on well-being related topics.

STATE BAR WELL-BEING COMMITTEES

A number of state bars have launched lawyer well-being initiatives, including South Carolina and Georgia. Even for legal employers outside these states, the Committees' websites may provide useful materials and ideas.

South Carolina Attorney Wellness Committee

The [SC Attorney Wellness Committee](#) was launched in 2014 in an effort to address serious issues confronting members of the legal profession. Its aim is to help lawyers achieve total wellness: mentally, physically, and socially. The Committee started the "Living Above the Bar" wellness initiative and website, which included activities and wellness resources.

Georgia Attorney Wellness Task Force

The Task Force seeks to study and promote lawyer wellness programs by identifying factors that impact the physical and emotional well-being of attorneys. It started the ["Lawyers Living Well"](#) initiative and



website, which included activities and wellness resources.

BERKLEY LAW MINDFULNESS PROGRAM

The [Berkley Law Mindfulness in Legal Education](#) Program provides a website with mindfulness-related resources for teaching and practicing mindfulness in the legal profession.

**Do You Recommend
Other Well-Being Partners?**

Please Let Us Know!

Contact: abrafford@aspire.legal



Below is a list of consultants, speakers, and professional coaches to aid your well-being initiatives. Many on the list are lawyers, and all have credentials or significant professional experience outside of practicing law. The list is provided as one resource for legal employers looking for collaborators. It is not offered as an “ABA-endorsed” list. The people on the list are either in my own personal network or were recommended to me by someone I know. Many other candidates clearly are available, and I encourage additional recommendations. No negative inferences should be made by the exclusion of anyone from this list. Also, all should be vetted according to your regular procedures for ensuring high-quality, reliable content.

DEBRA AUSTIN, JD, PHD

[Debra Austin](#) is a Professor of the Practice at University of Denver Sturm College of Law. She writes and speaks about how neuroscience and psychology research can improve law student and lawyer well-being and performance. Her papers are [available online](#). Contact: daustin@law.du.edu.

LISLE BAKER, LLB, MAPP

[Lisle Baker](#), a professor at Suffolk Law School in Boston, focuses on incorporating positive psychology into the law school classroom and practice of law. In 2017, he launched a Suffolk Law Positive Psychology Conference to provide an annual forum for professors, experts, and practitioners to share ideas. Contact: lbaker@suffolk.edu.

JONATHAN A. BEITNER, JD, CPC IN PROGRESS

Jonathan Beitner is a practicing Senior Associate in a large law firm who is completing his professional coaching certification. He speaks and writes on topics related to attorney well-being, including mindfulness, fostering positivity/optimism, taking the anxiety out of networking, and breaking through procrastination. Contact: jbeitner@jenner.com.

ROBIN BELLEAU, JD, LCPC

[Robin Belleau](#) is a Licensed Clinical Professional Counselor and former criminal defense litigator. She speaks on the topics of substance abuse, mental health, and well-being in the legal profession. Contact: rbelleau@illinoislap.org.

DAN BOWLING, JD, MAPP

[Dan Bowling](#) is a former practicing lawyer and current law professor who focuses on the positive aspects of law practice and the importance of using one’s strengths. He teaches and researches on this topic at Duke Law School and has written and spoken extensively on the topic. Contact: dabowling@gmail.com.

ANNE BRAFFORD, JD, MAPP, PhD IN PROGRESS

[Anne Brafford](#), a former Big Law partner, is an [author](#), speaker, and researcher. She focuses on the many aspects of law firm culture that boost engagement and well-being and avoid burnout, such as meaning and purpose, positive leadership, high-quality motivation, resilience, work-life balance, organizational practices and leadership behaviors that contribute to depression and burnout, and more. She also can provide organizational development and statistical analysis services for well-being initiatives. Contact: abrafford@aspire.legal.

HEIDI K. BROWN, JD

[Heidi Brown](#) is an Associate Professor of Law at Brooklyn Law School. She is the author of [The Introverted Lawyer](#) and champions the power of quiet individuals to be impactful advocates, in their authentic voices. Heidi illuminates the gifts that introverted, shy, and socially anxious individuals offer the legal profession, and seeks to help amplify their advocacy voices in an authentic manner. Contact: heidi.brown@brooklaw.edu.



BREE BUCHANAN, MSF, JD

[Bree Buchanan](#) is a Co-Chair of the National Task Force on Lawyer Well-Being, Chair of the ABA Commission on Lawyers Assistance Programs (CoLAP), and Director of the Texas Lawyers Assistance Program. Bree is a former litigator, law professor, and lobbyist who now dedicates her life to promotion of well-being in the legal profession. Contact: bree.buchanan@texasbar.com.

JEFFREY H. BUNN, JD

Jeffrey Bunn, a retired long-time business litigator and mediator, is the owner of The Mindful Law Coaching & Consulting Group. As part of his advocacy for incorporating meditation into the law firm business model, he speaks about mindfulness in the legal workplace, the business case for mindfulness, and measuring success of mindfulness practice. Contact: jbunnlaw@gmail.com.

SHANNON CALLAHAN, JD, CPC (PENDING)

Shannon Callahan is a member of the Advisory Committee to the Lawyers Assistance Program Board Vice Chair of the Illinois Task Force on Lawyer Well-being. She does individual and group coaching; speaks on mindfulness through training with Mindfulness Based Stress Reduction (MBSR); and speaks on growth mindset, grit, self-compassion, resilience, goal-setting, and wellness. Contact: Scallahan@seyfarth.com.

CHELSEY A. CASTRO, JD, MA MSW, LCSW

[Chelsy A. Castro](#) is an attorney, psychotherapist, and author who speaks to lawyers, judges, and law students on stress-management techniques, success strategies for high-achievers under pressure, mindfulness, substance abuse, mental health, and wellbeing. Contact: ccastro@illinoislap.org.

JEENA CHO, JD

[Jeena Cho](#), a practicing lawyer, consults and speaks with lawyers about using mindfulness and meditation

to reduce stress and enhance resilience. She co-authored [The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation](#). Contact: hello@jeenacho.com.

JUDI COHEN, JD

[Judi Cohen](#) is a Lecturer at Berkeley Law and the founder of [Warrior One LLC](#), a provider of continuing legal education focused exclusively on mindfulness training for the legal mind. Warrior One offers in-person trainings in-house and for firms, government, and public interest attorneys; and on-demand for individuals and licensed to law firms and legal organizations. Contact: judi@warriorone.com.

ANDREW COHN, JD, MA

[Andrew Cohn](#), a professional coach, trainer, and consultant, focuses on wellness and achievement, including clearer thinking, improved decision-making, and alignment among project/work teams. He uses a variety of tools and assessments, as well as principles of Aikido both on and off the mat. Contact: andrew@lighththousteams.com.

BRIAN CUBAN, JD

Brian Cuban is a practicing attorney, author, and addiction recovery advocate. The younger brother of Dallas Mavericks owner and entrepreneur Mark Cuban, Brian has been in long-term recovery from alcohol, cocaine, and bulimia since 2007. He is the author of [The Addicted Lawyer, Tales of The Bar, Booze, Blow, & Redemption](#). Contact: briancuban.com.

SHARON F. DANZGER, CFA, CLU, ChFC, MAPP (PENDING)

Through corporate training programs and one-on-one coaching, [Sharon Danzger](#) teaches individuals to be more productive, healthier and happier. Using evidence-based, practical strategies, clients are able to build daily habits that enable them to make



the best use of their time while reducing stress and improving overall well-being. Sharon is the author of [*Super Productive: 120 Strategies to Do More and Stress Less*](#). Contact: Sharon@ControlChaos.org.

STEWART I. DONALDSON, PhD

[Stewart Donaldson](#) is a Professor of Psychology and Community & Global Health at Claremont Graduate University and the Executive Director of the [Claremont Evaluation Center \(CEC\)](#). His focus includes program evaluation, health promotion and disease prevention, positive psychology, and organizational development. Stewart and the CEC can provide support to organizations interested in evaluating the effectiveness of well-being initiatives, including evaluation and statistical analysis services. Contact: stewart.donaldson@cgu.edu.

STACEY DOUGAN, JD, LLM, MS, APC, NCC

[Stacey Dougan](#) is a lawyer-turned-therapist who helps attorneys and law students align their needs and values with their personal and professional roles and responsibilities. As a writer, speaker, and consultant, Stacey also works with bar associations, law firms, and law schools to promote wellbeing in the legal profession. Contact: Stacey@workbestconsulting.com.

SEAN DOYLE, JD, MAPP

[John “Sean” Doyle, J.D., MAPP](#), is General Counsel for a broadband provider and has taught psychology at North Carolina State University for a decade. Sean works with lawyers on enhancing their effectiveness and increasing their sense of meaning and joy. His book, *Mud and Dreams*, is a series of essays about overcoming hardships and falling deeper in love with life. Contact: [www.JohnSeanDoyle.com](#), [LiveFully@JohnSeanDoyle.com](#).

ANDREW ELOWITT, JD, MBA, PCC

[Andrew Elowitt](#) is a speaker, consultant, coach, and author focusing on emotional, social and conversational intelligence; soft skills; and

related topics. Titles of past presentation include: Maintaining Peak Performance by Managing Energy & Stress Rather than Time; Developing Competence with Interpersonal Conflicts; Working With Difficult People; Stress is Not Your Enemy; Growing Beyond Perfectionism; and Forget About Balance – How About Work-Life Integration? He is the author of the ABA book [Lawyers as Managers](#). Contact: [elowitt@newactions.com](#).

TAL FAGAN, JD, CLC

[Tal Fagin](#) is a former practicing lawyer and certified life coach. Her clients are successful people who, despite their many achievements, tend to feel perpetually dissatisfied. They often are looking for “something more,” whether that be in their personal relationships, careers, or health. Tal works together with her clients to devise effective strategies for healthier, happier, more balanced living. Contact: [tal@talfusion.net](#).

JEFFREY FORTGANG, PhD

Jeffrey Fortgang is a licensed psychologist and alcohol/drug counselor with a PhD in Clinical Psychology who provides counseling services to lawyers. He also speaks and writes on these topics and is co-author of the ABA book [The Full Weight of the Law: How Legal Professionals Can Recognize and Rebound from Depression](#), which focuses on how law students and lawyers can recognize, sometimes avoid, and even rebound from depression. Contact: [drjeff@lclma.org](#).

SARAH CAMPBELL FOWLER, MAPP

[Sarah Campbell Fowler](#) is a presenter and coach who uses her background in positive psychology and resilience to help clients combat counterproductive thinking, manage stress, increase well-being, develop leadership skills, and strengthen relationships. She has developed a series of short videos focused on resilience skills and positive psychology specifically for lawyers. Sarah earned a Master of Applied Positive Psychology from the University of



Pennsylvania and has completed her certification in Leadership Coaching from Georgetown University. Contact: sarah@sarahcfowler.com.

SAMANTHA GOLKIN, JD, LLM, MAPP

Samantha Golkin, a practicing lawyer, is a breast cancer survivor who regularly speaks on topics related to the connection between stress, rigorous work environments, and health. Her focus is on how professionals can incorporate positive behaviors in a high-stress profession to improve well-being and positively affect overall health. Contact: sgolkin@samanthagolkin.com.

MEGAN GRANDINETTI, JD

[Megan Grandinetti](#) is a certified health coach, yoga teacher and (non-practicing) attorney. Megan works with her coaching clients on stress reduction, work-life balance, career transition, and holistic health. She often interweaves meditation, breath-work, and other tools from her extensive yoga training into her coaching sessions and speaking engagements. Contact: megan.grandinetti@gmail.com.

TERRY HARRELL, JD, LCSW, MAC, LCAC

[Terry Harrell](#) was appointed by 2017-2018 ABA President Hilarie Bass as the Chair of the ABA Working Group to Advance Well-Being in the Legal Profession. She also is a member of the National Task Force on Lawyer Well-Being and the Director of the Indiana Judges and Lawyers Assistance Program. Terry combines her experience as therapist and a lawyer when speaking on topics such as lawyer well-being, resilience, and happiness. Contact: terry.harrell@courts.in.gov.

MILANA HOGAN, EdD

[Milana Hogan](#) focuses on the non-cognitive traits—like grit, growth mindset orientation, and resilience—that have been shown to be predictors of long-term, successful careers in the law, particularly for women lawyers. She is one of the co-creators of the ABA Commission on Women in the Profession's Grit Project, which offers practical tools for women to

assess, develop and strengthen these traits. She is the author of the ABA book [Grit, The Secret To Advancement: Stories of Successful Women Lawyers](#). Contact: hoganm@sullcrom.com.

MICHAEL HOEPPNER

[Michael Hoepfner](#) is president of GK Training and Communications, which trains lawyers to access their most genuine, authentic selves as communicators. He uses performance techniques and kinesthetic learning tools to help clients transform their breathing, anxiety reflex, and stress response to handle high-consequence communication situations with grace and ease. Contact: Mhoepfner@gktandc.com.

JOHN F. HOLLWAY, JD, MAPP (PENDING)

John Hollway is the Executive Director of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School. His focus is on creating psychologically safe spaces that facilitate difficult conversations and generate open and honest dialogue about events that divide people. His aim is to help management design compassionate and fair responses that improve trust and engagement. Contact: jhollway@law.upenn.edu.

PETER HUANG, JD, PhD

[Peter Huang](#) is a professor at University of Colorado Law School. He speaks and writes on topics related to law and happiness, subjective well-being, mindfulness, neuroscience, and psychology. Many of his papers are [available online](#). Contact: peter.huang@colorado.edu.

LOUISA JEWELL, MAPP

[Louisa Jewell](#) is a speaker, author, and positive psychology expert who works with organizations to promote well-being, confidence, and resilience. Louisa is the founder of the Canadian Positive Psychology Association and a professor at the University of Texas, Dallas. She is the author of [Wire Your Brain For Confidence: The Science of](#)



[Conquering Self-Doubt](#). Contact: louisa@louisajewell.com.

ELIZABETH JOHNSTON, JD, MAPP

Elizabeth Johnson, a practicing lawyer, focuses on well-being for law students and big firm associates, including topics such as motivation, congruency, self-determination theory, and the pursuit of success (versus happiness) generally. She strives to apply her psychology education and her experience as a law firm associate to recommend how to mitigate the psychological risks inherent in the profession and to help others thrive as attorneys. Contact: edjohnst@gmail.com.

ANDREW D. KANG, JD, LICSW

[Andrew Kang](#), a former practicing lawyer, is a licensed therapist in Boston who specializes in working with lawyers and other professionals. He speaks on topics related to mental health, work/life balance, and substance abuse in the legal profession. Contact: [Boston Professionals Counseling, LLC](#).

TRACY L. KEPLER, JD

[Tracy Kepler](#) is the Director of the [ABA's Center for Professional Responsibility](#). She has acted as an ABA liaison for the National Task Force on Lawyer Well-Being and Presidential Working Group on Well-Being in the Legal Profession. Tracy speaks on the relationship between well-being and professionalism and competence. Contact: Tracy.Kepler@americanbar.org.

MARTHA KNUDSON, JD, MAPP

[Martha Knudson](#) brings expertise in the law, business, and positive psychology to her work with individuals and organizations. She speaks on law and well-being, work-life conflict, strengths-based stress management, resilience, and [building psychological capital](#) – the psychological strengths associated with higher performance, lower stress levels, and better well-being. Contact: marthaknudson@mac.com.

PATRICK KRILL, JD, LLM, MA, LADC

Recognized as a leading authority on the substance use and mental health problems of lawyers, Patrick is the founder of [Krill Strategies](#) behavioral health consulting firm exclusively for the legal profession. Patrick works with legal employers to help them understand and navigate addiction, mental health, and well-being issues. Contact: patrick@prkrill.com

LARRY KRIEGER, JD

Larry Krieger is a professor at Florida State University law school and researcher on topics related to law student and lawyer well-being. He has led multiple studies on lawyer/law student functioning and well-being, including a [2016 study](#) of over 6,000 lawyers on happiness in the legal profession. Contact: LKrieger@law.fsu.edu.

JON KROP, JD

[Jon Krop](#), the Founder of Mindfulness for Lawyers, helps legal professionals reduce stress, boost performance, and cultivate resilience through mindfulness, a simple mental practice derived from meditation and validated by modern science. Jon has taught mindfulness at Harvard, the Pentagon, and the world's top law firms. He offers workshops, individualized coaching, and other services. Contact: jon@mindfulnessforlawyers.com

PAULA DAVIS-LAACK, JD, MAPP

[Paula Davis-Laack](#) is the Founder and CEO of the Stress & Resilience Institute, a training and consulting firm that partners with legal employers to teach resilience skills to lawyers and key stakeholders so they can be more effective at leading in a changing environment, managing stress and preventing burnout, and building innovative, high-performing teams. Contact: paula@pauladavislaack.com.

JENNIFER LEONARD, JD

[Jennifer Leonard](#) is the Associate Dean for Professional Engagement and Director of the Center on Professionalism at the University of Pennsylvania Law School. She educates lawyers and law



students about overcoming challenges created by lawyer culture that can harm their well-being and performance. Jen's work focuses on growth, the power of social connection, and the development of the whole attorney. She founded thehappyjd.com, which promotes well-being in the legal profession. Contact: jenleo@law.upenn.edu.

STEWART LEVINE, JD

[Stewart Levine](#) is a counselor, mediator, facilitator, trainer, and author. He seeks to generate well-being through education and training on collaboration and conflict resolution skills, emotional intelligence, communication, and relationships. He is the author of [Getting to Resolution: Turning Conflict into Collaboration](#) and curated and edited the forthcoming ABA book titled *The Best Lawyer You Can Be*, which provides tools and information to enable a successful career and a happy life. Contact: ResolutionWorks@msn.com.

CAROLINE ADAMS MILLER, MAPP

[Caroline Miller](#) is an author, speaker, coach, and positive psychology expert who focuses especially on well-being, goal-setting, and grit. She is the author of [Getting Grit](#) and other books and is an adjunct faculty in the Wharton Business School Executive Education School at the University of Pennsylvania. Contact: caroline@carolinemiller.com.

RONDA MUIR, JD

Ronda Muir, Principal of [Law People Management, LLC](#), focuses on lawyer personalities and solutions to people management challenges in the legal industry. She is the author of the ABA book [Beyond Smart: Lawyering with Emotional Intelligence](#), which is a comprehensive guide to emotional intelligence in the practice of law. Contact: RMuir@lawpeoplemanagement.com.

CORY MUSCARA, MAPP

[Cory Muscara](#) is an international speaker and teacher on mindfulness meditation. He has taught mindfulness-based leadership at Columbia University

and serves as an assistant instructor for the Master of Applied Positive Psychology graduate program at the University of Pennsylvania. In 2012, Cory spent 6 months in silence practicing meditation in Asia and now integrates this work into professional settings in a practical, evidence-based way. He's been a regular guest on the [Dr. Oz show](#). Contact: cory.muscara@gmail.com.

CHRIS L. NEWBOLD, JD

Chris Newbold, a member of the Presidential Working Group on Well-Being in the Legal Profession, is the Executive Vice President of ALPS, the largest direct writer of lawyer's professional liability insurance in the country. He understands how attorney well-being weaves into the underwriting process for malpractice insurance carriers, and regularly facilitates large groups intent on focusing on the well-being subject, with special emphasis on State-based task forces, working groups, bar association committees on well-being and law firm retreats. Contact: cnewbold@alpsnet.com.

ELAINE O'BRIEN, PhD, MAPP

[Elaine O'Brien](#) holds a PhD in Kinesiology, the Psychology of Human Movement, and a U Penn MAPP degree. She is Founder of Positive Fit Lab: Lifestyle Medicine. She consults, speaks, and trains on the topics of positive health, performance, vibrancy, physical activity, fitness enjoyment, motivation & adherence strategies. Contact: PositiveFitLab@gmail.com.

JENNIFER OVERALL, JD

[Jennifer Overall](#) is a former Biglaw attorney and a Certified Presence-Based® Coach (an ICF accredited coach training program) who works with lawyers and other professionals wrestling how to respond when they are feeling unfulfilled, frustrated, disengaged, or burned out at work. Contact: jen@jenniferoverall.com.

GLORIA H.M. PARK, PhD, MAPP

[Gloria Park](#) is a consultant, coach, and trainer for Perform Positive Consulting and Research Director at



[Wharton People Analytics](#). She applies the principles of sport and performance psychology to help individuals and organizations cultivate performance excellence while also supporting well-being. She has worked with athletes, performing artists, and various professionals in high stress environments teaching skills and strategies that unlock the potential for growth and achievement. Contact: Gloria@performpositive.com.

SUZANN PILEGGI PAWELSKI, MAPP

[Suzann Pileggi Pawelski](#) is an author, speaker, and well-being consultant specializing in the science of happiness and its effects on relationships and health—an area critical for lawyer well-being, given work-life balance research showing that healthy marital relationships contribute to thriving in both domains. Suzann is the co-author of [Happy Together: Using the Science of Positive Psychology to Build Love that Lasts](#), which she wrote with her husband, James Pawelski. Contact: suzieandjames@buildhappytogether.com.

JANE REARDON, JD

[Jayne Reardon](#) is the Executive Director of the Illinois Supreme Court Commission on Professionalism. She oversees programs and initiatives to increase the civility and professionalism of attorneys and judges, create inclusiveness in the profession, and promote increased service to the public. She also writes and speaks on professionalism topics, including ways lawyers can better manage time, client expectations, and stress. Contact: jayne.reardon@2civility.org.

CANDICE REED, JD, MAPP

[Candice Reed](#), a former practicing lawyer, is a speaker, professional coach, and legal staffing consultant. She focuses on topics such as cultivating well-being and increasing workplace engagement and satisfaction. Contact: creed@candicereedconsulting.com or creed@latitudelegal.com.

BECKY REICHARD, PHD

[Becky Reichard](#), an Associate Professor at Claremont Graduate University, focuses on all aspects of leader development, assessment, and development readiness. Becky directs [LeAD Labs](#), which is an applied research group focused on leader development. She teaches on topics like leader development, positive leadership, psychological capital, organizational behavior, and training and development. Contact: becky.reichard@cgu.edu.

AILEEN REILLY, JD, CPCC, ACC, ORSC-TRAINED

[Aileen Reilly](#) is a relationship coach and also a former felony prosecutor and Big Law white collar criminal attorney. Aileen works with professionals to improve their most important relationships, both at home, with their spouses or partners, and at work, with their co-workers and clients. When relationships are good, life is good. Contact: aileen@aileenreilly.com.

KAREN REIVICH, PHD

[Karen Reivich](#) is a leading expert in the fields of resilience, depression prevention, and positive psychology. She is the Director of Training Programs for the Penn Positive Psychology Center. She is the lead instructor and curriculum developer for the [Penn Resilience Programs](#), which delivers evidence-based workshops to organizations on resilience and well-being. She is the co-author of [The Resilience Factor](#). Contact: Reivich@sas.upenn.edu.

RICHARD C. REUBEN, JD

[Richard Reuben](#), a professor at University of Missouri School of Law, has focused on creating an infrastructure within the legal profession to support mindfulness, yoga, and contemplative practices, including founding the [Mindfulness in Law Society](#) and the Mindfulness Affinity Group of the Balance Section of the Association of American Law Schools. Reuben also teaches and researches mindfulness for students. Contact: ReubenMindfulness@gmail.com.



LARRY RICHARD, JD, PhD

[Larry Richard](#) is a speaker and consultant focusing on offsetting lawyer negativity with positivity using personality research, building psychological resilience in lawyers, and increasing psychological engagement in Millennials. Contact: dlarryrichard@lawyerbrain.com.

SCOTT L. ROGERS, MS, JD

[Scott Rogers](#) founded and directs Miami Law's Mindfulness in Law Program, where he teaches Mindfulness in Law, Mindful Ethics, and Mindful Leadership, and co-founded the University's Mindfulness Research & Practice Initiative. He created [Jurisight®](#), a CLE program to integrate mindfulness, neuroscience, and the law. He is the author of [The Six Minute Solution: A Mindfulness Primer for Lawyers](#). Contact: srogers@law.miami.edu.

DIANE ROSEN, JD, MBA, MAPP

Diane Rosen, a practicing lawyer, also facilitates training and education on engagement (from Millennials to transitioning senior partners), difficult conversations, conflict resolution, positively-oriented performance management, leading with strengths, multigenerational leadership, relational mentoring, onboarding, goal-setting and the meaning of wellbeing in the workplace. Contact: dianerosen105@gmail.com.

JOANNE CLARFIELD SCHAEFER, LLB, AccFM, ACC, CAPP

[Joanne Clarfield Schaefer](#) has a coaching and consulting practice focused on building resilience and developing practical stress management strategies and well-being initiatives. She is a former practicing attorney, partner, and past head of Professional Development at a global law firm. She has a Certificate in Positive Psychology and is a Certified Coach. Contact: joanne@jschaefercoaching.com.

EVA SELHUB, MD

[Eva Selhub](#) is a Board Certified physician, speaker, scientist, coach, and consultant in the fields of stress and resilience. She is the author of several books, including the forthcoming [The Stress Management Handbook](#) (January 2019 release). She works with clients, corporations, and scientific colleagues to redefine the approach to health and wellness to a model that incorporates improving culture, managing stress, and working with the natural environment to achieve maximum resilience and optimal leadership. Contact: dreva@drselhub.com.

JASON T. SIEGEL, PhD

[Jason Siegel](#) is a professor of psychology at Claremont Graduate University, the director of the Depression and Persuasion Research Lab, and the co-director of the Institute for Health Psychology & Prevention Science. His research focuses on the social psychology of health behavior change and includes work on communication strategies to encourage help-seeking and avoiding boomerang effects. Contact: jason.siegel@cgu.edu.

GULWINDER S. SINGH, JD

[Gulwinder "Gullu" Singh](#) is a corporate real estate attorney who teaches mindfulness meditation to lawyers and others. He has significant training as a teacher and practitioner and is deeply inspired to share meditation as an antidote to stress; a way to cope more effectively with the challenges of work and life; and to inject more sanity, compassion and wisdom into this world. Contact: gs@GulluSingh.com.

PAT SNYDER, JD, MAPP, ACC

[Pat Snyder](#), a professional coach, focuses on identifying and using character strengths in the practice of law, integrating work and life, developing self-compassion to increase the capacity for risk-taking and success, developing a daily practice of specific positive interventions, and navigating transitions smoothly through an ending, limbo



period and new beginning. Contact: Pat@lawyercoachpatsnyder.com.

ALISTAIR SOUTHERN, LLB (HONS), MSc (PSYCH)

[Alistair Southern](#) is an executive performance coach and former Magic Circle solicitor from London, England. He adopts an integrative approach to professional well-being that incorporates insights and techniques from positive and cognitive psychology, neuroscience, and learning theory to help lawyers remain positive, focused and resilient in their work. Contact: alistair@cerrocoaching.com.

DASHA TCHERNIAKOVSKAIA, JD, LMHC

Dasha Tcherniakovskaia, a formerly practicing lawyer, is a licensed therapist in Boston. She is in private practice and also speaks on topics related to lawyer mental health. Contact: dasha.lmhc@gmail.com.

DWAYNE A. THOMAS, JD, MAPP

[Dwayne Thomas](#) is a practicing attorney who also speaks and consults on topics related to lawyer success and well-being. Dwayne's speaking engagements have focused on how beliefs that spread through cultural transmission can impact success, how to pass the bar exam or any other test, and using research to improve the success of diversity recruitment efforts. Contact: DwayneAThomas@gmail.com.

DAN TOMASULO, PhD, MFA, MAPP

[Dan Tomasulo](#) is a core faculty member for the Spirituality Mind Body Institute, Teachers College, Columbia University, a licensed psychologist and psycho-dramatist, and a graduate from the Master of Applied Positive Psychology program at the University of Pennsylvania. Named by Sharecare as a top ten online influencer on the topic of depression, he was formerly a consultant for the Trial Lawyer's College in Wyoming, and specializes in the use of psychodrama, psychotherapy, and education to enhance well-being. Contact: tomasulo@tc.columbia.edu.

DIANA UCHIYAMA, JD, PsyD

[Diana Uchiyama](#) is a licensed Clinical and Forensic Psychologist and a former criminal defense attorney. She speaks about and promotes wellness in the legal profession, focusing on co-occurring disorders, substance use, and mental health, utilizing a strength based approach. Contact: duchiyoama@illinoislap.org.

MARY E. VANDENACK, JD, RYT300, ACE CFI

Mary Vandenack practices and teaches yoga, meditation, mindfulness, and pilates. Mary trained with, among others, Tias Little and Prajna Yoga at One Tree Yoga. She has comprehensive contemporary and classical training in mind-body work and teaches and speaks about mindfulness. As a practicing lawyer by day, Mary focuses on helping lawyers find balance and wellness. Contact: mvandenack@vwattys.com.

SARAH WEINSTEIN, JD, MA

[Sarah Weinstein](#), a former practicing lawyer, is an executive consultant and psychotherapist who specializes in working with lawyers and other professionals. She formerly served as the External Director of the [Stanford Law School Wellness Project](#). Contact: sarah@sarahweinsteintherapy.com.

ANGELA WRIGHT, JD, LLM, LLB, MSc, COACHPSYCH

[Angela Wright](#), a former lawyer, is a consultant, coach, and researcher. She works with lawyers and law firms to develop the interpersonal skills, cultures and environments that drive peak performance and support well-being, including enhancing Mental Toughness, Psychological Capital, Engagement, Motivation, Agility, Resilience, Complexity of Mind, Positive Leadership & Workplace Practices. Contact: angelajwright@gmail.com.



