



NEW YORK STATE  
BAR ASSOCIATION

# Report and Recommendations of the NYSBA **Task Force on Attorney Well-Being**

*THIS IS US: FROM STRIVING ALONE TO  
THRIVING TOGETHER*

October 2021



# **NYSBA ATTORNEY WELL-BEING TASK FORCE REPORT**

*THIS IS US: FROM STRIVING ALONE TO THRIVING TOGETHER*

NYSBA TASK FORCE ON ATTORNEY WELL-BEING



## Report of the Task Force on Attorney Well-Being

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# Report of the Task Force on Attorney Well-Being

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### **Dedication**

The Task Force Report is dedicated to our friend and colleague, Stephen P. Gallagher who was the first Director of Law Office Economics and Management for NYSBA from 1990 through 2003. After embarking on a successful coaching career for lawyers, Steve returned to his friends at NYSBA to assist with issues involving lawyer well-being in the age of retirement and worked closely with the Senior Lawyer Section. A dedicated, loyal and vociferous advocate for lawyer well-being, Steve attended as many of the working group meetings as he could despite declining health. Sadly, Steve passed away on May 2, 2021, prior to the release of the Task Force Report. His vision, voice, and influence profoundly affected the work of the Task Force and can be heard throughout this Report.

### **Message from the Co-chairs**

For almost one hundred and fifty years, the New York State Bar Association, the largest voluntary bar association in the United States, has served as a “link between the state and the individual lawyer, as a force for constructive change.” Perhaps then, it is only natural and appropriate during the unfolding paradox of community disintegration supplanted by digital connection that NYSBA has boldly and bravely looked to its roots as a professional community to examine the collective impacts the 21st century world has on the well-being of our lawyers.

While the well-being of lawyers may seem like an individual lawyer’s problem, the data has been sounding an alarm for the better part of three decades that the training, culture, and economics of law contribute exponentially to the suffering in our profession. To truly address the systemic issues in law, we must look to the precedent of the profession as a command to take up a collective responsibility – to each other. We must move from striving alone to thriving together if we are to survive the present challenges.

On behalf of the NYSBA Attorney Well-Being Task Force, we expect this Report to be illuminating, sobering, and, ultimately galvanizing, acting as both a platform and a call to action. We must move beyond blame and shame as mechanisms to distance ourselves from the aspects of the legal system and law culture which are not working or offend our own understanding of the profession and, instead, shift our gaze to holistic solutions and better outcomes for ourselves and our colleagues.

We laud the dedication and productivity of our working group chairs and members, and express our appreciation to the dedicated NYSBA staff who supported our efforts over this year. We dedicate the work of the Task Force to each of you – your personal and professional value, your

contribution to our community and your role in supporting the access to justice which is at the root of a free society. Our fondest hope is that we make manifest the belief that the healthy lawyer helps create a healthier world.

Libby Coreno, Esq.

Hon. Karen Peters



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## Report of the Task Force on Attorney Well-Being

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## Introduction

Why did you choose the law? Many of us talk about working for the cause of justice and being able to make a difference. We have colleagues who describe the delight of the intellectual challenges and the problem-solving that make a life in the law endlessly interesting. Others speak of the opportunity to do meaningful work.

While the law is not the only profession where a person can make a difference, it is the only profession dedicated to righting wrongs, ensuring fairness and endeavoring to ensure that all people be treated equally. Lawyers are unique in that our work is essential to a free and fair society. Of that, we justly are proud.

Yet, for all the positive aspects of law practice, there is a dark side. Lawyers are more vulnerable to stress, depression, anxiety and substance abuse than nearly any other profession. There are myriad reasons why. Some believe that the traits that make for effective lawyering – perfectionism and detail-orientation, when combined with legal training in anticipatory anxiety and a deep sense of responsibility – can cause a perfect storm. And once lawyers are inside the storm, they confront a help-resistant profession which prizes helping others but never seeking help for themselves and an inability to admit vulnerability – a trait universally perceived as a sign of weakness. We resist being the one needing answers and help; preferring to offer advice and provide solutions.

Our profession has rightly been termed “help-resistant,” a trait deeply embedded in the culture of law. Renowned as much for its fast pace as for its resistance to change, it took the rapid onset of a global pandemic and a resultant “world on pause” for lawyers to slow to a pace necessary to see, feel and grapple with the magnitude of our community’s well-being crisis which was both highlighted and exacerbated by more than a year of COVID-19 and its effects.

Change is most likely to occur during times of great disruption. COVID-19 has disrupted our families; it has disrupted our lives; it has fundamentally disrupted the practice of law – from the office to client meetings to the courts. When life, work and family enter uncharted territory, it is much more difficult to realistically expect a return to ‘business as usual.’ While our profession has been seriously studying the issues of lawyer stress and lawyer burnout for the better part of a decade, we now have a unique opportunity to implement real change. We must seize the moment.

While the pandemic increased our physical isolation from each other and challenged our traditional notions of the practice of law, we found lawyers talking with each other more, reaching out more, helping each other navigate new processes and grappling with new ideas. For a profession traditionally averse to change, this is an encouraging sign.

We need each other, because the most effective tool available to us is *us*: our community of lawyers. We face the same challenges, we understand each other in a way that others, even

family members, often cannot. When we embrace our community and declare our responsibility for each other, we can move from striving alone to thriving together.

Our Task Force mission was to address the well-being crisis in our profession. Little did we know we would be called upon to do so in an ongoing global pandemic. Yet, in this time of worldwide suffering, we found more opportunity than we could have ever imagined – to learn about and to make recommendations for real, impactful change in our legal community.

All stakeholders now realize attorney well-being is vital – to our own success and to our viability as a profession, one which is built on society's trust and faith in the rule of law. We, as lawyers and colleagues, must ensure our own health and well-being, and the creation of a culture that supports our colleagues. For ourselves and for those whom we serve, it is a moral and ethical imperative as well as the fiscally prudent thing to do. Change is upon us, and we are optimistic.

## Background

### Accepting the Challenge, Crafting a Path

The well-being of attorneys is critical to the effective practice of law, the protection of the public trust and the vibrancy of the culture of our profession. Well-being must be of paramount importance to all members of the legal profession, to ensure our individual and our collective survival.

The personal and professional rewards gleaned from the legal profession are many but may come at great cost. Data and reports compiled over the last decade have shown that lawyers experience rates of mental illness, fatigue, physical health problems and substance abuse disorders in numbers that exceed the national averages in all other professions.<sup>1</sup> While some attorneys may have underlying issues that make them more susceptible to mental health problems or substance abuse than others, the rates of ill-being far outpace the general population. The reality is that the status quo is not sustainable.

Lawyer surveys, including one undertaken by the New York State Bar Association (NYSBA), confirm these data. Simply put, for the sake of ourselves and our colleagues, we need a concerted national effort to bring the subject of attorney health and wellness to the forefront of our profession.

Shortly before NYSBA President Scott Karson took office in 2020, he determined that NYSBA should conduct its own investigation of the issues surrounding attorney well-being and New York lawyers, in particular. To do so, he created our Task Force on Attorney Well-Being and charged us with examining the factors, both positive and negative, that impact the health and well-being of the legal community. We were tasked with conducting a review of the entire cycle of a lawyer's life – from law student to retiree – developing a report describing our findings, and detailing attainable, measurable mitigation efforts that could be implemented across New York's legal landscape to ensure the health and well-being of our community.

Our Task Force's work has been greatly informed by NYSBA's long-standing and effective efforts in this area. For more than four decades, NYSBA has been a leader in the lawyer assistance movement. In 1978, it formed a special committee to address the problems of lawyer

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<sup>1</sup> Among these: Va. Bar Ass'n, "The Occupational Risks of the Practice of Law," Report of the Va. State Bar President's Special Committee on Lawyer Well-Being, May 2019, [https://www.vsb.org/docs/VSB\\_wellness\\_report.pdf](https://www.vsb.org/docs/VSB_wellness_report.pdf); Nat'l Task Force On Lawyer Well-Being, Am. Bar Ass'n, The Path to Lawyer Well-Being: Practical Recommendations For Positive Change (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>; Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 Geo. Wash. L. Rev. 554 (2015); <https://ir.law.fsu.edu/articles/94>; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 Behavioral Sci. & L. 261, 281 (2004); Jarrod Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 Vill. L. Rev. 361 (2020).

alcohol- and substance-use disorders. Building on the 12-Step AA model, that committee's first chair worked with the county bar associations in all 62 New York counties to establish Lawyers Helping Lawyers or Lawyer Assistance Committees. A dozen years later, the Lawyer Assistance Program (LAP) became a permanent department in NYSBA. Since then, in consultation with and with the support of the court system, LAP has broadened its focus to emphasize the vital role of prevention and early intervention, as well as treatment. In 2014, the Office of Court Administration provided a grant to support LAP's work.

NYSBA has also championed the amendment of the disciplinary rules and other laws to support lawyers experiencing mental health issues and to encourage them to seek assistance when needed. The effort is twofold: to assure lawyers that help-seeking behavior will not be stigmatized and to provide an incentive to get help before a problem becomes a crisis. Attorney disciplinary rules now allow the option of referring attorneys for treatment and New York's Judiciary Law now grants confidentiality to communications between lawyer assistance committee members or agents. Most recently, NYSBA helped lead a campaign to remove the mental health questions from the character and fitness portion of the application for admission to the New York bar.<sup>2</sup> NYSBA and other advocates for this change correctly surmised that these questions made law students reluctant to get much-needed assistance in times of uncertainty and stress, thus exacerbating the problem while sweeping it under the rug.

And yet, LAP funding is not permanent, even as its portfolio has broadened. The original LAP focus on substance-use disorders has rightfully expand to a host of known stressors which affect the health and functioning of lawyers – including the culture of law itself. LAPs are now tasked with educational efforts, case management for diversion programs, law school outreach and calls for more mental health support.

### Task Force Philosophy

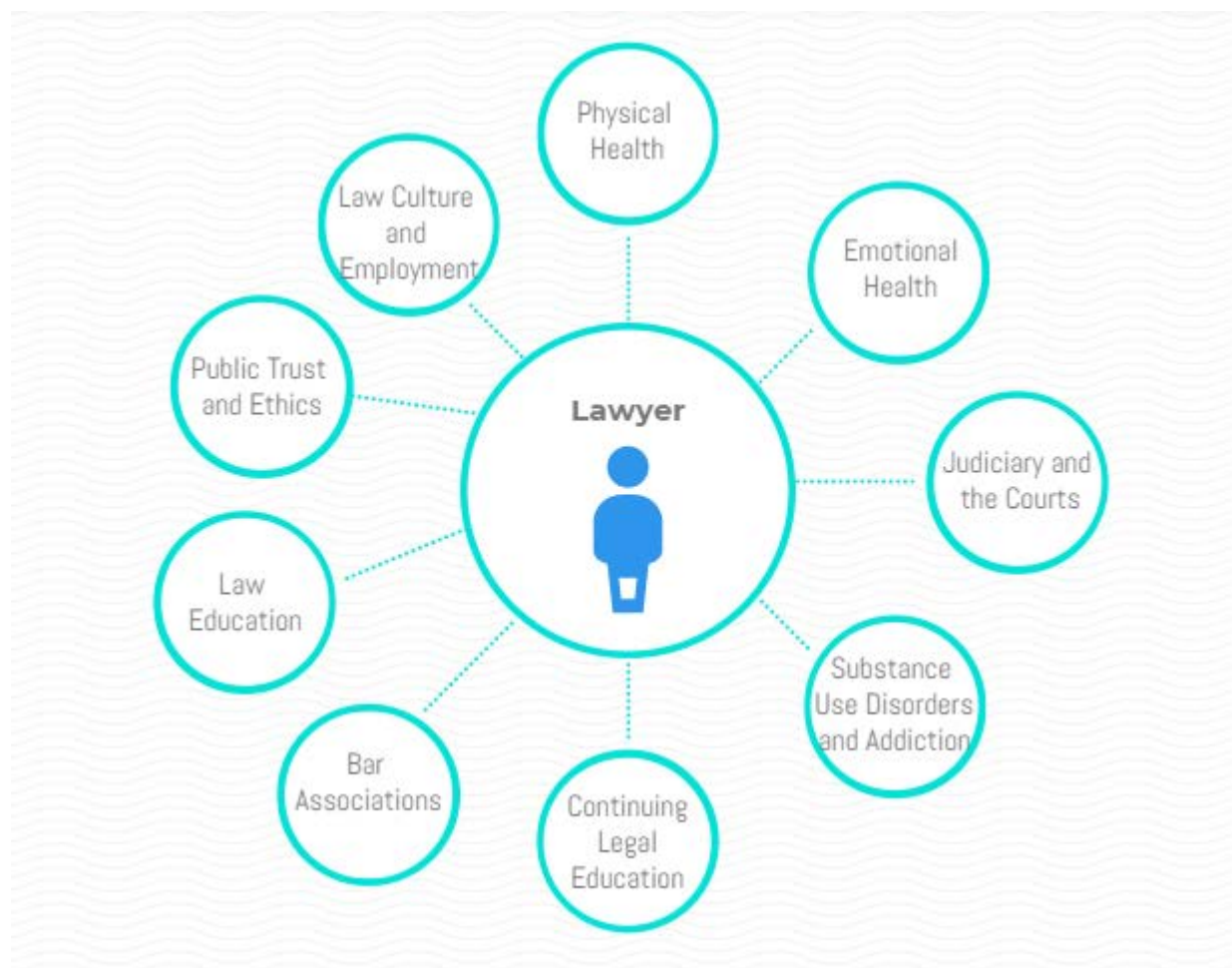
We understood that the issue of lawyer well-being was multifaceted, especially across a highly diverse landscape such as New York State. It was critical to identify the key areas in a lawyer's life and career where the individual, the system and the culture collectively impact on comprehensive well-being regardless if the lawyer is from a large firm or solo, urban New York City or rural Alleghany County, first year associate or retiring senior. We considered the lawyer as “the hub” of a holistic wheel containing nine spokes of influence most likely to impact a lawyer's life from law school through retirement – the “Wheel of Wellbeing.”

It was of the utmost importance to the Task Force that the challenges of the scope of attorney well-being be met with a broad, holistic approach, rather than a limited, category-specific approach to a system-wide problem. As a result, the Task Force was formed to include

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<sup>2</sup> The Impact, Legality, Use and Utility of Mental Disability Questions on the New York State Bar Application, a report by the Working Group on Attorney Mental Health of the New York State Bar Association, Nov. 2, 2019. <https://nysba.org/report-of-the-working-group-on-attorney-mental-health/>.

stakeholders with diverse backgrounds and experience in each of the nine key categories to provide expertise and recommendations for actionable change. Conceptually, each Working Group for the nine categories was to independently develop the recommendations in their respective area and then the entire Task Force would work together to synthesize information from each Working Group into a final Report.



### The Working Groups

The Task Force Co-Chairs, M. Elizabeth (Libby) Coreno, Esq. and Hon. Karen K. Peters developed the missions for the nine Working Groups and then asked nine of their distinguished colleagues to chair the efforts during a pandemic year when lawyers' worlds had been upended. Shortly after the nomination of each Working Group Chair, the members of the Task Force Working Groups were appointed in a collaborative effort between the Co-Chairs and each Working Group Chair based upon expertise, geographic area, and diversity. Below is the mission that was set forth for each of the nine Working Groups and their respective Chair. The full roster of the Task Force can be found on pages 2 and 3 of this Report.

*Emotional Well-being: Meredith S. Heller, Esq.*

The Working Group focused on the most up-to-date empirical data on the emotional and mental health of lawyers, the reasons for the higher-than-average rates of suboptimal psychology and provide recommendations concerning the studied mitigative efforts which can be utilized to assist lawyers in accessing mental and emotional support, as well as collaborated with the other Working Groups regarding possibilities for implementation across the legal community.

*Physical Well-being: Robert S. Herbst, Esq.*

The Working Group examined the importance of physical health, investigated why lawyers have a low physical activity participation rate, and made recommendations for methods to increase opportunities for physical movement and self-care in the legal community.

*Substance Use Disorders and Addiction: Hon. Sarah Krauss*

The Working Group addressed the current state of lawyer assistance in New York State, the scope and impact of addiction, including but not limited to, substance use disorders. Additionally, the Group's goal was to make recommendations about efforts which can be implemented at the local and state level to increase awareness, reduce stigma, and provide services, community, and support to lawyers.

*Law Culture and Employment: Kathryn Grant Madigan, Esq.*

The Working Group, a diverse group of practitioners – solos, small, medium and large firms, government and in-house counsel – examined the reports and key findings of state, local, and national bar associations on the topic of lawyer well-being and the occupational risks of law practice. It also reviewed scholarly research and consulted experts on the business case for and the ethical imperatives of promoting and prioritizing lawyer well-being. The group then identified the most attainable measures, and a pathway for implementation, for effecting transformative change in the profession and workplace culture – from law school to the active professional years through retirement.

*Law Education: Rosemary Queenan, Esq.*

The Working Group examined the current culture of law schools related to the health and well-being of students across New York, advised on the programs which have been successful in fostering health and well-being, and proposed recommendations to reduce stigma, increase well-being education, and facilitate systemic change in the approach to work-life balance for lawyers.

*Bar Associations: Glenn Lau-Kee, Esq.*

The Working Group reported on the current framework of bar associations across the state and their ability to assist as key stakeholders in the well-being of lawyers. Additionally, the Working Group sought to make recommendations concerning how the NYSBA, specifically, can work to increase awareness, work with local and national bar associations for education, and develop support mechanisms for lawyers.



*Judiciary and the Courts: Hon. Shirley Troutman*

The Working Group considered how stigma, culture, rules and procedures affect the state of our lawyers' health in its efforts to provide recommendations concerning methods to address attorney well-being from the judicial perspective.

*Public Trust and Ethics: Marian Rice, Esq.*

The Working Group examined the role that attorney well-being plays in ensuring ethical lawyering since malpractice claims, attorney discipline and even criminal behavior can often find its roots in a lawyer experiencing distress or a significant life event. The Working Group also sought to make appropriate recommendations by considering the principle that the practice of law is built upon the public trust and its requirement that lawyers operate within the expectations of professional responsibility.

*Continuing Legal Education: James Barnes, Esq.*

The Working Group examined the status of Continuing Legal Education for well-being, the current rules for well-being programming and the current demand for well-being programming across the state. Additionally, the Working Group considered a stand-alone well-being credit certification or whether other mechanisms could be used to implement the mitigation efforts recommended by the other subcommittees for continuing legal education.

*The Task Force Advisors*

In addition to the 80 lawyer-members and special guests of the Task Force, the group benefitted from at-large advisors with significant expertise in the field of lawyer wellbeing. Several of the Task Force advisors authored articles for the September 2020 issue of the NYSBA *Journal* on the scope and breadth of the issues affecting lawyer well-being and facing the profession as a whole.

A full list of the Task Force Co-Chairs, Working Group Chairs and Advisors is attached as Appendix B.

*Talking with Lawyer-Leaders; Reviewing the Literature*

The Working Groups engaged in conversations with each other and with our colleagues in New York and beyond to truly understand the depth of the issues confronting attorney well-being. Within its 54,000 square miles, New York State contains a mix of the very urban to the very rural, and everything in between. We sought guidance from lawyer-leaders in every corner of the state, and our discussions and their advice proved invaluable. All showed a deep commitment to our effort and many volunteered to serve.

