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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,

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"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

TABLE OF CONTENTS

INTRODUCTION

PART I – RECOMMENDATIONS FOR ALL STAKEHOLDERS

1. Acknowledge the Problems and Take Responsibility.
2. Use This Report as a Launch Pad for a Profession-Wide Action Plan.
3. Leaders Should Demonstrate a Personal Commitment to Well-Being.
4. Facilitate, Destigmatize, and Encourage Help-Seeking Behaviors.
5. Build Relationships with Lawyer Well-Being Experts.
 - 5.1 Partner with Lawyer Assistance Programs.
 - 5.2 Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts.
6. Foster Collegiality and Respectful Engagement Throughout the Profession.
 - 6.1 Promote Diversity & Inclusivity.
 - 6.2 Create Meaningful Mentoring and Sponsorship Programs.
7. Enhance Lawyers' Sense of Control.
8. Provide High-Quality Educational Programs and Materials About Lawyer Well-Being.
9. Guide and Support The Transition of Older Lawyers.
10. De-emphasize Alcohol at Social Events.
11. Use Monitoring to Support Recovery from Substance Use Disorders.
12. Begin a Dialogue About Suicide Prevention.
13. Support A Lawyer Well-Being Index to Measure The Profession's Progress.

PART II – SPECIFIC STAKEHOLDER RECOMMENDATIONS

RECOMMENDATIONS FOR JUDGES / p. 22

14. Communicate that Well-Being Is a Priority.
15. Develop Policies for Impaired Judges.

16. Reduce Stigma of Mental Health and Substance Use Disorders.
17. Conduct Judicial Well-Being Surveys.
18. Provide Well-Being Programming for Judges and Staff.
19. Monitor for Impaired Lawyers and Partner with Lawyer Assistance Programs.

RECOMMENDATIONS FOR REGULATORS / p. 25

20. Take Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority.
 - 20.1 Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.
 - 20.2 Modify the Rules of Professional Responsibility to Endorse Well-Being as Part of a Lawyer's Duty of Competence.
 - 20.3 Expand Continuing Education Requirements to Include Well-Being Topics.
 - 20.4 Require Law Schools to Create Well-Being Education for Students as an Accreditation Requirement.
21. Adjust the Admissions Process to Support Law Student Well-Being.
 - 21.1 Re-Evaluate Bar Application Inquiries About Mental Health History.
 - 21.2 Adopt Essential Eligibility Admission Requirements.
 - 21.3 Adopt a Rule for Conditional Admission to Practice Law with Specific Requirements and Conditions.
 - 21.4 Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.
22. Adjust Lawyer Regulations to Support Well-Being.
 - 22.1 Implement Proactive Management-Based Programs (PMBP) That Include Lawyer Well-Being Components.
 - 22.2 Adopt a Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.

- 22.3 Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information from Regulators to Lawyer Assistance Programs.
- 22.4 Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven.
- 23. Add Well-Being-Related Questions to the Multistate Professional Responsibility Exam (MPRE).

- 31. Commit Resources for Onsite Professional Counselors.
- 32. Facilitate a Confidential Recovery Network.
- 33. Provide Education Opportunities on Well-Being Related Topics.
 - 33.1 Provide Well-Being Programming During the 1L Year.
 - 33.2 Create a Well-Being Course and Lecture Series for Students.
- 34. Discourage Alcohol-Centered Social Events.
- 35. Conduct Anonymous Surveys Relating to Student Well-Being.

RECOMMENDATIONS FOR LEGAL EMPLOYERS / p. 31

- 24. Establish Organizational Infrastructure to Promote Well-Being.
 - 24.1 Form a Lawyer Well-Being Committee.
 - 24.2 Assess Lawyers' Well-Being.
- 25. Establish Policies and Practices to Support Lawyer Well-Being.
 - 25.1 Monitor for Signs of Work Addiction and Poor Self-Care.
 - 25.2 Actively Combat Social Isolation and Encourage Interconnectivity.
- 26. Provide Training and Education on Well-Being, Including During New Lawyer Orientation.
 - 26.1 Emphasize a Service-Centered Mission.
 - 26.2 Create Standards, Align Incentives, and Give Feedback.

RECOMMENDATIONS FOR BAR ASSOCIATIONS / p. 41

- 36. Encourage Education on Well-Being Topics in Association with Lawyer Assistance Programs.
 - 36.1 Sponsor High-Quality CLE Programming on Well-Being-Related Topics.
 - 36.2 Create Educational Materials to Support Individual Well-Being and "Best Practices" for Legal Organizations.
 - 36.3 Train Staff to Be Aware of Lawyer Assistance Program Resources and Refer Members.
- 37. Sponsor Empirical Research on Lawyer Well-Being as Part of Annual Member Surveys.
- 38. Launch a Lawyer Well-Being Committee.
- 39. Serve as an Example of Best Practices Relating to Lawyer Well-Being at Bar Association Events.

RECOMMENDATIONS FOR LAW SCHOOLS / p. 35

- 27. Create Best Practices for Detecting and Assisting Students Experiencing Psychological Distress.
 - 27.1 Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.
 - 27.2 Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.
 - 27.3 Provide Mental Health and Substance Use Disorder Resources.
- 28. Assess Law School Practices and Offer Faculty Education on Promoting Well-Being in the Classroom.
- 29. Empower Students to Help Fellow Students in Need.
- 30. Include Well-Being Topics in Courses on Professional Responsibility.