COURTNEY WYLIE, JD, CPC, ELI-MP, PhD ADMITTED

[Courtney Wylie](#), an experienced professional development specialist in the legal profession, will start a PhD program in positive psychology in the fall of 2018. Her focus is on working with lawyers using evidence-based strategies to create balance, improve emotional intelligence, and prioritize self-care to enhance health, happiness, and success. Contact: cowylie@gmail.com.

JEFFREY YIP, PhD

[Jeffrey Yip](#) is an Assistant Professor of organizational psychology at Claremont Graduate University. He directs the [Talent Science Lab](#), which is an applied research group focused on talent management and career development. Jeffrey's research is in the areas of leadership, mentoring, and career development. His professional experience includes work in leadership development with the Center for Creative Leadership. Contact: Jeffrey.Yip@cgu.edu.

**Do You Have A Well-being
Speaker Or Consultant
To Recommend?**

Please contact us:
abrafford@aspire.legal

The image shows a close-up of a spiral-bound notebook with a blue pen resting on it. The notebook is open to a blank page. The background is a dark, textured surface. The top of the image has a decorative header with a dark blue background and a blue triangle on the right side.

ACTIVITY WORKBOOK

WHAT IS THE WORKBOOK?

In the following pages, you'll find Well-Being Worksheets that provide hands-on activities, guidelines, reminders, and the like to help boost well-being. The Worksheets can be used by individual lawyers or collectively as part of legal employers' well-being initiatives.

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How To Be Happier? Make it a Priority

Contributed by: Anne Brafford, JD, MAPP, PhD In Progress
abrafford@aspire.legal | www.aspire.legal

While genetics play a role in our patterns of happiness, our biology doesn't have to be our destiny. Much about our genetic makeup is malleable. Also, our life circumstances and factors within our voluntary control play a big role in our level of happiness (Lyubomirsky et al., 2005). This is good news. It means that even those born with a genetic tendency for gloominess have an opportunity to take control over factors that can significantly increase their well-being.

HAPPINESS IS WORTH THE EFFORT

Most of us would like more happiness in our busy lives, and science shows that it's worth making an effort. People with a Positive Emotional Style (PES)—who tend toward positive emotions—are more resilient, healthier, and happier. Among other things, they have fewer symptoms of anxiety and depression; live longer; have better immune systems, cardiovascular health, and pulmonary functioning; and have higher life and work satisfaction (Brafford, 2017). Science suggests that creating a personal Happiness Plan can contribute to our health and success.

PRIORITIZE POSITIVITY

When designing your own Happiness Plan, you'll want to keep in mind that, for evolutionary reasons, bad is stronger than good: Negative emotions are much stronger than positive ones. We're hardwired to react more strongly to bad things. As a result, we're not likely to feel happy (and experience the related beneficial effects) unless our positive emotions outweigh bad ones.

To feel happy, shoot for a ratio 3-5:1. In other words, try to offset every negative experience with three to five positive ones. This is not to say that we should strive to eliminate negative emotion (which would be impossible anyway!). Negative emotions are useful.

They let us know, for example, when we need to make important changes and often accompany early stages of growth activities. But if negative emotions dominate our lives, our health and well-being will suffer. Especially if you experience a high frequency of negative emotions as a regular part of your work (as lawyers often do), you may need to consciously seek out good things to restore your equilibrium after something bad happens. No one said happiness didn't require some work!



But be aware that pursuing happiness for its own sake can backfire and make us less happy. The best strategy is to deliberately plan daily opportunities that can lead to naturally-occurring positive emotions (Datsu & King, 2016). Focus on the journey, not the destination. The benefits are greater positive emotions and well-being.

CHOOSE HIGH-VALUE HAPPINESS ACTIVITIES

Not all activities that trigger short-term positive emotions contribute equally to our long-term happiness. Scarfing down an entire pizza with extra cheese, for example, may give me a jolt of temporary pleasure, but it's unlikely to do much for my long-term well-being. Activities that will give the biggest boost to our health and happiness are those that support our basic needs as continually-evolving



human beings. The challenge will be to figure out how to include more activities that support these needs into your everyday life. It won't happen by accident.

- ✓ **Connection & Belonging.** We humans have a fundamental need to connect and belong. This includes supportive relationships as well as a sense of belonging or fit with groups we care about. A sizable body of inter-disciplinary research shows that this need is powerful and pervasive. It can help or harm our cognitive processes, emotional patterns, behaviors, and health and well-being. A poor sense of belonging and feelings of exclusion can trigger self-defeating behaviors like procrastination, lethargy, and depression.
- ✓ **Mastery Activities.** Our fundamental needs also include feeling confident in our ability to master new skills and to have an impact on our environment. Continuous learning and a growing sense of mastery in activities that are significant to us are keys to this source of well-being.
- ✓ **Maximize Autonomy.** A third fundamental need is driven by a basic human desire to be "self-creating" and under self-rule. It's about feeling authentic and like the author and architect of our own behavior—that our behavior aligns with our interests and values and is within our responsibility and control.
- ✓ **Help Others.** Research also suggests that we have a basic need to feel that we're benefiting others or the common good.
- ✓ **Do Something Meaningful.** We often waste our scarce free time by mindlessly watching TV, paging through gossip magazines, reading click-bait on the Internet, or perusing social media. These don't contribute much to our sense of meaningfulness in our lives or work--which research shows is powerfully related to health and happiness. Meaningful activities include those that make us feel that we're doing something

significant within your own values system and/or that help us make progress toward goals or a general purpose.

PLAN & TRACK YOUR PROGRESS

It may seem counter-intuitive but, like anything worth doing, increasing happiness will take effort and planning. Below are suggested steps to get started on your Happiness Plan:

- 1. Learn Your Behavior Patterns.** Much of our behavior is so automatic that it occurs outside of our awareness and as a matter of habit. To begin to change our patterns to boost well-being, we need to gain better awareness of them. A good way to do so is to create an Activity and Mood Monitoring Chart. For a week or more, complete an activity log (sort of like your billable time log) on an hour-to-hour basis. Write down brief statements of what you are doing each hour (Addis & Martell, 2004).
- 2. Learn Associated Moods.** Next, for each activity, write down a few words that describe how you felt during the activity. Words might include, for example, happy, joyful, passionate, angry, anxious, or sad. Rate each emotion on a scale of 1 to 10, with 10 being the most intense (Addis & Martell, 2004).
- 3. Review What You Noticed.** After you've created your logs for a week, review them and identify patterns. Did your moods vary or not? Are there common times of the day that are more difficult or easier for you? Are there situations that routinely make you happy or are associated with negative emotions? (Addis & Martell, 2004).
- 4. Identify Behaviors That Have Positive/Negative Impact.** Next, review your logs and identify what activities or behaviors made you feel bad on a regular basis. Consider what alternatives you may have that can make you feel better or improve the situation. Also identify activities and behaviors that regularly boosted your mood. Consider why that was so and how you can increase those ingredients in your daily schedule.



5. Create a Schedule of Mood-Boosting Activities.

After looking over the behaviors, activities, and alternatives from Step 4, create a daily log for the upcoming week in which you schedule do-able activities that may help you avoid negative experiences and increase positive ones. Also try to choose high-value happiness activities that are most likely to have the biggest positive impact:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
8:00 am							
9:00 am							
10:00 am							
11:00 am							
12:00 pm							
1:00 pm							
2:00 pm							
3:00 pm							
4:00 pm							
5:00 pm							
6:00 pm							
7:00 pm							
8:00 pm							

- How can you connect more frequently with people who give you energy? How can you foster a greater sense of belonging inside of work and in non-work activities? What can you do to contribute to others' sense of connection and belonging?
- What can you do to support your need for continual learning and mastery--both inside work and in non-work activities? How can you help others do the same?
- How can you more effectively plan your schedule and activities so that you feel that they are more aligned with your own interests and choices? How can you reduce feeling that you're being "bossed around" by your schedule and others' demands? How can you help support others' autonomy?
- What can you do each day or each week to support others or the common good? How can you highlight for others how their contributions have helped you, clients, or others?

- How might you foster a greater sense of meaningfulness in your work and non-work life? What can you do to ensure that meaningful activities are prioritized over mindless activities? How can you help others feel a greater sense of meaning?

Start relatively small so that you can ensure early wins that will fuel your motivation to keep at it. As you pick up momentum, you can increase the difficulty of your goals and begin designing realistically ideal days that are filled with more positive experiences.

6. Adopt a Mindset of Curiosity. As you progress through these steps, do so with an experimental (not a judgmental) mindset. Notice how you feel and whether your plan is working or not. No matter what the outcome, you're likely to learn something useful. Keep trying new experiments to discover what works best for you.

7. Periodically Measure Your Happiness. To test whether your Happiness Plan is working, consider measuring your level of happiness with a validated scale. To get a base line, take a happiness survey before you launch your Happiness Plan. Then repeat the survey in six-week intervals and keep track of your results. You might find your happiness levels perking up!

One good measure to use is Subjective Well-Being, which is discussed in the Assessments section of the Toolkit. It measures life satisfaction and your balance of positive to negative emotions. It has been linked to many positive well-being consequences.

If you're experiencing depressive symptoms, you might also decide to use a depression scale to track your progress--such as the [CES-D Scale](#) discussed in the Assessment section. The recommendation here to prioritize positivity is similar to what's called "behavioral activation." This is a cognitive behavioral-based strategy for overcoming depression and other mental health difficulties that's been used effectively as part of self-help programs and in conjunction with clinical therapy (Addis & Martell, 2004). The strategy



involves identifying one's values and scheduling daily activities to better align with those values. To learn how to take a structured approach to behavioral activation, Drs. Michael Addis and Christopher Martell's award-winning workbook [Overcoming Depression One Step at a Time](#) guides readers through helpful exercises.

CONCLUSION

As the above reflects, for many of us, making up our minds to be happier and healthier by prioritizing positivity is likely to have the intended results. Fellow lawyer Abraham Lincoln appears to have had it about right when he said, "Folks are usually about as happy as they make up their minds to be."

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High-Quality Happiness Activities



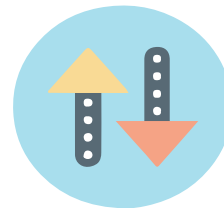
Connection & Belonging

Supportive relationships and a sense of belonging or fit with groups we care about.



Mastery Activities

Continually learning, growing, and gaining confidence in our ability to make things happen.



Autonomy

Feeling that our choices are self-authored and aligned with our own preferences. The opposite of feeling controlled, forced, or guilt-driven.



Helping Others

Having a positive impact on others or the common good.



Meaningfulness

Feeling that our activities are significant within our own values system.



6 Sources of Well-Being: Create Your PERMA-H Formula

Contributed by: Paula Davis-Laack, JD, MAPP

www.pauladavislaack.com | paula@pauladavislaack.com

PERMA is a [theory of well-being](#) developed by Dr. Martin E.P. Seligman and includes the following five dimensions: Positive emotions, Engagement, Relationships, Meaning, and Achievement (also called Accomplishment). According to Dr. Seligman, people thrive or flourish when they prioritize all of these dimensions. While Dr. Seligman has not formally added “health” to his theory, my colleagues and I think it is an indispensable aspect of well-being.

INSTRUCTIONS FOR PART 1:

Answer the questions below and then assign a value for each category, for a total of 40 points (your “PERMA-H Score”).



POSITIVE EMOTION: What positive emotions do you experience regularly? What activities facilitate those emotions?

VALUE: _____



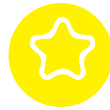
ENGAGEMENT: What activities cause you to lose track of time and make you feel like you’re “in the zone?”

VALUE: _____



RELATIONSHIPS: Who are the people at work and home who most contribute to your sense of well-being? Who makes you feel the most authentic?

VALUE: _____



MEANING: What contributes to your sense of meaning and purpose?

VALUE: _____



ACHIEVEMENT: What activity types drive you? What does achievement mean to you?

VALUE: _____



HEALTH: Burnout prevention requires self-care. How do you re-charge your batteries at work and outside work? What prevents you from fostering good self-care habits?

VALUE: _____

INSTRUCTIONS FOR PART 2:

Step 1. Create a PERMA-H Score that represents how you feel when you’re at your best.

Step 2. Now create a second PERMA-H Score for how you feel on a typical day.

Step 3. What are the similarities and differences?

(The PERMA model was created by Dr. Martin E.P. Seligman. Thanks to my colleague Gretchen Pisano for introducing me to the concept of creating a formula.)



Grow Your Gratitude

Contributed by: Anne Brafford, JD, MAPP, PhD in Progress
 abrafford@aspire.legal | www.aspire.legal

Because how you *think* about yourself and everything around you is more important to your happiness than your actual objective circumstances, increasing your attention to all the good things in your life can significantly enhance your happiness. Multiple studies have shown the positive power of gratitude (e.g., Emmons & McCullough, 2003; Lyubomirsky, Sheldon et al., 2005; Sheldon & Lyubomirsky, 2006). People who are consistently grateful are happier; more energetic; and less depressed, anxious, and envious (Lyubomirsky, 2008).

THREE GOOD THINGS

One well-tested activity is to take time once a week to write down three or more things for which you're grateful. Studies have shown that people who do this activity for six weeks markedly increase their happiness (Lyubomirsky, Sheldon et al., 2005). But it's also important to vary your gratitude activities so that you don't get bored. The good effects can wear off if you do the same activity all the time. Below is a list of different gratitude activities for you to try. Pick one day each week to do your gratitude activity—e.g., Thankful Thursdays. And then pick an activity. Try one for three or more weeks and then switch to another.

GRATITUDE JOURNAL

Once a week, think about everything—large and small—for which you are thankful (e.g., got called on in class and was prepared, roommate made a delicious dinner, tulips are blooming). Think about things you're good at, advantages you've had, people who care about you and have touched your life. Then pick three to five things and write a brief note about them. Try out a gratitude journal website or smart phone app (e.g., My Gratitude Journal by Happytapper), which will send you regular reminders.

APPRECIATIVE ART

Engage in something artistic to express your gratitude to another. Draw or paint a picture, make a collage, sculpt with clay, etc. Or write a poem, a song, or a story. Studies indicate that art-creation boosts mood (Dalebroux, Goldstein, & Winner, 2008). Evidence suggests that art-making that depicted something happy was more effective at improving short-term mood than using art to vent negative emotions (Dalebroux et al., 2008).

Evidence also indicates that a variety of different art-making activities (e.g., drawing, painting, collage-making, clay work, etc.) may reduce anxiety (Sandmire, Gorham, Rankin & Grimm, 2012). So, engaging in an appreciative art activity may give you benefits both from artistic engagement and from your grateful thinking.





GRATITUDE PHOTO COLLAGE

Taking and sharing “selfies” is popular, but try this too: For a week, keep a look-out for every-day things for which you’re grateful (e.g., your dog, a warm garage in winter, dinner with friends, your baby sister) and take photos of them. At the end of the week, post them all on your favorite social networking website with fun notes. Research shows that sharing good things with others (the more the better) actually increases your enjoyment of them (Gable & Reis, 2004; Gable & Gosnell, 2011). So share your photos with friends and explain why they represent something for which you’re grateful.

GRATITUDE LETTER

Think about the people for whom you feel grateful—a family member, old friends, a special teacher or coach, a good boss. Write a letter expressing your gratitude and, if you can, visit that person and read it aloud or call them on the phone. Describe in detail what they did for you and how they affected your life. You might even write a letter to people who are helpful everyday but whom you don’t know—e.g., postal carrier, garbage removers, bus drivers, politicians, authors. You might also choose to write a letter but then not deliver it.

One study showed that participants who spent 15 minutes writing gratitude letters once a week over an eight-week period became happier during and after the study (Lyubomirsky, 2008). Check out this fun [video from Soul Pancake](#) showing real-life results from the gratitude letter activity.

GRATITUDE JAR

Designate a jar or other container as the Gratitude Jar and invite others to drop notes in whenever someone does something helpful. Then read the notes aloud once a week. Use this activity with your roommates, classmates, family, team members, work colleagues—any group that spends significant time together.

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Do Acts of Kindness

Contributed by: Anne Brafford, JD, MAPP, PhD in Progress
 abrafford@aspire.legal | www.aspire.legal

Scientific studies have shown that doing acts of kindness for others is not just helpful to them, it's also good for your own well-being (Lyubomirsky, et al., 2005). There are a number of ways to maximize your happiness from acts of kindness:

BURSTS OF KINDNESS

People typically get a bigger boost to their happiness when they do a bunch of smaller acts of kindness or one big act of kindness all on one day rather than spread out over a week (Lyubomirsky, et al., 2005). So consider adopting "Friendly Fridays" (or whatever day of the week you like) to shower those around you with kindness.

YOU CHOOSE

Your acts of kindness should be things you choose and not too disruptive to your life (Della Porta, 2012).

AIM FOR VARIETY & NOVELTY

Variety is important. Shake it up so that you don't get bored. You're more likely to sustain the benefits of doing acts of kindness when you vary your activities (Lyubomirsky & Layous, 2013). Also, your acts of kindness should be new and outside of your routine activities.

KEEP A KINDNESS JOURNAL

Record your planned acts of kindnesses and reflect on the experience. There's evidence that counting your own acts of kindness contributes to increases in happiness (Otake et al., 2006).



BE MINDFUL

Do your kindness activities mindfully. Put yourself in the other persons' shoes and consider the impact of your actions on their lives (Lyubomirsky, 2007).

DO SECRET ACTS

Remember that acts of kindness are not all about receiving approval and admiration. Consider doing at least one act of kindness per week anonymously. Giving for kindness' sake can reap tremendous rewards.

BE AUTHENTIC

Acts of kindnesses can be big or small. What is important is that they be a part of your kindness intention. You'll want to design

activities that feel authentic for you.

43 ACTS OF KINDNESS TO DO FOR YOUR BOSSES, COLLEAGUES, STAFF, & CLIENTS

"No act of kindness, no matter how small, is ever wasted." —Aesop

1. Offer to help them with a difficult project or meet a tight deadline.
2. Tell them why you appreciate them.
3. Be a cheerleader for their ideas.
4. Share your expertise with them.
5. Do great work that's ready to go and requires little more from them.
6. Send them flowers.



7. Bring their favorite kind of coffee from their favorite coffee shop.
8. Assume their good intentions.
9. Make sure they know why their work matters and how it benefits others.
10. Admit to them when you're wrong.
11. Invite them to lunch.
12. Put your phone away when you're with them.
13. Tell them thank you.
14. Cheer them up after disappointments.
15. Write, make, or buy something to provide encouragement when they're experiencing difficulties.
16. Praise them to others.
17. Really be present and listen to them without interrupting.
18. Learn something new about them.
19. Look for opportunities to make helpful introductions.
20. Celebrate their accomplishments.
21. Help them before they ask.
22. If they're overwhelmed with personal or work challenges, ask if you can help in some way.
23. Forward articles that may interest them.
24. Allow them to help you.
25. Pass along useful information.
26. Buy them a book that you know they'll love.
27. Leave positive sticky notes on their computers.
28. Scout for reasons to compliment them. Shoot for three people a day.
29. Give them a "care package" when they're preparing for trial, participating in a deal closing, etc.
30. Send them greeting cards on holidays.
31. Notice and note their progress on something important to them.
32. Compliment a good presentation, high-quality meeting, contribution on a call.
33. When you open your inbox each day, make the first email you write a compliment, note of support or appreciation, or other positive jolt.
34. Sneak into their offices and leave them candy or other treats.
35. Get to know them as people, remember the details, and follow up on them.
36. Don't gossip or talk negatively about them.
37. Make them laugh.
38. Celebrate their birthdays by making them cards and a cake.
39. If they blog or publish online, read, comment, circulate, and encourage others to do the same.
40. Create a spreadsheet that includes their likes (e.g., simple things like favorite candy, favorite drink, favorite snack, etc.) and use it regularly.





41. Share credit with them.
42. Learn and use their names.
43. Start meetings by inviting them to share “what’s going well”?
44. Be their “wing man.” Find out their strengths and accomplishments and share them with others at conferences, meetings, networking events, retreats, etc.

PAY SPECIAL ATTENTION TO NEWCOMERS

Getting started as a new lawyer or even starting at a new place of work is stressful, so try to pay special attention to newcomers when doling out your acts of kindness:

- Invite them to networking events and “shepherd” them through.
- Recommend professional associations for them to join.
- Drop by their offices and say hello.
- Make introductions—to peers, staff, leaders, clients, insiders, etc.
- Invite them to attend hearings, meetings, etc. with you.
- Offer to observe them in a hearing, deposition, call, etc., and provide feedback.
- Mentor them.
- Give guidance on developing their reputation.
- Help them learn the firm’s “political” ropes.
- Praise them to higher-ups and insiders.
- Leave a “welcome” greeting card signed by everyone on the team/department/office.
- Tell them all the great reasons they were hired.
- Leave a note saying, “We’re glad you’re here!”
- Take a strengths assessment together and share

ideas about using those strengths at work.

- Discuss their goals and how you can support them.

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Psychological Capital: Build Your Mental Strength & Flexibility

Martha Knudson, JD, MAPP

www.linkedin.com/in/martha-knudson | marthaknudson@mac.com

P psychological Capital (PsyCap) – the powerful combination of our resilience, optimism, hope, and confidence – helps us to keep our competitive edge while managing the stress of lawyering. Research links high levels of PsyCap with better job performance, a greater ability to overcome obstacles, higher job satisfaction, and elevated well-being (Avey, Reichard, Luthans, & Mhatre, 2011; Luthans, Youssef-Morgan, & Avolio, 2015).

PsyCap can be thought of as positive mental strength and flexibility. It can be developed by building these four mental capacities:

- **Resilience:** Being able to cope, sustain, and bounce back to attain success when challenge strikes.
- **Optimism:** Having a positive expectation about your ability to meet challenges and succeed now and in the future.
- **Hope:** Having the ambition to persevere toward goals and, when necessary, to change direction to reach goals in order to succeed.
- **Confidence (or Self-efficacy):** Having the belief you can successfully take on and put in the necessary effort to succeed at challenging tasks.

While each of these capacities individually contributes to our positive mental strength, when combined and used together they become stronger than the sum of their parts.

This worksheet will help you build each PsyCap capacity by having you work through a real-life adversity. You will identify new ways to look at your issue and challenge basic assumptions you might

have about your ability to overcome it. Then, you will take an inventory of the resources you have to help you successfully resolve the problem and use your critical thinking skills to see if you've overlooked anything. Finally, you will set a S.M.A.R.T. goal, devise multiple ways to reach it, and anticipate ways to overcome any obstacles to your success.



STEP 1:

Describe a challenging situation that is not going as well as you would like.

STEP 2:

Reflect on your mindset.

Take a minute to understand the nature of your mindset when the situation first occurred, and you initially assessed the risk. How did you respond? Were you energized and ready to rise to the challenge? Or, were you overwhelmed? Defeated? Something else?



STEP 3:

Frame the situation again in terms of its actual impact.

- A. What is the real risk? Is this risk something in or out of your control? What are your options? Is it possible your initial mindset colored your first assessment?
- B. Are there any different ways to look at the situation that will allow you more options or control over your success? [Note: if you get stuck, it can help to get a colleague's viewpoint. They might see it differently than you.]

STEP 4:

Identify helpful skills and resources. *[Note: these can include your knowledge, work ethic, legal skills, colleague networks, ideas from others, finances, creativity, past experience, and the like.]*

- A. List the skills and resources you have used to respond to the challenge.
- B. Are there other resources available you haven't considered?

STEP 5:

Set a goal that is directly related to overcoming your challenge.

- A. Write down your goal using S.M.A.R.T. criteria – Specific, Measurable, Attainable, Relevant, and Timely. [Note: pick a goal you want to achieve rather than avoid.]
- B. Break your goal into manageable small steps and list them in sequential order.

STEP 6:

Identify multiple ways to goal accomplishment.

- A. Write down all the paths you can think of that could realistically lead you to reaching your goal.
- B. For each path make a list of the skills and resources you will need.

STEP 7:

Identify and plan ways to overcome potential obstacles.

- A. List the obstacles that could get in the way of each path you identified in Step 6.
- B. List how you can deal with each of these obstacles. Are there ways around them? Be specific.

STEP 8:

Take time to visualize your success.

Set aside 10 minutes every day to think through the steps of this worksheet and visualize your success. Really get into it. See each step with as much detail as possible. Imagine using your resources to navigate the different paths toward your goal with you confidently getting around any obstacles in your way. Then, visualize yourself reaching your goal and imagine celebrating your win!

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RESOURCES

Contributed by Anne Brafford

Reading Recommendations

- Martha Knudson, [Building Attorney Resources: Helping New Lawyers Succeed Through Psychological Capital](#)
- Fred Luthans, Carolyn M. Youssef-Morgan, & Bruce J. Avolio, *Psychological Capital and Beyond*
- Martin Seligman, *Learned Optimism*
- Karen Reivich & Andrew Shatte, *The Resilience Factor*
- Shirzad Chamine, *Positive Intelligence: Why Only 20% of Teams and Individuals Achieve Their True Potential*
- Russ Harris & Steven Hayes, *The Confidence Gap: A Guide to Overcoming Fear & Self-Doubt*
- Louisa Jewell, *Wire Your Brain for Confidence: The Science of Conquering Self-Doubt*
- Katty Kay & Claire Shipman, *The Confidence Code: The Science and Art of Self-Assurance--What Women Should Know*
- Amy Cuddy, *Presence: Bringing Your Boldest Self To Your Biggest Challenges*
- Carol S. Dweck, *Mindset: The New Psychology of Success*
- Cary Cooper, Jill Flint-Taylor, & Michael Pearn, *Building Resilience for Success: A Resources for Managers and Organization*



Reframe Stress & Adversity

Contributed by: Paula Davis-Laack, JD, MAPP

www.pauladavislaack.com | paula@pauladavislaack.com

Lawyers spend years learning, and then practicing how to “think like a lawyer.” Professionally, lawyers are responsible for doing all of the due diligence in a matter, analyzing what could go wrong in a situation and steering their clients away from negative impact. That’s important when lawyers are engaged in the practice of law; however, when lawyers practice looking at issues through such a pessimistic, rigid lens 12-14 hours a day, that thinking style becomes harder to turn off when it’s not needed. Ultimately, it can undercut leadership capabilities, interactions with clients, colleagues, and family and cloud the way life is viewed generally.

This skill will help you think more flexibly about stressful situations.



STEP 1:

Think of a situation you are struggling with or frustrated about, and write it in the space below:

STEP 2: LIST...

The aspects of the situation you can control or influence:

The aspects of the situation you can’t control or need to accept:



The specific action steps you can take to make the situation better:

(Based on the work of Drs. Martin Seligman, Karen Reivich, & colleagues).

RESOURCES

Contributed by Anne Brafford

Book Recommendations

- Martin Seligman, *Learned Optimism*
- Karen Reivich & Andrew Shatte, *The Resilience Factor*
- Shirzad Chamine, *Positive Intelligence: Why Only 20% of Teams and Individuals Achieve Their True Potential*
- Kelly McGonigal, *The Upside of Stress*

Videos

- Kelly McGonigal, **How to make stress your friend** (www.TED.com)

Web Resources

- www.happify.com
- www.superbetter.com
- **Mood Gym** is a subscription-based online application created by academics to teach cognitive reframing—a key to mental health and resilience.

Smart Phone Apps

- A growing number of smart phone apps are available to teach cognitive reframing and other psychological tools to manage stress and reduce depression and anxiety. Examples include **Pacifica**, **Betterhelp**, and **Ginger.io**.



Practice Mindfulness to Boost Well-Being & Performance

Contributed by: Jon Krop, JD

www.mindfulnessforlawyers.com | jon@mindfulnessforlawyers.com

Meditation has become enormously popular, and with good reason: it's great for you. Research shows that meditation can reduce stress and anxiety [1], increase resilience and well-being [2], develop emotional intelligence [3], boost focus [4], enhance cognitive flexibility [5], and improve physical health [6].

MEDITATION: WHY & HOW

Here's one way to understand meditation: **It is the practice of learning to stay in the present moment and out of our heads.** We spend so much time wrapped up in worries, fears, plans, and memories. When we untangle ourselves from those mental stories and rest in the present moment, we discover a refreshing calm and simplicity. The simple, present-moment awareness we cultivate through meditation has a name you may have heard before: mindfulness.

Here's a simple, powerful meditation technique you can try (a [video version available here](#)):

1. Sit down: Find a comfortable seated posture that lets you maintain a straight, unsupported spine. The simplest way is to sit in a chair, with both feet on the floor and your hands on your thighs. For detailed

instructions on meditation posture, see [this video](#).

