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Ethical and Practical Issues in Lawyer Well-Being, Disability, and Impairment

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Panelists:
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Kathleen M. Uston, Virginia State Bar
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ABA Business Law Section
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Ethical and Practical Issues in Lawyer Well-Being, Disability, and Impairment

by Gisela M. Munoz, Esq.*

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Lawyer well-being and impairment have become topics of increasing focus. As of 2016, the rate of attorney depression and substance use disorder, each, were twice that of the general population. The 2017 report of the National Task Force on Lawyer Well-Being described significant deficiencies in wellness within the profession, mobilizing bar associations to conduct further research and provide both (1) wellness tools and (2) tools to help identify and address impairment. All of the foregoing can be helpful to an individual lawyer’s ethical, professional, and even substantive practice of law, and, ultimately, to the business of law and to public confidence in the profession, as the crucial institution it is in our society. However, the latter tasks – identifying and addressing lawyer impairment – may have their own ethical/professionalism issues and may be susceptible to mishandling, thereby amplifying those potential issues.

Well-Being

It has become clear that making certain affirmative choices, such as a healthy diet and exercise, are key to long-term health. These preventative measures help avoid or delay physical illness and continue to be part of well-being plans. We now recognize, however, that lawyer well-being must include mental/emotional health, among the other identified dimensions of well-being: occupational, intellectual, social, and spiritual/meaningfulness. This is not only important for the attorney personally, but professionally in terms of ethical and substantive performance.

The high levels of long-term stress and anxiety found in lawyers have been correlated with compromised cognitive skills, reduced ability to focus, and diminished memory function, and are thought to contribute to the high rate of substance addiction among attorneys. These and other issues implicate a lawyer’s ability to represent clients competently, diligently, and promptly, in accordance with the ABA Model Rules of Professional Conduct (“Rules”) 1.1, 1.3, and 1.5 (assuming hourly rates), and may interfere with an attorney’s ability to serve as an advisor pursuant to Rule 2.1 and communicate effectively and professionally with both clients and opposing counsel in accordance with Rule 1.4 and general civility precepts. Moreover, as wellness increases, a lawyer’s ability to solve problems creatively will likely increase, in part because less of her attention will be distracted by deficiencies in her wellness.
Accordingly, finding methods to reduce stress and anxiety and otherwise maintain/improve lawyer well-being is critical. Some of these techniques include practicing Mindfulness, practicing Yoga, making a list of positive events, keeping a gratitude journal, using positive psychology methods, and finding time to do something you find meaningful in your life or work.

Let’s focus on one of these. Mindfulness – i.e., paying attention to the present moment while suspending judgment – although not for any purpose other than being mindful, can be particularly helpful in the practice of law. On the professionalism front, it can assist in compliance with the Rules and in identifying and then addressing unconscious bias. On the substantive front, it can enable insight, “aha” moments, and creative problem-solving. Mindfulness can be practiced in many ways, including through awareness of breath exercises, body scan meditations, and mindful walks, and now there are even Mindfulness “apps.”

**Impairment – Not To Be Confused with Disability**

Whether an attorney uses any of these techniques to maintain/improve well-being, she may, nonetheless, become impaired. Rule 1.16(a)(2) requires a lawyer to decline or withdraw from representation if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.” It is important to focus on the challenges in identifying “impairment.” As discussed in this program, “impairment” means the lawyer’s ability to represent clients ethically (whether competently or under another Rule) is “materially and adversely affected,” such that whether the attorney should be permitted to practice at that time is in question.

Some bar association proposals, citing Rules 5.1 to 5.3, have suggested that unimpaired lawyers or employers essentially police impaired attorneys, by identifying and reporting them, if they refuse to self-identify/self-report. The first issue with this lies in the definition above. Are unimpaired attorneys/employers qualified and unbiased enough to identify when an attorney, who may have disability, for example, (1) is impaired as defined above, or (2) simply has a disability that requires an accommodation (which may or may not involve impairment if not accommodated), or (3) has a disability that does not even require an accommodation or involve impairment? Further, are unimpaired lawyers/employers properly incentivized? Thus, care is required in developing proposals for identifying “impairment” to ensure the solution does not raise its own professionalism issues regarding bias and increased stigma against people with disabilities, as well as potential violations of the Americans with Disabilities Act and the like. A second issue is ensuring the standard applied – in this program, “materially and adversely affected” – is appropriate, defined, and consistently used in such proposals.

Regardless of such difficulties, we must better identify and address impairment, not only for the sake of the impaired attorneys, the bottom line, and the profession’s reputation, which will, ultimately, suffer from the provision of incompetent/unethical representation by impaired attorneys, but, **most importantly, for the sake of the clients, who are relying on those attorneys, and for the sake of society and the rule of law, which rely on the integrity (i.e., not just ethicalness, but also soundness and stability) of the profession.** Once identified, bar associations and employers can provide resources to assist the lawyer in recovery from the impairment, or management thereof, so the lawyer can continue, or recommence, practicing if the facts allow. Wellness tools can supplement the primary treatment(s), and some, including
Mindfulness, have already been found helpful in supplementing the treatment of certain mental illnesses and addiction.

In conclusion, studies have found that lawyers are disproportionately affected by wellness problems as compared to the general public, and the profession needs to address lawyer impairment more effectively, which may be assisted by increased attention to well-being in the first place. Implementing wellness tools can be part of a comprehensive personal and professional well-being plan for lawyers, which can help the lawyer, the lawyer’s clients, the lawyer’s employer, and, ultimately, society as a whole.
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Gisela M. Munoz practices in the areas of commercial real estate and corporate transactions. She represents companies and financial institutions in real estate acquisitions, dispositions, development, financing, and operations, as well as in the structuring, negotiation, and documentation of joint ventures and in general corporate/commercial matters. Gisela is an experienced member of the Firm’s Latin America Group, who speaks Spanish fluently and has counseled Latin American clients in U.S. matters, as well as U.S. clients in matters involving Latin America together with local co-counsel in Latin America. The depth and breadth of her practice ranges:

- from hotel transactions, including resort hotels with complex reciprocal easement agreements and co-branding agreements, to office leasing on both the landlord’s side and the tenant’s side, including representation of law firms as tenants;

- from conventional mortgage financing, CMBS financing, and syndicated mortgage financing for both construction loans and stabilized projects, each in the hundreds of millions of dollars, to the acquisition of raw land and/or entitled lots, all cash, for the development of new residential subdivisions.

Gisela is an adjunct professor at the University of Miami School of Law, teaching or co-teaching the Hospitality Law LL.M. course. Aside from real estate law matters, Gisela also makes presentations or speaks on panels about issues of professionalism and professional responsibility, including the intersection of Mindfulness practice and the professional practice of law. Gisela has been selected for Chambers USA, Florida Super Lawyers, and Florida Trend’s Legal Elite. In addition, in 2017, she was named by the Daily Business Review (Miami-Dade edition) as one of the “10 Top Women in Law” and received both the “Legal Luminaries Award, Real Estate Development Transactions” and the “Louise Rebecca Pinnell Woman of Distinction Private Practice Award” from the Dade County Bar Association. Gisela was included in Florida real estate practitioners in a recent edition of Chambers USA, which identified her as “super thorough, intelligent, diligent, and demonstrates both the ability to solve issues and respond quickly.” She was selected as a Fellow of both the American College of Real Estate Lawyers (ACREL) and the American College of Mortgage Attorneys (ACMA).

Gisela earned her J.D. from Yale Law School, and her A.B., summa cum laude, from the University of Miami.
Patrice Keitt, J.D.

Patrice is a Partner at Clear Path Executive Coaching, a New York based firm committed to helping executives, emerging leaders and entrepreneurs develop leadership skills and create meaningful change in their organizations and their lives. Over the past 11 years, Clear Path has worked with a broad range of corporate clients including leading financial institutions, international law firms and public and private global corporations.

Prior to joining Clear Path, Patrice spent over 15 years in the international corporate arena, first as an attorney practicing Mergers & Acquisitions at Shearman & Sterling and Davis & Gilbert and then in the luxury fashion industry as COO of Wolford and CEO and Principal of Anne Fontaine USA.

Throughout her corporate career, she established a track record of training, developing and mentoring highly motivated, cohesive and successful teams of managers and employees. In her work with clients, she draws on that experience as well as the analytic skills she honed as a lawyer.

Patrice also has extensive training in mindfulness, meditation and is a certified yoga instructor, having discovered the practice over 25 years ago as an over-stressed lawyer. She regularly brings those skills to bear in her coaching practice.

Patrice has particular expertise conducting corporate facilitations, seminars and workshops on topics relating to peak performance, including emotional intelligence, leadership skills, team building, stress management, mindfulness, resilience, work/life balance, and navigating career change.

Patrice holds a J.D. from The University of Pennsylvania Law School, a B.A. in Political Science and French from Hofstra University and is an International Coach Federation (ICF) accredited coach.
Kathleen M. Uston is an Assistant Bar Counsel with the Virginia State Bar in Alexandria, Virginia, and an adjunct professor of law at American University Washington College of Law teaching Ethics for Trial Lawyers. She received her J.D. from George Mason University School of Law in 1991 where she served as President of the Student Bar Association and as a Justice on the Moot Court Board. Ms. Uston was previously in private practice focusing in the areas of attorney ethical defense work, GAL representation, and civil litigation. While in private practice, she also served as a Commissioner in Chancery for the Circuit Court for the City of Alexandria. Ms. Uston is a past President of the VSB Young Lawyers Conference during which time she served on the VSB Council and Executive Committee. She also served as vice-chair of the American Bar Association Young Lawyers Division Solo and Small Firm Committee. Ms. Uston is a former President of the Alexandria Bar Association, and is currently serving as Immediate Past President of the National Organization of Bar Counsel. Ms. Uston is also currently serving as a member of the National Task Force on Lawyer Well-Being, is a member of the Presidential Committee on Wellness of the Virginia State Bar, and served as a member of the Virginia Committee on Lawyer Wellness formed by the Chief Justice of the Virginia Supreme Court. Ms. Uston has lectured extensively on the subject of attorney ethics, and co-authored the updated edition of *Lawyers and Other People’s Money* with Frank Thomas, Esquire.
ETHICAL AND PRACTICAL ISSUES IN LAWYER WELL-BEING, DISABILITY, AND IMPAIRMENT
DATE: SEPTEMBER 14, 2019

PANELISTS:
Gisela M. Munoz, Esq., Shareholder, Stearns Weaver Miller, of Miami, Florida
Patrice Keitt, JD, Partner, Clear Path Executive Coaching, of New York, New York
Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, of Richmond, Virginia
I. Introduction (by Gisela M. Munoz of Stearns Weaver Miller in Miami)

The rate among attorneys of

Depression

and

Substance Use Disorder

is TWICE the rate among the general public.
According to the Recommendations:

- There are significant deficiencies in wellness among lawyers.
- The number of attorneys struggling with anxiety and stress were respectively 23% and 19%.
- Even lawyers who are not struggling are not thriving and feel “profound ambivalence” about their work.
- Knowing “how to maintain well-being can enhance competence, diligence, and work relationships – all of which are required by the ABA Model Rules of Professional Conduct.”
According to the Recommendations:

Lawyer Well-Being =

Continuous Process Toward Thriving in 6 Dimensions of Life

1. Physical
2. Emotional
3. Intellectual
4. Occupational
5. Social
6. Spiritual/meaningfulness
II. SOME TECHNIQUES TO MAINTAIN/IMPROVE WELL-BEING:

- Exercise
- Healthy diet
- Practice Mindfulness – including short exercises
- Practice yoga
- Make a list of positive events
- Keep a gratitude journal
- Find work-life balance
- Use positive psychology
- Find time to do something you find meaningful in your life or work
- Get sufficient sleep regularly
III. MINDFULNESS

A. Generally

1. One definition: “Paying attention in a particular way: on purpose, in the present moment, and non-judgmentally.”
   - Jon Kabat-Zinn, Professor Emeritus of the University of Massachusetts Medical School and founder of the Mindfulness Based Stress Reduction (“MBSR”) Program

2. Gain it by practicing through various methods.

   [AOB Exercise]
A caveat: mindfulness is NOT for the following listed purposes. The point of mindfulness is simply, in and of itself, to be mindful. Nonetheless, mindfulness can have these beneficial side effects and can be:

B. A tool *TO ACHIEVE*:

1. **LESS:**
   - stress
   - ineffective and inefficient “busyness”
   - reactivity (knee-jerk)
III. MINDFULNESS (CONTINUED)

B. A tool TO ACHIEVE:

2. MORE:

- proactivity (thoughtful responsiveness, creativity)
- focus
- efficiency and effectiveness
- competence (ABA Model Rule of Professional Conduct (“Rule”) 1.1)
- diligence and promptness (Rule 1.3 and 1.5)
- professionalism and civility
III. MINDFULNESS (CONTINUED)

B. A tool TO ACHIEVE:

3. IMPROVED:

- communications (Rule 1.4) - particularly, in today’s day and age, where “multi-tasking” and attention-dividing is more prevalent

- advising methods and substance (Rule 2.1)

- identification of and challenge to implicit bias
III. MINDFULNESS (CONTINUED)

C. Certain Studies

1. Yale University (2011): Long-term meditators (10 years) were found to have:

- decreased activity in the “Default Mode Network” (associated with lapses of attention and with self-referential and mind-wandering thoughts, leading to worry/anxiety/stress)
III. MINDFULNESS (CONTINUED)

C. Certain Studies

2. Harvard University (2011): After practicing mindfulness for only 8 weeks (in the MBSR program), practitioners were found to have:

- increased ability to focus
- shrinkage in amygdala (stress/fear/“fight-or-flight” center of brain)
- thickening of pre-frontal cortex
III. MINDFULNESS (CONTINUED)

C. Certain Studies

3. UCLA (2015): Long-term mindfulness practitioners were found to have:

- increased grey matter (associated with learning and memory) throughout the brain, except in amygdala

- decreased loss of grey matter related to aging
D. Parsing the Definition and Discussion of Possible Results

1. Presence/awareness; this moment; without judgment/self-judgment

2. While focusing on the moment, the mind will wander, and the idea is to bring the mind back to focusing on the moment without judgment.

3. A paradigm shift may occur from merely being present in the moment or from the analysis described above. Some choices are made unconsciously. Make more of them consciously.
IV. INTERSECTION WITH ETHICAL PRACTICE AND PROFESSIONALISM: THE RULES AND BEYOND

A. Rule 1.1 – Competence – the thoroughness and preparation the lawyer is able to give to the matter

1. The Recommendations suggest “mental, emotional, and physical ability reasonably necessary” be included in the definition of competence (but not for discipline)

2. Even without implementation of that, if you are stressed and engaging in “busyness,” then focus, thoroughness, and preparation will likely suffer.

3. A 2010 Harvard Study published in Science found that:

   we are off-task 47% of the time!
A. Rule 1.1 – Competence (continued)

4. Impaired competence and/or diligence – risk of not spotting an issue and adequately advising the client, because of:
   - stress
   - distraction
   - “multi-tasking” (fallacy)
   - reactivity to what is presented to you, rather than proactivity and thinking outside the box (fallacy of a proposed binary choice)
IV. INTERSECTION WITH ETHICAL PRACTICE AND PROFESSIONALISM: THE RULES AND BEYOND (CONT’D)

A. Rule 1.1 – Competence (continued)

- July 2018 ALAS (Attorneys’ Liability Assurance Society) Loss Prevention Journal reported that mistakes were the largest attorney liability issue and cited multi-tasking as part of the problem.
- Multi-tasking results in “Switch Cost” – Coined by MIT Neuroscience Professor Miller and supported by recent University of Miami study and Stanford study cited in 2017 book entitled *Altered Traits* by Goleman and Davidson.
- Segue to promptness and billing rules
IV. INTERSECTION WITH ETHICAL PRACTICE AND PROFESSIONALISM: THE RULES AND BEYOND (CONT’D)

B. Rule 1.3 and 1.5 – Promptness and Diligence/Billing

1. Inefficiency as affecting diligence (and competence) - “busyness” and “busy minds”/“multi-tasking” are being found to be inefficient and ineffective

2. Procrastination – called out by the comment to this Rule 1.3 as one of the worst “professional shortcomings,” but some people deal with stress by procrastinating – minimizing stress through mindfulness can lead to less procrastination in the profession

3. Ethics in billing – wandering, unfocused mind may mean you’re so inefficient that you’re overbilling
IV. INTERSECTION WITH ETHICAL PRACTICE AND PROFESSIONALISM: THE RULES AND BEYOND (CONT’D)

C. Rule 1.4, Rule 2.1, Preamble to Rules, and General Professionalism/Civility – Communication; Role as Advisor; Professionalism/Civility

1. Risk of not adequately communicating an issue and, thereby, not adequately advising the client, because of (a) reducing communication to technical legal issue/language not fully understood by client (comment to Rule 2.1), or (b) tunnel vision/too narrow a focus

2. Risk of not adequately advising the client, because of taking the “judgment” portion of legal training too far down a road that is not a practical concern/possibility

3. Communication with/professional behavior toward/civility toward opposing counsel – being thoughtfully responsive rather than knee-jerk reactivity, when confronted with difficult opposing counsel, for example
V. Techniques to Improve and Maintain Well-being

WHAT YOU CAN DO AND WHAT YOUR FIRM CAN DO
A. Tool #1 – Seated Meditation

1. Generally

- Many different types: mindfulness, transcendental, yoga, use of mantra, visualization – pick one that resonates with you
- Start with 3 minutes and slowly build
- Choose a comfortable seated position
- Choose the time of day that you will stick to
- Use a guided meditation
- Join a group class
Overcoming Resistance

• Don’t have time

• Boredom

• ”My mind is too busy, I can’t quiet down” – the fallacy of uniqueness
2. Metta Meditation: Loving Kindness

a. What Is It?

• Four phrases:
  • May I be happy
  • May I be healthy
  • May I be safe
  • May I live with ease

• Silently repeated and directed to (1) yourself; (2) someone important to you; (3) an acquaintance; (4) someone you have difficulty with
b. Why Loving Kindness?

- Activates empathy
- Increases sense of connection
- Increases compassion
- Curbs self-criticism – counteracts the inner critic
- Increases positive emotions, including love, joy and gratitude
B. Tool #2 - Mini-Meditations

- Take “Purposeful Pauses”

- Focus on any present moment sensation – hearing, touch, sight, heart beat for 15 seconds

- STOP: Stop, Take a breath, Observe, Proceed
“When walking, walk. When eating, eat.”

ZEN PROVERB USED BY AMERICAN HEART ASSOCIATION AND AMERICAN STROKE ASSOCIATION “TOGETHER TO END STROKE” CAMPAIGN
C. Tool #3 - Desk-Side Yoga

• Use the breath with simple movement to release habitual tension and connect to a sense of balance in mind and body

• Develop healthier posture and proper breathing to feel more vital, alert and energized – feed your brain!

• Move your body to increase flexibility and energy

• Let’s try it!
D. Tool #4 – Regular Recovery

• Stress is not the problem, the absence of disciplined, intermittent recovery is

• “Oscillate” between periods of intense focus and regular renewal

• Create recovery rituals

• Note: recovery is active (e.g. moving, massage, meditate) not passive (vegging in front of the tv)

E. Tool #5 – Energy Management vs. Time Management

• Time is finite, energy is renewable

• Work with, not against, ultradian rhythm of the brain

• 90-minute intervals with breaks – alternate high frequency brain activity with low frequency

• Working through the ultradian rhythm triggers fight or flight stress response

F. Tool #6 - Honor Your Values

- Values give life meaning and allow us to persevere through adversity

- Identify your core values: use a list, think of people you admire, think of things you dislike

- Some benefits of honoring your values: can reduce stress, boost decision making and problem solving and inspire better health habits

Source: “9 Surprising Superpowers of Knowing Your Core Values”, Meg Selig, Psychology Today, November 27, 2018
G. Tool #7 - Positive Psychology

• Negativity bias of the brain - like Velcro for negative and Teflon for positive

• Take in the good – Use the “HEAL” process to make passing positive mental states into lasting neural traits

• Practice gratitude and loving kindness

Source: Buddha’s Brain, Rick Hanson, PH.D. with Richard Mendius, MD
VI. WHAT LAW FIRMS CAN DO

• Start at the top with leadership commitment, support and a comprehensive structure

• Change the paradigm from self-care = weakness to self-care = an ethical and strategic imperative

• Create a culture of wellness → one-off random acts of wellness are not enough

• Provide coaching for individuals to explore new behaviors, create action plans, provide accountability and sound boarding support
VII. RESOURCES

10% HAPPIER
How I Tamed the Voice in My Head, Reduced Stress Without Losing My Edge, and Found Self-Help That Actually Works—A True Story

By Dan Harris

Real Happiness
The Power of Meditation

By Sharon Salzberg

“A Salzberg speaks from experience... an extraordinary teacher.”
—O. The Oprah Magazine
VII. RESOURCES (CONTINUED)
VII. RESOURCES (CONTINUED)

Tiny Changes, Remarkable Results
Atomic Habits
An Easy & Proven Way to Build Good Habits & Break Bad Ones
James Clear

The Power of Habit
Why We Do What We Do in Life and Business
New York Times Bestseller
Charles Duhigg
With a New Afterword by the Author
VII. RESOURCES (CONTINUED)

There’s an App for that:
• Headspace
• Mindful
• 10% Happier

And Websites:
• Mindful
• UCLA Mindful Awareness Research Center
• Institute for Mindful Leadership
VIII. IMPAIRMENT-NOT TO BE CONFUSED WITH DISABILITY

- Whether an attorney uses any techniques to maintain or improve well-being, she may, nonetheless, become impaired.
- **Rule 1.16(a)(2)** requires a lawyer to decline or withdraw from representation if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”
- Challenges in identifying “impairment.”
- In this program, “impairment” = “materially and adversely affected,” such that whether the attorney should be permitted to practice at that time is in question.
VIII. IMPAIRMENT—NOT TO BE CONFUSED WITH DISABILITY (CONTINUED)

Examples of Challenges

A. Are attorneys/employers qualified and unbiased enough to identify when an attorney, who may have disability, for example:
   1. is impaired as defined above, or
   2. simply has a disability that requires accommodation (which may or may not involve impairment if not accommodated), or
   3. has a disability that does not even require an accommodation or involve impairment?

B. Are lawyers/employers properly incentivized?
IX. IMPAIRMENT AND WELL-BEING

Kathleen M. Uston
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A. The Path to Lawyer Well-Being:

Practical Recommendations for Positive Change
1. About “Well-Being”

Well-Being is about:

• PREVENTION of impairments (substance abuse, mental health problems), and
• TREATING impairments when they occur, and
• PREVENTION of their relapse

AND it’s about a continuous process of thriving across multiple dimensions...

- Focused on impairment and well-being
- 44 recommendations directed at changing culture of legal profession
- Addressed to legal stakeholders (not individual lawyers):
  - Judges
  - Regulators
  - Legal Employers
  - Law Schools
  - Bar Associations
  - Professional Liability Carriers
  - Lawyers Assistance Programs
3. Three Reasons to Take Action

Organizational effectiveness:
• It’s good for business!

Ethical integrity and professionalism:
• It’s good for clients!

Humanitarian reasons:
• It’s good for lawyers and their families!
Are you at risk?
The legal profession is putting you at risk.

**Adaptation Risks**
- Changing Legal Paradigms
- Technology Addiction
- Lack of Diversity in the Legal Profession
- External Pressures on Lawyer Independence

**Physical Risks**
- Sedentary Nature of Work
- Long and Unusual Hours
- Sleep Deprivation
- Working Indoors
- Aging of Lawyers

**Mental and Emotional Risks**
- Adversarial Nature of Work
- Individual Work
- Professional Demands
- Vicarious Trauma and Managing Others’ Problems
- Duty of Confidentiality
- Financial Concerns
- Need to Display Confidence and Conceal Vulnerability

**Self-Actualization Risks**
- Losing Control of Professional Destiny
- Values Conflict with Client or Practice Setting
- Expectations-Reality Gap in Law Practice

Look for solutions here:
Report of the VSB President’s Special Committee on Lawyer Well-Being
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## Matrix of Occupational Risks to Lawyer Well-Being

### Physical Risks
- Sedentary Nature of Work
- Managing Long and Unusual Hours
- Sleep Deprivation
- Working Indoors
- Aging of Lawyers

### Mental and Emotional Risks
- Adversarial Nature of Work
- Individual Work
- Professional Demands
- Vicarious Trauma and Managing Others' Problems
- The Duty of Confidentiality
- Educational Debt
- Business Management of the Practice of Law
- The Need to Display Confidence and Conceal Vulnerability

### Adaptation Risks
- Changing Legal Paradigms
- Technology Addiction
- Lack of Diversity in the Legal Profession
- External Pressures on Lawyer Independence

### Self-Actualization Risks
- Losing Control of Professional Destiny
- Values Conflict with Client or Practice Setting
- The Expectations-Reality Gap in Law Practice

## Conclusion

## Resources
### Special Committee on Lawyer Well-Being

## Matrix of Occupational Risks to Lawyer Well-Being

### Physical Risks

<table>
<thead>
<tr>
<th>Risk</th>
<th>Description</th>
<th>Potential Effects</th>
<th>Practice Pointers for Individuals</th>
<th>Practice Pointers for Organizations</th>
</tr>
</thead>
</table>
| Sedentary Nature of Work | Lawyers spend most working hours (and off-hours) in the seated position. Mounting evidence suggests that prolonged sitting can be serious an issue; obesity and smoking, and can pose serious health risks, including an elevated risk of mortality. Computer slump can cause hunched shoulders and neck problems leading to long-term postural problems. | • Understand the risks associated with physical inactivity.  
• Make efforts to add more movement to daily routines, even in activities as mundane as taking a walk at lunch or using the stairs rather than the elevator.  
• Set periodic reminders to stand up and stretch during the day.  
• Use ergonomic equipment, standing desks, walking desks, and balance boards for standing.  
• Have a regular exercise routine.  
• Stay current on medical appointments. | • Recognize the sedentary nature of legal work and encourage employees to stay active.  
• Consider subsidizing gym memberships and purchasing ergonomic office equipment as part of an overall benefits package for employees.  
• Adopt policies permitting employees to take stretch breaks and to otherwise get up and move throughout the day.  
• Educate employees on posture risks, including computer slump, and best practices for avoiding it.  
• Provide healthy food and non-alcoholic beverage options at firm events. |

| Managing Long and Unusual Hours | The competing demands of clients, employers, and the judiciary take toll on a lawyer's time and energy. There is a profession characterized by long and unusual working hours that can lead to stress, exhaustion and, ultimately, burnout. | • Recognize there are only 24 hours in a day and adopt habits that make the most of the time allotted.  
• Plan out each day, prioritizing tasks based on their importance and urgency, and avoid interruptions until the task is completed.  
• Stop procrastinating by breaking up large and unwieldy tasks into smaller, more manageable pieces.  
• Establish reasonable expectations regarding client/accountability.  
• Take regular vacations. | • Consider offering time management clinics and training to employees.  
• Recognize and prioritize the importance of time off to rest and recharge.  
• Lead from the front: practice what should be replicated; leaving at a reasonable time each evening and taking appropriate vacations.  
• Promote flexible work scheduling options.  
• Provide incentives, like subsidizing gym memberships, that encourage taking time to exercise. |
B. A PROFESSION AT RISK

Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia
Mission Statement

The well-being of lawyers, judges and law students in Virginia is integral to professional competence. A competent bench and bar in Virginia is essential to ensuring the protection of the public we serve.

As members of a self-regulated profession, we are devoted to client protection as a fundamental duty. To achieve this, the legal profession must support education and training that will ensure professional competency. Further, the legal profession as a whole must provide the resources necessary to ensure intervention, assessment, and referral services for at-risk and impaired lawyers, judges, and law students.

Recent studies have documented the prevalence of dysfunction, at-risk behaviors, and impairment in the legal profession. The response must be comprehensive in scope. Because of its statutory and regulatory responsibility for supervision of the entire legal profession, the Supreme Court of Virginia is uniquely empowered to create and implement such a comprehensive response.

This proposed approach is not unlike the origins of the Carrico Professionalism Course, which the Supreme Court of Virginia adopted in 1987 in response to a crisis arising from the increasing disregard of principles of professionalism. Resisted at first, the Professionalism Course has become accepted as essential training for every newly licensed Virginia lawyer. Aspirations to professionalism are now inculcated as an essential obligation of the legal profession.

As with that earlier crisis that threatened to destabilize the relationships of legal professionals with each other, their clients, the courts, and their communities, an alarming number of lawyers, judges and law students are experiencing a "wellness" crisis. Its most alarming manifestations include behavioral health and substance use disorders, as well as attempted and completed deaths by suicide. This crisis threatens the integrity of the profession, and in turn the members of the public.

Accordingly, the proposals in this report are conceived from a profound conviction that the personal health and wellness of legal professionals are inseparable from the duty of such professionals to provide competent services to the public and ensure its protection.

These proposals impose costs upon the legal profession. However, our collective judgment is that the immediate benefit to individual members of the profession and the prophylactic benefit to the profession and the public of education, training, and prevention, including intervention for impaired legal professionals, substantially outweigh the slight cost associated with the establishment and funding of the following proposals. We believe that they are fundamental to competent and professional legal services, and will be accepted as core responsibilities attendant to the privilege of practicing law.
Committee Members

Justice William Mims, Chair
David Bobzien, Esq.
Judge Thomas Bondurant
Manuel Capvisis Doris Causey, Esq.
David David Brant Hellwig
Drew Davidson
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Lorraine Lord, Esq.
Judge Mary Malveaux
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Dean Wendy Perdue
Judge Deans Simmons
Judge Jacqueline Talevi
Tram Tran
Pia Trigiani, Esq.
Catherine Hill, Esq.
Cynthia Hudson, Esq.
Kathleen Uston, Esq.

If we live for others, we will gradually discover that no one expects us to be "as gods." We will see that we are human, like everyone else, that we all have weaknesses and deficiencies, and that these limitations of ours play a most important part in all our lives. It is because of them that we need others and others need us. We are not all weak in the same spots, and so we supplement and complete one another, each one making up in himself for the lack in another.

-Thomas Merton, No Man is an island
X. WHAT IMPACT DO VIRGINIA’S LEO’s HAVE NOW?

• All considered “decisions of the court”
  • Binding jurisprudence
  • Not charged with violating a LEO
  • Charged with violating RPC’s,
• Can be interpreted with reference to LEO
Approved by the Supreme Court of Virginia December 15, 2016

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LEO 1886 - DUTY OF PARTNERS AND SUPERVISORY LAWYERS IN A LAW FIRM WHEN ANOTHER LAWYER IN THE FIRM SUFFERS FROM SIGNIFICANT IMPAIRMENT
Questions Presented

1. Is there a duty to report a lawyer who continues to represent clients while suffering from an impairment?

2. What other options are available, instead of or in addition to filing a bar complaint?
Mission Statement

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-Thomas Merton, No Man is an Island
Background

Two national studies published in 2016 relating to behavioral health and substance use disorders among attorneys and law students sent shockwaves through the American legal community. Both reported dramatically higher percentages of alcohol and drug abuse, depression and anxiety, and attempted and completed suicide, when compared with the general population. Among lawyers:

- 21-36% qualified as problem drinkers.
- 14% reported that problematic drinking began in law school.
- 28% were experiencing some level of depression.
- 11% had experienced suicidal thoughts.

Among law students:

- 25% were at risk for alcoholism.
- 17% were experiencing depression.
- 14% were experiencing severe anxiety.
- 6% had experienced suicidal thoughts within the past year.

These findings were the impetus for creation of a 17-member national task force by the American Bar Association, the Conference of Chief Justices, and other entities. Virginia Chief Justice Donald Lemons was one of two judges on the task force.

In August 2017, the task force published a comprehensive report, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” which included 44 detailed recommendations for judges, regulators, legal employers, law schools, bar associations, professional liability carriers, and lawyer assistance programs.

The recommendations include five central themes: (1) identifying stakeholders and the role each can play in reducing toxicity in the legal 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 well-being issues, and (5) taking incremental steps to change how law is practiced and how lawyers are regulated to increase well-being in the profession.

Immediately upon release of this report, Chief Justice Lemons appointed a 25-member committee to review it, to examine existing programs and procedures in Virginia, and to recommend improvements. The full committee met four times to receive detailed briefings on relevant topics, including the following:

- Overview of the national task force report from Chief Justice Lemons and the co-chair of the task force.
- Report on the current status of Lawyers Helping Lawyers (“LHL”), its limitations due to lack of adequate and reliable funding, and its adopted strategic plan if increased funding is provided. The PowerPoint slides from this presentation are attached as Appendix Exhibit 1.
- Summary of suicide prevention efforts in Virginia jointly by the Departments


2 The report can be found here: https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf.
of Health ("VDH") and Behavioral Health and Disability Services ("DBHDS"), including the relationship between substance use and behavioral health disorders and deaths by suicide.  

- Strategies for maintaining wellness, including the six dimensions of wellness identified by behavioral health professionals (i.e. social, physical, emotional, occupational, intellectual, and spiritual). This included how wellness can be enhanced through continuing legal education ("CLE") courses and other educational materials to minimize substance use and behavioral health disorders, and through mentoring and changes in the legal culture. A handout that was reviewed by the Committee that lists six aspects for each of the six dimensions of wellness is attached as Appendix Exhibit 2.

- The effect of "vicarious trauma" on many legal professionals, including judges, prosecutors, defense attorneys, legal aid attorneys, guardians ad litem and others. Vicarious trauma symptoms are similar to post-traumatic stress disorder. A memorandum regarding vicarious trauma authored by committee member Kathleen Uston is attached as Appendix Exhibit 3.

- Briefings by the executive directors of statewide lawyer assistance programs ("LAPs"), in North Carolina and Pennsylvania that could be models for a more comprehensive program in Virginia. Twelve states already have statewide LAPs, typically managed by the supreme court or the mandatory bar, and 16 others are moving in that direction following release of the national report.

- A briefing by representatives of the Virginia Health Professionals Monitoring Program, which provides an alternative to disciplinary action for impaired health professionals in Virginia.

The minutes of the four full committee meetings are attached collectively as Appendix Exhibit 4.

The bulk of the committee's work was accomplished in four task groups, each of which included six members, relating to specific subsets of the legal profession: judiciary, law schools (including the Virginia Board of Bar Examiners ("VBBE")), private sector, and public sector (including legal aid). As their work was nearing completion, a separate task group began working on structural and funding recommendations that would apply across the legal profession. Because of the importance of these structural and funding recommendations, which are comprehensive and will permit the implementation of many of the recommendations of the other four task groups, they are addressed first herein.

### Structural and Funding Recommendations

Create a position and program within the Office of the Executive Secretary of the Supreme Court to coordinate comprehensive well-being initiatives.

It is recommended that the Educational Services Department of the Office of the Executive Secretary ("OES") oversee the education and training of, and assistance to, lawyers, judges and law students regarding generalized health and wellness initiatives (collectively "professional

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health initiatives"). One individual with appropriate experience and training should manage this effort, with administrative support as needed.

Provide adequate funding to Lawyers Helping Lawyers for implementation of its statewide strategic plan.

Lawyers Helping Lawyers, a 501(c)(3) private organization, is a critical part of the solution to the wellness crisis in the legal profession. Yet it is severely under-funded, with a budget of only $275,000 and one full-time and one part-time employee. Last year it opened 107 new cases. There are more than 32,000 active members of the Virginia State Bar (VSB).

LHL funding presently comes from VSB ($150,000), VBBE ($15,000), ALPS Insurance ($30,000), the Virginia Trial Lawyers Association (VTLA) ($17,000), and various smaller donations ($55,500). LHL has adopted a bold new strategic plan, the “Lighthouse Plan,” which would allow it to grow from one office in Richmond to three (adding Roanoke and Alexandria), with 10 “lighthouses” which are additional locations throughout Virginia with trained volunteers. (For example, the Roanoke office would have a “lighthouse” in Abingdon to be the initial point-of-contact for attorneys in far Southwest Virginia.) Staffing would grow from 1.5 to 6.0 FTEs, and potential clients who could be served would increase dramatically. This strategic plan for growth assumes optimum funding of $775,000 annually.

We recommend that the Supreme Court, through OES, provide funding in a sufficient amount which, in conjunction with other funding sources, would allow LHL to achieve its

Lighthouse Plan.

OES would enter into a Memorandum of Understanding (“MOU”) with LHL, similar to LHL’s present MOU with VSB, for the provision of recovery and behavioral health assistance services, including (1) training, mentoring, and management of a volunteer network, and (2) intervention, assessment, referral, and requested monitoring for impaired lawyers, judges, and law students. LHL’s services would focus primarily on substance abuse and behavioral health-related matters, to include its continuing provision of critical services to VSB of monitoring lawyers and effectuating public protection.

LHL would continue to operate as a stand-alone 501(c)(3) organization. It is advisable, though, that LHL agree to amend its bylaws and/or other organizational documents to permit one-third (1/3) of its directors to be designated by OES for so long as the MOU is in effect.

Appoint an advisory board to advise OES regarding all aspects of the comprehensive well-being initiatives.