RECOMMENDATIONS FOR LAWYERS PROFESSIONAL LIABILITY CARRIERS / p. 43

- 40. Actively Support Lawyer Assistance Programs.
- 41. Emphasize Well-Being in Loss Prevention Programs.
- 42. Incentivize Desired Behavior in Underwriting Law Firm Risk.
- 43. Collect Data When Lawyer Impairment is a Contributing Factor to Claims Activity.

RECOMMENDATIONS FOR LAWYERS ASSISTANCE PROGRAMS / p. 45

- 44. Lawyers Assistance Programs Should Be Appropriately Organized and Funded.

- 44.1 Pursue Stable, Adequate Funding.
- 44.2 Emphasize Confidentiality.
- 44.3 Develop High-Quality Well-Being Programming.
- 44.4 Lawyer Assistance Programs' Foundational Elements.

CONCLUSION / p. 47

Appendix A / p. 48

State Action Plans Checklists

Appendix B / p. 50

Example Educational Topics for Lawyer Well-Being

- 8.1 Work Engagement vs. Burnout.
- 8.2 Stress.
- 8.3 Resilience & Optimism.
- 8.4 Mindfulness Meditation.
- 8.5 Rejuvenation Periods to Recover from Stress.
- 8.6 Physical Activity.
- 8.7 Leader Development & Training.
- 8.8 Control & Autonomy.
- 8.9 Conflict Management.
- 8.10 Work-Life Conflict.
- 8.11 Meaning & Purpose.
- 8.12 Substance Use and Mental Health Disorders.
- 8.13 Additional Topics.

Appendix C / p. 58

Appendix to Recommendation 9: Guide and Support The Transition of Older Lawyers.

Appendix D / p. 59

Appendix to Recommendation 25: Topics for Legal Employers' Audit of Well-Being Related Policies and Practices.

Appendix E / p. 61

Appendix to Recommendation 33.2: Creating a Well-Being Course and Lecture Series for Law Students.

Appendix F / p. 63

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. HARTER, 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”

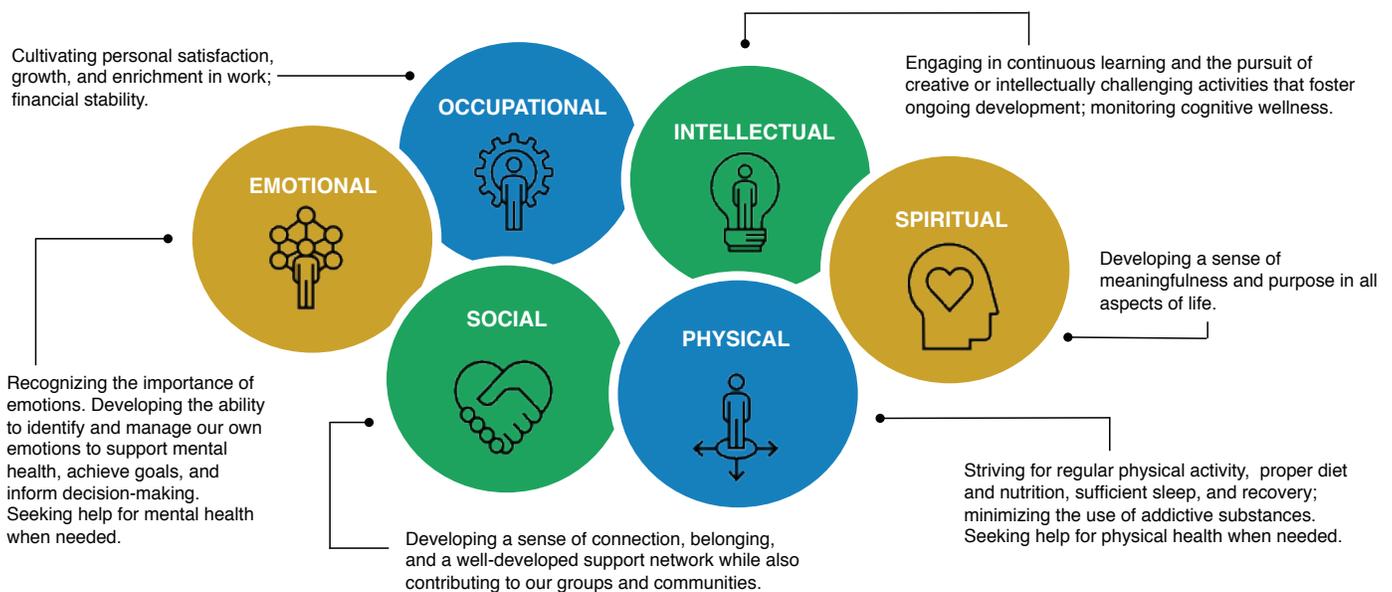
We define lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer 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-Shorridge, 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. Rüsçh, *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.sobar.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-Schriels, 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. Collinworth, 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-Schriels, 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.⁴⁶ 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 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=.a79ad124eb5c1; 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&blogaid=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. Houffort, 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.