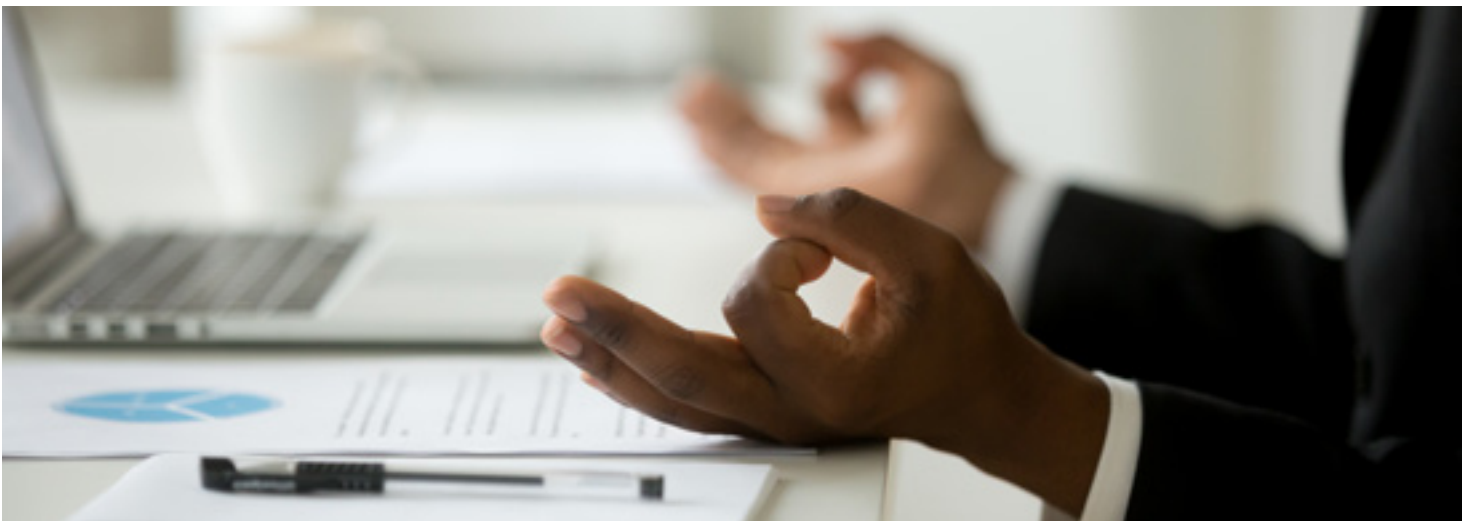
2. Find your anchor: Bring your attention to the sensation of air passing through your nostrils as you breathe. That sensation will help anchor you in the present moment.

3. Rest attention on the anchor: Rest your attention on the breath at the nostrils. Form the gentle intention simply to observe the flow of sensation at that spot. As you do this, there's no need to deliberately control your breath. If the rhythm of your breath changes on its own, that's fine.

4. When the attention wanders, notice that and return: Eventually, you'll get distracted. Not only is that okay, it's supposed to happen. Just notice that the attention has wandered and then gently escort it back to the breath at the nostrils — back to the present.

Some final thoughts on meditation:

Meditation is often soothing and enjoyable... but not always. Like most things worth doing, meditation will sometimes challenge you. It can be agitating or uncomfortable on occasion. It can even stir up





difficult thoughts, emotions, or memories. These experiences are a normal part of the process and are actually useful learning opportunities. I hope you'll embrace the challenge and growth it brings.

One last tip: **Meditating regularly is more important than sitting for a long time.** Even a few minutes a day can bring real benefits. The Tibetan meditation masters say, "Short sessions, many times."

MINDFULNESS & ANXIETY

Anxiety isn't fun, but it's totally normal — everyone experiences it. Luckily, there are simple ways to work with anxiety so that it's less of a problem. To use these strategies effectively, it's helpful first to understand how anxiety arises and grows.

The root of anxiety is avoidance. We feed anxiety whenever we avoid uncomfortable feelings, thoughts, and situations [7]. Because anxiety is itself uncomfortable, we avoid it when it appears, which makes the anxiety worse, which triggers more avoidance, and so on. It's a vicious circle.

However, there's good news: avoidance is a reflex we can unlearn. Through mindfulness practice, we can experience discomfort without fighting or flinching away. In doing so, we deprive anxiety of its fuel source.

Here are some mindfulness practices that can help when you're feeling anxious:

THE MINDFUL PAUSE

This technique takes about 30 seconds. You can do it sitting, standing, or lying down. Your eyes can be open or closed. The practice is quick and discreet, so you can do it almost anywhere. It has four steps:

[\(Video version available here.\)](#)

1. Take a deep breath.

Take a slow inhale and exhale. Fill your lungs all the way, but really take your time doing it.

2. Turn toward your body.

Turn your attention toward the sensations in your body. Whatever comes up, just notice it: warmth, pressure, itching, tickling, aching, etc. There's no need to evaluate the sensations as "good" or "bad." Itching is just itching. Coolness is just coolness.

If you notice sensations that seem related to anxiety, those are particularly good to turn toward. You're developing the skill of observing those sensations without resisting, condemning, or judging them.

This step can be as quick as one in-breath or out-breath.

3. Rest your attention on your breath.

Pay attention to the sensation of air passing through your nostrils as you breathe. This is the same technique as the meditation practice we explored earlier.

Just like the previous step, this step needn't take longer than one in-breath or one out-breath.

4. Carry on with your life!

The last step of the mindful pause is simply to re-engage with the world, without hurry. Don't lunge for your phone or speed off to your next activity. Move at a leisurely pace.

FLOATING NOTING

Like the Mindful Pause, floating noting works by helping you turn toward your present-moment experience instead of avoiding it. However, it's a bit more comprehensive and less bite-sized. Once again, you don't need to adopt a special posture or even find a quiet place. Here's how you do it:

[\(Video version available here.\)](#)

- **Let your attention float freely.** As your attention drifts, various sights, sounds, sensations, and thoughts may grab your attention and take center stage in your awareness.



- As this happens, just **(1) notice whatever stands out in awareness and (2) give it a light mental label.**
- **To keep the labeling simple, we'll use categories:** “seeing” for sights, “hearing” for sounds, “feeling” for physical sensations, and “thinking” for anything that arises in the mind.
- **As new objects arise in awareness, just continue noting whatever is most prominent.**

Let's say the sound of a passing car draws your attention. You just label the experience “hearing.” Then a thought arises — maybe something about a client matter you're working on. Instead of getting caught up in the thought, you label it “thinking.” The thought then triggers a hollow sensation in your stomach, which you label “feeling.”

Even difficult experiences become less overwhelming when you break them down in this way. An anxious sensation or a worried thought is less of a problem when you just notice it, label it, and move on.

Here are a few practice tips:

- Find a nice, steady rhythm for your noting. Personally, I find that noting once every couple of seconds feels good. I advise against noting more quickly than that. Fast noting can produce unpleasant side effects and is best done under a teacher's supervision.
- If you're somewhere private, you can note out loud. It helps you stay focused and present. It can even bring you into a pleasant sort of “flow state.”
- If the same object stands out in your awareness for a while, just keep noting it: “hearing... hearing... hearing...”
- If multiple objects stand out at once, and you don't know which one to label, just pick one.
- If you have no idea what to label in a given moment, you can just notice that uncertainty and label it “don't know.”



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RESOURCES

Contributed by Anne Brafford

Book Recommendations

- Jeena Cho & Karen Gifford: *The Anxious Lawyer: An 8-Week Guide to a Happier, Saner Law Practice Using Meditation*
- Rick Hanson, *Buddha's Brain*
- Daniel Goleman & Richard Davidson, *Altered Traits: Science Reveals How Meditation Changes Your Mind, Brain, & Body*
- Cal Newport: *Deep Work*

Videos

- Andy Puddicombe, **All It Takes Is 10 Mindful Minutes** (www.TED.com)

Web Resources

- Mindfulness-Based Stress Reduction (MBSR) is a well-established, meditation-based stress management program developed by Prof. Jon Kabat Zinn. MBSR resources are widely-available and some can be found [here](#).

Smart Phone Apps

- Headspace: Among the most popular meditation apps.
- 10% Happier: **Meditation for Fidgety Skeptics**. A popular meditation app.



The Emotionally Intelligent Path To Well-Being

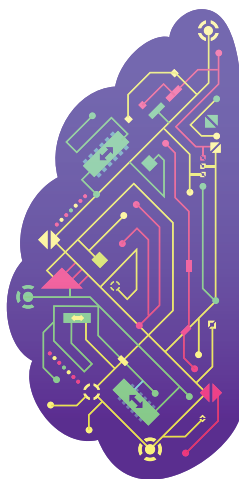
Contributed by Ronda Muir, JD

RMuir@lawpeoplemanagement.com | Law People Management LLC

RAISING AWARENESS OF EMOTIONS

A lack of awareness of emotions (our own and others') is on average the greatest emotional intelligence (EI) deficit in lawyers. Emotional awareness gives us the data we need to spot and then solve emotional problems which if unaddressed can sabotage our productivity and our mental and physical health.

Here are some suggestions aimed at helping us gain greater awareness of emotions. Remember that changing an old habit or establishing a new one usually takes at least three weeks of hard work, and sometimes longer, so don't despair if you don't see immediate results. Persistence will pay off.



1. Take an EI Assessment. A number of EI assessments can give you good information about your personal strengths and challenges. The major ones, such as the MSCEIT, EQi 2.0, and ECSI, take approximately 40 minutes to complete, charge a fee, and often include professional feedback to help you understand your results. While there are plenty of free assessments, and some may give you some useful information, for the most part they are not reliable indicators of your emotional intelligence.

2. Profit from Performance and Client Reviews.

These are ideal venues to better understand how well others think you handle your own emotions and how well you read others' emotional cues. Remember that perception is reality. Regardless of your intentions, if others are misunderstanding your reactions or you are misunderstanding theirs, it's time for a concerted

effort at raising your emotional awareness by following some of these suggestions.

3. Chart Your Emotions. The Yale Center for Emotional Intelligence recommends making a chart on a regular basis of how you feel. The [Yale Mood Meter app](#)--which features a four-quadrant chart with two axes: energy and pleasantness--can be downloaded to easily record your feelings.

You can set your phone to alarm on whatever schedule you prefer--every hour, every meal, or once or twice a day--and record where in the four quadrants your mood at that moment fits, creating a visual map of your moods for that day, week, and month. The point is not to change or like your moods, but to faithfully become aware of what you feel on those two dimensions.

4. Build Your Emotional Vocabulary. As you check in with your emotions, try to be more specific about what you're feeling so you can build a more extensive vocabulary. After placing the emotion within one of the four quadrants mentioned above, then identify its degree of intensity--slight to severe, and give that feeling a more nuanced name, like melancholy or annoyance instead of sadness, contentment or joy instead of pleasantness.

5. Pay Attention to Your Body. Paying attention to your body goes hand-in-hand with building your vocabulary. Identifying the physical sensations that go along with whatever you are feeling can help distinguish emotions. Are you hot or cold, tense or relaxed? Do you have sensations in your head or your chest? As an example, you might recognize



that “This feels disturbing, a little hot and makes me feel somewhat aggressive and energized but doesn’t make me lose control. This might be the feeling of frustration.”

6. Get a Coach, Mentor or EI Buddy. Coaching and mentoring are two reliable, institutional, and interactive methods that legal workplaces often employ that can help raise your emotional awareness, and which you can arrange even if your firm or department doesn’t offer them.

Even if you don’t have access to, or the time/money/patience for, a mentoring or coaching relationship, find a “high EI buddy”—preferably someone who knows your workplace and/or the players involved or works in a similar environment and whose interpersonal skills you admire—to see if he or she agrees on your take on your own emotions or your reading of others’ emotional cues. The person could be your spouse, your relative, a friend, or a colleague. Ideally, this is someone who often sees things differently than you do and also seems to move in and out of difficult situations with aplomb. Describe a situation and ask for his or her assessment of what the various players’ body language, words and tones might mean, and how best to proceed.

7. Practice Mindfulness. Practicing mindfulness allows us to make enough room mentally to detach from our emotions long enough to identify them. It also gives us a short “vacation” from the stress of emotional turmoil so we can hopefully view our emotional landscape from a refreshed vantage point.

8. Try a Screen Vacation. Research indicates that putting away the devices for even a few days and interacting socially with others can significantly raise your emotional perception skills.

LEARNING TO REGISTER OTHERS’ EMOTIONS

Although all the above suggestions can help fine-tune your awareness of others’ emotions as well as your own, these suggestions specifically help to more accurately read others’ emotional cues.

1. Ask. Here’s a low-tech suggestion: if you’re not sure what emotion another person is experiencing, ask! You can say “it looks like you are [insert emotion here—angry, pleased, defiant, etc.]; is that correct?” or you can simply ask what/how he or she is feeling.

2. Train Yourself. Paul Ekman found we can improve our ability to recognize other’s emotions by systematically studying facial expressions and has produced a number of [training programs](#) to help train how to read various facial cues in different settings.

3. Take the Silent Route. Watching movies on mute (a good way to spend time on an airplane) is an excellent method to build your emotion reading skills. Try to understand the action by the facial expressions and body language—you can turn on the sound periodically to verify or redirect your take.

4. Mimic Facial Expressions. Our mirror neurons can convey to us the feelings of someone else by our replicating their outward expressions. If contorting your face in a meeting is a no-go, at least think consciously about their specific expressions in trying to understand what they feel.

5. Play A Videogame. The GSL Studios game [Crystals of Kaydor](#) could help your child or the child in you develop skill in reading nonverbal emotional cues. In it, an advanced robot that crash lands on an alien planet helps the natives solve problems by interpreting their body language and nonverbal cues.

RAISING EMOTIONAL MANAGEMENT

Learning to recognize emotional signals will give you a major leg up in the emotional management trenches, where most problem solving resides. Once you register the emotions at play, you don’t want to automatically default to old emotional regulation strategies—like suppression and rumination, which are common to lawyers—that are not constructive and can even be counterproductive.

Here are some suggestions to improve how you manage your emotions.



1. Take a Deep Breath. Daniel Goleman heralds the importance of signaling a slowdown to your brain and your body by taking a deep oxygen-filled breath before taking any important actions.

2. Accept Your Thoughts and Emotions.

Acceptance does not mean resigning yourself to negativity but responding to your emotions with an open attitude—letting yourself experience them without jumping to behavioral conclusions, a danger for those of us high in a sense of urgency. This acceptance can bring relief, but it won't necessarily make you feel good. In fact, you may realize just how upset you really are. It is still a good place to start in order to achieve better emotional and behavioral management.

3. Count Yourself Down. It's true what your mother said—sometimes simply counting to ten works well to clear your mind for a better emotional response. It allows time for the rational brain to engage and survey the situation. Consciously asking questions or attempting to analyze the problem can also delay and help redirect a habitual emotional response to a more rationally engaged one.

4. Walk It Off. Taking a walk outdoors has been demonstrated to improve mental functioning and positive well-being, and is a particularly good antidote to brooding, rumination, and depression. But the walk has to be outside in a natural setting, not on asphalt in an urban setting.

5. Change Your Self-Talk. How we talk to ourselves can also help us manage our emotions. Telling ourselves repetitively our angry aggravations or negative predictions will not help us make good emotional management decisions. Reframing our internal dialogue away from entrenched pessimism is a way to build a new response. Get in the habit of marshaling credible counterarguments against that internal voice predicting doom and gloom and blaming it all on you.

6. Practice Mindfulness Meditation. In addition to helping us identify our emotions, practicing

mindfulness allows us to learn how to slow ourselves down from automatically reacting and give ourselves time to choose better responses.

7. Download a Game or an App. The GLS Studios game [Tenacity](#) focuses on learning self-regulation by maintaining attention and calm when serene scenes are bombarded with various distractions—a plane flying by, animals running past. Stanford University's Calming Technology Lab is developing devices that help you respond to strong emotions, such as a belt that can detect breathing and connects to an app that helps calm you when you're feeling emotionally out of control.



LEGAL EMPLOYERS' CHECKLIST FOR RAISING EMOTIONAL INTELLIGENCE

- ☒ **Include emotional intelligence (EI) assessments either before or after hiring.** These can be full blown EI assessments or, what is more likely at least in applications, questions that can elicit an applicant's EI skills, like the questions Dartmouth College's Tufts School of Business has added to its applications and recommendations asking about a student's ability to interact well with others in challenging circumstances. Assessments given after hiring can help guide young lawyers to their most



successful position and give them a base against which to measure improvements.

- ☑ **Offer well-educated mentors, coaches and/or confidential counselors.** To achieve their best performance, lawyers need to be keenly aware of how they come off to their clients and colleagues and also how to handle professional challenges. Well-educated mentors and/or professional coaches and counselors who have the confidence of their charges, can listen well and can give honest but sensitive and confidential advice will make valuable improvements in your organization's performance.
- ☑ **Provide EI development as part of your professional development programs.** Emotional intelligence is unquestionably trainable, and lawyers--in a highly personal service industry where they regularly face severe stress--can benefit from better understanding their own and others' emotions. That understanding will improve their client service skills and their personal functioning.
- ☑ **Add specific EI-related features to performance reviews.** Including discussions in performance reviews of collegiality, collaboration and teamwork helps spotlight their importance and promotes developing those skills.
- ☑ **Reward EI skills.** Show that you go beyond simple lip service to valuing EI skills by giving recognition, promotions and bonuses to high achievers.

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Take Charge of Your Well-Being With Confidence

Contributed by: Louisa Jewell, MAPP

louisa@louisajewell.com | www.louisajewell.com

Excerpt from [*Wire Your Brain for Confidence: The Science of Conquering Self-Doubt*](#)

Is there something in your life you would really like to do next, but you are not feeling confident about it, so you avoid it? Do you have something coming up in your life that you are anxious about, and you want to raise your level of confidence about it? Next time you are feeling particularly low in confidence about something you need to undertake, ask yourself these questions. (Or ask a trusted colleague to ask you them.) These questions are helpful when helping others boost their confidence too.

First, recall a time when you were successful at doing that particular thing in the past (or doing something similar). Then ask yourself: What was key to my success? What did I do then that made me successful? How did I manage to do that? What is one thing I did then that I am not doing now?

1. Considering what I am embarking on now, what is already going well? What small successes have I had so far?
2. How can I do more of what is already going well?
3. How have I managed to get this far?
4. What does that tell me about myself?
5. What have I done in the past that might help me now?
6. What personal qualities and strengths do I have that will help me be successful?
7. What ideas do I have for solving this?
8. Who can help me with this?
9. Who would have a different perspective on this?

Take some time with these questions and try to recall your past experiences. When you realize you have done this same endeavor successfully in the

past, you will quickly shift into believing you can do it again. If you haven't done exactly the same thing, contemplate similar parts of the experience that you mastered in the past. (For example, many years ago, I was asked to deliver my first ever keynote address. I had already delivered numerous workshops, but never a keynote. I was not feeling confident about it.



After asking myself the questions above, I realized that I had actually mastered many keynote skills in all my years of workshop delivery. Taking the leap to keynote deliveries no longer seemed as daunting. I worked on the gaps to improve my skills and my confidence shot up again.)

The other questions also get you thinking about the progress you have already made with this accomplishment, rather than your shortcomings. This gets you thinking about everything that is already working in your favor, and you will experience a boost in confidence. Once you have asked yourself the questions above and are feeling a shift in your confidence, ask yourself this important question: What is one small step I can take to get myself closer to my goal? Commit to taking that step.



Use Your Strengths

Contributed by: Anne Brafford, JD, MAPP, PhD in Progress
 abrafford@aspirelegal.com | www.aspire.legal

To get started on this activity, you'll first need to identify your strengths by taking the values in action (VIA) Survey. The VIA Survey measures 24 character strengths. The results are simply a rank order of your own strengths. Your results are not compared to others. Also, the survey doesn't measure which strengths you value the most; it measures the strengths that you report as most often showing up in your actions and thoughts. It's an effective way to identify your own strengths, which you then can use to spur your thinking about how to use those strengths more and in new ways to improve your and others' happiness.

The VIA is based on the VIA Classification, which resulted from an extensive 3-year research project. Researchers explored the best thinking from all over the world on virtue and positive human qualities in philosophy, virtue ethics, moral education, psychology, and theology over the past 2500 years.

VIA CLASSIFICATIONS

Six core themes emerged, which were found across religions, cultures, nations, and belief systems. These "virtues" were subdivided into 24 universal character strengths:

Wisdom: Creativity, curiosity, judgment/open-mindedness, love of learning, & perspective

Courage: Bravery, perseverance, honesty

Justice: Teamwork, fairness, & leadership

Humanity: Love, kindness, & social intelligence

Temperance: Forgiveness, humility, prudence, & self-regulation

Transcendence: Appreciation of beauty & excellence, gratitude, hope, humor, spirituality, & zest

Character strengths are stable, universal personality traits that show themselves in how you think, feel, and behave. They are considered to be the basic building blocks of human flourishing. They are not fixed; they can be developed. Most people likely can enhance their capacity for expressing each of the 24 character strengths.

"Signature strengths" are your top character strengths that really resonate with you and feel like they are at the core of who you are (Peterson, 2006).



INTERPRETING THE VIA REPORT

- The VIA report is about your strengths. It doesn't measure weaknesses or problems. So, lower strengths still are strengths.
- The VIA Survey measures your view of yourself, not facts about your character. The results are broad brushstrokes. So don't sweat the details.

WHY USE YOUR SIGNATURE STRENGTHS?

Studies show that using your signature strengths more or in new ways can improve well-being.

- Regularly using strengths is linked to work satisfaction and engagement at work, lower turnover, greater psychological well-being, less stress, goal achievement, and lower depression levels as much as 6 months after participating



in a strengths-based exercise (Biswas-Diener, Kashdan, & Gorpall, 2012).

- Two of the most important predictors of employee retention and satisfaction are: Reporting use of your top strengths at work and that your immediate supervisor recognizes your top strengths.
- Character strengths buffer people from the negative effects of vulnerabilities (e.g., perfectionism and need for approval) and play an important role in depression recovery.
- As you learn more about your 24 strengths, you can begin to develop your competence in using them all in the right proportion that each situation calls for. This can improve your interpersonal effectiveness and other aspects of personal performance and sense of well-being (Biswas-Diener, Kashdan, & Gorpall, 2012).

PUT YOUR STRENGTHS INTO ACTION

Now that you've identified your character strengths and know why it's valuable to use them, it's time to put them into action...

Think of a specific time when you were at your best—when you really were feeling and behaving at a high level and you felt that you were being your authentic self. Describe that time.

LIST YOUR TOP STRENGTHS

Now, list your top strength from your VIA survey report.

Strength 1:

Strength 2:

Strength 3:

Strength 4:

Strength 5:

Strength 6:

Strength 7:

IDENTIFY YOUR SIGNATURE STRENGTHS

Next, you'll identify your signature strengths, which are strengths that you easily recognize in yourself, regularly exercise, and celebrate. You feel that they describe the "real me." You have a rapid learning curve and feel joy and enthusiasm when using them (Peterson & Seligman, 2004; Seligman, 2011).

- Review your top VIA strengths and ask the following questions:
- Is this strength the real, authentic you? Does it come naturally to you? Is it easy for you to express?
- Do you feel more energized when you're using this strength?
- Would your family and friends be quick to identify this strength in you?
- Do you use this strength frequently at home, at work, and in your social life?
- What character strengths have you used in your past and current successes?

When you're happiest, what strengths are you using?

REFLECTING ON YOUR STRENGTHS

- What was your initial reaction to your survey results?
- Did anything from your survey results surprise you? If so, why?
- What strengths can you identify in the story of you at your best?
- Which one of your signature strengths seems most evident in your every-day life right now?
- What are examples of how you use that strength now?



USING YOUR SIGNATURE STRENGTHS

Our work doesn't end with identifying our strengths. Having strengths and values in the abstract is not enough to flourish. What we do makes the difference (Peterson, 2006). According to Seligman (2002) and Peterson (2006), the regular use of signature strengths—especially in service to others—cultivates well-being.

A good place to start is with a well-tested exercise in which you pick a signature strength and, for the next week, use it in a new way every day (Peterson, 2006; Seligman & Peterson, 2005).

The strengths of hope, zest, gratitude, curiosity, and love, have the strongest link to life satisfaction (Park, Peterson, & Seligman, 2004). So you might consider them as top targets if they are among your signature strengths.

For ideas on activities that incorporate your signature strengths, take the Person-Activity Fit Diagnostic test developed by Sonja Lyubomirsky (2008). You'll likely find that such activities improve your well-being through engagement.

THREE WAYS TO USE YOUR STRENGTHS

What are three ways in which you can use your signature strength more or in a new way in the next three weeks to help you progress toward something important to you? For ideas, review [340 Ways to Use VIA Character Strengths](#) (Rashid & Anjum, 2008),

1.

2.

3.

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Investigating & Capitalizing on Our Introverted Strengths

Contributed by Professor Heidi K. Brown, Brooklyn Law School
Heidi.Brown@brooklaw.edu

“To be yourself in a world that is constantly trying to make you something else is the greatest accomplishment.” -- Ralph Waldo Emerson

Introverts and otherwise quiet advocates are well-poised to play an influential role in the legal profession through their inherent capacities for active listening, analytical thinking, thoughtful writing, empathy, and creative problem-solving (See [The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy](#), ABA 2017).

If you are a naturally quiet lawyer, this activity can help identify your natural gifts. With enhanced self-awareness, instead of trying to force extroversion to fit the “stereotypical gregarious lawyer” mold in our day-to-day lives, we can capitalize on our inherent strengths in being authentically empowered advocates.

- **Listening:** Are you a good listener? How do you listen? How do you physically position yourself? Where do you focus your attention? Do you maintain eye contact? How do you demonstrate to the speaker that you are listening?



- **Data-gathering:** Are you a good note-taker? How do you capture the thoughts of others, and your own thoughts, while others are speaking?
- **Perceiving:** Do you consider yourself a perceptive person? Do you notice details that your extroverted friends miss? Sights? Street signs? Landmarks? Facial expressions? Smells? Tastes? Patterns? Textures? Sounds?
- **Researching:** When you’re researching something or trying to figure out a problem, do you dig deep? If you can’t easily find an answer, are you comfortable changing tactics and trying new research angles or sources?
- **Creative thinking:** Do you consider yourself a creative person? This does not necessarily mean artistic, but instead, being innovative in your thinking. Do you come up with interesting or even wild ideas for solving problems?
- **Deep thinking:** Are you a deep thinker? Do you find yourself wrestling with problems or concepts to figure them out?
- **Writing:** Do you enjoy writing? What type of writing? It doesn’t have to be legal writing. Think about what genres of writing you enjoy: Text messaging? Creative Facebook posting? Emails? Poems? Songs? Letters?
- **Choosy speech:** Are you a person of few words? Do you like finding the right word to express a thought? Do you think about how to phrase your ideas before relaying them aloud? When you speak, are people sometimes surprised at how good your ideas are?



- **Negotiating:** When you negotiate, do you prefer a win-win effort, or a winner-takes-all competition?
- **Tolerating silence:** Are you comfortable with silence? Why or why not? With whom?
- **Modeling empathy:** Do you consider yourself an empathetic person? Are you able to listen to another person describe his or her experiences and understand that person's reactions, feelings, perceptions, and choices—even if they are different from your own? How do you convey to others that you understand their feelings or emotions?

Now, try to recall specific situations in which any of the foregoing inherent traits were beneficial in solving a problem, resolving a conflict, achieving progress in a stalled situation, or counseling another person through a difficult circumstance.

Trait: Scenario:

Trait: Scenario:

Trait: Scenario:

As introverts, many of us feel pressure to try to “act extroverted,” when in reality, it is our introverted assets that make us authentically powerful legal advocates. Next time you are in an interactive lawyering scenario, consider how your introverted strengths can power you through the experience in an authentic and fulfilling manner.

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Overcoming Public Speaking Anxiety & Amplifying Our Authentic Lawyer Voices

Contributed by Professor Heidi K. Brown, Brooklyn Law School
Heidi.Brown@brooklaw.edu

Many lawyers experience public speaking anxiety, even though the stereotypical gregarious advocate seems to be born with the gift of gab. Instead of getting down on ourselves when we experience public speaking anxiety, or forcing ourselves to “just do it,” we can tap into our authentically empowered voices through a bit of mental and physical reflection, and then a reframed mental and physical action plan. Try this activity to amplify your advocacy voice in an authentic manner. No “faking it till we make it!” Let’s be our genuine impactful selves.



make you feel? Agitated, annoyed, nervous, angry, numb? Now, try to think back to events in your past when you experienced similar feelings and heard

comparable language. Who was there? What was happening? What were their exact words, language, or phrases? Make a list of those past messages and their sources.

Now think about how much time has passed since you originally received those messages. Do any of these past messages have any

relevance to your present life in the law? Can you view the original messengers in a different light, perhaps with compassion, and realize their words might have come from a place of their own fear, but have no relevance to your legal persona now? If you can, label the messages as no longer useful, and name the original sources as no longer relevant or influential in your legal persona.

1. ENVISION THE SCENE

First, envision an interpersonal interaction, a command performance, or a public speaking scenario in the legal context. Let’s be specific: Is it a courtroom scenario? A law office interaction? A meeting with opposing counsel? A conference call? A negotiation? An argument or speech?

2. MENTAL REFLECTION

For some of us, when we anticipate nerve-racking performance scenarios, we hear negative mental messages that can rattle us, but often we don’t know what to do with this information. In this activity, let’s listen and transcribe, so we can eventually delete the negative and re-craft some positive personal slogans.

First, what mental messages do you hear when you anticipate the lawyering scenario? What are the exact words, language, or phrases you hear? Write them down. How do those words, language, or phrases

3. PHYSICAL REFLECTION

Next, catalogue your body’s physical responses when anticipating the performance-oriented event. Try to notice both subtle and obvious changes in your body and record each one, as if someone is snapping photographs of each new physical response the instant it appears.

What part of your body do you feel or sense first? When you first felt the emotional kick of stress or anxiety toward the interpersonal exchange, did your physical body shift in any way? Were you sitting or standing? Did you subconsciously cross your legs? Fold your arms? Hunch or crouch lower?