It is recommended that the Supreme Court create a multi-disciplinary advisory board composed of volunteer members, and including representatives of LHL. The advisory board would:

- Advise the Court and OES at their request regarding the implementation of the proposals of this committee and the professional health initiatives;
- Provide guidance to the Mandatory Continuing Legal Education (“MCLE”) Board on issues relevant to professional health initiatives and, when appropriate, recommend changes to the Rules of Court with regard to professional health initiatives; and
- Monitor at the direction of OES the accountability and performance of the professional health initiatives, including monitoring the monthly financial and performance reports for
all outsourced services, and report to the Court and OES no less than annually regarding the expenditure of funds by, and the performance of, outsourced service providers.

Continuing Legal Education programming should be provided on a wide range of wellness topics.

OES Department of Educational Services, in conjunction with Virginia CLE, state agencies (e.g., VDH and DBHDS for suicide awareness and prevention), and other states’ LAPs, will develop online professional health initiatives programming in 30-minute and one-hour modules that will qualify for MCLE credit and be available to Virginia lawyers free of charge. Also, for-profit MCLE providers and other sponsors of MCLE programming (e.g., bar associations, law firms, etc.) will be encouraged to develop and provide CLEs and programming for professional health initiatives.5

The Supreme Court is requested to amend the MCLE Rule of Court (i) to require lawyers to disclose on their MCLE forms as a reporting requirement only whether they have taken at least one (1) hour of professional health initiatives education or training within the past three (3) years; and (ii) to permit the MCLE Board to authorize MCLE attendance and teaching credit to active members of the VSB who, on a volunteer, non-compensated basis, prepare approved written materials for, or present approved instruction to, judges or law students regarding professional health initiatives.

Primary funding for the foregoing wellness initiatives should be the collective responsibility of all members of the Bar.

Such a comprehensive program cannot be operated without adequate funding. The primary source of such funds should be borne collectively by all members of our profession, since we all will benefit, directly or indirectly. It is recommended that the Supreme Court seek a budget amendment by the Governor in his mid-biennial submission for FY20. It would permit such funds to be collected, in a sum sufficient to initiate this comprehensive program, through a modest annual assessment on all active VSB members. Such assessment would be collected at the same time as VSB dues and transferred to OES. In support of this recommendation, we note that the annual assessment paid by each attorney for the Client Protection Fund (“CPF”) was decreased by $15 at the beginning of this fiscal year, and that having multiple approved online CLE programs available for no charge confers a substantial financial benefit on any attorney who elects to use them.

5 It is noted that this recommendation, which was adopted by the full committee, is not as far-reaching as that of the private sector task group. That task group’s recommendation is included in this report for discussion purposes.
The preceding structural and funding recommendations were guided in large measure by the experience of our sister state, North Carolina, which has a bar of similar size to Virginia's and has had a comprehensive LAP for many years. Guidance also came from the existing professional assistance program for health practitioners in Virginia, the Virginia Health Professionals Monitoring Program. These two programs, and their relevance for Virginia's legal professionals, are summarized below.

**North Carolina’s Lawyers Assistance Program (“NC LAP”)**

North Carolina, which has a bar similar in size to Virginia’s, has a robust Lawyers' Assistance Program with 650 active files. While the NC LAP is a division of the state bar, which is not what we propose in Virginia, the similarities between the North Carolina program and our proposed program are significant.

North Carolina has approximately 28,000 bar members. With an average of 650 open files, the program’s utilization rate is more than 2%. Virginia’s LHL anticipates it could reach a 2% utilization rate with adequate funding and staffing. With more than 32,000 VSB members, 2% utilization would mean helping 600-700 lawyers.

NC LAP was founded in 1970 as a volunteer program. In 1994 it became an official state bar program and hired a director. It had approximately 50 open files. As bar membership increased, NC LAP increased the number of funded positions. Today, the program has 3 clinical staff, 2 administrative staff and an executive director. The clinical staff covers three parts of the state – Eastern, Piedmont, and Central – and the program has 250 active volunteers. This is similar to LHL’s Lighthouse Plan. Like LHL, nearly all referrals are self-referrals or referrals by friends or co-workers.

About 10% are referrals from law firms or courts.

North Carolina instituted mandatory CLE for alcohol and drug abuse issues in 2001, resulting in a surge of referrals to the NC LAP – from 230 active files in 2000 to 500 files the year after the rule change. Other states have experienced similar growth from required CLEs in substance abuse awareness and training. (A PowerPoint presentation by the NC LAP Executive Director is attached as Appendix Exhibit 6.)

CLE is any LAP’s biggest marketing tool. On average, the North Carolina program receives one referral for each CLE program its staff presents. North Carolina requires 12 CLE credits annually with three of those credits in ethics. Every three years, one credit hour in substance abuse training is required. NC LAP staff are asked to conduct more than 100 presentations every year.

NC LAP has a budget of $750,000, which is similar to what LHL proposes. It is funded through bar dues, which are $325 per member. Because NC LAP is a division of the bar, there is not a separate assessment. However, based on the number of active bar members and the LAP’s budget, it appears that about $25-26 per member is expended on the program.

**Virginia’s Health Practitioners’ Monitoring Program, Code §§ 54.1-2515, et seq.**

Health practitioners in Virginia who are struggling with substance abuse or mental health issues may be referred to the statutorily-created Health Practitioners’ Monitoring Program ("the Monitoring Program" or "the Program"). (A PowerPoint presentation by representatives of the Program is attached as Appendix Exhibit 7.)
The Monitoring Program provides an alternative to disciplinary action for impaired health practitioners.  
Disciplinary action is stayed when the practitioner enters the Program by written contract so long as the practitioner remains in compliance with the contract terms. Most of the Program’s referrals come from disciplinary actions, rather than from voluntary participation, and there is, as yet, no general wellness component. The Program’s Administrative Director is working to increase education and outreach to expand voluntary participation and the scope of the program.

The Program is operated under an umbrella agency, the Department of Health Professions (“DHP”) for Virginia’s 14 health regulatory boards. Any health practitioner licensed by a health regulatory board in Virginia or by a multi-state licensure privilege is eligible to participate. Accordingly, the Program serves all licensed health practitioners in Virginia, from nursing aides to surgeons, massage therapists to veterinarians, encompassing more than 100 disciplines.

The Program provides intake, referral and monitoring services, but no intervention or treatment. Operating costs are funded by licensing and administrative fees practitioners pay to their respective health regulatory board. However, participants may be charged a reasonable portion of the fees related to the costs of participation.

A portion of the fees practitioners pay to their health regulatory boards are deposited into a special fund and held to cover the expenses of the the Monitoring Program. The Monitoring Program then collects funds by invoicing each board for its licensees who are participating in the Program. Most participants are in the program for five years.

The most recently available Annual Report shows that in December 2016, the Monitoring Program was serving 448 participants. Ninety percent were monitored for substance use (opioids 52%, alcohol 37%), 8% for psychiatric issues, and 2% for physical issues.

To provide the Monitoring Program’s services, DHP has a Memorandum of Agreement (“MOA”) with Virginia Commonwealth University Health Systems, Department of Psychiatry, Division of Addiction Psychiatry (“VCUHS”), which provides 14 full-time and 2 part-time employees. It is staffed by a part-time Interim Medical Director; an Administrative Director with an assistant; 6 case managers; an intake manager; 4 case manager assistants; a receptionist; and a part-time HR/fiscal manager. All full-time staff are VCUHS or VCU employees. The DHP employs one full-time staff member – the Monitoring Program Manager, who serves as liaison between the Program and the DHP. The MOA provides for annual 3% increases in monthly fees charged by the Monitoring Program.

Oversight and coordination is provided by a nine-member committee that meets six times per year, or as needed, to review program operation, policies and specific cases. Members are appointed by the Director of the DHP and must be “knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health care practitioners.”

Records of the Monitoring Program, to the extent they identify individual practitioners in the program, are privileged and confidential.

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6 “Impairment” means a physical or mental disability, including but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.

7 Our proposal contemplates providing oversight of LHL through an Advisory Committee selected by the Supreme Court. The Advisory Committee would oversee distribution of funds to LHL and ensure LHL is accountable for funds expended and services provided. It is not contemplated at this time that the Advisory Committee will make recommendations regarding disposition of cases or that it would have the health care expertise to endeavor to do that.
The reports of the four task groups relating to specific subsets of the legal profession follow. These reports collectively provide a thorough outline of how to enhance wellness throughout the legal profession. Some of the recommendations of these task groups are dependent upon the preceding structural and funding recommendations. However, most of them stand on their own and may be implemented without delay.

Report of the Judicial Task Group

The Judicial Task Group was composed of the following members:
- Fairfax County General District Judge Manuel Capsalis (Chair)
- Henrico General District Judge Thomas Bondurant
- Court of Appeals Judge Mary Malveaux
- Smyth County Circuit Judge Deanis Simmons
- Roanoke County General District Judge Jacqueline Talevi
- Fairfax County Circuit Judge John Tran

The Judicial Task Group proposes the adoption of the national task force report and its recommendations as pertinent to the judiciary (numbered 14-19 in the report). For each of the report’s titled recommendations below, we include commentary and proposals which we believe are necessary and appropriately tailored for our Commonwealth’s judiciary.

Communicate that well-being is a priority

Education, communication, awareness, and public protection are the cornerstones of prioritizing the well-being of our judiciary. Serving as a judge in the Commonwealth is a privilege and a unique opportunity to better one’s community; however, the stress and isolation associated with the occupation can lead to a measurable deterioration in wellness if left unchecked.

We believe the terms “wellness” or “well-being” should be acknowledged as multidimensional and include (1) social, (2) emotional, (3) spiritual, (4) occupational, (5) intellectual and (6) physical wellness. Sustaining wellness within the judiciary promotes public confidence whenever judges approach conflicts with a balanced sense of assurance.

Awareness of and commitment to minimizing the risks to wellness must be a top priority of our judiciary. As discussed in our commentary to a subsequent recommendation below, education and communication should commence upon a judge’s appointment to the bench and be maintained thereafter on a consistent basis.

Develop policies for impaired judges

The success of any policy for promoting and sustaining the well-being of judges is dependent on the availability of a recognized and fully supported assistance program.

To make this possible, we propose the recognition of LHL as a recommended assistance program for judges, and propose appropriate funding to deliver such assistance statewide.

We also propose a full review of the Rules of the Judicial Inquiry and Review Commission ("JIRC"). As appropriate, we recommend that JIRC amend or supplement those Rules to better institute rehabilitative-focused practices and procedures in cases of mental health and/or substance use issues. Consideration should be given to the rehabilitative-focused practices and procedures of the VSB’s disciplinary system as a model.
Consistent with Judicial Inquiry and Review Commission of Virginia v. Elliott, 272 Va. 97 (2006), and to more fully clarify the ability of JIRC to institute rehabilitative-focused practices and procedures, as well as in addition to any other amendments to the Rules of JIRC as may be deemed appropriate, we propose that JIRC consider the following amendment to the Rules:

RULE 15. DISPOSITION OF CHARGES.

A. After an investigation has been concluded, the Commission may take any of the following actions:

...  

2. If the Commission finds the charges against the judge to be well founded and of sufficient gravity to constitute the basis for retirement, censure or removal, it shall may file a complaint against the judge in the Supreme Court of Virginia or may proceed as set forth in paragraph (4) below.

...  

4. If the Commission finds the charges against the judge to be well-founded, the Commission may, with the consent of the judge, place the judge on a period of supervision under such terms and conditions as the Commission shall determine. Violation of such terms and conditions shall be grounds for a new charge of failure to cooperate with the Commission.

Reduce the stigma of mental health and substance use disorders

Endemic with the occupational hazards of being a judge is the stigma of struggles with one's well-being and the perceived institutional disincentives to seek assistance. What if the local bar finds out? What if a colleague finds out? What if JIRC finds out? What if the public finds out? What if the General Assembly finds out? We strongly support and reiterate the proposals discussed herein to develop policies and better promote an occupational environment conducive to well-being. Compassionate and rehabilitative-focused policies must not be considered as undermining, but rather as enhancing, public protection and the rule of law.

Confidentiality in help-seeking behaviors is imperative to foster the trust of judges who might otherwise not seek assistance. If judges feel confident that their information is protected when they seek assistance, this in turn will encourage them to seek help when needed. Not only will this promote better wellness among judges, it also will ensure protection of the public through the stability of the judges within our Commonwealth and the sustainability of our judicial institutions.

Conduct judicial well-being surveys

Surveys have proven very useful in assessing and better understanding the mental health and substance use struggles of lawyers in Virginia and elsewhere. Yet there has never been a judicial well-being survey in Virginia. We believe that if conducted in a way that assures confidentiality and statistically relevant responses, a judicial survey should be undertaken in the Commonwealth. We propose that the Supreme Court and/or OES take appropriate measures to conduct such a survey.
Provide well-being programming for judges and staff

Consistent with our commentary above, we fully support this recommendation and propose that such well-being programming commence as soon as possible upon a judge's appointment to the Bench and be made a part of bench books and other judicial publications.

We also propose a more prominent and consistent presentation of well-being programs at the mandatory judicial conferences. Further, well-being information should be disseminated to all members of the judiciary and staff throughout the year. In coordination with the Supreme Court and/or OES, we believe that LHL can assist in the development of such a year-round program of judicial and staff well-being.

Monitor for impaired lawyers and partner with lawyer assistance programs

The judiciary plays a vitally important role in promoting law student, lawyer and judge wellness, as well as in monitoring possible lawyer impairment. To this end, we believe that judicial participation in LHL and other law student, lawyer and/or judicial assistance programs should be strongly encouraged.

Judges can offer valuable insight to assist law students, lawyers, and fellow judges alike. In coordination with the law schools of our Commonwealth, we propose that the Supreme Court promote judicial participation in law student wellness presentations. Given the unique role of the judiciary and as a valuable way to promote lawyer and judge wellness, we also propose that the Supreme Court encourage judicial participation in lawyer well-being CLE’s on both the state and local bar level, as well as participation in judicial wellness programs.

As stated in the national task force report, judges often are among the first to notice possible attorney or judge mental health and substance use struggles. However, there is uncertainty as to the permissible boundaries of judicial action in such situations. We propose a review and as appropriate, a clarification of the Canons of Judicial Conduct as to the permissible role and responsibilities of judges regarding the reporting, assisting and monitoring of lawyers or judges evidencing such struggles. It is important that the judiciary be given clear guidance as to what a judge can and cannot do in these situations. To this end, we propose the following amendments to the Canons of Judicial Conduct:

Canon 3(D) – Disciplinary Responsibilities.

(3) The provisions of this Canon do not require any action by a judge or the disclosure of knowledge or information gained by a judge who is a board member of Lawyers Helping Lawyers, or any committees of Lawyers Helping Lawyers, or who is a board member of any other wellness or assistance program, or who is a trained volunteer for any such program, or who is otherwise cooperating in a particular assistance effort when such knowledge or information is obtained for the purpose of fulfilling the recognized objectives of the program.

(4) A judge shall have absolute immunity from civil action with respect to the discharge of disciplinary responsibilities required or permitted by Sections 3D(1) through 3D(3) (2).
Canon 4(D) – Governmental, Civic or Charitable Activities.

(3) – Commentary.

Nothing contained in these Canons shall be deemed to prohibit a judge from serving in a nonvoting capacity on the Board of Directors of Lawyers Helping Lawyers, or any committees of Lawyers Helping Lawyers, or as a board member of any other wellness or assistance program or any committees thereof, or as a trained volunteer for any such program, or from cooperating in a particular assistance effort when such information is obtained for the purpose of fulfilling the recognized objectives of the program.

Conclusion

The members of the Judicial Task Group respectfully propose the foregoing recommendations. We believe these recommendations are necessary and beneficial in promoting an occupational environment conducive to the well-being of our judiciary and staff, as well as for lawyers and law students. We further believe that these recommendations will enhance public protection and the rule of law in our Commonwealth. We move for their adoption.

Report of the Law Schools and Virginia Board of Bar Examiners Task Group

The Law Schools and VBBA Task Group was composed of the following members:

- Dean Davison Douglas,
  William & Mary School of Law
- Dean Brant Hellwig,
  Washington & Lee School of Law
- Catherine Hill, VBBA Secretary (Chair)
- Dean Sandra McGlothlin,
  Appalachian School of Law
- Kailani Memmer, VBBA Member
- Dean Wendy Perdue,
  University of Richmond School of Law

We were tasked with examining the recommendations made in The Report of the National Task Force on Lawyer Well-Being ("Report") relevant to Virginia law schools and the Virginia Board of Bar Examiners. We reviewed the Report and identified recommendations 27-33 relating to law schools and 21-22 relating to regulators as being relevant to our task group. The following are our findings and recommendations.

Re-evaluate bar application inquiries about mental health history

In 2015, the American Bar Association (ABA) adopted Resolution 102, which encouraged bar admission agencies to focus character and fitness inquiries "on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner." The Report recommends that jurisdictions "follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment."
In 2015, the Virginia Board of Bar Examiners (Board) revised its Character and Fitness Questionnaire (CFQ) in response to the ABA’s resolution. The current CFQ asks:

“Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?” The current CFQ also asks:

“Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?

‘Currently’ means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing lawyer.”

The Board recognizes that law students may be anxious about the bar exam and the admissions process generally and acknowledges the stigma associated with seeking help. Accordingly, the CFQ states, “the mere fact of treatment for health problems is not, in itself, a basis on which an applicant is denied admission in Virginia, and the Board of Bar Examiners regularly licenses individuals who have demonstrated personal responsibility and maturity in dealing with health issues. The Board encourages applicants who may benefit from treatment to seek it.” Further, the CFQ emphasizes, “[t]he Board does not, by its questions, seek information that is fairly characterized as situational counseling.

Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as relevant to the issue of whether an applicant is qualified to practice law.”

The Board has a statutory obligation to determine whether an “applicant is a person of honest demeanor and good moral character... and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law.” Va. Code § 54.1-3925.1 (A). In fulfilling this statutory obligation, the Board must balance student well-being issues with protecting the public.

In conjunction with the work of this Task Group, the Board re-evaluated the CFQ and revised the CFQ to emphasize that most diagnoses and treatments need not be disclosed. It is only when an applicant’s condition or impairment is so severe that it affects his or her ability to practice law in a competent, ethical, and responsible manner that it is relevant to the character and fitness screening process and, therefore, must be disclosed.

We recommend that the Board continue to work with the Virginia law schools to educate students about the character and fitness screening process. Specifically, the Board and the law schools should educate students early, preferably in the IL year, when there is sufficient time to seek treatment if needed, and to take steps necessary to prove rehabilitation prior to the admissions process.

We also recommend that a more formal ongoing relationship and communication system be established between the law schools and the Board, specifically through the annual Professionalism for Law Students Program presented by the VSB’s Section on the Education of Lawyers. For example, during the IL year, there should be a presentation by a member of the
Board or the Character and Fitness Committee explaining the process and requirements of character and fitness screening. This could become part of the Professionalism for Law Students program. We recommend that the Board continue to partner with LHL, and consider recruiting volunteers who have successfully completed the character and fitness screening to speak to current law students each year about their experience.

Adopt essential eligibility requirements

According to the Report, at least 13 states have adopted essential eligibility requirements for admission to practice law. The Board’s Rules do not include a section titled “Essential Eligibility Requirements” (EER). However, the Board’s Rules contain the following, which are similar to EER of other jurisdictions:

In addition to demonstrating adequate knowledge of the fundamental principles of law and their application, an applicant must produce clear and convincing evidence to the satisfaction of the Board of Bar Examiners, in its sole discretion, that the applicant has the requisite character and fitness to: (a) comply with deadlines; (b) communicate honestly, candidly and civilly with clients, attorneys, courts and others; (c) conduct financial dealings in a responsible, honest and trustworthy manner; (d) avoid acts that are illegal, dishonest, fraudulent or deceitful; and (e) conduct himself or herself in accordance with the requirements of applicable state, local and federal laws and regulations, any applicable order of a court or other tribunal, and the Virginia Rules of Professional Conduct.

In addition, Supreme Court of Virginia Rule 1A:1 which governs admission without examination, provides, “[i]n evaluating whether an applicant has demonstrated satisfactory progress in the practice of law for admission to the practice of law in Virginia without examination, the Board considers whether the following requirements are evident from the information supplied by the applicant and from the investigative report:

1. Knowledge of the fundamental principles of law and the ability to recall that knowledge, to reason, to analyze, and to apply one’s knowledge to relevant facts;
2. The ability to communicate clearly, candidly and civilly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one’s professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Rules of Professional Conduct;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.”

In response to this Task Group’s recommendation, the Board adopted these
requirements in the Board’s Rules, so that they are clearly applicable to all applicants.

**Adopt a rule for conditional admission to practice law with specific requirements and conditions**

Virginia is one of 30 jurisdictions that do not have a rule providing for conditional admission to practice law. For those applicants who have successfully started rehabilitation efforts, but who are not able to prove rehabilitation at the time of their application, the Board offers an alternative to conditional admission. In lieu of denying their admission, leading to a minimum of two years before the applicant is eligible to reapply, the Board will take the matter under advisement and defer a decision until the applicant is able to prove rehabilitation, typically six months. This deferral process is available not only for those applicants with current severe substance abuse or mental health conditions, but also for applicants with financial responsibility issues, poor driving records, criminal records, and other negative behavior.

The advantage of this process is the Board’s ability to license applicants more quickly while fulfilling its mission and statutory duty to protect the public. In some jurisdictions with conditional admission rules, applicants may not be licensed until more than two years after they prove rehabilitation. Conditional admission rules reviewed in other jurisdictions contain confidentiality provisions, including prohibiting the disclosure of the applicant’s underlying condition or impairment and, in some instances, prohibiting from disclosure the mere fact that an attorney’s license is subject to a condition or restriction. In other words, the public is not made aware that an attorney’s license is subject to some condition or restriction.

In Virginia, LHL provides free, confidential, non-disciplinary assistance to attorneys, judges, law students, bar applicants and others in the legal profession and their families with problems related to mental health and substance abuse. The Board works with LHL throughout the character and fitness screening process to ensure that applicants seeking treatment can achieve their goals of recovery and licensure.

We recommend that the Board continue to work with the Virginia law schools to educate law students about the admission process, including emphasizing the importance of getting the help they need sooner rather than later. This should result in fewer deferred or denied admissions. And for those applicants who enter the admission process needing more time to prove rehabilitation, we recommend that the Board continue to work with LHL to get applicants help early, so they may be licensed as soon as possible, without compromising the Board’s duty to protect the public.

**Publish data reflecting low rate of denied admissions due to mental health disorders and substance use**

The Task Group is not aware of any jurisdiction that publishes data regarding applicants denied admission based upon mental health or substance use disorders. We acknowledge that publishing data reflecting the low rate of denied admissions due to mental health disorders and substance use could help alleviate common misperceptions about character and fitness decisions, and could help alleviate stigma and fear associated with seeking help.

We also recognize that publishing such data could compromise applicant confidentiality, and could result in additional misperceptions if such data is misinterpreted. Accordingly, we recommend that the Board continue to investigate
whether other jurisdictions publish such data, and consider whether it is feasible to publish such data in manner that protects and maintains applicant confidentiality.

Create best practices for detecting and assisting students experiencing psychological distress

The ABA Commission on Lawyer Assistance Programs (CoLAP) Law School Assistance Committee recently surveyed law schools across the country on curriculum and resources available to address issues of student well-being. Their goal is to develop access to resources available in law schools today and to share these resources. They intend to compile what they receive and provide a detailed summary of the responses.

In addition, our Task Group surveyed the eight Virginia law schools to inquire about current well-being programs and initiatives. What we have learned from our discussions and survey responses received thus far is that law schools in Virginia currently provide many different programs and resources to address their students’ wellness issues as summarized below.

Provide training to faculty members relating to student mental health and substance use disorders

Some Virginia law schools currently provide faculty training on student mental health and substance abuse issues. For example, Regent University’s Emergency Preparedness Committee speaks to all faculty and staff members on an annual basis to advise them about the mental health trends occurring within the student body. Faculty at University of Richmond School of Law (UR) receive periodic presentations from CAPS, the University’s Counseling and Psychological Services Center. Appalachian School of Law (ASL) intends to incorporate training related to student mental health and substance abuse issues into the mandatory fall orientation training sessions for all faculty and staff. ASL intends to seek the advice and assistance of Jim Leffler, Clinical Director at LHL, for this training. Washington and Lee University School of Law (W&L) offers a faculty workshop on working with stressed students, promoting grit and resilience, and responding to red flags.

We recommend that all Virginia law schools provide training to faculty relating to student mental health and substance use disorders.

Adopt a uniform attendance policy to detect early warning signs of students in crisis

Currently all Virginia law schools have attendance policies. For example, ASL has a policy for regular and punctual class attendance. The policy requires that attendance be taken in all courses by sign-up sheets. The faculty assistant who compiles the attendance sheets monitors students for absences that exceed the limit of the policy, and notifies the associate dean of violations of the policy, so that he can contact the student to determine if the student is experiencing issues. UR has a General Policy on Class Attendance, Punctuality, and Preparation, and each professor is responsible for monitoring compliance with the policy. Consistent with ABA standards, W&L and William & Mary (W&M) require regular class attendance as a condition for receiving credit, and each faculty member includes the specific attendance policy for the course in the course syllabus.

We recommend that all Virginia law schools have procedures in place to determine if students are regularly in class to help identify early warning signs of students in crisis. Consistent with ABA requirements, law schools should have the discretion to determine the best approach to implement and utilize attendance policies and
practices as a tool to help identify students in crisis. In addition, we recommend that Virginia law schools collaborate to improve existing policies and, if feasible, to develop and adopt a uniform attendance policy that will work well in all Virginia law schools.

**Provide mental health and substance use disorder resources**

Virginia law schools provide a wide array of mental health and substance use disorder services. For example, at ASL, all students and employees are given a list of mental health resources, including information about the cost per visit for mental health counseling, as well as information about local substance abuse and rehabilitation meetings. In addition, Jim Leffler of LHL meets once each fall with the IL students to discuss substance abuse and mental health issues in the legal profession. And a former circuit court judge who is a recovering alcoholic comes to ASL at least once each semester to conduct private, confidential counseling sessions with students and employees, and works with students by phone and email as necessary, all free of charge.

Regent provides resources to students on-campus through the Office of Counseling & Disability Services, which provides professional counseling to students for mental health and substance abuse-related disorders, and the Psychological Services Center offers counseling services to students by doctoral students in training. In addition, a comprehensive list of substance use disorder resources is available through University's Drug & Alcohol Abuse Prevention Program, and the Career Services office sends email notifications to students and faculty of the substance support group sponsored every other week by LHL.

UR provides resources on mental health and substance abuse issues through CAPS, and its active LHL law student group offers support and events relating to substance use. Through its "Balancing Act" program, UR alternates months of programming among physical, mental, financial, and professional wellness, including sessions on mindfulness and other stress reducing strategies. W&M has a similar program to the UR program called "Wellness Wednesdays" whereby students are offered regular training in mindfulness and other stress reduction activities.

Also, each spring semester VSB members present programming to the IL classes at Virginia’s law schools on matters of lawyer professionalism, including life balance, individual well-being, and resources to cope with substance abuse, depression, and other mental health concerns.

W&M provides all incoming students with information (which is also available for future reference on the website) on mental health and substance use disorders through the Student Health & Counseling Center. The Dean of Students office manages the peer mentoring program, collaborates with Jim Leffler at LHL to present in professional responsibility courses, and provides programming on physical and mental wellness. Peer mentors are trained by the University resident psychiatrist and Dean of Students to detect signs of distress. And the Student Bar Association formed a wellness committee to provide programming and to serve as an additional resource for students.

We recommend that all Virginia law schools identify and publicize mental health and substance use disorder resources so that students know that there are resources available to help them address stress and well-being issues. We also recommend that all Virginia law schools maintain a student chapter of LHL.
Assess law school practices and offer faculty education on promoting well-being in the classroom

Some Virginia law schools currently provide educational and training opportunities for faculty and staff on promoting well-being. For example, Regent’s Emergency Preparedness Committee yearly delivers a required presentation to law school faculty and staff on issues related to campus security, which identifies warning signs to look for in assessing whether students are facing challenges relating to well-being, mental health, or substance abuse, so they can encourage students to seek help through the well-being services offered through the University Center for Student Happiness, the Office of Counseling & Disability Services, and the Psychological Services Center. At UR, a recent faculty retreat focused on student engagement, including student well-being.

We recommend that all Virginia law schools review current practices and offer faculty training and education focused on promoting well-being in the classroom.

Empower students to help fellow students in need

Virginia law schools provide many different opportunities for students to help other students in need. At ASL, members of the Student Services Committee determined the best way to empower students to help fellow students and detect issues early is to train ASL Ambassadors on how to spot issues. Ambassadors are students chosen by a faculty committee. They are assigned a small group of incoming students to mentor and meet in small groups once a week. The Ambassadors are trained how to detect issues (by Jim Leffler of LHL, for example). At Regent, students are encouraged to report serious student concerns to the Regent University Behavioral Intervention Team (RUBIT).

Students reported to RUBIT receive support and resources from the appropriate University offices and staff.

At UR and W&M, the student-led LHL program provides opportunities for students to help fellow students. The W&M program includes a series of discussions on topics such as “Detecting Signs and Distress and Depression,” and “Mindfulness.” In addition, UR is developing a university-wide initiative to extend the Peer Sexual Misconduct Advisors (PSMA) program. This program will be a confidential resource to student victims of sexual assault.

W&L has a peer mentoring program where two 2Ls are paired with a small section (approximately 20) of 1L students. These peer mentors are trained to detect early warning signs and to promote and encourage wellness and positive, healthy behaviors. W&L’s Student Bar Association has formed a standing committee on wellness in an effort to provide social offerings to students that promote physical and mental well-being. The University Counseling Center provides an outlet for students to support one another through the Washingtonian Society (a support network for students who have had problems with alcohol or substance abuse) and the Depression and Anxiety support group.

We recommend that all Virginia law schools provide resources and opportunities to empower students to help fellow students in need.

Include well-being topics in courses on professional responsibility

Some Virginia law schools currently include well-being topics in professional responsibility courses. In the required professional responsibility courses at Regent and UR, guest speakers from LHL speak to students about lawyer and law-student well-being, mental health, and substance abuse. Presentations include, for example, (1)
testimonials from lawyers who have benefitted from LHL services about the importance of getting help when one is facing challenges with well-being; (2) discussions regarding the obligation of law firms and their lawyers to have measures in place to ensure that problems of physical, mental, and emotional impairments or conditions that may adversely affect the lawyer's duties of competence and diligence are recognized, and steps taken to provide intervention, correction and support, with attention to recent pertinent Legal Ethics Opinions from the ABA and the VSB, as adopted by the Virginia Supreme Court; and (3) classes each semester on work-life balance, the pressures and demands of practicing law, excessive workloads, the importance of maintaining physical and mental fitness, family crises, personal relationships, etc. W&L covers similar topics in its required professional responsibility courses and continues to partner with LHL to speak with students about challenges they may face in law school and later in practice.

We recommend that all Virginia law schools include well-being topics in their professional responsibility courses.

Commit resources for onsite professional counselors

Some Virginia law schools currently provide resources for student counseling, both on and off-site. For example, at ASL, Jim Leffler of LHL conducts private, confidential counseling sessions with students and employees, free of charge, at least once each semester. In addition, for the past ten years, ASL has included a line in the operating budget for counseling services for students in need. Regent University has four full-time counselors on staff in the Office of Counseling & Disability Services, as well as a doctoral psychology program that offers individual counseling and mental health testing for free or at a reduced rate for students.

And UR, W&L and W&M offer professional counseling services on campus.

Regarding onsite counselors, there are good reasons to have the counseling resources located in a separate part of campus. Importantly, off-site but on-campus counseling services permit students to seek this assistance on a more discreet basis. For example, for a small, stand-alone law school comprised of few buildings, having a counselor onsite could result in a lack of privacy for the student seeking services or could result in a student not seeking services for fear that others would find out.

As an alternative, we recommend that law schools commit resources to assist students in need to seek counseling. Such counseling services could be provided off-site and with a counselor selected by the student.

Facilitate a confidential recovery network

Some Virginia law schools currently have a confidential recovery network for students. For example, at Regent, recovery groups and resources are available to the entire University community through the Drug & Alcohol Abuse Prevention Program. The law school also hosts groups organized through LHL. UR has an active student-run LHL, and one of its student leaders gives a presentation to entering IL students during orientation. CAPS also offers access to support as well as connections to the state-wide chapters of LHL. In addition, CAPS refers members of the University community for assessment and support to Family Counseling Center for Recovery (FCCR). At W&L, information about campus recovery and support groups is available through the Student Health & Counseling Center and the Office of Law Student Affairs.

We recommend that all Virginia law schools provide resources to facilitate a confidential recovery network of practicing lawyers in recovery.
from substance use to connect with law students in recovery.

Provide education opportunities on well-being related topics, including well-being programming during the IL year

Some Virginia law schools currently provide education opportunities for students on well-being topics during their IL year. For example, at ASL, an attorney and licensed therapist with A.S.A.P. Consulting Group, a drug addiction and treatment center, speaks to the ILs each fall about stress and time management and how to balance home life and school in healthy ways.

At Regent, student well-being is discussed annually with IL students during orientation sessions in the fall and spring semesters. A faculty member from the School of Psychology & Counseling speaks to students about the importance of well-being and offers resources to students who are experiencing difficulties. And in the required spring semester Foundations of Practice course for IL students, students discuss recent studies on lawyer and law student well-being.

At W&L, the Dean of Students collaborates with student organizations to provide wellness programming such as meditation and mindful thinking seminars. Peer mentors plan non-alcohol centered social events each semester for their IL small sections. The university Outing Club facilitates opportunities for students to engage the outdoors year-round, particularly during orientation and exam periods. In March, W&L provides a wellness fair as part of ABA Mental Health Day.

We recommend that all Virginia law schools provide well-being programming during the IL year.

Create a well-being course and lecture series for students

Virginia law schools currently provide various opportunities for students to participate in well-being related programs and activities. For example, ASL’s Happiness Project supports, enhances, and ensures a mentally and physically healthy community of students, staff, and faculty by offering classes on nutrition, mental health-related topics, stress management, yoga, Zumba, and other fitness practices. It also provides resources and information about area services for mental health counseling, physical fitness, massage, meditation, time management strategies, and day care. Regent and W&L offer a variety of well-being related lectures and services. And UR’s Balancing Act program provides education, programming, and resources to students on physical, financial, mental, and professional well-being to students.

We recommend that all Virginia law schools incorporate opportunities for students to participate in various types of programs and activities focused on well-being. We also recommend that Virginia law schools collaborate on ways to improve upon and expand existing well-being programs and activities. Recognizing that law schools face pressure on curricular offerings to prepare students for the bar exam while also providing opportunities to allow students to develop critical professional competencies, we recommend that each Virginia law school determine how best to fit wellness instruction into their program. Offering a course or lecture series on the topic is one of many ways for law schools to ensure that its students are exposed to wellness issues. Providing well-being topics in required courses on professional responsibility could provide the foundation in the curriculum.
Discourage alcohol-centered social events

Some Virginia law schools currently discourage alcohol-centered social events. For example, at Regent, all events at or sponsored by the University are alcohol-free. The school also provides information regarding alcohol-free events on-campus in the University’s Drug & Alcohol Abuse Prevention Program. At UR, student leaders in LHL have been active in providing alcohol-free programs. In addition, the SBA actively promotes programming where alcohol is not the focus. On every Friday and Saturday night during the academic year, W&L offers alcohol-free social events on campus such as karaoke, board games, billiards, and student performances.

We recommend that all Virginia law schools actively discourage alcohol-centered social events.

Conduct anonymous surveys relating to student well-being

Some Virginia law schools have conducted anonymous surveys on student well-being. For example, Regent’s Substance Abuse Prevention Committee administers an anonymous substance abuse survey to students as part of the Drug & Alcohol Abuse Prevention Program. And at UR, CAPS conducted a Healthy Minds survey in 2016. This survey is repeated every few years to gather data and other information regarding mental health and substance abuse. UR’s law school also conducts the bi-annual LSSSE Survey, designed to measure the effects of legal education on law students, as well as an annual 3L exit survey that discuss in detail students’ experience, including areas of well-being. W&L also conducts the LSSSE survey every three years. The Office of Health Promotion at the University conducts surveys and assessments of the student body.

We recommend that all Virginia law schools conduct anonymous surveys designed to measure student well-being.

Report of the Private Sector Task Group

The Private Sector Task Group was composed of the following members:
- Richard Garriott, president-elect of the Virginia Bar Association
- David Harless, former president of the Virginia State Bar
- Leonard Heath, president of the Virginia State Bar
- Lee Livingston (Chair), immediate past president of the Virginia Trial Lawyers Association
- David Mercer, former president of the Virginia Bar Association
- Pia Trigiani, former president of the Virginia Bar Association

This Task Group proposes the adoption of the national task force report and several of its recommendations as pertinent to the private sector.

Strengthen the Relationship Between Lawyers Helping Lawyers and of the Virginia Supreme Court

The success of an endeavor to promote the sustained well-being of lawyers is dependent on the availability of a recognized and fully supported lawyers’ assistance program. In Virginia, since 1985, LHL has served this function. LHL provides confidential, non-disciplinary assistance to members of the legal profession who experience professional impairment as a result of substance abuse or behavioral health issues. LHL assists in
verifying problems, planning and implementing interventions, providing treatment referrals, conducting assessments, offering peer support for clients and counseling for families, establishing and monitoring rehabilitation contracts, and providing education regarding these issues.

