

AMERICAN BAR ASSOCIATION**ABA WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION
COMMISSION ON LAWYER ASSISTANCE PROGRAMS
STANDING COMMITTEE ON PROFESSIONALISM
NATIONAL ORGANIZATION OF BAR COUNSEL****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

- 1 RESOLVED, That the American Bar Association supports the goal of reducing mental
2 health and substance use disorders and improving the well-being of lawyers, judges
3 and law students; and
4
- 5 FURTHER RESOLVED, That the American Bar Association urges all federal, state,
6 local, territorial, and tribal courts, bar associations, lawyer regulatory entities, institutions
7 of legal education, lawyer assistance programs, professional liability carriers, law firms,
8 and other entities employing lawyers to consider the recommendations set out in the
9 report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive*
10 *Change*, by the National Task Force on Lawyer Well-Being.

REPORT

The American Bar Association has been instrumental in developing recent research examining aspects of well-being among law students and lawyers. This research has quantified an alarming rate of alcohol and other substance use and mental health concerns, coupled with deficient help-seeking behaviors. These studies have been a catalyst for a coalition of entities within and outside of the ABA to form the National Task Force on Lawyer Well-Being. After analyzing the data and seeking input from numerous sources, the Task Force issued a report in August 2017, which presents a series of recommendations directed at a variety of stakeholders within the justice system. The recommendations are designed to be transformative when implemented. They are designed to shift the culture of the legal profession to one that is focused on well-being. They are designed to strengthen the legal profession in a way that assures the public has a justice system that is competent, fair and just. This resolution calls upon those stakeholders to consider the Task Force recommendations.

The Research

In 2014, the ABA Board of Governors selected a coalition of ABA entities to receive an award from its Enterprise Fund to research law student well-being. The coalition included the Commission on Lawyer Assistance Programs, the Solo, Small Firm and General Practice Division, the Young Lawyers Division, the Law Students Division and the Commission on Disability Rights. The Dave Nee Foundation also joined the project and provided research and additional financial support. Associate Dean David B. Jaffe, American University Washington College of Law, Professor Jerry M. Organ, University of St. Thomas Law School, and Dr. Katherine M. Bender, Dave Nee Foundation, led the research design, implementation and analysis, with input from representatives of the Enterprise Fund coalition.

The Survey of Law Student Well-Being was designed to measure alcohol use, drug use, and mental health issues among law students. Fifteen law schools were selected to participate, representing a diverse range of settings and structures, e.g. urban/rural, small/large, geographic dispersion. Over 3,300 law students took part in the survey, which examined alcohol use, substance use, mental health issues and help-seeking behaviors.

The results showed that more than one out of four law students reported binge drinking within the prior two weeks of the survey. One out of seven students reported they had used prescription drugs without a prescription in the prior year. The incidence of marijuana and cocaine use had increased substantially since similar research was done in 1991, with the use of cocaine doubling.

When examining mental health issues, the survey showed that more than one out of six students screened for depression and nearly one out of four screened for anxiety.

Perhaps the most concerning aspects of this research involves the limitations reported for help-seeking behaviors. Of the 42 percent of respondents who indicated they needed help for mental health issues, only about half of them actually received counseling. Students showed a reluctance to turn to a dean of students or a state lawyer assistance program and indicated they were concerned about threats to bar admissions, academic standing and job prospects.

In 2015, the ABA Commission on Lawyer Assistance Programs joined with the Hazelden Betty Ford Center to survey lawyers for alcohol use, substance use, and mental health issues, as well as help-seeking behaviors. Bar associations from 16 states assisted with the research, resulting in survey responses from 12,825 licensed and employed lawyers.

The findings indicated that more than one-fifth of the respondents scored at a level consistent with problematic drinking. This was nearly twice that of a similar study of a highly-educated workforce. Over a fourth of the respondents reported some level of depression, with nearly half indicating that they had experience depression at some point in their careers. Similarly, about a fifth of respondents reported suffering from anxiety, with more than six out of ten having done so at some period of their careers. More than one out of ten respondents reported suicidal thoughts at some point while practicing law. Even more significant, 0.7 percent of respondents indicated at least one prior suicide attempt. While this is a very small percentage, if it were extrapolated over the 1.3 million lawyers in the U.S., that would lead us to conclude that 9,100 lawyers have attempted suicide.