Grit your teeth? Clench your fists? Grip an object? Avert eye contact? Did you feel anything different internally? Did you gulp, take a deep breath, or lose your breath? Is your heart beating faster? Does your stomach hurt? Does your head ache? Are you noticing any external clues? Are your hands or knees shaking? Are you blushing? Sweating? Do you feel hot? Cold? Numb? When/if you speak, does your voice sound different? Is your voice shaking? Is it higher or lower pitched than usual? Are you swallowing more? Or less? What else do you physically feel or notice?

4. MENTAL ACTION

Now that you have reflected on messages from the past that re-appear in the face of a future performance-oriented event, contemplate a list of new personal taglines that can help you recalibrate and take control of your thoughts. Consider these prompts:

- **I feel strongest and most like a rockstar when:** _____.

[Note: This could be weightlifting at the gym, playing the guitar, cooking, running, painting a picture, rehabilitating an abused pit bull, whatever. Be specific with the details. The point is to identify an environment in your life where you feel almost invincible. We want to bring some of that swagger into the legal context.]

- **I am really good at:** _____.

[Note: This can be completely unrelated to law. Again, we are trying to identify aspects of ourselves that showcase our strengths. Then, we bring some of that swagger into the legal context.]

- **I feel really smart when I:** _____.
- **I feel really physically capable when I:** _____.

- **People seem surprised when I:** _____.
- **My best day was when I:** _____.
- **My ideal day is when I:** _____.
- **People listen to me when I talk about:** _____.
- **I bring something different to the table because I:** _____.
- **I am not afraid to speak to others when:** _____.

5. CREATE 10 POSITIVE SLOGANS

Now that you have reflected on the scenarios in your life in which you feel most powerful, write out at least 10 positive personal slogans. If you need a prompt, or are not sure how to phrase them, try these:

- I am a _____ person.
- I bring _____ to the table.
- I care about _____.
- I deserve to be treated _____.
- Perfection is boring; be _____.
- Who cares if people can see [insert your least favorite visible physical response to stress]; I will keep talking and it will go away.
- Who cares if I don't express myself perfectly; it is more important in this moment for me to be _____.
- Not everyone needs to like me; _____ likes me.
- This doesn't have to go perfectly; my goal is to get through the experience, while doing the best I can while I am learning, and reminding myself that _____.



- I do not need to be perfect at this; this is just practice in _____.

6. PHYSICAL ACTION

Armed with new information about how your body instinctively responds to anxiety toward a public speaking event, consider subtle changes to your physical stance and movement that can help channel your energy, blood, and oxygen flow in a productive manner. How about these:

- **Stance and Posture:** Do you have a favorite athlete? How does he or she stand when preparing to move? Most athletes stand in a balanced, open stance. Consider watching a helpful [TED Talk by Professor Amy Cuddy](#) about “power poses” —standing in a powerful pose for a few minutes before a performance event.
- **Breath:** Practice breathing to slow your heart rate.
- **Appendages:** Open your arms and hands; let that excess energy jump out of you, or direct it into a podium or desk.
- **Eye Contact:** Practice channeling excess energy out of you by projecting eye contact to various individuals around the room.
- **Voice Projection:** Practice channeling excess



energy out of you by projecting your voice to the person furthest away from where you sit or stand.

- **Blushing or Sweating:** For some of us, blushing or sweating are normal bodily reactions to anxiety. Because we cannot change this instinctive reaction, we instead can embrace it. As author Erika Hillard says, “[t]o see a blush is to celebrate life’s living . . . fullness, ripeness, color, and flourishing life.” Let’s also make ourselves as physically comfortable as possible; we can wear clothing that helps us breathe!

7. PRACTICE

Identify one low-stakes performance-oriented event in the lawyering context, to practice your new Mental and Physical Action Plans. It could be a team meeting, a one-on-one meeting with a supervisor, or a phone call with opposing counsel.

8. DEVELOP A PRE-GAME & GAME-DAY STRATEGY

Brain Pre-Game: What substantive preparation is necessary for your first exposure event?

Body Pre-Game: Can you visit the exposure event location? Will you be sitting or standing? Where? What adjustments can you make to your physical stance and comportment to channel your energy, oxygen, and blood flow in a constructive manner?

Mind Pre-Game:

- Have you written out and reread your new positive personal taglines?
- What can you do the night before the event to minimize anxiety?
- What will you do the morning of the event to minimize anxiety?
- What will you do a half hour before the event?
- What will you do right before you enter the room?
- Visualize the exposure event space. Imagine your



entry into the room, and the chronological steps leading up to the moment you begin speaking. Anticipate the potential influx of the negative thoughts and physical responses. Rehearse halting the negative soundtrack and replacing it with your positive mental taglines. Envision physically adjusting your stance, enhancing blood, oxygen, and energy flow.

9. APPLY YOUR LEARNING

- Step into the event with your new Mental and Physical Action Plans:
- Consider doing a “power pose” for a few minutes before the event
- Remind yourself that the natural mental and physical manifestations of anxiety will naturally re-appear...but we have a plan now!
- When the usual negative mental messages re-appear, apply the fire-drill mantra of “stop, drop, and roll”: Stop for a moment; greet the messages; remember that they are no longer relevant now in your lawyering life; remind yourself of your NEW mental messages;
- When the usual physical manifestations of anxiety re-appear: Stop for a moment; breathe deeply; adopt a balanced athlete’s stance (seated or standing); send excess energy out of you and into a podium or desk or into the air; make eye contact; project your voice; remember that, for some of us, blushing or sweating is just life surging through us!

10. TAKE TIME TO REFLECT

After the event, reflect. What worked great? What techniques could use adjustments for next time?

11. CELEBRATE!

Congratulate yourself for an amazing effort!

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Mind Your Marriage (& Similar Relationships)

Contributed by Aileen Reilly, JD, CPCC, ACC, ORSC-Trained

www.aileenreilly.com | aileen@aileenreilly.com

As Esther Perel, noted psychotherapist, author and TED speaker says, “The quality of our relationships determines the quality of our lives,” so it’s about time to start talking about attorneys and their marriages and partnered-relationships. Too often these most important relationships get sacrificed or pushed to the edge of life while you are busy showing up 100% at work. It doesn’t seem right that your clients and your firm and your practice group gets the best of you, while your spouse/partner and your family gets whatever is left over, essentially “the scraps.”



So, what can you do about it? Start by being more intentional about the time you do have in these relationships. Don’t spend date nights going to see a movie, where although you’re both entertained, there is no further emotional connection being formed, no conversation whatsoever. Of course that’s okay every once and a while, but if you’re like most couples who only have date nights once a month, it’s important not to squander that time.

Be intentional. That means two things. One, put those date nights on your calendar. Ideally, every week, your relationship should have time put aside to grow

together as a couple. Two, in advance, think about how you want to show up for the date — energized? tired? another thing “to do?” excited? curious? — and then do that.

The following lists contains fun date night ideas, together with fun questions and conversation starters. The key is to have fun. Don’t make date night an evening to talk about “all the things” in your relationship that need attention — kids, money, etc.. Schedule that for another time and place, and keep it out of the date night time. Date nights are for the two of you and for your relationship together. Your relationship together is the “glue” for everything else in your life. When your relationship is in a good place, everything else flows so much better, including your work.

FUN DATE NIGHT IDEAS (THAT DON’T INVOLVE ALCOHOL):

- Cooking Class
- Hiking
- Art Gallery Walk
- Comedy Club
- Zip-Lining
- Live Theater
- Kayaking
- Live Music
- Bowling
- Blankets and Star-Gazing
- Late Night at the Museum
- Long Walks
- Rock Climbing
- Trampoline Park
- Hotel Room
- Dance Lessons
- Arcade



- Coffee Shop and Board Games
- Any Festival
- Driving Range
- Mini-Golf
- Biking
- Random Open House Tours
- Painting Class
- Ice Skating
- Couples Massage
- Indoor Sky Diving

FUN CONVERSATION STARTERS:

- Ask Each Other [36 Questions](#) on the Way To Love
- Download Gottman Card Decks (a smart phone app) and ask each other questions.

GO HOME AND HAVE SEX

Needs no further explanation. Your physical relationship is an integral part of your marriage/partner relationship. When a couple isn't having sex or not having sex as frequently as they once did, it's often the sign of an emotional disconnect between the partners. Rather than ignoring the distance and watching it grow across time, work to get closer. Utilize the ideas above. And sometimes, you simply need to have sex, so that you remember why you like having sex to begin with. Sex begets sex. This is good for your physical relationship, for your emotional relationship together, and for your own release of hormones and stress-relief.

RESOURCES

Book Recommendations

- John Gottman, The Seven Principles For Making Marriage Work.
- Gary Chapman, The 5 Love Languages.
- Harville Hendrix, Getting the Love You Want.
- Amir Levine, Attached: The New Science of Adult Attachment.
- Marshall Rosenberg, Non-Violent Communication.
- Byron Katie, Loving What Is.
- Kerry Patterson, Crucial Conversations.
- Esther Perel, Mating in Captivity.
- Laura Vanderkam, Off The Clock.

Apps For Your Phone

- Gottman Card Decks (Love Maps, Questions/Conversations, Resources)
- 36 Questions To Fall In Love
- Danielle LaPorte's "Conversations"

Podcasts to Listen To

- Where Should We Begin (Esther Perel)
- Rise Together Podcast
- Marriage Therapy Radio
- Relationship Advice
- The Loveumentary

Follow on IG and FB

- @gottmaninstitute
- @estherperelofficialbetter

Email Newsletters

- The Marriage Minute
- Five Love Languages



Managers, Don't Forget Your Own Well-Being

Contributed by Andrew Elowitz, JD MBA PCC
 elowitz@newactions.com | <http://newactions.com>

Studies have shown that the demands and stress of legal practice take a toll on many lawyers' mental and physical health (Krill, Johnson, & Albert 2016). For many lawyers the additional demands of being in a management position exacerbate those stresses. As other activities in this toolkit demonstrate, lawyers can build resilience and minimize the risk of burnout by developing healthy personal habits, good work-life integration, and competence in handling interpersonal conflicts.

But even managers who are genuinely concerned about the wellbeing of their firm members may overlook or underestimate the importance of looking out for their own physical and mental health. As a firm leader your wellbeing is important not only to you but to everyone else. If you're sidelined by physical or mental health problems, firm members who depend on you for guidance and leadership may suffer as well, not to mention the impact your problems may have on your clients.

In many respects, your health and wellbeing is more important than that of other firm members. As a manager and leader, you need to set an example for others by modeling behaviors that promote wellbeing. Credibility suffers and cynicism grows when leaders don't walk their talk and follow their own advice. How likely would you be to follow health advice from an obese doctor who smokes and drinks excessively?

At this point it should be rather obvious that whether you're a manager or not, you need to pay attention to your own wellbeing. But you may well be asking yourself, "How on earth am I going to do that with the increased time pressures of being a manager?" It's a great question and a real quandary. And though it may at first seem a bit counterintuitive, follow the advice of Dirty Harry Callahan from the classic movie *Magnum Force*—"know your limitations!"

Your limitation is simply that you are but one person. No matter how smart, talented, and energetic you may be—you are still one person with a finite amount of time in which to get everything done. Working harder and faster will only take you so far, and working longer hours may be an obstacle to your wellbeing. So what can you do to resolve this common leadership dilemma? By all means do the first activity listed below and then you will be ready to try one or more of the following ones.



PRACTICES TO PROMOTE FIRM MANAGERS' WELL-BEING

1. Don't Go It Alone! Your first activity may be the least visible but it's the most important. Schedule an hour or two when you know you will have a minimum of interruptions or distractions. It can be time in or outside of your office as long as you can do a big-think and deep-think. You will ask yourself and hopefully answer four questions:



- What support do I need as the manager of my firm (or practice area head, or legal department head)?
- Who within the firm can provide me with that support?
- Who outside of the firm can provide me with support?
- How do I feel about asking for that support?

Don't skip the last question! If you're like a lot of lawyers, you may be hesitant to acknowledge you need support, let alone to ask for it. When compared to the general population, lawyers are far more autonomous and achievement oriented. These personality traits lead many to assume that they should, without additional training or support, be able to handle leadership and management responsibilities on their own. They worry that their peers and firm members will perceive a request for support as a sign of (gasp) weakness or (double gasp) incompetence. Nothing could be further from the truth. One of your top priorities as a manager are to set you and your firm up for success, so don't be shy in asking for support.

The following activities and practices will improve the odds of you being an effective firm leader and manager, while at the same time reducing your stress and enhancing your wellbeing.

2. Mind Your Time. Make sure you have time to manage and lead. Time is a finite resource and no matter how efficient you are management activities take time. Running even faster on the hamster wheel is a poor strategy for improving your wellbeing. Try these instead:

- *Delegate more.* Every day try to delegate at least three client or administrative matters that you usually would have handled yourself. For guidelines on how and what to delegate, please refer to Chapter 6 of *Lawyers as Managers* (Elowitz & Wasserman, 2017, pp. 79-104). Studies show that law firm partners that delegate not only

save time but also make more money (Hubbard, 2016).

- *Track your energy levels.* There are times of day and days of the week when we are our most focused and productive. When our energy levels are low, it takes us longer to get things done. If we can't add hours to the clock, at least we can use those hours more productively. By tracking your energy levels you will learn the best times for you to approach items that require the most analytical skill and concentration. You may also learn that caffeinating, though widely used, is not the best or only practice for boosting your energy levels. Paying attention to your sleep, nutrition, exercise, and recreation are better and more sustainable strategies (Schwartz & McCarthy 2007).
- *Manage other's expectations of you.* Don't forget the importance of also managing the expectations of you firm, partners, and family as to how much time you can and will devote to management activities. These conversations can help prevent strife and stress down the road. Initiate discussions with your firm about adjustments to your billable hours targets, client development efforts, and compensation that reflect your added contributions as a manager.

3. Clarify Your Authority. Make sure your management authority is commensurate with your responsibilities. There are few things more frustrating than being given the responsibility to do something without also being given adequate resources and authority to accomplish it. Your authority will of course vary depending on the nature and significance of a decision. You can simplify your life and save time by sharing the following guidelines with other firm members to clarify the boundaries of your power (Elowitz & Wassermann, 2017, pp. 210-215):

✓ **Who is making the decision?**

- You, as the manager?
- You with input from one or more individuals?



- You with input from a group?
- By group consensus?
- ✓ **Once the “who” has been determined also pay attention to:**
 - Who will be giving input on the decision?
 - Whose approval (if any) is needed?
 - Who must be notified on the decision and when?
 - Who will be implementing the decision?
 - Have those responsible for implementing been given clear instructions, necessary resources, and performance criteria?



Once firm stakeholders are in agreement with you about these guidelines, time is saved and wasteful firm politics are minimized. Conversations are focused where they should be—on the merits of a decision rather than on personalities. Knowing the limits of your authority will help you determine whether your decision-making authority matches your management responsibilities. If it does, great! And if it doesn't, you can begin conversations to help bring them into congruence. Either way you will minimize your chances of feeling powerless and disengaged.

4. Commit to a Shared Vision. Make sure your firm has a clear vision, direction, and business plan. You may be wondering how doing this will enhance your wellbeing. Managing lawyers can be challenging and stressful. It has often been likened to herding cats (Richard, 2002, and Elowitz, 2018). It's much easier to lead and manage when everyone is on the same page about a firm's values, direction, and plans to get there. Getting agreement and alignment up front minimizes tensions and provides you with a game plan you can follow. When your “cats” all have the same goal, you will deal with fewer conflicts within your firm.

5. Develop Your Support System. Further develop your support system by reaching outside your firm. The burdens of management can feel heavy at times and it can be difficult to look to someone within your firm for support. The alternative is to look outside where there are abundant resources:

- Law practice management coaches and consultants can help you develop your skills and work through especially tough challenges.
- Managing partner roundtables are in-person or virtual groups of lawyers that meet on a regular basis to discuss management matters, share best practices, and offer mutual support.
- Bar associations offer CLE programs and webinars on a wide range of management topics. Attending them is a great way to benchmark your management skills, meet people with similar challenges, and discover the most useful law practice management blogs, websites, periodicals, and books.

Any of these three resources will help keep you from feeling lonely and isolated at the top of your firm. Several recent studies have shown that feelings of loneliness are especially prevalent among lawyers and that they threaten our physical health and wellbeing (Rubino, 2018).



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Positive Leadership: Key Ingredients For Unleashing The Best In Others

Anne M. Brafford, JD, MAPP, PhD in Progress
abracford@aspire.legal | www.aspire.legal

Wouldn't we all love to work in law firms that bring out our best? And, as aspiring positive leaders, wouldn't we all love to know the secrets to unleashing the best in others? Psychological science offers some helpful insights on these very questions. Of particular importance is a well-established and powerfully predictive framework of human motivation called "self-determination theory" (SDT), which forms the foundation of my book [Positive Professionals](#). SDT identifies key ingredients that contribute to optimal performance, health, and happiness.

SDT proposes that we're all naturally inclined toward growth and happiness and that our social surroundings facilitate or thwart our path toward optimal functioning. Our continued growth depends on whether our social conditions thwart or help meet basic psychological needs:

- ✓ **Autonomy.** This need is driven by a basic human desire to be "self-creating" and under self-rule. It's about feeling authentic and like the author and architect of our own behavior—that our behavior aligns with our interests and values and is within our responsibility and control. It is the opposite of feeling controlled, bossed around, or guilted in to things.
- ✓ **Connection & Belonging (or "Relatedness").** We humans have a fundamental need to connect and belong. This includes supportive relationships as well as a sense of belonging or fit with groups we care about. This need is powerful and pervasive. It can help or harm our cognitive processes, emotional patterns, behaviors, and health and well-being. Lack of belonging and feelings of exclusion can trigger self-defeating behaviors like procrastination and depression.

- ✓ **Mastery (or "Competence").** Our fundamental needs also include feeling confident in our ability to master new skills and to have an impact on our environment. Continuous learning and a growing sense of mastery in activities that are significant to us are keys to this source of well-being.
- ✓ **Helping Others (or "Benevolence").** Research also suggests that we have a basic need to feel that we're benefiting others or the common good.

Ingredients For Thriving Firms



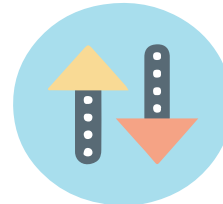
Connection & Belonging

Supportive relationships and a sense of belonging or fit with groups we care about.



Mastery Activities

Continually learning, growing, and gaining confidence in our ability to make things happen.



Autonomy

Feeling that our choices are self-authored and aligned with our own preferences. The opposite of feeling controlled, forced, or guilt-driven.



Helping Others

Having a positive impact on others or the common good.



This may all sound fine and good but still leave you wondering if it really applies to that special breed of people called *lawyers*. Recent research shows that it absolutely does.

Researchers Larry Krieger (a law professor-turned-researcher) and Dr. Kennon Sheldon (a highly respected social scientist) conducted a large-scale study of 6,000 lawyers working in a wide variety of legal jobs. The study, titled [What Makes Lawyers Happy?](#), asked what kinds of things in lawyers' social surroundings contributed to their happiness.

It found that SDT needs made a huge difference in lawyers' lives. The relationships between lawyer happiness and SDT needs was much larger than other factors in the study. For example, the positive relationship between need-fulfillment and happiness was three times as large as the relationship between income and happiness. And whether lawyers had achieved a high class rank during law school (something that so many law students stress out about) had a very small relationship with their current levels of happiness.

SUPPORTING THE AUTONOMY NEED

All of the SDT needs are essential ingredients to thriving workplace cultures. But we need to start somewhere, and the autonomy need is a good place to start. (My book [Positive Professionals](#) offers strategies for fulfilling all of the needs). Leaders, colleagues, clients, and workplace policies and practices all can support or undermine our sense of autonomy.

Experiencing autonomy goes hand-in-hand with feeling respected, valued, and important. It is the experience of choosing an activity freely because it aligns with our own values, goals, and desires—it aligns with who we are. It's not synonymous with individualism or detachment. In particular, it doesn't mean that we must act independently from others' desires. Instead, it's a need to act with a sense of choice and volition, even if doing so might mean complying with the wishes of others.

Autonomy at work typically takes the form of discretion for work scheduling, decision-making, and work methods. All three forms of autonomy significantly contribute to job satisfaction and engagement, but decision-making autonomy leads the pack. Below are some strategies for fostering a culture that supports autonomy:

1. FOSTER A SENSE OF CONTROL

Autonomy is closely related to the concept of control—which affects not only engagement but also psychological health. Feeling in control of one's own work and schedule is a well-established factor contributing to mental health. Lack of control—especially in the face of high demands—is a strong predictor of depression and burnout. A high level of responsibility with little control is a toxic combination that can destroy health and performance.

2. OPTIMIZE INDEPENDENCE

Among the best way to support autonomy is to allow as much independence and discretion as followers' level of experience and competence allow. We should allow people to figure things out for themselves, make their own choices as much as possible, and not hijack the project at the first sign of a wobble.

3. GIVE FLEXIBILITY IN TIME & PLACE OF WORK

Flexibility in where and when followers' do their work also helps meet their autonomy need. Technology has dramatically enhanced the potential for such flexibility, making telecommuting both feasible and desirable because it provides greater autonomy and job satisfaction.

Many firms still have not embraced the full potential for flexibility, although some have formally adopted telecommuting policies. Some lawyers continue to frown on the practice, having long relied on “face time” in the office as a de facto measure of commitment and productivity. They worry that associates will shirk their responsibilities if allowed to work from home. In short, they don't trust them.



Recent research should help allay these concerns. A 2015 study that crossed industries found that telecommuting did not harm workers' performance—and, in fact, boosted it. They found that the autonomy need was at the root of the effect. Workers felt grateful for the trust and autonomy granted to them by their organizations and so reciprocated with greater energy that positively influenced their performance.

4. FRAME WORK-RELATED COMMUNICATIONS TO RESPECT AUTONOMY

When making work-related requests, leaders respect followers' autonomy by using words of influence rather than coercion. Dwight D. Eisenhower defined motivation as "the art of getting people to do what you want them to do because they want to do it." This is precisely what leaders do when they tailor work requests to respect autonomy.

To take Eisenhower's advice, research shows that we should show responsiveness to others' perspectives,

avoid bossy- or coercive-sounding language, give meaningful rationales for requests, and offer opportunities for choice. For example, a junior lawyer might question the tight deadline given for a project but still act willingly and autonomously because the partner provided a meaningful rationale for it.

The opposite of an autonomy-orientated leadership style is a controlling one. Controlling leaders ignore others' needs, interests, and feelings. To motivate followers, they use directives, threats, incentives, and deadlines. In short, they're bossy and rely on power differentials to motivate. The result is extrinsic, low-quality motivation among followers and all the trouble that flows from that.

Research has found that, no matter what your natural tendencies, you can learn to use a more autonomy-oriented style. Below are some fairly simple research-backed behaviors that you can adopt to start championing autonomy right away:

Autonomy-Supportive Communications

BEHAVIOR

Use language that doesn't sound controlling or coercive. (Avoid bossiness.)

Take followers' perspectives and acknowledge their feelings.

Give rationales for requests.

Tailor motivation strategies to account for followers' interests, preferences, work-related values, and to boost their confidence in their abilities to be effective and master new skills.

Maximize followers' sense of choice and self-initiation.

EXAMPLE

"Can you please ____? It would be really helpful if you could ____."

"I'm sorry about this short turn-around t. I know it's a pain and I'm sorry about that."

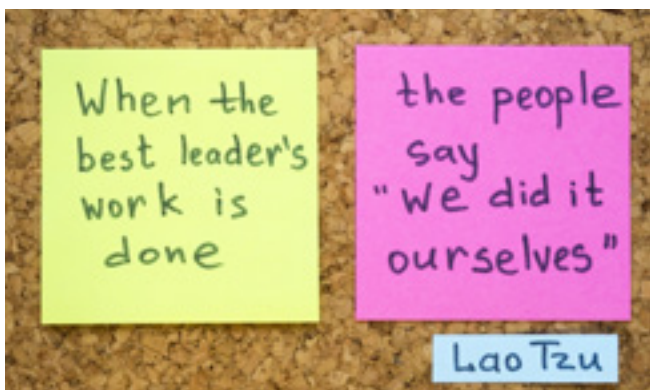
"The client just asked for this by tomorrow."

"I wouldn't ask just anyone to do this, but I know you can handle it. And the upside is that it might give you a chance to take a deposition."

"I know it's getting late and it's fine if you want to go home and work there. What time do you think is reason-able to get me a draft?"

5. USE PARTICIPATORY LEADERSHIP

In participatory management styles, leaders invite others' suggestions, solicit input, and spur open discussions for identifying new solutions. This type of leadership demonstrates that leaders value others' opinions, contributions, and talents. When people are involved in making decisions, they feel more autonomous when carrying them out. This tactic boosts followers' sense of meaningfulness because they feel valued and that their opinions matter. On the other hand, people who are left out of decision-making have a higher risk of burnout.



WON'T THIS TAKE MORE TIME & EFFORT?

It's true that autonomy-oriented leadership often requires investment of extra effort compared to directive or controlling styles. It can be easier to boss people around than inspire them. But research indicates that it's worth it. It will pay off by enhancing motivation and engagement.

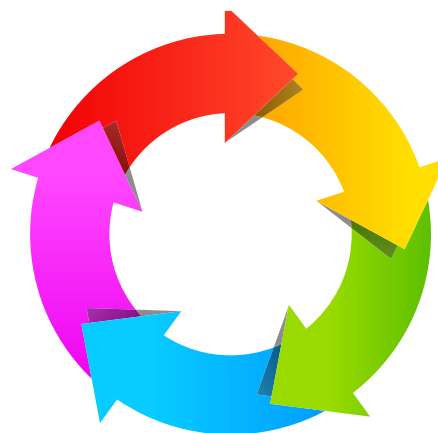
RESOURCES

Book Recommendations

- Anne Brafford, *Positive Professionals: Creating High-Performing, Profitable Firms Through The Science of Engagement*
- Liz Wiseman, *Multipliers: How the Best Leaders Make Everyone Smarter*
- Jane Dutton & Gretchen Spreitzer (Editors), *How to Be A Positive Leader*
- Daniel Pink, *Drive: The Surprising Truth About What Motivates Us*
- Michael Bungay Stanier, *The Coaching Habit: Say Less, Ask More, & Change The Way You Lead Forever*
- Paul J. Zak, *Trust Factor: The Science of Creating High-Performance Companies*
- Bruce Avolio, *Leadership Development in The Balance*
- John Mackey & Raj Sisodia, *Conscious Capitalism: Liberating the Heroic Spirit of Business*

Autonomy-Support Checklist:

- ✓ Foster a Sense of Control
- ✓ Optimize Independence
- ✓ Give Flexibility in Time & Place
- ✓ Make Non-Controlling Requests
- ✓ Use Participatory Leadership





Promoting Health, Vibrancy, & Flourishing Lives

Contributed by Elaine O'Brien, PhD, MAPP, CPT
Move2Love@gmail.com | www.ElaineOBrienPhD.com

Do you want to feel more healthy and energetic? Don't we all? Physical activity can help:

- Engaging in physical activity helps build positive resources and promotes health, vibrancy, and flourishing lives (Mutrie & Faulkner, 2004).
- Physical activity, movement, and play are essential to our physical, social, emotional, cognitive well-being and for our development at every age.
- Epidemiological data and considerable research indicate that physical activity is a major factor in reducing the risk of disease and disability, and for improving our well-being.

CALL TO ACTION

A “critical call to action” was made at the United Nations High-Level Meeting on Physical Activity and Non-Communicable Diseases that I attended in 2011. This summit identified physical activity as “a fast-growing public health problem contributing to a variety of chronic diseases and health complications, including obesity, heart disease, diabetes, hypertension, cancer, depression and anxiety, arthritis, and osteoporosis.” Three urgent, guiding principles were articulated:

1. Exercise and physical activity are important to health and the prevention and treatment of many chronic diseases.
2. More should be done to address physical activity and exercise in different settings, including at home and at work.
3. Multi-organizational efforts to bring a greater focus on physical activity and exercise across settings are to be encouraged.

LIFESTYLE MEDICINE

In Spring 2018, at the inaugural [American College of Lifestyle Medicine Summit](#), leaders in health, medicine, fitness, and well-being, joined forces. They sought to define the empirical, fast-growing science of Lifestyle Medicine. As defined, Lifestyle Medicine directly encourages:

- Healthful eating of whole plant based foods
- Developing strategies to manage stress
- Forming and maintaining positive relationships
- Improving your sleep
- Cessation of smoking
- Increasing physical activity.

The rationale is that Lifestyle Medicine not only has the power to prevent, treat, and reverse disease, but it may also contribute to real health care reform.





INFUSING PHYSICAL ACTIVITY AND PROMOTING HIGH PERFORMANCE LIVING

This worksheet offers strategies and information on how you can become more positively self-determined to infuse more physical activity, vibrant health, and positive energy into your life.

Our bodies are important to how we think, feel and behave. Vibrancy is a quality of harnessing zest, enthusiasm, and vitality. A focus on the somatopsychic, how our body impacts our mind, as well as the psychosomatic, raises our whole experience of living.

“Our bodies are important to how we think, feel, and behave.”

We have the ability every day to heighten our proprioception: the amazing knowledge of our body in space. With this, we positively impact vibrant health, usually manifested in uplifted energy, confidence, and enhanced performance (Teixeira, 2012). It also feels great.