LHL is a 501(c)(3) charitable entity, wholly dependent upon private contributions and contract arrangements with the VSB and the VBWE for much of its annual funding. Perennially, LHL begins its fiscal year with a substantial shortfall in projected revenues that must then be solicited from private donors. The sources and amount of funding are uncertain and unreliable.

Presently, LHL is underfunded to address its current mission. If LHL were able to double its current budget, these additional resources would not enable LHL to address fully the current substantial need. This circumstance will be exacerbated if LHL is tasked to assume the wellness initiatives and education envisioned by this Committee’s recommendations.

The Task Group believes that LHL is the natural and appropriate organization to implement and educate the profession regarding the Court’s wellness proposals. To be effective, however, the funding sources to and fiscal integrity of LHL must be ensured. We believe that this outcome can be achieved with certainty and reliability only if LHL’s functions as an independent entity are closely coordinated with a more comprehensive lawyer assistance program created and administered by the Supreme Court. Funding would be part of the Supreme Court’s regular budgeting process, but could be funded independently by professional assessments determined by the Supreme Court.

The Task Group believes that ensuring the confidentiality of assistance endeavors, encouraging professional self-reporting and self-help measures, and clearly separating lawyer assistance program administration from the disciplinary process is critical to its success. For this reason, the Task Group believes that the VSB should not and cannot be tasked to undertake the staffing and administration of the lawyer assistance program.

As this program is brought online as a fully integrated part of the judicial system, we propose a review of the Rules of the Professional Conduct as appropriate, and the amending or supplementing of the Rules, to acknowledge and incorporate rehabilitative-focused practices and procedures in cases of mental health and/or substance abuse issues. Consideration should be given to the rehabilitative-focused practices and procedures of the VSB’s disciplinary system.

As stated in the national task force report, judges often are among the first to notice possible attorney mental health and substance use struggles. However, there is uncertainty as to the permissible boundaries of judicial intervention. We propose a review of the Canons of Judicial Ethics concerning the role and responsibilities of judges, to include a review of the ability of judges to make referrals and/or mandate evaluations. Issues such as whether judges should sit on cases when they make a referral of a lawyer for assessment should be addressed.

Make well-being more prominent in the induction of new lawyers to the profession. Specifically, modify the mandatory professionalism course and explore new screening for applicants to include well-being in the character review.

Education, communication, awareness, and public protection are the cornerstones of prioritizing the well-being of new lawyers. Serving as a lawyer in the Commonwealth is a privilege; however, the stress associated with the occupation can lead to a measurable deterioration in wellness, in the absence of careful attention to wellness.
This concept should be featured prominently in the mandatory professionalism course and as a part of character review. By starting new lawyers out with wellness front and center, applicants for the bar and new lawyers may be better prepared to address well-being concerns as they take their first steps in the profession.

While character and fitness review of bar applicants has been modified in more recent years to address some of the more apparent conditions that affect lawyer well-being, we recommend that further review of that process be considered in consultation with VBBE and with participation from representatives of Virginia law schools. We also propose adding a lawyer well-being segment to the mandatory professionalism course in consultation with course coordinators and LHL.

Implement mandatory CLE for wellness

Education is the most efficient and effective way of promoting lawyer well-being and promoting a positive change in the legal profession. Recommendation 20.3 of the national task force report recommends "expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow[ing] credit for other well-being-related topics that affect lawyers' professional capabilities." The recommendation further references the ABA proposed new Model CLE Rule that requires lawyers to earn at least one credit hour every three years in the wellness subject-matter area. In response to the National Task Force report, Virginia's MCLE Board has already redrafted its Opinion 19 to make it clear that wellness topics are approvable for CLE topics.

Therefore, one component of the task force recommendations on MCLE requirements is already being met in Virginia. The second component of the National Task Force MCLE recommendation is that a wellness credit be required. Our Task Group believes that requiring one credit hour of wellness each year is not appropriate. However, the Task Group does favor the approach recommended by the national task force, i.e., requiring one credit hour of wellness every three years. Currently, Virginia attorneys must comply with a one-year MCLE cycle.

The more recent trend in MCLE requirement is to provide for multi-year compliance periods. Currently, seven states provide for a two-year cycle, while an additional seven states provide a three-year cycle. Our Task Group recommends that Virginia convert to a three-year MCLE cycle for the reasons set forth below.

Multi-year MCLE reporting periods provide several advantages. First, a three-year reporting period provides attorneys flexibility in meeting their MCLE requirements. Throughout an attorney's professional career, which may span more than 50 years, there are particular years that are more time sensitive than others. On the professional side, an intensive case, transaction, or other aspect of the practice of law may require the majority of the attorney's time for that particular year. On the personal side, there are normal life events that always have to be accommodated, such as marriages, births, and illnesses. Second, a three-year cycle should reduce the yearly compliance and enforcement workload of the VSB staff and MCLE Board, since only one-third (1/3) of the attorneys will be going through the compliance process each year.

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9 The full committee declined to adopt this recommendation, preferring a less far-reaching recommendation from the structural and funding task group. (See page 6.)

10 These states are as follows: Delaware, Iowa (for ethics only), New York, Vermont, Illinois, Utah, and West Virginia.

11 These states are as follows: Colorado, Indiana, Minnesota, North Dakota, Oregon, Washington, and Florida.
Third, a three-year cycle will reduce by one-third (1/3) the critical deadline dates that an attorney will have to meet during the attorney’s professional life. Each year, the MCLE Board must examine requests for extensions and waivers filed by attorneys who are experiencing health or other personal crises, particularly those that occur in the months of August, September, and October, and many of which are simply singular events that are not subject to repetition. On a three-year reporting cycle, such events that occur in August, September, or October of a non-reporting compliance year would not require the attorney to request an extension from the MCLE Board. In fact, such events would be of no significance to the MCLE compliance process at all. A fourth benefit is that adopting a three-year cycle will provide flexibility for additional credits that might be mandated. For example, mandating a wellness credit every year may be viewed as simply too draconian or, in the alternative, simply not needed. However, requiring one hour of wellness every three years, as recommended by the ABA, is workable, especially if Virginia is on a three-year reporting cycle. Additionally, other similarly situated subject-matter topics could be added in the future, if deemed appropriate.

The Task Group is mindful that there are disadvantages to this proposal. First, any new proposal is initially viewed as disruptive. However, we believe that the advantages of a three-year reporting cycle outweigh the disadvantages. A second disadvantage is that currently the one-year reporting cycle actually serves to identify attorneys who may be experiencing problems in their practice. Generally, individuals who cannot maintain the MCLE requirements, or simply forget to do so, are experiencing other problems in their personal or professional lives. Literally, the one-year MCLE reporting cycle helps to identify these individuals annually. A third disadvantage is the initial added costs to the Virginia State Bar in converting its computer systems from a one year to a three-year cycle and to further train staff with regard to the particular changes necessary for a three-year reporting cycle. However, the annual cost savings associated with converting to a three-year cycle should over time offset these initial expenses. Finally, a fourth disadvantage is a potential loss of income to the Virginia State Bar. Every year, numerous attorneys fail to take timely their MCLE courses or fail to report timely their hours, which results in significant late fees that generate income for the VSB.

In recommending adoption of a three-year MCLE reporting cycle, with one hour of wellness required each cycle, our Task Group has weighed these advantages and disadvantages. More importantly, we believe that mandating a wellness requirement every three years is truly one of the only permanent ways to assure that wellness is addressed.

Form a blue ribbon panel of lawyers and health care professionals to establish aspirational recommendations for private practice lawyers to implement.

When compared to professionals who study, evaluate, or teach wellness full-time, lawyers are not as well-suited to evaluate the specific risks to an individual’s well-being that may be associated with the practice of law nor are we best-qualified to establish effective wellness practices. Even as we may fashion ourselves as capable accountants or marketers, experience shows that lawyers often overestimate our ability to prescribe remedies for problems that fall outside the practice of law. In addition, we may be too close to, or too vested in, the practices entrenched in the profession in order to perform alone a critical wellness review and evaluation.
Recognizing that we may not be our own best teachers, we recommend seeking out experts who study, evaluate, and teach wellness. For example, in our Committee work, we obtained, in a preliminary fashion, ideas from a physician who manages wellness issues and treats doctors who get into trouble at the University of Virginia. Such experts have a wealth of information to inform lawyers about what works best, and what may not work, to promote wellness among professionals.

Experienced lawyers from varying size firms and practice areas, working hand in glove with experienced experts on a panel, would produce a list of guidelines, and optional specific recommendations that would be ready-made for lawyers to implement.

As the ABA panel concluded, the terms “wellness” or “well-being” should be acknowledged as multi-dimensional and include (1) social wellness, (2) emotional wellness, (3) spiritual wellness, (4) occupational wellness, (5) intellectual wellness and (6) physical wellness.

Most lawyers are a far stretch from a comprehensive understanding of wellness. We could use experts to guide us toward implementing meaningful changes in a manner that would be most well received, based on their own experience implementing change in groups of other professionals who likely are just as uninitiated about comprehensive wellness as most lawyers.

Prepare an Informational Pamphlet to be Distributed to Families, Staff, and Significant Others of Lawyers and Law Students

Family and friends are often the first to recognize problems in those suffering from a lack of well-being. Therefore, it would be helpful to provide educational materials to those who may be first to observe impaired attorneys, to inform them of specific risks of the profession and to show them the resources available to assist impaired attorneys.

Once the blue-ribbon panel described above has completed its study, the information gained should be incorporated into a pamphlet. The pamphlet should be short, pithy, and educational. It may even be humorous and entitled something similar to “How to Care for and Train Your Attorney.” The pamphlet can identify different types of occupational risks associated with practicing law, as well as the signs and symptoms of resulting mental health issues. Most importantly, the pamphlet should identify how a loved one can intervene early in the process.

A similar pamphlet should be prepared for the loved ones of law students.

Attached as Appendix Exhibit 8 is a matrix of some occupational risks that apply to lawyers. It may serve to assist in preparing the pamphlet described.

Report of the Public Sector Task Group

The Public Sector/Legal Aid Task Group was composed of the following members:

- David Bobzien, retired Fairfax County Attorney and former president of the Virginia State Bar
- Doris Causey, immediate past president of the Virginia State Bar
- Michael Herring, Richmond City Commonwealth’s Attorney
- Cynthia Hudson, Chief Deputy Attorney General
- Lori Lord (Chair), Chief Staff Attorney for the Supreme Court of Virginia
- Kathleen Uston, President of the National Organization of Bar Counsel
While the recommendations of the Report of the National Task Force on Lawyer Well-Being are not expressly directed to public sector lawyers, the Public Sector Task Group has gravitated toward the National Report’s Recommendations for Regulators. Specifically, our efforts have been directed to Recommendations Number 20 (Taking Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority) and 20.1 (Adapting regulatory objectives that prioritize lawyer well-being). We also address Recommendation 36.2 (Recommendations for Bar Associations: Create Educational Materials to Support “Best Practices” for Legal Organizations).

The Public Sector Task Group offers proposed action items and updates on the progress of other groups in the Virginia legal community working toward implementing the National Report’s recommendations. Updates from the VSB’s Committee on Lawyer Discipline (“COLD”) and VSB’s Young Lawyers’ Conference (“YLC”) are provided here, as are comments about lawyer well-being from ALPS Executive Vice President, Chris Newbold.

In February and March 2018, the Public Sector Task Group engaged in fact-finding interviews concerning the vicarious trauma that attorneys and judges endure. From these discussions we learned about the repetitive trauma faced by attorneys who work in capital litigation and those who prosecute child pornography, violent sexual predator, and other serious crimes. We heard from juvenile court judges who discussed the isolation implicit in being a judge and the burden they carry in trying to “fix” the intractable family problems they confront in their courtrooms and address the serious criminal offenses committed by the juveniles who come before them. We also interviewed Fairfax circuit court judges who have endured months, sometimes years, of MS-13 gang trials and heard about physical threats against the judges and the horrific facts they are exposed to daily. From these interviews and many other sources, the Task Group has developed action items which are set out below.

In addition, one of our members has prepared a report on “best practices” for public sector legal organizations, which the National Report addresses under Recommendations for Bar Associations at number 36.2 (Create Educational Materials to Support Individual Well-Being and “Best Practices” for Legal Organizations). The “best practices” report is attached here as part of an appendix. The appendix also contains statistics regarding lawyer well-being, links to wellness training materials, and a list of presenters who can provide content for CLEs and other substance abuse and mental health programs.

I. UPDATES FROM INDUSTRY GROUPS

COLD has been studying the National Report’s recommendations and is considering specific suggestions for rule changes made by the VSB Office of Bar Counsel.

On February 24, 2017, the VSB Council (“Council”) unanimously approved a change to the disciplinary procedural rules developed and approved by COLD. Specifically, Council voted to approve a clarification that a disciplinary record does not include administrative suspensions, such as impairment suspensions. By order effective June 15, 2018, the Virginia Supreme Court adopted this proposed rule change. This change will help remove the stigma of a disciplinary record from impairment findings, which are often temporary in nature, and will, in turn, address the mental and/or physical health concerns presented, as opposed to attorney ethical misconduct.

At its meeting on March 7, 2018, COLD approved additional amendments to the procedural rules intended to address lawyer well-being. One proposal will allow the Office of Bar
Counsel ("OBC") to share confidential information with LHL. Specifically, if a lawyer comes to the attention of OBC through the bar complaint process, and it is suspected that either alcohol or substance abuse or mental health concerns may be at the root of the alleged misconduct, this proposal will permit OBC to confidentially refer the lawyer to LHL.

Currently, all complaints are confidential at these early stages and not even the fact that a complaint has been filed may be disclosed to anyone, including LHL. This would have obvious benefits, in particular to more quickly refer lawyers to an entity that can provide it. This proposal is on point with the National Report, which recommends that when information indicating mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulation matters, confidentiality rules should allow sharing of such information with lawyer assistance programs.

COLD also is considering a proposal to help facilitate retirement with dignity through adoption of a new rule that would permit a complaint, where there is no serious misconduct, to be resolved at a low level provided the lawyer at the center of the complaint agrees to retire. Under current rules, moving from active to retired status is not permitted if a disciplinary complaint is pending.

On April 3, 2018, the VSB Standing Committee on Legal Ethics voted to send a proposed amendment to the Comments to Rule of Professional Conduct 1.1 (Competence) to Council for its consideration and approval highlighting that wellness is inseparable from professional competency. The proposal provides that a lawyer’s mental, emotional, and physical well-being impacts the lawyer’s ability to represent clients and make responsible choices in the practice of law.

ALPS

At the National Task Force level, Christopher Newbold, Executive Vice President of ALPS, is leading a group of four carriers (of about 30-40 carriers in the total market) which is discussing the issue of lawyer wellness and its relevance to their business models. Mr. Newbold reports that these carriers have discussed the possibility of offering premium discounts to firms that provide wellness opportunities and/or CLE-type instruction on the subject, but the concept faces many challenges. Specifically, the cultural shift in the profession which this Task Force seeks will be best advanced not solely by “doing the right thing” but will have to be accompanied by economic incentives to accelerate the shift. In short, it may have to be demonstrated that wellness has economic value.

Mr. Newbold noted that each carrier has independent authority to embrace the notion of offering premium incentives, subject to approval by the state regulators in those states in which they do business. As with private law firms, carriers in many respects are motivated by the bottom line. Mr. Newbold believes that the legal community will need to demonstrate that law firms committed to the well-being of their attorneys are generally better, healthier risks and thus should be entitled to premium credits because of that lower risk.

Providing economic incentives without first having this proof in hand would be challenging. Mr. Newbold noted that carriers are increasingly turning to data analytics to understand which factors ultimately contribute to higher frequency of claims and little data exists concerning wellness in contrast to behaviors associated with law practice management such as conflicts and calendaring systems and other aids that, if used, reduce a law firm’s susceptibility to a claim.

Also, state regulators will have to be convinced that a statistical correlation exists before carriers will be permitted to offer premium discounts.
Mr. Newbold observed that some states will understand it intuitively while others will require the data before permitting the credit into a carrier's rate formula.

Finally, Mr. Newbold noted the possibility of coming at the issue from the other side—charging higher premiums for those who maintain unreasonable billable-hour requirements. ALPS does not currently gather billable-hour requirements on its LPL application, but he noted they could begin, then use that information to correlate against their claims experience.

Young Lawyers’ Conference of the Virginia State Bar

The Public Sector Task Group supports partnering with the YLC. Following is a summary of work the YLC has been doing to increase awareness and create programming for lawyer well-being.

The YLC reported to us that it started a Wellness Initiative in April 2017, preparations for which began in 2016. The goal was to find programs addressing lawyer well-being, a topic of particular interest to young lawyer groups around the country. Tragically, two groups, the Texas Young Lawyers Association and the Florida Bar Young Lawyers Division, suffered suicides on their boards of governors in the 2012-2013 timeframe. In response, those associations created committees with mental and physical health components. In 2014, the ABA Young Lawyers started “FIT to Practice,” incorporating movement elements such as walks, scavenger hunts, and yoga, similar to what the Virginia YLC does at its annual conference.

The YLC’s initial goal was to sponsor interactive programming for its members and provide written materials for members to access at any time.

In early May, YLC held its first wellness CLE webinar, now archived on the VSB webinar system, featuring Professor Heidi Brown, author of The Introverted Lawyer. The committee also has put out its first Docket Call column, the “Wellness Corner,” in the spring issue. Finally, the YLC has been working to implement the National Report’s recommendations through existing programs and is working with the Senior Lawyers Conference to implement a mentorship program. YLC’s wellness team also is considering sponsoring a wellness month, obtaining discounted gym memberships, and furthering a partnership with LHL.

II. PUBLIC SECTOR TASK GROUP ACTION ITEMS

The Public Sector Task Group agrees with the National Task Force that wellness should be considered part of professional competence and that this message should be echoed in continuing legal education. (See Recommendation Number 20 (Taking Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority)). We also agree that adopting regulatory objectives that prioritize the well-being of legal professionals, particularly measures that increase access to lawyer and judicial assistance programs, is necessary to ensuring client protection. (See Recommendation 20.1 (Adopting regulatory objectives that prioritize lawyer well-being)).

LHL is severely underfunded. Adequate and dependable funding must be a top priority.

Well-being is necessary for professional competence. The ABA Hazelden study demonstrated that a substantial need for services...
exists everywhere, including Virginia. Attorney assistance programs remain under-utilized not because of a lack of need, but a lack of awareness and education and a fear or stigma about seeking help.

Information provided at the Lawyer Well-Being Committee’s June 13, 2018 meeting shows that providing attorneys with resources for intervention and treatment can dramatically reduce malpractice and disciplinary claims.

The Executive Directors of the North Carolina and Pennsylvania judicial and lawyer assistance programs who presented at the June meeting illustrated the importance of adequately funding lawyer assistance programs and publicizing these services through wellness CLEs. Pennsylvania also noted a dramatic increase in judges seeking referral services once a judicial hotline was created.

North Carolina, which has a bar similar in size to Virginia’s but enjoys a fully funded LHL, has a 2% utilization rate from active attorneys versus Virginia’s 0.5% utilization rate. Based on North Carolina’s experience, Virginia could see at least 600 to 700 active attorneys seeking assistance annually.

CLE requirements should be expanded to include wellness topics. Eventually, mandatory CLE credit requirements should be considered for mental health and substance abuse, i.e., "wellness,” topics

CLE serves as a cost-effective means of informing attorneys of the importance of well-being and increasing awareness of where and how to obtain help. CLE can teach legal professionals the warning signs of impairment and how to approach an impaired attorney. Offering CLE credit for these programs will underscore the importance our Supreme Court places on attorney and judicial wellness.

The MCLE Board has recently amended Opinion 19 to make clear that wellness programming can be approved for CLE credit. However, materials should be submitted in advance for approval and the programs must be substantive – the presenter should be a clinician or other mental health practitioner or expert – in order to increase the likelihood the program will be approved for credit.

The ABA new Model Rule provisionally recommends that states grant CLE credit for lawyer well-being programming and that it include topics beyond mental health and substance abuse. Coping with vicarious and secondary trauma is an example of a substantive topic outside of mental health and substance use disorders that could be the subject of wellness training. The Public Sector Task Group, through interviews with attorneys and judges and through its own resources, has collected a list of experts whose presentations likely would receive CLE credit. This list includes links to programs and other wellness resources and is attached as Appendix Exhibit 9.

Some of the nation’s most successful judicial and lawyer assistance programs (“JLAPs”) have relied on mandatory CLE programming for increasing awareness of intervention and referral services. After North Carolina mandated wellness CLE credit, the number of attorneys seeking assistance from the JLAP more than doubled.

Mandatory CLE programs appear to provide cost-effective means of increasing awareness and marketing to members of the bar and judiciary without absorbing JLAP funds that could be spent on intervention, referral and treatment. Further, making wellness programming mandatory and subject to MCLE approval likely would create a market for Virginia CLE and other independent groups to produce high-quality wellness content at no cost to the Supreme Court or LHL.
Establishment of a confidential “hotline” for judges

One of the judges we interviewed identified establishing a confidential hotline as the single most important action this committee could take to improve judicial well-being. How to implement this item is unclear as judges are unlikely to reach out to LHL. Perhaps the Supreme Court could consider setting up a hotline operated by a third-party provider and placing the hotline number on its website. Details including privacy and liability considerations would have to be resolved.

Addition of a wellness component to the Harry L. Carrico Professionalism Course for new lawyers

Reaching young lawyers as they start their careers is critical. We need to educate young lawyers about mental health, substance abuse and the risks of impairment and direct them to resources that can provide assistance. While the current YLC President includes wellness in his speech welcoming newly admitted lawyers to the bar, a substantive and permanent program is needed. Any such programming should be developed in coordination with the Law School/VSBBE Task Group proposals.

The Office of the Executive Secretary should expand its provision of resources for judges and lawyers to become informed about coping with repetitive vicarious trauma and include this topic in the training of new judges.

The Chief Justice has agreed to send an open letter to various groups to advocate for voluntary attendance at wellness programs. Constituencies could include the annual mandatory judicial conferences, annual institutes for Virginia Commonwealth’s Attorneys, the Office of the Attorney General, the Virginia Bar Association and other organizations.

Implement Best Practices

Cynthia Hudson, Chief Deputy Attorney General of Virginia, oversees the largest group of public sector attorneys in the Commonwealth. The Chief Deputy has identified best practices in running a public sector legal office. (The report is attached as Appendix Exhibit 10.) Implementing these practices supports National Task Force Report Recommendation 36.2 (Recommendations for Bar Associations: Create Educational Materials to Support “Best Practices” for Legal Organizations).
Conclusion

The legal profession is at risk from a wellness crisis. And when we are at risk, so is the public we serve. Fortunately, meaningful steps are already being taken.

Chief Justice Donald Lemons has made wellness initiatives a priority for his second term, which will begin in January 2019. The full Supreme Court has signaled its unanimous support for his efforts.

Likewise, the current Virginia State Bar president, Leonard Heath, and the immediate past president, Doris Causey, have done much to advance this cause, as have Executive Director Karen Gould and VSB’s dedicated staff. The Office of Bar Counsel and Committee on Lawyer Discipline are notable for their significant work to date.

With this Report, representatives from many groups within our profession have demonstrated their support for a comprehensive response. Judges, legal educators, law profession regulators, legal aid providers, public law offices, large and small private law firms, and solo practitioners all must work together.

May these recommendations light the path forward for our profession.

"Light can lift depression, dispel despair Bring Hope to the weary, lead us from fear Light can raise up emotions, quiet the storm Beckon us from rolling seas into the calm We learn by light, we grow by light We sit in the dark transfixed by its sight And as the light flickers our hearts respond We can see the connections, we can feel the bonds."

(Excerpt from “Light the Soul,” by Retired Justice John Charles Thomas)
APPENDIX

EXHIBIT 1
Organization and Purpose

Independent 501(c)3 non-profit

Confidential, non-disciplinary assistance

Lawyers, judges, law students and legal professionals

Professional impairment as a result of substance abuse or mental health problems

Promote recovery, protect the public, prevent disciplinary problems for the lawyer, support their families and professional associates, and strengthen the profession
4 Key Processes

Outreach → Intake & Evaluation / Counsel → Treatment → Follow-Up

- Education
- Counseling
- Connection to Treatment
- Safe Haven

CORE COMPETENCIES

- Trustworthy
- Competent
- Visible
- Accessible

ENABLING ATTRIBUTES

- Geography
- Presence
- Trust & Confidence
- Volunteers

CHALLENGES

- Staffing
- Funding

CURRENT LIMITATIONS
## Current Funding

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*As of June 30, 2017

**2014 Hazelden Betty Ford study predicts 30% of all lawyers are dealing with depression and over 20% are overusing alcohol
Strategy

Reach more people!
Increase: Visibility & Accessibility
Mitigate: Geography & Presence

Approach

Nationwide survey of other LAPS

Contracted with VCU EMBA program
  - Validate survey
  - Evaluate similar non-legal related programs
  - Develop low cost tactical plan
  - Develop long term strategic plan
Lighthouse Plan

Lighthouse Plan

- Volunteer
- Assessor
- Pilot Lighthouse Locations
- Additional Locations
- Clinical Director

Outreach & Intake  Assess  Treatment Recommendations
Lighthouse at a Glance

By The Numbers

- 1 additional Case Worker
- 4 months to complete pilot
- 10 Lighthouse locations
- 400 members assisted per year
- $85K estimated increase in existing budget

Lighthouse at a Glance

Dependencies
- Completion of current IT plan
- Volunteers
- Recruitment of the case worker
- Source additional $85K funding

Risks
- Volunteer Availability
- Sustainable Additional Funding
New Business Plan

Business Plan
- Outreach Manager
- Full-Time ED
- Clinical Director
- 3rd Party Clinical Specialist

Case Manager
★ Richmond

Case Worker
Roanoke

Case Worker
→ Tidewater
Business Plan

$541K
Expand
Capability
Full-Time
Executive
Director
Full-Time
Case Manager
Full-Time
Outreach Manager

$597K
Expand
Service
Full-Time
Caseworker

$663K
Full-Time
Caseworker

Business Impact

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<td>Business Plan (Phase 3)</td>
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Summary

Discussion
APPENDIX
EXHIBIT 2
THE SIX DIMENSIONS OF WELLNESS

Wellness is commonly viewed as having six dimensions. Each dimension contributes to our own sense of wellness or quality of life, and each affects and overlaps the others. At times one may be more prominent than others, but neglect of any one dimension for any length of time has adverse effects on overall health.

Social Wellness is the ability to relate to and connect with other people in our world.

1. I am able to resolve conflicts in all areas of my life
2. I am aware of the feelings of others and can respond appropriately
3. I have at least three people with whom I have a close trusting relationship
4. I am aware of and able to set and respect my own and others boundaries
5. I have a sense of belonging/not being isolated
6. I have satisfying social interaction with others

Physical Wellness: involves implementing regular physical activity, maintaining a healthy diet, and rejuvenating our bodies through rest and sleep - all things that protect us from chronic diseases and improve our quality of life.

7. I exercise at least 3 times per week.
8. I eat a balanced nutritional diet.
9. I am generally free from illness.
10. I am a reasonable weight for my height.
11. I do not use alcohol or use in moderation, am a non-smoker and avoid street drugs.
12. I take proactive steps to avoid and prevent injury, illness and disease (including sexually transmitted diseases).

Emotional Wellness is the ability to manage emotions, have a realistic and mostly positive view of ourselves, others, and the circumstances in our lives.

13. Others would describe me as emotionally stable.
14. I can express all ranges of feelings including hurt, sadness, fear, anger and joy and manage related behaviors in a healthy way.
15. I accept and appreciate my worth as a human being.
16. I manage stress and do some activity that elicits the "relaxation response" for at least 15 minutes each day.
17. I avoid blaming other people or situations for my feelings and behaviors.
18. I can realistically assess my limitations and cope effectively with stress and ego.

Occupational Wellness is the ability to get personal fulfillment from our jobs or our chosen career fields while still maintaining balance in our lives. Being financially secure also contributes to occupational wellness.
19. I have chosen a job role that I enjoy and that matches my values and lifestyle.
20. I have developed marketable job skills and keep them current.
21. I balance work with play and other aspects of my life.
22. I earn enough money to meet my needs and save to provide economic stability for myself
    and/or family.
23. I use money positively, e.g., little or no gambling or excessive massing of goods
24. My work benefits individuals and or society.

**Intellectual Wellness** involves a commitment to lifelong learning. We nurture our intellectual
health when we engage in creative activities, learn new things, and expand our knowledge.

25. I have specific intellectual goals, e.g., learning a new skill, a specific major
26. I pursue mentally stimulating interests or hobbies.
27. I am generally satisfied with my education plan/vocation.
28. I appreciate and explore the creative arts of theatre, dance, music and expressive art.
29. I commit time and energy to professional and self-development.
30. I would describe myself as a life long learner.

**Spiritual Wellness** is the ability to establish peace and harmony in our lives. It involves learning
to be more forgiving, grateful, and compassionate, to be kinder and less judgmental.

31. Principles/ethics/morals provide guides for my life
32. I trust others and am able to forgive others and myself and let go
33. I have a sense of meaning and purpose in my life
34. I have faith in a higher power
35. I practice meditation, pray or engage in some type of growth practice
36. I have a general sense of serenity
APPENDIX
EXHIBIT
3
VIRGINIA STATE BAR DISCIPLINARY CONFERENCE

THE INTERSECTION BETWEEN LAWYER WELLNESS AND THE DISCIPLINARY SYSTEM

VICARIOUS TRAUMATIZATION IN THE LEGAL PROFESSION AND THE ROLE AND FUNCTION OF THE VIRGINIA STATE BAR

I. Introduction

An examination of whether or not attorneys experience vicarious trauma in the course of carrying out their professional duties is not a subject that has been extensively studied. Similarly, assuming such a phenomenon does exist, there is little information available to attorneys to address what is clearly something that many experience – the negative consequences of repeated, in depth, and/or long term exposure to traumatized clients. Think about it – as an attorney representing a domestic violence victim, or one accused of perpetrating that violence, it is necessary for you to delve deeply into the underlying event before you can competently and diligently represent your client. A GAL for an abused or neglected child, an attorney defending a parent in termination proceedings, a prosecutor dealing day in and day out with the victims of violent crimes. There is no question that this can and does take its toll on the professional whose job it is to be dispassionate and objective.

The question becomes – how can attorneys address these very real issues in their professional lives before they result in burn out, bar complaints, and malpractice suits? While this outline certainly does not contain the answers to these important questions, it will endeavor to present an exploration of the issues and provide information from other professionals who are attempting to help attorneys navigate these thorny paths.

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1 These materials were originally prepared by Kathleen M. Uston, Assistant Bar Counsel with the Virginia State Bar, for a program sponsored by the City of Alexandria Juvenile and Domestic Relations Court.
II. Compassion Fatigue, Secondary Traumatic Stress ("STS"), and Vicarious Traumatization ("VT")

Although there is a shortage of thorough empirical studies focused on this topic, there is some literature discussing vicarious trauma in attorneys. One study broke this down into three categories – Compassion Fatigue, Secondary Traumatic Stress ("STS"), and Vicarious Traumatization ("VT").² STS can manifest with symptoms similar to those of Post-Traumatic Stress Disorder including re-experiencing the event witnessed (or relayed during a client interview), avoidance of recollections of those events, numbing in affect and function, and persistent arousal.³ VT, on the other hand, develops as a result of the more intimate relationship with the traumatized individual over a longer period of time. Research into these phenomena has focused primarily on first responders, disaster workers, trauma therapists, and other mental health care providers, but not attorneys. Dr. Levin and Mr. Greisberg report, however, that some existing clinical literature has produced revealing and important facts.

First, there is evidence to suggest that attorneys who have worked with difficult and traumatized clients may exhibit responses including "counter-transference" and identification with victims. Second, this internalization can lead not only to symptoms of secondary trauma but also burnout which, in turn, can lead to substance and/or alcohol abuse. This path is one that almost inevitably leads to ethical lapses, bringing an otherwise competent and well intentioned attorney into the ambit of the Virginia State Bar.

These studies show that attorneys who work with traumatized clients experience significant symptoms of secondary trauma and burnout at a rate much higher than mental health


³ Dr. Levin and Mr. Greisberg cite to Figley, CR: Compassion Fatigue as secondary traumatic stress disorder: an overview, in Compassion Fatigue. Edited by Figley CR. Levittown, PA: Brunner/Mazel, 1995, pp 1-20.
providers and social services workers also interacting with these client victims. Why are attorneys disproportionately impacted? The studies point to the intensity and length of exposure as significant risk factors – while mental health providers or social workers may see victim clients with some frequency, the day to day contact an attorney must have with his client, as well as the necessity of digging deeply into the facts underlying the trauma, significantly increase the frequency and intensity of exposure to the trauma itself as well as to it’s victim. Other significant contributors increasing an attorney’s risk of secondary trauma and burnout include a prior mental health history, high case loads, a lack of systematic education regarding the effects of trauma on their clients and themselves, and the paucity of forums within which to regularly vent.

"Burnout," a term coined by Herbert J. Freudenberger, is not merely stress, ennui, or disenchattment. Instead, "burnout" is far more serious and can lead an attorney to literally stop in his or her tracks, thus implicating multiple ethical obligations that all attorneys owe to their clients – the duties of competence (Rule of Professional Conduct [“RPC”] 1.1), diligence (RPC 1.3), of keeping their client informed about what is transpiring in their case (RPC 1.4) among them. Freudenberger articulates burnout as progressing through twelve stages:

1. A compulsion to prove oneself;
2. Working harder;
3. Neglecting one’s needs;
4. Displacement of conflicts;

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5 *Id.*

5. Revision of values;
6. Denial of emerging problems;
7. Withdrawal from social contacts;
8. Obvious behavioral changes;
9. Depersonalization;
10. Inner emptiness;
11. Depression;
12. Burnout Syndrome

Hopefully, none of the attorneys reviewing these materials will identify with all twelve of these stages. However, we can all of us, no doubt, recognize ourselves in at least two or three. While the 12 stages articulated above do not necessarily amount to an inevitable path, recognizing the symptoms of burnout in oneself or one’s colleagues at an early stage is critically important to avoiding a long, slow slide to an encounter with the Virginia State Bar that could result in a lengthy suspension or even disbarment. There are far too many cases where an attorney has run afoul of the Bar’s rules requiring diligent and competent representation merely because that attorney was unable to recognize in herself that her avoidance of a particular case or client was the result of a treatable condition. In the most extreme situations, an attorney who falls victim to alcohol or drug addictions can succumb to misappropriating client funds – a one way ticket to disbarment.

III. Substance Abuse and the Practice of Law

For many years the American Bar Association and other entities have studied the correlation between alcohol and substance abuse and the practice of law. A 1990 study published in *The International Journal of Law and Psychiatry* offered some very revealing
statistics. The rate of problem drinking for attorneys was reported at 18% as compared to 10% in the general population. Evidence also suggests that early in our careers, those of us in the legal profession experience problems with substance abuse that worsen over time. According to one study, 8% of pre-law students, 15% of first-year law school students, and 24% of third-year law students reported concerns with alcohol use. Once they passed the bar, 18% of attorneys who had been licensed for 2-20 years reported concerns as compared to 25% of attorneys who had been practicing for more than 20 years. These numbers are staggering, and it should therefore come as no surprise that the ABA reports that 27% of disciplinary cases involve alcohol abuse, and that the longer attorneys with alcohol abuse issues remain in practice, the more likely they are to be the subject of malpractice suits.7

The question is why? Many theories have been posited – most attorneys are Type A to begin with and therefore take on too much work, work too hard, and do not given themselves a break; the culture surrounding law firm life is one that emphasizes social drinking with partners and clients on the golf course or other firm outings; attorneys take on heavy workloads and either cannot or do not take the time to establish a balance between their professional and personal lives; and finally there is intense stress that goes hand in hand with much of the work that we as attorneys do, some of which can literally have life or death consequence for the clients. Each of these explanations has merit.

At long last, Dr. Anker has also explored the correlation between prolonged relationships with clients who are trauma-exposed and attorney substance abuse. Dr. Anker reported that, in addition to having a higher prevalence of job related burnout, attorneys working in the public sector also experienced higher incidences of PTSD as compared to people in the general

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7 *Attorneys and Substance Abuse*, Justin J. Anker, Ph.D., Butler Center for Research (September, 2012).
population. This research also supports the very concerning proposition that criminal defense and family attorneys experience greater levels of trauma as compared to other high stress jobs in mental health and social services fields. Dr. Anker noted that the, “... need to understand intimate details of a client’s trauma history” can, in turn, can lead to STS and/or VT.

Interestingly, a survey of administrative staff, as compared to criminal defense attorneys on the front lines, did not indicate an increased incidence of STS or other symptoms in support staff thus supporting the theory that prolonged and in-depth exposure to clients and their trauma, an experience unique to the attorney handling the case, correlates to the onset of STS and VT.