We also called on several experts from around the country who have written about and studied the issues surrounding lawyer well-being, or, perhaps more aptly, why and how it is lacking. Among them were Jarrod Reich, professor of law at the University of Miami School of Law who authored a quantitative article on the relationship between the changes in law firm economics

and the decline in lawyer well-being;<sup>3</sup> Len Heath, who, as president of the Virginia State Bar Association, formed and served on the committee that published a report about the “Occupational Risks of Practicing Law”;<sup>4</sup> and Debbie Epstein-Henry, a Task Force advisor who is internationally known for her work in law firm culture and lawyer well-being. And we carefully reviewed the studies and reports released by other bar associations, such as the Virginia State Bar, the 2019 report of the Utah Task Force on Lawyer and Judge Well-Being,<sup>5</sup> and the ABA’s 2017 report “The Path to Lawyer Well-Being.”<sup>6</sup>

Task Force members quickly determined that our main imperative was to talk directly with our colleagues. *Are you feeling stressed? If so, how do you handle the stressors in your law practice? What are they? What do you think about it? What kind of support do you need?* There has been a tremendous amount of data and opinions about lawyer well-being in the national conversation since the release of the ABA National Task Force Report in 2016, but we wanted to hear from our community of New York lawyers specifically, to gain their first-hand views on the stressors of our profession and what they believed could address it, especially in the midst of the COVID-19 pandemic.

We spent several months developing a survey to ask lawyers about these issues and more. In October 2020, we sent the Survey on Lawyer Well-Being (“Survey”) to all NYSBA members New York lawyers. To reach the greatest number of New York lawyers, we encouraged our members to share the Survey with non-NYSBA-member colleagues in their local and affinity bar associations, their law firms and other legal organizations. The Survey was both quantitative and qualitative, asking both free text and multiple-choice questions.<sup>7</sup> Over the course of 45 days, a total of 3,089 attorneys responded to the survey. The results were both astonishing and highly informative.

Based on all the information the Task Force was able to gather, review and discuss, we developed two broad categories for study: the structure and the mechanics of the system and the profession; and the intangibles, such as culture, emotional and physical health, and public trust issues.

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<sup>3</sup> Jarrod Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 Vill. L. Rev. 361 (2020).

<sup>4</sup> Va. State Bar Ass’n President’s Special Comm. on Lawyer Well-Being, *The Occupational Risks of the Practice of Law*, May 2019, Va. State Bar Ass’n, [https://www.vsb.org/docs/VSB\\_wellness\\_report.pdf](https://www.vsb.org/docs/VSB_wellness_report.pdf).

<sup>5</sup> Utah Task Force on Lawyer and Judge Well-Being, *Creating a Well-Being Movement in the Utah Legal Community*, Feb. 2019, Utah Bar Ass’n, <https://www.utahbar.org/wp-content/uploads/2019/07/Task-Force-Report-2.pdf>.

<sup>6</sup> Am. Bar Ass’n, *The Path to Lawyer Well-Being: Practical Recommendations For Positive Change* (2017), *supra* note 1.

<sup>7</sup> The Task Force engaged Spa City Consulting, LLC to evaluate the quantitative and qualitative information received given the volume of the responses and the complexity of the information to be analyzed. On March 7, 2021, the firm provided the Task Force with “The New York State Bar Association’s Well-Being Survey 2020: Selected Areas of Analysis Results” which is provided in its entirety at Appendix A.

Because of the scope and complexity of the task, none of the nine Working Groups operated in a vacuum. Of necessity, their work overlapped a great deal – the structure of law education is inseparable from its role in disseminating the culture of law; the culture of law reinforces cultural norms taught in law schools and perpetuates the actions of the judiciary and the structure of law firms, whether large, small or solo; the emotional well-being and physical well-being of lawyers are influenced by the actions of these structural stakeholders.<sup>8</sup> The structure of the entire legal system is dependent upon maintaining the public’s faith in our work and in the rule of law. And so, a whole system (holistic) approach to the Task Force was born.

We soon realized the value of being part of the whole, and of regular talking and listening sessions with other lawyers. Many of us on the Task Force had already joined the Lawyer-to-Lawyer Well-Being Roundtable, sponsored by NYSBA’s Lawyers Assistance Program (LAP), which was created in response to the COVID-related shutdown in March 2020 and co-moderated by Task Force Co-Chair, Elizabeth Coreno, Esq. and Task Force Advisor, Dr. Kerry M. O’Hara, PsyD. Other Task Force members joined the Roundtable, which was held for nearly 54 consecutive weeks during the pandemic. At these virtual weekly meetings, we had honest and vulnerable conversations about the issues, which has given us valuable insight and proven enormously helpful to our work. Sharing our stories and experiences with each other, being able to see their connections with the literature and the findings in data from lawyer and student surveys, has kept us focused on what is truly important – the humans behind the data.

*As I look back, I examine my journey from law school to now, at age 60, having left active practice to work on other projects. Was it the practice of law that caused my depression? No. Was it a significant factor? Yes. The truth is, like most of you who struggle with mental health or addiction – and the numbers are staggering – you brought into the profession risk factors, sometimes several of them.*

*For me, there was the issue of genetics and a family tree filled with folks who struggled – and still do – with depression, bipolar disorder, and alcoholism. Second, I grew up in a dysfunctional home with an alcoholic father. These two things, I now see, put me at risk for depression at some point in my life.*

*Lawyering, which I found very rewarding, is a highly stressful profession for all of us. Stress, especially the unremitting type that lawyers experience every day – including on weekends – can tip the delicate balance in the brain and psyche, resulting in sickness, both physical and mental. And I am not talking about everyday anxiety or the blues. Clinical depression, anxiety, and addiction are actual illnesses that need treatment and care, not stigma, as often experienced by those afflicted.*

*The good news is that recovery is possible. Not only that, it is probable if one gets the help and support needed. The truth is you can’t fix these problems by yourself. There is now, unlike when I was diagnosed all those years ago, plenty of support and resources to help you, many of which are discussed in this report.*

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<sup>8</sup> Despite the attention given to large firms, the largest cohort of lawyers in New York State and the U.S. are in solo or small-firm practices. Solo practitioners report higher rates of stress and dissatisfaction than their large-firm counterparts. See NYSBA Lawyer Well-being Survey 2020, Summary, App. A, “Overall Satisfaction in the Practice of Law.”

## Report of the Task Force on Attorney Well-Being

*There has also been a seismic shift happening in the legal culture across the country. This shift is being driven by the reality that we need to constructively and proactively address the causes and conditions of a culture that makes too many lawyers, law students, and judges unhealthy and unhappy in the legal profession. This profound shift in thinking and prioritizing mental health and well-being makes me hopeful and optimistic about real, positive, and lasting change.*

*And for myself, I have come a long way in these past 20 years. I learned to manage my depression and be a successful lawyer. The two are not mutually exclusive, as we sometimes think.*

*So please, as someone who has walked this path before, I encourage you to get the help you need. If you have already gotten it, keep going.*

***You're worth it.***

Dan Lukasik, Esq. – Judicial Wellness Coordinator NYSOCA

### This Is Our Story

#### *In the Beginning*

When you chose the legal profession, how did you imagine your life in the law? What did you think that life would mean? What did you imagine your workplace, your colleagues and your clients would be like? Did you see in yourself something of a crusader, someone whose job would be to right wrongs, or someone who could solve the thorny puzzles that life and the law so often present? That you would spend your life in service to the ideals of the law: truthfulness, honesty, responsibility and ethical behavior?

You fully expected to work hard, having absorbed the tropes common in books, films and television – the lone crusading lawyer, the lawyer with the out-sized work ethic, the lawyer who also plays detective to uncover corruption or save a wrongfully accused client.

These all are elements of the culture of law, but they are often seen through a romantic lens. Culture is messy. And the culture of law is made up of the good and the bad, the transactional and the noble, ambition and the pure desire to do good. Culture is revealed not just in its aspirations, but in what it “rewards, supports and tolerates.”<sup>9</sup> And, unfortunately for lawyers, the actions for which they reap the highest rewards over the course of their careers can frequently cross the line into unhealthy behaviors.

For most of us, we start our path around the “Wheel of Well-being” in law school. Law schools provide the framework for the knowledge, training, expectations and attitudes that lawyers carry throughout their professional lives. Perhaps law schools’ most important task, the one that retains its influence throughout a legal career, is that of enculturating students into the profession. Both

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<sup>9</sup> NYSBA Attorney Wellbeing Podcast, *Who Are We Anyway? Exploring The Realities and Challenges in the Culture of Law*, May 2020 with Kathleen Fyfe of Fyfe Consulting, LLC. <https://podcasts.apple.com/us/podcast/who-are-we-anyway-exploring-realities-challenges-in/id1511208061?i=1000473671449>.

overtly and subtly, students receive cues that indicate what behaviors are encouraged: a competitive mindset, “a war-like persona,”<sup>10</sup> the belief that the only place is at the top.

Students quickly absorb the lesson – law is competition. Who gets the highest grades? Who has all the answers in class? Who is always in the library, putting in the hours, nailing down every detail? The answers to those questions may determine who makes law review and who gets recommended for a coveted internship. In the law firm, that may mean who gets mentored, who gets choice assignments and who is on partner track.

While a healthy work ethic is essential, constant pressure to do beyond what is human will take its toll. Traits useful in law school, in the office or in the courtroom, can be deleterious to our personal lives – and sometimes with disastrous results. You cannot be a lawyer at home, with your spouse and children, with your friends and family, and in other interpersonal relationships. Conversely, if your interpersonal relationships are unhealthy, they can affect life at the office.

As we learn more and begin to question the notion that lawyers must be warriors, and to confront honestly the toll such behaviors take on lawyers, their careers, their clients and their colleagues, their firms and their families, we see a culture in crisis, one that must be changed. Yet, turning around the great ship of law cannot happen overnight. It happens over years; it takes time and resources. It is and will be an ongoing and multi-pronged effort.

### The NYSBA Lawyer Well-Being Survey Results (2020)

When we set out to test what we had been told by the experts and prior attorney well-being reports with our own New York lawyers, we were gratified by the response to the Survey.. By the middle of December 2020, the Survey had returned 3,089 responses and volumes of information, opinions, stories, suggestions and criticisms. Lawyers were more than willing to tell us what they experience and what they think we should do about it.

The Survey provided the Task Force with a tremendous amount of data which was then reviewed against the unique landscape of New York law-practice life including the court system, the voluntary nature of NYSBA as a statewide association, the disciplinary framework, the CLE accreditation process, and the diversity of the state, among other things. While a full summary of the Survey finding is attached at Appendix A, we chose the following as particularly high-level data points to illustrate the most notable lessons we learned:

- There were 3,089 respondents to the Survey.
  - Most of the respondents (58%) have been in practice for over 21 years

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<sup>10</sup> Robert Goldman, JD, PsyD, *Lawyers Who Accept War-Like Personas Carry Heavy Burden*, NYSBA J., Sept.-Oct. 2020, at 20.

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- Respondents were most often from small firms with 2-10 lawyers (30%) or are solo practitioners (33%)
- Most lawyers who responded are from private law offices (70%), with government or agency, Legal Aid, in-house counsel, the judiciary, or other making up the remaining 30%
- The overall satisfaction with the practice of law was 3.42 on a scale of one to five. The top answers for the greatest impacts on lawyer well-being were:
  - Lack of boundaries for “down time” or “never off”
  - Client expectations and demands
  - Financial pressures in the “business of law”
- 7 out of 8 people (88%) who self-disclosed having a disability indicated that continuing certain virtual appearances even after the pandemic ceases is something the judiciary can do to help.
- While only 8% of respondents had utilized an Employee Assistance Program, individuals working for Legal Aid were the most willing to use a confidential resource provided by the bar association or an affiliated organization should one be provided. Members of the judiciary were least willing to use such a resource. 71% of new lawyers (those practicing 0-5 years) indicated they would consider using such a resource.
- The top three overall requests of NYSBA to assist with health were:
  - A gym or fitness membership discount, or discounted fitness equipment (479)
  - A request that NYSBA advocate for cultural change (147)
  - Free or low-cost counseling (114)
- Cultural changes were requested of NYSBA as well as employers. The feeling of being always on call and not having true downtime weighed on many individuals across types of practice, years in the profession, and number of lawyers at the respondent’s office.
- Generally, respondents indicated they are reluctant to seek assistance with mental health concerns. While there are many practical reasons for this (e.g., time and cost) stigma and confidentiality concerns posed significant barriers. Several respondents did not want to be perceived as “weak” by their colleagues or clients. Others noted that they did not believe that confidential resources would be truly confidential, with a few mentioning very negative experiences in the past where confidentiality was breached.

### *What Do We Value?*

A look at the reward structure of law firms, law schools, agencies and not-for-profits, will reveal what we value.<sup>11</sup> We collectively and almost unanimously say we believe in the importance of attorney well-being and express our support. Yet, are we providing lawyers with the tools they need become healthy? Do we reward help-seeking behavior? Or, are we still valuing attorneys working 12-to-16-hour days while pointing to the gym memberships that they do not have time to use? The anecdotal evidence and the Survey results bear out that the “check the box” mentality is where law culture is, but the future will be looking at root causes.

Whether we are merely paying lip service to well-being, or sincerely making efforts to reform a culture that has traditionally turned a blind eye to unhealthy attorneys, can be revealed by asking, “*What is rewarded here? What is tolerated here? What is acceptable here?*”<sup>12</sup> And if we are not asking ourselves these probing questions, we then must ask ourselves why not.

### *The Bottom Line, Is the Bottom Line*

By far the biggest sources of stress cited by the attorneys who participated in the NYSBA Survey were feeling they had no downtime and that they were always on call.<sup>13</sup> Encouraging attorneys to take time off to rest and recharge, to seek help when needed, is a moral imperative. However, law firms and other workplaces – solo and small firm practices in particular – may find it difficult to put into practice. It may seem illogical that taking vacation time or going home at a reasonable hour will not affect the bottom line.<sup>14</sup> Yet, there is no greater danger to law firms, the legal system and its clients than lawyers who are unwell.

As lawyers, we took an oath to abide by and to defend the rule of law. We are required to be competent, ethical, honest and truthful, and to behave honorably. Lawyers who are suffering due to a significant life event, burdensome workloads, financial pressures and other life stressors are more in danger of breaching their ethical responsibilities or using poor judgment. Malpractice claims, attorney discipline proceedings and even criminal proceedings often are rooted in the actions of a lawyer who is unwell. Any such breach affects the entire institution, not just the individual in crisis. Other attorneys and staff must cover for the affected lawyer. Some clients may lose faith and move on, or some form of damages must be paid. Once a firm has lost its clients’ trust, it is in trouble. Maintaining client trust is much easier than regaining it.

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<sup>11</sup> NYSBA Attorney Wellbeing Podcast, *The Case for Attorney Well-being: A Profession in Change*, a discussion between Libby Coreno and Dr. Kerry O’Hara, <https://nysba.org/the-case-for-attorney-well-being-a-profession-in-change/>.

<sup>12</sup> *Id.*

<sup>13</sup> See Appendix A, NYSBA Attorney Well-being Survey 2020, Summary.

<sup>14</sup> Jarrod Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 Vill. L. Rev. 361 (2020).



Our most important professional investment is in our colleagues. *That* is the bottom line. Maintaining and growing this investment means working to ensure attorneys' health and well-being. Healthy lawyers are better lawyers.

## Traversing the Spokes on the Wheel: The Case for Holistic Change

We understood early on that the complexity of the issues to be addressed – how we got here and how we can change – could not be evaluated in discrete units. A holistic, comprehensive and interrelated approach was necessary. We have demonstrated the research methods, the data set, and the key aspects underlying the culture of law – which we now understand to be the product of how we train, how we reinforce, what we learn to tolerate, and what we value. Now, our goal is to make the case for the path back home around the Wheel of Well-being. Our profession is charged with the public trust and the integral operation of a system governing all of society. While on the surface it may look like an individual's issue, attorney well-being is instead a collective responsibility.

*“As above, so below; as within, so without.”* – Hermes Trismegistus, Hermetic Corpus

### Step into the Wheel: Beginning with Legal Education<sup>15</sup>

We open our case for attorney well-being with a robust discussion about legal education, how it shapes what lawyers value and how they are rewarded. It is the basis of a lawyer's career and highly influential throughout the arc of that career. And it is where we must focus much of our efforts if we are to eliminate the epidemic of lawyer ill-being, by stopping it before it starts.

Law schools across the country recognize that their law students and graduates need resources and services to enrich their well-being and help them through the difficulties of life and have initiated wellness programming and initiatives to encourage well-being in law school. Several surveys have been conducted and reports have been issued related to well-being in law school, including studies by the ABA and law school faculty and administrators in 2004, 2014,<sup>16</sup> 2016<sup>17</sup>

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<sup>15</sup> Law Education Working Group members include: Dr. Yvette Wilson-Barnes (CUNY), Markeisha Miner (Cornell), Lisa Monticciolio (Hofstra), Rosemary Queenan (Albany), Marta Galan Ricard (Columbia), Melinda Saran (Buffalo), Kimathi Gordon Somers (Fordham) and law students Olivia Cox (Albany Law, Class of 2021) and Joey Corigliano (New York Law School, Class of 2021). The Working Group would like to thank Alex-Marie Baez, Diversity, Equity & Inclusion Post-Graduate Fellow (Albany Law School, class of 2020) and Sarah Dixon-Morgan (Albany Law student, class of 2022) for their work on the footnotes. Ms. Dixon-Morgan also assisted the Working Group with their research.

<sup>16</sup> Fifteen law schools responded to the Survey of Law Student Well Being (SLSWB) was conducted with support from the ABA Enterprise Fund and sponsored by the ABA Commission on Lawyer Assistance Programs, Law Student Division, Small Firm and General Practice Division, Young Lawyers Division, Commission on Disability Rights and the David Nee Foundation. See Nat'l Task Force on Lawyer Well-Being, Am. Bar Ass'n, *The Path to Lawyer Well-Being: Practical Recommendations For Positive Change* (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

<sup>17</sup> In 2016, the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation co-sponsored a study of mental health and substance abuse disorders. See Patrick Krill, Ryan Johnson, Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. Addiction



and 2017. These studies provide valuable data and information that highlights the following barriers to well-being faced by law students: (1) mental health issues, including depression and anxiety;<sup>18</sup> (2) alcohol;<sup>19</sup> and (2) drug use.<sup>20</sup>

Based on its finding that “too many lawyers and law students experience chronic stress and high rates of depression and substance use,” in 2017, the ABA National Task Force on Lawyer Well-Being (ABA Report) issued a report and recommendations focused on “five central themes . . . to instill greater wellbeing in the profession.”<sup>21</sup> However, with respect to law schools, the ABA Report noted that it “did not seek to identify the individual or contextual factors that might be contributing to students’ health problems,” but noted that “law school graduates cite heavy workload, competition, and grades as major law school stressors.”<sup>22</sup> The ABA Report included specific recommendations for stakeholders collectively and individually, including the following recommendations for law schools:

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| Create Best Practices for Detecting and Assisting Students Experiencing Psychological Distress   | Commit Resources for On-site Professional Counselors          |
| Assess Law School Practices and Offer Faculty Education on Promoting Well-Being in the Classroom | Provide Education Opportunities for Well-Being-Related Topics |
| Empower Students to Help Fellow Students in Need   | Facilitate a Confidential Recovery Network                    |
| Include Well-Being Topics in Courses on Professional Responsibility                              | Discourage Alcohol-Centered Social Events                     |

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Med., Feb. 2016, Vol. 10, Iss. 1;

[https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the\\_prevalence\\_of\\_substance\\_use\\_and\\_othe  
r\\_mental.8.aspx](https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx).