TIPS TO GET MOVING MORE AND WELL

Is there a way you can increase your motivation to move well and more at home and at work? Can you take your levels of physical activity and fun in frequency, intensity, duration, creativity and enjoyment. Here are some tips to help you get going:

1. Set Goals. Create a strategy that will set you up for success. Write down an action plan that is simple, realistic, and optimistic. Tweak it as needed and as you like. Some people like the SMART goal model: Systematic, Measurable, Action Oriented, Realistic, Timed. Think about and write your short term/long term goals.

- 2. Prioritize Activity.** Your action plan should consider how you can prioritize physical activity in your busy schedules. In the 1440 minutes of your day, give at least 30 minutes, 5-6 days per week to physical activity, especially aerobic fitness.
- 3. Start Small and Progress.** If you’ve been inactive, find simple ways to get moving more and well. Take the stairs and frequent short walks. Gradually increase your activity to 30 minutes (non-consecutive minutes are ok), on most days. For example, start by challenging yourself to power walk for 20 minutes. As you progress, increase the intensity so that you’re working in your target heart rate zone alternating with easy and challenging intervals of walking--and, if you want, some running. Try this for 4 to 5 days per week for 8 weeks, alternating with a light, and then a more challenging day. Note your progress, and aim to mark your feelings in a journal at least once a week.



- 4. Straighten Up.** As you get moving, remember to “posture check” yourself. Think of lifting your heart, opening up and increasing your postural awareness: Crown of the head to the sky, tall neck, rib cage lifted up, shoulders down and in, abdominals in and up, hips in alignment, knees in line with hips and ankles, good, balanced foot placement. Then give yourself a big whole hearted forward and backward hug. It’s a great stretch, feels good, and can prime your senses.



5. **Learn to Love Change.** Mixing up your routine keeps it fun, reduces the risk of overuse injuries, and boosts your skill levels. Practice Cross Training (not Cross Fit®), which incorporates a variety of activities (e.g., exercises, dance, sport, recreational moves). This activates different muscle groups, keeps training interesting, and helps reduce the risk of boredom.



6. **Pick a Partner(s).** Having trusted accountability buddies can boost adherence, motivation, and success, and research shows that being part of a group can positively impact health and well-being (Putnam, 2000). Having social support can offer us companionship, strength, and can give us a sense of purpose around our commitment to train. Start a walking club at work, walk with family members, and/or check your local community center, church, or park/recreation program for activities you might enjoy.
7. **Break a Sweat.** Incorporate aerobic movement --“the key to fitness” (Cooper, 1977)--to improve your physical, emotional, social, and neural health and protect you against non-communicable diseases (Ratey, 2008; O’Brien, 2013).
8. **Be Safe.** Create a SAFE, effective training space, even in your office, with a warm, welcoming atmosphere, encouraging positive connections (O’Brien, 2015; Peterson, 2007).
9. **No Pain, Just Gain.** Create an exercise plan that promotes injury-free health. Even in moderation, physical activity, exercise, and movement enhance positive health and well-being. You do NOT need to feel pain to get great benefits. Listen

to your body’s cue, and move with good form and safety first. Avoid the weekend warrior syndrome. Don’t overdo it! Listen to your body, challenge yourself, and have fun.

10. **Aim For Exhilaration.** Leave your training session feeling great, wanting a little more. Feel exhilarated, not exhausted.
11. **Reward your Achievements.** Savor your successes. Find meaningful ways to celebrate your accomplishments.
12. **Get Out in Nature.** The term “green exercise” emerges from a growing body of research that shows that interacting with nature can positively affect our health and well-being, relieving stress, and promoting lucidity and clearer concentration (Archer, 2007). Breathing fresh air and being exposed to the land, sky, and nature’s panoply of colors offers refreshing sensory stimulation. The awe of our surroundings bolsters our appreciation of the beauty of nature. We can reenergize by getting away from stress giving us time to reflect and gain clarity in thinking.
13. **Get Moved By Music.** Being “moved” by music is an ancient, global tradition. Music can enhance our performance, increase our motivation, boost our stamina, and reduce exercise recovery times. What music moves you? Can you think of and play-list tunes from your peak years to boost your energy and your inclination to move? Music is a great way to quickly enhance mood (O’Brien, 2014; Langer, 2009).
14. **Adopt a Play Mindset.** To boost your motivation to move, think of play. What did you enjoy as a child. Are any of those interesting, modifiable, or viable now?
15. **Laugh!** Bring humor, smiles, and laughs to your training (O’Brien, 2013; Seligman, 2011).



PSYCHOLOGICAL BENEFITS OF EXERCISE

The investment into daily activity boosts not only physical health but also psychological well-being. For example, exercise:

- Acts as a relief from tension, depression, and fatigue. “It’s an ideal antidepressant” (Ornish, 2018). Tal Ben-Shahar has stated, “Not exercising is like taking a depressant!”
- Helps create a sense of independence/self-care/positive self-determination.
- Helps cultivate experiences of joy, self-worth, mastery, possibility, and fulfillment.
- Can result in experiences of “flow” (as defined by Mihaly Csikszentmihalyi).
- Fulfills a need to play and have fun.
- Inspires others by being a positive role model.
- Builds confidence and kinesthetic awareness.
- Creates change in values generally as well as positive feelings about your body.
- Boosts greater sexual appreciation (Ornish, 2018).

HEALTH BENEFITS OF AEROBIC ACTIVITY

“Aerobics is the key to fitness.”
– Dr. Ken Cooper

Aerobic activity has special benefits. “Aerobics” means “with oxygen.” Aerobic exercise, in the presence of oxygen, trains the heart and lungs (cardiopulmonary system), the brain, and all bodily systems. Some examples of aerobic activities for you to incorporate include:

- Brisk walking (100 steps/minute)
- Dancing
- Running
- Water Fitness/Swimming
- Cross Country Skiing

- Bicycling
- Hiking
- Skating
- Skiing
- Surfing
- Basketball

Important benefits of aerobic activity include:

1. Boosts Your Energy. An important benefit of aerobic activity is that it gives you more energy. As your heart strengthens, it will pump more blood with less work, and your resting pulse will drop, as your body’s amazing efficiency improves.

2. Boosts Your Brain Power. A growing body of research has demonstrated that aerobic exercise boosts our brain power, increasing brain derived neurotropic factor, which is like Miracle Grow for your brain’s synaptic connectivity. Ratey (2008) discusses how aerobic exercise benefits the brain:

- Generates new brain cells, which is called “neurogenesis”
- Strengthens between cell connections
- Promotes neuroplasticity: restoring, repairing, and building resilience in the brain.

Boosting our executive function is important because it helps us plan, organize, and initiate action. It helps us learn from mistakes and maintain focus, and improve working memory. On the other hand, dysfunction in the executive function leads to a disruption in the organization and control of behavior. Additionally, aerobic exercise in the middle years has been shown to greatly reduce the risk of cognitive disorders later in life (Aamodt & Wang, 2007).

In short, aerobic exercise makes us smarter daily and for the long haul, while also making us look better, feel better, do better, and boost our mood.



FITTING IN MORE PHYSICAL FITNESS EVERYDAY

The many benefits of physical activity should have us all feeling inspired to get moving. But how do we fit it into our busy schedules? Most of us are sitting way too much. Changing this will take time and perseverance, but it will be worth the effort.

Creating more ways to incorporate physical activity into your work day is a good place to start. Below are some strategies for doing so:

- Standing or walking meetings
- Treadmill or standing desks
- Energy breaks during meetings
- Exercises at your desk like seated push ups, seated jumping jacks, knee raises
- Joining forces to train together with colleagues in meaningful activities. You can Race for the Arts, Walk for the Cure, and find ways to be a positive role model.
- Have an office mini Dance Break – take turns picking music and coming up with cool moves.

For more ideas and encouragement, check the [Exercise is Medicine](#) website.

RELAXATION TRAINING

While being more physically active is essential for our health, so is calming the high physiological arousal that our stressful work often generates.

“Arousal” generally is not a bad thing, but arousal that triggers our stress response can be harmful if not “shut off.” “Arousal” is simply the physiological and psychological state of being awake. It is also the stimulation of our sensory organs. Arousal is important in regulating consciousness, attention, alertness, and information processing. Arousal can be learned and with intention, and practice, we can

consciously regulate, maintain, and establish better, more consistent performance.

Green and Green (1977) studied autonomic function control. Their findings demonstrated how, with training, individuals can alter their:

- Brain waves
- Heart rate
- Respiration
- Blood pressure
- Body temperature
- Other bodily processes generally associate with the autonomic nervous system.



Relaxation Training is a practice used to increase calmness or otherwise reduce pain, anxiety, stress or anger. Because we are often faced with many demands, and a deluge of overstimulation, here are some tools to help you breathe and relax:

Easy Belly Breath for Calming, Reorganizing, and Energizing. Sit in a comfortable spot. Close your eyes. Imagine your belly is the ocean, and your breath, the waves. As the waves roll in, breathe in, and as the waves roll out, breathe out. Allow your breath to be natural and easy, flowing effortlessly like the waves onto the beach. Enjoy becoming more relaxed, nurtured, peaceful, and clear.



Methods of Breathing: All breaths start with a deep exhalation; then breathe in through the nose, and out through the mouth. All breaths are executed with excellent posture, form, with your eyes open or closed, honoring the self and others.

1. Complete breath/diaphragmatic breathing:

Place one hand on your abdomen, and the other on your upper chest. Slowly, and while visualizing the lungs as 3 chambers, breathe in, and fill your belly, chest cavity, and then the top of your lungs (by your collarbone, expanding the shoulders) with air. Exhale and repeat.

2. Rhythmic breathing, & sigh of exhalation:

Breathe in for a count of 4, hold the breath for a count of 7, and exhale audibly for a count of 8.

Relax and repeat.

3. 1:2 ratio: Breathe in and out fully. Breathe in for a count of 4, out for a count of 8. With practice you can change the count to 5:10, or 6:12.

4. 5-to-1 count: Say and visualize the number “5: as you take in a full deep breath in and out. Mentally count and visualize the number “4,” saying to yourself, “I am more relaxed than I was at 5.” Continue the countdown until you get to “1,” and are totally relaxed.

5. Concentration Breathing: Breath of Thanks: Breathe in for 7 counts, hold for 7 counts, and exhale out for 7 counts. Relax and repeat.

Incorporating Calming Activities at Work. Taking moments to engage in beneficial breathing is one way to incorporate more calming, relaxation activities into our work days. Others include:

- Siesta pods for a little necessary and beneficial rest time.
- Mats for prayer, rest, or meditation
- Availability of good, clean, fresh, (plant based) food
- Flex, time, and shorter or variable hours

POSITIVE EMBODIMENT: CARE FOR YOUR BODY, HEART AND MIND

“Embodiment” is a field of study dedicated to exploring and understanding the subjective experience of the body. Embodiment has to do with things like our proprioception: awareness of our body in space, and our comportment: how we carry ourselves, mentally and physically, during the day.

The hope is that this worksheet will inspire you to find ways to elevate your well-being for a lifetime. Taking moments for self care and reflection are important. So is appreciation for your self. Here are questions around physical activity, embodiment, and vibrancy to consider in lovingly tending for your body, heart, and mind:

Appreciative Questions and Reflections on Your Body and Vibrancy:

1. What aspects of my body can I notice or appreciate that I may take for granted?
2. When do I tend to have the most energy, or feel best during the day?
3. How can I incorporate more of this good energy into each day?
4. Think back to an experience when you really felt good physically. What was going on during this peak time? What can I apply in my life now?
5. Imagine optimal health. How does it feel? How can I create that?
6. How might I infuse more passion and zest into my life today?

RESOURCES AND REFERENCES

Want an Energy Boost; Making Positive Psychology Work: Podcast with Elaine O’Brien and Michelle McQuaid:



<https://www.michellemcquaid.com/podcast/want-energy-boost-podcast-elaine-obrien/>

Redefining True Health Care: Inaugural Summit on Happiness Science in Health <https://positivepsychologynews.com/news/elaine-obrien/2018051038438>

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O'Brien, E. (2016). Move2Love and Vibrancy: Community Dance/Fitness. *Women & Therapy*, 39(1-2), 171-185. Abstract.

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Heffernon, K., & Mutrie, N. (2012). Physical activity as a "stellar" positive intervention. In E. O. Acevedo (Ed.), *The Oxford handbook of exercise psychology* (pp. 117-130). New York: Oxford University Press.

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Aamodt, S., & Wang, S. (2007, November 8). Exercise on the brain. *New York Times*.

Levitin, D. J. (2008). *The world in six songs: How the musical brain created human nature*. New York: The Penguin Group.

Dr Ding Ding et al, The economic burden of physical inactivity: a global analysis of major non-communicable diseases, *The Lancet* (2016). DOI: 10.1016/S0140-6736(16)30383-X.

RESOURCES

Contributed by Anne Brafford

Book Recommendations

- Tom Rath, *Eat, Move, Sleep*
- Tom Rath, *Are You Fully Charged? The 3 Keys to Energizing Your Work and Life*
- John Ratey, *Spark: The Revolutionary New Science of Exercise and the Brain*
- John Ratey, *Go Wild: Eat Fat, Run Free, Be Social, and Follow Evolution's Other Rules for Total Health and Well-being*
- Eva Selhub & Alan Logan, *Your Brain on Nature: The Science of Nature's Influence on Your Health, Happiness, & Vitality*
- David Carless & Kitrina Douglas, *Sport and Physical Activity for Mental Health*
- Wallace Nichols, *Blue Mind: The Surprising Science That Shows How Being Near, In, On, or Under Water Can Make You Happier, Healthier, More Connected, and Better at What You Do*
- Mihaly Csikszentmihalyi, *Flow: The Psychology of Optimal Experience*

Videos

- Wendy Suzuki, *The Brain Changing Benefits of Exercise*, **TED Talk**



Fit Fore Golf: Dr. Elaine's PGA, Positive Golf Activities

Contributed by Elaine O'Brien, PhD, MAPP, CPT
Move2Love@gmail.com | www.ElaineOBrienPhD.com

A key strategy to help increase our daily physical activity is to increase the physical challenge of activities that we're already doing. Golf is one such activity that many lawyers already enjoy.

First, golf can be an aerobic activity if you play a fast game and without a golf cart. Adding a golf conditioning program is another great way to help raise your fitness level. It also can improve your game and add yardage to your drive. To get started, below are some stretching and strengthening moves to help you improve your health, stability, and vitality and also improve your game:

1. **Dorsi flex:** This is a simple toe tap that can improve flexibility. It stretches the gastrocnemius (calf) and strengthens the tibialis anterior (shin area). This simple, but effective stretch helps us with balance, flexibility and injury prevention. It's easy to do at the office, at home, or at play. Do 12 toe taps, each foot, 3-4 times per day.
2. **Calf stretch:** Put your feet parallel in a stride position with one foot in front of the other. Lower your back heel to the floor, and hold the stretch, static (not bouncing) for 15-20 seconds. Then switch. Repeat throughout the day to increase your flexibility.
3. **Quadricep Stretch:** Bend your leg gently at the knee with your foot towards your buttock until you can feel a gentle stretch on the front of the thigh. To increase the stretch, tilt your hips slightly backwards. Hold for 20-30 seconds and repeat 3 times. Do this at least 3 times a day.
4. **Seated Hamstring Stretch:** Bring your hands behind the back upper thigh, (not behind the fragile kneecap, but the belly of the hamstring muscle); extend your leg, and lift it up, alternately pointing and flexing the feet. Hold for 20-30 seconds, and repeat 3 times. Do this at least 3

times a day to reduce your risk of low back pain.

5. **The Plank.** This is a slightly advanced, simple, but effective bodyweight exercise. Holding the body (light as a feather) and stiff as a board develops strength primarily in the core—the muscles that connect the upper and lower body—as well as the shoulders, arms, and glutes. There are variations on this, and like other exercises and skills, it's good to build progression.



6. **Push-ups:** Wall push ups can do these anywhere and boost chest and arm strength.
7. **Squat:** Targeting the legs and gluteals, squats are an excellent way to warm up your core, especially prior to stretching, and power up your energy and strength.

In a golf swing, 33 major muscles are activated. Also, the nature of golf is that is a highly repetitive activity, often at a relatively high level. Because golf involves core flexion and rotation in the swing, and bending over and over again and again to pick up the ball (up to 200 times/game), there tend to be higher incidences of chronic low back pain among golfers. Light rhythmic strength training, and stretching can help reduce the risk of aches and pains. It's a good idea to speak with your golf pro or a kinesiologist about ways you can improve your swing, and your biomechanics.



Lawyer Assistance Program Contacts By State

To make it easy to contact your local Lawyer Assistance Program (LAP), below is a list of Directors or other leaders of the state LAPs whom you can contact for support with your well-being initiatives.

ALABAMA

[Alabama Lawyer Assistance Program](#)

Robert B. Thornhill
robert.thornhill@alabar.org

ALASKA

[Alaska Lawyers' Assistance Committee](#)

Deborah O'Regan
oregan@alaskabar.org

ARIZONA

[Arizona Member Assistance Program](#)

Roberta L. Teppar
roberta.tepper@staff.azbar.org

ARKANSAS

[Arkansas Judges & Lawyers Assistance Program](#)

Andre Lewis
andre@arjlap.com

CALIFORNIA

[California Lawyer Assistance Program](#)

Michelle Harmon
michelle.harmon@calbar.ca.gov

[California -The Other Bar](#)

David Mann
dguymann@gmail.com

COLORADO

[Colorado Lawyer Assistance Program](#)

Sarah Myers
smyers@coloradolap.org

CONNECTICUT

[Lawyers Concerned for Lawyers – Connecticut, Inc.](#)

Beth D. Griffin
beth@lclct.org

DELAWARE

[Delaware Lawyers Assistance Program](#)

Carol P. Waldhauser
cwaldhauser@de-lap.org

DISTRICT OF COLUMBIA

[DC Bar Lawyer Assistance Program](#)

Denise Perme
dperme@dcbar.org

FLORIDA

[Florida Lawyers Assistance, Inc.](#)

Judith R. Rushlow
judy@fla-lap.org

GEORGIA

[Georgia Lawyer Assistance Program](#)

Jeff Kuester
jkuester@taylorenghish.com

HAWAII

[Hawaii Attorneys & Judges Assistance Program](#)

Liam Deeley
director@hawaiiiaap.com

IDAHO

[Idaho Lawyer Assistance Program](#)

Ben Seymour
ben@southworthassociates.net

ILLINOIS

[Illinois Lawyers' Assistance Program](#)

Robin M. Belleau
rbelleau@illinoislap.org



INDIANA

[Indiana Judges and Lawyers Assistance Program](#)

Terry L. Harrell

terry.harrell@courts.in.gov

IOWA

[Iowa Lawyers Assistance Program](#)

Hugh G. Grady

hugh@iowalap.org

KANSAS

[Kansas Lawyers Assistance Program](#)

Anne McDonald

mcdonalda@kscourts.org

KENTUCKY

[Kentucky Lawyer Assistance Program](#)

Yvette Hourigan

yhourigan@kylap.org

LOUISIANA

[Louisiana Judges & Lawyers Assistance Program Inc.](#)

Joseph (Buddy) E. Stockwell III

buddy@louisianalap.com

MAINE

[Maine Assistance Program for Lawyers & Judges](#)

William Nugent

maineasstprog1@myfairpoint.net

MARYLAND

[Maryland Lawyer Assistance Program](#)

James P. Quinn

jquinn@msba.org

MASSACHUSETTS

[Massachusetts Lawyers Concerned for Lawyers, Inc.](#)

Anna Levine

anna@lclma.org

MICHIGAN

[Michigan Lawyers & Judges Assistance Program](#)

Tish Vincent

tvincen@mail.michbar.org

MINNESOTA

[Minnesota Lawyers Concerned for Lawyers](#)

Joan Bibelhausen

jbibelhausen@mnlcl.org

MISSISSIPPI

[Mississippi Lawyers & Judges Assistance Program](#)

Chip Glaze

cglaze@msbar.org

MISSOURI

[Missouri Lawyers' Assistance Program](#)

Anne Chambers

achambers@mobar.org

MONTANA

[Montana Lawyer Assistance Program](#)

Michael E. Larson

mlarson@montanabar.org

NEBRASKA

[Nebraska Lawyers Assistance Program](#)

Christopher Aupperle

caupperle@nebar.com

NEVADA

[Nevada Lawyers Concerned for Lawyers](#)

Kristine M. Kuzemka

kristine@kuzemkalaw.com

NEW HAMPSHIRE

[New Hampshire Lawyers Assistance Program](#)

Terri M. Harrington

t.harrington@nhlap.org

NEW JERSEY

[New Jersey Lawyers Assistance Program](#)

William John Kane

wkane@njlap.org

NEW MEXICO

[New Mexico Lawyers & Judges Assistance Program](#)

Pamela Moore

pmoore@nmbar.org



NEW YORK

[Nassau County Bar Association Lawyer Assistance Program](#)

Elizabeth Eckhardt
eeckhardt@nassaubar.org

[New York City Lawyer Assistance Program](#)

Eileen Travis
etravis@nycbar.org

[New York State Lawyer and Judges Assistance Program](#)

lap@nysba.org

NORTH CAROLINA

[North Carolina Lawyer Assistance Program](#)

Robynn Moraites
robynn@nclap.org

[BarCARES of North Carolina](#)

Jacquelyn L. Terrell
jterrell@ncbar.org

NORTH DAKOTA

[North Dakota Lawyer Assistance Program](#)

Diane M. Wehrman
dwehrman@vogellaw.com

OHIO

[Ohio Lawyers Assistance Program, Inc.](#)

Scott R. Mote
smote@ohiolap.org

OKLAHOMA

[Oklahoma Lawyers Helping Lawyers](#)

Deanna Harris
dharris@plexusgroupe.com

OREGON

[Oregon Attorney Assistance Program](#)

Barbara S. Fishleder
barbaraf@oaap.org

PENNSYLVANIA

[Lawyers Concerned for Lawyers of Pennsylvania, Inc.](#)

Laurie J. Besden
laurie@lclpa.org

RHODE ISLAND

[Rhode Island Lawyers Helping Lawyers Committee](#)

Nicholas Trott Long
nicholas@ntlong.com

SOUTH CAROLINA

[South Carolina Lawyers Helping Lawyers](#)

J. Robert Turnbull, Jr.
rturnbull@scbar.org

SOUTH DAKOTA

[South Dakota Lawyers Concerned for Lawyers](#)

Rebecca Porter
Rebecca.porter@sdbar.net

TENNESSEE

[Tennessee Lawyers Assistance Program](#)

Ted Rice
ted.rice@tncourts.gov

TEXAS

[Texas Lawyers' Assistance Program](#)

Bree Buchanan
bree.buchanan@texasbar.com

UTAH

[Utah Lawyers Helping Lawyers](#)

Brook Millard
admin@lawyershelpinglawyers.org

VERMONT

[Vermont Lawyer Assistance Program](#)

Joshua L. Simonds
jls@burlingtonlawpractice.com



VIRGINIA

[Virginia Lawyers Helping Lawyers](#)

Tim Carroll

tcarroll@valhl.org

WASHINGTON

[Washington Member Wellness Program](#)

Dan Crystal

danc@wsba.org

WEST VIRGINIA

[West Virginia Judicial & Lawyer Assistance Program](#)

Robert E. Albury, Jr.

alburyr@WVJLAP.ORG

WISCONSIN

[Wisconsin Lawyers Assistance Program](#)

Mary Spranger

mspranger@wisbar.org

WYOMING

[Wyoming Lawyer Assistance Program](#)

John B. Speight

jspeight@wylap.org

*Thanks very much to Sarah Smith, Associate Counsel
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Professional Responsibility, for compiling this list.*



Well-Being Toolkit Nutshell: 80 Tips For Lawyer Thriving

Many legal employers are ready to become positive change agents on the path to lawyer well-being but are unsure where to start. To help, the American Bar Association's Presidential Working Group to Advance Well-Being in the Legal Profession has launched the [Well-Being Toolkit for Lawyers and Legal Employers](#). This nutshell summarizes 80 of the Toolkit's key items to help get you started on a lawyer well-being initiative.

3 Reasons To Care About Well-Being

1. It's the right thing to do
2. It impacts competence
3. It's good for business



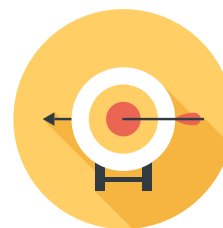
13 Healthy Workplace Factors

1. Culture of Trust
2. Mental Health Support
3. Effective Leadership
4. Civility & Respect
5. Good Person-Job Fit
6. Growth & Development
7. Recognition & Reward
8. Involvement & Influence
9. Workload Management
10. Employee Engagement
11. Work-Life Balance Support
12. Psychological Safety
13. Physical Safety



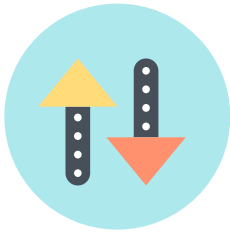
6 Dimensions Of Lawyer Well-Being

1. **Occupational:** Satisfaction, Growth, Financial Stability
2. **Emotional:** Manage Emotions & Protect Mental Health
3. **Physical:** Healthy Lifestyle, Help-Seeking When Needed
4. **Intellectual:** Learn, Pursue Challenge, Keep Developing
5. **Spiritual:** Meaning & Purpose
6. **Social:** Connection, Belonging, Contributing



8-Step Action Plan For Launching A Well-Being Program

1. Enlist Leaders
2. Start a Well-Being Committee
3. Define Well-Being
4. Do a Needs Assessment
5. Identify Priorities
6. Make & Execute an Action Plan
7. Create a Well-Being Policy
8. Measure, Evaluate, & Improve



15 Ideas for Well-Being Activities & Events

1. Use a Well-Being Scorecard to Assess Leader Effectiveness
2. Create a Well-Being Knowledge Hub
3. Start a Well-Being-Related Book or Video Club
4. Launch and Support a Leader Development Program
5. Invest in Professional Coaches
6. Measure Well-Being
7. Get Creative with CLEs, e.g., Spin Class CLE Events
8. Celebrate a Well-Being Week
9. Maintain a Calendar of Well-Being Events
10. Do Well-Being Goal-Setting
11. Embed Well-Being in Content & Format of Meetings
12. Incorporate Well-Being into Promotions & Other Transitions
13. Offer Treadmill/Standing Desks
14. Add Mental Health Apps to Insurance Plans
15. Audit policies/practices that may impact well-being.



18 Topic Ideas For Education & Development

1. Detecting Warning Signs of Mental Health & Alcohol Use Disorders
2. Facilitating & Destigmatizing Help-Seeking
3. Enhancing A Sense of Autonomy & Control
4. Elevating Focus on Client Care
5. Work Engagement & Burnout
6. Stress Mindset
7. Resilience & Optimism
8. Mindfulness
9. Rejuvenation
10. Leader Development
11. Conflict Management
12. Work-Life Conflict
13. Meaning & Purpose
14. Grit
15. Psychological Capital
16. Self-Determination Theory
17. Emotional Intelligence
18. Time Management/Alignment



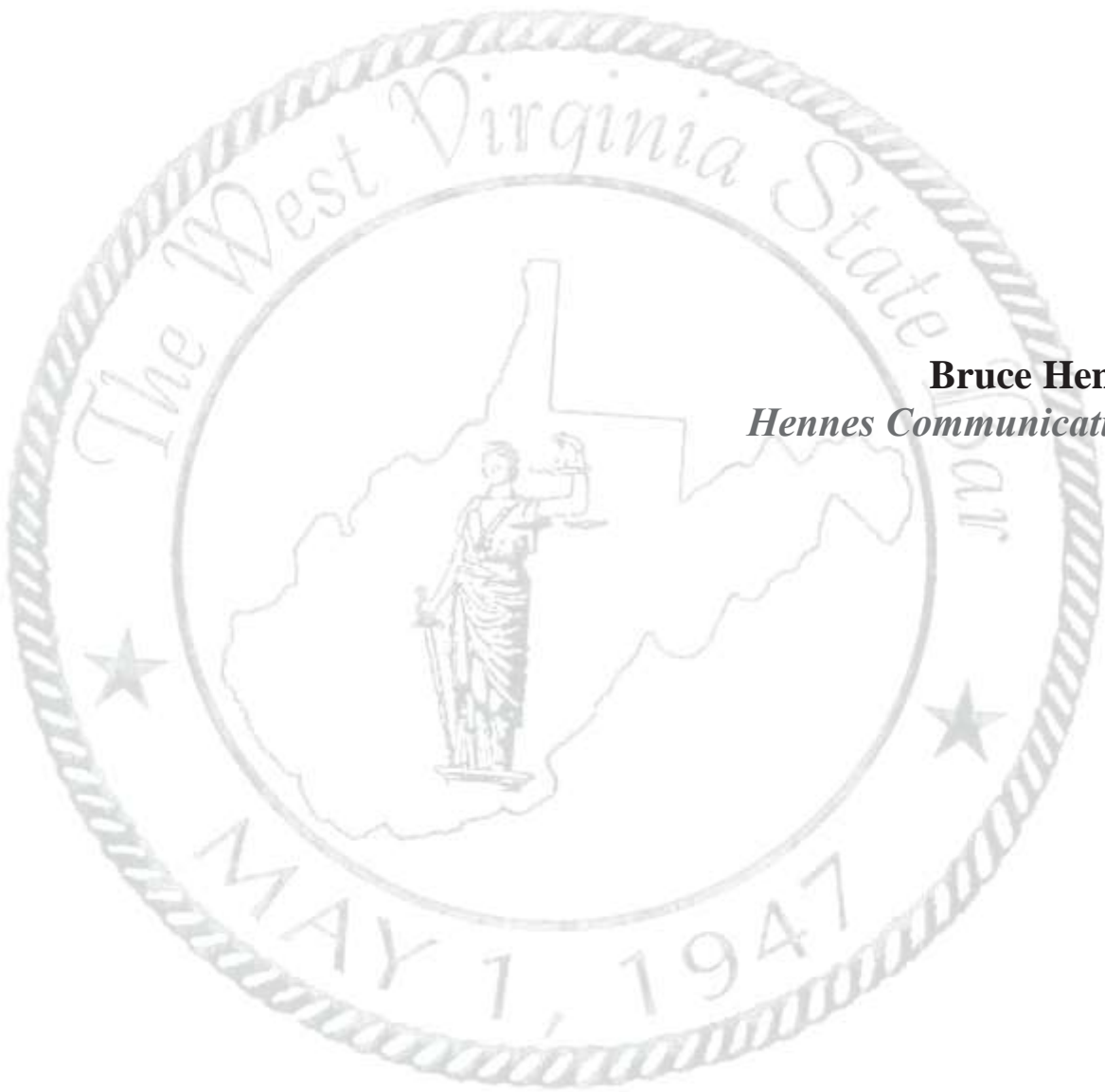
17 Well-Being Activity Worksheets To Try

1. How to Be Happier? Make it a Priority
2. Six Sources of Well-Being
3. Grow Your Gratitude
4. Do Acts of Kindness
5. Psychological Capital
6. Reframe Stress & Adversity
7. Mindfulness To Improve Well-Being & Performance
8. The Emotionally Intelligent Path to Well-Being
9. Well-Being & Confidence
10. Use Your Strengths
11. Capitalizing on Introverted Strengths
12. Overcoming Public Speaking Anxiety
13. Mind Your Marriage
14. Managers, Don't Forget Your Own Well-Being
15. Positive Leadership
16. Physical Activity & Vibrancy
17. Positive Golf Activities

Today's Well-Being To Do List:

- ✓ Review the Toolkit
- ✓ Do one thing to get started
- ✓ Pass the Toolkit on to others
- ✓ Send questions to abafford@aspire.legal

Crisis Management for Attorneys and Their Clients



Bruce Hennes
Hennes Communications



Bruce M. Hennes

[Bruce Hennes-V-Card](#)

Bruce M. Hennes is Chief Executive Officer of Hennes Communications, a crisis management, crisis communications and litigation communications consulting firm based in Cleveland.