Dr. Anker notes that despite the prevalence of STS amongst attorneys, it has been largely overlooked by the research community despite the seriousness of these issues from both the personal wellbeing standpoint of attorneys and the ethical implications for the Virginia State Bar. Specifically, STS and VT can lead to symptoms that mirror PTSD – increased stress, demoralization, anxiety, helplessness, exhaustion, social withdrawal, burnout, and functional impairment. As noted above, an attorney experiencing these types of symptoms may bring those with him to the workplace, pushing a problem case aside and neglecting what needs to be done, avoiding returning client phone calls, failing to do the research and preparation necessary to competently represent his client, and even failing to show up for court and dissembling with the client and others about what he has done or failed to do on a particular case. As bar prosecutors, we see these types of behaviors manifest in otherwise competent and well respected attorneys which, in turn, lead to bar complaints and prosecutions. It is indeed tragic, and often utterly avoidable, when the Bar must prosecute an attorney suffering from burnout, who has otherwise

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been ethical and competent during the course of her career, and seek to have her license to
practice either suspended or revoked.

IV. What is the Answer?

On August 5, 2017, a National Task Force, established through the joint efforts of the
National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers,
and the ABA Commission on Lawyer Assistance Programs, released its Report on Attorney
Wellness. The Task Force, of which Chief Justice Donald Lemons is a member, did an excellent
job in their Report of pointing up the challenges that face attorneys, and noted the
disproportionate representation of attorneys in the population of people suffering from alcohol
and drug dependence and mental health challenges. Most importantly, the Report offered
concrete recommendations as to how to combat these problems in our profession. The issue is
finally being looked at on a very serious level and the Report is being as widely distributed as
possible.

It is expensive, challenging, and time consuming to obtain one’s law degree. It also takes
time, patience, and great effort to develop one’s reputation in the legal community. All of this
can be lost in the blink of an eye. More often than not, an attorney experiencing either STS or
VT will not progress through Freudenberger’s 12 stages of burnout or fall victim to debilitating
substance abuse. However, it does happen. The good news is it can be avoided before an
attorney harms either himself or his client. And we now have some concrete steps and
recommendations to help attorneys as they navigate these difficult waters.

The fact that the issue of attorneys experiencing vicarious trauma is even being raised and
researched has already had an impact. One study participant, a legal aid attorney representing
victims of domestic violence, wrote, “It actually feels good to hear that I am not the only one
who feels depressed and helpless and that these issues are worth studying.” This attorney went on to note, “Fortunately, the stress has decreased with experience and time for me, but I still have vivid memories of quite traumatic experiences representing victims of domestic violence who were so betrayed that it was difficult to continue to have faith in humankind.”

Attorneys working with traumatized clients frequently reported that they felt over-extended with their clients due to after-hours contacts and becoming mired in trying to assist their clients with ancillary issues like securing government benefits or safe housing. Overall, these attorneys attributed their secondary trauma responses to lack of preparation in understanding their clients, and the lack of a regular forum within which to vent their frustrations and feelings. Obviously, high case loads, indifferent government administrators, and contentious relationships with law enforcement and court personnel can exacerbate secondary trauma.

What can an attorney do? Simply being aware of the potential problem is a huge first step. Attorneys on the front lines of dealing with traumatized clients must recognize that their client’s trauma can become their own, and therefore they should be on the lookout for symptoms in themselves.

Developing “stress hardiness” is another proactive step attorneys can take to avoid STS, VT, and burnout which almost inevitably leads to an unpleasant encounter with the Virginia State Bar. The progression down Freudenberger’s 12 stages is a grim path to take, but avoiding this progression can begin with a simple three-step process: recognition of the situation and the

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10 Id.
signs leading up to it; reversing the tide by reducing stress and seeking support; and fostering resilience through developing physical, emotional, and spiritual resources.\textsuperscript{11}

Data and informal polling suggest that the development of programs for law students and attorneys regarding the effects of trauma on their clients and themselves can help fend off a significantly adverse and long term reaction. In addition, ground breaking brain research has been conducted which confirms the ability of all of us to essentially “reprogram” the way we think and react. Hallie Neuman Love, Esquire, a New Mexico attorney and certified mind-body therapist, has published extensively on this subject including an article titled “Work Smarter: The Power of Recharge.”\textsuperscript{12} In this article, Ms. Love discusses the brain science behind her theory that, by taking some very simple and concrete steps, attorneys – even those who deal extensively with trauma victims – can avoid STS, VT and burnout.

Pointing to the high demands on lawyers, the multitasking we are all required to do, the emotional impact of dealing with traumatized clients, and the sedentary nature of the practice of law, Ms. Love advocates simple behavioral interventions to counteract the problems that can result from these facts of our professional lives. These include engaging in “mini-recoveries” that switch off the stress responses that our bodies involuntarily produce, including the release of stress hormones that initiate the fight or flight response, throughout the day. This can be as simple as taking a 5 minute walk, or stopping your work for a few minutes to get up from your desk and take some deep breaths. As simple as this might sound, the impact can be profound.

In materials submitted to the National Organization of Bar Counsel by Joe Balkenbush, Oklahoma Bar Association Ethics Counsel, Mr. Balkenbush discusses “The Four Agreements”

\textsuperscript{11} American Bar Association Publications, Law Practice Magazine, Vol. 38, #3 (May-June, 2012). This article offers specific mechanisms by which to accomplish this including staying in contact with friends, scheduling vacations in advance, and maintain proper boundaries.

articulated by Don Miguel Ruiz. Mr. Ruiz advocates reaching these “agreements” with yourself and never deviating from them, or doing so as infrequently as possible. These “agreements” are:

1. Be impeccable with your word. While we strive to be impeccable with our word to others, we must also work to be impeccable with our word to ourselves.

2. Don’t take anything personally. This is a very important, and hard to learn, lesson, especially for us Type A attorneys.

3. Don’t make assumptions. How often do we assume that we understand what someone said, only to find out that we have miscommunicated? When you’re unsure, ask a clarifying question.

4. Always do your best. Keep in mind, our “best” may vary from day-to-day or minute to minute. But no matter what, if we always do our best, we will have no regrets.

V. Applicable Rules of Professional Conduct

It goes without saying that no attorney wants to receive a letter from the Virginia State Bar with a big, red “Personal and Confidential” stamp across it. The difficulties that attorneys who deal extensively with trauma victims face, however, are real and can lead to very real ethical concerns. As noted above, RPC 1.1 states as follows:

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

RPC 1.3 requires, and prohibits, the following:

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.
RPC 1.4 reads as follows:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RPC 1.16 places an affirmative obligation upon attorneys to withdraw when their own mental or physical state renders further representation impossible:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

1. the representation will result in violation of the Rules of Professional Conduct or other law;

2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

All attorneys are well aware of our obligations under RPC 1.15 to safeguard client funds.

In cases where attorneys are suffering from substance abuse or other symptoms of secondary trauma or burnout, it is typically these Rules which are implicated. Generally speaking, the complaints of ethical misconduct filed against an attorney will come to the Virginia State Bar alleging that she won't return a client's phone calls, or has failed to respond to requests for a status update. When we investigate, we often discover that the problems run far deeper.

Avoiding this encounter with the Bar may be as simple as taking the steps outlined about to recognize that you are, or could be, suffering from secondary traumatization and then taking the steps to get some assistance. Sometimes, simply acknowledging the potential problem is more than half the battle.
VI. Conclusion

It is hoped that the information provided above offers some insight into an issue that has been too long ignored. From a purely practical standpoint, as a bar prosecutor, it is clear that these are very real issues that can have very serious consequences for attorneys. With education, attorneys can avoid these consequences, both in their personal and professional lives. It is not a sign of weakness but of strength to be able to recognize this in oneself and take the steps necessary to protect your investment in your law license, your reputation, and your career.
APPENDIX
EXHIBIT 4
SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: December 4, 2017

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

OTHERS IN ATTENDANCE: Chief Justice Donald Lemos; Jim Coyle and Jonathan White from The National Task Force on Lawyer Well-Being (by video conference); Jim Leffler and Tim Carroll from Lawyers Helping Lawyers; and Nicole Gore, Department of Behavioral Health and Developmental Services.

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ACTIONS OF MEETING

Agenda Items 1 & 2:

Welcome and Opening Remarks -- Chief Justice Lemos
Overview of Meeting and Committee’s Work – Justice Mims

    Discussion:

After the conclusion of lunch, Chief Justice Lemos welcomed the committee members and discussed the importance of their work for the profession. The Chief Justice discussed whether well-being issues are related to the manner in which firms compensate attorneys and whether it was worth restructuring compensation and promotion practices to encourage attorney well-being. He also discussed the difficulty of determining when the bar should become involved in well-being issues: (1) during law school; (2) during character and fitness evaluations; or (3) when attorneys are admitted to practice.

Justice Mims provided an overview of the presentations and speakers and informed the committee he will email the PowerPoint slides used during the day’s presentations as well as meeting notes and any revisions to their contact information.

Agenda Items 3:


    Discussion:

Mr. Coyle serves as Attorney Regulatory Counsel for the Colorado Supreme Court and is a co-chair of the National Task Force for Attorney Well-Being (“Task Force”). Mr. White serves as a staff attorney for the Task Force. Mr. Coyle reported that the Chief Justice worked with the Task Force on the report and served as a liaison for the National Conference of Chief Justices.
Mr. Coyle discussed the Hazelden study, which was the genesis for the Task Force’s work. Hazelden was the first study since 1990 to address attorney well-being issue such as substance abuse, depression, and mental health issues in comparison to the general population. The study evaluated over 12,000 attorneys and found high incidences of depression (28.5%) and suicidal thoughts (11.5%), which far exceed the general population. The Task Force was most surprised and alarmed by a finding that one-third of attorneys under the age of 30 were at risk for problematic drinking habits (far higher than expected). Mr. Coyle also discussed the primary reasons attorneys do not seek help. In particular, many reported confidentiality concerns.

Mr. White discussed the findings of a study on law school well-being, which was prompted by 10 student deaths during the 2014-15 school year. The study found that depression, anxiety, and alcohol abuse increased with each year of law school. Laws students also used more alcohol and participated in more binge drinking than other graduate students. One-fourth of law students were found to be at risk of developing alcoholism. The study found multiple barriers exist for students seeking help: (1) concerns about bar admission/character and fitness evaluation; (2) social stigma; (3) privacy; (4) negative employment prospects; and (5) perception the problem can be handled without help.

Mr. Coyle discussed the work behind the Task Force’s report and how it aims to change the culture of the legal profession. The report took approximately 1 year to draft and contains 44 recommendations directed at all stakeholders in the legal profession including: (1) legal employers, (2) judges; (3) law schools; and (4) insurance liability carriers.

The Task Force considers attorney well-being to be multifaceted and multi-layered comprising of 6 elements including: occupational, spiritual, physical, and emotional well-being. It is a continuous process: strive to thrive.

There are three reasons to take action: (1) promoting well-being is good for business; (2) well-being is a competency issue; and (3) it is a humanitarian issue.

Messrs. Coyle and White discussed the following Task Force recommendations in detail.

1. All stakeholders must acknowledge there is a well-being problem.
2. Use Report as an action plan nationally and on the state level. National and state leaders must emphasize this is a priority.
3. Bar leaders must show a personal commitment to well-being.
4. Encourage “help seeking” by reducing stigma and eliminating perceptions of any barriers to getting help. Mr. Coyle suggested stigma can be reduced by relying on attorneys who have successfully recovered from impairments as role models and bar educators.
5. Foster collegiality because incivility creates burnout and depletes energy that should be devoted to clients. Teach attorneys how to politely disagree.
6. Implement proactive programs for assisting attorneys. Mr. Coyle discussed his experience in Colorado and challenged the committee to find funding for assistance programs. In 2011, Colorado had a budget of less than $200,000 for such programs. They then transformed the program into a Colorado Supreme Court agency and increased the budget to over $500,000
and hired 4 staff members by increasing bar dues by 40%. In response to a question about where to find funding, Mr. Coyle suggested raising funds by increasing bar registration fees.

7. Foster environments which give attorneys a sense of control. Control contributes to mental health.

8. Implement high quality educational programming on well-being issues and re-write CLE rules to allow for these courses. Effective training can occur by using lawyers who were disbarred and re-admitted.

9. Focus on senior attorneys not only as mentors but to ensure they are not suffering from a decline in physical and mental capacity that could impair their competency.

10. De-emphasize alcohol at social events, especially at law school events during law school.

11. Start dialogue about suicide. Mr. Coyle mentioned that 4 members of his small law school class have committed suicide and he believes suicide is quite common in the legal profession.

12. Adopt regulatory objectives to increase competency through mentoring. Regulation should take a more holistic approach to assist attorneys at early stages of problems and develop proactive programs to remediate problems.

13. Link competency to well-being in regulatory rules.

14. Adopt diversion programs to rehabilitate attorneys with impairments.

15. Develop a central grievance intake system to identify well-being issues through client complaints. Under a centralized process, regulators can see patterns developing early.

16. Educate judges about available resources for impaired attorneys because they are on the frontlines and will see the issues first.

17. Educate legal employers about resources and encourage development of workplace tools for well-being. Mr. Coyle referred the committee to the Tristan Jepson Memorial Foundation as a resource for finding tools on workplace well-being.

18. Use law schools and bar associations to get the word out on well-being.

19. Engage liability carriers to track data on claims related to impairment.

*Mr. Coyle mentioned that many of these recommendations are similar to recommendations that were made to medical students and doctors 20 years ago. The legal profession is far behind the medical profession in addressing well-being.

Mr. Coyle also suggested the committee refer to work conducted by the Department of Defense on resilience and coping mechanisms to find ideas that are adaptable to the legal profession.

**Agenda Items 4:**

Virginia Lawyers Helping Lawyers – Timothy Carroll

**Discussion:**

Mr. Carroll provided an overview of the history and mission of Lawyers Helping Lawyers (“LHL”). LHL does not provide treatment, but evaluates treatment options and connects their clients with resources. LHL is limited by a small budget, small staff, and the geographic diversity of the state. The current budget of $286,000 funds only 1.5 positions. There are approximately 50,000 people who might qualify for LHL services, including judges, associate bar members, law...
students, and active attorneys (32,000). By reference to the Hazelden study, LHL estimates 14,000 people it serves in Virginia are suffering from depression and 10,000 overuse alcohol.

LHL helps approximately 200 people each year. In the last year, LHL handled 161 new cases. Of this number, 80 were attorneys and 24 were law students. 80 of the cases concerned alcohol, 31 cases concerned depression, and 12 cases concerned drug use.

In terms of funding organizations like LHL, the average for Virginia’s peer states is $556,000 with a staff of 4.4. LHL helps 0.48% of practicing attorneys whereas peer states help 1.24% of their practicing attorneys. Most states fund these programs through registration dues.

Mr. Carroll discussed the strategic business plan it developed with the VCU MBA program and the Lighthouse Plan he wants to institute. The goal is to have volunteers around the state to serve as contact points with attorneys in their communities. LHL needs approximately $85,000 in increased funding to finalize the Lighthouse Plan because it must hire an additional case worker. When the Lighthouse Plan becomes operational, LHL believes it will reach over 400 new people each year.

Mr. Carroll also discussed the three phases of the strategic business plan. At part of the plan, LHL wants to staff case manager positions in Roanoke, Tidewater, and NOVA and fund the executive director as a full time position. The first phase of the plan would require $275,000 in additional funding; the second phase $332,000, and the final phase would require a total increase of $398,000 from the current LHL budget. A committee member noted that it would take a $15 increase in VSB dues to fully fund phase 3 of the LHL strategic plan.

In response to a question from the committee, Jim Leffler discussed the effectiveness of law school LHL programs. Mr. Leffler said the effectiveness depends on faculty involved in the programs. LHL has not had the resources to work with law schools to develop “real programs,” but they travel to each of the 8 law schools in the state to raise awareness about wellness issues and to provide information on LHL.

A committee member also noted the data showed that of the new LHL cases approximately one-fifth involve law students. Mr. Leffler attributed this high number to law schools proactively referring students to LHL who might have trouble getting admitted to the bar.

**Agenda Items 5:**

Suicide Prevention Efforts in Virginia – Nicole Gore

**Discussion:**

Ms. Gore provided an overview of suicide statistics in Virginia and discussed the various warning signs and risk factors to be aware of.

She informed the committee she can arrange training sessions on suicide prevention for bar organizations and law schools.
Agenda Item 6:

Closing remarks and task groups.

Discussion:

Justice Mims provided an overview of the four task groups and said he will email the VBA, VTLA an VSB, Young Lawyer’s Conference about the committee’s work. He also suggested the task groups reach out to various bar organizations and peer groups for input and assistance. He provided examples such as the Judicial Council, Association of Virginia Law School Deans, and Old Dominion Bar Association.

Justice Mims also shared a timeline. He anticipates at least two more meetings: (1) in April 2018 at a time and location to be determined and (2) a meeting in Virginia Beach to coincide with the VSB summer conference.

Following Justice Mims’ remarks, the committee broke into individual task groups.

NEXT MEETING: April 2018 (date and location to be determined)

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

12/5/17
SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: April 12, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

OTHERS IN ATTENDANCE: Amy Shane and Darrell Moon of Orrian

ACTIONS OF MEETING

Agenda Item 1:


Discussion:

Justice Mims introduced Ms. Shane and gave a brief overview of the topic she would be discussing with the committee.

During the 45-minute presentation, Ms. Shane discussed a PowerPoint presentation on the six dimensions of wellness. Copies of the presentation slides were distributed to attendees.

Ms. Shane also administered a wellness survey to the attendees.

Agenda Item 2:

Live Telephone Presentation by Darrell Moon, CEO of Orrian: “Strategies for Managing Mental Health Challenges.”

Discussion:

Mr. Moon has become a national expert on behavioral health in the workplace. Mr. Moon worked on the “treatment” side of mental health before he began working on the preventative side.

He discussed ways to improve mental health in the work place:

1. Increase awareness about the issue. Although many employer insurance plans have Employee Assistance Programs to address mental health issues, the programs are under-utilized.

2. Coordinate Care: After someone seeks treatment, it is important a case manager be involved to coordinate treatment across disciplines and ensure all treatment needs are being addressed.
3. **Keep people in care.** An engaged case manager can improve treatment retention.

After Mr. Moon’s presentation, he took several questions from the committee.

One member asked how he addressed resistance from organizations about well-being programs and the data he used to convince organizations to adopt well-being programs. In response, Mr. Moon discussed the concept of participatory underwriting. Under this concept, everyone in an organization “pays into the pot” and those who don’t want to participate subsidize those who do participate. It increases the number of contributors. Participatory underwriting can increase health and productivity in populations.

Justice Mims commented that law firms currently recognize the connection between physical well-being and productivity. The next step is to convince them how other aspects of well-being will also increase productivity. He asked which organizations could promote the message that employees and employers benefit from balance.

Mr. Moon next discussed the concept of “if then” rewards as incentivizing employees to adopt healthy behaviors. While the concept gets people to do simple tasks, it is less effective at getting people to change complex behaviors. An organization can use an “if then” reward to get employees to the table and to “connect” to other individuals.

Mr. Moon mentioned that the Utah Bar Association was conducting work on wellness issues and he would provide Justice Mims with a contact he could use to obtain more information about their work.

At the conclusion of the presentation, members offered their insights on changing wellness in the profession, the obstacles to doing so, and the reasons attorneys struggle with wellness.

Justice Mims also discussed a VSB journal article on mentoring and read an excerpt of the article about a young attorney’s positive interaction with a mentor.

**Agenda Item 4:**

Presentation on Vicarious Trauma by Katie Uston.

**Discussion:**

Ms. Uston provided an overview of her work on repetitive vicarious trauma, which is trauma attorneys and judges face through long-term exposure to violent crime, damaged families and children, and other traumatic situations they face in their work. Few other professions experience such long-lasting trauma. Ms. Uston noted that simply talking about the issue can help.

David Bobzien discussed interviews he and Lori Lord conducted with juvenile court judges and attorneys from the Attorney General’s office in February. He noted judges act in a caretaker role and can be vulnerable to the trauma they are exposed to in the courtroom.
Mr. Bobzien also discussed interviews he and Ms. Uston conducted with Fairfax circuit court judges who have endured years of MS-13 trials.

The group discussed how habitual pro se litigants can place a strain on judges. There is a tendency to assign the same judge to a repeat litigant, but this can be harmful and can cause the pro se litigant to obsesses about one judge. Judge Tran said he and his colleagues now try to have repeat filers appear before all of the judges in the circuit.

Lori Lord also discussed her impressions from the vicarious trauma interviews she participated in. Attorneys prosecuting child sex crimes said being surrounded by understanding colleagues, working with other professionals, including law enforcement professionals, who understand the issues, and attending national conferences with attorneys who do the same work were helpful to them. She said the Public Sector task group would provide a list of clinical practitioners and other experts in its final report. These practitioners could be called upon to present on vicarious trauma and other substantive issues that would help a wellness program be approved for CLE credit.

**Agenda Item 5:**

Update on **Private Sector Task Group** by Lee Livingston and David Harless.

[Note: Mr. Livingston distributed this task group’s full written proposal by email on April 9, 2018]

**Discussion:**

The task group sought feedback from private bar groups, but got limited responses. The task group made the following recommendations:

1. Formation of a blue ribbon commission to address wellness in the profession.
2. Change LHL’s structure and convert it into an agency of the Supreme Court.
   a. Becoming an agency of the Court will enhance LHL’s credibility and emphasize to the bar the importance of wellness.
   b. Wellness initiatives should come from the Court and be separated from the VSB to distance the initiatives from the disciplinary process. Associating LHL with VSB could discourage attorneys from seeking help. North Carolina’s program could serve as a reference point for how to reorganize the program.
   c. However, if the program is placed with the VSB, it may be more effective in working with firms to adopt a wellness culture. VSB could use its relationship with insures to negotiate rates that would incentivize participation by firms. Data suggest larger firms are dealing with wellness issues more effectively and that smaller firms (fewer than 40 attorneys) are struggling with the issue.
   d. LHL governance should be multidisciplinary—more than just judges and attorneys.
   e. To become more effective, LHL’s budget would need to be doubled. The task group is not suggesting this be done with tax payer dollars. The profession should fund the program. Colorado’s program can be a reference point for funding through bar dues.
3. Recommend changing what is asked of new bar applicants and that the mandatory professionalism course for new attorneys include a wellness component.

4. Change MCLE requirements to include wellness credit. To accomplish this change, the task group recommends CLE reporting be done on a 3-year cycle with 1 hour of wellness required every 3 years. This change may receive pushback from the VSB, which collects $500,000 in annual CLE late fees. The Court would also need to modify the MCLE rule to change the reporting cycle.

*New Task Group:* After the recommendations from the task group, Justice Mims formed a new task group to address creating a Supreme Court agency or department that would be in addition to LHL.

This task group includes: David Harless, Chair; Judge Capsalis; Richard Garriot; Lori Lord; Len Heath.

Justice Mims suggested this task group also work with Dennis Sisk and Tim Carroll.

The committee also discussed the 2009 judicial wellness program and materials about the program were distributed.

**Agenda Item 6:**

Update from Judicial Task Group by Judge Manuel Capsalis.

[Note: Judge Capsalis distributed this task group’s full written proposal by email on April 10, 2018.]

**Discussion:**

This task group recommends adopting the national task force report’s recommendations related to the judiciary (paragraphs 14-19 in the report).

Judge Capsalis also discussed how judges experience stress differently because they are isolated from other professionals. The task group also recommended the Judicial Inquiry and Review Commission’s rules be reviewed with a focus on rehabilitation. Even if there is a basis for removal of a judge, the rules could be amended to allow for some discretion over whether the case is certified to the Court. Under the current system, there is an institutionalized disincentive for judges to seek help.

This task group proposed a wide-ranging judicial well-being survey be conducted with LHL and the Office of Executive Secretary.
**Agenda Item 7:**

Update from Law Schools/VBBE Task Group by Catherine Hill.

**Discussion:**

Ms. Hill discussed the ABA’s recommendation on bar applicant questions regarding conduct and behavior. She emphasized there should be an effort to educate law students about the character and fitness process. She also discussed the adoption of essential eligibility requirements like other states have done, but noted Virginia has implicit essential eligibility requirements.

The task group supports the recommendations from the national task force specific to law schools. The task group also believes law schools should consider adopting policies to monitor attendance.

**Agenda Item 8:**

Closing Remarks by Justice Mims

**Discussion:**

Justice Mims provided an overview of the June meeting. He would like the four task groups to finalize their reports in time for the June meeting. Justice Mims suggested the private sector task group see if they could find a representative from the North Carolina attorney wellness program to speak at the June meeting. He also discussed the work that would need to be done after the June meeting to generate a final report and to obtain approval by the full Court for any final proposal on LHL and CLE rule changes.

The meeting adjourned at 5:30 p.m.

**NEXT MEETING:** June 13, 2018 at VSB conference in Virginia Beach.

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

04/24/18
SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: June 13, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Virginia, Beach, Virginia.

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ACTIONS OF MEETING

Agenda Item 1:

Welcome Remarks -- Justice Mims

Justice Mims informed the committee he anticipated the four task groups would complete their reports within three to four weeks.

Agenda Item 2:

Live Presentation by Robynn Moraites, Executive Director, North Carolina Lawyer Assistance Program (LAP™).

Discussion: 2:05 to 2:57 p.m.

Lori Lord introduced Ms. Moraites who discussed the history and changes LAP has undergone since its founding in 1970 as a volunteer program. LAP was initially modeled after Alcoholics Anonymous. It became an official state bar program in 1994 and hired a director. In 1994, the program had approximately 50 files. As bar membership increased, LAP increased the number of funded positions. Currently, the program has 3 clinical staff, 2 administrative staff and an executive director. The clinical staff cover three separate parts of the state (Eastern, Piedmont, and Central). Clinical staff are licensed. LAP has 250 active volunteers.

In 2001, North Carolina instituted mandatory CLE for alcohol and drug abuse issues. This CLE rule change has led to a significant increase of cases referred to LAP. In 2000, LAP had approximately 100 active files. However, by 2002, over 500 files were active. Currently, LAP has 800 active files.

Typically, 100 to 125 files are opened each year. On average, 600 files are active at any given time. North Carolina has over 28,000 active bar members. Thus, LAP has a 2% utilization rate. Half of all cases are “self-referred”; 40% by friends or co-workers; and 10% from 3rd party entity (law firm, court).
LAP has a $750,000 budget: staffing and marketing are biggest expenditures. Because of the mandatory CLE every three years, LAP staff conduct over 100 presentations annually.

LAP also uses its budget to pay for volunteer conferences/retreats (hotel and meals). Additionally, LAP is involved in a minority outreach conference.

Mandatory CLE is LAP’s biggest marketing tool. The more CLE programs LAP presents the more referrals it receives. On average, LAP receives one referral for each CLE presentation.

LAP historically focused on alcoholism, but CLE topics have been expanded to broader topics applicable to the rest of the bar: work life balance, compassion fatigue.

As the mission of the program expands from alcoholism to other wellness issue, Ms. Moraites noted there is resistance (an “uprising”) from original volunteers. When programs expand to mental health and wellness, there is a risk to the program. Ms. Moraites cited Washington State as an example of a top-notch program which declined because an expansion was not managed properly.

With LAP programs, Ms. Moraites’ experience has been, “If you build it they will come.” In Louisiana, there were only 9 cases per year. The year after full funding more than 700 cases were opened. West Virginia also experienced a substantial increase after full funding.

In response to questions from the Committee, Ms. Moraites stated the NC program is funded through bar dues ($325 per member). She also noted some states like Louisiana obtain funds through a per lawyer assessment.

She also stated only a small percentage of the LAP cases are judges -- 1 to 3 % -- and she does not know the utilization rate for judges in the state. As to referrals from the state bar, 3 to 5% of cases are referred by the disciplinary board.

The North Carolina Supreme Court has no oversight or involvement in the LAP program. Oversight is by the State Bar only.

**Agenda Items 3:**

Live Skype Presentation by Laurie J. Besden, Executive Director, Pennsylvania Lawyers Concerned for Lawyers (“LCL”).

**Discussion:** 3:00 to 3:45 p.m.

Ms. Besden shared her background and told the Committee how important LCL had been in helping her recover from an addition. LCL started in 1988 as a non-profit and now operates as an agency of the Supreme Court. LCL is funded from two separate agencies, which in turn are fully funded from bar fees ($225 per member). Pennsylvania has 49,000 active bar members. The current annual budget is $727,000, which equates to approximately 5% of bar fees.
They conduct no in-house assessment or treatment, but operate as a “nexus” for treatment resources. Staff devote a lot of time to marketing. LCL first got state funding in 1994. The program has contracts with health care providers in each county. They try to match insurance with providers. For those unable to pay, they have a fund that can cover costs of treatment. The program relies heavily on volunteers. Confidentiality agreements are required for all volunteers.

The program spends approximately $15,000 annually on literature. The program has 5 full and part time staff. No clinical staff.

LCL maintains a 24/7 phone helpline. In 2017, the helpline received 483 calls. In 2017, LCL conducted 228 CLE programs. Ms. Besden stated that almost every CLE presentation brings a new case to LCL. Judges Concerned for Judges (“JCF”) falls under the LCL umbrella. In reference to the JCF, Ms. Besden also discussed the concept of, “if you build it they will come.” In 2012, before implementing a helpline devoted to judges, LCL received 6 contacts from judges. However, since the JCF helpline was started, contacts from judges have jumped to 78 per year, as of 2017. LHL participates in the orientations of all 9 of the state’s law schools and has a presence in professional responsibility classes.

While taking questions from the Committee, Ms. Besden clarified that of the calls LCL receives 15% relate to questions and guidance for the caller to approach an impaired attorney. Of the calls from judges, 1/3 related to assistance for the judges personally. The remaining calls were in regard to attorneys the judges were concerned needed assistance.

**Agenda Items 5:**

Update from David Harless.

Mr. Harless provided an update on proposed plans for implementing a special committee’s recommendations regarding providing increased funding to Virginia’s LHL. Mr. Harless proposed the Supreme Court’s Office of the Executive Secretary have staff members devoted to wellness issues who work with an advisory committee appointed by the Court.

Mr. Harless also discussed funding sources. The first step is to educate the General Assembly on the need to raise bar dues above the current cap. During this process, LHL will continue to be a stand-alone, independent organization. LHL staffing cannot increase until funding increases are approved. A portion of the new funding would go to one full time position and a part time position in the education division of the Office of the Executive Secretary. LHL would also enter a memo of understanding with the Court on provision of services.

A new rule of court regarding CLE wellness credits might be needed. Wellness CLE credits would not have a cap but would not be eligible for ethics credit. The Court would develop on-line CLE content available at no charge for bar members. The initial recommendation is that wellness CLE not be mandatory.
**Agenda Items 6:**

Closing remarks

A law student wellness summit is being planned at the University of Virginia on February 5-6, 2019, which will be hosted by Virginia CLE.

Justice Mims asked that each task group complete their reports by July 17 and circulate final drafts. In late August, the Court will hold a retreat and Lori Lord and David Harless will present the committee’s recommendations to the Justices. The next committee meeting will take place on September 6, when a vote on all the recommendations will be held.

The meeting adjourned at 4:00 p.m.

**NEXT MEETING: September 6, 2018 in Richmond.**

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

06/15/18
SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: September 6, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Richmond, Virginia.

______________________________

ACTIONS OF MEETING

Agenda Item 1:

Live Presentation by Peggy Wood, Program Manager for Virginia Health Practitioners’ Monitoring Program (“HPMP” or “program”), and Janet Knisley, Ph.D, Administrative Director of the program.

Discussion: 1:00 to 1:45 p.m.

Ms. Wood and Dr. Knisely gave a PowerPoint presentation on the structure and funding of the HPMP. They also discussed the intake and monitoring process for program participants.

HPMP has a staff of 14 full-time employees, including 7 case managers, plus 2 part-time employees. Each case manager handles approximately 75 cases. The program serves all licensed health practitioners or those with pending applications for a license or those seeking reinstatement of a license. Most participants in the program are non-voluntary. Approximately 40% of participants are ordered into the program; 15-20% are under investigation at the time they enter; 7% are self-referrals; and the remainder are referred by employers.

The program serves a population of approximately 400,000 health professionals in Virginia. There are approximately 38,000 physicians, 14,000 pharmacists, and 7,000 dentists covered by the program. Of this population, approximately 10-12% are estimated to be at risk. However, approximately 1% are treated through the program.

HPMP is seeking additional money for treatment because participants are responsible for payment for their own treatment. The largest obstacle to successful outcomes is the unavailability of treatment center. The program sees higher success rates for those who voluntarily enter the program because they tend to begin treatment at the early stage of an illness/impairment.

Ms. Wood noted that the electronic monitoring platform they use is quite helpful and the software could be easily adapted by other groups.
Agenda Item 2:

Committee Discussion and Vote on Draft Report

Discussion: 1:45 to 2:50 p.m.

Justice Mims requested members provide him with any suggested changes immediately because he plans for the report to be finalized by September 7. After finalization and approval by the committee, it will be sent to Chief Justice Lemons for review on September 10. Chief Justice Lemons will meet with Governor Northam on September 12 to discuss a budget amendment funding the report’s recommendations. In the coming weeks, the final report will also be discussed at the Lawyers Helping Lawyers (“LHL”) board meeting and at the Virginia Bar Council meeting.

In reference to the draft report, the members discussed whether there were any inconsistencies between the task group reports and the full committee’s recommendations that should be revised. In particular, the group discussed the issue of mandatory CLE for wellness which the private task force group recommended but the full report omits. Justice Mims indicated he does not view this as a conflict. He also stated he does not want to downplay or change task group recommendations because they are particularized to each of the working group’s constituencies. It was suggested a footnote be added to explain the full committee reached a consensus on handling wellness CLE through a mandatory reporting rather than mandatory attendance. Justice Mims will circulate additional language on the CLE issue for the final report.

The committee then discussed the recommended funding mechanism. The funding will occur through a $30 per attorney assessment rather than through bar dues. This charge will operate like the collection of fees for the client protection fund. The money will be collected with annual bar dues and will be transferred to OES rather than to the VSB. OES will enter a memorandum of understanding with LHL for provision of services.

Judge Simmons asked whether the committee had anticipated that some attorneys will question why judges have not been asked to help fund the new program as judges are not required to pay bar dues. A subcommittee did discuss funding by judges but elected not to pursue assessments from the judiciary. Judges are free to donate to LHL, which will remain a stand-alone 501(c)(3) organization.

Mr. Harless made two points about the recommendations: First, this is not a proposal of the legal profession but one from the Supreme Court intended to enhance the protection of the public from impaired attorneys. Second, the recommendations maintain a complete separation between treatment and the regulatory and disciplinary process.

LHL has agreed to amend its governing documents to allow the Supreme Court to appoint up to one-third of the members of LHL’s board.

Justice Mims noted that the program manager at the Supreme Court will be key to implementing the committee’s recommendations. OES will create a position to manage the program and this person
will report to Caroline Kirkpatrick, the director of OES’ Educational Services Division. This person will also take a leading role in providing CLE materials on wellness. If the General Assembly approves the bar assessment, the position should be funded on July 1, 2019.

The budget for LHL will be handled on an annual basis.

At the conclusion of the discussion, a motion was made to adopt the report’s recommendations, including proposed changes to the report discussed during the meeting. The motion passed unanimously.

**Agenda Items 3:**

Implementation of the Report and Closing Remarks

**Discussion:** 2:50 to 3:00 p.m.

Justice Mims distributed a sheet listing volunteer opportunities for implementing the committee’s recommendations. Any recommendations or changes to the volunteer list should be provided to Justice Mims by email.

The meeting adjourned at 3:00 p.m.

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

09/6/18
SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: September 6, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Richmond, Virginia.

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Minutes Prepared by William Childress, Office of Chief Staff Attorney.

09/6/18
Clinical Report

June 2017 through May 2018
New Cases Last 12 Months

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**Report Totals:** 107
Cases By Date, by Problem Last 12 Months

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## Client Role Last 12 Months

![Bar Chart](image)

### Table

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<th>Start Date</th>
<th>Bar Applicant</th>
<th>Family</th>
<th>Law Student</th>
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<th>Non Legal Job</th>
<th>Other Legal</th>
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Total:

- Bar Applicant: 6
- Family: 2
- Law Student: 63
- Lawyer: 1
- Non Legal Job: 7
- Other Legal: 7
- Suspended Attorney: 107
APPENDIX
EXHIBIT 6
NC Lawyer Assistance Program

Robyn Morales, Director

ABAWellness Report Implementation Commission

Summary of Statistics Reported to the VA

Correlative Statistics for VA
direct services clinical work. If lawyers don’t about LAP, they can’t refer. Smaller programs have no time or bandwidth to do outreach – too busy with know and trust us, the more willing they are to reach out for assistance or refer a friend in need. Marketing/Outreach most crucial. The more lawyers hear about LAP, see us at events and CLE, get to
Filles is a significant factor - more so than for some other LAPS (like NC). Louisiana does a great deal of multi-year monitoring, so total open period time frame.

- **2014**: Restructure and staff reduction
- **2013**: First stop gap
- **2012**: Full funding infusion
- **2010**: New director hired; he built a case for full funding infusion outside of ODC referrals.