<sup>18</sup> Seventeen percent reported depression, 23% mild to moderate anxiety, and 14% severe anxiety. One third of those who screened positive for anxiety reported developing anxiety during law school. *Id.* at 7.

<sup>19</sup> About half of the respondents reported drinking enough to get drunk at least once in the prior 30 days, 43% reported binge drinking at least once in the prior two weeks and 22% percent reported binge drinking at least once in the prior two weeks. *Id.*

<sup>20</sup> Fourteen percent reported use of prescription drugs without a prescription in the prior 12 months and use of marijuana and cocaine increased since a prior study in 1991. *Id.*

<sup>21</sup> A.B.A., *supra* note 16, at 2.

<sup>22</sup> *Id.* at 35. *See also* Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 Behavioral Sci. & L. 261, 281 (2004) (noting negative effect law school can have on law students’ subjective well-being).

In making these recommendations for law schools, the ABA Report noted that “[l]aw school well-being initiatives should not be limited to detecting disorder and enhancing student resilience. They also should include identifying organizational practices that may be contributing to the problems and assessing what changes can be made to support student well-being. If legal educators ignore the impact of law school stressors, learning is likely to be suppressed and illness may be intensified.”<sup>23</sup>

Since the ABA Report, many New York law schools have adopted the ABA’s and other recommendations and have established robust initiatives and programs focused on law student mental health and well-being. The next section of this report summarizes the tremendous work being done by the New York law schools on wellness initiatives.

### *New York Law Schools Programs and Initiatives Focused on Well-Being*

In the fall of 2020, the Law Education Working Group sent a survey to the 15 New York law schools seeking information about resources and programs law schools offer and provide to promote the well-being of their students.<sup>24</sup> These resources and programs focus on law students’ well-being generally, including mental health, physical wellness, academic wellness and social wellness. A summary of the survey responses is provided below. The student members of the Working Group also met with the Student Bar Association presidents of all fifteen New York law schools to learn the student perspective related to well-being programs at their respective institutions which information has also been included below.

#### *Counseling*

Of the 11 law schools that responded to our Working Group survey, only one institution does not offer counseling services and seven reported that they offer onsite counseling services. While much progress has been made related to counseling services, the Student Bar Association presidents reported that most students expressed a desire for more support for student mental health. Students reported that they have advocated for onsite services and that the institutions that do not provide onsite counseling cited concerns related to confidentiality, insurance policies, restrictions on therapist licensing, and lack of counseling availability. Some students suggested that institutions should do more to communicate with students on the availability of counseling and other mental health resources.

#### *Peer Support*

In response to student concerns about disclosing mental health-related issues to faculty and staff at their institutions, many institutions offer peer-mentoring or support services. Several responding schools offer programs that empower students to promote and remind their peers of available support resources, as well as help them navigate the law school experience. One

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<sup>23</sup> *Id.*

<sup>24</sup> Eleven of the 15 New York law schools responded to the survey.

institution offers an Upper-Year Peer Mentorship Program, which is “designed to foster community and inclusion within the Law School and ensure that all students feel cared for and supported.”<sup>25</sup> The program is structured as follows:

Second-year students who seek additional guidance and ties to the law school community are matched with third and fourth-year students who can empathize with their situation and support them as they navigate the personal, academic, and professional challenges of the 2L year. Mentoring groups meet on a weekly basis for the duration of the fall semester, with an option to continue through the spring term. Mentors are afforded a budget, which enables them to meet with their mentees regularly over coffee or a meal. All mentors enroll in the one-credit seminar “Peer Mentoring & Leadership,” which is designed to equip mentors with the tools and training they will need to support their mentees and develop the professionalism skills necessary for effective leadership. Mentors help each other work through challenges that arise in their mentoring, and practice cultivating critical leadership and professionalism skills such as listening, teamwork, emotional intelligence, and multicultural competence.

Another law school reported having “[s]tudent facilitators [who] are trained to listen to fellow students’ concerns and direct them to appropriate resources using an empathy, assistance, and referral model. In the last few years, more graduate and professional school students have been recruited and trained as peer support facilitators in response to student feedback that graduate and professional students were unlikely to participate in a program led by undergraduate students without similar lived or academic experiences.” Other law schools reported having similar mentor programs designed to match upper level students with incoming students to foster a sense of community and belonging. One school is working on a collaborative project with the Lawyer Assistance Program (LAP) and Lawyers Helping Lawyers (LHL) to establish a support group for students with the confidentiality protections LAP affords.<sup>26</sup>

*I had reached my bottom. Dropped from a class for failure to attend; gone from second in my class to almost not graduating on time. I needed help. Following the encouragement of a fellow law student, I went to a therapist who told me I was an alcoholic and needed AA. After attending meetings, getting a sponsor, and staying sober for a short while, I worked up the courage to reach out to our Dean of Students. He gave me a brochure for NYC LAP and permission to take 20 credits my last semester so I could graduate on time. Now, besides the workload, I had to somehow navigate the world without my*

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<sup>25</sup> NYS Task Force on Attorney Well-being Law School Survey, <https://albanylaw.evaluationkit.com/Respondent/Survey?ida=%2bKvnttlpiKiDfdjrpBBauSytLRW4kvg6bR7bi6OmIln5UdOzwi1M73PC7i8r6MVEus%2fh4p%2bCx4HFzSCwUGq4rA%3d%3d> (last visited Jan. 15, 2021).

<sup>26</sup> Pursuant to this initiative, approved law students who are active members of the local NYSBA Lawyers Assistance Program (LAP) will be “authorized agents” of the LAP, allowing conversations between the agents and other law students at their peer support meetings to have the confidentiality protections of Section 499 of New York State Judiciary Law.

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*crutch of alcohol, even as it seemed pervasive, if not integral to our academic social scene. But I did it. I graduated.*

*After law school, I had to face with the mental health issues that I had been masking with alcohol abuse. I struggled to find the right mix of medication and therapy to be a functioning human, let alone an attorney. It was during this time of self-discovery that I found the Capital District Lawyers Helping Lawyers group. The group was comprised of attorneys and law students who themselves had struggled with mental health and substance abuse issues. Most of the members were successfully employed and respected in their community. Being amongst them gave me hope.*

*I eventually came to chair the Lawyers Helping Lawyers group and joined NYSBA's Lawyers Assistance Committee. Along the way, I was admitted to practice in New York and gained employment. Now I try to help others who suffer. I doubt I would be alive, much less an attorney, without the encouragement of my colleagues and this community. For that I am eternally grateful.*

— Daniella E. Keller, Esq., Co-Chair, NYSBA Lawyers Assistance Committee

While Student Bar Association presidents applauded their school administration's efforts to foster peer support, they expressed concern that the students most in need of support are often reluctant or not interested in taking advantage of such services. Students reported that some students are more likely to seek support from affinity groups (e.g., APALSA, the Asian Pacific American Law Student Association; BLSA, Black Law Students Association; LALSA, Latin American Law Students Association; MLSA, Muslim Law Students Association; OUTLaw, LGBTQ+ Law Student Association). The "neutral" setting of affinity group meetings allows students to identify their own need for support and learn how to be an ally to reach out to classmates who may need help.

### Best Practices for Identifying and Assisting Students

In an effort to reach out to students in need of support, particularly during the recent global health pandemic, New York law schools have established various best practices for identifying and assisting these students. For example, some schools have developed a protocol where members of the faculty, administration, and staff meet to discuss a team-oriented, collaborative approach to outreach and support. Several reporting schools have established written protocols that advise students, faculty, and staff on how to support students in distress, including reporting to the Office of Student Affairs, with thoughtful follow up with the students to provide resources and support.

Schools also reported that their onsite counselors or counseling centers have presented to faculty and offered other training programs to law school staff on how to recognize and best support students in distress.

### Mental Health Education

Many law schools offer regular wellness programs (monthly or weekly) that focus on educating the community about wellness issues.<sup>27</sup> One school reported that it has a mandatory program for first-year students, called “Wellness 101: Strategies & Resources for Managing Stress & Cultivating Well-Being in Law School and Practice,” which provides an overview of the mental health challenges experienced by many law students and lawyers, the available resources (both on campus and in the legal and New York City community) to support students who are experiencing any of these issues, and strategies and resources they can use to affirmatively cultivate their well-being. While these programs provide the law school community with valuable information and awareness on mental health issues, attendance is a challenge. Many members of the community who are already aware and educated on these issues are the sole attendees. As a result, law schools are faced with the challenge of deciding how to encourage the broader community to engage and participate or whether to make such programs mandatory.

Student Bar Association presidents all stated that attendance at wellness events was a challenge. They attributed this to students not wanting to spend more time on campus than necessary or, during the COVID-19 pandemic, Zoom fatigue.

### Collaboration with the Lawyer Assistance Program

Law schools recognize that the NYSBA LAP provides a valuable resource. All responding New York law schools reported hosting programs with the LAP and LHL programs. First-year orientation programs often include representatives from both organizations. One school has hosted LHL meetings on campus as a way to offer students a convenient way to join a meeting and learn about the program. Student feedback from orientation indicates that introducing LAP is incredibly helpful in reducing stigma around substance issues and mental health issues that often inhibits help-seeking behaviors. Law schools should continue to utilize LAP in orientation and other times throughout the course of the academic year.<sup>28</sup>

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<sup>27</sup> These programs include (1) Voices of Recovery panels/lunch talks, where attorneys share their personal stories about overcoming mental health challenges, (2) Mental Health First Aid and related trainings for law faculty and staff, (3) fitness activities led by faculty members, and workshops on: (4) Becoming a More Effective Mental Health Communicator, (5) Mindfulness and Meditation, (6) Stress Management, (7) Vicarious Trauma, (8) Racial Trauma Workshops, (9) Nutrition and Food Insecurity, and (10) Time Management.

<sup>28</sup> The ABA has recently proposed revisions to Standard 508 that would require law schools to provide students “[i]nformation on law student well-being resources.” A.B.A., Memorandum on ABA Standards and Rules of Procedure – Matters for Notice and Comment – Standards 303 and 508 and Rules 2 and 13 (Mar. 1, 2021), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/20210301-notice-and-comment-standards-303-and-508-rules-2-and-13.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20210301-notice-and-comment-standards-303-and-508-rules-2-and-13.pdf). Proposed Interpretation 508-1 provides “Law student well-being resources include information or services related to substance abuse and mental health. They can include, but are not limited to, counseling services provided in-house by the law school, through the university of which the law school is a part, or by a bar association legal assistance program. Other law student well-being resources may include information for students in need of critical services such as food pantries or emergency financial assistance.”

### Professional Responsibility and Other Courses Focused on Well-Being

One reporting school has a required professionalism course for 1Ls where wellness is part of the curriculum and reported that all first-year students participate in a Wellness 101 program. Several schools reported that they include a mental health and wellness module in their required Professional Responsibility courses and other institutions have courses that are focused on mindfulness, such as “Mindfulness and Professional Identity” and “Positive Lawyering.” Student Bar Association presidents reported that some first-year legal writing/lawyering professors included well-being in their teachings.

### Contemplative Lawyering and Mindfulness Programs

Several New York law schools have created spaces for law students to be introduced to and/or to practice deep reflection, mindfulness, meditation, yoga, and any art of contemplation they choose to help reduce their stress and anxieties, and improve their focus, attention, study habits and creativity. Some law schools have dedicated spaces (e.g., serenity room) for meditation, prayer, mindfulness and contemplation. The Student Bar Association presidents reported that these spaces are appreciated but are underused and not well-known amongst students.

### Programs Related to Financial Well-Being

Many reporting law schools offer programming led by outside organizations such as Access Lex on financial planning, debt management, and financial well-being. However, Student Bar Association presidents expressed that there is not enough support and programming related to financial well-being during law school – for example, for those experiencing stress because of a change in scholarship status. Law schools have also responded to financial needs of law students by establishing an emergency financial assistance program to immediately address financial hardships. Many schools have organized fundraising efforts around these emergency funds, particularly during the recent pandemic and Access Lex has contributed funding for law school emergency fund programs. Law schools have also focused on issues of food insecurity, and many have instituted food services and pantries that are used widely and greatly appreciated by students. Student organizations have also addressed these issues by offering gift cards/promo codes for food delivery phone apps to students who attend events.

### Communication/Establishing a Culture of Well-Being/Wellness Blogs and Webpages

Many schools maintain wellness blogs where the law school community can share and receive information about well-being resources. These blogs and web pages include resources on mindfulness, mental health counseling, financial counseling resources and other information. Some include resources and information related to the impact of COVID-19 pandemic and racial injustice.



## Challenges for Law Schools

While the New York law schools have made great progress in addressing the needs of the law school community, there is more work to be done. Law schools should continue to provide the much-needed counseling and mental health support services and should continue efforts to educate the community on mental health and wellness challenges law students face. As law schools continue to address student well-being, it is important to take the further step of exploring and identifying the individual and contextual factors that might be contributing to law students' mental health issues, such as the historical culture of legal education, external factors that interfere with law student well-being, and the challenges faced by law schools in addressing them. These individual, contextual, and external factors can often interfere with wellness in various areas, including intellectual, emotional, social, physical and financial well-being.<sup>29</sup>

### Intellectual Well-Being and Law School Culture: The Hidden Curriculum

Law school is academically challenging. Navigating the culture of law school can also be challenging, particularly in the first year. The 1973 movie, *The Paper Chase*, examines the first-year experience of students at Harvard Law School. The esteemed Professor Kingsfield faces his first-year class and provides three statements that may still be repeated by some law professors today:

You come in here with a skull full of mush . . . and you leave thinking like a lawyer. You teach yourselves the law . . . but I train your mind. Through this method of questioning, answering . . . questioning, answering . . . we seek to develop in you the ability to analyze . . . that vast complex of facts that constitute . . . the relationships of members within a given society.<sup>30</sup>

The culture of law school has changed as a result of the work of many legal education scholars who have noted the importance of mindfulness in teaching,<sup>31</sup> as well as support from faculty, staff, student services, academic services and, most of all, diversity, equity and inclusion support.

But the vestiges of *The Paper Chase* remain. Law students are accustomed to succeeding academically, knowing the answers and how to obtain them, and, therefore, expect to receive all A's and obtain the job of their dreams. Instead, they are faced with the Socratic Method or some variation thereof, a curve (sometimes mandatory), and they are required to develop reading and analytical skills that are different than most have used during their undergraduate studies. Some

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<sup>29</sup> Nat'l Task Force on Lawyer Well-Being, Am. Bar Ass'n, *The Path to Lawyer Well-Being: Practical Recommendations For Positive Change* (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

<sup>30</sup> *The Paper Chase* (20th Century Fox 1973).

<sup>31</sup> See Marjorie A. Silver, *The Affective Assistance of Counsel: Practicing Law as a Healing Profession* (2007).

scholars have noted that the “constant fear of a ‘cold call’ combined with the cutthroat learning environment is detrimental to most students’ ability to learn.”<sup>32</sup>

The law school environment imposes pressure on law students to compete with their classmates for grades and class rank, with the goal of achieving a rank in the top 10% of the class, and that “a summer associate position at a large law firm, a coveted judicial clerkship, or membership on the law review or moot court board, are the prizes of law school and take precedence over thoroughly learning class material, practicing lawyering skills, or collaborating and communicating with others.”<sup>33</sup> This competitive culture reinforces and, possibly, incentivizes a fixed mindset among students.<sup>34</sup> However, as Professor Jolly-Ryan notes, opportunities for a high rank, positions on law reviews, big-law positions, and clerkships are limited. “In fact, by simple math, 90% of law students will not find themselves in the top 10% of the class, where most of the traditional rewards of law school are found” and students who do not rank in the top 10% “fear not only the consequences of poor grades, such as limitations on opportunities, but also the humiliation of not doing well academically after years of apparent successes” and are often “ill-prepared to handle the ups and downs of law school.”<sup>35</sup> This aspect of law school culture is referred to as the “hidden curriculum,” which “includes ignoring stress and its consequences, focusing on studies to the exclusion of all else in a student’s life, utilizing substance abuse for escape, and failing to pay attention to mental health.”<sup>36</sup>

The ABA Standards for the Approval of Law Schools has required law schools to provide academic support to students in an effort to improve outcomes.<sup>37</sup> As a result, law schools have established robust academic support services, including faculty who are dedicated to working with students who are struggling academically. Some have raised concerns about the stigma associated with being in the bottom of the class and receiving academic support services. This can be addressed by shifting the culture so that students understand that given the challenging work required for law school, grades that are considered “average” should not be a source of shame. Law education scholars have noted that “by focusing on the emotional and psychological well-being of students, teachers enhance a student’s ability to succeed.”<sup>38</sup> Law schools can address some of these concerns by sending a message of belonging on the first day of law school

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<sup>32</sup> Louis N. Schulze, Jr., *Alternative Justifications for Academic Support: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 Cap. U. L. Rev. 41, 20 (2012).

<sup>33</sup> Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do For Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 Louisville L. Rev. 95, 109 (2009).

<sup>34</sup> See Carol S. Dweck, *Mindset: The New Psychology of Success* (2007).

<sup>35</sup> *Id.*

<sup>36</sup> Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. Cal. Interdisc. L.J. 147, 187 (2014) (citing Jolly-Ryan, note 33 *supra*, at 98).

<sup>37</sup> 2020-2021 Standards for Approval of Law Schools, Academic Advising and Support § 309 (A.B.A. 2020).

<sup>38</sup> Louis N. Schulze, Jr., *Alternative Justifications for Academic Support: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 Cap U. L. Rev. 41, 20 (2012), at 20.



that reminds students that they were selected for admission based on their merit, and they are capable of succeeding in law school.

### Emotional Well-Being and Law School Culture

As Professor McClain notes in his book *The Guide to Belonging in Law School*,<sup>39</sup> “[e]verybody faces challenges in law school. What is important is how you deal with those challenges.” The heavy workload and stress in law school can exacerbate maladaptive behaviors such as overuse of alcohol, food and other substances as coping mechanisms and can inhibit a sense of belonging for students who do not drink for religious, recovery, or other reasons. Alcohol is often served at law school and bar association functions, making alcohol central to the legal culture, which is not always similar to the undergraduate academic experience. Lack of appropriate sleep and poor nutrition take their toll as well. The stress caused by the financial burden of tuition, books and housing expenses can cause students to make unhealthy decisions.<sup>40</sup>

As discussed above, many law schools are providing counseling and linkages to the LAP and LHL programs to help students deal with emotional, psychological and substance abuse issues. These services are particularly useful for students who are using unhealthy ways to cope and for students who develop symptoms triggered by certain topics of the facts of the case and related class discussions or who suffer vicarious trauma in experiential settings. Although almost all New York law schools provide counseling services, it can be financially challenging for law schools to provide individual, on-site private counseling sessions. The number of counseling sessions may be limited as a result, posing an access issue. In the majority of institutions, most of the institutional funding is reserved for the academic program and, because counseling is resource-intensive, funding for broader wellness initiatives, including counseling, can be difficult for law schools to find or allocate. While some law schools benefit from a counseling center shared with its undergraduate institution, which may defray costs, such general counseling services may not be suited to address the specific nature of law students’ stressors and concerns. To address these financial challenges, some law schools have funded counseling services through student health insurance and activity fees.<sup>41</sup>

### Barriers to Belonging

Another crucial aspect to emotional well-being for law students is developing a sense of “connection, belonging, and a well-developed support network while also contributing to our groups and communities.”<sup>42</sup> Law schools do not operate in a vacuum, but rather are products of

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<sup>39</sup> Russell A. McClain, *The Guide to Belonging in Law School* 15 (2020).