Hennes has more than 30 years' experience working in politics, having managed or served as a senior campaign consultant and fundraiser for campaigns at the local, state and federal levels. Hennes also served three years as executive director for The Temple on the Heights in Pepper Pike, Ohio, and three years doing government and public relations in the automotive industry. He opened Hennes Communications in 1989, which later became Hennes/Haslett & Associates, handling government relations, public relations, community relations and media training. In 2002, the firm was renamed Hennes Paynter Communications and in 2015, the firm reverted back to Hennes Communications.

As one of Cleveland's best-known crisis communication specialists and media trainers, Hennes is also an in-demand speaker before bar and trade associations on the subject of crisis communications. Under the auspices of Red Cross chapters, county emergency management agencies and boards of health, he frequently speaks to mayors, police, fire, education and other government officials on the subject of "Extreme Crisis Communications" (i.e. how to handle mass casualty incidents and other "extreme" situations involving threats to life & limb).

Hennes is past chairman of the Greater Cleveland Growth Association's Public Affairs Committee and The Cleveland Jewish News. He currently serves on the boards of the Cleveland Leadership Center and The Judicial Candidates Rating Coalition (Judge4Yourself.com). He was one of the founding board members of the FBI Citizens Academy Foundation of Cleveland. He is also an adjunct professor teaching crisis management in the Levin College of Urban Affairs at Cleveland State University and a frequent guest lecturer at John Carroll University, Kent State University, Case Western Reserve University and Ohio State University. Hennes is a member of The Press Club of Cleveland and on the board of the Cleveland Leadership Center. He is also on the board of The Cleveland Metropolitan Bar Association, which twice awarded him with the President's Award for service to the bar association. Hennes is president of the Leadership Cleveland Class of 2008. He has a degree in political science from York University in Toronto, Canada.

Hennes is recipient of the President's Special Award for Extraordinary Service from the Cuyahoga County Bar Association and two Vega awards from The American Red Cross. In 2011, he received the "Communicator of the Year Award" from the International Association of Business Communicators – Cleveland Chapter and in 2013, his work won a gold "Rocks" award from the Cleveland Chapter of the Public Relations Society of America on behalf of a client, SeaStreak, in the crisis communications category. The campaign also was named "Best of Show," which is awarded to the entry that receives the highest score among all the entries from a panel of judges. The entry, titled "Doing the Right Thing: How a Company's Fortright Crisis Response Preserved its Reputation and Maintained Customer Confidence," recounted the

communications strategy the company adopted in January 2013 when one of SeaStreak's passenger ferries crashed into a dock in lower Manhattan's Financial District. In 2017, his firm received the Silver Anvil Award, in conjunction with a number of other agencies, from the Public Relations Society of America for its work on behalf of the Cleveland Host Committee for the 2016 Republican Convention held in Cleveland. Hennes was also named by PRNews as one of its 50 "Game Changers of PR for 2017," noting his 30 years of experience helping CEOs, executive directors, government officials and other leaders preserve and protect their reputation. Recently, Hennes received his second President's Award for Outstanding Service to the Cleveland Metropolitan Bar Association.

Hennes received certification in Effective Communications from the U.S. Department of Homeland Security and The Federal Emergency Management Agency. He is also *of counsel* to Levick Strategic Communications in Washington, DC.



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CRISIS COMMUNICATIONS | CRISIS MANAGEMENT
LITIGATION COMMUNICATIONS | MEDIA TRAINING

Terminal Tower | 50 Public Square, Suite 3200 | Cleveland, Ohio 44113 | tel 216-321-7774

AES Building | 388 S. Main Street, Suite 400 | Akron, Ohio 44311 | tel 330-310-9290

www.crisiscommunications.com

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The Media Revolution is 'Iterative' and Social: Experts Share How Not to Get Left Behind

By Marilyn Cavicchia

"You're all living in a media revolution," said Thom Fladung, vice president of Hennes Communications. "And you don't even know it."

Offering a window onto one aspect of that revolution, Bruce Hennes, president of the same crisis communications firm, said, "I don't think there's a reporter in the country who's not using Twitter to crowdsource what people are thinking about."

Speaking at this year's Midyear Meeting of the National Association of Bar Executives, National Conference of Bar Presidents, and National Conference of Bar Foundations, Hennes and Fladung helped attendees understand how they should navigate in a world where, as Fladung put it, "The media has changed more in 10 years than in the past 100."

What's New? Iterative Reporting

It used to be that a news article was a single item, published once, Fladung said, and reporters were expected to get every important source into the story, even if it meant trying to reach them six different ways before giving up.

Because articles can, and are, updated easily online, the typical news story is now given out "piece by piece, over time," Fladung said, noting that this is called "iterative reporting."

As a source, Fladung added, this means you are no longer indispensable—so you can't make yourself difficult to reach, or you'll miss the chance to put your association in its best light (whether the story is good news for you, or bad news).

"If you don't pick up the phone, you're not in the story," he said, noting that Google's analytics give priority to whichever news outlet broke a story first—which has put pressure on reporters to work faster than ever, and not to spend too much time chasing down sources.

While you could still make it into an update to the story, Fladung added, that's not really where you want to be. "When is the last time you went back on your phone to see if there's been an update to something you read?" he asked, noting that 60 percent of all news content is now consumed via smart phone.

What if you really can't make the reporter's deadline, or you find out after the fact about a story your bar should have been part of? See if the reporter will do a whole new story with a new headline, Fladung suggested—again, so you can avoid being hidden away in an update.

Both Fladung and Hennes confirmed to skeptical audience members that reporters really are receptive to this idea, as long as you honestly do have a lot of new facts to offer. Hennes noted that quite often, reporters are rewarded—including in pay—for the number of separate articles they publish.

Just How Important is Social Media?

So important, Hennes said, that maintaining some kind of presence there is no longer optional; if you really don't want to manage an account yourself, then he advised that you hire someone to do it for you.

Why? Your members are there, and so are reporters—and if you or your bar association are being discussed, whether positively or negatively, you need to know about it so you can respond.

Sometimes, Fladung added, reporters will use comments on Facebook and Twitter as akin to interviews—and will quote them. That's all the more reason, he said, to be present on social media: so you'll know what's being said about you there, before you see it in a news article.

The lines between social media and traditional media have blurred significantly in recent years, Fladung noted. Particularly if the account is "verified" (meaning the person has taken extra steps to authenticate that they are who they say they are), others will trust the information and cause it to go viral or to be picked up by a news wire service.

Twitter also functions independently as a news outlet, Fladung added, often being the first place where people see what turns out to be very important information. For example, he said, the first anyone outside of the Pulse nightclub in Orlando heard about the mass shooting there last year was when someone tweeted about it from the club's restroom. When the Orlando police apprehended the shooter, they didn't write a press release or call a reporter; instead, Fladung said, "The biggest news in its history was shared on Twitter."

The traditional news outlets that have survived have learned how to use social media to their advantage, Fladung said, noting that "Facebook now drives about 30 percent of the traffic that comes into newspapers." In other words, a person sees a post on Facebook and clicks on the article, rather than going directly to the newspaper's website and accessing the article from there.

Years ago, Fladung said, a study found that one of the top three drivers of whether a person finds a piece of information noteworthy and worth acting on is whether a friend tells the person about it. "Facebook has taken that concept and supersized it," he added.

Tips for Doing 'Social' Well

Though there are other social media platforms, ranging from LinkedIn to Snapchat, Fladung gave the most focus to Facebook and Twitter. The two tend to be mentioned as a pair, but there is a difference: "Facebook is where people share," he said. "Twitter is where people find." That is, Facebook relies a bit more on interpersonal relationships and friendliness, whereas Twitter is a bit less personal and more about the information being conveyed.

In deciding which one, two, or more platforms to focus on, Fladung said it's important to know where your audience already "lives."

Once you establish an account, make sure to secure it with a two-step verification process, Fladung advised, and set up some guidelines and terms of use. Having some rules that people can clearly see when they visit you on Twitter or Facebook can be very helpful in case you have to remove or block someone, he said.

Build your following by interacting with others and by posting a variety of content, Fladung said, noting that video can be especially powerful. Be professional, but also make sure your tone is "conversational and casual," he advised, "not corporate."

Make sure to respond to comments as soon as possible—especially if they're critical (and don't delete negative comments, lest it look like you're censoring), Fladung recommended. A phenomenon known as confirmation bias means that once a person has a particular opinion of someone or something, their brain will react as if to a pain stimulus when they are presented with facts that conflict with that belief. The longer you let a negative comment sit, the more likely it is that people will see it and perhaps be influenced by it before you intervene.

But "don't arm wrestle with trolls," Fladung continued; if a comment is factually wrong, simply state your case—once. If someone persists and it's especially important to change their mind, try to move the conversation out of the public forum, he recommended. "People are often louder and more abrasive online," he said; also, they tend to think of organizations as "faceless and soulless" and are pleasantly surprised when an actual person contacts them directly. You might even find that the person goes back to the comments to mention this positive interaction and apologize for their initial tone.

For More Information on Working with Reporters

The information that Hennes and Fladung presented on the importance of social media was new at this year's Midyear Meeting. This new guidance relates to Hennes' longstanding advice that association leaders and others not hide from the media, even when something bad happens. Hennes often shares the following rules from his "damage control playbook":

- Tell the truth. (It will always come out eventually.)
- Tell it first (before someone else has a chance to, so that people will be more likely to accept your account rather than another, perhaps more negative one.)
- Tell it all (so you don't look like you're hiding something, which will encourage people to dig).
- Tell it fast (before stories start floating around that don't put you in the best light).
- Realize the media filters everything (i.e. it necessarily picks and chooses the facts and how to "frame" them).
- Realize that the fundamental role of reporters is not to inform or educate, but to tell a story.

Social media now offers a powerful way to get around the traditional media "filter" and reach your audience directly and quickly. However, reporters do still exist and will still contact you for an interview or for information.



On Trial in the Courts of Law and Public Opinion: The Tension Between Legal and Public Relations Advice

by Mark Herrmann and Kim Kumiega

Regardless of industry or size, companies today are more vulnerable than ever. A government action such as a product recall of a children's toy, or a media event such as an investigative exposé of fraudulent business practices on *20/20* can place almost any corporation on trial simultaneously in the courts of law and public opinion. The corporation will rely on lawyers to defend against liability in court and on public relations professionals to protect its reputation in the media. These judicial and media battlefields, however, present very different threats. With every media inquiry, the litigator may see risk where the public relations consultant sees opportunity. The corporation may thus receive conflicting advice on a variety of subjects.

The battles to avoid liability and to protect the brand must both be won. Management will not be praised for winning the litigation at the expense of the company's reputation, or for protecting the brand at the cost of punitive damage awards that drive the company into bankruptcy. The company must thus intelligently balance the advice proffered by legal and public relations advisors.

Some media inquiries portend both litigation and public relations risks. A telephone call in which the executive producer of *60 Minutes* explains that Mike Wallace intends to criticize the safety of your product puts you on notice that the corporation is about to be attacked on two fronts. The situation would be quite different, however, if the same producer called and seemed to be honing in on one isolated incident. For example, a company that sells its products exclusively door-to-door might receive media attention about the number of assaults committed by door-to-door sales representatives. If only one such assault was committed by your company's sales force,

and the incident was resolved or is now barred by the statute of limitations, the television exposé threatens little litigation risk. It is unlikely that a substantial number of assaults by sales representatives went unreported and that a televised exposé would now prompt the filing of many complaints.

A corporation should be able to decide relatively quickly whether it is confronting potential liability, a potential stain on its public image, or both. If the threat is purely one of public relations, there is less need for close coordination between legal and public relations advisors. If the threatened risk involves both potential liability and potential harm to the corporate brand, however, then lawyers and public relations consultants must work together in the company's defense.

They may disagree immediately on a threshold issue: Should the public relations advisor attend critical meetings with counsel? The lawyer's advice on this subject will be cautious. Meetings between lawyer and client are protected by the attorney-client privilege, and a client ordinarily waives that privilege by disclosing information to a person who is outside the attorney-client relationship. Some courts have suggested that a public relations advisor is a stranger to the attorney-client relationship, so disclosing privileged information to her may under certain circumstances waive the privilege. Compare *In re Copper Market Antitrust Litigation*, 200 F.R.D. 213 (S.D.N.Y. 2001) (finding no waiver), with *Calvin Klein Trademark Trust v. Wachner*, 198 F.R.D. 53 (S.D.N.Y. 2000) (finding waiver). A cautious lawyer will want to avoid any risk of waiving the attorney-client privilege and thus will typically advise a client to exclude the public relations advisor from strategy sessions between client and counsel.

The public relations advisor is likely to have exactly the opposite view: How is she to advise the corporation on how to protect its reputation without being fully informed of all key events, which often include legal decisions and strategy? She will want full access to that information and may suggest

Mark Herrmann is a partner in the Cleveland, Ohio, office of Jones, Day, Reavis & Pogue. Kim Kumiega is general manager of crisis and issues management at Edelman Public Relations Worldwide in Chicago.

the client is best served by having both teams share strategic insight to develop an integrated plan to protect the company's divergent interests.

A possible compromise solution in this situation is to designate a lawyer to serve as the liaison to the public relations staff. After the lawyer attends key meetings with management, she can advise the public relations staff about decisions that were reached without disclosing privileged thought processes. For example, the liaison might tell the public relations advisor that the corporation decided to pursue a particular theme, without disclosing the deliberations that led to the choice of that theme. Although this approach insulates public relations consultants from certain information, it generally keeps them in the loop without risk to the attorney-client privilege.

Like most compromises, however, this solution is not perfect and requires delicate balance. The liaison to the public relations team must be a senior attorney with the ability to assess various scenarios from a strategic standpoint and answer critical questions posed by the team. For example, will the strategy of "vigorously defend" preclude settlement talks? Have plaintiffs' attorneys reviewed in discovery damaging internal documents that could surface or leak before trial? Answers to these questions and others might substantially affect the tactics employed and messages developed by public relations professionals. The public relations counselor could not be expected to deliver a comprehensive strategy without access to all pertinent information. What one liaison determines to be critical information, worthy of sharing, another might not. The liaison must be sensitive to ensuring that the public relations counselor is armed with all critical information to guide her strategy.

Traditionally lawyers advised clients not to comment in the press about pending litigation. The rules of ethics discouraged talking to the press. See Model Code of Professional Responsibility DR 7-107; Model Rule of Professional Conduct 3.6. Thus, many lawyers would "not acquiesce in allowing what used to be condemned as 'trying cases in the press.'" 2 Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law Of Lawyering* § 32.8 at 32-14 (3d ed. 2001). Apart from ethics, lawyers saw no advantage to foreshadowing one's case in the media.

Even today, certain lawyers continue to advise clients to decline to comment to the media.

Public relations consultants, on the other hand, are typically eager to speak to the press. "When the media call, you can't hide behind a 'no comment' response. The press will report the story with or without you. The sooner you present the facts clearly to the public, the sooner the issue will be resolved." Sandi Sonnenfeld, "Media Policy—What Media Policy?," *Harvard Business Review* 18, 28 (July-Aug. 1994). Public relations consultants will thus routinely advise corporations to take advantage of, or even to try to generate, media opportunities.

On this subject, times have changed, and so must legal advice. In particular situations, litigation risk may be paramount. In other situations, the public relations risk might be paramount. If a controversy threatens the destruction of a company's reputation, then lawyers can no longer advise their clients to ignore the press and accept the consequences.

Moreover, public opinion is irrelevant to many, but not all, lawsuits. In high-profile cases, massive publicity may so poison the minds of potential jurors that a trial is lost before a jury is chosen. Depending on the circumstances, the corporation will have to develop an appropriate response to media inquiries.

Sometimes the situation will force a company's hand; other times the situation will leave many options open. For example, the media may be poised to criticize an entire industry rather than one company's particular product. If your client is a small player in that industry, the client might choose not to speak to the press about the issue, leaving the titans in the marketplace to fend for the industry at large. If, on the other hand, your client is a market leader, it may find itself compelled to speak for the industry. The appropriate media response may vary with the circumstances, but companies should rarely, if ever, adopt blanket policies of providing only a "no comment" in response to pending litigation.

This does not mean, however, that the spokesperson will discuss details of pending litigation with the media. It is perfectly acceptable for an executive to refuse to comment on litigation while agreeing to respond to the issues in general. For example, in cases involving the EEOC or quality-control allegations, the spokesperson can defend the company's record and discuss corporate guidelines and policies without discussing details of the case. Communications strategy will likely encourage you to tell your side of the story whenever possible. With or without the details of litigation, the company likely has a track record, a corporate mission and philosophy, and an overarching reaction to the litigation that it can share.

When a high-profile controversy does arise, someone must speak for the company. Legal and public relations professionals agree that spokespersons should be presentable, articulate, and fully able to defend the company's position.

In addition, the spokesperson should receive both media training and a legal briefing. Media training can help the spokesperson ensure that the company's position is, in fact, aired. Legal training will emphasize that every word spoken during an interview might later be deemed an admission by a party opponent and thus be admissible at trial. See Federal Rules of Evidence 802(d)(2). Similarly, the spokesperson must understand the underlying substantive law governing lawsuits to "help avoid comments or phraseology that have an apparently innocuous ring to a layperson but fit uncomfortably snugly into the language of later jury instructions." Kevin F. Brady, Mark Herrmann & Katherine Bryan Jenks,

"What to Do When Mike Wallace Knocks on Your Door," *Corporate Legal Times* 84 (Dec. 1999). The challenge here is in melding the styles. All comments must be safe from a legal perspective, but the difference between an appropriate answer in a deposition (the most concise truthful answer) and an engaging sound bite (authoritative, direct comments that show control and understanding of the situation) diverge widely and must be considered when framing answers and counseling clients.

Lawyers will generally advise that a member of senior corporate management should not act as spokesperson. Chief executives and other senior officers are important to running a business and should not be distracted from their jobs by being forced repeatedly to give testimony in lawsuits. A senior corporate officer who does not act as a spokesperson typically can be protected from being deposed by offering alternative witnesses who have more personal knowledge of the relevant facts and by explaining that senior managers should be witnesses of last resort. See, e.g., *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985) (quashing deposition notice served on Chrysler Corporation's then chairman Lee Iacocca); *Liberty Mutual Insurance Co. v. Superior Court*, 10 Cal. App. 4th 1282, 1287, 13 Cal. Rptr. 2d 363, 366 (1992) (depositions of senior-level officials "raise a tremendous potential for discovery abuse and harassment").

If a senior officer serves as spokesperson, the corporation may be less able to protect that officer from later being forced to give testimony. The information that the spokesperson discloses to the media, the positions that the corporation takes, or the mere fact of the interview itself may be discoverable events. In a situation where hundreds or thousands of lawsuits are filed, the corporate officer who acts as spokesperson may be deposed repeatedly. Lawyers thus recommend choosing a less valuable employee to serve as spokesperson.

Public relations consultants, however, typically advise cor-

A corporation under siege in the media is defenseless until it offers its own explanation of the crisis.

porations to have the key executive managing a problem or able to change corporate policy to prevent a similar problem in the future serve as the media spokesperson. The issue here is one of accountability. The CEO or other top executive is not chosen simply because she has a high profile but also because messages are more effective when delivered by someone who is responsible for the part of the business that is on trial in both the media and courts.

For high-profile matters of public safety, the communication strategist will likely urge that the CEO become involved. See Kathleen A. Martinelli & William Briggs, "Integrating Public Relations and Legal Response During a Crisis: The Case of Odwalla, Inc.," *Public Relations Review* 443, 458 (Winter 1998) ("The public demonstrates understanding of corporate problems when the corporation—through its top

leadership, not just the Director of Communications—quickly comes forward to make (in-person) public statements disclosing as much information as is available"); Rose Marshall, "No Comment and Other Admissions of Guilt," *Briefly* 1, 21 (Feb. 2000). By selecting such a spokesperson, the corporation tells the world that it is taking the problem seriously and a responsible officer is on the scene. This spokesperson projects both the appropriate corporate image and appropriate concern.

Involving the CEO

In the last few years, the soft drink industry has provided two examples of when and how to involve the CEO. The first example is a case study in effective crisis management; the other illustrates the pitfalls of an inappropriate response.

In 1993, PepsiCo was faced with a contamination issue when a syringe was discovered in one of its cans. Within 24 hours the CEO made appearances on all major national media, sharing the company's plan of action and underscoring the importance of public safety above all else. When the case turned out to be a hoax that had been escalated by copycat claims in more than 20 states, the company was applauded for its responsiveness, even though Pepsi had not been at fault. See Julie Androschick, "Kaboom!," *Forbes* 18 (Nov. 18, 1996).

The Coca-Cola Company, on the other hand, seemed to be late in its response and concern when, in June 1999, 100 people in Belgium, including 40 school children, reported becoming ill after consuming soft drinks. Multiple spokespersons were used during the first 10 days of investigation; only later did then CEO Douglas Ivester become involved by traveling overseas to investigate personally this high-profile focus of international attention. Many cited his lack of responsiveness as one reason for his departure as chairman and chief executive officer only six months later. See Betsy Morris & Patricia Sellers, "What Really Happened at Coke," *Fortune* 114, 116 (Jan. 10, 2000).

Ultimately, the corporation will be forced to choose between protecting senior management from repeated depositions and projecting the right image on the public relations front. That tension is sometimes unavoidable; in other situations, it can be resolved by using a second-tier corporate officer or a regional employee as the media spokesperson.

Once the company selects a suitable spokesperson, management must determine what that person should say. Most lawyers believe two things deeply: First, because the universe of known facts changes over time, the results of an initial investigation will almost inevitably be revised as more information comes to light. Second, people who make statements based on preliminary information can be embarrassed at trial for having said things that later turned out not to be true. Lawyers have thus historically tended to give conservative legal advice in a crisis: "Tell 'em nothin' and tell 'em slow." Norman R. Augustine, "Managing the Crisis You Tried to Prevent," *Harvard Business Review* 147, 155 (Nov.-Dec. 1995).

Public relations professionals, on the other hand, believe that a corporation under siege in the media is defenseless until it offers its own explanation of the crisis. The public relations advice is thus to make a spokesperson available and to provide as much detail as possible.

Although advisors may disagree over the level of detail a company should provide, they should share one cardinal rule: Tell the truth. From both legal and public relations perspectives, honesty is both the right policy and the best policy.

According to Daniel J. Edelman, founder and chairman of Edelman Public Relations Worldwide, "We emphasize the truth in communicating to the public—telling the truth and telling it immediately and saying what you're going to do about it if it's a problem." Dan G. Tripps, *The Heart of Success—Conversations With Notable Achievers* 221 (2001).

Given the scope of permissible discovery in litigation and the insatiable curiosity of investigative reporters, the real story will eventually be told. Public relations strategy is often to be the first to tell the truth, which allows the company to benefit from positioning its side of the story from its own perspective early on in the coverage.

Getting Out in Front

Many lawyers' instincts will be conservative. There is no legal benefit to setting in stone the facts as they are understood early in litigation, because early statements may require revision and could prompt assertions that the client made misstatements to the public. Moreover, adopting a position prematurely reveals to opposing counsel the target being attacked, thus giving them more opportunity to prepare. Being proactive offers no legal advantages and several potential disadvantages: restraint is the safer course.

Not so, says the public relations advisor: Be proactive. "[S]et up a media blitz of your own, a truth squad to carry your messages to reporters. ... Create Fact Sheets or White Papers to leave behind with the media." Robert L. Dilenschneider, "Getting Your Message Across While Under Attack," *Public Relations Quarterly* 9, 10 (Summer 2000). The importance of this is multiplied in light of modern communication tools. With approximately 407 million people using the Internet worldwide, both news and misinformation spread across the globe at lightning speed. "Crisis managers need to move faster and use communications vehicles that may be unfamiliar, such as Web sites and chat rooms, to reach consumers in real time. And those consumers are more cynical and demanding, thanks to the proliferation of investigative news shows and class-action lawsuits." Dana James, "When Your Company Goes Code Blue: How Crisis Management Has Changed," *Marketing News* 1, 1 (Nov. 6, 2000). If a company is not in front of the story, its message is often left behind, leaving the company in a reactive and weakened position.

The difference between the legal and public relations advice in this area may be less than it seems. So long as the facts are true and verifiable—which should be important to advisors of every type—lawyers should rarely object to sharing basic, accurate facts with the media when disclosure is needed to protect the corporate image. Nor should lawyers object to the public relations effort to frame that information appropriately and in a timely manner. Public relations professionals urge getting the company's message out before the opposition has a chance to frame the story. The difference between responding on the first day of a crisis and the second can set the tone for every activity that follows.

The case of Odwalla is instructive. Immediately after the company learned that some of its juices might be infected with *E. coli* bacteria, Odwalla recalled the products and set up an Internet site to provide customers with up-to-date information about the recall. The company also set up two 800 numbers, one for consumers and one for retail outlets and suppliers. The Web site received 1,400 hits in less than 24 hours. Odwalla chairman and co-founder Greg Steltenpohl served as

spokesperson, repeatedly offering to pay medical bills of all those affected and promising the company would not make apple juice products until it could ensure they were bacteria-free. A team of food and safety experts was assembled and determined that the contamination was not an isolated incident at one company but posed a threat to the entire fresh-juice market. Complete, proactive disclosure and total transparency led to full reintroduction of Odwalla juices on grocery store shelves, while competitors dealt with issues reverberating through the industry. See Martinelli & Briggs, *supra*, at 443, 450-51.

If a corporation is accused of conduct that injured or killed people, another tension may arise between the legal and public relations advice. A lawyer will typically advise a client not to apologize or accept responsibility for having caused harm when possible alternative explanations exist. An apology, like any other statement by a responsible corporate officer, could later find its way into evidence at trial as an admission by a party opponent and be used as evidence against the defendant. See Peter H. Rehm & Denise R. Beatty, "Legal Consequences of Apologizing," *Journal of Dispute Resolution* 115, 119-22 (1996). Additionally, insurance policies sometimes forbid the insured from assuming liability without the insurance company's consent. Counsel may be concerned that, were the client to apologize, it could be deemed an admission of fault that voided insurance coverage. See Annotation, "Validity, Construction, and Effect of 'No-Consent-to-Settlement' Exclusion Clauses in Automobile Insurance Policy," 18 A.L.R. 4th 249 (1982). Counsel thus routinely advise clients not to apologize.

From the public relations perspective, however, it is important for a corporation to accept responsibility for any wrong it may have done. Only by accepting responsibility, displaying appropriate empathy, and promising to make necessary changes in the future can a company restore public trust. "[I]f there is any truth whatsoever to the charges, then I unequivocally advise the individual or organization to admit their culpability, put the crisis behind them, and get on with business." Ian I. Mitroff & Gus Anagnos, *Managing Crises Before They Happen* 95 (AMACOM 2001) (emphasis in original). Studies with focus groups have shown that more than anything else, including paying monetary damages, consumers and audiences expect companies to apologize and take responsibility for their conduct when appropriate. From a public relations perspective, an apology may be precisely what is needed to save the brand.