Correlated with funding infusion and program growth.
5 years into recovery (i.e., before and after LAP involvement)

Study data is combined total of the 5 years before recovery and

Total number of claims or cases

Protections of the Public

Risk Management (Oregon Study)
Overall percentage of lawyers with claims

Malpractice

Discipline

General Population

Lawyers in Recovery

(Oregon Study) Risk Management & Protection of the Public
APPENDIX
EXHIBIT
7
"An Alternative to Discipline"

Monitoring Program

Health Practitioners

[Logo: Health Professions Virginia Department of Health Professions]
Methods of communication between health regulatory boards and vendor's staff.

Establish a process for reporting non-compliance with a contract, order, and/or a law or regulation.

Restrictions on practice and terms of board orders.

Monitor compliance with each participant's contract including initial enrollment (to include eligibility determination).

Toll-Free Telephone #

Scope of Services
MONITORING PROGRAM COMMITTEE
Previous annual payments to HPMP
Budgeting for each board is based on historical cost data.
Participant amount
The agreement between DHP and the vendor establishes the per
participant enrolled in HPMP
Each board is assessed a monthly amount determined by the # of
participants
DHP is a non-General Fund agency fully supported by licensing fees.

BUDGET
Participation Contract, Release of Information

Run Prescriptive Monitoring Program Report (12 mo)

- Admission
- Previous treatment providers (all records relevant to HPMP)
- Obtain records (assessment, treatment reports, lab reports, etc.)
- Progress, treatment plan
- Contact to verify enrollment in treatment, diagnosis, treatment
- Current treatment providers
- Request treatment records

- Monitoring

- Clinical information to determine appropriateness for
- Determine license requirement eligibility

Intake Process
Multiple provider options
- Medication management
- Residential, intensive outpatient program, outpatient
  level of intensity based upon severity of illness
- Treatment
  - Neuropsychological
  - Psychiatric
  - Substance abuse
  - Assessment
  - Monitoring plan

Intake Process (cont)
Dilute/abnormal/invalid

- Nails ($80-$390) 14 panels
- Hair ($80-$390) 14 panels
- Blood ($25-$110) 3 panels
- Urine ($29-$140) 22 panels

Specimens collected

Confirmatory testing

HHS/DOT

Medical Review Officer (MRO) practice - U.S. Department of

Medical Monitoring

Abstinence Monitoring

Medication adherence (e.g. lithium, methadone, buprenorphine,

Third Party Administrator

Toxicology Testing
• Prescription Monitoring Program reports
• Toxicology screening compliance
• Work site, employer, peer monitoring reports
• Treatment provider reports
• Participant reports & meeting attendance logs
• Monthly telephone contact

Monitoring components
• Observed toxicology screen
• Review orientation handbook
• Recovery Monitoring Contract
• Meet with case manager

Program orientation

Case Management
Ongoing Monitoring

- Practice concerns/practice restrictions
- Abstinence/medication adherence
- Reporting requirements
- Treatment attendance/engagement
- Toxicology program
- Monthly check-ins with HMP Monitoring components
- Return to practice
- Provider changes
- Treatment changes
- Contract changes
<table>
<thead>
<tr>
<th>Occupational Risk</th>
<th>Potential Primary Effects</th>
<th>Remediation/Treatment/Cure</th>
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<tbody>
<tr>
<td>Sedentary Nature of Work</td>
<td>Becoming less resilient to cope with mental health issues</td>
<td>Exercise; work/life balance; vacations; regular medical exams</td>
</tr>
<tr>
<td>Long hours</td>
<td>Becoming less resilient to cope with mental health issues</td>
<td>Set appropriate hours for work; work breaks; meditation; vacations</td>
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<tr>
<td>Unusual hours</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Set appropriate hours for work; work breaks; meditation; vacations; manage client expectations; delay delivery of emails to others; especially subordinates (so that they are not receiving assignments</td>
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<tr>
<td>Managing problems of others</td>
<td>Stress, depression, anxiety, PTSD, and sleep disturbance</td>
<td>Maintain your own support groups both inside and outside the profession. For example, inside the profession: lunch with partners, end of day discussions, memberships, and participating</td>
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<tr>
<td>Adversarial nature of work</td>
<td>Stress, depression, anxiety, PTSD, and sleep disturbance</td>
<td>Civility CLEs, participating in professional organizations, court intervention, VSB</td>
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<tr>
<td>Individual work</td>
<td>Loneliness</td>
<td>Join groups (professional, sports, civic, religious, etc.); mentor relationships; build relationships with people you can trust</td>
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<tr>
<td>Client demands</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Establish appropriate client expectations and boundaries; proper client/case selection; if necessary, end attorney/client relationship</td>
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<tr>
<td>Court demands</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Courts need to be educated on wellness issues</td>
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<tr>
<td>Professional demands</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Minimize professional deadlines, such as converting MCLE reporting periods from annual to every three years</td>
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<tr>
<td>Education Debt (College, possible Graduate School, Law School)</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Monitor and limit exposure to traumatic events or material; spread work that may cause vicarious trauma so that participants can provide support to each other</td>
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<tr>
<td>Vicarious trauma</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Get outdoors, seasonal effective disorder awareness and treatment</td>
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<tr>
<td>Working indoors</td>
<td>Depression, becoming less resilient to other mental health issues</td>
<td>VSB ethics hotline; LPL carrier’s risk management provider</td>
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<tr>
<td>Duty of confidentiality</td>
<td>Loneliness, stress, anxiety, depression, sleep disturbance, and becoming less resilient to other mental health issues</td>
<td>Require law schools to teach law firm management courses; take business</td>
</tr>
<tr>
<td>Financial (other than Education Debt)</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Attend meetings of legal professional organizations, participate on bar committees, attend VSB Tech Show</td>
</tr>
<tr>
<td>Occupational Risk</td>
<td>Potential Primary Effects</td>
<td>Remediation/Treatment/Cure</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Technological changes</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Attend meetings of legal professional organizations, participate on bar committees</td>
</tr>
<tr>
<td>External pressures on Lawyer independence</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Educate the public on the importance of a lawyer's independent judgment</td>
</tr>
<tr>
<td>Need to display confidence and conceal vulnerability</td>
<td>Stress, depression, anxiety, work addiction, and sleep disturbance</td>
<td>Attend meeting of legal professional organizations; memberships, maintain relationships outside of “the Law.”</td>
</tr>
<tr>
<td>Lack of diversity in profession</td>
<td>Stress, depression, anxiety, sleep disturbance, and loneliness</td>
<td>Actively recruit and promote minorities; mentorships</td>
</tr>
<tr>
<td>Losing control of professional destiny</td>
<td>Stress, depression, anxiety, and sleep disturbance</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX
EXHIBIT
9
EXPERTS IN WELLNESS

Sergeant Wayne F. Handley
CIT/CISM Program Director
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Norfolk, VA 23502
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Meghan Zwisohn
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Gloucester, VA 23061
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Mzwisohn@gloucesterva.info

Dr. Allison Sampson-Jackson
CEO
Integration Solutions, Inc.
ajackson@integrationsolutions.org
(804) 432-0056
(804) 205-4461
(Trains judges and others about how childhood trauma affects children’s brains and development)

Peter Jaffe, PhD
Psychologist and Professor in the Faculty of Education at the University of Western Ontario and Academic Director of the Centre for Research & Education on Violence against Women & Children
Director Emeritus for the London Family Court Clinic
pjaffe@uwo.ca
Centre for Research on Violence against Women & Children
1137 Western Road, Room 1118
Faculty of Education Building
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(519) 661-4040 ext. 84040
Linda Bryant  
Assistant Superintendent  
In-House Counsel  
Hampton Roads Regional Jail  
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LLB1966@gmail.com

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Boston University School of Theology  
Co-Director of the Religion and Conflict Transformation Program  
745 Commonwealth Avenue, Room B-17  
Boston, MA 02215  
(617) 358-5729  
twporter@bu.edu  
(Trial lawyer, mediator, teacher and minister)

Cathryn Evans  
Deputy Commonwealth’s Attorney  
Office of the Commonwealth’s Attorney for the City of Alexandria  
520 King Street, Suite 301  
Alexandria, VA 22314  
(703) 746-4100  
Cathryn.Evans@alexandriava.gov  
(Deputy Commonwealth’s Attorney in child abuse/neglect section in Fairfax)

Everett A. Martin, Jr., Judge  
Norfolk Circuit Court  
4th Judicial Circuit of Virginia  
150 St. Paul’s Boulevard  
Norfolk, VA 23510-2773  
(757) 769-8539 (Clerk’s office)  
(George E. Schaefer, Clerk)  
gschaefer@circuitcourtva.us

David. Peter Coleman, MD  
(804) 353-1230

Desi Farren  
(703) 464-5122
Christine Galli  
(804) 363-2583  

Tim Hilton  
877-934-4253  

INSTITUTIONAL RESOURCES  

National Council of Juvenile and Family Court Judges (NCJFCJ)  
P.O. Box 8970  
Reno, NV  89507  
(775) 507-4777  
contactus@ncjfcj.org  

National Attorneys General Training & Research Institute (NAGTRI)  
1850 M Street NW, 12th floor  
Washington DC  20036  
(202) 326-6000  
lthrash@naag.org  

Association of Government Attorneys in Capital Litigation (AGACL)  
1108 Lavaca Street, Suite 110 Box 141  
Austin, TX  78701  
agacl@msn.com  
(512) 484-7022  
(Holds an annual conference focusing on technical issues, not on wellness or trauma, for appellate litigators, prosecutors, capital habeas practitioners, method of execution lawyers).  

Sandra L. Karison, Director  
Court Improvement Program  
Office of the Executive Secretary  
Supreme court of Virginia  
100 North Ninth Street  
Richmond, VA  23219  
(804) 786-6455  
skarison@vacourts.gov  
(Provides training in trauma to GALs, court-appointed attorneys, DSS heads, social services attorneys)
Commonwealth’s Attorneys’ Services Council
Jane Sherman Chambers, Director
William and Mary Law School, Room 220
613 South Henry Street
P.O. Box 3549
Williamsburg, VA 23187
(757) 253-4146
jscham@wm.edu

Greater Richmond Trauma-Informed Community Network
Lisa Wright, Community Manager
(804) 257-7226
http://www.acesconnection.com/g/greater-richmond-va-trauma-informed-community-network-

Main SCAN Office, Family Support Program and FAM (Families Are Magic)
103 E. Grace Street
Richmond, Virginia 23219
Phone: (804) 257-7226
Fax: (804) 257-7109
http://grscan.com/trauma-informed-community-network/

Richmond CASA (Court Appointed Special Advocates)
1600 Oliver Hill Way
Richmond, VA 23219
Phone: (804) 646-0516
Fax: (804) 646-0624

Child Advocacy Centers
Directions available upon request
Phone: (804)643-7226
Fax: (804) 643-3529

The Circle Preschool Program
1205 W. Franklin Street
Richmond, VA 23220
Phone: (804) 257-7226
PROGRAM MATERIALS

“Vicarious Trauma/Compassion Fatigue/Secondary Traumatic Stress/Countertransference; So many names for the effects of caring”; March 4, 2015.


http://www.clemetrobar.org/cmba_prod/CMBA/CMBA/Legal_Professionals/Sections_Committees/Committees/Mental_Health/Mental_Health___Wellness_Committeee.aspx

Wellness articles from bar associations around the country:

http://www.clemetrobar.org/CMBA_Prod/cmbadocs/About/July_August_Journal.pdf

Beginning in 2010, the Cleveland Metropolitan Bar Association’s Task Force on Mental Health & Wellness coordinated an effort to increase awareness of mental health issues among attorneys by featuring these nine articles in the CMBA Bar Journal written by behavioral health care professionals and practicing attorneys:


http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety

https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf


http://www.vsb.org/docs/conferences/young-lawyers/dc_s2018.pdf (p. 5)
APPENDIX

EXHIBIT

10
Public Employer “Best Practices” in Support of Attorney Well-being

Foundation

Strong leadership support: Agency/organization leaders must show commitment to well-being in policy adoption; by regular messaging directly from the leader(s) – not HR – regarding the importance of prioritizing wellness and well-being; and by personally discussing/endorsing well-being matters (via newsletters, all-staff emails, at group gatherings). Leader should even consider a signed, regular mail letter to each employee’s home address stressing commitment.

Clarify Focus (via the written policy): Five elements: (1) physical health and fitness, (2) mental health, (3) work-life balance, (4) nutrition & sleep, (5) responding to lawyers in distress as observed or reported.

Evaluate to Learn and Set Baseline for Change and Improvement: Survey (anonymously with freedom to voluntarily self-identify) how employees feel about existing workloads; ask about workplace and outside contributors to stress and anti-wellness behavior/habits; ask what promotes their productivity and feeling of well-being; ask what they want to see us do to promote their best wellness interests. (And continue to survey periodically to assess effectiveness of efforts informed by the baseline information).

Formation of Wellness Committee: Committee of peers and managers will be tasked to lead the Office’s efforts with respect to attorney/employee well-being.

Topics for Inclusion in Wellness Program (Coordinated by Committee)

Physical Health and Fitness

1. Actively encourage “walking” meetings where conditions and subject matter permit.
2. Provide support and resources for tobacco cessation programs.
3. Provide support and resources for weight loss programs (e.g., Weight Watchers At Work)
4. Promote the formation of recreation-league sports teams.
5. Form fitness meet-up groups (walking clubs, training teams for local races)
6. Provide stand-up desks upon request.
7. Schedule ergonomic seminars.
8. Encourage friendly competitions with team captains (i.e. most steps walked, etc.).
9. Offer health screenings – maybe in coordination with other government agencies/insurance provider/administrator.
10. Sponsor flu shot clinics.
11. Include a health-tips and healthy recipes page in newsletters or all-staff email messaging.
12. Ensure that leaders/managers participate in as many of the health and fitness programs as possible.

**Mental Health**

1. Establish attorney mentoring/“buddy” programs to better ensure formation of relationships that promote disclosure of well-being issues.
2. Provide designated relaxation space(s) in the building and encourage brief “timeouts” for those who find them useful.
3. Encourage peer groups to form and meet at lunch times (in the work building or grounds) or after work around activities and common interests/concerns (i.e., working mothers, gardeners, book groups, adult caregivers).
4. Offer introductions to meditation, mindfulness, or yoga classes.
5. Provide outlets or targeted counseling for attorneys working on traumatic cases (involving violence, child endangerment/abuse and exploitation, etc.).
6. Establish employee recognition programs – monetary or nonmonetary rewards for achievements or for demonstrating commitment to stated office values in both substantive work and well-being activities.

**Work-Life Balance/Quality-of-Life**

1. Allow flexible work schedules.
2. Schedule financial seminars/brown-bag lunches.
3. Provide lactation rooms for new mothers.
5. If possible, use “PTO” (personal time off) for leave, rather than prescribed leave types (sick leave, vacation leave, etc.) OR increase leave amounts for school- or family-related or community-service leave.

**Nutrition & Sleep**

1. Host tastings and recipe swaps.
2. Replace vending machine choices with healthier food choices.
3. Offer nutrition consulting and seminars (perhaps as part of a brown-bag lunch series offering).

**Responding to Lawyers in Distress**

1. Increase awareness of existing Bar programs (Lawyers Helping Lawyers).
2. Increase awareness (or remind employees) of your Employee Assistance Program and how it really works.
3. Establish policies that encourage attorneys to reach out for help without fear of retribution.
4. Include as a required part of periodic performance conversations/evaluations a “check up” inquiry about how the employee is adjusting/coping or otherwise handling the job (mindful of legal implications around privacy, disability laws, etc.).
5. Assemble a team of attorneys willing to volunteer to provide confidential mentoring or guidance to other attorneys about handling work load, or difficult client relationships, and other work difficulties that may compromise well-being

Other Ideas

- Wellness-specific newsletters or communications (like the Weekly Wellnote, a topical newsletter put out by the state’s CommonHealth program) or provide a regular wellness feature in a general employee newsletter.
- Brown-bag lunches with topical health conversations.
- Collaborate with other state/local government agencies to contribute speakers, consultants, spaces, experiences or activities in the implementation of the well-being program (e.g., Dept. of Health, Va. State Parks, higher education facilities).
- Use health insurance providers that include rewards or other financial incentives, such as reducing health insurance premiums, by completing a health assessment or flexible spending accounts.
- Increase awareness of access to health discounts through CommonHealth.

**These practices are currently in place or under active consideration in many public sector attorney workplaces in the state and, of course, apply to all agency staff.**
The Occupational Risks of the Practice of Law

May 2019
INTRODUCTION

On August 14, 2017, a landmark report on attorney well-being was published by the National Task Force on Lawyer Well-Being (National Task Force). The National Task Force was established by the ABA Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers. The report described in great detail the wellness deficiencies that exist within the legal profession.

The report was a clarion call to the profession for critical self-examination and evaluation. The National Task Force Report has been a motivating factor in numerous bar associations studying the wellness problem and recommending changes. As an example, the American Bar Association has published numerous articles, conducted timely and thorough educational programs, and prepared a wellness tool kit that can be used for large law firms in addressing the wellness crisis. At the state level, both mandatory and voluntary bar associations have sought to identify the signs of mental health problems, to identify resources for lawyers who need treatment, and to strengthen judicial and lawyer assistance programs. Local bar associations have also presented continuing legal education programs on the wellness initiative.

However, little has been done to “drill down” to the reason that lawyers experience wellness problems at a disproportionate rate when compared to the public as a whole. Unlike other occupations that educate and prepare participants for the specific occupational risks they face, thus far little, if any, attempt has been made to identify the occupational risks to an attorney’s well-being. This dearth of information and resources served as the impetus for this Committee and its report. Stated simply, before the wellness crisis can be properly addressed, the root causes of the wellness issues must be identified. Once identified, participants in the profession will hopefully become educated and informed of the risks, so that those risks can be avoided or at least the effects of those risks can be mitigated.

This Committee was established with the sole mission of producing this report, which identifies at least some of the occupational risks of the practice of law. This Committee was tasked with completing its report during the term of the 80th President of the Virginia State Bar.
The Committee

The president of the Virginia State Bar selected twenty individuals, including himself, who exhibited a unique skill set applicable to the wellness initiative or stated an interest in the wellness initiative. These twenty members represent a broad spectrum within the legal community. The committee consists of former presidents of statewide bar associations, a law professor, a senior vice president of the Virginia State Bar’s endorsed lawyer professional liability carrier (ALPS), staff from the Virginia State Bar, an employee of Lawyers Helping Lawyers, and lawyers representing a diverse cross-section of the legal profession. The members of the committee are as follows:

Joseph Meek Bowen, Esq.
Bowen & Bowen, P.C.
Tazewell, VA

Martha JP McQuade, Esq.
McQuade Byrum P.L.L.C.
Alexandria, VA

Graham Keith Bryant, Esq.
Supreme Court of Virginia
Richmond, VA

Sharon D. Nelson, Esq.
Sensei Enterprises, Inc.
Fairfax, VA

Timothy Carroll
Lawyers Helping Lawyers
Richmond, VA

Chris Newbold
ALPS Lawyers’ Malpractice Insurance
Missoula, MT

Larry O. Natt Gantt II, Esq.
Regent University School of Law
Virginia Beach, VA

James Harrison Powell II, Esq.
Heath, Overbey, Verser & Old, P.L.C.
Newport News, VA

Robert C. Goodman Jr.
Kaufman & Canoles, P.C.
Norfolk, VA

Prescott Lee Prince, Esq.
Virginia State Bar
Richmond, VA

Shemeka Christina Hankins, Esq.
Invictus Law
Virginia Beach, VA

Dusty Sparrow Reed, Esq.
Sparrow Miller, P.L.L.C.
Arlington, VA

Leonard C. Heath Jr., Esq.
Heath, Overbey, Verser & Old, P.L.C.
Newport News, VA

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Biberaj, Snow & Sinclair, P.C.
Leesburg, VA

Kamala Hallgren Lannetti, Esq.
Virginia Beach City Attorney’s Office
Virginia Beach, VA

Kathleen Maureen Uston, Esq.
Virginia State Bar
Richmond, VA

Ronald Lee Livingston, Esq.
MichieHamlett
Charlottesville, VA

Brian Thornton Wesley, Esq.
Thornton Wesley, P.L.L.C.
Richmond, VA

James Michael McCauley, Esq.
Virginia State Bar
Richmond, VA

Cooper Ginsberg Gray, P.L.L.C.
Fairfax, VA
In addition to the tasks assigned to each member, individual members agreed to serve as chairs of subcommittees. Those chairs are:

   Larry O. Natt Gantt II, Esq.
   Kamala Hallgren Lanetti, Esq.
   Prescott Lee Prince, Esq.

Finally, two individuals agreed to serve with the president as editors of this report. Those co-editors are:

   Graham Keith Bryant, Esq.
   James Harrison Powell II, Esq.
Historical Background for the Wellness Initiative in Virginia

In Virginia, Lawyers Helping Lawyers\(^1\) conducted two surveys on substance abuse and mental health. The first was conducted in 2008 and the second, which was co-sponsored with ALPS, was conducted in 2014. Both surveys substantiated the belief that lawyers in Virginia experience significant mental health and substance abuse issues. The 2008 and 2014 surveys were based upon responses from 1,993 Virginia lawyers and 2,721 Virginia lawyers, respectively. Those studies reflected the following:

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has the use of any substances affected either your work as a lawyer or your personal life?</td>
<td>No – 87%</td>
<td>No – 87%</td>
</tr>
<tr>
<td></td>
<td>Yes – 13%</td>
<td>Yes – 13%</td>
</tr>
<tr>
<td>Have personal mental health problems affected either your work as a lawyer or your personal life?</td>
<td>No – 76%</td>
<td>No – 80%</td>
</tr>
<tr>
<td></td>
<td>Yes – 24%</td>
<td>Yes – 20%</td>
</tr>
<tr>
<td>Has the use of any substance or personal mental health problems affected either your work as a lawyer or your personal life?</td>
<td>No – 69%</td>
<td>No – 68%</td>
</tr>
<tr>
<td></td>
<td>Yes – 31%</td>
<td>Yes – 32%</td>
</tr>
</tbody>
</table>

On a national level, the results of two large studies analyzing the legal profession were published in 2016. The first report was published by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelton Betty Ford Foundation. That study covered 13,000 currently practicing lawyers and found that between 21% and 36% qualify as problem drinkers, and that approximately 28%, 19%, and 23% are struggling with some level of depression, anxiety, or stress, respectively.

The effects of these mental health problems included suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a diversity crisis, work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception. Significantly, the ABA study found that younger lawyers in the first ten years of practice and those working in private law firms experience the highest rates of problem drinking and depression.

The second study covered fifteen law schools and over 3,300 law students. It found that 17% of law students experienced some level of depression, 14% experienced severe anxiety, 23% had mild or moderate anxiety, and 6% reported serious suicidal thoughts in the past year. When it came to alcohol consumption, the results were even more dramatic. Forty-three percent reported binge drinking at least once in the prior two weeks and 22% reported binge drinking two or more times during that period. One quarter of the participants fell into the category of being at risk for alcoholism, for which further screening was recommended.

\(^1\) Lawyers Helping Lawyers will be changing its name to the Virginia Judges and Lawyers Assistance Program in the near future. This report will continue to refer to the organization as “Lawyers Helping Lawyers” to avoid confusion because the transition to the new name has not occurred at the time of publication. Regardless of its name, the organization’s mission remains the same.
The results of these two national surveys demonstrated that lawyer well-being issues could no longer be ignored. Acting for the benefit of all lawyers, the National Task Force was established.

On August 14, 2017, the National Task Force on Lawyer Well-Being Report, entitled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” was published. That report can be found at https://perma.cc/EY3P-5G9P. In the cover letter that accompanied the report, the co-chairs of the National Task Force wrote as follows:

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.

Significant to Virginia is the fact that one of the co-authors of the report is our own Chief Justice Donald W. Lemons. In addition, the Virginia State Bar’s Kathleen M. Uston served as a peer reviewer for the report. Finally, Chris L. Newbold, Executive Vice-President for ALPS Corporation and ALPS Property & Casualty Company served as a co-author. Mr. Newbold has a long-standing relationship with the Virginia State Bar because ALPS has served as the VSB’s endorsed lawyer professional liability insurance carrier. He has provided input and guidance to the VSB Lawyer Insurance Committee. Mr. Newbold and Ms. Uston serve as members of this committee.

On June 15, 2018, Leonard C. Heath Jr. was sworn in as the 80th president of the Virginia State Bar. In his inaugural address at the Virginia State Bar annual meeting in Virginia Beach, he announced that the wellness initiative would be at the forefront of his activities in the coming year. President Heath concluded his acceptance speech with the following call to arms:

As we move forward this year, the “experts” on lawyer well-being are the attorneys across this great commonwealth who, day in, day out, actually practice law. We are the ones who must participate in critical self-evaluation, not only for ourselves, but for our families, and for those attorneys yet to come.

With the support of both the Supreme Court of Virginia and the leadership of the Virginia State Bar, the wellness initiative has made major strides forward in Virginia. The Virginia State Bar has initiated a number of changes. The following are just a few examples of the changes made.

First, Rule 1.1 of Virginia’s Rules of Professional Conduct has been amended, adding a new comment 7, which calls attention to the fact that maintaining well-being is an aspect of maintaining competence to represent clients. Second, rules governing Virginia’s disciplinary system have been modified to facilitate retirement for a lawyer suffering from a permanent impairment, such as an irreversible cognitive decline, by allowing retirement with dignity instead of having the lawyer’s license suspended on impairment grounds. Third, the disciplinary process has also been modified so that when information of possible mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulatory matters, confidentiality rules will now allow sharing of such information with lawyer assistance programs.

Referencing the National Task Force Report, Virginia’s Mandatory Continuing Legal Education Board modified and expanded its Opinion 19 dealing with attorney well-being issues. While the opinion only reinforces past practices of the board, the opinion is now designed to make it abundantly clear that attorney well-being topics will be granted CLE credit, so long as other requirements of the MCLE process are satisfied.

Predating the National Task Force Report, in April 2017 the Virginia State Bar Young Lawyer’s Conference established its Wellness Initiative, which focuses on raising awareness of lawyer well-being, providing related resources to its members, and working to eliminate the stigma associated with seeking treatment for mental health and substance abuse. The YLC was already working on wellness issues because previous literature noted that substance abuse and untreated mental health issues were more significant with lawyers in their first years of practice.

Finally, members of the Supreme Court of Virginia, the Virginia State Bar president, and numerous members of the Virginia State Bar counsel staff have spoken both locally and nationally on attorney well-being issues. Uniformly, the leadership of our legal community believes that education and understanding is a major component of addressing the wellness crisis.

Motivated by the National Task Force Report, Chief Justice Lemons appointed a group of judges, bar leaders, prominent attorneys, and law school deans to study attorney wellness issues in the Commonwealth of Virginia. Chaired by Justice William Mims, the committee published its own report entitled A Profession at Risk: Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia, which is available at https://perma.cc/78W3-4JNF.

At the heart of this report was a recommendation that Virginia’s lawyer assistance program, Lawyers Helping Lawyers (LHL), have a permanent, reliable, and adequate funding source paid from bar dues of Virginia’s lawyers. The report further recommended that LHL serve as the state’s designated judge/lawyer assistance program (JLAP). Further, the report recommended that JLAP should serve not only the needs of Virginia’s judges and lawyers, but also
Virginia’s law students, particularly given the fact that recent studies revealed that wellness issues arise as early as the second year of law school.

In addition to all of these actions, VSB President Heath established this Committee on Lawyer Well-Being to research and identify specific risks to the occupation of the practice of law. In investigating these risks, the committee was mindful of the following three observations. First, the wellness crisis is not about big firm versus small firm cultures, or being in private practice versus being in government practice. However, the effect of a particular occupational risk may be dependent on these variables in the professional community. Second, when it comes to “wellness,” one size does not fit all. What one attorney finds helpful to maintain a healthy lifestyle may not work for another lawyer. Each of us needs to find what works given our own particular personalities, practices, and lifestyles. Third, while the wellness initiative must address the specific needs of impaired lawyers, the vast majority of lawyers who will suffer some wellness issue will never suffer to the extent of becoming impaired. It is perhaps this group of lawyers that will benefit the most from this report.
Assignment of the Committee

This committee was tasked with identifying specific aspects or characteristics of the practice of law that might serve as a risk to a lawyer's well-being. After attending numerous conferences nationwide, President Heath had compiled an initial list of risks in a matrix format that was attached as Appendix Exhibit 8 to the report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia. Much of this committee's work was devoted to refining this list of risks. This report contains a final matrix of twenty occupational risks.

At its initial meeting on September 17, 2018, the committee elected to identify each risk, describe the potential effects, list resources available to learn about each risk, and publish practice pointers for both individuals and legal organizations to help avoid or mitigate each risk. At its second meeting on November 13, 2018, the committee decided to expound on the description of each occupational risk. Each member of the committee was tasked with gathering information, documentation, and resources that identify and explain specific risks of the practice of law. The raw data and documents were then delivered to the editors of this report, Graham K. Bryant and J. Harrison Powell II, on November 30, 2018. The editors were assigned the substantial task of compiling the resources gathered by the committee members and distilling that information into a usable document. Thereafter, the committee reconvened for conferences on January 15, 2019, and March 7, 2019, and a telephone conference on March 28, 2019, to make final improvements and edits to the report.

The occupational risks discussed in this report are divided into four categories. “Physical Risks” are those that directly affect a lawyer’s bodily health. “Mental and Emotional Risks” refer to conditions of law practice that harm psychological well-being. “Adaptation Risks” are related to the changing nature of law practice in the twenty-first century. Finally, “Self-Actualization Risks” borrow from the final tier of Maslow’s hierarchy of needs and refer to situations that prevent lawyers from flourishing or reaching a state of contentment between their professional, social, and personal lives.

Following this introduction is the final matrix of occupational risks to lawyer well-being, which provides a concise overview of each identified risk, its potential effects, and steps individuals and organizations can take to mitigate the risk. Most of the practice pointers for “organizations” are submitted for law firms. But some of the recommendations are directed to law schools, bar associations, bar examiners, and the courts, because those organizations can have an effect on the identified risk to lawyer well-being. Following the matrix is the body of the report consisting of substantive discussions of each occupational risk, along with some concluding remarks. Finally, the report ends with a resources section that both functions as a bibliography for the discussion sections and contains recommended materials for further reading tailored to each occupational risk. The committee decided to enhance the report’s readability by inserting footnotes in the text only when directly quoting or referencing another source. By functioning as a bibliography, the resources section guides the reader to other sources that the committee relied upon in drafting the report, but that were not directly cited or referenced in the text.

This report will be formally presented at the 81st Annual Meeting of the Virginia State Bar in Virginia Beach, Virginia on June 14, 2019.
Goals of the Committee

This report is a product of the committee’s discussions, research, and experience as practicing lawyers and legal professionals. The committee did not perform its own studies because previous studies have already documented the lawyer wellness crisis. Nor is this report intended to be academic in nature, and it accordingly dispenses with many conventions of legal academic writing to promote readability. This decision was made to further the committee’s two goals in publishing this report. The first was to serve as an accessible resource for all those participating in the legal community, including lawyers, judges, law students, legal assistants, law office staff, and clerks of court and their staff.

In addition, this report is intended to help those who, despite lacking familiarity with the legal profession, may nonetheless be most keenly aware of lawyers’ or judges’ wellness issues: the spouse, significant other, and family members of an affected legal professional. This report is designed to serve as a resource to help identify particular risks, to provide knowledge about the risks, and to offer recommendations to both individuals and legal organizations on how to avoid, minimize, or mitigate the effects of such risks. While some risks may be avoidable, others are not. However, before an individual can take action to avoid, minimize, or mitigate the risks, the individual must be aware of and made knowledgeable about them.

This report is a compilation of research about specific risks, as well as a summary of the life experiences of the committee members. With this in mind, the second goal of the committee in publishing this report is to prompt discussion and further study. This report is designed to be a first step.

It is the committee’s hope that others will build upon the report, identify new risks, perhaps consolidate other risks, and establish procedures and protocols to better address and understand each risk. The occupational risks to the practice of law must become part of professional responsibility courses in law schools. Whether this particular report is used, or others that follow, law students must be taught about the risks, how to recognize them, and how to handle them.