<sup>40</sup> Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory*, 47 Washburn L.J. 101 (2008).

<sup>41</sup> See NYSBA Attorney Well-being Survey 2020, Summary App. A.

<sup>42</sup> Nat’l Task Force on Lawyer Well-Being, Am. Bar Ass’n, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017), p. 9;  
<https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

and impacted by systems of exclusion that are endemic to society at large. At the time this Report was being drafted, the global community was in the throes of a once-in-a-century pandemic that disparately impacts individuals based on race, ethnicity, and economic status. Simultaneously, American society has been grappling with advocacy, activism and social justice protests in response to prominent instances of police violence. This has been occurring in an often polarized and divisive climate where the very definition of what constitutes a fact is constantly disputed and can vary based on individuals' affiliations. Disputes concerning the 2020 presidential election spilled over to the certification of Electoral College results, culminating in an invasion of the U.S. Capitol on January 6, 2021, marked by flags and other symbols of racialized violence and anti-Semitism, which overshadowed the peaceful transfer of power that are hallmarks of American democracy and the rule of law. Law students bring this context with them into their classrooms, and it necessarily affects their sense of inclusion and belonging or, more often than not, the lack thereof.

Additionally, students from underrepresented backgrounds may struggle with belonging in law school. The reality is that law school faculties often do not reflect the diversity of the student body at most institutions. Law school faculties have traditionally been primarily made up of white men.<sup>43</sup> While efforts have been made to diversify law school faculties, diverse faculty who progress in their scholarship and teaching are often recruited by prestigious law schools with greater endowments who seek to hire diverse faculty at higher ranks. This results in recruitment challenges for lower tier schools, which often have greater student diversity and with less faculty diversity.<sup>44</sup> And, diverse faculty representation is not high at higher-ranked institutions either. Thus, students from some communities – rooted in race, ethnicity, sex, gender identity, sexual orientation, religion, immigration status, and those whose primary language is not English, among others – do not see themselves reflected at the podium, in the pedagogy, or in the profession. Students struggle with learning facts and what is framed as objective law that do not often reflect their identities, histories, or experiences.<sup>45</sup> The resulting cognitive dissonance is jarring and is exacerbated in times of social unrest like these. This dissonance contributes to impostor syndrome,<sup>46</sup> isolation, and an inability to imagine oneself as a full member of the legal community. Potential law students also face this dilemma.<sup>47</sup>

Another issue is one of career aspirations and employment, discussed more fully in the next section. Students in the top 10% of the class and those on law review are groomed for big firm

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<sup>43</sup> See, e.g., Meera Deo, *Unequal Profession: Race and Gender in Legal Academia* (2019).

<sup>44</sup> Kevin R. Johnson, *Some Thoughts on the Future of Legal Education: Why Diversity and Student Wellness Should Matter in a Time of Economic Crisis*, 65 Buff. L. Rev. 255 (2017).

<sup>45</sup> We note that several New York law schools are addressing this issue by adding courses or curricular requirements focused on racial and social justice.

<sup>46</sup> Gill Corkindale, *Overcoming Impostor Syndrome*, Harv. Bus. Rev. (May 7, 2008), <https://hbr.org/2008/05/overcoming-imposter-syndrome> (explaining that “Imposter syndrome can be defined as a collection of feelings of inadequacy that persist despite evident success. ‘Imposters’ suffer from chronic self-doubt and a sense of intellectual fraudulence that override any feelings of success or external proof of their competence.”).

<sup>47</sup> See Johnson, *supra* note 44.

jobs and judicial clerkships. Students who are not ranked in the top of the class are left wondering where they fit in for their future employment prospects. Students of color and women are often encouraged to look at public interest jobs where the majority of the clients “look like them.” Sandra Simkens’ article “*The Pink Ghettos*” of *Public Interest Law: An Open Secret* describes the “socialization” in law school where men are seen as “breadwinners” and women as “caretakers.”<sup>48</sup> Some law schools have noted the impact this has on students, beginning in the first year of law school:

This failure to incorporate the perspectives of marginalized and oppressed groups harms students. First-year legal education that fails to directly address hierarchy and subordination provides students with an impoverished experience and a limited and defective legal training that falls short of preparing them for legal practice and interaction in a diverse and demographically shifting country and a globally interdependent world.<sup>49</sup>

A look at the 2020 report required by Standard 509 of the ABA Standards for the Approval of Law Schools demonstrates the lack of diversity of both faculty and students.<sup>50</sup> A summary of those findings is provided below.

| Law Faculty     |                                 |                              |                       |                          |                       |
|-----------------|---------------------------------|------------------------------|-----------------------|--------------------------|-----------------------|
|                 | Total Full time (FT) professors | All minority (FT) professors | Black (FT) professors | Hispanic (FT) professors | Women (FT) professors |
| All 198 schools | 9,329                           | 1,990 (21.22%)               | Not specified         | Not specified            | 4,339 (46.51%)        |
| NY schools only | 987                             | 185 (18.74%)                 | Not specified         | Not specified            | 451 (45.69%)          |

<sup>48</sup> Sandra Simkens, *The “Pink Ghettos” of Public Interest Law: An Open Secret*, 68 Buff. L. Rev. 857, 864 (2020).

<sup>49</sup> Symposium at B.U. Sch. of L., *Racial Bias, Disparities and Oppression in the 1L Curriculum*, B.U. SCH. OF L. (Dec. 12, 2019), <https://www.bu.edu/law/2019/12/12/racial-bias-disparities-and-oppression-in-the-1l-curriculum/>. Symposium held Feb. 28-29, 2020.

<sup>50</sup> 2020-2021 Standards for Approval of Law Schools, Student Support Services § 509 (A.B.A. 2020). See Stephanie Francis Ward, *How Many Tenured Law Professors Are Black? Public Data Does Not Say*, ABA J. (Oct. 28, 2020, 3:25 PM), <https://www.abajournal.com/web/article/how-many-tenured-law-professors-are-black-public-data-does-not-say>.

| Law Students (JD only) |              |                       |                |                   |                 |
|------------------------|--------------|-----------------------|----------------|-------------------|-----------------|
|                        | All students | All minority students | Black students | Hispanic students | Women students  |
| All 198 law schools    | 114,520      | 36,091 (31.51%)       | 8,870 (7.75%)  | 14,832 (12.95%)   | 61,949 (54.09%) |

In addition, LGBTQ+ students and students with disabilities are underrepresented at many law schools. Diversity, equity and inclusion efforts do not always focus on these populations and law firms do not seek out these students in their efforts to diversify their staff.<sup>51</sup> Finally, students who identify by their ethnicity, religion, gender identity, sexual orientation or disability do not see themselves well represented in law school texts and in course work, with the exception of their work in clinics, externships and field placements, where discussions around diversity, inclusion, and equity are often presented in an attempt to create a culturally sensitive future attorney.<sup>52</sup>

### Support Structures

The 2020 Law School Survey of Student Engagement (LSSSE) survey highlights that most law schools claim a focus on improving diversity; however, many students still feel marginalized based on race and ethnicity, gender, sexual orientation, gender identity or expression, and socioeconomic status.<sup>53</sup> The subsections below explore the lack of sufficient support structures that contribute to this experience of exclusion for three communities: racial and ethnic minorities, first generation/low-income individuals, and those who are differently abled.

#### Systemic Racism

Students of color face many challenges with respect to systemic racism within the legal system. As they maneuver the intricacies of social interaction and lack of opportunities to be easily included, students of color are often at risk for experiencing racial trauma which tends to have a clear impact on their overall well-being. Many law schools have initiated programs and initiatives to encourage faculty to address systemic racism in the legal system – in course

<sup>51</sup> Nat'l Ass'n for Law Placement, Report on Diversity in U.S. Law Firms (2019).

<sup>52</sup> Johnson, *Some Thoughts on the Future of Legal Education* *supra* note 44.

<sup>53</sup> Stephanie Francis Ward, *New report looks at how law students view their schools' diversity work*, ABA J. (Sept. 30, 2020, 10:14 AM), <https://www.abajournal.com/news/article/new-report-looks-at-how-law-students-view-their-schools-diversity-work> (citing LSSSE 2020 Annual Survey Results: Diversity & Exclusion). We note that at the time of the drafting of this report, the Council of the ABA's Section of Legal Education and Admissions to the Bar proposed a change to ABA Standard 206 that provides that "A law school shall provide . . . '[a]n environment that is inclusive and equitable with respect to race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, disability, and military status.'"

materials and as part of class discussion. Schools have also noted the substantial burden on students, faculty, staff and administrators of color who are often asked to organize events, provide support, and educate the larger community on these issues. These issues can interfere with the well-being of the members of the law school community. As a profession, we must find inroads to eradicate the systems that continue to marginalize these students and young professionals as they begin their careers. Removing these long-standing barriers is the only way to change the face of our profession and the NYSBA is poised to support and assist law schools in their endeavor to achieve this.

### First-generation Students

First-generation law students face additional issues that impact both their well-being and their overall performance in law school. Stressors from taking out loans, coupled with the likelihood that they come from a multicultural background or may need to attend law school part-time to maintain a full-time job, adds an additional set of external challenges. In addition, these students often are under pressure to meet familial and societal expectations and, despite these challenges, have no one in their personal or professional life who can assist them. These students are unfamiliar with the law school process, which can interfere with their well-being in law school and beyond.

Support for first-generation students is often limited to minority bar associations and diversity, equity and inclusion staffing and/or programs, although some schools have first-generation law student organizations or host receptions for first-generation students to connect with one another as well as with law faculty and staff who were first-generation students themselves. Many schools also have student mentors for first-year students through affinity groups, the Student Bar Association or organizations.

### Students with Disabilities

Students with disabilities experience different levels of stress that can be detrimental to their well-being. Although most law schools maintain offices that work with disabled students to support their education as much as possible, steps can be taken to enhance inclusion and a sense of belonging for students with disabilities. For example, in November 2020, the NYSBA hosted programming for parents and law students on how to plan for disability testing accommodations in law school with a particular focus on doing so during a pandemic.

One area in which students with disabilities continue to face challenges is related to seeking accommodations. Students with disabilities are often required to fund the cost associated with obtaining medical documentation and evaluations to support their accommodation requests. Additionally, students with disabilities continue to experience the stigma associated with accommodations and the misperception that accommodations provide an advantage. Further, students with disabilities face a significant administrative burden with completing the extensive necessary forms to secure accommodations on the bar exam.

Student Bar Association presidents at the majority of institutions described the process for seeking accommodations as “too difficult.” Additionally, each president felt that their school’s process to receive accommodations could be clearer and more transparent. Students also expressed dissatisfaction with the level and amount of accommodations they received and raised concerns about the anonymity of their requests. Many law schools have taken steps to anonymize the accommodations process, which is recommended as a best practice with respect to requests for accommodations. Law schools also work to balance student concerns about the accommodations process with schools’ legal responsibilities to ensure students receive consistent support tailored to their individual conditions and circumstances.

But seeking accommodations is only one challenge that has an impact on well-being. Law schools should continue to focus on developing programming for students with disabilities that is focused on how to succeed in law school. While law schools have offered programming that highlights the work of persons with disabilities in the legal profession, which is valuable, it is important to provide resources and support to students to address the challenges they may face while they are in law school. A collaborative approach between the NYSBA and local law schools supporting current disabled students would be remarkably insightful. Offering these resources to disabled law students positions them for success and will serve to lessen the negative impact on their mental state and wellness while in law school.

#### Student Emotional Health

Students also continue to struggle with whether to seek assistance for their mental health needs. A 2004 study of lawyers recovering from mental illness determined that the two greatest factors in failing to seek treatment was the belief that “they could handle it on their own” and that discovery of treatment would stigmatize their reputation. The National Task Force on Lawyer Well-Being released research that included an expansive list of reasons why lawyers are so help-averse, including:

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

As noted in the introduction above, New York removed the mental health question from the bar admission application in 2019 in response to the NYSBA Attorney Working Group on Mental Health Report. Students applying to the bar were relieved as, in the past, many applicants to the bar equivocated as to whether they needed to report seeking any counseling they ever had,

medication they took or are currently taking to relieve symptoms of ADHD, mild anxiety and/or depression, or self-help they might have explored. Individuals with DSM IV - R diagnoses whose impairment is fully controlled by medication felt relief as to not having to explain and worry an employer member of the Character and Fitness Committee might find out. However, students at New York law schools often seek admission in other states that continue to require disclosure by a lawyer who has received treatment for any type of mental illness.

*Most of us are but a degree of separation (if not closer) from the ravages of mental illness. My mother suffered from schizophrenia, in a time when medical science could do little to help her. The illness robbed her of a normal life and my family of her presence, as she was frequently hospitalized. Were she alive today, with appropriate medication, my mother could have lived a perfectly normal and productive life. She was one pill away from the sanity that we often take for granted.*

*My mother's struggles inspired me during my year as NYSBA president to advocate for the elimination of questions on the Bar admission application that required applicants to reveal their mental health history. A multi-disciplinary task force I established issued a report in 2019 that cited studies showing that law students suffering from depression and other mental health conditions would forgo needed treatment and medication to avoid having to disclose their condition to admission committees. Thankfully, our court system followed the task force's recommendations and eliminated these antiquated questions.*

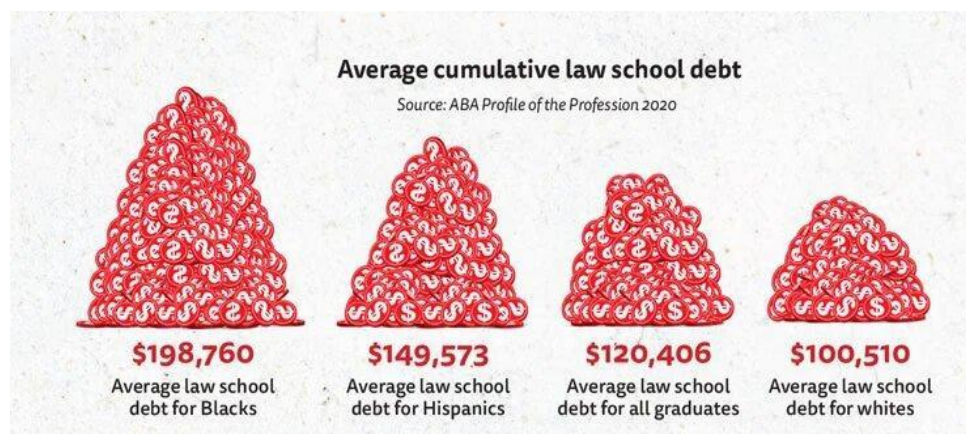
*The stigma of mental illness remains a danger to the public's health and well-being. We can all draw on our personal experiences to rid the legal profession of this scourge and encourage our colleagues and friends to get the help they need.*

– Hank Greenberg, Former President, NYSBA

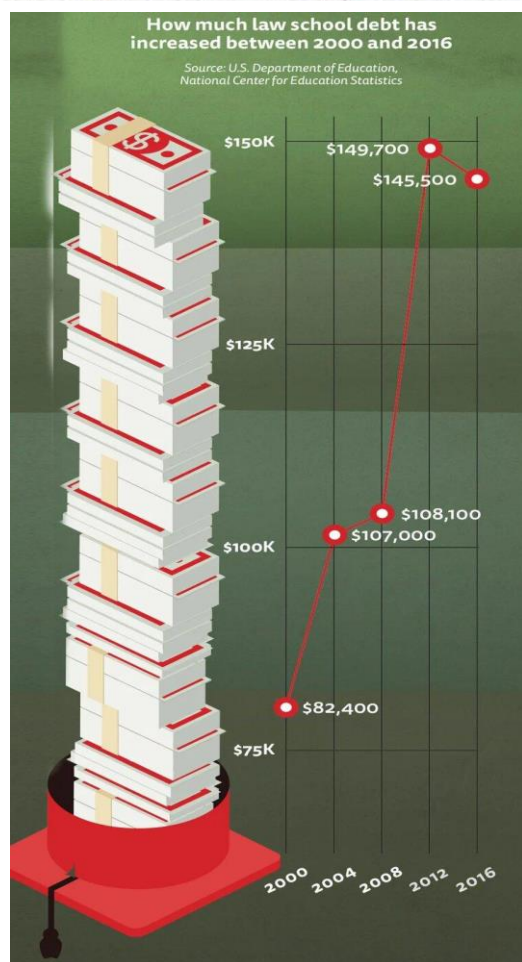
### Financial Well-Being and Employment Pressure

Financial and employment (in)stability are known to be significant stress points that can also detrimentally impact law student well-being. The investment needed to attend law school is substantial, even without considering the earning potential lost by students during the law school years. The actual cost of a law school education can easily exceed \$100,000 after factoring in tuition, books, housing, transportation, and other living expenses. Some students work part-time to defray the cost of a legal education, which complicates their ability to become integrated into the informal networks that contribute to success and a sense of belonging in law school, such as attending office hours, career and other mentorship programming, and student organization meetings. Many students have to repay sizable loans after law school, which can be challenging. While a small number of law graduates land high-salaried legal jobs, the vast majority do not.





According to the ABA's survey of 1,000 law school graduates in March of 2020, the average amount of debt students have upon graduation is \$165,000.<sup>54</sup> The amount of debt is even larger for first-



generation lawyers and lawyers of color.<sup>55</sup> This chart indicates the “[a]verage cumulative law school debt” as reported by the ABA.

Legal education scholars have noted that student debt can prevent law students from “pursuing their original goals in favor of high-paying positions that provide financial security at the expense of personal satisfaction. . . . For example, many law students who would like to pursue public-interest careers – perhaps as advocates for non-profit agencies or as legal counselors to low-income populations-find it impossible to do so because of their heavy debt (and because there are a limited number of these positions). Thus, many law students are forced to make lifelong career choices based on how they will repay school loans, rather than how they would like to act as a legal professional.”<sup>56</sup> Graduates may choose high-paying jobs over those that they might be passionate about or would make them happier.<sup>57</sup>

[Chart by Elmarie C. Jara, Getty Images, <https://www.abajournal.com/magazine/article/law-school-debt-is-delaying-plans-for-recent-grads-and-heres-how-6-are-adapting>].

<sup>54</sup> Debra Cassens Weiss, *Law student debt averages about \$165K at graduation, creating stress and restricting choices, survey says*, ABA J. (Oct. 27, 2020, 12:19 PM), <https://www.abajournal.com/news/article/law-student-debt-averages-165k-at-graduation-creating-stress-and-restricting-choices-survey-says>.

<sup>55</sup> Debra Cassens Weiss, *Majority of minority female lawyers consider leaving law; ABA study explains why*, ABA J. (June 22, 2020, 4:19 PM), <https://www.abajournal.com/news/article/most-minority-female-lawyers-consider-leaving-law-aba-study-explains-why>.

<sup>56</sup> Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do For Law Students*, 48 Louisville L. Rev. 95, 115-16 (2009).

<sup>57</sup> Weiss, *Law Student Debt Averages about \$165K*, *supra* note 54.