Similar to the results found for law students, lawyers are reluctant to seek help. They are concerned that available measures are not sufficiently private and confidential and worried that others will learn of their circumstances.

The National Task Force on Lawyer Well-Being

Prior to the undertaking of the research, the Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers had collaborated on projects involving conditional admission of new lawyers in recovery and age-related cognitive impairment, among other issues. Upon the release of the survey results, these entities recognized the need to collaborate on the development of programs and policies that would reverse the course of lawyer impairment.

In the summer of 2016, representatives from these groups were joined by those from six other entities both within and outside of the ABA to create the National Task Force on Lawyer Well-Being. The ABA Standing Committee on Professionalism, the ABA Center for Professional Responsibility, the ABA Young Lawyers Division, the ABA Law Practice Division Attorney Wellbeing Committee, the National Conference of Chief Justices, and the National Conference of Bar Examiners joined the three founding entities to form the Task Force.

Between August 2016 and August 2017, the Task Force analyzed aspects of the research, explored additional resources and conducted widespread outreach in its effort to promulgate its report and recommendations for changes designed to create a sound and sustainable profession.

In its analysis of the research, the Task Force stated:

The two studies... 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.

Preliminary to and in support of its recommendations, the Task Force stated:

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.

The Task Force Recommendations

In its report entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, published in August 2017, the Task Force opens by offering three primary reasons to take action: organizational effectiveness, ethical integrity, and humanitarian concerns; and defines 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."

The Task Force indicates the 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 Report is divided into two sections. The first section sets out a series of recommendations suitable for input and implementation by all stakeholders. The recommendations are fully set out with analysis and commentary in the report at <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>.

In brief, these recommendations are as follows:

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

The second section identifies specific stakeholders and sets out specific recommendations for their implementation. Recommendations are set out for:

- The Judiciary;
- Regulators;
- Legal employers, including law firms;
- Law schools;
- Bar associations;
- Professional liability carriers; and
- Lawyer assistance programs.

Those recommendations addressing the judiciary include:

- Communicate that Well-Being Is a Priority.

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

Those recommendations addressing lawyer regulators include:

- Take Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority.
- Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.
- Modify the Rules of Professional Responsibility to Endorse Well-Being as Part of a Lawyer's Duty of Competence.
- Expand Continuing Education Requirements to Include Well-Being Topics.
- Require Law Schools to Create Well-Being Education for Students as an Accreditation Requirement.
- Adjust the Admissions Process to Support Law Student Well-Being.
- Re-Evaluate Bar Application Inquiries About Mental Health History.
- Adopt Essential Eligibility Admission Requirements.
- Adopt a Rule for Conditional Admission to Practice Law with Specific Requirements and Conditions.
- Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.
- Adjust Lawyer Regulations to Support Well-Being.
- Implement Proactive Management-Based Programs (PMBP) That Include Lawyer Well-Being Components.
- Adopt a Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.
- Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information from Regulators to Lawyer Assistance Programs.
- Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven.
- Add Well-Being-Related Questions to the Multistate Professional Responsibility Exam (MPRE).

Those recommendations to be implemented by law firms and other legal employers include:

- Establish Organizational Infrastructure to Promote Well-Being.
- Form a Lawyer Well-Being Committee.
- Assess Lawyers' Well-Being.
- Establish Policies and Practices to Support Lawyer Well-Being.
- Monitor for Signs of Work Addiction and Poor Self-Care.
- Actively Combat Social Isolation and Encourage Interconnectivity.
- Provide Training and Education on Well-Being, Including During New Lawyer Orientation.
- Emphasize a Service-Centered Mission.

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- Create Standards, Align Incentives, and Give Feedback.

Recommendations directed toward law schools include:

- Create Best Practices for Detecting and Assisting Students Experiencing Psychological Distress.
- Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.
- Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.
- Provide Mental Health and Substance Use Disorder Resources.
- Assess Law School Practices and Offer Faculty Education on Promoting Well-Being in the Classroom.
- Empower Students to Help Fellow Students in Need.
- Include Well-Being Topics in Courses on Professional Responsibility.
- Commit Resources for Onsite Professional Counselors.
- Facilitate a Confidential Recovery Network.
- Provide Education Opportunities on Well-Being Related Topics.
- Provide Well-Being Programming During the 1L Year.
- Create a Well-Being Course and Lecture Series for Students.
- Discourage Alcohol-Centered Social Events.
- Conduct Anonymous Surveys Relating to Student Well-Being.