Dedication

Lastly, this report is dedicated to the memory of our friend and colleague, David P. Bobzien, the 66th president of the Virginia State Bar, and his unwavering commitment to advancing wellness in our profession.
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### Matrix of Occupational Risks to Lawyer Well-Being

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<th>PHYSICAL RISKS</th>
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<td><strong>Risk Description</strong></td>
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| Sedentary Nature of Work | Lawyers spend most working hours (and off-hours) in the seated position. Mounting evidence suggests that prolonged sitting can be as serious an issue as obesity and smoking, and can pose serious health risks, including an elevated risk of mortality. Computer slump can cause hunched shoulders and neck problems leading to long-term postural problems. | • Understand the risks associated with physical inactivity.  
• Make efforts to add more movement to daily routines, even in activities as mundane as taking a walk at lunch or using the stairs rather than the elevator.  
• Set periodic reminders to stand up and stretch during the day.  
• Use ergonomic equipment, standing desks, walking desks, and balance boards for standing.  
• Have a regular exercise routine.  
• Stay current on medical appointments. | • Recognize the sedentary nature of legal work and encourage employees to stay active.  
• Consider subsidizing gym memberships and purchasing ergonomic office equipment as part of an overall benefits package for employees.  
• Adopt policies permitting employees to take stretch breaks and to otherwise get up and move throughout the day.  
• Educate employees on posture risks, including computer slump, and best practices for avoiding it.  
• Provide healthy food and non-alcoholic beverage options at firm events. |
| Managing Long and Unusual Hours | The competing demands of clients, employers, and the judiciary take a toll on a lawyer’s time and energy. The result is a profession characterized by long and unusual working hours that can lead to stress, exhaustion and, ultimately, burnout. | • Recognize there are only 24 hours in a day and adopt better habits that make the most of the time allotted.  
• Plan out each day, prioritizing tasks based on their importance and urgency, and avoid interruptions until the task is completed.  
• Stop procrastinating by breaking up large and unwieldy tasks into smaller, more manageable pieces.  
• Establish reasonable expectations regarding clients’ access to lawyers.  
• Take regular vacations. | • Consider offering time management clinics and training to employees.  
• Recognize and prioritize the importance of time off to rest and recharge.  
• Lead from the front: practice what should be duplicated by leaving at a reasonable time each evening and taking appropriate vacations.  
• Promote flexible work scheduling options.  
• Provide incentives, like subsidized gym memberships, that encourage taking time to exercise. |
## PHYSICAL RISKS

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<tr>
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| Sleep Deprivation| The nature and stressors associated with a lawyer’s work upset sleep, making legal professionals among the most sleep-deprived in the work force. Too little sleep poses dire health consequences, the effects of which can lead to increased risk of illness and physical injury. Sleep deprivation can also lead to a lapse in judgment, affecting a lawyer’s representation of clients and increasing malpractice risk. | - Evaluate the quality and quantity of sleep, recognizing that it is recommended for adults to get 7 to 9 hours of sleep each night.  
- Avoid screen time (computer, television, phone, or otherwise) at least one hour before bed, and—to the extent possible—do not sleep in the same room as your phone.  
- Establish a reasonable bedtime and stick to it.  
- Consider keeping a sleep diary to rid distracting thoughts from your mind.  
- Exercise regularly (but not immediately before bedtime). | - Recognize the health risks posed to employees who are not getting enough sleep, as well as the high likelihood of a suffering work product.  
- Encourage employees to leave work at a reasonable time consistently, and lead by example.  
- Understand the connection between lack of sleep and traditional methods of measuring lawyer performance through the billable hour construct and seek workable solutions that enable healthy sleep habits and profitable firm performance. |
| Working Indoors | A lawyer’s indoor working environment disrupts the circadian rhythm, leads to vitamin deficiencies, and may contribute to Seasonal Affective Disorder (SAD). | - Develop awareness of time spent inside.  
- Strive to add outdoor time when feasible.  
- Consider vitamin deficiency or SAD testing.  
- Exercise regularly.  
- Consider using a full spectrum light box.  
- Traveling to a tropical destination can be therapeutic in many ways. Warmth and increased sunlight exposure can improve mood.  
- Maintain a regular sleep schedule.  
- Eat a balanced diet. | - Understand that SAD is a real condition.  
- Adopt policies promoting time outdoors, such as walking meetings and outdoor lunches.  
- Provide training on SAD.  
- Ensure adequate lighting and indoor air quality.  
- Be aware of and allow SAD accommodations.  
- Maximize natural lighting where possible.  
- Test indoor air quality. |
## PHYSICAL RISKS

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| Aging of Lawyers | As lawyers age, our mental and physical capacities decline, creating risks to ourselves, our firms, and our clients. At the same time, other lawyers and legal employers should recognize that aging affects each individual differently, and age is not a litmus test for legal capacity. | • Be honest with yourself about this risk and be watchful for any warning signs.  
• Be receptive of feedback from others.  
• Proactively seek annual medical examinations to identify any cognitive deficit.  
• Solo and small-firm practitioners especially should develop a succession plan to protect clients and colleagues. | • Recognize the risk, be mindful of warning signs, and provide assistance for age-related impairments.  
• Develop policies and procedures for succession planning and encourage proactive succession planning for senior attorneys.  
• Encourage firm leaders to have an awareness of, or at least access to, fellow partners’ deadlines and calendars to allow for seamless coverage in case of incapacity.  
• Consider implementing a “fitness for duty” evaluation for all lawyers to uncover and address any cognitive deficits.  
• Encourage annual medical examinations. |
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| Adversarial Nature of Work | The adversarial nature of the legal profession promotes feelings of anger, guilt, and fear that can lead to depression and chronic stress. | • Be proactive about taking civility-focused CLE courses.  
  • Be involved with local and statewide bar associations to develop and maintain congenial relationships with other practitioners.  
  • Treat every communication with opposing counsel as though it were made in court.  
  • Participate in the adversarial system without being combative.  
  • Treat others the way you would like to be treated.  
  • Always maintain a professional perspective and never let the client’s problem become your problem.  
  • Seek advice from mentors.  
  • Regularly review the Principles of Professionalism for Virginia Lawyers.  
  • Join an Inn of Court.  
  • Understand the importance of “Emotional Intelligence” in practicing law.  
  • Be aware of “Emotional Contagion.”  
  • Employ mindfulness techniques. | • Foster an open-door policy and mentorship programs to help create a comradeship that can combat the loneliness and frustration that can be the byproduct of a contentious profession.  
  • Make allowances for and encourage participation in bar events and organizations to foster collegiality within the legal community.  
  • Recognize the differing skill sets in individual attorneys and try to assign work that matches best with the individual.  
  • Establish formal mentor-mentee programs. |
| Individual Work           | The individual nature of a lawyer’s profession can lead to feelings of isolation. In fact, legal work in general has been considered the loneliest kind of work. Lonely lawyers face a host of health-related risks and impairments, perform poorly, change jobs frequently, and experience greater job dissatisfaction. | • Perform an honest self-assessment to determine whether you are experiencing the effects of loneliness.  
  • Actively participate in bar functions and organizations and develop relationships with legal colleagues.  
  • Promote and maintain an active life outside of practice with family and friends.  
  • Seek counseling if needed. | • Recognize that it is often colleagues and supervisors who are best positioned to recognize a lonely lawyer. Have policies and procedures in place to assist such individuals.  
  • Promote a positive and collaborative working environment through an open-door policy and mentorship program.  
  • Organize frequent formal (or informal) lunch and social gatherings to boost morale and encourage involvement. |
# MENTAL AND EMOTIONAL RISKS

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| Professional Demands | The practice of law is a demanding one, and the pressure lawyers face from clients, employers, and the judiciary contribute to virtually every risk outlined in this matrix, along with their incident effects and symptoms. | • Develop and continually perfect effective communication and time management skills.  
• Proactively address issues or potential issues with clients, supervisors, or the judiciary.  
• Take care to combat potential health risks. Eat healthy, exercise daily, and get enough sleep each night.  
• Attend risk-management programs and employ appropriate risk management practices.  
• Become familiar with, and use when appropriate, the VSB Ethics Hotline (804-775-0564) and, if available, your lawyer professional liability carrier’s risk management consultant. | • Law firms and organizations should seek to ensure cases are adequately staffed given the client and difficulty involved.  
• Expectations concerning requirements for billable hours and community involvement should be periodically reviewed and clearly communicated.  
• Employ and monitor appropriate risk management practices.  
• Discuss the demands and time pressures of the prospective practice area during the hiring process, including interns and summer associates.  
• Judges should seek to participate more frequently in local bar events to develop relationships with local practitioners.  
• Courts should review 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.  
• Courts should review practices that promote refusal to permit trial lawyers to extend trial and other deadline dates to accommodate vacation plans or scheduling trials shortly after end of vacation so that lawyers must work during that time. |
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| Vicarious Trauma and Managing Others’ Problems | Prolonged exposure to our clients’ legal problems and dilemmas can be mentally and physically stressful, exhausting and debilitating. | • Recognize the risk of vicarious trauma that is inherent in the representation and championing of others’ struggles.  
• Seek counseling if needed, and consider contacting Lawyers Helping Lawyers on its 24-Hour Help Line at 1-877-545-4682.  
• Intentionally set time aside to separate from the client and case in order to recharge. This can be done through conversation with trusted colleagues or the pursuit of activities and hobbies outside of law.  
• Create and maintain an end-of-day routine to help leave work at work and to transition from the office to home. | • Discuss the issue of vicarious trauma openly to encourage those suffering to seek assistance.  
• Implement an employee assistance program to provide a confidential outlet for attorneys suffering from vicarious trauma to discuss their struggles and provide access to mental health professionals where needed.  
• Be proactive in seeking out suffering attorneys who may not recognize the risk in themselves and be willing to offer aid.  
• Provide reasonable vacation and encourage its use so as to promote time away from the office. |
| The Duty of Confidentiality | Ethical adherence to the duty of confidentiality can cause lawyers to feel isolated, delay necessary case-related tasks, and exacerbate the existing disincentives to seek help. | • Develop strong working relationships with other attorneys inside the firm who share the client’s confidences.  
• Pursue positive relationships inside and outside of the legal setting.  
• Become familiar with, and use when appropriate, the VSB Ethics Hotline (804-775-0564) and, if available, your lawyer professional liability carrier’s risk management consultant. | • Promote positive, supportive, and collaborative workplace environments.  
• Foster mentorship relationships among employee attorneys.  
• Encourage an open-door policy among all attorneys and staff.  
• Train lawyers and staff on protecting client information, including the benefits and risks of using technology. |
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<tr>
<td>Educational Debt</td>
<td>Law school debt is debilitating. Most law students take out significant debt with the unrealistic and unlikely expectation that they will land a high-paying job. As a result, many will be saddled with crushing monthly payments for the foreseeable future, contributing significantly to overall feelings of stress, anxiety, and disenfranchisement with the profession.</td>
<td>• Prospective law students should study the profession and gain a working knowledge of the financial realities before applying to law school. They may want to consider options like public service or military enlistment as means to offset student debt. • Lawyers should prioritize debt repayment and live below their means during this time. • Consider hiring a financial planner to understand the nature of student loans and what repayment or forgiveness plans may exist.</td>
<td>• Law schools should consider a financial responsibility and planning course as part of a legal curriculum. • Law schools should counsel prospective and current students regarding options for mitigating debt, such as public service loan forgiveness or the GI Bill. • Law schools must proactively address the current tuition and law school debt crisis. • Firms and organizations can also offer financial planning services, or access to the same, to their lawyers. • Bar associations should consider dues models that reduce or eliminate fees for newer attorneys. • Law firms should consider paying directly, or providing stipends to pay for, young lawyers’ bar dues and otherwise promote young lawyer involvement in bar activities.</td>
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<td>Business Management of the Practice of Law</td>
<td>Managing the business component of the practice of law is stressful. New lawyers largely enter practice without any formal financial education, contributing to financial stress.</td>
<td>• Proactively secure business and financial literacy training through law school classes, CLE, and similar programming. • Retain the services of an accountant, insurance agent, and other professionals for advice regarding your business and personal financial affairs.</td>
<td>• Law schools should include law practice management, financial literacy, entrepreneurship, marketing, and related courses as part of legal skills curricula. • Encourage all law students to take at least one business management course. • Offer financial planning services to employees. • Explore, choose, and implement software solutions for timekeeping, billing, and trust accounting.</td>
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## MENTAL AND EMOTIONAL RISKS

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| The Need to Display Confidence and Conceal Vulnerability | Law practice and legal education are inherently competitive, discouraging help-seeking behavior as an admission of weakness and incentivizing lawyers to wear a confident façade despite suffering wellness issues. | • Develop a support network of family, friends, and fellow attorneys with whom vulnerability can be safely discussed.  
• Law students should seek to understand that the character and fitness process is not a trap.  
• Do not fear seeking counseling or other treatment, if needed.  
• Understand “imposter’s syndrome.”  
• Participate in an Inn of Court.  
• Participate in bar association activities.  
• Seek an experienced mentor. | • Promote an organizational culture encouraging help-seeking behavior such that all employees know that nothing is wrong with knowing their limits and asking for help.  
• Consider developing wellness committees or providing counseling services.  
• Bar examiners should strive to create a transparent character and fitness process and make clear that those who need help should seek treatment without fear of penalty.  
• Offer an Employee Assistance Program (EAP). |

## ADAPTATION RISKS

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| Changing Legal Paradigms | The nature of law practice has changed dramatically since the digital revolution, with wildly fluctuating market conditions, new business models, and evolving technologies making adaptation challenging, but necessary. | • Develop the attitude of a lifelong learner.  
• Study the reports of VSB committees addressing the future of law practice.  
• Attend programming such as the VSB Techshow.  
• Participate in bar organizations to develop relationships and stay up-to-date on changing legal technologies.  
• Stay current on ethics guidelines and opinions addressing changing business models and evolving technologies. | • Study and emulate business models of “dynamic” law firms that are successfully adapting to the new practice realities.  
• Consider revising billing models, adopting new technologies, and overhauling internal workflows to better meet client needs.  
• Encourage attorneys to streamline their practice with the utilization of new technologies.  
• Stay current on ethics guidelines and opinions addressing changing business models and evolving technologies. |
## ADAPTATION RISKS

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| **Technology Addiction**                     | Ever-connected lawyers who feel obligated to be available at all hours experience reduced attention span and productivity, harm to personal relationships, and risk revealing confidential information through sloppy data use. | • Review resources on digitally detoxing, then adopt strategies.  
• Identify incremental steps to reduce technology reliance, like designating certain times and spaces as tech-free zones.  
• Strive to “unplug” from work when not in the office. | • Recognize that expecting complete availability of employee attorneys is counterproductive.  
• Provide technology addiction training during regular IT training programs.  
• Cultivate a workplace culture promoting work-life balance with time to disconnect.  
• Be aware of the increasing right-to-disconnect movement, which has resulted in some countries restricting work-related communications after business hours. |
| **Lack of Diversity in the Legal Profession** | Diverse and inclusive working environments foster lawyer wellness. A lack of diversity, however, can lead to isolation, a sense of exclusion, and ultimately poor performance and a lack of autonomy. | • Actively seek mentors within your organization and practice area.  
• Participate in diversity and inclusion sections of bar organizations.  
• Develop an awareness of implicit biases.  
• Seek out relationships with colleagues who have a different background. | • Prioritize and set accountability goals for diversity and inclusion in recruitment, practice, promotion, retention, and partnership.  
• Recognize implicit cultural biases.  
• Develop and enhance mentoring programs for a diverse workforce.  
• Train management to understand the benefits of a genuinely diverse workplace.  
• Provide adequate employee benefits, including family leave and flexible work hours.  
• Promote a team mentality among all members of the organization favoring open dialogue about diversity and other issues.  
• Emphasize respect and appreciation for all members of the team, recognizing the diversity of their contributions. |
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<tr>
<td><strong>External Pressures on Lawyer Independence</strong></td>
<td>Economic pressures and changing market dynamics, such as the rise of alternative</td>
<td>• Study new LEOs, reports about the state of the profession, and law practice development news.</td>
<td>• Strive to educate lawyers, students, and the public about lawyers’ role in society and how an</td>
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<td>legal business structures, are incentivizing attorneys to compromise their</td>
<td>• Participate in the bar’s self-regulatory activities.</td>
<td>independent bar contributes to a thriving democracy.</td>
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<td>independence, risking professional sanction and harm to the rule of law.</td>
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<td>• Incentivize participation in bar organizations, including the regulatory bar.</td>
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<td>• Provide adequate compensation.</td>
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<tr>
<td><strong>SELF-ACTUALIZATION RISKS</strong></td>
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<tr>
<td><strong>Losing Control of Professional Destiny</strong></td>
<td>Becoming trapped in a particular area of law or type of legal employment the</td>
<td>• Proactively plan to develop the desired type of practice, including creating a plan to make the</td>
<td>• Foster mentorship relationships among attorneys in the organization across practice groups.</td>
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<td>lawyer does not enjoy is at best unfulfilling and at worst actively detrimental to</td>
<td>most of challenging or undesirable career phases.</td>
<td>• Facilitate participation in bar associations and similar organizations.</td>
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<td>a lawyer’s health and well-being.</td>
<td>• Participate in bar associations and cultivate a strong professional network.</td>
<td>• Preemptively seek to understand a new hire’s career goals at the recruitment phase.</td>
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<tr>
<td><strong>Values Conflict with Client or Practice Setting</strong></td>
<td>Lawyers carrying out instructions or practicing in a subject area contrary to their</td>
<td>• Compare values espoused by potential employers and practice areas to personal values before</td>
<td>• Exercise transparency with the organization’s values at hiring and throughout the employment</td>
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<td>personal beliefs experience cognitive dissonance that can harm not only their</td>
<td>committing.</td>
<td>relationship.</td>
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<td>practices, but also their sense of personal integrity.</td>
<td>• Develop a plan for dealing with values conflicts.</td>
<td>• Permit attorneys to assert personal or moral conflicts of interest and decline tasks without</td>
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<td>• Maintain accountability relationships with friends, family, clergy, fellow attorneys, and other</td>
<td>retribution.</td>
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<td>you respect.</td>
<td>• Promote internal working and mentorship relationships.</td>
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<tr>
<td><strong>The Expectations-Reality Gap in Law Practice</strong></td>
<td>Many people enter law school with certain expectations about life as an attorney,</td>
<td>• Strive to develop accurate expectations about law practice realities.</td>
<td>• Set clear expectations of practice realities during talent acquisition.</td>
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<td>only to have those expectations disappointed by practical realities, resulting in</td>
<td>• Consider a broader definition of a legal career, including JD-preferred and other nontraditional</td>
<td>• Promote a culture of empathy and understanding to ease the transition into practice for new</td>
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<td>career regret and a sense of feeling trapped.</td>
<td>careers using a law degree.</td>
<td>attorneys.</td>
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<td>• Allow attorneys to change practice areas and facilitate such changes.</td>
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<td>• Consider adopting innovative new billing and service-delivery practices to increase client and</td>
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<td>lawyer happiness.</td>
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Sedentary Nature of Work

One of the most dangerous aspects of the legal profession is perhaps one of the least obvious. And while some lawyers may appreciate the apparent ease of a deskbound, relatively inactive office position, the sedentary nature of legal work presents a host of health-related risks bearing directly on attorney well-being.

Sitting too much and for too long on a daily basis can lead to an early death. According to the Mayo Clinic, “[a]n analysis of 13 studies of sitting time and activity levels found that those who sat for more than eight hours a day with no physical activity had a risk of dying similar to the risks of dying posed by obesity and smoking.”3 Another study suggests that “greater daily time spent sitting in major activities is associated with elevated risks of mortality from all causes and from cardiovascular disease.”4

According to U.S. News & World Report, approximately 86% of American workers sit all day at work.5 Lawyers are no different. Even litigators, who may be in and out of court most days, still spend an inordinate amount of time sitting in the courtroom waiting for their case to be called, sitting at their desk preparing briefs or correspondence, or sitting at a conference table across from a client, witness, or colleague. This risk extends even beyond working hours. Consider, for example, the time spent sitting in the car on a daily commute and the time spent sitting at home at the dinner table or on the couch in front of the television unwinding, ironically, from a full day of sitting.

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3 Edward R. Laskowski, What Are the Risks of Sitting Too Much?, MAYO CLINIC (May 8, 2018), https://perma.cc/JQ8L-8KFR.
All that time spent sitting harms our bodies. Physical inactivity is considered the fourth leading risk factor for global mortality, with approximately 3.2 million deaths per year being attributed to physical inactivity alone. Not surprisingly, this so-called “sitting disease” has been labeled “one of the most unanticipated health threats of our modern time.” Related conditions, like “computer slump” and “text neck,” affect most users of computers and mobile devices. Lawyers, whose daily tasks require extensive use of these technologies, are especially prone to developing long-term postural issues from hours of typing and swiping each day.

Practice Pointers

Recognition of this risk, like others, is critical because recognition can lead to action. Fortunately, individuals and organizations need only take simple steps to offset its danger.

Medical research suggests that if people make the relatively benign choice to stand up, sit less, and move more, significant benefits in physical and mental health follow. Low-intensity, non-exercise activities, surprisingly, may be an effective alternative to engaging in the doctor-recommended amounts of moderate to vigorous activity each week. This is because even the most prolific exerciser can have their efforts countered by the effects of prolonged sitting that occurs throughout the day.

Non-exercise activity thermogenesis — also known as NEAT — encompasses those calories that we burn every day simply by living life. An example from the National Academy of Sports Medicine explains this concept succinctly:

[A] 145 lb. person burns approximately 102 calories an hour while performing their office job in a seated position (1.7 kcal/minute), but burns 174 calories an hour if performing those same office duties while standing. This may not seem like much, but it translates to 18,000 calories or a little over 5 lbs. over a 50-week work year (250 work days). By comparison, that same person would need to squeeze in 60, 30-minute runs at 5 mph to achieve that same caloric burn.

Every little movement, therefore, can accumulate over time into a sustainable weight-loss solution, which in turn can influence overall health and well-being. This means that individuals can make small choices each day to improve their health and counteract the deadly impacts of prolonged sitting. For example, simple things — like parking at a distance from a building, using stairs instead of elevators, setting reminders on a phone or watch to stand up and move,

---

John F. Kennedy

“Physical fitness is not only one of the most important keys to a healthy body, it is the basis of dynamic and creative intellectual activity.”

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working at a standing desk, taking multiple stretch breaks, and walking at lunch — all make a positive difference. Additionally, stay current on all medical appointments to catch medical issues related to a sedentary working environment, many of which can go unnoticed until it is too late.

At the organizational level, measures should be taken to permit and encourage freedom of movement. Organizations can also consider subsidizing membership at a gym, many of which offer corporate discounts. Employers can also purchase and train employees in the use of ergonomic equipment, standing desks, and balance boards for standing at desks. Finally, firms should try to offer healthy food and beverage alternatives at events. Organizations that champion the health of their employees in this regard may see a happier workforce, less turnover, and a better work product.

Managing Long and Unusual Hours

The Risk

For most lawyers, working long and unusual hours is a fact of life, especially for associates. It is expected and, given the prevalence of the billable hour throughout the legal landscape, often necessary for the overall profitability of law firms and attorney advancement. Lawyers are people, however, and working long, unpredictable hours without rest can yield predictable consequences, including exhaustion, stress, and mental burnout.

While the workaholism that characterizes the legal workforce is not a new phenomenon, modern advances in technology and communication have made it even harder to disconnect. Where correspondence with one’s co-workers, clients and opposing counsel was once limited to regular mail and working hours, the advent of email, laptops, and mobile phones has blurred the lines between work and time off. See Technology Addiction. Clients frequently do not recognize how long lawyers spend on their cases or that their lawyer may be handling other cases. Because clients often do not realize that their lawyer, too, is only human, they may demand immediate attention.

Court demands and deadlines also govern much of an attorney’s time. Cases develop and morph over time, and it is challenging to anticipate or plan how long a trial or hearing, and the necessary preparation, may take. Consequently, lawyers must constantly react to the changing landscape of a case in order to competently represent the client. Doing so often requires late nights and early mornings, particularly in the days and weeks leading up to a significant court appearance.
Compounding these concerns is the billable hour — that is, what percentage of a lawyer’s time actually counts in the eyes of the firm. Put bluntly, what can feel like a full day’s worth of work can be drastically diminished once the actual billable hours are tallied, particularly in smaller firms where individual lawyers must assist in many of the day-to-day aspects of keeping a small business running — time that adds up significantly but that cannot be billed to a client. The end-result? The lawyer must work more hours wherever they can be found, including nights, weekends, and holidays, to meet his or her goals or requirements.

**Practice Pointers**

Dealing with this occupational risk requires acceptance of the fact that there simply are not enough hours in the day. Given this undeniable truth, lawyers should employ time-management techniques to better organize both their practice and their life away from law.

Time itself, however, cannot be managed. Instead, the events that make up time must be organized effectively. A helpful article on the subject published by the University of Georgia Cooperative Extension identifies ten strategies to aid in individual time management:

1. Know how you spend your time: keep a log of daily activities.
2. Set priorities: know the difference between important and urgent.
3. Use a planning tool: write down tasks and review them daily.
5. Schedule time appropriately: block out time for important tasks and avoid interruptions.
6. Delegate: request help from others.
7. Stop procrastinating: break up overwhelming tasks into manageable parts.
8. Manage external time consumers: phone, email, unexpected visitors, meetings, and family.
9. Avoid multi-tasking: switching from one task to another costs time and reduces productivity.
10. Stay healthy: schedule time to relax and recharge physically and mentally.8

Taking vacations is imperative to well-being and family life. A good sign that a vacation is in order is when life feels too busy to take one. Simply stated, no one is that important. Every lawyer must find what works, whether that means a one, two, or three-week vacation, a series of “long weekends,” or a well-earned sabbatical. Time away from the office is vital in the marathon known as the practice of law.

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At the organizational level, employers should consider offering time management clinics to assist their employees in developing the skills necessary to thrive in a demanding practice. Fostering an atmosphere of congeniality and emphasizing the importance of time off from work is a necessity. Firm leadership should lead by example in this arena to encourage associates and support staff to take time off to recharge and, where possible, provide the occasional option to work from home. Simple things like a partner delaying the delivery of an email to an associate from 7:30 p.m. to 8:00 a.m. the next day (yes, this can be done) may have a substantial and positive impact on the associate’s ability to seek work-life balance.

Too often, lawyers who otherwise have vacation time to take may feel pressure to be in the office simply to “show face.” While this may be important in some respects, firm leadership should recognize the dangers associated with long and unusual hours away from home and take steps to minimize the risks by encouraging — not discouraging — their employees to take care of themselves. And one of the best ways to do that is for firm leadership to lead from the front and begin by first taking care of themselves.

Sleep Deprivation

The Risk

Lawyers are among the most sleep-deprived professionals in the work force, second only to home health aides according to one survey. Though widely acknowledged throughout the legal field, sleep deprivation is often ignored as a by-product of a successful law practice. Sleep deprivation, however, is a major health issue that requires attention and, if necessary, medical intervention.

The lack of sleep — whether due to a sleep disorder, working late hours, work-induced stress, or the insomnia caused by the other risks addressed in this report — can drastically affect mental and physical health. According to an article published by Johns Hopkins, sleep researcher Patrick Finan has identified the following somewhat surprising repercussions associated with the lack of sleep:

- 6,000 fatal car accidents are caused each year by tired drivers;
- 1 in 25 adults have fallen asleep at the wheel in the past month;
- Increased cravings for sweet, salty and starchy food;
- 50% increased risk for obesity if sleeping less than 5 hours a night;
- 36% increased likelihood for colorectal cancer;
- 3 times the risk for type 2 diabetes;
- 48% increase in developing high blood pressure;

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• 3 times more likely to catch a common cold;
• 33% increase in dementia risk;
• Greater risk for depression, irritability, anxiety, forgetfulness, fuzzy thinking; and
• The brain can age 3–5 years due to lack of sleep.¹⁰

Not surprisingly given some of the above effects of sleep deprivation, studies have also shown that moderate sleep deprivation produces impairments equivalent to those associated with alcohol intoxication. After seventeen to nineteen hours awake, human performance is equivalent to that of a blood alcohol concentration (BAC) level of .05. After longer periods of sleep deprivation, the performance level reaches levels equivalent to a BAC of 0.1 percent, beyond the legal intoxication level in most states. In short, continuing to work without enough sleep is like trying to work while drunk.

Considering all of this, tired lawyers should also be aware of their sleep deprivation’s effect on clients’ cases. The evidence is strong that an individual’s mental capacity — and therefore, the quality of his or her work — is drastically diminished without adequate sleep. Hence, the risks associated with sleep deprivation are not limited just to the health of the legal practitioner: his or her license could also be on the line if a vital mistake is made while representing a client.

As dangerous as the lack of sleep is, the profession has nevertheless consistently ignored the problem. As one commentator notes, if you tell a lawyer he or she is not getting enough sleep, one of three responses is common: resigned ambivalence (i.e., sleeplessness is a fact of life that they are used to), the macho response (i.e., bragging about getting no sleep while chasing unsustainable billable hours), or plain denial.¹¹ To break through these common responses to the problem, the effects of the lack of sleep must be understood and addressed at both the individual and organizational levels.

Practice Pointers

At the individual level, lawyers need to take affirmative steps to regain control of their sleep. According to the Mayo Clinic, adults should get seven to nine hours of sleep each night.¹² How this is accomplished will be unique to each individual, though some ideas include: keeping a sleep diary to put thoughts on paper and out of the mind, avoiding external stimuli (including screens of any sort) before going to bed, exercising regularly (though not immediately

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¹¹ Zach Wolfe, I’ll Sleep When I’m Dead: The Ignored Epidemic in the Legal Profession, Five Minute L. (July 31, 2017), https://perma.cc/XM52-7H9K.
before bed), and establishing a consistent bedtime and bedtime routine. If feeling stressed
about work or a looming deadline, remember that spending an extra few hours on something
at the cost of a good night’s rest can sometimes cause more harm than good.

Law firms and organizations, in turn, should recognize that getting more sleep has a far
greater likelihood of improving job performance than can be accomplished through mara-
thon workdays. Leadership can lead by example, recognizing the importance of adequate rest
by leaving on time each day and thereby sending the implicit message that it is okay for as-
associates and support staff to do the same. Some larger firms have also instituted “nap pods” in
their breakrooms to provide a creative solution to this epidemic. Clever though this approach
is, a more fundamental shift in organizational mindset is needed for long-term improvement.

Comparing lawyers with professional athletes, one legal commentator has emphasized the
importance of “game day” over the days and hours leading up to it. Professional athletes,
by and large, recognize this reality and do what they can to ensure their bodies stay in
peak condition by getting enough sleep, particularly in-season. Contrast this with the legal
profession, which tends to measure performance by the number of hours worked. “When
sleep-deprived lawyers bill hundreds of caffeine-fueled hours doing mediocre work, it’s not
the clients who benefit. Generally, clients would be better served by razor-sharp mental
focus and efficiency.”13 Rather than emphasize the number of hours worked, lawyers should
be focused on winning each “game,” which can be defined as any court appearance or client-
deliverable.

Admittedly, this kind of institutional shift cannot occur overnight. But law firms and orga-
nizations need to be cognizant of the real risk that sleep deprivation can have on both their
employees and their clients. Once this risk is better understood, steps should be taken to
minimize it, whether that be through the installation of nap pods, or ultimately, a more fun-
damental shift in the attitude towards billable work and its accounting.

Working Indoors

The legal profession is undoubtedly an indoor one. Attorneys’ offices seem like cushy work-
spaces, but even the most pristine of indoor work environments presents several risks to
lawyer well-being.

Foremost among these is limited exposure to sunlight and the attendant disruptions of
circadian rhythm. Artificial light is no substitute for natural sunlight: artificial light disrupts
the body’s natural clock, contributing to difficulty concentrating and even medical issues like
high blood pressure and respiratory problems. Insufficient exposure to sunlight contributes
to vitamin D deficiencies, which can cause feelings of fatigue and moodiness. Exposure to
artificial light can also make it harder to fall asleep. In fact, one study found that employees

13 Wolfe, supra note 11.
not exposed to natural light sleep an average of 46 minutes less per night than those with a healthy amount of natural light exposure.14

Detachment from natural light can contribute to another condition known as Seasonal Affective Disorder (SAD). SAD is a type of depression related to seasonal changes — it generally begins in the fall, continues through the winter months, and drops off as the days grow longer in the spring. Common symptoms include a lack of energy, moodiness, hypersomnia, social withdrawal, fatigue, irritability, feelings of loneliness and sensitivity to social rejection, and a loss of interest in previously enjoyed activities. Although the exact mechanism behind SAD is not fully understood by science, various studies indicate that 15–30% of the global population experiences some degree of SAD and link that condition to insufficient exposure to sunlight. The annual winter doldrums are likely exacerbated — and extended — by attorneys’ long, indoor working hours.

A few other, less obvious risks from the indoor working environment bear mentioning. The quality of indoor air can be substantially worse than that of the air outside, with dampness, mold, dust, and cleaning materials contributing to eye, nose, throat irritation, and even fatigue. Many attorneys are familiar with the persistent, dull headache that comes toward the end of the day: the potential causes are legion, but at least one study suggests poor air quality as a cause. Finally, recent studies of myopia — nearsightedness — among urban populations have drawn a tentative connection between insufficient exposure to outdoor light and development of the condition.15 This possible link is a departure from the standard thinking just a few years ago, which assumed myopia was primarily hereditary.

Practice Pointers

The most important thing both individual attorneys and organizations that employ them can do to mitigate this risk is to develop an awareness of just how much time lawyers spend inside daily. A study surveying 16,000 people across North America and Europe found that most respondents thought they spent two-thirds of their time inside.16 In actuality, approximately 90% of all people spend close to 22 hours inside each day. In an average workday, the typical desk-job employee spends as little as 15 minutes outside in daylight. That is just half the time most people need to calibrate their circadian rhythm.

Scientists recommend exposure to two hours of daylight per day. Organizations employing lawyers should therefore adopt policies promoting time outdoors, such as permitting “walking meetings” where feasible and encouraging employees to take lunch away from their desks. Individuals should also strive to spend at least some time outside during their personal time.

16 The Indoor Generation, supra note 14.
Ultimately, spending significant time indoors is an undeniable facet of a lawyer’s life. However, certain strategies can help mitigate the effects of working indoors. Simple things such as exercising regularly, eating a balanced diet, maintaining a regular sleep schedule, and taking a vitamin-D supplement can help alleviate the symptoms of SAD. Phototherapy, which may include the use of a full spectrum lightbox or taking a trip to a tropical destination to be exposed to increased sunlight, is commonly employed to minimize the effects of SAD. Having an office on the southern side of the building, which increases exposure to sunlight during January and February, can also have a positive effect. For those suffering more significant effects of SAD, talking to a doctor is highly recommended.

Organizations must understand that SAD is a real condition and they should accommodate, if possible, requests to deal with SAD. Organizations should seek to maximize natural lighting in offices and, if needed, employ full spectrum lighting. Finally, organizations should take steps to ensure that indoor lighting is high-quality and adequate for lawyers’ reading-intensive tasks. They should also review their facility’s HVAC system, and consider professional testing if there is any doubt as to indoor air quality.

### Aging of Lawyers

**The Risk**

Time passes inexorably, and everyone, lawyers and laypeople alike, are getting older with each passing day. With advancements in medical technology, the average lifespan continues to increase, yielding (one hopes) a longer and more fulfilling life. Because people are living longer, people are also working longer. Whether due to the financial constraints discussed elsewhere in this report or other reasons, lawyers are opting to practice longer than ever before. Although this commitment to the profession should be lauded, and seasoned attorneys offer much in terms of their experience and ability to mentor new lawyers, aging lawyers also carry an increased risk for declining mental and physical capacity. As such, aging lawyers — and the firms or organizations for which they work — must recognize the realities incident to aging, and the potential dangers they may pose to the individual lawyer and his or her clients.

First, consider the facts. In 2016, Virginia had 18,194 “senior” — that is, over age 55 — lawyers, which constituted 35% of the overall 51,096 lawyers licensed by the Virginia State Bar. The American Bar Association’s National Task Force Report on Lawyer Well-Being shared two surprising statistics: first, the oldest Baby Boomer turned 62 in 2008 and the youngest Boomer will turn 62 in 2026, and second, nearly 65% of law firm equity partners will retire at some point during the next decade.

> “Nearly 65% of law firm equity partners will retire at some point during the next decade.”

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As the lawyer population ages, current practitioners must be aware of the potential for mental or physical impairment in their older colleagues to protect those individuals, their clients, and themselves.

To be sure, the effects of an aging body and mind may manifest differently for different individuals. Some common signs include short-term memory loss, lack of mental flexibility, language-related problems, disorientation, attention or concentration deficits, and decreased emotional stability. Age-related degenerative diseases (e.g., cerebrovascular disease, small and/or large strokes, microvascular ischemic changes) or neurodegenerative diseases (e.g., Alzheimer's disease, Parkinson's disease, dementia) are often — though not always — the cause, as this report makes plain. Nevertheless, older attorneys are more prone to these symptoms than younger ones.

The practice of law is an analytical, skilled profession requiring mental acuity. Although not a universal rule, those abilities generally decline as we age. A diminished ability to assess and pursue a client’s needs in the professionally competent manner required of an attorney poses a serious risk to the client and their case. This diminished ability can lead to drastic repercussions for the lawyer and his or her employer, including bar complaints and sanctions resulting from a case gone wrong or a practice improperly wound up.

Unfortunately, according to an article published by the ABA, it is much harder to spot such impairments in high-functioning individuals, like lawyers, than it is in the remainder of the population. Often, a lawyer may not show any sign of a cognitive decline until it is too late. The article summarized it this way:

> The more developed a person’s brain, the more capable she is of hiding any impairment. [Jonathan Canick, Ph.D.,] reported that a professional’s highly developed routines, practices and conversational and social skills, which are rehearsed and reinforced over a career, can function almost reflexively and automatically, obscuring detection of underlying problems that may be more readily apparent in individuals with lesser ability.18

In other words, because lawyers are, by their education and the nature of their practice, highly intelligent and capable people, their cognitive decline can go largely unnoticed.

Thus, aging lawyers who suffer cognitive decline not only place the client and their practice at risk, but also themselves if the help needed does not come because their overall decline is not noticed. Sadly, it seems “[t]he highly valued skills and abilities a lawyer develops over many years of practice that once contributed to great success are the same qualities that may ultimately contribute to an unfortunate downfall.”19

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19 Id.
Given the prevalence of more seasoned lawyers among the profession, the challenges that come with an aging legal profession must be considered and understood. Unlike some of the risks discussed by this report, aging is one that literally cannot be avoided.

At the individual level, lawyers must be introspective and receptive of feedback from others. If you notice that tasks are taking you much longer to complete than is ordinarily the case, or if you begin recognizing in yourself some of the symptoms listed above, take note. Lawyers, and even Lawyer Assistance Program (LAP) professionals, simply do not have the experience to diagnose and treat cognitive disorders and their associated impairments. Instead, all lawyers should have regular, if not annual, examinations by their primary care physicians. Potentially impaired lawyers may need — and should agree to — formal evaluation by specialists in psychology, psychiatry, neurology, gerontology, or such other fields as deemed necessary by healthcare providers. As we age, periodic evaluations by such professionals, while inconvenient and perhaps somewhat discomforting, are far more preferable to the consequences of undetected impairment for our clients, colleagues, families, and ourselves. Finally, senior lawyers should proactively develop succession plans to minimize negative effects for their clients and colleagues in the event they face an unexpected decline in their mental capacity.

At the organizational level, it bears emphasis that colleagues and coworkers are the first line of defense to this risk. Lawyers must watch out for each other. Firms, LAP professionals, and individual lawyers should learn about this risk and the red flags that suggest a colleague’s cognitive abilities have dropped below the level that is required for effective law practice. Firms and organizations may also consider flexible work schedules, team approaches (older lawyers working with other lawyers), or lightened caseloads for aging lawyers, as well as implementing a “fitness for duty” evaluation for all lawyers to ensure a constantly effective workforce. Although age affects every attorney differently and is not a litmus test for legal ability, all lawyers should be mindful of its warning signs and provide assistance for age-related impairments. All practices (especially those of sole practitioners) should also have a policy for succession planning in the event of a lawyer’s retirement or sudden incapacity to ensure that clients are adequately protected.

“The highly valued skills and abilities a lawyer develops over many years of practice that once contributed to great success are the same qualities that may ultimately contribute to an unfortunate downfall.”
Mental and Emotional Risks

Adversarial Nature of Work

The adversarial nature of law practice distinguishes it from other professions. “In its simplest terms, an adversary system resolves disputes by presenting conflicting views of fact and law to an impartial and relatively passive arbiter, who decides which side wins what.”20 The method by which this is accomplished, however, is necessarily conflict-ridden, and conflict breeds stress.

The “nature of civil litigation,” as one commentator has observed, “involves two lawyers (often Type A personalities) squaring off against one another under circumstances where there will be a winner and a loser, and part of each lawyer’s job will be to capitalize on any possible error in judgment that the other side makes.”21 Summarized another way: “[n]early every stage of litigation is a battle of persuasion, from convincing opposing counsel that the offer you made is favorable and reassuring your client that you have made a fair assessment of the case that justifies your billable hours, to persuading a judge or jury to view the facts of a case as you do.”22 In short, conflict is an unfortunate reality for many lawyers.

The emotions created by incessant conflict — anger, guilt, and fear — cause stress that can have physical ramifications. Stress, in and of itself, is not a bad thing. Chronic stress, however, can inhibit the body’s essential functions, including disease prevention, and, as at least one study has

21 Dan Lukasik, A Lawyer’s Heart, Laws. with Depression (June 11, 2009), https://perma.cc/HR7J-LN94.
shown, accelerate the body’s aging at a cellular level. Chronic stress can also lead to anxiety disorders (including panic attacks), lack of sleep, digestive issues, and heart disease.

The contentious nature of the legal profession and its associated stress can also negatively affect a lawyer’s mental health. Lawyers are prone to a “simmering variety of anger” that can express itself in a multitude of ways, including a cynical attitude, impatience, irritability, depression, disconnection from others, and fatigue. Elevated levels of hostility, in turn, have been shown to correspond with premature deaths related to cardiovascular disease.