Stress is also caused by the unpredictable job market for law students. A New York Times article reported that in 2015 “more than 20% of graduates from the class of 2010 held jobs that did not require law degrees. Only 40% worked in law firms, compared to 60% from the class of 2000.”<sup>58</sup> Regarding salaries, “[t]he 2018 median pay for law school graduates across the board was only \$70,000. . . . Entry-level prosecuting attorneys earn a median pay of \$56,200; public defenders do slightly better at \$58,300.”<sup>59</sup> “‘Over the long term,’ the ABA report noted, ‘we continue to ask new graduates to absorb a larger debt burden than their predecessors. The class of 2020 – as their plans to become licensed abruptly devolved into chaos during the COVID-19 pandemic – will almost assuredly bear the biggest burden we have ever asked of any modern class of lawyers.’”<sup>60</sup>

The financial burden of law school also impacts nearly every aspect of life after graduation. Financial wellness often directly affects overall wellness and can have a significant impact on physical, mental, and emotional wellness.<sup>61</sup> Financial challenges cause increased stress, decrease productivity, and reduce overall happiness.<sup>62</sup> And young lawyers often postpone many life decisions, including purchasing cars and homes, getting engaged or married, or having children due to the burden of law school debt.<sup>63</sup>

Bar association members comprise a brain trust that could be of great value to law schools in implementing programs and initiatives to introduce resources and practical advice regarding financial well-being to incoming students. A proactive approach for prospective students between bar associations and local law schools about how to finance a legal education would be extremely beneficial as offering this information may serve to lessen the stresses relating to financial burdens. Educating these prospective law students on funding beyond traditional services provided by the offices of financial aid will equip them with resources that may permanently offset the financial burdens if they are encouraged to plan ahead. This encouragement should include identifying non-traditional funding sources that may offer law students grants or financial support. For example, NYSBA’s “brain trust” could develop and host a program (or a series of programs) that provide information to students on financial well-being – and which could benefit new and veteran attorneys as well. Development of a module that addresses loan and debt management will offer students the opportunity to start law school with

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<sup>58</sup> Greg Depersio, *Is Law School Worth It Anymore?*, Investopedia (Aug. 16, 2020), <https://www.investopedia.com/articles/personal-finance/082416/going-law-school-worth-it-anymore.asp>.

<sup>59</sup> *Id.*

<sup>60</sup> Weiss, *Law student debt averages about \$165K supra* note 54.

<sup>61</sup> Stephanie Francis Ward & Lyle Moran, *Law school debt is delaying plans for recent grads*, ABA J. (Dec. 1, 2020, 12:00 AM), <https://www.abajournal.com/magazine/article/law-school-debt-is-delaying-plans-for-recent-grads-and-heres-how-6-are-adapting>.

<sup>62</sup> Gradifi by E-Trade, *Financial Wellness Benefits Boost Employee Happiness and the Bottom Line*, ABA (2020), <https://www.aba.com/-/media/documents/industry-insights/gradifi-financial-wellness-ebook.pdf?rev=54b91feb5b1e4c229d32ba7e5ab7e092>.

<sup>63</sup> *Id.*

a different mindset relating to finances and would lessen their burden, thereby enhancing their well-being in an already challenging environment.<sup>64</sup>

### Physical Well-Being in Law School

Law schools and the legal profession have made progress in modeling the importance of physical well-being and making explicit the connection between physical health and a long, productive career in law. All reporting law schools offer fitness classes and events to encourage students to be active while in law school. These include yoga classes, wellness walks with student services professionals, faculty/staff-student volleyball and other similar programs. And many schools have student organizations that are focused on fitness-related activities, such as a soccer club. While the benefits of a consistent physical fitness routine are well-documented, students often cite the lack of time as a factor for not being able to fully avail themselves of such offerings. This perception of insufficient time for physical fitness and an inability to prioritize physical well-being is a challenge as physical well-being can have a significant impact on an individual's intellectual and emotional well-being. Finding sufficient resources to address physical well-being such as maintaining fitness facilities and programs, nutrition-focused programs, and programs focused on food insecurity can be similarly challenging for law schools as well.

As such, the Task Force's Physical Fitness Working Group recommends that law schools take "advantage of high levels of access to well-being and recreation opportunities within colleges and universities." For example, if a "law school is affiliated with a university, it should arrange for its students to have affordable privileges to take part in the wellness offerings available to undergraduates and publicize their availability. If university facilities are inadequate or the law school is stand-alone, it should arrange for student discounts at neighboring gyms and fitness facilities." The Working Group also recommends inviting attorneys to speak to law students about practicing well-being throughout their legal career.

Law schools should also be mindful about preparing students for wellness in their law practice. When entering the profession, new attorneys are often addressing financial challenges and may not have the resources for mental health counseling or fitness memberships, and their legal employers may not provide mental health and wellness benefits. Law schools can assist in transitioning law students to the profession by encouraging students to develop strong wellness habits that can carry over into their professional careers.

### Transition to the Legal Profession

The ABA and New York State require students to have training that provides ethical, experiential and practical knowledge to transition to the legal profession.<sup>65</sup> One way students can

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<sup>64</sup> Sara Tabin, *Thinking Differently*, Yale Daily News (May 19, 2019, 11:45 PM), <https://yaledailynews.com/blog/2019/05/19/thinking-differently/>.

<sup>65</sup> *Id.* See also 22 NYCRR § 520.18 (requiring documentation of skills competency for admission to the bar in New York).

obtain experiential and practical knowledge is by participation in an externship or clinic, which provides the opportunity for students to observe the reality of law and models of professionals. Among other things, experiential opportunities teach students how to acquire facts and counsel clients, apply the law, face ethical dilemmas, and relate to other professionals.<sup>66</sup> Oregon's Alternatives to the Exam Task Force recently released a Report calling for alternate ways to enter the profession which focus less on the test-taking mechanisms of the bar exam and on models such as "where the second and third years of law school would be clinic-based work finalized with a major project that would be submitted for approval to the Oregon Board of Bar Examiners. A second option would be an apprentice-based where applicants to work under a licensed attorney for up to 1,500 hours and then submit a selection of work samples to the board." The Report focused on "substantial evidence to support offering alternative pathways to licensure that maintain and enhance rigor, while ensuring that new lawyers enter the profession with the knowledge and skills that they need to service clients."<sup>67</sup>

Law schools can do more to train students for the day-to-day life of an attorney. After the first year of law school, students create their own schedule. And, even in the first year, most do not have classes on Friday. Students fortunate enough to have a summer associate position in a big firm often do not see the actual work hours necessary to reach the billable hours quota. Even young attorneys in legal services do not work "9 to 5" and often begin at the bottom of the power structure. Expectations of power, money and privilege are not realized.

### Professional Identity Formation

The culture of law school needs to better prepare law students to be knowledgeable, skilled, resilient and understand their own values, goals, strengths and weaknesses. The transition from law student to attorney should be made with perspective, understanding and fortitude to seek what and where they want to be in the profession. One way to better prepare law students for the transition to the profession is by encouraging them to develop their professional identity while in law school and to become aware of the importance of the alignment between their individual personal values and the values of the profession.<sup>68</sup> Using self-evaluation to develop an understanding of how and whether their individual values align with the values of their clients and their employer can be integral to lawyering effectiveness and long-term career satisfaction. Legal educators have also suggested that it is important to encourage law students to focus on improving their understanding of their own formative capacity, including learning from their own strengths, as well as other professionals. By modeling self-evaluation, we can underscore

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<sup>66</sup> Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. Rev. 465 (2011).

<sup>67</sup> Elizabeth Olson, *Oregon High Court to Consider Dropping Bar Exam for New Lawyers*, Bloomberg Law, July 6, 2021, <https://news.bloomberglaw.com/business-and-practice/oregon-high-court-to-consider-dropping-bar-exam-for-new-lawYERS>.

<sup>68</sup> We note that, at the time of the drafting of this Report, the Council of the ABA's Section of Legal Education and Admissions to the Bar has proposed a change to ABA Standard 303(b) which would require law schools "to provide substantial opportunities to students for . . . the development of a professional identity." Proposed Standard 303(c) provides: "A law school shall provide training and education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation."

the importance of knowing one's own values and how they contribute to one's professional responsibilities, as well as their long-term career satisfaction and success.

Additionally, separating individual values from professional values may strip law students and lawyers of their own autonomy and interfere with attorney well-being and career satisfaction. Consider a lawyer representing a client or cause that goes against their individual values and the impact to their autonomy when that lawyer is “rendered morally impotent.”<sup>69</sup> Relying on a study conducted by the ABA, attorney and author Steven J. Harper notes that public sector lawyers, who are able to function with greater autonomy report greater career satisfaction.<sup>70</sup> In addition to personal autonomy and the satisfaction that comes from making meaningful contributions, Harper identifies another theme among those who are satisfied with their careers: they understand in advance the pros and cons of their chosen career. He notes, “the law is a career in which understanding one's own personality and predilections can help to produce a satisfying career. Those who know themselves well are more likely to find a job that suits them.”<sup>71</sup> To foster greater career satisfaction for law students, law schools should encourage students to assess their individual values and decipher how those values align with different types and areas of law practice. Students should also be advised to consider practice size (solo, small or medium-sized firm, Biglaw?) and workplace environment (in-house, corporate, government?) when looking at what would best fit their values.

Concurrently, students should be equipped with information, resources, and narratives regarding financial stewardship, loan forgiveness, and loan repayment so their accumulated debt loads do not foreclose them from pursuing the career paths they desire and that align with their values.

### What Can Legal Employers Do?

The ABA's National Task Force Report (2016) established a seven-point pledge for law firms, legal departments and law schools who pledge to:

1. Provide enhanced and robust education to attorneys and staff on topics related to well-being, mental health, and substance use disorders.
2. Disrupt the status quo of drinking-based events:

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<sup>69</sup> See Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis* 61 (2013) (citing to a 1990 Johns Hopkins University Study that reported 20% of all attorneys will suffer from clinical depression at some point in their careers); see also Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. Rev. 203, 240 (2019) (observing lack of autonomy where lawyers are being denied the ability to take on work that is reflective of their interest and values); Patrick R. Krill et al., *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Med. 46, 51 (2016) (reporting levels of alcohol abuse, depression, anxiety and noting that “it is reasonable to surmise from these findings that being in the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder.”).

<sup>70</sup> Harper, *supra* note 69, at 61.

<sup>71</sup> *Id.*, at 58–59.

- a. Challenge the expectation that all events include alcohol; seek creative alternatives.
  - b. Ensure there are always appealing nonalcoholic alternatives when alcohol is served.
3. Develop visible partnerships with outside resources committed to reducing substance use disorders and mental health distress in the profession: healthcare insurers, lawyer assistance programs, EAPs (Employee Assistance Programs), and experts in the field.
4. Provide confidential access to addiction and mental health experts and resources, including free, in-house, self-assessment tools.
5. Develop proactive policies and protocols to support assessment and treatment of substance use and mental health problems, including a defined back-to work policy following treatment.
6. Actively and consistently demonstrate that help-seeking and self-care are core cultural values, by regularly supporting programs to improve physical, mental and emotional well-being
7. Highlight the adoption of this well-being framework to attract and retain the best lawyers and staff.

As of October 2020, 193 legal employers and law schools had signed the pledge. The ABA has created a template for employment policies that provide for confidentiality, leave for treatment and return to practice. The list of signatories could serve as a useful resource to students applying to summer and permanent positions. However, we realize that the elements of this pledge depend on the size of the law firm or law firm department to make them possible. Certain items, such as leave without pay, also depend on the debt of the law student now the lawyer.

Notably, only 31 law schools are signatories to the pledge and only two New York law schools have signed the pledge. Schools that have not signed the pledge have indicated that many aspects of the pledge do not apply to law schools. In order to address this in New York, it is recommended that NYSBA develop a *Law Student Well-Being* pledge that is specific to law schools. Additionally, the New York and other state bar associations through their lawyer assistance and wellness programs could expand the availability of mental health resources through state and local government to solo practitioners, smaller firms and attorneys in government, public interest and closely held corporations.

### Entering the Profession: Law Culture and Employment

Law firms, like law schools, are highly competitive. We quickly learn that to get ahead we must follow the same program from our educational environment: work the hardest, be the best. Those

of us who join large firms must meet the billable hour quota, and then some, strive to get noticed, to get promoted, to get on partner track. If we enter public or government service, or a corporate legal department, we do not need to meet a billable hour quota, but we bring with us the lessons of law school – work the hardest, be the best, get noticed, move up the ladder. If we join a small firm or strike out on our own, we learn to run a business, and determine that we will be the best at that, too. Yet the truth is, we spent three years working almost single-mindedly toward the goal of being a lawyer to find out it is truly just the beginning.

Like most of us did, young lawyers soldier on thinking things will soon get better and they will either get used to the pace or become experienced enough so that they will not have to work so hard. But in most cases that is not what happens, and the more proficient young lawyers become in their job generally results in a higher billable hour quota, a larger workload or maybe taking on clients we do not really want. After five years of trying, many lawyers begin to experience burnout; some report feelings of depression or anxiety.

The legal profession has known for decades that its members suffer from mental illness and addiction in staggering numbers, yet it largely has been unmoved to create changes. However, making meaningful, systemic changes to promote and prioritize lawyer well-being will reduce costs, increase efficiencies, and improve profit margins. The profession not only should make these changes to create a better future for the profession and its lawyers, but it should do so because it is in its financial interest to do so. In making these changes, even for economic and business reasons, the profession and its lawyers will benefit as a result.

No one is immune from stress. Private practitioners face financial pressure from having to generate business, bill hours or collect fees. It is especially challenging for solos and practitioners in small firms, who also run a business, which eats up a significant amount of time.<sup>72</sup> A litigator's job is innately adversarial, and lawyers may experience secondary trauma or compassion fatigue as a result of their clients' stress.

It is even more difficult for members of under-represented groups. They do not see themselves in their law firms, which are overwhelmingly white and male. In fact, the law is the whitest of all the professions. According to the ABA's "2019 Profile of the Legal Profession," 85% of lawyers are white; 5% are African-American; 5% are Hispanic; and 3% are Asian-American.<sup>73</sup> The ratio of men to women in the profession is 2:1. These numbers have not budged in the past decade, despite changes in U.S. population, and an increase in the number of women – who have edged out their male counterparts – and under-represented people entering law school.

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<sup>72</sup> Small-firm attorneys spend 61% of their time practicing law, 39% on business; solos spend 55% of their time practicing law, 45% on business. We note that there can be a huge gap between the hours spent in the practice of law and the number of hours actually billed. Thomson Reuters, Solo Small Firm Survey 2016, <https://complexdiscovery.com/thomson-reuters-solosmall-firm-survey-how-lawyers-spend-their-time-and-the-money-they-make-2/>.

<sup>73</sup> <https://www.mycase.com/blog/aba-2019-report-lawyer-demographics-earnings-tech-choices-and-more/>.

Law school contributes to and law firm culture encourages unhealthy behaviors. As most law schools are taking meaningful steps to help ensure the health and well-being of their students, law firms, too, are realizing that the cultural norms of law – perfectionism, unhealthy levels of self-reliance, overwork and a crusading mind set – are not behaviors to emulate, they are occupational hazards.<sup>74</sup> But those behaviors are crucial to the current law firm business model, no matter how or where you practice.

### The First 10 Years

During the first 10 years of practice, we learn the ins and outs of the legal profession. We also encounter new stressors, pressures and anxieties, and we may double down on the habits and coping mechanisms we developed in law school. During this time period, most lawyers report that they are generally satisfied with their work.<sup>75</sup> This holds true despite the fact that lawyers in the first decade of practice report significantly high rates of alcohol use.<sup>76</sup>

### Years 11 to 15

The excitement of starting your career is over. Maybe you are beginning to tire of the long hours, the work of building and maintaining a business, feeling like you cannot get ahead. You may have a child and a mortgage and still have law school debt. For most lawyers, career satisfaction drops.<sup>77</sup> For some of us, this can feel like a tipping point.

Between years 10 and 15 of practice, lawyers tend to ask themselves existential questions: Who am I? Why am I here? Is my current path right for me? Ideas can begin to form about returning to the path that originally called us to law. Maybe we just are tired of law firm culture in general or are disheartened about how we are viewed as lawyers.<sup>78</sup>

As we approach mid-career, it is natural to question previously held beliefs about who we are and where we believe we should be. It might also feel “natural” to resist seeking help for what

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<sup>74</sup> Va. Bar Ass’n, “The Occupational Risks of the Practice of Law,” Report of the Va. State Bar President’s Special Committee on Lawyer Well-Being, May 2019, [https://www.vsb.org/docs/VSB\\_wellness\\_report.pdf](https://www.vsb.org/docs/VSB_wellness_report.pdf).

<sup>75</sup> NYSBA Attorney Well-Being Survey 2020, Summary, App. A.

<sup>76</sup> In 2016, the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation co-sponsored a study of mental health and substance abuse disorders. See Patrick Krill, Ryan Johnson, Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. Addiction Med., Feb. 2016, Vol. 10, Iss. 1, pp. 46-52; [https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the\\_prevalence\\_of\\_substance\\_use\\_and\\_othe\\_r\\_mental.8.aspx](https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_othe_r_mental.8.aspx).

<sup>77</sup> NYSBA Attorney Well-Being Survey 2020, Summary, App. A. NYSBA’s lawyer survey showed that lawyer satisfaction with their work starts to inch downward after their fifth year and drops precipitously in year 11. The survey also revealed that, in general, the least satisfied lawyers were solo practitioners, and those in firms of 101 to 200 lawyers. According to the survey, the “sweet spot” for law firm life was in firms of 21 to 100 lawyers. Attorneys in small firms of two to ten lawyers reported markedly higher rates of satisfaction than solos.

<sup>78</sup> A Pew Research Center survey found that only 17% of those questioned believed that attorneys contribute to society’s well-being. See Joseph Liu, *Public Esteem for Military Still High*, Pew Research Ctr., July, 11, 2013, <https://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/>.



we may dismiss as merely an early mid-life crisis. Yet, if we feel unwell, anxious and distressed, and cannot figure out what to do or where to turn, it is imperative that we seek help. If our mental health is in danger, ignoring those symptoms and soldiering on may eventually endanger our ability to practice law, which can have severe repercussions. And if we also are physically unwell, that will exacerbate any mental health issues we may be experiencing.

### Years 16 and Beyond

For most lawyers, it gets better. As we enter our sixteenth year in practice, job satisfaction begins to rise precipitously, peaking at year 21 and holding steady through to retirement.<sup>79</sup> By this time, wherever we have landed – whether we switched jobs, tailored our practice to better suit our needs, become part of leadership or achieved satisfaction as a senior associate – most lawyers have found career satisfaction. We have a better understanding of ourselves, are aware of the breadth of our knowledge and a confidence in our value.

Given the opportunity, we can mentor new lawyers and share our experience. We can let young lawyers know that we will listen, that we have been there ourselves and remind them that there is no shame in seeking assistance. We cannot change the culture of law by ourselves, but we can be part of the solution by serving as guides for others.

### Retirement: Who Will I Be?

We have been on the go for our entire legal career – meetings, clients, on call 24/7, setting aside family matters for the needs of others, researching, calculating, strategizing and problem solving. What if that all goes away? How will we define ourselves? For many lawyers, the prospect of retirement can be as anxiety-producing as anticipating a particularly rough day in court. Aging, however, is not just a personal matter. For lawyers who work in large firms, government agencies or corporate entities, it is likely that transition planning is part of the workplace structure – whether we want it or not.