This tension between the legal and public relations viewpoints could lead to a compromise—a partial apology. The corporation might, for example,

express sympathy for the injured party's condition, but not admit fault or express regret for the defendant's actions. Following a car accident, the offender might visit the injured party in the hospital and state simply "I am very sorry that your leg is broken, and I hope that you feel better soon."

Jonathan R. Cohen, "Advising Clients to Apologize," 72 *Southern California Law Review* 1009, 1030 (May 1999).

To use a higher profile example, the United States recently offered a partial apology to obtain the release of the crew of an EP-3 spy plane that made an emergency landing in China after a midair incident involving a Chinese plane. After several days of negotiations, escalating ill will between the two nations, and increasingly negative headlines, U.S. Ambassadors

sador Joseph W. Prueher and the Chinese minister of foreign affairs agreed to the terms of a partial apology from the United States. The ambassador asked Minister Tang Jiaxuan to "convey to the Chinese people and to the family of pilot Wang Wei [who was killed in the incident] that we are very sorry for their loss." Ambassador Prueher was also "very sorry the entering of China's air space and the landing did not have verbal clearance." See www.usembassy-china.org.cn/english (May 31, 2001). The ambassador did not, however, go so far as to apologize for having violated Chinese airspace or for having spied on China. Nor did the United States agree not to spy on China again in the future. The United States thus expressed regret without accepting blame or making commitments. To Cole Porter, this might have been the difference between *tomato* and *toh-mah-toh*, but in international affairs, it was the key to obtaining the safe release of 24 members of the American flight crew.

From a public relations standpoint, the main criticism of the EP-3 affair is that 10 days of negative media coverage could have been avoided if the carefully framed apology had been made early on in the crisis. From a legal standpoint, however, similar creative ambiguity might be used to show regret to protect the brand in a way that could not be construed to admit liability or void insurance coverage. The show of humanity that is critical to the public relations strategy can be structured to do no harm to the litigation strategy.

A wide range of audiences other than courts and the media may be curious about a corporate crisis. Shareholders may flood the corporation's investor relations department with inquiries. Employees will naturally be curious about what they read in the press and the implications of the crisis for their futures. Corporate suppliers and distributors may have legitimate interests of their own. All the while, the company's competitors may be fanning the flames, and the sales force

may be providing a different answer to each customer.

Lawyers have traditionally tended to advise limited sharing of information. Loose lips sink the attorney-client privilege. Talkative employees may have their depositions prolonged by hours of questions about past conversations. Information, lawyers may advise, should be shared sparingly.

Public relations consultants, in contrast, may view employees and other corporate constituencies as some of their most important audiences. If questions posed to employees, vendors, and stockholders are not answered, these constituencies are left to speculate. This, in turn, feeds the rumor mill and again places the company in a reactive and defensive position. If you don't tell people what's going on, they generally assume the worst. And, unfortunately, "the worst" can become tomorrow's headlines. See Alison Paddock, "When Lightning Strikes," *Grocery Headquarters* 16, 19 (Dec. 2000).

Deciding what information to share with various corporate constituencies requires a true compromise between the legal and public relations advisors. After a corporation selects the main themes it will press in the media, it can share these themes with its employees, suppliers, and distributors. Basic factual information that is unlikely to be subject to dispute can also be shared safely.

The corporation should, however, avoid disclosing too much detail when speaking to these various constituencies. Superfluous details clutter the message (offending the public relations consultant) and may also later turn out not to be true (the lawyer's concern). An intelligent compromise between the need to speak and the need to avoid over-speaking is probably the appropriate middle ground. Statements made to corporate constituencies should of course be vetted carefully by both lawyers and public relations consultants.

In some circumstances, a corporation may need third-party experts to come to its defense in a crisis. Lawyers will typically advise corporations to keep their powder dry: Save the best available experts to serve as expert witnesses at trial. Delaying the disclosure of these experts serves many legal purposes. First, an expert who acts as a media contact may become a fact witness susceptible to deposition and may be deposed repeatedly or prematurely, before the necessary analysis has been completed. Second, an expert who speaks to the media may be tempted to opine on a wider range of subjects than will actually be in dispute in a later trial. The expert may thus inadvertently expand the range of topics on which he can be cross-examined before a jury. Third, an expert who defends the company in the media might be painted at trial as an advocate rather than a neutral expert.

Public relations advisors, on the other hand, are likely to encourage deploying the best available experts at the earliest possible time. Public relations consultants view a threat to the brand as immediate, and a prompt response could stop the image crisis in its tracks. The best defense of the brand is to deploy the corporation's finest outside experts to help balance the story. The public will listen and likely give the company the benefit of the doubt sooner if a trusted figure stands by the company's side.

The case of Pepsi and the syringe again provides an example of using the right resources at the right time. During the syringe crisis, the then commissioner of the Food and Drug Administration, who was also a pediatrician, appeared on many national news programs alongside Pepsi's CEO. Because the syringe issue focused on trust, the FDA commis-

sioner gave credibility to Pepsi as the story unfolded.

The tension between the legal and public relations advice on when to deploy experts peaks when relatively few experts are available to speak for the company. If a wide assortment of experts is available, some can be used for public relations purposes, and others can be kept under wraps as litigation consultants. If, however, only one or two experts are available to speak for the company, hard choices are inevitable. Corporate management considering whether to disclose expert witnesses at an early date will have to weigh the benefit to the corporate brand against the potential harm to the litigation defense.

In certain crises, a corporation may ultimately decide that a particular employee, or a small number of employees, was responsible for the problem. If the chief financial officer intentionally cooked the corporate books, then the CFO is culpable, and she must be fired. In other situations, however, culpability may be more ambiguous. It might be possible to assign blame, for example, to certain members of a product development team, but it may not be clear that those employees acted maliciously. In that situation, the legal and public relations consultants may offer conflicting advice.

A lawyer might advise a corporation not to fire an employee who is likely to become a key witness in coming months or years. Firing the employee could create animosity, which could make it more difficult to work with the employee to prepare for upcoming depositions and trial. Moreover, firing the employee could also have implications for the attorney-client privilege. If the employee will be fired, the lawyer might advise, this can be done after the last lawsuit is tried.

The public relations consultant, on the other hand, may prefer fixing the blame and firing the responsible people. By acting quickly to assign blame and punish the culprits, the corporation shows that it is in command and has acted decisively. Prompt action can help turn the tide in the media blitz, so long as that action affects the truly responsible parties, not simply scapegoats who may come back to haunt the company.

Like many of the other areas of disagreement, there is no easy way to resolve this tension. The corporation can do no more than evaluate the individual circumstances, weigh the costs and benefits of the competing approaches, and try to reach a sensitive and intelligent solution.

Although there will be tensions between legal and public relations viewpoints on many aspects of crisis management, there are other areas in which these outside professionals will see eye to eye. In these areas, corporate management would be wise to follow the joint advice.

It is axiomatic among crisis managers that companies must plan in advance for corporate crises. See generally Mitroff & Anagnos, *supra*. Lawyers and public relations professionals alike understand that, in a crisis, time and information are precious commodities. With appropriate advance preparation, a corporation may have stored reserves of time and information that can be used in a crisis.

For example, today's large corporations often face high-profile race discrimination lawsuits. A well-advised corporation will plan for that possibility in advance, preparing packets of material describing the company's diversity efforts, its successes in the field, and its future plans. The corporation may also prepare lists of key personnel and contact information to be used if a race discrimination crisis arises. When the crisis erupts, everyone on the crisis management team will save time and have ready access to basic information if these

materials were prepared, reviewed, and shared in advance.

Every company should take a hard look at its most likely industry exposures and be ready to respond. For instance, food companies should have a rigorous plan in place to respond to and manage recalls based on product contamination. According to the American Dietetic Association, millions of Americans are sickened, 325,000 are hospitalized, and 5,000 die each year from food poisoning. Not surprisingly, the Food Marketing Institute reported in a 1999 consumer survey that between 60 percent and 75 percent of Americans rated product safety as very important in food shopping. Even though the issue of liability for these illnesses is a separate matter, the need to address the issue is unquestionable. A food company that is not responsive will suffer the public's wrath, which can result in plummeting product sales in the short term and a long-term hit in corporate and brand trust that could take years to repair.

A conscientious lawyer should add one caveat to the sound advice that corporations prepare in advance for crises. Advance-planning crisis-management documents may or may not, depending on the circumstances, be protected by the attorney-client privilege or work product doctrine. If not carefully crafted, a fact sheet about the subject of race discrimination could later be introduced as exhibit one of a plaintiff's case. The corporation was so keenly aware of its discriminatory conduct, plaintiff's counsel could argue, that the company actually planned in advance how to defend against anticipated lawsuits. The plaintiff could suggest that the advance planning documents are themselves evidence of discrimina-

Food companies should have a rigorous plan in place to manage recalls.

tory intent. Thus, although advance planning is necessary, it must be undertaken carefully.

Lawyers and public relations consultants alike should agree that fact investigation is best left to lawyers. This is true for two primary reasons. First, the work of lawyers is more likely to be protected by the attorney-client privilege than the work of public relations consultants. There is thus less chance of public disclosure of preliminary investigative work if the investigation is conducted by lawyers.

Second, litigators spend much of their lives developing factual records; public relations consultants devote more of their efforts to casting known facts in an attractive and newsworthy light. By having lawyers conduct the investigation and public relations consultants develop themes, both sides work in concert to share information and develop strategies, and all are put to their highest and best uses.

Legal and public relations advisors should also agree that their efforts must be coordinated. This is sometimes harder to achieve than it first appears. Some old-school lawyers continue to believe that it is their job solely to protect the client in the courtroom and that only a publicity hound with a thin

sense of ethics would try a case in the press. Moreover, lawyers' egos may interfere with efforts to coordinate. Some lawyers "say they don't believe a public relations consultant can tell a story or deliver a message as well as a lawyer." Marshall, *supra*, at 21-22.

Certain public relations professionals, on the other hand, view lawyers as conservative advisors with no sense of the reality of modern life. Public relations consultants may also fear that stodgy lawyers will, like the scholastic monks of old, spend days quibbling about the meaning of words, thus delaying urgent press releases. When statements are finally made, the news angle may be lost in a maze of legal jargon and seemingly irrelevant procedural explanations.

Getting Along

If a corporation retains lawyers and public relations professionals with some sensitivity to each others' tasks, then these advisors should be able to work together civilly. A lawyer should realize that a media consultant can help develop catchy themes that later prove useful at trial. And a public relations consultant will come to learn that taking time to scrub the facts can pay long-term dividends. At a minimum, lawyers and public relations consultants must understand the need to be accessible to each other and to return each other's phone calls promptly.

A failure to coordinate legal and public relations efforts can have devastating consequences. For example, in early 1993, an automotive manufacturer defended the wrongful death case of a 17-year-old boy who died in a fiery truck crash. The jury found in favor of plaintiffs during the first phase of the trial. Defense counsel then gave his argument during the punitive damages phase. The lawyer told the jury that its verdict was "a crushing blow" to the manufacturer. He continued, "You sent a message. We have got the message. We have got the message." While the lawyer

was giving [the company's] *mea culpa* to the jury inside the courtroom, outside in the corridor a [corporate spokesman] was distributing a defiant press release rejecting the jurors' determination that the pickup truck was defective and accusing them of being swayed by emotion. When [plaintiffs' counsel] stepped forward to make his case on punitives, he had the press release in his hand.

Terence Moran, "Defendant Burns Itself," *American Lawyer* 68, 81-82 (Apr. 1993).

Plaintiffs' counsel explained that the defense lawyer was saying, "We respect the jury system." But the company "has already issued a press release about this case. Why don't they give you the press release and see if that tells you that they respect your decision?" The court later admitted the press release into evidence, and the jury chose to award punitive damages of \$101 million.

In today's world, even small missteps can have large consequences. In high-profile litigation, the mere scheduling of depositions can have public relations implications. Will the deposition of the CEO be taken at the office of plaintiffs' counsel? If so, will a team of reporters be waiting in counsel's lobby for pre- and post-deposition interviews? Or should the corporation have the deposition taken at a conference room in a local hotel that has a back door for easy (and low-profile) entrance and egress? For depositions and hearings that involve lower level employees, who will advise the com-

pany's witnesses to walk confidently through the cameras and not to pull their coats over their heads like criminal suspects often do on television?

Public relations consultants may also want to obtain expedited (or real-time) deposition transcripts to share with the press promptly. But a lawyer may have to review the transcripts to designate as confidential those exhibits and testimony that would disclose corporate trade secrets and proprietary information. Close coordination is essential to avoid missteps in the mundane tasks that can inadvertently add fuel to a media fire.

Coordination is also needed for less mundane tasks. Defense counsel are often pessimists. They are retained only after the catastrophe has occurred and spend their lives trying to reconstruct the wreckage. A defense lawyer may occasionally be "guardedly optimistic" about the result of a motion or trial; true enthusiasm only rarely enters the lawyer's emotional repertoire.

Public relations consultants may be exactly the opposite. Any procedural success is a victory worth trumpeting. The discovery of helpful evidence means that the litigation is almost over. A constant drumbeat of good news may influence media coverage, and corporate management may be pleased to report news that helps relieve pressure on the company's stock price.

Due regard for securities law, however, must occasionally dampen this enthusiasm. "Often the gravest danger is presented by a perceived need to remain continuously upbeat with the Wall Street community." "High Profile Litigation," *Successful Partnering Between Inside and Outside Counsel* § 67:6 (Robert L. Haig ed., 2000). If a corporation makes an optimistic but materially misleading statement that affects the price of a security, a securities fraud complaint may compound the company's legal woes. Statements about the litigation process, or the crisis in general, should thus be reviewed by a securities lawyer to ensure legal compliance.

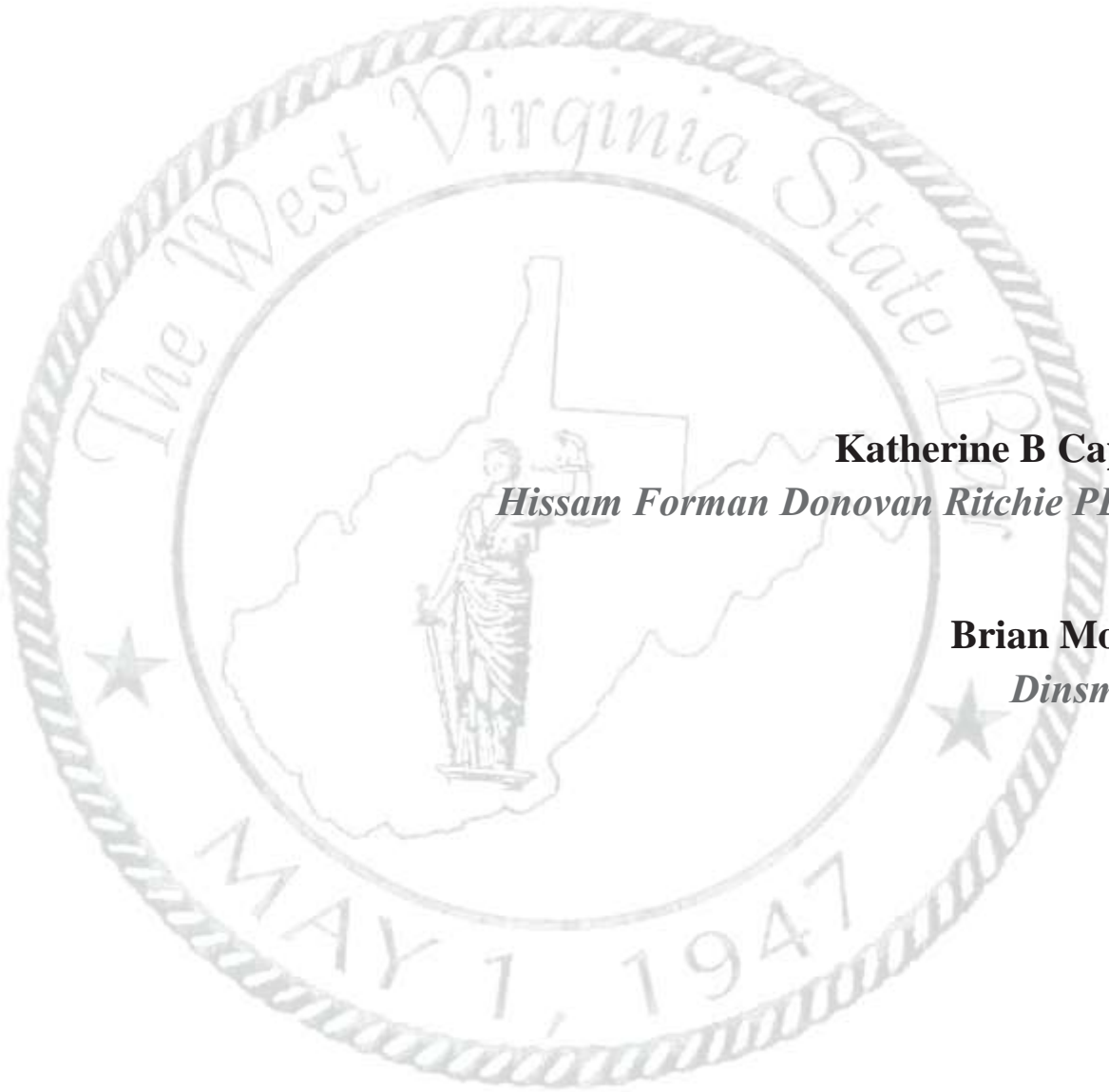
Developing Themes

Another reason to coordinate the legal and public relations efforts is to ensure the corporation uses its best themes in both the courts of law and public opinion. A "theme of the case" that will be used as the introduction to an opening statement or closing argument at trial is likely also to be a sound bite suitable for use in a television interview. Indeed, the television interview may influence public opinion in a way that later helps to shape jurors' attitudes. The corporation should have legal and public relations staffs work together to develop themes of the case that can be used from the first television interview through the last closing argument.

Repetition and the constant drumbeat of messages will benefit the company in the long run. In public relations, as in writing briefs and trying cases, "Tell 'em what you're gonna tell 'em. Tell 'em. Tell 'em what you told 'em." Peter Jacobi, *Writing With Style: The News Story and the Feature* 93 (1982).

Finally, a corporation that finds itself on trial simultaneously in courts of law and public opinion probably should retain outside help. A high-profile crisis is, fortunately, a relatively rare event. Most corporations choose not to employ full-time staff capable of managing crises that arise only rarely. Instead of having that capacity available in house, most corporations will need to bring in extra help when this type of crisis erupts. That temporary help—crisis managers and defense counsel—can be key to corporate survival. □

***Impact of #METOO Movement
on Sexual Harassment Litigation***



Katherine B Capito
Hissam Forman Donovan Ritchie PLLC

Brian Moore
Dinsmore

KATHERINE B. CAPITO

804-986-5012

- J.D., **Washington & Lee University School of Law** — *magna cum laude*; Order of the Coif; Lead Articles Editor and Staff Writer, *Washington and Lee Law Review*
- B.A., **Roanoke College** — *cum laude*

Katie has significant experience handling litigation matters, particularly in the area of labor and employment. Katie's experience includes handling all facets of litigations, including providing counsel, arguing and drafting motions, and managing discovery. Katie represents her clients before state and federal courts, arbitrators, the West Virginia Human Rights Commission, the EEOC, and the NLRB. Katie also frequently handles nationwide wage and hour and FLSA class actions.

She works closely with clients, including their in-house counsel and human resource groups, to identify and address existing and potential issues. She advises companies and supervisors on National Labor Relations Act-related issues and handles collective bargaining and labor arbitrations. Katie also drafts employee handbooks, employment policies, non-competes, and non-solicitation agreements.

Katie also counsels clients on how to prevent claims, ultimately saving her clients exposure and money. In addition to handling litigation, Katie regularly authors and edits papers and articles for national publications and is invited to speak at leading conferences. Katie's goal is to achieve her client's goal—whether that is arguing a case through trial or settling a case early to maximize the outcome for the client and minimize risk.

Admissions

- West Virginia
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia

Professional Background

- Dinsmore & Shohl LLP, Charleston, WV, 2011 - 2018

Memberships and Affiliations

- Rotary Club of Charleston, president; West Virginia Board of Directors

- Appalachian Reading Center, Board of Directors, past president
- Craik-Patton, Board of Directors
- Washington and Lee Alumni Association, Charleston Chapter, Board of Directors
- Childhood Language Center, Human Resources Committee
- YWCA, Human Resources Committee, Board of Directors
- Leadership Kanawha Valley, Class of 2013
- Ronald McDonald House, Board of Directors
- Women for Economic Development, member
- Regional Presbytery, Trustee Committee

Distinctions

- Difference Maker Award in Honor of Alice J. Neeley
- Generation Next 40 Under 40 award, The State Journal (2014)
- West Virginia Rising Stars®



Brian J. Moore

Partner

brian.moore@dinsmore.com

Charleston, WV

Tel: (304) 357-9905

Brian represents companies in labor, employment, deliberate intent, and general litigation. His business-oriented approach enables him to guide clients through a myriad of challenges. He draws on his experience to help clients reach efficient resolutions -- or pursue litigation and trial -- as the situation warrants. Working with clients in the banking, insurance, retail, health care, energy, hospitality, and food and beverage industries, he has guided them through an array of issues, including discrimination, harassment, wage and hour, deliberate intent, unfair labor practice, union representation, injunction, and general litigation matters. Brian has substantial experience practicing in both state and federal courts, including trying cases to verdict, as well as practice before the West Virginia Human Rights Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. He has also drafted and litigated employment and arbitration agreements, covenants not to compete, and various other contracts.

He places a premium on partnering with his clients to learn their operations and culture as he builds a strategy that suits their needs. He often works closely with in-house counsel, human resources professionals, and company management, taking a proactive approach to help clients anticipate and overcome challenges before they arise. He prepares employee handbooks, conducts supervisory training, and understands the increasing role of technology and social media in the workplace.

Brian is an active speaker and writer and has published a book entitled *The Pocket Guide to West Virginia Law*. In addition, he speaks, writes and provides training on leadership, networking, time management and other personal development topics. When he is not practicing law, speaking, or writing, Brian is an avid fitness, automobile and college football enthusiast.

Services

- Labor
- Employment
- Litigation
- Workplace Safety
- Employment Discrimination Litigation

- Labor Arbitrations
- Collective Bargaining Negotiations
- NLRB Issues
- Strike Preparation/Litigation
- Wage/Hour Law
- Wrongful Discharge
- Audits, Counseling & Training
- First Amendment & Media
- Natural Resources Industry

Education

- West Virginia University College of Law (J.D., 2001)
 - West Virginia Law Review, executive editor for research
 - Class treasurer
- West Virginia University (B.S.B.A., *summa cum laude*, 1998)
 - Accounting

Bar Admissions

- West Virginia
- Kentucky

Court Admissions

- U.S. Supreme Court
- Kentucky Supreme Court
- West Virginia Supreme Court of Appeals
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia

Affiliations/Memberships

- Mountain State Rotary, president (2013 - 2015)
- Putnam County Chamber of Commerce, Board of Directors
- Generation Putnam, director

- Generation West Virginia, Board of Directors (2013 - 2015)
- Defense Trial Counsel of West Virginia, Chairperson of Employment Law Committee (2009 - 2010)
- Habitat for Humanity of Kanawha & Putnam County, Board of Directors (2011 - 2012)
- Appalachian Reading Center, Inc., Board of Directors (2009 - 2012)
- Problem Gamblers' Help Network of West Virginia Advisory Board (2009 - 2012)
- American Bar Association, Section of Labor and Employment Law
- Defense Research Institute (DRI), Employment Law Committee
- West Virginia Bar Association
- Kentucky Bar Association
- Kanawha County Bar Association
- West Virginia Bar, Employment Law Committee
- Generation Charleston, Membership Committee
- WVU Alumni Association
- Energy & Mineral Law Foundation
- Leadership West Virginia, Class of 2012
- Leadership Putnam County, Class of 2009

Distinctions

- *Best Lawyers*® for Labor and Employment Law
- West Virginia *Super Lawyers*®
- *West Virginia Rising Stars*®
- Peer Review Rated AV in *Martindale-Hubbell*
- National Kidney Foundation of Maryland, Volunteer Service Award (2008)
- University of Virginia Trial Advocacy Institute (2004)
- Generation Next: 40 Under 40 award by *The State Journal* (2011)
- Young Leader Award, Putnam County Chamber of Commerce

Experience

Represented a Company in NLRB Charges Related to Collective Bargaining Negotiations (2017)

We successfully represented a Caterpillar dealer in NLRB charge following last best final offer and implementation in collective bargaining with the Operating Engineers.

Secured Favorable Resolution for a Publicly Held Client in Hazing Case (2013)

We obtained the favorable and confidential resolution of a case for a publicly held client where two employees claimed constructive discharge following unfortunate horseplay and extreme hazing which led to embarrassing allegations and two constructive discharges.

Ellis v. West Virginia American Water Company, Inc. (Kanawha County, WV 05-C-749) (2010)

Successful defense in suit by HR manager alleging sex discrimination by company where HR manager was discharged for inappropriate e-mail communications. Obtained summary judgment on all issues on case of trial.

Represented a Hospital Following Collective Bargaining (2010)

We successfully defended a hospital in NLRB charge following the implementation of its last best final offer in collective bargaining with the USW.

Hospital and Union

Successfully defended against an unfair labor practice charge alleging that the Hospital improperly declared impasse and implemented its last best final offer.

Plaintiff v. Hospital

Successfully obtained reversal by the West Virginia Supreme Court of an award of unemployment compensation benefits.

Plaintiff v. Large Retailer

Obtained summary judgment in United States District Court for the Southern District of West Virginia on disability discrimination claim brought by former employee.

Plaintiff v. Regional Airline

Successfully obtained reversal by the West Virginia Supreme Court of the West Virginia Human Rights Commission's finding of discrimination.

Publications

July 26, 2018

The Top 10 Reasons Your Organization Should Have an Employee Handbook

April 7, 2017

Employer's Rights and Obligations When Dealing With Employees on Workers' Compensation Leave

Sterling Education Services

April 6, 2017

Privacy and Today's Technology in the Workplace

Sterling Education Services

November 23, 2016

District Court in Texas Issues Nationwide Injunction on New DOL Overtime Rule

December 1, 2014

Keeping Pace With Social Media and Other Technologies in the Workplace, from The Impact of Recent Regulatory Developments in Employment Law (2015 Edition, Aspatore Publishing).

January 1, 2013

The Pocket Guide to West Virginia Employment Law

New Linxus Publishing, LLC

June 1, 2012

Employment Litigation Issues

May 25, 2012

The Uniformed Services Employment and Re-employment Rights Act

May 17, 2012

Retaliation Claims Under Civil Rights Statutes

May 10, 2012

How Do You Handle Employees in the Workplace?

May 3, 2012

Employment Law Issues in the Workplace: EEOC Developments

February 17, 2012

Accommodating Religion in the Workplace is a Balancing Act

July 22, 2011

Wrongful Discharge Cases May Carry Heavy Price Tag

June 7, 2011

Workplace Surveillance: Balancing the Employee's Right to Privacy With the Employer's Right to Know

May 12, 2011

The Evolution of Social Networking Technologies in the Workplace

April 1, 2011

"Survey of West Virginia Privacy and Related Claims Against The Media," Media Law Resource Center


March 25, 2011

Courts Provide Little Guidance on Technology in the Workplace




IMPACT OF THE #METOO MOVEMENT ON SEXUAL HARASSMENT LITIGATION

Brian J. Moore, Partner
Dinsmore & Shohl LLP
Katherine B. Capito, Partner
Hissam Forman Donovan Ritchie



Sexual harassment under West Virginia and federal law

- “Harassing” employees is not illegal. Harassing them based on a legally protected characteristic is illegal.
- At-will employment is the general rule, but there are hundreds of exceptions, including retaliating against someone for making a sexual harassment complaint.
- There are other forms of illegal harassment, but today we will be discussing sexual harassment specifically, and the impact of the recent #MeToo movement.



Sexual Harassment

- Sexual harassment is a form of sex discrimination.
- Unwelcome sexual advances.
- Requests for sexual favors.
- Verbal or physical conduct of a sexual nature.

FORMS OF SEXUAL HARASSMENT

- Quid Pro Quo
- Hostile Work Environment

Quid Pro Quo Harassment

- “This for that” or “backscratcher” harassment.
- The decision is based upon an individual’s submission to or rejection of sexual advances or conduct of a sexual nature.
- Example: “I will give you a raise if you sleep with me.”
- Usually involves tangible employment action against the victim, such as a change in employment status, monetary loss or gain, or new job.

Hostile Work Environment Harassment

- Intended to interfere or does, in fact, interfere with the person’s work or creates “an intimidating, hostile, or offensive work environment,” whether or not there is any unfavorable job action.
- Touching; comments
- Speech or conduct severe or pervasive enough to create an abusive work environment. One crude joke not enough.
- Includes explicit or suggestive items displayed in the workplace.
- Inappropriate emails, texts, social media communications can contribute to a hostile work environment.

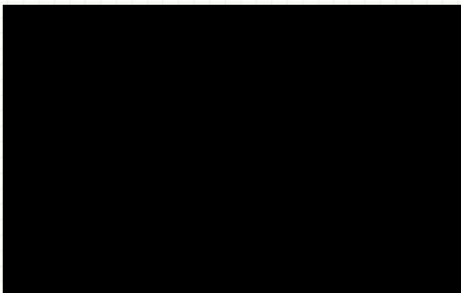
Always a male supervisor harassing a female subordinate?