Lawyers need to be taught and to understand that the practice of law does not involve only logic and analytical skills, but also an understanding of their own emotions and the emotions of those around them. Concepts like “Emotional Intelligence” and “Emotional Contagion” are important for lawyers to better comprehend their clients and their clients’ needs. But a better understanding of these concepts is also vital to lawyer well-being.

“[E]motional intelligence is the ability for each of us to recognize, understand and manage our own emotions as well as the ability to recognize, understand, manage and influence the emotions of others.” It is not enough to understand one’s own emotions or the emotions of others without also understanding that emotions can spread between individuals, “similar to a disease process known as ‘emotional contagion.’” Add to this the immutable fact that “[l]awyers are constantly dealing with people who are under stress or strain of one sort or another.” As a result, an attorney’s emotional state can be seriously affected by the emotions of a client, an adversary, or a judge. Significantly, these concepts are not adequately taught in law schools or CLE programs. And like most topics affecting lawyer well-being, acknowledgment of the risk and education about it is critical.

Practice Pointers

While most lawyers cannot escape the adversarial nature of their work, steps can be taken to minimize its potentially destructive effects. At the individual level, for example, lawyers should take civility-centered CLEs and consider participating in organizations devoted to professionalism and civility, such as the American Inns of Court. Lawyers can also maintain an active involvement with state and local bar associations and professional organizations to build and maintain relationships with other practitioners in their areas. Developing cordiality and comradeship with other lawyers who practice in similar fields outside of a lawsuit can

24 Lukasik, supra note 21.
27 Id. at 449 n.108 (quoting Erwin N. Griswold, Law Schools and Human Relations, 37 Chi. B. Rec. 199, 203 (1956)).
go a long way in tempering any feeling of animosity towards that individual when on opposite sides of a case.

Once litigation has been initiated, the temptation to engage in “battle” may present itself. However, lawyers should strive to follow the Golden Rule and treat opposing counsel as they would like to be treated, as long as the client’s interests are otherwise protected. For example, lawyers should be willing to extend a discovery deadline or postpone a hearing if opposing counsel makes a reasonable request. Lawyers should also refrain from name-calling or posturing. And perhaps most helpful, lawyers should treat every piece of communication with opposing counsel — whether it be written or verbal — as though it were in front of a judge. While the lawyer can only control his or her own actions and reactions, if enough lawyers make the choice to be more cordial toward their colleagues, the otherwise adversarial nature of the profession can be managed.

Lawyers, judges, and law students must gain an understanding of concepts like “Emotional Intelligence” and “Emotional Contagion” and be taught how to deal with the emotional impact of the practice of law. While everyone must find what works for them, mindfulness training is particularly effective for most.

At the organizational level, firms can pursue several initiatives to deal with the adversarial nature of the legal practice and its ramifications. For example, senior leadership can foster an open-door policy among lawyers and staff to help create comradeship and combat the feeling of isolation engendered by the chronic aggression of law practice. Firms and organizations can also encourage participation in civility programming and organizations, as well as attending social gatherings with local bar organizations to foster cordiality within the legal community. Organizational leaders should recognize that new lawyers bring a unique set of strengths and traits to the firm or organization. They should therefore attempt to identify those traits and encourage their development. Doing so will help the new lawyer thrive and feel more connected and accepted by the organization.

The practice of law is not a one-size-fits-all profession. Where one lawyer may thrive in the heat of a courtroom battle or the overall competitive nature of practice, another may be conflict-averse and better suited to research and writing. Firms and organizations should remember, however, that introverted lawyers are no less effective than extroverted lawyers. Therefore, organizational leadership should identify the strengths and weaknesses of their workforce and assign work accordingly, providing the necessary training and support where needed.
Individual Work

The Risk

The practice of law can be lonely. In fact, it is the loneliest kind of work, according to a report published by the Harvard Business Review, with 61% of lawyers ranking “above average” on a loneliness scale.28 The inherently intellectual nature of practicing law requires lawyers to spend a considerable amount of time writing, researching, and studying. Long hours and heavy client loads, coupled with the profession’s often-competitive culture, contribute to feelings of isolation. Left unchecked, this risk can yield several surprising health risks.

For example, studies examining the effects of loneliness have identified a multitude of physiological and mental effects, including:

- Diminished physical activity;
- Diminished motor function;
- Symptoms of depression;
- Disrupted sleep and daytime dysfunction;
- Impaired mental and cognitive function;
- Increased systolic blood pressure;
- Increased sympathetic tone and vascular resistance;
- Increased hypothalamic pituitary adrenocortical activity;
- Altered gene expression related to anti-inflammatory responses; and
- Altered immunity.29

Other research suggests that loneliness has the same effect as smoking fifteen cigarettes a day on our overall health and our health-related expenses.30 Perhaps more troubling than any of the above, though, is evidence suggesting that loneliness can significantly contribute to premature death, exclusive of other factors.31

Not surprisingly, lonely workers lose social skills, tend to perform more poorly, quit more often, and experience greater job dissatisfaction, all at significant cost to their employers. Put

30 Achor et al., supra note 28.
31 Alspach, supra note 29.
succinctly, loneliness begets burnout. And lawyers, although perhaps the loneliest of professionals, are not alone in their feeling of isolation. Almost 40% of Americans have reported being lonely, and the United Kingdom has even appointed a “Minister of Loneliness” to address the epidemic in that nation, which saw more than nine million people reporting a “frequent” feeling of loneliness in 2017.32

Finally, the nature of individual work may also expose an attorney to a higher risk of malpractice claims. Practitioners working alone may be at greater risk of making mistakes if they are not consulting other attorneys when novel or difficult issues arise.

Practice Pointers

Loneliness is often subjective. Some lawyers, after all, work better alone and prefer solitude. Given the hazards of loneliness described above, however, all lawyers should be aware of the effects of prolonged isolation, both on their health and on the profitability of their position.

Due to the subjective nature of this risk, any remedy would ideally begin with the individual lawyer. An honest self-assessment will be required, and the lawyer should be proactive in seeking social outlets, both inside and outside of their employer. If the employer offers a mentorship program, lawyers should participate wholeheartedly to develop strong relationships with firm colleagues. Lawyers should also intentionally interact with their colleagues on a daily or weekly basis to help prevent a feeling of lonely drudgery. Outside of work, research has shown that those who have more people around them in their private lives are less likely to experience the ill effects of loneliness. A concerted effort, therefore, must be made to keep and maintain healthy relationships with family and friends. Competing on sports teams, participating in religious organizations and attending worship services, volunteering in the community, and working with charities are all examples of activities that are vital in minimizing the risk of loneliness.

Solo practitioners must make special effort to have regularly scheduled social and familial opportunities outside of client work. Where practical, it would be a good rule of thumb to say “yes” to as many social gatherings as the solo practitioner’s schedule will allow. Many solo practitioners find that even when they do not feel like socializing, it is just this experience that reinvigorates them.

At the organizational level, colleagues and supervising partners are best positioned to identify lawyers who may be suffering from loneliness or isolation. As with many of the risks considered by this report, the signs may be subtle, which is why an awareness of the risk and its symptoms is paramount. Positive social support in the workplace can help stave off feelings of loneliness from occurring in the first place. Leadership should be quick to praise when praise is warranted and otherwise work to create a supportive and collaborative atmosphere.

outings and after-work social gatherings should also be encouraged in order to increase organizational cohesion and create lasting bonds. If one does not exist, firm leadership can also implement a mentorship program to forge beneficial relationships between senior and junior lawyers while investing in their newest hires.

In addition to the above ideas, and according to the Harvard Business Review, the “single most impactful leadership behavior” an organization can implement to counteract loneliness is to create “shared meaning” with colleagues. In other words, “[u]nderstand what makes their work meaningful to them, and then connect that to what makes it meaningful for you.”33 Some practical steps to accomplish this may be for the organization to take the time to learn more about its individual employees through periodic evaluations and questionnaires. Perhaps more effective, leadership should seek out opportunities for candid conversations with their employees to learn what motivates them about the practice. Organizations can also celebrate collective wins with the entire team to help create a sense of unity of purpose. Creating a shared meaning among organizational leadership and their colleagues may take time, but the effects on diminished loneliness undoubtedly make such an approach worthwhile.

Finally, to prevent individual work from exposing one to an increased risk of malpractice, attorneys should maintain relationships with, and seek out the counsel of, at least one experienced mentor in each area of his or her practice that can serve as a sounding board and provide guidance and advice as needed. For their part, attorneys who are approached to become mentors should be willing to offer reasonable assistance out of a courtesy to their fellow practitioner, and also out of concern for the profession as a whole. Just as important, they should serve as a mentor for their own well-being. If the mentor-mentee relationship is successful, the mentor will get just as much out of the relationship as the mentee.

Professional Demands

The Risk

Law is a demanding profession. Between clients, colleagues, and the courts, a lawyer can feel as though he or she is being pulled in too many directions to manage, let alone function effectively. The result of the constant professional demands of the legal profession, left unchecked, can lead to a multitude of the risks addressed by this report. In truth, it is the unyielding demands of the profession that, in many respects, are the cause of a lawyer’s individual struggle with his or her well-being. This topic, therefore, should be viewed considering this report as a whole, but focuses here on three areas: client demands, organizational demands, and court demands.

Client representation forms the basis for any legal job, whether in the private or public sector. Clients seek representation and guidance from lawyers when they have important life and business decisions that they cannot handle on their own. In some cases, the client may be

33 Achor et al., supra note 28.
facing incarceration, divorce, the removal of a child or other family member from the home, loss of employment, severe personal injury, or the loss of business opportunities. In most cases, a lawyer’s client is experiencing emotional, personal, social, and financial stress and is in a period of unprecedented upheaval. As a result, some clients will demand the lawyer’s complete attention to what they perceive as being one of the most significant and trying events in their lives. Clients can become disgruntled if they perceive the lawyer’s attention is inadequate. This can expose the lawyer to bar complaints, unfavorable online reviews, and malpractice claims, adding to the lawyer’s overall stress. In addition, more and more lawyers are reporting “compassion fatigue” or “vicarious trauma,” wherein they have trouble separating themselves and their reality from the client’s case and personal situation. See Vicarious Trauma and Managing Others’ Problems.

Firm and organizational demands can further irritate the stressors of a profession built on client representation. These include requirements for billable hours, compensation programs that encourage excessive work hours, client recruitment and retention expectations, partner demands, expectations for professional development, and internal deadlines. Add to this the after-hours expectations many firms have for their lawyers to participate in social events with coworkers and other colleagues in the legal community and to volunteer on various community and leadership boards. In addition, solo practitioners and members of smaller firms have the added burden of managing employees and overall business operations. And this is all before we consider the challenge of the actual legal work that is being done at the office, which is itself a significant burden on an individual lawyer.

Lastly, demands placed on lawyers by a tribunal, combined with the everyday concerns discussed above, can sometimes be enough to upset the delicately balanced block tower of a lawyer’s existence. Harsh and unyielding deadlines — such as those in federal court — necessarily take priority over other concerns and can completely disrupt a lawyer’s other projects, not to mention social or community involvement. Court appearances are often high-pressure affairs, contributing to late nights and long hours, particularly in the days and weeks leading up to a trial or hearing. Many (but not all) judges and clerks also expect lawyers to be poised and articulate at every appearance and in all written motions and briefs, no matter the circumstances. Any request for leniency or a continuance may be viewed as a sign of weakness or ineptness. Thus, many lawyers opt to power through minor illness and even family emergencies as opposed to seeking permission from opposing counsel and the court to continue a case or extend a deadline. See The Need to Display Confidence and Conceal Vulnerability.

Taken together, the inherent demands of a legal practice, whether from clients, employers, or the court system, pose a serious risk to overall lawyer well-being. They contribute to many of the risks identified in this report, including long and unusual hours at the expense of family and personal time (many of which cannot be counted towards a billable goal), loneliness, decreased sleep, instances of vicarious trauma, increased stress, and general burnout. A lawyer’s
quality of work can also diminish if the lawyer is distracted in trying to satisfy the myriad other expectations heaped upon him or her without any effective time management skills.

Practice Pointers

Lawyers should seek to establish reasonable and realistic client expectations at the outset of the client’s case so there are no (or at least minimal) surprises later. This would include expectations concerning timing and frequency of communication, billing, and trial strategy. Often, client difficulties can be resolved through consistent efforts at communication. Lawyers can also strive to defuse tension by determining the client’s deadline and then seeking to complete the project ahead of time. Lawyers should also seek assistance and advice from colleagues and remember to exercise their judgment in deciding whether to take on and/or continue to handle a particular client’s case or cases. Lawyers must always be mindful not to make the client’s problem their problem. Objectivity and at least a certain amount of detachment are two vital components of effective legal service.

Lawyers should also strive to ensure complete and clear communication with their employer regarding the requirements expected of them. Open dialog is key to preventing uncomfortable conversations later. A lawyer can seek out a trusted mentor or colleague to ask advice as to how to meet billable goals while growing their practice through social and community involvement. Perhaps most importantly, a lawyer should seek to develop effective time management skills to make the most of the hours in each day. In addition, a lawyer should be purposeful in daily planning and focus on preserving his or her overall health (through healthy diet, exercise, and sleep) to maintain an edge during the workday. See Managing Long and Unusual Hours.

The same advice can be followed with respect to court demands. Individual lawyers, for better or for worse, are at the mercy of the court. Knowing this, those deadlines should be prioritized and accomplished early to prevent stress later. If extenuating circumstances nonetheless occur, making a court appearance or deadline unlikely or impossible, lawyers should proactively reach out to opposing counsel and the court to explain the situation. Lawyers should also maintain a professional demeanor throughout and, if on the receiving end of such a request, remember that what goes around comes around or, put another way, that kindness and civility often beget the same in return.

At the organizational level, firms and other employers are in a better position to mitigate some of the negative impacts of this risk. They can ensure that cases — particularly those that are overly complex, involve difficult clients, or present issues that can adversely weigh on an individual lawyer — are adequately and appropriately staffed to mitigate any such issues. Policies and procedures should be in place to assist lawyers who are struggling with time management skills to enable them to reach their full capacity while avoiding mental and physical burnout. Expectations concerning billable hours, community involvement, and social outings should also be periodically revisited and clearly conveyed to ensure they are reasonable and understood. If an attorney is struggling in any of these areas, organizational leadership, in
recognition of this risk and its potential consequences, should discern the reason and seek to assist where possible.

Finally, courts and other tribunals are also able to mitigate this risk. Although the pressures associated with court dates and deadlines will never completely vanish, the judiciary can take measures to ease these pressures through its daily interactions with practitioners. For example, where possible, court dates and deadlines should be continued for good cause, and steps should be taken to ensure the legal community understands that such requests can, in good faith, be made without fear of repercussion. The following two suggestions for courts come directly from the August 2017 National Task Force report:

- Courts should review 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.

- Courts should review practices that promote refusal to permit trial lawyers to extend trial and other deadline dates to accommodate vacation plans or scheduling trials shortly after end of vacation so that lawyers must work during that time.

Just as importantly, judges should also participate in local bar activities and Inns of Court to develop and maintain relationships with attorneys, especially attorneys who may be just starting their professional careers or who are new to the area.

**Vicarious Trauma and Managing Others’ Problems**

**The Risk**

The foundation of the legal profession is client service. Although representing others and their interests, particularly in times of need, is the great privilege of being a lawyer, that privilege is also a significant occupational risk. This risk most frequently takes the form of what has been termed “vicarious trauma,” although it can also manifest as the lawyer performs routine management functions with respect to other attorneys, staff, clients, and others.

The first, and perhaps the most dangerous, of the risks associated with representing the interests of others is also the noblest aspect of the legal profession: the attorney’s role as champion for his or her client. Lawyers necessarily shoulder the legal burdens of others, assuming the responsibility (and related stressors) of each case. The danger lies in the risk of the lawyer overly associating his or her own personal worth with the success or failure of the client’s case. Not surprisingly, the added pressure associated with this facet of legal practice, if left unchecked, can lead to increased stress, depression, anxiety, sleep disturbance, PTSD, and an overall decline in work satisfaction and enjoyment.

At the extreme end of the spectrum of this occupational risk is “vicarious trauma.” Vicarious trauma refers to the negative effects resulting from prolonged exposure to other people’s trauma. Stated another way, the concept refers to the cumulative transformative effect on
the “helper” who works with survivors of traumatic life events. Other terms often used to describe the syndrome are “secondary trauma,” “emotional fatigue,” and “compassion fatigue.” Regardless of the term used, the concept describes the stress experienced as the result of long-term involvement in emotionally demanding situations, such as helping a traumatized person. This “vicarious trauma” can negatively affect the attorney and support staff’s physical, psychological, emotional, and spiritual health. As summarized by one illuminating article, “[f]or many lawyers and judges (as well as jurors, courtroom personnel, and others), the violent, disturbing reality they witness inside and outside the courtroom as part of their profession can become debilitating. It can become vicarious trauma.”

The effects of vicarious trauma may manifest in any number of ways. Some tell-tale signs have been identified as follows: “avoiding certain types of matters or clients, engaging in risk-taking behavior, insomnia, feeling helpless about work tasks and withdrawing from colleagues, friends and family.”

Vicarious trauma mirrors the effects of short-term post-traumatic stress disorder in that it can “lead to nightmares and intrusive imagery, fear for one’s safety or the safety of others (family members in particular), resistance to hearing accounts of traumatic events, irritability and emotional numbness.” Not surprisingly, these effects contribute to a number of physiological conditions including increased heart rate, high blood pressure, muscular tension, sleep disruption, an impaired immune system, appetite changes, and other physical reactions. As one commentator notes, “[m]ore troubling and profound long-term effects include changes to the core beliefs of the secondarily exposed person and his or her view of self, others and the world.” A lawyer suffering from vicarious trauma may therefore face a severe decline in his or her physical and mental health. Such a lawyer is also susceptible to behavioral changes and negative coping mechanisms that can lead to drug or alcohol abuse, depression, withdrawal from work and family, decreased productivity, and an overall sense of dissatisfaction and detachment.

Another consideration associated with the risk of representing the interests of others, though perhaps not quite as apparent as vicarious trauma, concerns the stresses attendant with managing other people — both clients and colleagues. Studies show that lack of management skills is a significant cause of stress in that one may voluntarily take on tasks (and the associated stress) that are more appropriately the responsibility of others, simply because the individual has not developed the leadership skills necessary to properly manage others. Along the same lines, the lack of management skills also appears in a decreased ability to control a client and manage his or her expectations. The practice of law is a people-based profession, but these skills are seldom emphasized in legal academia. Consequently, while new and seasoned

“Every man has his secret sorrows which the world knows not; and often times we call a man cold when he is only sad.”

– Henry Wadsworth Longfellow

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36 Id.
37 Id.
lawyers alike may be well-versed in the law and possess strong skills in the courtroom and the law library, relatively few will have formal training in the art and skill of leading, managing, or supervising others. The end-result often leads to a breakdown in communication with clients and coworkers, increased stress, and heightened anxiety.

**Practice Pointers**

Given the implicit risk associated with a career devoted to representing others in their times of need, individual lawyers should take steps to become educated about the risk, address the risk, and pursue activities outside of the practice of law to disengage and refresh from the risk. Clients’ problems can become all-consuming if left unchecked, and lawyers must take time to periodically extricate themselves from the situation in order to maintain their effectiveness as an attorney.

One way to accomplish this is to purposefully schedule interruptions during the work day. While such interruptions would vary according to a lawyer’s personal inclinations, examples include a workout, lunch with a friend or even a massage or quick trip to the mall. The best activities are those that will occupy the mind and provide a break from worrying about a client’s situation. Lawyers who are otherwise performing should not feel guilty about taking breaks during the work day. Managers and partners in firms should provide such flexibility to lawyers, recognizing the overall benefit to the firm.

Intentionality here, as with many of the risks discussed in this report, is paramount. The lawyer must be intentional about setting time aside to step back from the client or situation. Considering the realities of vicarious trauma, lawyers must take steps to monitor their exposure to traumatic events or material, particularly if their caseload involves contentious family or criminal law matters.

The individual attorney must also remember that attorneys are not the only ones exposed to this kind of work and therefore take steps to reach out to other members of the legal community, including colleagues or other members of the bar, support staff, and court personnel, to act as a source of mutual support. Lawyers should also create an end-of-the-day routine to help transition from the office and leave work at work. Again, lawyers should emphasize the activities they enjoy in order to disconnect. This can be as simple as spending fifteen minutes reading a book or magazine, but may also include family time, exercise, sports, religious activities, contact with nature, meditation, yoga, periodic vacations, and so on. Moreover, all attorneys should prioritize health, including proper nutrition and sleep habits, to keep their body functioning optimally.

The individual lawyer can also self-educate on leadership and management techniques in order to address any perceived short-coming in this area. Improved management skills may lead to increased self-confidence, which can in turn help offset work demands and (hopefully) mentally counteract the effects of vicarious trauma as a byproduct. Bookstore shelves are replete with titles focused on these topics, some of which are cited in the resources section of this report. Although not legal treatises or hornbooks, such self-help publications can go a long way in preparing a lawyer for the realities of practice and managing the problems of others.
At the organizational level, the profession needs to recognize the risks associated with client representation and take steps to minimize their impact on practitioners. All members of the profession should adopt the ethic that their job is not only to serve the client and make money for the firm, but that they also have an ongoing responsibility to protect and develop the human resources of themselves, their respective law firms and the profession as a whole. Vicarious trauma needs to be openly discussed, and programs should be developed to provide a confidential outlet to discuss personal trauma history that could affect the risk for vicarious traumatization, as well as incidents of trauma experienced over the course of a specific case.

Individual attorneys can effect positive change. Colleagues may be in the best position to recognize the warning signs of emotional fatigue and vicarious trauma in their peers, but managing partners need to be especially cognizant of these issues. All members of the profession should therefore take steps to develop a working knowledge of the risk and its symptoms. Practices and procedures should be in place to address this risk and provide the support needed when it presents itself. Organizations should provide reasonable vacation and encourage their employee lawyers to periodically take time to themselves in order to rest and recharge. Respite from those cases that can inflict vicarious trauma is critical to the lawyer’s well-being.

Programs can also be designed to foster development in leadership and management techniques for all employees, not just those individuals who have been subjectively identified as leaders or rising stars. Better managers are better leaders who exhibit stronger feelings of self-worth and self-confidence. Organizations would therefore be well-served in nurturing management skills. They should encourage an open dialog on all matters relating to the firm, including a lawyer’s struggle in managing the problems of others. Along the same lines, senior leadership should also take steps to ensure that all employees, particularly the newest lawyers, feel comfortable discussing their concerns openly.

The Duty of Confidentiality

An attorney’s duty to maintain and protect client confidences under Rule 1.6 of the Rules of Professional Conduct may cause attorneys to feel isolated, unable to discuss their concerns about a particular case, and alone when trying to develop a strategy for moving a difficult case forward. Attorneys often encounter cases presenting a particularly challenging or novel legal issue or requiring an approach with which the attorney has no experience. Other cases raise issues that attorneys cannot unravel, leaving them unable to develop a strategy for a viable way forward. Probably more problematic are those cases in which the lawyer, through a protected attorney-client communication, learns disturbing facts that must be held confidential.
These problems are exacerbated if the attorney is a solo practitioner and unable to consult with or seek counsel from another attorney in the firm. In addition, dealing with clients who are demanding, rude, or unwilling to accept an attorney’s advice can present its own set of headaches. Each of these factors can lead the attorney to take the one step that a lawyer should never take: avoiding a case that has already been accepted. One thing is certain — putting that difficult case or problem client off until tomorrow is not a sustainable solution.

Every attorney has a duty to represent clients competently under Rule 1.1, and diligently under Rule 1.3. Comment 3 to Rule 1.3 specifically warns about procrastination, noting that clients’ interests are frequently harmed by the passage of time: “[I]n extreme instances, as when a lawyer overlooks a statute of limitations, the client’s legal position may be destroyed. Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.”

A related and perhaps more intractable issue is the understandable apprehension an attorney may feel when faced with divulging that he or she may be having trouble moving a case forward, whether due to the reasons discussed above or because of a problem with substance or alcohol dependency, anxiety disorders, or mental health issues.

Put another way, people may feel a natural disinclination to seek help, and attorneys are particularly vulnerable for several reasons. First, people come to attorneys for help solving their problems. Attorneys invested huge amounts of time and money in obtaining licenses to practice. Admitting that attorneys are the ones who need help runs counter to what the population at large perceives a law license to represent. Second, no one wants to admit that they might have a problem, lawyers least of all. Third, the perceived stigma and indicia of weakness that are attached to those who seek mental health or substance abuse counseling can be overpowering drivers of action, or inaction as the case may be.

This latter issue is also one of concern to both members of the judiciary and to law students and will often prevent them from seeking the help they need for the same reasons. See The Need to Display Confidence and Conceal Vulnerability. Finally, attorneys may fear seeking help due to the incorrect but persistent notion that doing so could have deleterious consequences from an ethical standpoint. Recent rule revisions in Virginia have attempted to help address this concern. Specifically, the rules concerning an impairment finding have been amended so that a finding of impairment is no longer considered “misconduct” and will therefore not appear as such on an attorney’s disciplinary record.

Practice Pointers

The lawyer’s duty of confidentiality is a pillar of the legal profession, guaranteeing that a client’s sensitive issues will remain with his or her chosen advocate. This is an essential part of the profession’s ethical framework, and at the most practical level, a major reason why people
in need come to lawyers. Individual lawyers and their employers must therefore invest in practices to mitigate harm when the helpers themselves need help.

Because the duty of confidentiality limits those with whom a lawyer can discuss client confidences to those who share their obligation to a client, lawyers should strive to develop strong working relationships with the other attorneys in their firm or organization. Likewise, managing partners and equivalent supervisors should take steps to promote positive workplace environments. By creating a collaborative environment in which attorneys are encouraged to work together and see one another as companions rather than rivals, lawyers who would otherwise feel frustrated and confined by their confidentiality obligation will find they have a safe outlet for their concerns.

Moreover, research indicates that positivity enhances group performance, so as collaborative environments are fostered, overall productivity improves for the organization. Similarly, positive emotional climates in the workplace can contribute to employee loyalty and a sense of responsibility toward the organization. One study of several thousand lawyers from four states found that traditional measures of success — prestige, income, and other benefits — do not correlate with lawyer happiness. Instead, satisfied lawyers are those who regularly experience close relationships, interest, and meaning in their work. This finding suggests that the legal academy and employers should recast the perception of legal success from a focus on competition, status, and tangible benefits to professional satisfaction through support, collaboration, interest, and a sense of purpose.

By fostering the collaborative, supportive environments that mitigate the stifling effects of the lawyer’s duty of confidentiality rather than the traditional competitive, self-interested orientation of law practice, legal employers may reap significant economic and social gains.

Solo practitioners must be made aware of, and utilize, services available to discuss hard cases. For ethics questions, the Virginia State Bar has an Ethics Hotline at (804) 775-0564. Additionally, most lawyer professional liability insurance companies have their own risk management resources. Actively establishing a mentor-mentee relationship with a senior lawyer or law school professor is strongly encouraged, especially for less experienced attorneys. Finally, participating in specialty bar associations that focus on your particular field of practice can be an immense benefit.

“By fostering the collaborative, supportive environments that mitigate the stifling effects of the lawyer’s duty of confidentiality rather than the traditional competitive, self-interested orientation of law practice, legal employers may reap significant economic and social gains.”
Educational Debt

The Risk

In the history of the legal profession, this risk is relatively new. In spite of its recent origins, however, this particular risk is potentially soul-crushing for new lawyers. The main contributing factor to this risk is the unchecked, and potentially unsustainable, rise in law school tuition. In 1985, the average annual tuition in private law schools and public law schools was $7,526 and $2,006 (both in 1985 dollars), respectively. Applying the inflation rate to these figures, annual tuition for private and public law school should have been $17,520 and $4,670 in 2018.

Needless to say, tuition increases have vastly exceeded the normal rate of inflation. The actual average annual tuition for a private law school in 2018 was $47,754, while the average annual tuition for public law school was $27,160. This means that in 2018 private law school was 2.73 times as expensive as in 1985 and public law school was 5.82 times as expensive. Naturally, these tuition increases have translated to higher student loan debt upon graduation.

“Mortgage.” The word, which finds its roots in Old French and Latin, literally means “death pledge” and bears more on the student debt crisis than one might imagine. Just as a home buyer would be well-advised to develop a clear financial strategy prior to making a thirty-year commitment with a bank, student borrowers should do the same when considering educational loans. This is particularly true considering that the average law school graduate debt between 2010 and 2017, not counting whatever debt was incurred in college, has exceeded $100,000 — and according to at least one study, $140,000 — an amount that certainly qualifies as “death pledges” for a new age.

Perhaps surprisingly, many law students make the life-altering decision to take out large amounts of student loans with little to no thought as to the repercussions. Law schools and loan officers do not generally provide the financial counseling that would offer guidance in making sound financial decisions. Consequently, these decisions are primarily made by young students, generally recent college graduates with little professional experience and a significant lack of financial acumen. They are also based largely on unfounded expectations that the degree or degrees will ultimately yield a salary that will more than compensate for the risk involved in taking out such a crushing debt load. It is not until after graduation and passing the bar exam that the new lawyer must face the consequences of those earlier financial decisions and the effects they will have on both their career choices and their personal lives.

For instance, a 2018 article from U.S. News & World Report analyzing data provided in 2016 from graduates from 180 ranked law schools reveals the disconcerting reality. It reports that the median private sector salary was $68,375 (with salaries ranging from $45,000 to

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$180,000). Of the reporting schools, only 19.4% reported a median private sector salary that exceeded $100,000. Moreover, those graduates who entered the public sector reported median salaries that were significantly lower than their private sector counterparts, $53,500, with reported salaries ranging from $34,250 to $71,200. Other findings from the National Association for Law Placement show an overall median legal starting salary in 2017 of $70,000, with a law firm median starting salary of $117,000.

According to a 2014 Forbes article, by 2013 only 84.5% of law school graduates could find a job after graduation. Of those, only 51% were employed in law firm jobs, effectively pushing many graduates into lower-paying public sector jobs or, more disconcertingly, into non-legal career fields. More recent statistics from the National Association for Law Placement show that for 2017 graduates, the overall employment rate has increased to 88.6% of graduates, though the number of jobs available to graduates decreased by more than 1,200 compared with 2016. The total number of law school graduates has also declined for the fourth year in a row. Thus, “the employment rate increased even as the number of jobs declined.”

While the practice of law certainly can be a lucrative one, the evidence suggests that most new law school graduates are entering the workforce at salaries far below what they expected, and even in fields completely foreign to their J.D. degree. They are also entering the profession with little to no working knowledge of the realities and risks associated with the practice of law — one of the reasons for this report. And as one commentator put it, “[t]he trouble with taking out over $100,000 in loans to chase a degree is that you don’t know if you’ll love what you do.” If you do not love what you do, or if you get burnt out from the stress associated with the practice, you will either be left with an unfulfilling existence chasing a paycheck simply to pay off your loans, or leaving the field altogether for a new job in a new career with unknown salary prospects, all with the chains of debt following you. See The Expectations-Reality Gap in Law Practice.

Faced with these realities, many new lawyers find themselves shackled with massive monthly payments towards their loans that can extend for many years, equivalent to a mortgage with no accompanying house. This can lead to a decreased standard of living, a deliberate delay in starting families or purchasing a home or automobile, a feeling of lack of control and disenfranchisement with legal practice, burnout, decreased work-product, financial stress, family struggles, and general health challenges. These results have adverse societal impacts that ex-

"If you do not love what you do, or if you get burnt out from the stress associated with the practice, you will either be left with an unfulfilling existence chasing a paycheck simply to pay off your loans, or leaving the field altogether for a new job in a new career with unknown salary prospects, all with the chains of debt following you."
tend far beyond the scope of this report. Many young lawyers are also turning to second jobs in order to make ends meet. And coupled with the already long and stressful hours expected of an attorney, such an existence is rarely sustainable for long.

Excessive student debt placed upon young lawyers also has far-ranging impacts on the profession. When saddled with debt, young lawyers are far less likely:

- To practice in rural areas, because the salaries offered cannot support loan repayment obligations;
- To choose to practice in legal aid;
- To have funds to join, or time to participate in, voluntary bar associations;
- To have the ability to commit to pro bono obligations;
- To run for public office or provide public service typical of a citizen-lawyer; or
- To achieve a healthy work-life balance or overall satisfaction with their profession.

These young lawyers must examine life and make professional decisions based upon a debtor’s perspective. They are largely unable to take the entrepreneurial risks traditionally taken by previous generations of lawyers.

Practice Pointers

“Gone are the days when a law degree automatically created wealth and financial success. Prospective law students must now recognize the increased cost of legal education and the reasonable employment and salary expectations following graduation. Without understanding this risk, the decision to go to law school truly can be life-altering — but for the wrong reasons.

Prospective law students should first seek counsel from financial professionals and existing lawyers as to the true costs of a legal education. They should not rely on law schools or loan officers and institutions for this information as their interests will be different than those of the prospective law student. Loan repayment and tax consequences should also be studied. Tuition, textbooks, rent/mortgage, transportation, utilities, living expenses, and family obligations all must be taken into consideration. Starting a legal career often coincides with major life events such as marriage, home and car purchases, and beginning a family. The financial constraints accompanied by student loan repayment obligations can have a substantial impact on these events, and should be understood and evaluated.

Prospective law students may also consider working a few years to save money to use toward their legal education to limit or offset their exposure to the debt they will otherwise incur. More time preparing for the financial costs of law school can ease the financial burdens that a legal education requires. If possible, prospective students would also be well-served by
seeking out legal internships in college to explore whether the everyday practice of law is as attractive a prospect as they may think. They may also consider reaching out to practicing lawyers for their advice and thoughts.

If the prospective student decides to enroll in law school, they should carefully research their school of choice to understand the job prospects available to its graduates, as well as the expected amount of student loan debt upon graduation. Fairly or not, law school pedigree matters to many larger firms that offer high salaries. Prospective students should be aware of this reality. Many schools offer academic scholarships, so students can increase their odds at securing at least partial financial support by studying hard in college and scoring high on the LSAT exam. They should also research the school to determine whether any other scholarships may be available and apply to as many as is feasible.

Once in school, students should take advantage of the resources offered by their loan provider to truly understand the nature of their loan. Many career service offices offer counseling in this area, and students should take the time to understand the available career options and potential repayment strategies for their situation. For example, working in the public sector may provide a lawyer with complete loan forgiveness as long as Congress maintains the program. Law schools themselves may also offer stipends or partial loan assistance for certain students depending on their career trajectory. The earlier a strategy is developed, the more a student can be in control of their financial future.

Lawyers entering or already in practice must develop and maintain financial acuity and live within their means. Make loan repayment a priority and avoid taking out more debt than is necessary. Understand and study the tax consequences related to student loans and consider the impact of your loan obligation when making major life decisions. Working with a financial professional is encouraged as that individual may provide further insight as to how to get rid of the debt sooner, such as loan consolidation or another method. Simply by developing a plan and sticking to it, a lawyer can retake control and begin making progress on what otherwise may appear to be an insurmountable barrier.

Because, as stated throughout this report, joining voluntary bar associations is important to lawyer well-being, these organizations should consider dues models that reduce or eliminate fees for newer attorneys. Law firms should also consider paying directly, or providing stipends to pay for, young lawyers’ dues and otherwise promote young lawyer involvement in bar activities.

At the organizational level, the debt epidemic must eventually be addressed by the legal academy. Rising tuition and student debt is simply not sustainable by lawyers, our profession, or society as a whole. Although there is little individual lawyers can do to address this problem, simply beginning — and continuing — this conversation is a good start. Law school applications and enrollment continues to decline, at least in part due to an increased awareness of the educational debt problem. Faced with this reality, the legal academy and the profession must act. Schools that have been proactive by cutting tuition rates, for example, have seen an increase in applicants.

Additionally, law schools and bar organizations should consider forming task forces to investigate this issue further and craft viable solutions or proposals to address its effects on the
profession. Left unmitigated, some law schools may be forced to shut their doors for lack of applicants and the profession may suffer a reduction of quality new attorneys, particularly as a large generation of lawyers enter the twilight years of their careers.

## Business Management of the Practice of Law

### The Risk

The practice of law necessarily includes the business of law firm management. Like all businesses, income must exceed expenses for a law practice to survive. And as in every business, employees must be paid before the owners. The stress of running the business of a law firm is therefore an occupational risk that must be understood.

The level of this type of stress on individual attorneys is generally inversely proportional to the size of a law firm: the larger the firm, the less business management stress is felt (with the exception of managing partners and practice managers in larger firms). For solo practitioners, business management decisions are made daily, which translate into a potential daily cause of stress and anxiety. In addition, the social and professional expectations for lawyers can lead to excessive spending, simply to look the part and live in a manner commensurate with that of other professionals.