Those recommendations directed toward bar associations include the following:

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

The Task Force recommends that lawyer professional liability carriers undertake the following:

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

Finally, the Task Force makes the following recommendations for lawyer assistance programs:

- Lawyers Assistance Programs Should Be Appropriately Organized and Funded.
- Pursue Stable, Adequate Funding.
- Emphasize Confidentiality.
- Develop High-Quality Well-Being Programming.
- Lawyer Assistance Programs' Foundational Elements.

Implementation

Within a week of the release of the Task Force report in 2017, the Conference of Chief Justices passed Resolution 6 at its Annual Meeting, providing its support for the goals of reducing impairments and addictive behavior and improving lawyer well-being. The resolution further recommended that each jurisdiction consider the recommendations set out by the Task Force. See

https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_conference_of_chief_justices_resolution_6.authcheckdam.pdf.

Over the course of the past several months, lawyer assistance programs and regulators have advanced the report and its recommendations in several states, circulating the report to bar leaders, justices of their highest courts and others who are positioned to implement and advance the recommendations. This resolution calls on stakeholders to consider the recommendations more comprehensively.

Conclusion

As the conclusion of the Task Force report states:

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 CoLAP research demonstrates the need. The National Task Force on Lawyer Well-Being has identified the solutions. It is time for the full range of stakeholders to step up and to consider the recommendations. We respectfully ask that the American Bar Association provide its leadership to further advance the path to well-being and assure a system that deserves full and complete public confidence.

Respectfully submitted,

Terry Harrell

Chair, The ABA Working Group to
Advance Well-Being in the Legal
Profession

February 2018

GENERAL INFORMATION FORM

Submitting Entity: ABA Working Group to Advance the Well-Being of the Legal Profession

Submitted By: Terry Harrell

1. Summary of Resolution(s). The Resolution urges stakeholders to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.
2. Approval by Submitting Entity. November 6, 2017 during a regularly-scheduled conference call.
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

At the 2017 Midyear Meeting, the ABA passed Resolution 106, amending the Model Rule on Minimum Continuing Education. A provision of this model calls on states to require lawyers to take one hour of CLE programming every three years on substance use disorders or mental health matters. This is consistent with one of the recommendations in the report addressed in this Resolution.

At the 1990 Annual Meeting, the House of Delegates passed the Model Law Firm/Legal Department Personnel Impairment Policy and Guidelines.

At the 1991 Midyear Meeting, the House of Delegates passed Guiding Principles for a Lawyer Assistance Program.

At the 2004 Annual Meeting, the House of Delegates passed the Model Lawyer Assistance Program.

The current resolution reinforces, but does not duplicate, the current policies.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable)

N/A.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The Working Group to Advance Well-Being in the Legal Profession was established by President Bass to, in part, advance the recommendations of the National Task Force on Lawyer Well-Being. Therefore, efforts to implement this policy will come from ABA leadership and be advanced in collaboration with the participating entities that comprise the Task Force. A symposium is being planned for the spring of 2018 and advancement of this policy and the Task Force recommendations will be featured at that time.
8. Cost to the Association. (Both direct and indirect costs)

None.
9. Disclosure of Interest. (If applicable)

N/A.
10. Referrals. Prior to filing, the proposed resolution has been circulated to the Commission on Lawyer Assistance Programs, the Standing Committee on Professionalism, and the National Organization of Bar Counsel.
11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges stakeholders to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the crisis of lawyer well-being that has been documented by research conducted by the ABA Commission on Lawyer Assistance Programs. The research demonstrates that alcohol use, substance use and mental health disorders among law students and lawyers far exceed other professions and populations. These circumstances undermine the ability of the legal profession to assure the public that the system of American justice is competent, fair and just.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The National Task Force on Lawyer Well-Being has spent a year analyzing research and conducting outreach to craft a series of recommendations directed toward a full range of stakeholders, which, if implemented, will advance a cultural shift toward a legal profession that is better able to meet the needs of society without the burdens of alcohol and other substance use disorders or unmanaged mental health concerns.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.