For solos and small firms, the transition can be problematic in other ways. If you and your small-firm partners are around the same age, you may be looking to bring younger lawyers on board to eventually take over the practice. If it is just you, you may be looking to sell your practice. What if there is little interest from potential buyers? What do you do with that stack of wills?

It is not surprising that many solo practitioners do not expect to retire at all. And that may be a relief, because then no changes are needed. But plans must be made. What if choice is taken away due to cognitive decline and clients are left in limbo?

Aside from the logistics of transferring clients and closing files, the most important question is how you want to redefine yourself. Who will you be?

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<sup>79</sup> NYSBA Attorney Well-Being Survey 2020, Summary, App. A.



When Whitney North Seymour, Jr. and Peter Megargee Brown left their law firms in 1984, it was to open a new practice, one that was a 180-degree turn from their careers in Biglaw. They opened a two-person office and hired part-time help. While they hoped to make a living, they also hoped to render service. They took individual cases, did some public interest work and also took on work from people who could not afford to pay them. Seymour characterized their practice as akin to that of a “family doctor,” and referred to their office as a “country” firm.<sup>80</sup> He also said that he was “having the most exciting and enjoyable professional experience of my life.”<sup>81</sup>

Understand your value. You have decades of experience and a wealth of knowledge. Part-time or pro bono work, mentoring younger lawyers or law students are possibilities.

Bar associations are well-positioned to assist in the transition. They have members of all ages and from all stages of the profession – from student to retiree. Many have senior lawyer committees that can serve as clearinghouses for lawyers looking for assistance in winding down their careers or entering a second, or even a third, act.

#### Business Case for Change: Attorney Well-Being as an Ethical and Business Imperative<sup>82</sup>

So, we understand the impacts of our profession on well-being and overall satisfaction. We also understand that the legal profession has long been at a well-being crisis. Indeed, for over 30 years, a significant number of studies, articles, and reports have demonstrated the prevalence of depression, anxiety, and addiction in the profession. Throughout this time, there have been just as many calls for the profession to make changes to promote, prioritize, and improve lawyer well-being, particularly as many aspects of the way the profession operates exacerbate mental health and addiction issues, as well as overall lawyer dissatisfaction. Yet, as the ABA National Task Force on Lawyer Well-Being acknowledged in its 2017 *Path to Lawyer Well-Being* report, many stakeholders in the profession have “turned a blind eye to widespread health problems” that pervade the profession. But why?

A number of these stakeholders – especially law firms – have turned a “blind eye” in large part because they have not seen the financial incentives in addressing the problem. After all, firms’ short-term goal of maximizing annual profits has become their principal long-term goal; consequently, lawyer distress has risen along with partner profits. Thus, the commodification of

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<sup>80</sup> See B. Drummond Ayres Jr., *The Independent Style of Deaver’s Prosecutor*, N.Y. Times, June 8, 1987; Deirdere Carmody & Laurie Johnston, *New York Day By Day*, N.Y. Times, Jan. 21, 1983.

<sup>81</sup> See Whitney North Seymour, Jr., *Re-thinking Retirement*, NYSBA J., Jan. 2003, p. 50; <https://nysba.org/whitney-north-seymour-jr-jan-2003/>.

<sup>82</sup> The “Business Case for Change” section of the Report was adapted from Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 Vill. L. Rev. 361 (2020), and sources cited therein. Prof. Reich has written extensively and speaks widely on the economic case for law firm addressing well-being and increasing profitability, retention and satisfaction as a result. His full biography appears in Appendix B.

the profession is a key driver of the pervasiveness of lawyer distress, with such distress a means to the profit-maximizing ends.

However, systemic changes designed to provide support and resources to lawyers will avoid costs associated with lawyer mental health and addiction issues and, more importantly, create efficiencies that will increase firms' long-term financial stability and growth. Indeed, lasting and meaningful change will benefit law firms' collective bottom lines as it will improve: (i) performance, as clients are demanding efficiency in the way their matters are staffed and billed; (ii) retention as that creates efficiencies and the continuous relationships demanded by clients; and (iii) recruitment, particularly as younger millennial and Generation Z lawyers – who prioritize mental health and well-being – enter the profession.

### Performance

All professions incur significant costs due to untreated employee mental health and addiction issues, with each representing among the most burdensome illnesses to United States employers. Most of these costs are borne by employers because of losses in workplace productivity. Indeed, studies have shown that untreated mental health issues double annual sick days. Employees with such untreated issues have nearly four times more unproductive time at work than those without them, losing on average approximately five days per month due to unproductive work. Moreover, increased lawyer stress not only leads to a decline in health and well-being, but diminished cognitive capacity as well.

By contrast, studies have shown that employers who promote employee well-being and engagement have better business outcomes and employees who perform better. Put simply, as a practical matter, *more engaged employees generate higher business outcomes*. And companies that help to promote well-being realize a significant financial gain. In particular, studies reveal that for every dollar a company spends on employee wellness programs, medical costs decrease by more than \$3.27, absenteeism-related costs decrease by \$2.73, and employers realize \$4.00 in increased employee productivity.

Firms have been able to avoid addressing lawyer well-being issues on performance-related grounds because their business model is one that thrives on and financially rewards inefficiency – the billable hour. However, in recent years, clients have demanded (and caused) law firms to move away from the traditional hourly billing model and toward alternative fee arrangements, such as, among other things, fixed price agreements, success fee agreements, and contingency pricing. Such alternative fee arrangements, together with budget-based pricing, could account for as much as 80-90% of all law firm revenues. Further, large companies are seeking to change the billing model for their outside counsel. They are insisting on alternative fee arrangements, as the overwhelming majority of in-house corporate counsel has or seeks to cut their company's legal expenses. In other words, the billable hour model is one that is antithetical to productivity and efficiency; clients are now demanding firms move away from this model, and will instead award

their business to firms that demonstrate they can perform the work productively, efficiently, predictably and cost-effectively. Accordingly, firms that prioritize lawyers' well-being will be better equipped to meet client demands for exceptional yet efficient service.

### Retention

In general, attrition rates among lawyers at law firms are high, and untreated mental health and addiction issues can contribute to this already-high rate of lawyer attrition. According to one estimate, the cost of replacing a junior lawyer is roughly 1.5 to 2x times the annual salary of that lawyer. Thus, taking the average pre-pandemic attrition rates and using a conservative estimate salary, associate attrition costs law firm with 100 associates approximately \$6 million, and firms with 500 associates approximately \$30 million annually. Such costs do not include the likely higher implicit costs such as lost productivity time, covering the work of the departing lawyer, and disrupted intrafirm and client relationships.

Law firms that promote lawyer well-being will see improved retention rates. Studies in other industries have shown that businesses that promote employee well-being typically operate with much lower levels of employee turnover, which avoids the replacement cost of new employee hiring and training. Further, clients have begun to consider lawyer attrition as well as quality-of-life issues that affect attrition when making decisions of which outside firms to retain. In fact, in August 2019, 3M – whose legal department is a signatory to the ABA Wellness Pledge – has incorporated the pledge into its requests for proposals from outside counsel, asking firms if they have signed the pledge and what specific steps they have taken to promote lawyer and staff well-being.

Thus, firms that make efforts to retain their lawyers will not only avoid turnover costs as well as prevent the loss of institutional knowledge about matters and clients relationships generally, they will help to foster and retain clients in the first place. And firms will be better equipped to retain their lawyers by taking steps to promote and prioritize their wellness and well-being.

### Recruitment

The third area in which the profession will benefit will be in recruitment, particularly with respect to millennial and Generation Z lawyers. People in these generations suffer from higher levels of mental distress and suicidal ideation than previous generations at their age. And, perhaps as a result, they are more open about mental health and addiction issues and more motivated to promote their well-being than older generations at their age.

As these generations enter the workforce, they prioritize work-life balance when choosing employment, even more than salary. Indeed, other important considerations include leadership opportunities, a sense of meaning or purpose in their work, training, and the impact the work has on society – that is, the types of motivations and values that enhance one's subjective well-being and, in turn, inversely correlate to depression and mental distress.

Law students and young lawyers in this generation are no different. In its “2019 Summer Associates Survey,” the *American Lawyer* reported that 42% of respondents said that they are concerned about their mental health, including because of the “structure of the legal industry.” Further, when asked to list their top three factors in considering an employment offer from a law firm, work-life balance was the most important factor. Moreover, young millennial and Generation Z law students are at the forefront in promoting mental health in the profession, including through their activism in seeking the elimination of questions related to mental health history and addiction treatment from state bar admission questionnaires, and their demand for the creation of well-being-related programs and curricula at law schools.

Accordingly, firms that prioritize lawyer health and well-being will be attractive both to these younger and future lawyers who prioritize their own well-being, as well as lateral lawyers who seek better balance for themselves and the profession.

#### Common Practice: Solo, Small Firm

Large firms are not the only environments which are affected by and responsible to address lawyer well-being. While talk in and about the profession all too often centers on large firms – their cases, their salaries, their bonuses, who is in or who is out – that world is comparatively small. Fully two-thirds of lawyers in New York State are in solo or small firm practices. About half of these are solos. Surprisingly, these numbers stand, no matter where in the state we work – even in New York City.

#### Sometimes Lawyer, Full-time Business Owner

Did law school help prepare us for a variety of practice situations, or did the summer job placements focus mainly on larger firms or placements in the courts or other government agencies? If we did get to see a one- or two-person office in action, we saw only the lawyering, likely not the business side of law. While anyone in private practice faces certain business-related financial pressures – having to generate business, bill hours, collect fees – this is especially challenging for solo and small firm practitioners. Our colleagues who practice “small” understand generating business, but also learn hands-on the part that includes hiring office staff; paying rent, utilities, and insurance; developing a list of attorneys you can call on for per diem help with a large case; this list goes on.

Moreover, if the practice is a start-up, it likely means taking out another loan, on top of law school loans. General practitioners must prepare to take anything that walks in the door which likely means working BigLaw hours, at least initially.

### The Rural Lawyer's Dilemma

Unless employed by the government, most rural lawyers are solos or work in small firms.<sup>83</sup> They face the same challenges as lawyers in more populated areas, and ones that are unique to rural life. Rural lawyers “are overwhelmed by [the] volume of cases, financial stress and limited resources” and the difficulty of “finding qualified attorneys to refer cases to.”<sup>84</sup> And they are graying. Nearly 54% of rural lawyers are over the age of 55.<sup>85</sup> Some have said they find it difficult to retire because there is no one to take their place.

The financial realities can be burdensome. As one lawyer put it, “a working spouse is pretty much a necessity.”<sup>86</sup> Most lawyers will try to get a part-time position that offers a regular paycheck to supplement their practice. In rural areas with few lawyers, conflicts are more likely to crop up. Assigned work, such as Article 18-B appointments, require appearing in court and can entail hours of driving from court to court in remote areas of the state where the county courthouse can more than 50 miles away. Out of necessity, many lawyers find ways to work in their cars.

In serving indigent clients, it can be difficult to keep in contact when needed – a client might live in an area where cellphone service is spotty or maybe their service was cut off. It can be a juggling act. There is less opportunity to develop the camaraderie, to exchange information and ideas, to make the connections that tell us we are not alone. There are fewer people to turn to. The only bar association may be headquartered in the county seat or may be nearly nonexistent. It can be an isolating way of life.

### Finding Assistance

Solo and small firm practitioners, who have only themselves to rely on, need the support and encouragement of the legal community. If they are unwell and stressed, feel isolated and alone, they cannot properly serve their clients. As business proprietors, they have large responsibilities on top of law practice. Resources are scarce. These lawyers may want help but have more trouble finding help it.

Bar associations and other legal organizations can be valuable resources to small firm and solo lawyers and can assist by providing programming and support systems geared toward these lawyers' particular circumstances.

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<sup>83</sup> Taier Perlman, *Rural Law Practice in New York State*, Report of the Gov't Law Ctr., Apr. 2019, at 1. <https://www.albanylaw.edu/centers/government-law-center/the-rural-lawinitiative/Documents/rural-law-practice-in-new-york-state.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 11.

<sup>86</sup> William Pulos, Esq. of Pulos & Rosell, LLP (Alfred, New York) and Task Force member, discusses life as a rural lawyer in his contribution, “My Time in Rural Private Practice” at Appendix F.

## Public Servant, Public Trust: The Role of Lawyer Ethics and Discipline

*A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibilities for the quality of justice. As a representative of clients, a lawyer assumes many roles, include advisor, advocate, negotiator, and evaluator. As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.*<sup>87</sup>

### *Perfection as the Enemy*

*The perfect is the enemy of the good.* This simple sentence, frequently attributed to one penned in French by the Enlightenment-era writer, philosopher, and social activist Voltaire,<sup>88</sup> sums up so much of what we struggle with as legal practitioners. As aptly described in the Report's Law Education section, the drive for perfection in our professional endeavors starts in law school, and in many respects, presents an elusive and unattainable goal: the desire to win and accomplish the objective for our clients, be they organizational, governmental, or private. The ever-present pressure to be accepted and acknowledged favorably by peers, partners, managers, judges, and by clients, others in the legal community, or the public at large, who will somehow contribute to the advancement of our careers and professional reputations.

While the legal profession is, of course, a helping profession with expert problem-solvers who strive to do their professional best on a daily basis, we must acknowledge the dehumanizing effect that the goal – to be perfect – can have on both our professional and personal lives. The unrelenting pressure to produce perfection, whether or not self-inflicted, can lead to negative consequences, partially attributable to abject fear of not being perfect.

No one likes to have their work questioned, certainly. But, the trauma-based response experienced by some attorneys who receive a complaint of professional misconduct can, in some cases, lead to inertia and a downward spiral, ultimately resulting in a finding of professional misconduct and the issuance of professional discipline. In certain circumstances, this discipline can end up with the imposition of a public censure, suspension, or at worst, disbarment. It is incumbent on us all as stakeholders in the legal community and members of the legal profession to ensure that resources and information are available to attorneys in general, but it is imperative that we take action on behalf of our colleagues who experience this type of reaction. Whether

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<sup>87</sup> NYSBA NY Rules of Professional Conduct (2020), at Preamble: A Lawyer's Responsibilities (hereinafter "Preamble"), comment [1]. The Preamble is non-binding and is published by NYSBA to provide guidance to attorneys in complying with the New York Rules of Professional Conduct (hereinafter "RPC"), Joint Rules of the Appellate Division, (22 NYCRR) Part 1200.

<sup>88</sup> See Francois Voltaire, Philosophical Dictionary.



their reaction is due to substance or alcohol abuse, other mental or physical health impairment, trauma-related background, or the general feeling of being overwhelmed by the pressures of juggling professional practice and work/life balance in any regard, they must be made aware of available resources. And, most important, they need to know that they are not alone, and that if they are struggling for any reason, they have support and can access the necessary resources to ensure their return to well-being, and in turn competently practice and achieve success in their professional endeavors.

*The Attorney Disciplinary System: Increasing Access and Education for Assistance*

In March 2015, then-Chief Judge Jonathan Lippman of the Court of Appeals announced the creation of the Commission on Statewide Attorney Discipline (“Commission”) to conduct a comprehensive review of the existing attorney disciplinary system in New York State, with a goal of ultimately enhancing the efficiency and effectiveness of the disciplinary process throughout the State.<sup>89</sup> As a result of the Commission’s work, in December 2015, Judge Lippman announced the promulgation of the Rules for Attorney Disciplinary Matters (“Atty. Disc. Rules”), (22 NYCRR) Part 1240, which became effective on October 1, 2016, and have since been amended, and which provide for a uniform and harmonized approach to the handling of attorney disciplinary matters throughout the State.<sup>90</sup> The Atty. Disc. Rules are applied in conjunction with and supplemented by Court Rules in each of the Appellate Division Departments (“Court Rules”).<sup>91</sup> At the outset, attorneys should be aware of the Atty. Disc. Rules and applicable Court Rules, so that they are able to access information and understand the framework of the attorney disciplinary system to which they are subject.

The Attorney Grievance Committees (“AGCs”) in each of the four Departments provide practical information on their respective websites about the work of the AGCs, types of matters addressed, and links to resources such as applicable rules and forms pertaining to attorney disciplinary matters.<sup>92</sup> The LAP’s continued collaboration with the New York State Unified Court System ensures that information about the attorney disciplinary process is readily accessible and its educational efforts could potentially include professional service videos from judges, attorneys, and NYSBA officials. Widespread distribution and increased accessibility of informational resources about the attorney disciplinary system and process could help reduce fear-based reactions of some practitioners when faced with a grievance and/or the potential for

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<sup>89</sup> See, NY Courts page on Commission on Statewide Attorney Discipline, available at: <http://ww2.nycourts.gov/ATTORNEYS/DISCIPLINE/index.shtml>.

<sup>90</sup> See, (22 NYCRR) Part 1240; see also, “Overview of the Attorney Disciplinary Process” (hereinafter “Overview”), available at: <http://www.nycourts.gov/ad3/AGC/Forms/OverviewAttyDiscipProcess.pdf>.

<sup>91</sup> See, Rules of the Appellate Division, First Department (22 NYCRR) Part 603; Rules of the Appellate Division, Second Department (22 NYCRR) Part 691; Rules of the Appellate Division, Third Department (22 NYCRR) Part 805; Rules of the Appellate Division, Fourth Department (22 NYCRR) Part 1020.

<sup>92</sup> See, <http://www.nycourts.gov/courts/AD1/Committees&Programs/DDC/index.shtml> (1st Dept.); <http://www.nycourts.gov/courts/ad2/attorney matters.shtml> (2d Dept.); <http://www.nycourts.gov/ad3/AGC/Index.html> (3<sup>rd</sup> Dept.); <http://www.nycourts.gov/courts/ad4/Clerk/AttyMttrs/atty-discip.html> (4th Dept.).

interaction with an AGC, and further inform members of the public about the ways in which our profession engages in self-governance.

### *Pre-Admission Professionalism Courses*

In order to be admitted to the practice of law in New York State, applicants are required to demonstrate that they possess the requisite qualifications for admission to the practice of law as set forth in the Rules of the Court of Appeals.<sup>93</sup> Applicants are also subject to applicable rules in the respective Appellate Division Department in which they seek admission.<sup>94</sup> In the First and Second Departments, applicants for admission are required to complete pre-admission professionalism programs.<sup>95</sup> These programs draw upon the experience of various speakers and have been known to address topics including civility, frequent issues arising in disciplinary matters such as communicating with clients and properly maintaining attorney bank account and other records, along with issues impacting other aspects of attorney well-being, such as providing resources for addressing substance and alcohol abuse. In the Second Department, completion of its multi-hour professionalism program has been required for those admitted to practice since 2006, and has been known to feature speakers from different parts of the legal profession, including judges, general practitioners, AGC staff attorneys, attorney members of the AGCs, and those with experience in risk management, as well as bar leadership. It is currently presented as a three-hour online program.<sup>96</sup> The First Department's program, addressing professional ethics and related topics, has been required since 1999, and since 2018, presented in a two-hour online format.<sup>97</sup>

Harmonizing aspects of a pre-admission/pre-licensing program requirement throughout the State and across Departments would ensure uniform educational resources to all attorneys seeking admission. The programs are beneficial not only for new attorney applicants at the time of their introduction to the profession, but would establish a foundation upon which they could build and provide resources on which to draw throughout their careers. Providing pre-licensing programs which include guidance on real world issues such as the importance of competency would benefit the individual attorney applicants and help to maintain the honor and integrity of the legal profession.