Surprisingly, few law schools offer business management, accounting, marketing, finance, and technology classes, let alone courses in personal financial planning. Instead most lawyers are confronted with their lack of training in these areas after they pass the bar. Many new lawyers are forced to start their own practices to make ends meet. Indeed, a 2013 American Bar Association report found that the vast majority of private practice attorneys are in solo practice or small firms.\(^{45}\) Lack of business training during the legal educational process certainly contributes to stress and anxiety. Even experienced lawyers face the grind of generating clients, selecting contractors and service providers, securing insurance of all types, handling personnel matters, paying bills, and doing all things necessary to keep the lights on.

Although this particular risk is not necessarily unique to the practice of law, it is no less important to acknowledge and understand.

### Practice Pointers

The legal academy is perhaps in the best position to mitigate this risk by devoting educational resources to preparing law students for the business side of being a lawyer. Traditionally, legal education has been primarily theoretical, with practical instruction limited to essential lawyering skills such as legal writing, research, and oral advocacy. Law schools should recognize that the school-to-firm model that has worked for decades does not reflect the reality many of their graduates will face. Including law practice management, financial literacy, marketing,

\(^{45}\) Lawyer Demographics, A.B.A. (2013), https://perma.cc/YMA9-8TEV.
entrepreneurship, and related courses in legal skills programs will do much to equip new attorneys with the tools they need to handle the financial stresses of modern law practice.

Practicing lawyers should consider taking business classes through local colleges. In addition, every solo practitioner and law firm must retain services of competent professionals, such as accountants, insurance agents, and technology specialists to properly run their firms, provide quality services to clients, and protect confidential information. Bar associations should provide business training programs to their members, even if the business training does not qualify for CLE credit (these organizations should keep in mind that just because training does not qualify for CLE credit does not mean that the training is not important).

New lawyers should seek advice and guidance from experienced lawyers on how to manage firms, and experienced lawyers should agree to serve as mentors as part of their responsibility to our profession. An equally effective way of maintaining business competence is for attorneys in solo and small firm practices to get together informally to share business and technology ideas with each other. In addition to providing mental health resources and promoting a positive, collaborative working environment, legal employers should consider offering their employees financial planning services. This valuable benefit will not only assist in attracting legal talent, but also will help retain and nurture that talent by proactively preventing personal financial difficulties that inhibit a lawyer’s ability to practice effectively.

The Need to Display Confidence and Conceal Vulnerability

The Risk

This occupational risk reflects the fact that the legal profession can be, at times, ruthlessly competitive, even for practitioners outside of large, elite law firms. From a prospective lawyer’s first exposure to the profession in law school, one study observes, “students are socialized into a competitive environment in which showing any vulnerability is discouraged. Seeking help is an acknowledgment of vulnerability. The competitive nature of law school reinforces a message that students are better off not seeking help and instead trying to handle problems on their own.”

The inherently competitive nature of law school, where curved grading scales pit students against one another without regard to their individual merit, mirrors the practice of law, where lawyers in firms of all sizes and even government offices are judged by their perceived success rates.

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From the potential for humiliation with the Socratic method when students are not prepared (or even if they are) to missed deadlines and important details resulting in professional discipline, lawyers learn that they must not fail. ... Any possible failure becomes an opportunity for intense self-scrutiny and every move lawyers make can become defined by winning or losing.\(^47\)

But lawyers are subject to more than just these internal pressures. Many times, the legal process results in winners and losers. This process lends itself to participants, such as lawyers, not showing vulnerability or weakness. The public perception of attorneys as elite figures who are comfortable in the courtroom and boardroom alike also incentivizes lawyers to exude confidence.

These influences combine to stigmatize any help-seeking behavior. In a survey asking attorneys what factors would discourage them from seeking professional help for alcohol, drug, or mental health issues, “social stigma” and “potential threat to job or academic status” were consistently in the top three results.\(^48\) The same was true when asked about encouraging others to seek help or informing an appropriate party about concerns for other lawyers. Unfortunately, the incentives driving lawyers to put on a confident façade and conceal vulnerability are deeply embedded in the legal profession’s competitive culture.

These occupational influences, when combined with perfectionism, a trait found in many attorneys, can also lend to “imposter’s syndrome,” a psychological pattern in which a person doubts their capabilities and accomplishments and experiences a persistent fear of being exposed as a fraud. Imposter’s syndrome has been associated with anxiety, stress, and depression and may further inhibit lawyers suffering from this condition from seeking help.

### Practice Pointers

The reality of the legal profession is that it is inherently competitive. Nevertheless, there are some steps organizational stakeholders could take to reduce the stigma against help-seeking behaviors.

Perhaps the most widely studied manifestation of this occupational risk is law students’ general reluctance to seek help for fear that doing so will negatively affect their bar admission applications. Boards of bar examiners should adopt the recommendations of the Lawyer Well-Being Committee of the Virginia Supreme Court by revisiting bar application questions regarding mental health history and publishing data reflecting the low rate of admission denials due to mental health disorders and substance use. The Virginia Board of Bar Examiners has already taken an important step by removing the mental health inquiries of the character and fitness questionnaire and replacing them with the following single question: “Within the past five years have you exhibited any conduct or behavior that could call into question your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?”


\(^48\) See Organ et al., *supra* note 46, at 10–11.
Employers should also take affirmative, visible steps to change organizational culture to indicate acceptance, and even encouragement, of help-seeking behaviors. These can include approaches like developing wellness committees and providing counseling services on site, as well as promoting more social interactions and team building among employed attorneys. While these steps may increase expenses or reduce attorney productivity at times, research suggests that encouraging help-seeking behaviors will actually increase law firm profitability in the long-run.

Because this occupational risk is rooted in legal culture, individual lawyers’ options to counteract it are somewhat limited. Law students can seek to verify the realities of the character and fitness process, which, as discussed below, is a leading source of the stigma against seeking help among law students. By attending programs conducted by board of bar examiner representatives, among other information-gathering efforts, law students can learn that “[s]tate disciplinary authorities, boards of law examiners, and law schools all want lawyers and law students who need help ... to get the help they need to address and manage these problems so that they can be successful legal professionals and work responsibly on behalf of their clients.”49 Additionally, individual lawyers and law students can develop their support networks outside of the legal community. Healthy social, familial, and spiritual communities all provide a vital emotional support system in which a lawyer can be genuine and vulnerable without fear of professional stigma.

The American legal landscape is in a period of unprecedented upheaval, continuing a process of disruptive change that began with the digital revolution. Other than the fundamental constants of our common law system, everything about law practice seems to be changing. New technologies, particularly recent developments in artificial intelligence, stand to augment if not replace some attorney jobs in large firms, and adoption by smaller practices looms large on the horizon.

Meanwhile, many of law firms’ traditional corporate clients are increasingly turning to alternative business structures, non-traditional legal services providers, technological start-ups, and in-house counsel to reduce ballooning legal costs. Law firms continue to regain their footing following the Great Recession, but significant damage has already been done: steps taken to cope with the recession, such as staff cuts, thinning equity partner ranks, and steadily increasing hourly rates have left law firms with reduced capacity to respond to the next economic downturn. Adding to the stress are statistics indicating that demand for legal services has remained essentially flat since 2010.

Although these concerns reflect an industry-wide perspective, individual lawyers also must cope with these changing legal paradigms. Stress relating to job security affects many attorneys in this shrinking market threatened by alternative legal services providers, automation, and increased client resistance. Frustration with new technologies — and accompanying job dissatisfaction, anxiety, and inefficiencies — is also a common symptom as especially more experienced attorneys are forced to use new approaches to their familiar work. For instance, online legal research databases, e-filing, e-discovery, and digital calendaring and billing systems are the industry norm despite becoming commonplace only a decade or so ago.

Older attorneys may be tempted to cruise to retirement without adapting to new technologies, but recent changes to the ethics rules prohibit this approach. In 2016, the Supreme Court
of Virginia amended Rules of Professional Conduct 1.1 and 1.6, requiring lawyers to maintain competence in their practice areas, including awareness of the benefits and risks of relevant technologies. Similarly, lawyers are charged with protecting client confidences through appropriate cybersecurity measures. No longer is locking the file cabinet enough — lawyers must keep up with all technologies relevant to their practices, both in terms of substantive work (e.g., e-filing and e-discovery systems, appropriate research tools) and practice management (e.g., billing and calendaring systems, cybersecurity best practices to protect client data). Failing to keep up can lead to professional sanctions.

### Practice Pointers

With the current pace of change in the legal profession, lawyers who fall behind get left behind. Organizations should therefore proactively position themselves to stay ahead of the curve. A landscape survey of the 2018 legal market indicated a marked difference between “dynamic firms” that proactively addressed client needs through innovation, and “static firms” that clung to traditional models for delivering legal service. The dynamic firms far outperformed the static firms. Dynamic firms are distinguished by recognizing clients’ demands for greater efficiency, predictability, and cost-effectiveness, then restructuring their business model to deliver just that. Strategies employed included implementing alternative staffing tactics, creating flexible pricing models through up-front communication with clients, changing the internal firm work process, adopting innovative technologies to promote efficiency, and doubling-down on marketing and business development practices.

Individual attorneys also have a variety of resources at their disposal to stay on top of the changing legal environment. The Virginia State Bar, for instance, recognizes the need to keep Virginia attorneys educated on the rapid pace of legal developments, and to that end, has charged a study committee with evaluating current developments, assessing how these changes will impact the practice of law, and informing the organized bar of what to expect. Its first report, released in 2016, was designed as an accessible primer for attorneys addressing technology and the practice of law, alternative legal business structures, and access to justice. A later committee issued an updated report addressing the most recent developments on March 13, 2019. Reviewing the work of this and other committees addressing the future of law practice, as well as following up with further educational programming, is a great way to stay ahead of a changing practice environment.

To that end, lawyers should attend future-focused CLE programming, such as a tech show developed to help lawyers keep pace with developments in technology, legal practice, and accompanying ethical implications.

Finally, individual attorneys who regularly participate in state and local bar associations, attend networking and social events, and develop mentorship relationships with more experienced attorneys.

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attorneys, will find themselves better positioned to stay informed about subtle changes in the legal field and their practice areas than their peers who stay in the office. And, in a volatile legal market, developing relationships with fellow practitioners can help ease job transitions.

Technology Addiction

The Risk

With technology ever-present in our professional and personal lives, knowing when to unplug and refresh is vital. A few statistics reveal the breadth of the problem:

- 60% of people keep their phones next to them at night;
- The average person checks their phone 47 times per day;
- Half of the population checks emails at night;
- Nearly two-thirds of us look at our phones within 15 minutes of waking up each day; and
- 80% of vacationers connect to the internet for some or all of their vacation, and two-thirds of them check their business emails. Over half of vacationers spend at least one hour a day on their connected devices.53

As noted in the resources section to this report, the ABA Journal, New York Times, Washington Post, Forbes and many other publications have carried articles describing the effects of being addicted to our digital devices. These effects can include sleep disruption, anxiety, depression, stress, inability to focus on anything other than our devices, and even an inability to interact normally with people. Lawyers can become addicted to work and lose their focus on work-life balance. They can also be distracted from work by their devices, causing them to be unable to focus on important tasks like writing a brief, preparing legal documents, and conducting legal research. Instead, the lure of online games, shopping, news feeds, and social media can prove irresistible, interrupting workflow and reducing productivity. Thanks to the ubiquitous pocket computers (otherwise known as smartphones) we all carry around, the national attention span is noticeably shrinking.

The risks of technology addiction are particularly insidious for attorneys, who experience pressure — either from their employers or self-imposed — to stay connected to clients and the office, even in off hours. The new world of mobile phones and other connected devices makes it nearly impossible to truly leave the office. Lawyers who feel obligated to respond to emails in the middle of the night or after a much-deserved evening out might find their judgment less sharp than during the work day. Accidentally revealing client confidences through sloppy reliance on autocomplete or autocorrect functions, or simply sending an incoherent message, can not only harm an attorney’s reputation — it can also lead to bar complaints and ethics violations.

Practice Pointers

Attorneys need realistic strategies for digital detoxing that will help them serve their clients better, increase productivity, and enhance their vitality and well-being.

Individual lawyers who recognize their own tendencies in the risk description above should seek out the myriad resources on detaching themselves from their devices. Some starting points are suggested in the resources section of this report. As with any addiction, the cold-turkey approach rarely works, and in the case of connected lawyers, that approach would not necessarily be prudent. Some digital connections are necessary.

That said, lawyers should adopt incremental steps to digitally detox themselves and improve their quality of life. For instance, lawyers should designate certain times and locations as “device-free.” Mealtimes and the bedroom are good starting points. To the extent feasible, lawyers should also try to set expectations with employers and clients — for instance, emails received after a certain time will not receive a response until the next business day.

Organizations that employ lawyers should recognize that setting an expectation that employees always be available is ultimately counterproductive. Attorneys who try to respond competently at all hours of the day and night simply will be less effective and less productive than those who keep set hours of connectivity. Employers should perceive that the risk of mistakes — and their fallout — from over-connected attorneys outweighs any productivity benefits.

Lawyers who are addicted to digital devices have a substantially lower quality of life than those who are not — meaning that such lawyers are incentivized to shop around for a work environment that will provide a better quality of life. To prevent these ills, employers should, as much as possible, limit nonemergency correspondence to the workweek and consider providing training and support for those who cannot disengage. They should cultivate a workplace culture stressing the negative consequences of digital addiction and recognizing that lawyer well-being requires a fair balance between work and life.
Employers should take note that a “right-to-disconnect” movement is taking place abroad, with signs that it is catching on in America. There is already a law granting this right in France. German companies, including Volkswagen and BMW, have long had policies against contacting employees after hours. German lawmakers are currently considering making those policies law by following France’s lead and enacting so-called “right-to-disconnect” rules. The disconnect trend also has reportedly spread to Italy and the Philippines.

Canada has been considering similar measures since 2018, when the movement also reached the U.S. The New York City Council considered a proposal in 2018 that would give private employees the right to ignore electronic work communications after hours and fine employers $250 every time they violated that right. Workplace communication software, including industry leader Slack, have begun offering “Do Not Disturb” features for employers and employees.

In the practice of law, it will be difficult to strike a balance between the need to work after traditional hours and the employee’s right to have work-life balance. But this is a challenge that law firms need to meet.

**Lack of Diversity in the Legal Profession**

The lack of diversity in the legal profession is a well-established issue. Although the link between diversity and lawyer well-being may seem tenuous at first, leading research — including the report of the National Task Force on Lawyer Well-Being that was the impetus behind this and other wellness committees’ work — indicates that diversity and wellness are symbiotic. A collegial, respectful, and inclusive workplace contributes to a sense of connection, which has a direct bearing on well-being. Lawyers who feel they belong in their workplace are more likely to be engaged in their work and thus more productive.

In contrast, a lack of diversity in the profession can lead some attorneys to experience a feeling of isolation. Isolated attorneys tend to be unhealthier and poorer performers. They are also more likely to feel as though they lack control and autonomy over their professional lives and are more likely to suffer psychological disorders such as stress, anxiety, and depression.
In order to fully address lawyer well-being, law firms and organizations must adopt measures to increase the diversity and inclusion of lawyers throughout the profession. Legal employers and law schools should prioritize diversity and inclusion in recruiting students as well as in hiring and retaining attorneys. Similarly, developing or enhancing existing mentoring programs that engage diverse lawyers promotes an inclusive profession. Organizations currently lacking diversity programs should consider hiring consultants or other professionals with the necessary expertise to competently measure and assess the organization’s overall levels of diversity and inclusiveness, engage a diverse group of employees and stakeholders in the conversation, and suggest approaches for improving organizational inclusivity.

Diversity is about more than employment statistics — there is an emotional and psychological component that is just as important to fostering a positive working environment. Legal organizations should strive to empathize and address personal experiences within the organization caused by or related to a lack of diversity. By promoting a team mentality among all members within the firm or organization and encouraging open and honest dialogues related to the organization or firm’s diversity and inclusion practices, individual attorneys will feel that their experiences are recognized and appreciated. Employers should also include education on implicit bias and its effect on the organization or firm members as part of ordinary workplace training programs.

Bar associations and regulators should also strive to advocate for diversity and inclusion initiatives and educate the bar on why those initiatives are important to individual and institutional well-being. Doing so could take the form of offering CLEs focused on diversity and inclusion, developing diversity pipeline programs, and hosting business development events promoting diversity.

The effects of a lack of diversity in the profession are much harder for the individual lawyer to tackle as they tend to come from structural or institutional norms or practices and are not able to be easily or immediately altered by the individual lawyer. That said, individual lawyers can help mitigate this risk by actively seeking mentors inside and outside of their organization. Participation in diversity and inclusion sections in local, state, or national bars is a direct way to work toward increasing diversity in the legal profession.

Attorneys should be cognizant of the importance they place on being in a diverse and inclusive work environment and the effect that doing so has on their individual mental health. By being willing to communicate personal experiences with organization or firm leadership and hold management accountable, attorneys can help increase awareness of diversity’s role in establishing a positive working environment. When searching for new jobs, attorneys should factor in a work environment’s diversity objectives and culture in assessing their potential workplace satisfaction.

Finally, all attorneys should strive to be tolerant and develop a willingness to communicate and educate other attorneys on matters of diversity and inclusion. Nurturing this awareness of one’s own implicit biases and how they may impact other individual attorneys and the organization or firm is essential to establishing positive, productive working environments.
External Pressures on Lawyer Independence

Lawyer independence refers to a lawyer’s freedom to act in his or her client’s best interest without fear of interference. The independence of the legal profession and the judiciary is a fundamental aspect of the system of checks and balances protecting the rule of law in modern democracies. External pressures on that independence can come from a variety of forces that cause lawyers to set aside their independent judgment in favor of decision making based upon another interest. The importance of this independence has been summarized as follows:

In the great symphony of the American legal system, while it is the court that ultimately calls the final tune through judicial review, it is the lawyer who plays maestro and makes sure that each instrument of the orchestra is in place at precisely the right time so that the right tune is available to be played. Herein lies the true need of an independent legal profession, and simultaneously the reason our independence must be protected. The combination of the concepts of individual rights and American judicial review is unique in American jurisprudence and has a profound synergistic impact on our legal system. One good lawyer with one good case in front of one good court can literally change American society.54

Given the stakes involved, threats to a lawyer’s independence harms not just the individual attorney’s well-being, but the health of our legal system as a whole.

Individual lawyers are most likely to encounter threats to their independence in situations involving the potential for financial gain. The obvious examples are hornbook professional responsibility principles: engaging in a business transaction with a client without disclosure and consent, conducting a separate business activity that is contrary to a client’s interests, acquiring a property interest adverse to a client, or acquiring a financial stake in a case’s outcome. Any law student can tell you that these are all forbidden.

The reason for the taboo is that a lawyer in one of these positions has compromised his or her independence — such a lawyer has a financial incentive to act against the client’s interest. Numerous ethics rules — particularly Rules of Professional Conduct 1.7, 1.8, and 5.4 — prohibit these and other conflicts of interest. Protection of lawyer independence is thus an essential aspect of why law is a self-regulating profession: an outside regulatory body could limit the profession’s independence, but regulation is necessary to fight the financial incentive to compromise independence.

When these traditional ethical principles regarding lawyer independence are viewed in light of the modern, globalized legal market, a new quagmire of pressures on lawyer independence

emerges. As discussed elsewhere in this report, the changing paradigms of the legal profession have created an intensely competitive market characterized by proliferating alternative legal service providers, corporate clients increasingly taking legal work in-house, and client resistance to traditional billing models. See Changing Legal Paradigms. As a result, lawyers and their employers are feeling the pressure, making them increasingly likely to enter into conflicts to maintain the bottom line.

Economic pressures are heavily incentivizing lawyers and firms to innovate in ways that may compromise their independence. To keep profits up, some lawyers are turning to for-profit attorney-client matching services (ACMSs) to bring in fresh work. Similarly, startups combining venture capital funding with legal services are luring clients away from traditional law firms. The market clearly loves these innovative legal service providers. The problem with them is that they directly compromise lawyer independence — at least as traditionally understood. Many states, Virginia among them, have issued legal ethics opinions prohibiting lawyers from participating in certain for-profit ACMSs because doing so violates Rules 5.4 and 7.3, among others. However, other ACMSs comply with the Rules of Professional Conduct and are important to connecting clients with lawyers. Similarly, Rule 5.4 on its face prohibits lawyers from sharing legal fees or forming partnerships with nonlawyers — and in doing so, bans lawyers from harnessing venture capital or developing new methods of delivering legal services with nonlawyers.

**Practice Pointers**

This conflict between traditional values and ethical principles rooted in lawyer independence and the increasing commercialization and competitiveness of the legal field is developing into a crisis that law, as a self-regulating profession, must address. Alternative legal business structures that test the lines between ordinary businesses and law firms are nothing new and are here to stay. But lawyers must be forever mindful that lawyer independence as reflected in ethics rules ultimately serves to protect clients and the public. As one commentator put it, the Rules of Professional Conduct are our clients’ Bill of Rights.55

What can lawyers and their employers caught in the middle of this conflict do? They should strive to stay at the forefront of developments in the legal market by studying new legal ethics opinions, reports about the state of the legal profession, and other news sources related to developments in law practice. No one really knows how the understanding of lawyer independence will develop in the future. That said, lawyers should seek to become involved in the organized bar and contribute to the profession’s self-regulation. Legal employers should encourage this participation and make ample allowance for it because self-regulation is a primary pillar of lawyer independence.

Law schools and bar associations should strive to educate both lawyers and the public about the lawyer’s role in society and how an independent bar contributes to the rule of law and a thriving democracy. An independent bar requires public trust and support, so all legal stakeholders — law firms, lawyers, law schools, bar associations, and governments — should strive

to overcome the common negative perception of lawyers and restore the legal profession’s public image.

Finally, legal employers can reduce the risk of their employees entering into conflicts of interest or otherwise compromising their independence by providing attorneys with adequate compensation. Doing so will reduce financially induced temptation to skirt ethics rules.
Losing control of professional destiny is an occupational risk especially acute for young lawyers. Not to be confused with the expectations-reality gap in law practice discussed elsewhere in this report, the risk of losing control of professional destiny refers to becoming locked into a particular area of law or type of legal employment that is at best unfulfilling and at worst actively detrimental to a lawyer’s health and well-being.

Perhaps the archetypical example of this occupational risk is the young lawyer who, after graduating law school with a massive student debt load, feels obligated to become an associate with a large law firm. The new lawyer may have gone to law school with aspirations of becoming a prosecutor or family lawyer, but the firm offered a position in the government contracts section that came with a six-figure salary. The job was prestigious and paid well, but at the cost of a satisfying personal life.

One of the most insidious aspects of this risk is that many young lawyers who experience it feel as though it just happened to them and was not the result of their own volition. As one article discussing the struggles of new associates put it:

[O]verachieving law students have ended up at large firms by privileging the external measures of professional success and by resisting the possibility that less celebrated career options will open the door to other important and ultimately more satisfying facets of life. By eliding hard choices, these young associates find themselves in unhappy, unfulfilling environments without really knowing how they got there, disempowered and alienated from their work.  

This risk is characterized by a sense of feeling trapped or powerless, as young associates typically feel at the mercy of their supervising partners and firms. The realities of the legal market mean that employers—especially large firms—are unlikely to change the factors that make an associate’s life unpleasant. The reason behind this unfortunate reality is simple: “if the firm management places too much emphasis on social or ‘lifestyle’ goals, powerful partners are free to exit the firm in pursuit of an environment that will permit them to maximize the value of their book of business.”

That said, there are steps employers and other organizations can take to help their young associates without harming competitive margins. The most natural, practical action is to leverage existing human capital by fostering mentorship relationships. This is cost-effective because the people involved are already together. Plus, developing working relationships among lawyers within an organization increases individual effectiveness. These mentorship relationships will help young lawyers make the most of their experience in a challenging environment and provide resources for developing an action plan for career goals.

Although young lawyers may feel trapped by these professional realities, the best way for them to counteract this risk is to leverage the control they do have. Andy Clark, a wellness coach, advises taking proactive steps in the earliest stages of a legal career to stave off larger problems later in life:

[Young lawyers are] likely still at the stage of your career where you don’t feel in control of your time and that, for now, the interests of your superiors or your clients must supersede your own. You’re likely still paying down your law school debt, so you feel that your career and the salary it provides must come first.

But here’s the thing. Since you’re young — 25 to 35 — you probably have yet to see the full effects of unbalanced, career-comes-first living. If you’ve neglected your level of fitness, you may have gained a few pounds, but that’s no big deal, right? If you haven’t focused enough attention on your spouse and children, you can always do that later, when you’re less busy, right? If you haven’t managed your professional stress and it’s starting to wear on your emotional well-being, there are pills for that, aren’t there?

Wrong. Now is the time. The full effects of unbalanced living — i.e. increasingly eroding health, relationships, happiness and well-being — will show up in your life sooner than you think.

57 Id. at 1093.
Forces such as overwhelming debt loads that drive young lawyers into unsatisfying practices are not going anywhere anytime soon. Lawyers who want to avoid this trap should act proactively. Because most lawyers have to suffer through a challenging career phase at some point, they should plan to make the absolute most of the unpleasant experience. Proactively set an end-goal of where you want your career to be at certain milestones, brainstorm the steps needed to reach that goal, then take them.

Taking these steps will almost certainly involve changing employers. In that sense, young lawyers should avoid seeing their current position as a lifetime career trap — instead, they should consider how it is a stepping stone to where they want to be. By intentionally developing a plan for making the most of what might seem to be a bad experience and combining it with an exit plan for moving to the next stage, young lawyers who feel trapped may find that they have significantly more opportunities than they realized.

**Values Conflict with Client or Practice Setting**

**The Risk**

The Preamble to the Virginia Rules of Professional Conduct provides, “[i]n the nature of law practice ... conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an upright person while earning a satisfactory living.” Such conflicts between the lawyer’s responsibilities to the client and to his or her own interest “in remaining an upright person” can create an internal conflict within the lawyer that harms his or her well-being.

Research indicates that many lawyers experience value conflicts in their practice in which their client or supervisor asks them to do something that is not unethical, but to which they are morally opposed. Those attorneys often overlook their personal moral judgment in responding to the conflict and proceed with the representation.

For instance, a survey of young lawyers conducted by Robert Granfield and Thomas Koenig revealed that most of the respondents resolved ethical dilemmas in practice simply by retreating into their role as advocates in which they concentrated on the legal issues and ignored the social consequences of their lawyering. Although one respondent admitted he personally disliked representing some of his clients, he said, “I just close my eyes and do it.” Other attorneys in the survey revealed that the organizational pressures of law firm life caused them to compromise their personal ethical standards.59

Such lawyers’ responses to value conflicts with their clients or with aspects of their practice may appear understandable because lawyers serve as representatives of the clients. Additional research, however, indicates that channeling such conflicts in this way negatively affects lawyers’ wellness. Specifically, studies indicate that lawyers who fail to resolve such conflicts in a way that protects their personal integrity may encounter difficulty in maintaining a stable, integrated self. These studies on “self-concept differentiation” indicate how sharp separation between lawyers’ professional and personal identities can actually lead to emotional maladjustment. The studies show that individuals who do not integrate their identity across these roles — that is, they have high self-concept differentiation — “were relatively more depressed, anxious, and neurotic and had lower levels of self-esteem and wellbeing.”

In opining on how this research relates to lawyer well-being, one researcher observed:

Lawyers, like those in Granfield and Koenig’s study, who see their attorney role as a rather rigid construct and who act in that role in ways that do not match their sense of self in their other life roles (like parent or spouse), are evidencing a fragmented self. Such an unintegrated life is, in the words of the psychologists, “likely to result in difficulties in psychological adjustment.” Lawyers must see their role as attorneys as an extension of who they are at home, at church, and in life. The research ... indicates that lawyers need not view themselves simplistically and should recognize that different aspects of themselves may be more important in different roles. They therefore might rightly recognize their advocacy role in representing clients requires them to accentuate a personality trait they might not convey in their other roles. Nevertheless, their personal, moral beliefs, which are important to the core self, must be integrated into their role as lawyers. As Charles Wolfram writes, “Acting against one's moral beliefs leads to a loss of integrity, to a sense of being at war with oneself.”

Predictably, living in such a state of turmoil with oneself without adequately addressing the effects of such an existence can be exhausting and severely detrimental for the lawyer involved.

“Determine never to be idle. No person will have occasion to complain of the want of time who never loses any. It is wonderful how much can be done if we are always doing.”

– Thomas Jefferson

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61 Id. at 255.
Practice Pointers

The sorts of values conflicts discussed above are intrinsic to the practice of law. To best steel themselves against the psychological stressors associated with them, individual lawyers should take a moment to identify their core personal values. Before joining a new legal employer or other organization — or if already employed, before assuming new responsibilities — lawyers should seek to understand and identify the central values promoted by their firm or other employer. They should also consider the values espoused by practitioners in their primary practice area and by their usual clients. They then should assess the two areas for potential conflicts: identify how those values may conflict with personal values and determine whether proceeding in that firm or area is consistent with the attorney’s personal integrity. They should ask whether continued involvement in that firm or practice area promotes a larger value that is important to the attorney and that transcends the conflict (e.g., the attorney’s desire to serve the underrepresented transcends a specific conflict with his or her employer), or instead contributes to psychological dissonance.

Obviously, most practitioners are not in a position to change employers or practice areas when values conflicts arise. As such, attorneys should also develop a plan and decision-making framework to deal with conflicts. Maintaining good communication with work supervisors and clients is key, as conflicts attorneys sense may be resolvable upon open and respectful conversation with the others involved. Also, maintaining an accountability or support relationship with friends, family, clergy, or fellow attorneys to work through potential personal conflicts will also aid in protecting psychological wellness during values conflicts.

Organizations that employ attorneys should clearly note any organizational values that affect the type of clients or cases accepted when considering new hires and throughout the employment relationship. Highlighting these usually hidden values or cultural norms can ensure that employers and employees are able to find a healthy match that will promote a positive working environment. Employers should also allow attorneys to assert personal, moral conflicts of interest and decline representative tasks or assignments as appropriate. Asserting such conflicts may be appropriate under the Rules of Professional Conduct, and the cost in revenue will likely be minor compared to the value of promoting positive workplace relationships that lead to greater employee retention and productivity. Finally, employers should promote mentor relationships within the organization to help attorneys resolve values conflicts.

The Expectations-Reality Gap in Law Practice

The Risk

As this report has made apparent, the legal profession is leading in some disturbing categories: depression, substance abuse, alcoholism, and overall career dissatisfaction, to name only a few. This sobering truth begs the question: How much of a lawyer’s need to cope or dissatisfaction stems from failed expectations of what life as a lawyer would be like in contrast to actual realities?
Many lawyers admit to having dissatisfying careers. One study of 4,500 attorneys found that, regardless of their student debt load, around a quarter of them were dissatisfied with the decision to become a lawyer. Aspiring lawyers enter law school with all sorts of expectations of what their professional life will look like, and when realities fail to meet those expectations, resentment, anger, and regret can result. There are a variety of reasons why the expectations and reality of law practice do not match up:

Aspirations of practicing in ways glorified by movies and television, such as using the law degree to bring about societal change, argue high issues of constitutional law, or helping the less fortunate in substantial ways, which ultimately are derailed by law school debt realities, job market opportunities, salary expectations, the detail-oriented nature of legal practice, and similar factors;

- Misalignment of early career client work with personal values;
- Unrealistic salary expectations based on the popular perception of lawyers as all being wealthy;
- Discomfort with the realities of the adversarial system compared with its glorification in pop culture;
- Diminishing respect and professionalism among lawyers in practice;
- Failure to appreciate or understand the substantial commitment of time and energy necessary to become an effective lawyer; and
- Frustration with poor life-work balance in practice.

Any of these reasons, or a combination of them, can lead lawyers to experience career dissatisfaction, resentment toward the decision to pursue a legal career, and a feeling of being trapped. Living with professional regret can lead to misery and contributes to the epidemic of unwell lawyers.

**Practice Pointers**

The legal profession must take a hard look at the realities of the expectations-reality gap if it is truly committed to facilitating a happier, healthier, and optimistic outlook on life as a lawyer. Changing the negative realities of law practice will take substantial effort and a profession-wide perspective shift, but it is possible. After all, most commentators agree that the factors causing the present expectations-reality gap among so many attorneys only became prevalent in the last few decades.

Organizations that employ lawyers should strive to mitigate failed expectations by setting forth clear expectations of the realities of practicing there during the hiring and talent-acqui-

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sition process. Employers should recognize their role in establishing a productive, positive, and enticing environment that helps lawyers feel fulfilled and self-actualized in their roles. Establishing a culture of empathy and understanding in the workplace can help ease the transition into full-time law practice. Employers control the mechanisms of practice and can use that power to create a better environment. For instance, they should cultivate an understanding about how adherence to billable hours and other metrics of short-term profitability that are currently in vogue can produce diminishing returns in the long term and negatively affect satisfaction in practice. Research indicating that client-focused innovations with regard to billing and service delivery support the decision to overcome institutional inertia in this regard. See Changing Legal Paradigms.

Those considering a legal career should strive to develop accurate expectations about the realities of law practice. To that end, law schools and bar organizations should promote programming designed to educate current and potential law students about the practice realities in order to set measured expectations. Attorneys who feel frustrated or trapped by their career choice should seek to leverage their own agency and consider career pivots beyond traditional legal practice areas. See Losing Control of Professional Destiny. JD-preferred and other nontraditional careers that value the lawyer’s skill set may provide a way to use a legal education while finding a better match between professional expectations and realities.
CONCLUSION

On May 12, 1985, William B. Spong Jr., former United States Senator from Virginia and celebrated dean of our nation’s oldest law school, the Marshall-Wythe School of Law at the College of William & Mary, issued farewell remarks that have echoed to the present. In addressing the Class of 1985, Dean Spong reflected on the legal profession and had this advice to offer:

You should try to avoid awakening in your middle years, after the coveted partnership is obtained, to discover that a life of billable hours, club memberships and foreign automobiles is not enough; that success and happiness are not always the same; and that your capacity to be helpful to others and relate to others may have been impaired by single-minded efforts in your practice, often in a specialized area of competence not related to human needs and human understanding.

Am I suggesting that you should avoid specialization in one of the myriad of new areas of the law? No. Am I suggesting that you should avoid large firm practice? No. Am I so naive that I would attempt to dissuade you from seeking the most competitive of situations? No.

I am, however, alerting you to the danger of spending your formative years bereft of literature, music, art, an appreciation of nature, and most important, of the joys of family life. Jefferson’s idea of taking the study of law away from the apprentice model and into an academic setting, was, I believe, to assure that the practicing lawyer would be a whole person, with an understanding and appreciation of many things beyond the artisan demands of a skilled trade.63

Dean Spong’s heartfelt admonition still rings true today. We must strive to not only be good practitioners, but also “whole person[s].” It is the committee’s sincere hope that this report will further the discussion concerning the well-being of the legal profession and that it will positively affect the personal lives and professional experience of those who read it and of those they hold dear.

63 William B. Spong Jr., Farewell (May 12, 1985), https://perma.cc/QU4F-88BN.
RESOURCES

General Resources


Physical Risk Resources

Sedentary Nature of Work


Managing Long and Unusual Hours


**Sleep Deprivation**


**Working Indoors**


**Aging of Lawyers**


**Mental and Emotional Risk Resources**

**Adversarial Nature of Work**


**Individual Work**


**Professional Demands**


10. Steven A. Meyerowitz, HOW TO HANDLE DIFFICULT CLIENTS, FINDLAW, https://perma.cc/7WZ7-UWBU.

Vicarious Trauma and Managing Others’ Problems


The Duty of Confidentiality


Educational Debt


**Business Management of the Practice of Law**


**The Need to Display Confidence and Conceal Vulnerability**


**Adaptation Risk Resources**

**Changing Legal Paradigms**


**Technology Addiction**


5. Ian Sherr, Digital Detoxing is a Thing. Really, CNET (Oct. 9, 2017), https://perma.cc/X969-QC7V.


**Lack of Diversity in the Legal Profession**


**External Pressures on Lawyer Independence**


## Self-Actualization Risk Resources

### Losing Control of Professional Destiny


### Values Conflict with Client or Practice Setting


**The Expectations-Reality Gap in Law Practice**


SPEAKER RELEASE
American Bar Association
321 N. Clark Street, Chicago, IL 60654

ABA Entity: Business Law Section

Name of Presenter ("Presenter"): Gisela M. Munoz

ABA Program Title ("Program"): Business Law Section Annual Meeting 2019

Location of Program: Washington, DC

Title of Presentation/Paper: Ethical and Practical Issues in Lawyer Well-Being, Disability, and Impairment

Please sign and return this form by: Friday, August 2

to: Kathryn.chopp@americanbar.org

ABA Entity: Business Law Section

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ABA Entity: Business Law Section

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Name of Presenter (“Presenter”): Patrice Keitt, JD

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ABA Program Title (“Program”): Business Law Section Annual Meeting 2019

Date of Program: September 12-14, 2019

Location of Program: Washington, DC

Title of Presentation/Paper: Ethical and Practical Issues in Lawyer Well-Being, Disability, and Impairment

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ABA Entity: Business Law Section

Name of Presenter (“Presenter”): Kathleen N. Utton

ABA Program Title (“Program”): Business Law Section Annual Meeting 2019

Location of Program: Washington, DC

Date of Program: September 12-14, 2019

Title of Presentation/Paper: Ethical and Practical Issues in Lawyer Well-Being, Disability, and Impairment

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