- No. The sexes could of course be opposite with a female supervisor and male subordinate.
- Same sex sexual harassment is actionable.
- WV law recognizes that an employer may in limited circumstances be liable for a subordinate sexually harassing a supervisor.
- Could be co-worker harassment.

Outsider Sexual Harassment

- An employer failing to protect an employee from sexual harassment by outsiders, may subject the employer to liability.
- Delivery person; outside contractors.
- Liability depends on how much the employer knows and/or how much control the employer has over the situation.
- Did the employer know? Should the employer have known?

TYPICAL SEXUAL HARASSMENT EXAMPLES



Reasonable person standard

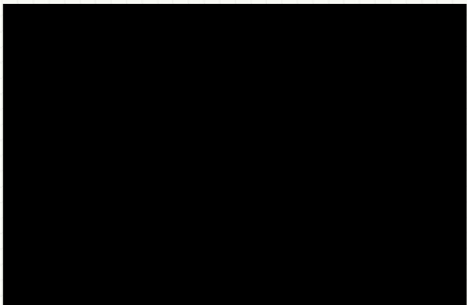


This Photo by Unknown Author is licensed under CC BY-SA

Sexual Humor & Comments: Rules (for you and your clients!)

- What is welcome to you may not be welcome to others.
- What is welcome from someone else may not be welcome from you.
- What was welcomed yesterday may not be welcomed today.
- What is welcome in one setting may not be welcome in another setting.

EXAMPLES



What is the #MeToo movement?

- The “Me Too movement” is a movement against sexual harassment and sexual assault that began to spread virally in October 2017 as a hashtag on social media.



#MeToo Movement

- The movement became widespread following sexual abuse allegations against Hollywood producer Harvey Weinstein.



#MeToo Movement

- A number of high-profile posts and responses from celebrities such as Gwyneth Paltrow, Ashley Judd, Jennifer Lawrence, and Uma Thurman, among others, soon followed.



Has the movement led to more sexual harassment filings?

- In October 2018, the EEOC released new data on workplace sexual harassment claims.
- Sexual harassment charges with the EEOC increased over 12% from the previous calendar year; the first year-to-year increase in a decade.



Increased filings


- Sexual harassment lawsuits filed by the EEOC increased 50% over 2017.
- “Reasonable cause” findings in sexual harassment investigations jumped by 23%.
- Successful EEOC conciliation (mediation) proceedings rose by 43%.
- EEOC website traffic – specifically the Agency’s sexual harassment page – more than doubled.
- EEOC sexual harassment recoveries jumped from \$47.5 million to \$70 million in 2018.
 - This doesn’t include private settlements which are kept confidential

Places with higher claims of sexual harassment

- Working for tips
 - Places with wait staff and hotel housekeepers account for 14% of harassment claims to EEOC
- Working in an isolated context
 - Domestic care workers, hotel workers, janitors, agricultural workers
- Workers without legal immigration status
- Working in a male-dominated job
 - Construction
 - Academia, engineering and medicine increasing
- Places with significant power differentials or rainmakers
 - Well-known professor, high-earning partner

How to help prevent sexual harassment lawsuits

- Have strong policies and procedures for reporting harassment
 - Communicate to employees
 - “Test” complaint procedure
- Train managers
- Have investigation procedures in place



Sexual harassment litigation: issues to consider

- Employer’s policies and procedures.
- Documentation or lack thereof.
- Speed and thoroughness of any investigation.
- Severity and pervasiveness of conduct.
- For the defense: what affirmative defenses may be available?
- WV Model jury instructions.

Sexual harassment investigations (for you and your clients)

- Act quickly and thoroughly.
- Male / female investigative team ideal.
- Interviews; can’t promise 100% confidentiality.
- Review potentially relevant documentation.
- Communicate your findings.
- Document your actions.
- Take steps to prevent future harassment, even if no harassment found.

The Faragher/Ellerth Defense

- Named after two U.S. Supreme Court cases issues near the same time.
- An affirmative defense employers may use to defend against claims of hostile work environment by supervisors.

The Faragher/Ellerth Defense

- Available only if no tangible adverse employment action was taken against the plaintiff (for example, no demotion, discharge, or undesirable reassignment).
- Available only if the employer exercised reasonable care to prevent and promptly correct the harassing behavior. For example, a harassment policy demonstrates reasonable care to prevent harassing behavior.

The Faragher/Ellerth Defense

- Available only if the plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm.
- *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).
- *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

The Faragher/Ellerth Defense

- Traditionally a federal law affirmative defense.
- Does it apply in West Virginia?
- Consider *Hanlon v. Chambers* and subsequent sexual harassment cases.

The Alter Ego Doctrine

- If the alleged harasser is ranked sufficiently high in an organization (e.g., President or Owner), such that he or she could be considered the “alter ego” of the organization, then the *Faragher/Ellerth* defense would not be available in any event.

RECENT CASES

- Former winery employees awarded \$11 million
 - Plaintiffs alleged that their supervisor flirted, physically made contact, made explicit gestures and comments and put his hands on their waists and buttocks.
- Applebees
 - Had to pay \$75,000 plus received years of watching by EEOC for allowing sexual harassment to go unchecked
- Smith v. Rosebud Farm (7th Circuit)
 - A jury awarded a male grocery store butcher \$2.4 million in compensatory and punitive damages on his claim of sexual harassment against a small grocery store. The court ultimately reduced the award to \$477,500, because of Title VII's statutory damage caps.

RECENT CASES

- Jenkins v. University of Minnesota
 - Plaintiff received \$1,000,000 plus \$300,000 in attorneys' fees for assistant researcher who was allegedly sexually harassed by a researcher
- Verdict for Plaintiff but not damages
 - A jury in Georgia entered a verdict for a plaintiff in a sexual harassment case but awarded her no damages.
- Ford EEOC Settlement
 - Ford agreed to pay \$10.1 million to settle sexual and racial harassment claims with the EEOC

QUESTIONS?

***Keep Calm and Turn Your Phones Off:
Dos and Don'ts From the Bench***



Judge Joanna Tabit
Thirteenth Judicial Circuit

JOANNA I. TABIT

Business Address

111 Court St.
Charleston, WV 25301
304.357.0362
joanna.tabit@courtswv.gov

Home Address

3703 Virginia Ave., S.E.
Charleston, WV 25304
304.552.3997
joannatabit@msn.com

BAR ADMISSIONS

Supreme Court of the United States of America	1991
United States Court of Appeals for the Fourth Circuit	1991
United States District Court for the Southern District of West Virginia	1986
United States District Court for the Northern District of West Virginia	2012
Supreme Court of Appeals of West Virginia	1986

PROFESSIONAL HISTORY

Supreme Court of Appeals of West Virginia, Charleston, West Virginia **2014-present**
Circuit Judge – Thirteenth Judicial Circuit

General jurisdiction judge in West Virginia trial court of record.

- Preside over child abuse/neglect, criminal, juvenile, civil, and administrative cases as well as magistrate and family court appeals, among others in state's busiest circuit.
- Acting Chief Justice, *In the Matter of The Honorable Allen Loughry II*, No. 18-0508
- Acting Supreme Court Justice, *California State Teachers' Retirement System v. Blankenship*, No. 14-1339 (May 25, 2018), sitting by special appointment by Chief Justice Workman; and *In Re: Callaghan*, No. 16-0670 (W. Va. Feb. 9, 2017), sitting by special appointment by Acting Chief Justice McHugh
- Presiding Judge – Kanawha County Juvenile Drug Court 2018
- Member – Mass Litigation Panel 2018
- Member - Business Court 2016-2018
- Member – Juvenile Justice Commission 2014-present

Step toe & Johnson PLLC, Charleston, West Virginia **1992 – 2014**
Member *1997 – 2014*
Associate *1992 – 1996*

Member in 300+ person law firm with emphasis on civil litigation.

- Practiced in state and federal courts in a variety of cases including medical malpractice, serious personal injury, governmental liability, product liability, sexual harassment, civil rights, and employment matters.
- Trained mediator having successfully mediated approximately 100 cases.

- Served as Special Assistant Attorney General representing the Solid Waste Management Board and West Virginia Investment Management Board.
- Researched and prepared petitions, motions, memoranda, and briefs for argument in state and federal trial and appellate courts.
- Presented seminars to clients and attorneys statewide on developments in governmental liability law, general civil litigation, and employment issues.
- Practice group leader for General Litigation Department's Charleston and Huntington offices, managing 30 attorneys and paraprofessional staff.

West Virginia University College of Law, Morgantown, West Virginia
Adjunct Lecturer – Summer Appellate Advocacy

2012-2013

Instructed 2L and 3L students on oral and written appellate advocacy.

Office of the Attorney General of West Virginia, Charleston, West Virginia
Deputy Attorney General – Appellate Division 1991-1992
Senior Assistant Attorney General – Appellate Division 1990-1991
Assistant Attorney General – Appellate Division 1989-1990

1989-1992

Administered appellate docket for cases in which State of West Virginia or its agencies were an interested party, personally briefing and arguing approximately 50 cases before state and federal appellate courts.

- Oversaw operation of Appellate Division, supervising two attorneys, one paralegal and one legal secretary.
- Prosecuted criminal and civil appeals on behalf of the State of West Virginia and its agencies.
- Served as special assistant prosecuting attorney in embezzlement case against county prosecutor.
- Represented prosecuting attorneys and state circuit court judges in original jurisdiction proceedings in the Supreme Court of Appeals of West Virginia.
- Represented the state in federal habeas corpus proceedings in federal district court and the United States Court of Appeals for the Fourth Circuit.
- Served as counsel for the West Virginia Board of Investments.
- Instructed prosecuting attorneys statewide on developments in federal and state criminal law.

Shuman, Annand & Poe, Charleston, West Virginia
Associate

1988-1989

Employed in twenty-person firm with emphasis on civil litigation.

- Researched and prepared various petitions, motions, memoranda, and briefs for arguments in state and federal courts.
- Attended hearings and depositions.

Supreme Court of Appeals of West Virginia, Charleston, West Virginia
Personal Law Clerk

1986-1988

Served as personal law clerk to the Honorable Thomas E. McHugh.

- Reviewed appellate records, conducted preliminary research, and prepared memoranda regarding recommended disposition of cases.
- Discussed memoranda and recommended disposition of cases with Justice McHugh prior to argument.
- Prepared drafts of opinions for Justice McHugh's review.
- Edited, cite-checked, and proofread final opinions.
- Prepared memoranda regarding petitions for rehearing.

EDUCATION

J.D., West Virginia University College of Law

1986

Moot Court Board, Order of Barristers

B.B.A., Business Management, Marshall University

1983

Magna Cum Laude

SELECTED PROFESSIONAL AND COMMUNITY ACTIVITIES

Fellow – West Virginia Bar Foundation

2018

Fellow – American Bar Foundation

2016-present

Member – Charleston Catholic High School Advisory Council

2016-present

Co-Chair – Campaign for Legal Aid

2014

Board member – YWCA of Charleston

2013-2014

Chairperson – Access to Justice Foundation

2011-2014

Chairperson – District 8 Character Committee of the West Virginia
Board of Law Examiners

2010-2014

Commissioner – City of Charleston Human Rights Commission

2009-2014

Emeritus Member – John A. Field, Jr. American Inns of Court

2005-present

Secretary, Board Member – Kanawha Pastoral Counseling Center

2006-2012

Pro Bono Attorney – Civil Legal Assistance Partnership

2000-2014

Pro Bono Attorney – West Virginia State Bar

1998-2014

Board Member – Kanawha County Public Defender Corporation

1997-2014

Member – Defense Trial Counsel of West Virginia

1998-2014

Member – Defense Research Institute

2000-2014

Member – St. Thomas More Catholic Lawyers Society

1995-2014

Board Member – Daymark, Inc.

2006-2009

Chairperson – Women's Committee of the West Virginia State Bar

2001-2002

Chairperson – “Mama Said There'd Be Rock ‘n’ Soul” Gala for Cystic
Fibrosis Foundation

2001-2003

District 8 Representative – West Virginia State Bar Board of Governors

1996-1999

Board Member – Literacy Volunteers of America – West Virginia

1996-1997

Board Member – Multiple Sclerosis Society of West Virginia	1996-1997
Member – Evening Optimist Club of Charleston	1996-1998
Industry Leader – American Heart Association	1995-2002
Treasurer – Kanawha County Bar Association	1997-1998
District 8 Representative – Young Lawyers Executive Committee, West Virginia State Bar	1993-1996
Volunteer – Salvation Army	1995-1996
Volunteer – Kanawha County Read-Aloud Program	1992-2003
Volunteer – Project Teach	1991-1992
Volunteer – Lawyer Information Service	1988-2014

SELECTED HONORS AND AWARDS

Alpha Chi Omega National Sorority “Award of Achievement,” June 2018

Union Mission “Women on a Mission,” 2018 honoree

West Virginia Bar Foundation, Foundation Fellow 2018

WV Living’s “Wonder Women” 2017 honoree

West Virginia University College of Law and *West Virginia Executive’s* “Lawyers & Leaders” 2017 honoree

YWCA “Women of Achievement” 2017 honoree

AV rated by *Martindale Hubbell*

Chambers USA, Leaders in Field: specialty – Commercial Litigation

The Best Lawyers in America: specialties – Appellate Practice; Employment Law – Management; Litigation – Labor and Employment; Medical Malpractice Law – Defendants; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants

Super Lawyers: specialties – Employment Litigation; Personal Injury Litigation

“Outstanding Private Practice Attorney,” Women’s Law Caucus, West Virginia University College of Law, 2009

“Charleston’s Finest,” Cystic Fibrosis Foundation for Kentucky/West Virginia, 2007

SELECTED SEMINARS TAUGHT, PRESENTATIONS MADE, AND PUBLICATIONS

"Healing Justice" Film Screening & Panel Discussion on the Importance of Restorative Justice Practices, The West Virginia Center on Budget and Policy, Call to Action for Racial Equality: CARE Coalition and American Friends Service Committee WV, Panelist, Charleston, WV, July 19, 2018

The Judges Speak: Civil Court Litigation Dos and Don'ts, "National Business Institute Judicial Forum, panelist, Charleston, WV, May 18, 2018

"Social Media," with Justice Beth Walker, West Virginia Spring Circuit Judge's Education Conference," Morgantown, WV, May 2, 2018 and West Virginia Family Court Judge's Conference, Charleston, WV, October 30, 2018

"Brown Bag Lunch with Judge Tabit: Dos and Don'ts in the Courtroom," West Virginia Women Attorneys, January 4, 2018

"A Conversation with Joanna Tabit," Defense Trial Counsel of West Virginia, Parkersburg, WV, February 15, 2018

"Learn with the League: West Virginia Women in Politics," Panelist, sponsored by the Junior League of Charleston, October 17, 2017

"State of the Girl," panelist, Black Diamond Council of Girl Scouts of America, Charleston, WV, June 20, 2017

"Professional Responsibility for Paralegals," LAPSWV seminar, South Charleston, WV, June 9, 2017

"The View from the Bench: The Best and Worst Civil Litigation Practices in the Courtroom," panelist, West Virginia Association of Justice Seminar, Charleston, WV, June, 1, 2017

Roundtable with Women's Leadership Council, WVU College of Law, Morgantown, WV, March 23, 2017

"Justice for All," panelist, Unitarian Church of Charleston, Charleston, WV, February 24, 2017

"Breakfast with Champions," Meet and speak to at-risk youth part of YWCA program, West Virginia University, Institute, WV, February 17, 2017

Opening Remarks, Guardian Ad Litem Training, Marriott, Charleston, WV, January 23, 2017

"Heart, Minds and Futures: A Discussion of Juvenile Justice, Mental Health Care and Education in West Virginia," panelist, University of Charleston, Charleston, WV, September 19, 2016

"Excluding an Opposing Expert Witness and Daubert Challenges in West Virginia," Expert Witness Workshop, Young Lawyers Section of West Virginia Defense Trial Counsel, Bridgeport, WV, September 9, 2016

“Moving to an Intervention and Prevention Model for Better Youth Outcomes,” moderator, West Virginia Center on Budget and Policy, Summer Policy Institute, Buckhannon, WV, July 9, 2016

Opening Remarks, Court Improvement Program Annual Conference, July 29, 2016

“Women in the Judiciary,” Daughters of the American Revolution, Charleston, WV, May 14, 2016

“Dos and Don’ts in the Courtroom,” panelist, West Virginia Association of Justice Winter meeting, Charleston, WV, February 5, 2016

“Dos and Don’ts for Young Lawyers,” Young Lawyers Section of the West Virginia Bar Association Lunch & Learn, Charleston, WV, August 6, 2015

Commencement Address, CCHS, Charleston, WV, May 22, 2015

“Remembering Judge Spaulding,” West Virginia Bar Association Bench & Bar Meeting, Charleston, WV, April 2, 2015

“Don’t Let Your Case Crash and Burn: Successful Tips and Strategies to Prepare Your Clients for Deposition,” West Virginia Association for Justice Annual Convention, Charleston, WV, June 6, 2013

“Hot Topics and Trends in State and Federal Employment Law,” Presentation to State Judicial Appellate and Circuit Court Clerks, Charleston, WV, August 2010

“Hot Topics and Trends in State and Federal Employment Law,” West Virginia Judicial Conference, Glade Springs, WV, October 15, 2009

“Women and the Law: Better Communications and Better Relationships for Better Results,” Defense Trial Counsel of West Virginia, Charleston, WV, 2008

“Deposing the Expert Witness,” Defense Trial Counsel of West Virginia, Charleston, WV, 2008

11th Annual Product Liability Conference, University of Wisconsin, Madison, Wisconsin, 2005

“West Virginia Supreme Court of Appeals and United States Supreme Court Case Updates on Criminal Law,” West Virginia Prosecuting Attorney’s Institute, 1990-1992

**KEEP CALM
AND
TURN YOUR PHONES OFF:
DOs AND DON'Ts FROM THE BENCH**

JOANNA I. TABIT, JUDGE
13th Judicial Circuit ~ Kanawha County

*West Virginia State Bar Annual Meeting
Charleston, West Virginia*

April 8, 2019

DOs

1. Know the court rules, and be courteous to the judge's staff. Sure, social media is changing the way most people communicate, but it's still all about relating to people. Nothing can replace the significance of picking up the phone or stopping by to talk with the judge's staff about courtroom rules before your court appearance. Although court staff can't provide legal advice, if you're nice, they can give you helpful tips about rules that can help you avoid traps. Check with your judge regarding procedures and personal preferences. I like courtesy copies of motions. We don't have e-filing yet. When you file a motion late, it won't get scanned in and might not get to the file. If you want to be sure I get it and read it, get me a courtesy copy.

2. Check your citations—and then check them again. There is nothing that drives a law clerk—or a judge—crazier than an incorrect citation. It's difficult to take an argument, and the lawyer giving the argument, seriously when we can't find your case.

3. Be organized. Be on time to Court and make sure you meet all the filing deadlines. If you're late to a hearing or miss a filing deadline, you hurt your client and your own credibility as a practitioner.

4. Be prepared. Make sure you know the case inside and out. Make sure you've got it all together before you walk into court. If you don't know the answer, own it!

Know the relevancy of the cases you rely on. It's very convenient when you can use prior case law or arguments in new litigation. But it sure is embarrassing when you don't know that the case you're relying on has been overturned modified,

vacated, or remanded, or another case with an identical fact pattern exists that better supports your position, and you missed your opportunity to use it. Always confirm whether the case you're citing is good law before citing it. Anticipate and address cases that weaken your argument by highlighting factual differences and relevancy.

5. Be professional. Lawyers always should be zealous and passionate advocates for their clients, but, to be effective, the zeal and passion have to be properly channeled. Too often in the heat of battle, lawyers devolve from arguing about issues to arguing about personalities-attacking an opposing party or opposing lawyer's character, sometimes rudely. Don't do it! Address your arguments professionally AND to the court, **NOT EACH OTHER!**

Snide comments and snarky remarks may seem clever when you write them, but they rarely look good in print, and they never impress a court. In fact, more often such tactics backfire against the attacker, hurting that lawyer's most precious asset – credibility. As the old saying goes, “you catch more flies with honey than with vinegar.”

6. Be selective. Think strategically. Motion practice, like any other pretrial procedure, is a tactic and should be thought of as a means to an end—the successful resolution of the case for your client. For any tactic to be successful, you must always focus on the bigger picture: will a "win" in the short term help or hurt your chances for ultimate success?

Just because you can file a motion does not mean that you should. Carefully choosing when and when not to engage in motion practice can be the difference between moving a case forward quickly toward a successful end and an expensive

and wholly ineffective boondoggle. Again, such choices often directly affect the lawyer's most-prized asset – credibility.

7. Be focused. If you choose to file a motion, focus on the most important bases for relief. As a general rule, you should focus on no more than two to three themes for any motion (irrespective how many grounds for relief you may have). Too many themes dilute the power of your best themes and often distract and confuse the audience - the judge. Lawyers too often feel the need to raise every single argument no matter how tangential or likely to contribute to ultimate success. Often this is borne of fear that omitting or minimizing any point, no matter how trivial, could leave them open to later criticism if the motion is not successful. But, let's face it, if the fifth or sixth most important point is the one that ultimately carries the day (assuming the court actually reads and meaningfully considers it), your prioritization was probably off from the start.

8. Be concise. They call it a “brief” for a reason! Judges are busy and have a lot to read. One way to show judges that you respect their time and the difficulty of their job is by taking great care to write motions and related briefs in a clear and concise manner. In this context, know your audience. And know that your audience has several other cases with substantive motions set the day and may not take kindly to your motion to exceed the page limit for your “brief” (note quotation marks). Show your judge that you understand and appreciate the difficulty of the job by spending the extra time to express your points succinctly and effectively.

To grab the reader's attention, lead with strength. State why you should be entitled to the relief you seek (or why your opponent should not) right up front, on the first page and preferably in the first paragraph. Throw out the canned goods – we all know the summary judgment standard!

We know that you have a lot to say, but despite our best efforts we may not have time to get to it all. We understand that you need a full legal memo of law on an issue, but condense your memo into a 2-3 page motion with the highlights and primary authorities. That way when we're pressed for time, we can pick up that motion and get a meaningful understanding of the issues.

9. Prepare sound Orders. When directed by the court, prepare orders reflective of the judge's findings and conclusions. They should read like an Order, not like a brief. In *Taylor v. Dept. of Health and Human Res.*, 237 W., Va. 549, 788 S.E.2d 295, 303-04 (2016), the State Supreme Court had harsh words for the trial court for signing an order submitted by counsel which was, let's say, "inartfully drafted." I won't sign an Order like that so don't submit it, and you sure don't want to be the lawyer that did. Pertinent language from that opinion follows:

We pause before we begin our analysis of the foregoing to address the circuit court's June 13, 2014, omnibus order, which primarily forms the basis of this appeal and the difficulties which the order presents. Recognizing of course that this order was prepared by respondents' counsel and merely executed and entered by the circuit court, we would be remiss if we failed to caution the lower courts regarding the risks attendant to adopting and entering—wholesale—orders prepared by counsel. We recognize the common practice of requesting attorneys to prepare proposed orders for consideration by the court while a matter is under advisement and, in general, find nothing untoward about this process. We caution circuit courts, however, that the burden of issuing an order which meets this Court's requirements, which requirements are designed to permit meaningful appellate review, ultimately remains on the circuit court. It is incumbent on the trial court to determine if the submitted order accurately reflects the court ruling given that it is well-established that "[a] court of record speaks only through its orders [.]" State ex rel. Erlewine v. Thompson, 156 W.Va. 714, 718, 207 S.E.2d 105, 107 (1973). With respect to summary judgment, this Court has stated that "the circuit court's order must provide clear notice to all parties and the reviewing court as to the rationale

applied in granting or denying summary judgment.” Fayette Cty. Nat’l Bank v. Lilly, 199 W.Va. 349, 354, 484 S.E.2d 232, 237 (1997), overruled on other grounds by Sostaric v. Marshall, 234 W.Va. 449, 766 S.E.2d 396 (2014).

Having reminded our lower courts of their obligations relative to entry of an order granting or denying summary judgment, we find it necessary to admonish counsel regarding preparing and tendering over-reaching orders which fail to succinctly identify and address the critical factual and legal issues. The order prepared by respondents contains seventy pages and 105 separately delineated paragraphs which contain, in large part, nothing more than a thicket of argumentative rhetoric. Respondents’ tendered order consists entirely of their version of the disputed facts and advocated inferences, upon which what little legal analysis it contains teeters precariously. Sections entitled “conclusions of law” are little more than one-sided rhetorical diatribes.

The order is similarly scattershot on the legal issues presented and concomitant legal analysis. Imbedded throughout the order are multiple legal determinations, any one of which may be dispositive of a particular claim, notwithstanding the fact that the order summarily concludes that summary judgment was granted simply due to the absence of a genuine issue of material fact and the presence of qualified immunity. Parties do themselves little favor by tendering such heavily partisan orders to the circuit court which fail so demonstrably to articulate a cogent outline of the claims subject to disposition, the undisputed facts pertinent to the analysis, and the legal basis therefor. This Court strongly disfavors such “kitchen sink” orders inasmuch as they present a substantial impediment to comprehensive appellate review.

The order tendered by respondents is so confounding that the effect is to leave this Court struggling to comprehensively discern upon which specific bases the summary disposition was awarded such as to guide our discussion. Accordingly, in addressing petitioners’ assignments of error, we find it expedient to approach each cause of action separately and place the myriad issues before the Court into their proper context relative to the causes of action asserted.

(footnote omitted)

10. PROOFREAD! Sure, we all make mistakes, and typos and misspellings inevitably happen. But don't rely on spell-check or your dictation software to clean up errors. If you proofread, you won't submit a "kitchen sink" order that is a "thicket of argumentative rhetoric." *See #9, supra.*

11. Listen. To judges, managing members, witnesses, counsel. Don't be so wedded to a scripted argument or deposition outline that you're not able to adapt your questioning of a witness or your argument to the court. A witness might be throwing you softballs that you'll not even swing at if you aren't listening to them. Similarly, the court might be making your argument for you, but you have to be paying attention to what the judge is saying to realize it.

DON'Ts

1. Don't be late. I repeat this to highlight its importance. The judge may (and in all likelihood will be, present company excluded, of course ☺) be late. You cannot be. It sets a bad precedent if you can't make a court proceeding on time. Even better—be 10 minutes early. On time is late and early is on time.

2. Don't procrastinate. Be mindful of your scheduling order and any briefing schedule as well as rules regarding the timing of filing responses and replies and follow them. Don't be a lawyer who faxes or emails responses the night before or even worse, the morning of the hearing.

3. Don't ask the law clerk for legal advice or an opinion. A question for a law clerk should never start, "Should I..." In all likelihood not only will the law clerk

be unable to give you an answer, he or she could be annoyed that you have even asked the question. Do your homework before you make the call. Law clerks do not want to hear from you until you have exhausted all other possible avenues. Still, they want to be helpful and if you're professional and courteous, they will be.

4. Don't interrupt the judge, opposing counsel, or witnesses. This too may seem self-evident, but it's something that I consistently see. Constant interruption not only delays the proceeding but agitates the judge and prevents him or her from doing the job—whether it is fact-finding, deciding a motion or making any type of judicial determination. Lawyers are passionate about their clients and the legal issues of the case by nature, but you need to learn to curb that passion when someone else, whether the judge, your adversary or a witness, is speaking. Mutual respect can take you a long way in a court of law.

5. Don't push it. Don't ask for more than what has been ruled by the court. Resist the urge to include simple words like “with prejudice,” “without prejudice,” or voluntarily award yourself attorneys' fees and court costs in a judgment order. If you didn't specifically address the issue with the Judge, don't assume that it's ok to ask for extra relief just because you think it's important. The court record serves numerous purposes, including protecting litigants from selfish or last-minute requests. Make a list of all relief sought from the court and make sure it is put on the record in open court. This will protect your client, the judge, and your reputation.

6. Don't cite web addresses in lieu of providing copies of documents. There is no guarantee that we can access the site or that the site won't disappear/change before the Court has a chance to review it.

7. Don't submit Orders directly to the court unless directed to by the Court or all efforts have been exhausted.

On any given day, there's a lot of mail coming through a judge's chambers. The last thing the judge's office needs to do is calendar when the 5 day deadline for objections under *W.Va. Trial Court Rule* 24.01(c) has passed, and the order you submitted can be entered. Many attorneys do this as a matter of course. It's fine to do so when directed by the court.

Understandably, despite counsel's best efforts, language in an order can't always be agreed upon, and the order must be submitted under the rule. The latter 8.

Don't underestimate the intelligence of jurors. Assume that they are as smart as you are and approach your case with that assumption in mind.

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9. Don't over cross-examine. Cross-examining, in a way that makes the lawyer feel he has won some battle to the death with the witness, is very difficult. It requires an uncommon kind of restraint and patience. You don't have to ask five questions about each question asked on direct. At best, it simply irritates the judge and the jury, and at worst, it reinforces the direct. Go to the heart of what you think is weak about the witness's testimony, and then stop. The most effective question on cross is often the question that the lawyer is smart enough to leave unasked. It is a common mistake for lawyers not only to over cross-examine in the substantive sense, but also in the emotional sense. Don't treat every witness as if he is a lying slug. Not all of them are. This should be the exception, not the norm.