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<sup>93</sup> See generally, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, (22 NYCRR) Part 520. Further, applicants for admission upon examination, with certain limited exceptions, are required to meet a skills competency requirement for admission by showing that "...the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services this State." (22 NYCRR) §520.18.

<sup>94</sup> See generally, (22 NYCRR) Part 602 (1<sup>st</sup> Dept.); (22 NYCRR) Part 690 (2d Dept.); (22 NYCRR) Part 805 (3<sup>rd</sup> Dept.); (22 NYCRR) Part 1015 (4<sup>th</sup> Dept.).

<sup>95</sup> See, (22 NYCRR) §602.3; §690.21. Additional information regarding these programs is available on the respective websites, at <http://www.nycourts.gov/courts/AD1/Committees&Programs/CFC/index.shtml> (1<sup>st</sup> Dept.); <http://www.nycourts.gov/courts/ad2/attorney matters.shtml> (2d Dept.).

<sup>96</sup> 22 NYCRR §690.21; see also, <http://www.nycourts.gov/courts/ad2/orientation.shtml>.

<sup>97</sup> 22 NYCRR §602.3; <http://www.nycourts.gov/courts/AD1/Committees&Programs/CFC/index.shtml>.



*Focused Expansion of Diversion Programs*

The AGCs throughout New York State should take the opportunity to apply diversion options to all disciplinary proceedings in the broadest possible fashion with an emphasis on the situation presented rather than the specific nature of the infraction.<sup>98</sup> Under the Atty. Disc. Rules, diversion is available throughout New York State.<sup>99</sup> Atty. Disc. Rules §1240.11 (“Diversion Rule”) provides a mechanism for an AGC or respondent attorney to seek an order of diversion from the applicable Appellate Division during the course of a disciplinary investigation or proceeding.<sup>100</sup> The applicable Rule provides in relevant part, as follows:

- (a) When in defense or as a mitigating factor in an investigation or formal disciplinary charges, the respondent raises a claim of impairment based on alcohol or substance abuse, or other mental or physical health issues, the Court, upon application of any person or on its own motion, may stay the investigation or proceeding and direct the respondent to complete an appropriate treatment and monitoring program approved by the Court....<sup>101</sup>

In determining to issue an order of diversion, the Court considers the nature of the alleged misconduct and whether it occurred during a time the respondent attorney suffered from the claimed impairment, along with a determination as to whether it is in the public interest to divert a respondent to a monitoring program, such as LAP.<sup>102</sup> In practical terms, the benefit to a respondent who is diverted to a monitoring program is not only potentially to their mental or physical well-being,<sup>103</sup> but can also ultimately result in the discontinuance of a disciplinary investigation or proceeding upon proof of successful completion of a such program being supplied to the Court.<sup>104</sup>

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<sup>98</sup> Failure to comply with an obligation or prohibition imposed by a Rule (of Professional Conduct) is a basis for invoking the disciplinary process. The Rules pre-suppose that disciplinary assessment of a lawyer’s conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

<sup>99</sup> Prior to the promulgation of the Atty. Disc. Rules, the Third Department provided a formal mechanism by which a respondent attorney or the AGC, then-known as the Committee on Professional Standards, could make application for an attorney who raised alcohol or substance abuse or dependency as a mitigating factor in a disciplinary matter to be diverted to a monitoring program sponsored by LAP. *See*, (former) Rules of the Appellate Division, Third Department, (22 NYCRR) §806.4(g).

<sup>100</sup> Atty. Disc. Rules §1240.11(a).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Anecdotal evidence suggests that of the attorneys who have sought diversion under the Diversion Rule since 2016, and have entered into a monitoring agreement with LAP or similar program, the majority seek assistance with substance abuse and/or alcohol dependency, or other mental health issue. However, diversion is also available for attorneys suffering from physical impairments, and monitoring programs can be implemented for those suffering from essentially any condition which can be monitored.

<sup>104</sup> Atty. Disc. Rules §1240.11(b). Under this Rule, it is important to note that the converse is also true, and a respondent who is unsuccessful in a monitoring program or commits additional professional misconduct while

Significantly, the Diversion Rule provides that all aspects of an application for diversion and a respondent's participation in a monitoring program as ordered by the Court, along with any related records, are confidential or privileged pursuant to Judiciary Law §§90(10) and 499. Despite these assurances of privacy, historical and anecdotal evidence suggests that attorneys are reticent to raise an issue of impairment.<sup>105</sup> As addressed in so much of the work of this Task Force and other similar initiatives relating to attorney well-being, the fear of stigma and/or admitting vulnerability poses a significant challenge.

It is of paramount importance that attorneys and their counsel be aware of the Diversion Rule and the possible avenue to increased well-being and assistance it provides for an attorney who is suffering from a mental or physical impairment.<sup>106</sup> In the Third Department, attorneys who receive notice of a complaint of professional misconduct are advised of the Diversion Rule from the outset of the investigation. AGC staff attorneys in the Third Department also regularly discuss the Diversion Rule at CLE presentations and with counsel for respondent attorneys.

However, despite the dissemination of this information, anecdotal evidence suggests that many respondent attorneys remain hesitant to pursue diversion. This is not only due to concerns about the stigma they may experience, but also to a conscious decision to 'take their chances' with the outcome of a disciplinary investigation. The majority of complaints of professional misconduct do not ultimately result in a disciplinary proceeding and/or Court order of public discipline and may instead result in the dismissal of a complaint, or determination of an AGC that a non-disciplinary letter of advisement be issued, or that an admonition be imposed as the appropriate measure of discipline.<sup>107</sup> Dismissals, letters of advisement, and admonitions are all private and confidential.<sup>108</sup> Attorney discipline is public in the relatively small number of cases where a disciplinary proceeding results in findings of professional misconduct and the associated issuance of a public order imposing discipline by the applicable Appellate Division.<sup>109</sup> That

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subject to the diversion order, may face the rescission of the order and the resumption of the disciplinary investigation or proceeding.

<sup>105</sup> See, e.g., Testimony of Deborah Scalise, Esq., before the Commission on Statewide Attorney Discipline, Hearing date August 11, 2015, at pp. 40-44. In advocating for the adoption of a uniform diversion rule which would allow for expanded consideration of psychological issues, Attorney Scalise, a member of this Working Group, who has extensive experience both as disciplinary counsel and respondents' counsel, relayed anecdotal evidence regarding an instance where a respondent attorney was hospitalized for treatment of bipolarism, and was facing discipline for failing to cooperate in a disciplinary investigation. In seeking an adjournment of the proceedings, he disclosed the hospitalization to her, but conveyed he would rather be disbarred for failing to cooperate than reveal the information regarding his mental health diagnosis and treatment.

<sup>106</sup> Notwithstanding the Diversion Rule or the filing of a particular complaint of professional misconduct/grievance, it is important for attorneys to be cognizant of their professional obligations regarding withdrawal in circumstances where a mental or physical condition impacts their representation of a client. See, RPC Rules 1.16(b)(2) and 1.16(c)(9). See also, Atty. Disc. Rules §§1240.14 and 1240.17, regarding proceedings pertaining to incapacitated attorneys. Attorneys should also be mindful of their professional obligations under RPC Rule 8.3, Reporting Professional Conduct.

<sup>107</sup> See, Atty. Disc. Rules §§1240.7, 1240.8.

<sup>108</sup> See, Atty. Disc. Rules §§1240.18; Judiciary Law §90(10).

<sup>109</sup> See, Atty. Disc. Rules §§1240.7, 1240.8; see also, Overview, *supra* note 90, for additional information regarding the disciplinary process and potential outcomes in disciplinary matters.

being the case, anecdotal evidence suggests that many attorneys would rather wait to see what occurs with any given disciplinary investigation by an AGC. Because, by applying for and being granted diversion, they not only expose themselves to the vulnerability of raising a mental or physical health condition or impairment, but could also be subject to the rigors and requirements of a monitoring program for a period of a year or more. Further, while a diversion order is confidential, some attorneys may still be reluctant to have any order issued that addresses their underlying condition or impairment. Thus, they may not raise or wish their counsel to raise these issues. Similarly, in circumstances where an AGC is aware of an impairment and moves for diversion, the respondent may choose not to respond or join in the motion and instead face the outcome of the disciplinary investigation or proceeding. Like so many other aspects of well-being, an attorney must be ready and willing to move forward and be an active participant in their own journey to wellness.

Recent public decisions in disciplinary matters indicate the Courts are cognizant of, sensitive to, and carefully consider issues pertaining to attorney well-being when determining an appropriate disciplinary sanction and/or reinstating an attorney to practice who has demonstrated such reinstatement will be in the public interest.<sup>110</sup> While diversion decisions are confidential, hopefully the dissemination of public opinions demonstrating courts' consideration of the impact of impairment and treatment in disciplinary matters will encourage respondent attorneys to seek diversion where applicable.

Even when diversion is not sought under the Diversion Rule, anecdotal evidence also suggests that AGCs may engage in informal diversion in certain cases. This may include an AGC's consideration of a respondent attorney's compliance with treatment recommendations following an arrest and conviction<sup>111</sup> for an alcohol- or substance-related driving offense such as driving while intoxicated or other crime pertaining to substance use or abuse or alcohol dependency. It may also include a situation where a respondent attorney has voluntarily chosen to enter into a LAP monitoring agreement for their own benefit, and allows compliance information to be

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<sup>110</sup> See e.g., Matter of Shmulsky, 186 A.D.3d 1878 (3<sup>rd</sup> Dept. 2020) (discussing that numerous factors were considered in mitigation when determining an appropriate sanction, including affirmative steps taken by the respondent to address emotional issues that contributed to his misconduct, and sealing those portions of the record which contained sensitive information pertaining to his treatment with mental health providers). As referenced by Attorney Scalise in her 2015 testimony, it is recommended that courts remain cognizant of sensitive information when issuing public decisions in order to encourage attorneys to be forthcoming in raising issues of impairment. See, Scalise Hearing Testimony, *supra*, at pp. 34-38; Matter of Canale, 162 A.D.3d 1455 (3<sup>rd</sup> Dept. 2018) (finding it was in the public interest to reinstate a disbarred attorney who demonstrated he had taken steps to address substance abuse and related issues which impacted his conduct resulting in disbarment, and dedicated himself to assisting others who suffer from similar issues).

<sup>111</sup> See, Atty. Disc. Rules §1240.12; Judiciary Law §90(4)(c), regarding reporting obligations for attorneys who are convicted of a crime. Attorneys and their counsel should be aware that for attorney disciplinary purposes, conviction occurs at the time a plea is entered. An attorney who is convicted of a felony is subject to automatic disbarment as an operation of law. See, e.g., Matter of Tandler, 131 A.D.3d 1301 (3<sup>rd</sup> Dept. 2015) (disbarring an attorney who entered a conditional plea to a felony DWI), subsequent proceeding at 145 A.D.3d 1314 (3<sup>rd</sup> Dept. 2016) (denying reinstatement); Matter of Werther, 2021 NY Slip Op 02215 (3<sup>rd</sup> Dept. 2021) (disbarring an attorney who pleaded guilty to felony DWI.).

shared with an AGC during the course of a disciplinary investigation. Sharing of this type of information is essential. As any AGC staff attorney, or AGC committee member is likely to discuss in conversation about the disciplinary process, the facts and circumstances of any given case, including mitigating factors, are carefully considered when issuing recommendations (staff attorneys) or making determinations (AGC Committee members), and may significantly impact the outcome of the investigation.

### *Ignored Complaints: Freeze Response*

Staff attorneys at the AGCs expend an inordinate amount of time and energy seeking responses from attorneys who simply “freeze” upon receipt of a complaint.<sup>112</sup> Attorneys are required to cooperate in an AGC investigation of alleged misconduct, and the failure to do so in and of itself can result in a finding of misconduct.<sup>113</sup> Atty. Disc. Rules §1240.9 provides a mechanism for AGCs to seek a respondent attorney’s suspension from the practice of law on an interim basis during the pendency of an investigation on the basis of that attorney’s failure to comply with an AGC’s lawful demand in an investigation.<sup>114</sup> Further, an attorney who is suspended on an interim basis for failing to cooperate can ultimately face disbarment if that attorney has failed to respond or appear for further investigatory proceedings within six months from the date of the suspension order. Notably, the Atty. Disc. Rules provide that such disbarment can be ordered upon application of an AGC, without any further notice to the respondent attorney<sup>115</sup>. On a practical level, what this means is that an attorney who fails to respond to an AGC which is seeking that attorney’s response to a complaint of professional misconduct can be suspended, and ultimately disbarred, on that basis alone. This can occur regardless of whether or not an AGC would ultimately have determined there to be merit to the underlying complaint.

AGCs do not rush to obtain interim suspension orders, and multiple efforts are made to obtain a respondent attorney’s response prior to seeking court intervention. For instance, in the Third Department, in conjunction with Atty. Disc. Rules §1240.7, an attorney who is the subject of a complaint/grievance is issued a Notice of Complaint of Professional Misconduct (“Notice”), directing that attorney to submit a written response to the allegations within 25 days, and advising the attorney of both their obligation to cooperate with the investigation and the potential for the AGC to apply for an interim suspension if they fail to do so. Further, if an attorney fails to respond to the initial Notice, a second Notice is issued, directing the attorney to submit a response within 15 days, again advising them of the ramifications of failing to do so. An attorney who fails to respond may be directed to appear before the Chief Attorney or staff attorney for a formal interview or examination under oath, and the AGC may also apply to the Clerk of the Court for a subpoena to compel their attendance.

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<sup>112</sup> The terms “complaint of professional misconduct”, “complaint”, and “grievance” are used interchangeably.

<sup>113</sup> See e.g., *Matter of Kove*, 103 A.D2d 968 (3rd Dept. 1984).

<sup>114</sup> Atty. Disc. Rules §1240.9(a)(3).

<sup>115</sup> Atty. Disc. Rules §1240.9(b).

Despite the multiple opportunities given to attorneys to respond to AGCs in their respective investigations, both case law and anecdotal evidence illustrate that some do not cooperate and face the potential imposition of public discipline such as suspension and/or disbarment as a result<sup>116</sup>. Seeking interim suspension is often seen as a last resort by the AGCs after other efforts used to try to obtain an attorney's response to a complaint have been unsuccessful.

We should explore solutions to the problem of lawyers who are non-responsive due to ill-being issues in their lives and who may not otherwise be in jeopardy of discipline but may be ill-served by the failure to respond. One possibility is a system that would allow the AGCs to reach out to a designated colleague of the attorney who is the subject of the complaint to minimize the potential discipline for failing to cooperate with an AGC investigation and maximize the potential for an attorney who needs assistance and is struggling with issues impacting well-being to be made aware of available resources. This resource could be provided through the optional designation of a colleague to be listed as a potential contact in conjunction with the filing of an attorney's biennial registration with the New York State Unified Court System's Office of Court Administration – Attorney Registration Unit.<sup>117</sup> If a colleague is listed as a contact and the respective AGC has received no response from an attorney who is the subject of a disciplinary investigation, the AGCs could be authorized to access designee information on file with the Attorney Registration Unit for an attorney who has been unresponsive to other communications, and could then be able to reach out to this authorized designee.

While not to be viewed as minimizing attorneys' professional obligations to be responsive to AGCs (and others who may be trying to reach them), having an additional potential contact available could be a valuable tool, given the objective of moving forward to resolution of the disciplinary investigations and proceedings, and assisting in ensuring attorney well-being. Given the challenges faced by so many since the onset of the COVID-19 public health crisis, there could be any number of reasons, other than simply choosing not to cooperate, why an attorney has not responded to an AGC. Anecdotal evidence suggests many AGC communications are now handled electronically, reducing the chances for mail-related delays or other issues. As the legal profession continues to utilize technology and embrace tools enabling virtual practice, the use of electronic communications and virtual proceedings in the attorney grievance process may also increase cooperation. However, since we increasingly see and rely on electronic communications

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<sup>116</sup> See e.g., Matter of Brownell, 180 A.D.3d 1218 (3<sup>rd</sup> Dept. 2020), (suspending an attorney who was already suspended for failing to comply with an AGCs lawful demands in connection with an investigation), subsequent proceeding at, 187 A.D.3d 1402 (3<sup>rd</sup> Dept. 2020) (disbarring respondent).

<sup>117</sup> Judiciary Law §468-a and the Rules of the Chief Administrator of the Courts, (22 NYCRR) Part 118, require all attorneys admitted in the State of New York to register every two years, whether they are residents or non-resident, active or retired, or practicing law in New York or elsewhere. In 2020, New York had approximately 338,000 registered lawyers. See, The Lawyers' Fund for Client Protection of the State of New York ("Lawyers' Fund"), Highlights from the 2020 Annual Report of the Board of Trustees ("Report"), available at: <http://www.nylawfund.org/>. The Report, which provides valuable reference information, including that pertaining to claims handled and paid out, and emphasizes that in the experience of the Lawyers' Fund, the vast majority of lawyers are honest, caring, also discusses causes of misconduct, which can often be traced to issues involving alcohol or substance abuse, gambling, and other pressures including those related to other mental health issues.

in so many aspects of life, some attorneys may feel overwhelmed by the volume of emails they receive on a daily basis. In those circumstances, an attorney could take individualized steps such as setting up an auto-reply message indicating alternate means of contact. Just as it is incumbent on attorneys to cooperate with AGCs, it is also a professional obligation to ensure responsiveness in general practice and to client communications.<sup>118</sup> NYSBA could refer to and build upon its work on the NYSBA Planning Ahead Guide,<sup>119</sup> when exploring the practical aspects and potential implementation of assistance in area of responsiveness.

#### *Mentoring in Professional Liability Areas and Civility.*

Another means of providing assistance is possible through the increased use and availability of mentors and mentoring resources. The NYSBA Committee on Professional Ethics answers questions about concerns pertaining to attorney conduct and issues non-binding opinions on issues of ethics.<sup>120</sup> NYSBA Ethics Opinions, which are publicly accessible, also provide valuable guidance and information for attorneys and the general public. However, development of a peer-to-peer resource could provide a different avenue for direct insight and interaction that is readily available to an attorney who is struggling, including by providing a non-judgmental setting in which the mentor and mentee are able to brainstorm together about available resources. While members of such a group would not provide representation in an AGC disciplinary investigation or proceeding, just having someone to talk to about issues that arise in everyday practice on a peer-to-peer level could help to address a potentially impactful ethics scenario before it reaches that point. Such resources could also be vital to solo practitioners and those who do not have colleagues readily accessible with whom they feel comfortable talking about an ethics or civility issue that may arise. Expansion of resources based on current initiatives like the Lawyer-to-Lawyer Well-Being Roundtable would also be beneficial. Further, having mentoring resources available for young attorneys provides another tool for them to use as they establish and move forward in their careers. One possible way to help attorneys accomplish these goals would be to institute changes to CLE credits pertaining to attorney well-being. While CLE is discussed later in the Report, it is worth noting that the incorporation of changes could help to ensure that attorneys maintain the high standards expected in the profession,<sup>121</sup> as well as their own well-being.<sup>122</sup>

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<sup>118</sup> See e.g., RPC Rules 8.4, 1.4.

<sup>119</sup> See, NYSBA Planning Ahead Guide, How to Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death, (Second Ed., 2015-2016), available at <https://nysba.org/attorney-resources/planning-ahead-guide/>.

