By: Elizabeth Fenton, Member, ABA Section of Litigation Task Force on Mental Health & Wellness

I. Introduction

The legal profession is in a period of profound change. Once upon a time, earning a law degree promised prestige, a good living, security, intellectual challenge, and the gratification that comes with serving others. Since the Great Recession, some of these promises ring hollow for a growing number of lawyers. The purpose of this talk is not to reminisce about the “good old days.” For large categories of lawyers currently practicing (women, racial and ethnic minorities, members of the LGBTQ community, to name a few), the “good old days” were not so good. Likewise, the impact of technology, outsourcing, the billable hour, layoffs, the imbalance between the number of legal jobs and the number of law school graduates: those are topics for another day and another panel.

Instead, we want to initiate a discussion about what lawyers and legal employers can do to foster mental health in a profession, and quite honestly, a world, of information overload, 24/7 client demands, and all that comes with these phenomenon. The statistics are well-publicized and we don’t need to belabor them here. Lawyers, in general, have higher rates of addiction, anxiety, and depression than the general population. See The Path to Lawyer Well-Being: Practical Recommendations for Lawyer Change, available at https://www.americanbar.org/groups/lawyer_assistance/task_force_report.html, at p. 8 (referred to as “Task Force Report”). Younger lawyers and in particular those at law firms have even higher rates of these problems. Id. Addiction, anxiety, and depression impact the affected lawyers in terms of their own well-being, of course, but they also impact their families, colleagues, and clients. Lost productivity, poor client service, mistakes, and turnover carry a financial, cultural and emotional cost. The above-mentioned task force report and the studies it references provide an overview of the problem and why ignoring it is no longer acceptable. See, e.g., P. R. Krill, R. Johnson, & L. Albert, The
But the Task Force Report also offers potential solutions; that is our focus. The theme of the solutions is that lawyer well-being is a “continuous process” focused on every dimension of the professional’s life: “emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.” Task Force Report at p. 9. Although the Task Force Report discusses the role of law schools, the judiciary, bar associations, lawyer assistance programs, malpractice carriers, and other stakeholders in addressing lawyer well-being, we will focus on lawyers and legal employers.

II. Lawyers’ Roles in their Own Well-Being

Lawyers are required, as a matter of professional responsibility, to be competent. Fundamentally, a lawyer puts his or her ability to fulfill the duty of competence at risk when he or she disregards well-being. See Task Force Report at p. 10. A shrinking minority of lawyers still adheres to the view that lawyer well-being should be sacrificed to the gods of the highest possible profits per partner, billable hours 24/7 (or as close to that as possible, and incivility towards opposing counsel and colleagues alike. Those lawyers may change someday, but we are focused on those who understand that the evidence shows that diverse workplaces, collegial cultures, and long-term relationship building between clients and lawyers make for not just better lawyer well-being, but better bottom lines in the long-term.

Lawyers can help themselves by educating themselves about the signs of burnout, depression, anxiety, and substance abuse. They can learn how to manage stress, to be better organized, to prioritize, and to set boundaries around personal and professional life. They can eat better, exercise,
and drink less. They can sleep! For those competitive folks, they can use apps such as the Whole Life Challenge, fitness trackers such as Fitbits, and other tools to “gamify” taking better care of themselves.


With these tools and knowledge, lawyers are better equipped not only to self-monitor, and also to be aware of their own colleagues’ behavior. If a young associate drinks excessively at social events on a regular basis, more senior lawyers can learn how to have a conversation about resources available (EAPs, lawyer assistance programs, or other services). Likewise, if a young associate has not slept in days, and behaves erratically, training in well-being will help more senior lawyers to know that such behavior does not in fact benefit the firm. On the other side of the scale, senior lawyers may need help in navigating the well-being challenges that accompany the aging process. As the lawyer population
ages, having the tools to discuss solutions that work for the lawyer, the client, and the employer will become even more significant.

Paying attention to our own well-being, and our colleagues’ well-being, improves our lives and our workplaces. One of the key take-aways of the Task Force Report was that lawyers need to educate themselves about these issues so that they avoid problem behaviors, burnout, addiction, mental illness and at the most extreme, suicide. Individual lawyers cannot do it alone, however. The culture of the legal workplace must change.

III. Legal Employers’ Roles in Fostering Lawyer Well-Being

Law firms, in-house legal departments, and other legal employers have a critical role to play, and the Task Force offers a number of concrete proposals. Recognizing that there is a problem is just the beginning, and it is a vital one. Next, employers should continue to make available employee assistance programs (“EAPs”) available which help employees address well-being issues. They should educate their employees on the importance of well-being and the available resources, including state lawyer assistance programs. Appendix D to the Task Force Report provides a list of policies employers might consider implementing relating to leave, the duty of competence, monitoring for impairment of self and colleagues, reporting of same through a confidential mechanism, and the benefits available under health insurance plans.

The Task Force Report suggests forming a lawyer well-being committee or designating a well-being advocate. See Task Force Report at p. 31. Employers can also do their part to reduce the stigma associated with mental illness and addiction by having high-level employees and managers provide concrete ways in which they foster their own well-being. The Task Force Report suggests that legal employers provide training and education, including during new lawyer orientation. Id. at 34. Corporations have done this for a long-time, as have affinity groups within law firms. Such discussions
should become part of the culture for everyone. In addition to making the workplace better, such efforts will ensure better client service and minimize liability.

IV. Conclusion

The ABA Task Force Report shed light on a longtime problem for the profession that shows no signs of abating. With the numerous actionable items described in the Task Force Report, now lawyers, law firms, bar associations, law schools, lawyer assistance programs, malpractice insurers, and the judiciary must take the next step to remedy this problem. Our legal system, our workplaces, our clients, and ourselves will be better off for it.

Additional Resources

COLAP Resources: https://www.americanbar.org/groups/lawyer_assistance.html

State-specific Lawyers Assistance Programs (contact information, videos links for counseling, crisis intervention and education & prevention):
https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html

National resources:
https://www.americanbar.org/groups/lawyer_assistance/resources/links_of_interest.html