<sup>120</sup> More information on that Committee is available at <https://nysba.org/committees/committee-on-professional-ethics/>. NYSBA Ethics Opinions are available at [https://nysba.org/news-center/?show\\_category=ethics-opinions](https://nysba.org/news-center/?show_category=ethics-opinions). Comments to the individual RPC Rules, while also non-binding, provide valuable information and guidance to attorneys. See, NYSBA NY Rules of Professional Conduct, *supra*. Treatises such as Simon's New York Rules of Professional Conduct Annotated, Roy D. Simon and Nicole Hyland, [Thomson Reuters 2019 Ed.], also provide extensive analysis of and guidance on the RPCs and Comments.

<sup>121</sup> It is important that attorneys remain aware of and strive to behave in accordance with civility standards expected for the profession. The New York Standards of Civility are not disciplinary rules under the RPC. However, they are

*Outreach Program: Goal of Rehabilitation*

Attorneys may experience the ramifications of a public order of discipline not only on their professional practices and careers, but also on their personal lives. It is not difficult to imagine scenarios involving the widespread impact on an attorney of any public order, but particularly when subject to a suspension or disbarment. For those who do not have support systems in place, it is also easy to imagine that this can be overwhelming in some respects. Having an outreach program available to attorneys (or former attorneys) could provide invaluable assistance to those impacted. While members of such a group would not provide representation, much like the previous point addressing mentoring, having peer support to rely on could provide an invaluable resource and assist an attorney on their path to wellness.

Attorneys who are suspended or disbarred must comply with the conditions of the respective court orders, as well as associated provisions of the Atty. Disc. Rules<sup>123</sup> and Judiciary Law, and may face other requirements, such as being directed to appear before a Character and Fitness Committee in connection with the submission of a reinstatement application. In order to be reinstated following a period of suspension, or in the case of disbarment, after seven years, an attorney seeking to be reinstated must apply in accordance with the procedure set forth in the Atty. Disc. Rules and accompanying Appendices,<sup>124</sup> the provisions of the underlying order, and demonstrate to the applicable court that the attorney should be reinstated to the practice of law, and that such reinstatement is in the public interest. Again, it is not difficult to imagine that applying for reinstatement can be daunting. As with cases of diversion, or other instances where an attorney raises issues of mental and/or physical health before a court, having someone to call on, not for representation, but just for moral support, could be beneficial and contribute to that attorney's well-being regardless of whether reinstatement is ultimately granted.

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aspirational standards which encourage those in the legal profession to observe principles of civility and decorum. *See*, (22 NYCRR) Part 1200, Appendix A.

<sup>122</sup> States that have enacted CLE requirements in areas related to attorney well-being: California, North Carolina, South Carolina, Nevada, Oregon and Illinois. Support for such a requirement in New York has been voiced by other bar associations and groups within the legal profession. *See e.g.*, New York City Bar, Report in Support of Mental Health, Substance Use and Lawyer Well-Being Continuing Legal Education (CLE) Requirement for New York Attorneys, by the Lawyers Assistance Program Committee and the Mental Health Law Committee, June 2020, at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/mental-health-substance-use-and-lawyer-well-being-continuing-legal-education-requirements> (listing states with the requirement).

<sup>123</sup> Atty. Disc. Rules §1240.15.

<sup>124</sup> Atty. Disc. Rules §1240.16; Appendices B, C, D, F. The provisions of Atty. Disc. Rules pertaining to reinstatements apply to suspended attorneys generally. For instance, unlike some other states, New York does not have an administrative suspension as a penalty for failing to register as required. Therefore, an attorney who is suspended for misconduct related to that attorney's failure to comply with attorney registration requirements of Judiciary Law §468-a, will be required to move for reinstatement in accordance with the applicable Atty. Disc. Rules and procedure, as would an attorney who is suspended for other professional misconduct. *See e.g.*, Matter of Attorneys in Violation of Judiciary Law §468-a, 185 A.D.3d 1373 (3<sup>rd</sup> Dept. 2020) (suspending multiple attorneys on the basis of uncontroverted evidence of misconduct and determining suspension was warranted for engaging in conduct prejudicial to the administration of justice pursuant to RPC Rule 8.4(d) for failing to fulfill attorney registration requirements and being delinquent in their attorney registration for at least one biennial period).



## Practice, Not Perfection: A View from the Bench<sup>125</sup>

The question of fitness to practice in the legal system is largely a self-regulating endeavor, as was made clear from the review of ethics and discipline. Judges and the courts play a key role not only in the regulation of attorneys, but also the management of their courtrooms and the perception of the public in accessing the system as a whole.

Notably, the culture of our modern legal profession operates in a larger society that – by and large – holds attorneys in ill repute, particularly when compared to other professions. A recent Pew Research Center survey demonstrated that only 17% of those questioned believed that attorneys contribute to society’s well-being.<sup>126</sup> Strikingly, this percentage is less than any other profession measured in the survey. This negative characterization has contributed to the stress encountered by young lawyers who are trying to find a role that is morally satisfying and meaningful in the eyes of a skeptical, if not hostile, society. Their challenge is further complicated by the fact that many begin their careers with crushing educational debt, resulting in career decisions based on harsh economic reality, rather than pursuing ideals such as social justice.<sup>127</sup> It is easy to understand how this existential issue makes it difficult for lawyers to navigate a career path that fits within their worldview of justice. Even when lawyers choose public service, the same culture that bemoans their financial success also perceives them as though they are not real lawyers, as exemplified by comments heard by public defenders. Lawyers in the defense bar, who advocate daily to ensure that the rights and principles in the Constitution are enjoyed equally by all of society, pay a price in defending these principles, especially when their cause or client is unpopular.

Encased in a “need to win and be the best” belief system, the cultural aspect of lawyering can be all consuming and override the importance of our own personal well-being. It also exists within a strict hierarchy, where judges are at the top and the remaining levels are occupied by clients, staff and the public. In this hierarchy, the contingencies of the lawyer’s practice, and often aspects of their lives outside of law, are controlled in large part by these other players. Thus, deadlines, rules, and financial concerns provide the stressful backdrop to the culture in which we practice.

Notwithstanding the stressors attendant to the legal profession, practicing law is an honorable and worthy pursuit, particularly in this day and age. Understanding the culture is integral to

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<sup>125</sup> This section of the report was submitted by the Working Group on the Judiciary and the Courts which membership included Hon. Shirley Troutman (Chair), Hon. Robert J. Miller, Hon. Stan L. Pritzker, Hon. Jane Pearl, and Hon. Adam D. Michlini.

<sup>126</sup> Joseph Liu, *Public Esteem for Military Still High*, Pew Research Center, <https://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/> July 11, 2013.

<sup>127</sup> Since 2004, 18-b assigned counsel are paid \$75 per hour for felonies and \$60 per hour for misdemeanors, with a \$4,200 case cap. Resistance to increasing attorney compensation for public defense adversely impacts minorities in a disproportionate fashion (see Jeh Johnson, Report from the Special Advisor on Equal Justice in the New York State Courts, 75-76 [Oct. 1, 2020]).



making the practice more fulfilling to attorneys and more effective for our clients. As will be shown, there are practical ways to accomplish this important goal. But first, we must address certain ethical realities about the role of judges in lawyer wellbeing.

### *Judicial Ethical Considerations*

There can be serious ethical issues for judges who want to assist a struggling lawyer, and the question that inevitably arises is: What types of activities are ethically permitted? While the line of demarcation is somewhat opaque, as a starting point, it is ethically permissible for judges to engage in extra-judicial activities that improve the law, the legal system and the administration of justice.<sup>128</sup> More specifically, the New York State Advisory Committee on Judicial Ethics (the Committee) has determined that it is ethically permissible for judges to participate in attorney diversion and legal assistance programs.<sup>129</sup> But what is the proper role for judges?

The Committee Opinion 16-177, issued May 4, 2017, addressed: (1) whether a part-time judge<sup>130</sup> could be involved in the departmental grievance committee's diversion program; and (2) whether a judge can participate in a bar association's lawyer assistance committee. The Committee found that it was proper for a part-time judge to participate as a mentor/monitor in a grievance committee diversion program with certain caveats, including disqualification "from matters involving attorneys he/she interacts with in the diversion program, both during the pendency of the relationship and for two years thereafter."<sup>131</sup> The Committee also found that it was proper for a judge, including a full-time judge, to participate in a lawyer assistance committee (hereinafter LAC). In distinguishing grievance committee participation with LAC activity, the Committee noted, "the interactions between this judge and the attorney [in LAC's] are relatively brief and take place in a group setting where the judge and other recovering attorneys share their own experiences with substance abuse. Unlike the grievance committee's diversion program, no ongoing counseling, mentoring or monitoring relationship is contemplated. Given this much-reduced interaction and the lack of a one-on-one relationship, the Committee believes the judge's impartiality cannot 'reasonably be questioned' in all matters involving the attorney."<sup>132</sup> However, caveats exist and, for example, the judge must recuse in a matter involving the specific attorney in the event the attorney is uncomfortable due to interactions with the judge, such as those occurring in a 12-step program.<sup>133</sup>

Opinion 18-58 is also instructive and involves a judge who was concerned that an attorney, who is an appointed fiduciary, was "struggling to keep up." The judge wanted to help the attorney but was cognizant of the tension created by 22 NYCRR 100.3 (D) (2), which requires a judge to "take appropriate action" if there is a substantial likelihood that the attorney committed a

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<sup>128</sup> See 22 NYCRR 100.4; Advisory Comm on Jud Ethics Op 13-09/13-52 [Jan 24, 2013/Apr 25, 2013].

<sup>129</sup> See Advisory Comm on Jud Ethics Op 18-58 [Mar 29, 2018]; Op 16-177 [May 4, 2017].

<sup>130</sup> The Committee has advised that a full-time judge cannot serve on an attorney grievance committee.

<sup>131</sup> Advisory Comm on Jud Ethics Op. 16-177.

<sup>132</sup> Advisory Comm on Jud Ethics Op. 16-177, quoting 22 NYCRR 100.3 [E] [1].

<sup>133</sup> See Advisory Comm on Jud Ethics Op 16-177.

substantial violation of the Rules of Professional Conduct. Here, the Committee drew a bright line, stating that referring an attorney to a disciplinary committee, which requires disqualification, is entirely different from referring an attorney to an LAC, which does not require disqualification. The Opinion further elucidates the critical 22 NYCRR 100.3 (D) (2) issue, which is bound to arise in these matters, “[h]ere, too, this judge must assess if he/she has received information indicating a substantial likelihood the lawyer has committed a substantial violation of the Rules of Professional Conduct’s competence requirements. If so, the judge must take some ‘appropriate action.’”<sup>134</sup> The purpose of the reporting requirement is not to punish attorneys for the slightest deviation from perfection, but to protect the public from attorneys who are unfit to practice law.<sup>135</sup> Thus, if the misconduct, if true, seriously calls into question the attorney’s honesty, trustworthiness or fitness as a lawyer, the only fitting action is to report them to the appropriate disciplinary authority.<sup>136</sup> But in all other instances, the judge has discretion to take appropriate measures short of referral for disciplinary action.<sup>137</sup> “Such measures may include, but are not limited to, counseling and/or warning a lawyer, reporting a lawyer to his/her employer, and sanctioning a lawyer.”<sup>138</sup>

The next common issue involves *ex parte* communication, which may occur when a judge has concern about an attorney’s well-being. In the context of a judge participating in an LAC, footnote 5 in Opinion 16-177 presciently frames the issue: “the Committee trusts the judge will not ‘initiate, permit, or consider any impermissible *ex parte* communications with the attorney about any matter before the judge.’” Except for this footnote, the Committee has not directly addressed this matter in the context at issue here. Nevertheless, the Committee provides some guidance, “[a] judge must always avoid even the appearance of impropriety and must always act to promote public confidence in the judiciary’s integrity and impartiality. Therefore, a judge, with specific exceptions, must ‘not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding.’ A pending proceeding is one that has begun but not yet reached final disposition, and an impending proceeding is one that is reasonably foreseeable but has not yet been commenced.”<sup>139</sup>

Generally, communication with an attorney about a problem impacting the attorney’s well-being and ability to practice is indeed proper, but safeguards should be put in place to ensure that nothing pending or impending before the judge is discussed. Depending on the circumstances, including the pendency of the case or cases involving the particular lawyer, a judge could decide to refrain from such communications and consider a referral to a LAC. To conclude, these issues

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<sup>134</sup> Advisory Comm on Jud Ethics Op 18-58, citing 22 NYCRR 100.3 [D] [2].

<sup>135</sup> See Advisory Comm on Jud Ethics Op 10-85 [June 10, 2010].

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> Advisory Comm on Jud Ethics Op 20-195 [Dec 10, 2020].

are difficult and often unclear. Accordingly, a judge must exercise caution and careful discretion when trying to assist a lawyer in distress if that lawyer practices in their court.

### *Judicial Role in Diversion and Lawyer Assistance Programs*

With respect to diversion programs,<sup>140</sup> while possessing great potential, their efficacy may be hindered by practical concerns and implementation issues. To begin, it is startling that the New York State Bar Association LAP reports that a recent study<sup>141</sup> found that just over 20% of practicing lawyers have reported problematic drinking patterns, which is a rate significantly higher than the 6.4% of Americans who display signs of alcohol-use disorder. Sadly, substance abuse disorders, encompassing drugs such as opioids and even marijuana, are also prevalent in the legal profession.<sup>142</sup>

Lawyers suffering from alcoholism, substance abuse or mental health issues are likely to have diminished capacity to exercise professional judgment on behalf of a client, which may lead to violations of the Rules of Professional Conduct.<sup>143</sup> For practical purposes, the diversion program allows attorneys to obtain a stay of the disciplinary matter while seeking treatment, continuing to practice law and serving their clients. In the Appellate Division, Fourth Department, the Court reevaluates the circumstances, typically after one year, and decides whether the disciplinary matter should be dismissed or resumed. If the lawyer commits additional misconduct during the monitoring period or ceases complying with the treatment monitoring program, the Court may vacate the stay and reinstate the disciplinary investigation or proceeding. In our view, the Appellate Divisions' diversion rule is consistent with the principle that the punishment of past wrongs is not the primary purpose of the attorney disciplinary process, "[t]he proper frame of reference, of course, is the protection of the public interest, for while a disciplinary proceeding has aspects of the imposition of punishment on the attorney charged, its primary focus must be on protection of the public. 'Our duty in these circumstances is to impose discipline, not as punishment, but to protect the public in its reliance upon the presumed integrity and responsibility of lawyers.'"<sup>144</sup>

Based on the above, because alcoholism, substance abuse and mental health issues are prevalent in the legal profession, and the symptoms of those conditions will likely impair a lawyer's ability

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<sup>140</sup> See the "Public Servant, Public Trust: The Role of Lawyer Ethics and Discipline" Section of this Report, *supra*, for a full discussion on diversion, the LAP program and ways to improve the access and impact of the system.

<sup>141</sup> In 2016, the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation co-sponsored a study of mental health and substance abuse disorders. See Patrick Krill, Ryan Johnson, Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. Addiction Med., Feb. 2016, Vol. 10, Iss. 1, [https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the\\_prevalence\\_of\\_substance\\_use\\_and\\_other\\_mental.8.aspx](https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx).

<sup>142</sup> *Id.*

<sup>143</sup> See the "Public Servant, Public Trust: The Role of Lawyer Ethics and Discipline" Section of this Report, *supra*, for a full discussion on diversion, the LAP program and ways to improve the access and impact of the system.

<sup>144</sup> *Matter of Levy*, 37 NY2d 279, 282 [1975], quoting *Matter of Kahn*, 38 AD2d 115 [1972].

to serve clients and act in a professional manner, lawyer assistance programs and the Appellate Division diversion program serve the public interest. Indeed, the potential beneficiaries of those programs include the impaired lawyer, the lawyer's family, partners, employees and clients, as well as the courts and the legal profession as a whole.

As noted in the "Public Servant, Public Trust" section above, in actual practice, the diversion program has been underutilized since the promulgation of 22 NYCRR 1240.11 in 2016. The Third Department, for example, has seen only a handful of diversion applications over the past five years, with only one such proceeding reaching successful fruition. This may be so because the diversion rule applies only to a particular and narrow set of facts. First, the Rule contemplates a lawyer ready, willing and able to seek treatment at the time when the disciplinary investigation or proceeding remains pending. All too often, the attorney's threshold acknowledgment of impairment or condition comes only *after* the disciplinary process has resolved unfavorably. Thus, it is much more common that a claim of impairment and successful treatment will arise in the context of an application for reinstatement from suspension or disbarment, rather than within the proceeding which gave rise to the suspension or disbarment in the first place.<sup>145</sup>

Moreover, even assuming that the attorney coming before the AGC is willing to admit that they have a problem in the course of the disciplinary investigation, the Rule additionally requires a logical nexus between the alleged misconduct and the claimed impairment.<sup>146</sup> To that end, the Courts have proven reticent to permit a diversionary stay of the proceeding or investigation where the misconduct alleged does not appear to be a direct consequence of the claimed impairment.<sup>147</sup> Further, the Rule also requires consideration of whether diversion would be in the public interest. The import of this consideration is that, where the purported misconduct is gravely serious or poses an ongoing threat of injury to the public at large, a diversionary stay will not be available. In one such confidential matter considered by the Third Department, for example, the alleged misconduct implicated the attorney's management of his attorney trust account. Notwithstanding record evidence of the attorney's mental health condition and his entry into a monitoring agreement with LAP, the presence of considerable client funds in the account militated against a stay of the AGC investigation since the committee's ability to monitor the trust account foreclosed the possibility of additional client injury going forward.

The resolution of this particular Third Department matter proves another point and may speak more generally about the dearth of true diversion cases at the Appellate Division. It must be remembered that the diversion rule is fundamentally concerned with affording the attorney an opportunity to escape the imposition of discipline at the conclusion of successful treatment. While the above discussion illustrates that the avoidance of discipline following a diversionary stay may not always be warranted, it does not speak to whether successful treatment by the

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<sup>145</sup> See e.g. Matter of Canale, 162 AD3d 1455 [2018].

<sup>146</sup> See 22 NYCRR § 1240.11 [a] [2] [requiring a Court to consider "whether the alleged misconduct occurred during a time period when the respondent suffered from the claimed impairment"].

<sup>147</sup> See e.g. Matter of Pierre, 153 AD3d 306, 310-311 [2017].

attorney may have other positive consequences on the disposition of the disciplinary matter. Stated differently, even if the investigation or proceeding is permitted to go forward to a finding of misconduct, successful treatment may still be offered as strong mitigation evidence which might cause the Attorney Grievance Committee to keep the disciplinary sanction private or cause a Court to impose a less severe public sanction than it otherwise would.<sup>148</sup> Nevertheless, the efficacy and great promise of diversion programs may require tweaking by the respective Appellate Divisions.

### *Family Court and Other Charged Arenas*

No discussion about health and well-being in the courts without attention paid to Family Court, which is known to be a stressful tribunal for lawyers and judges. Through the exploration of this challenging court, it is our goal to develop strategies to promote and sustain attorney well-being.

It has been said Family Court is one of the saddest places and one of the busiest courts. This mixture creates a breeding ground for stress and does not allow time for the lawyer, judges and, of course, the litigants, to process the often tragic events which dominate the court. In this context, lawyers are often overwhelmed by client demands in trying to adjust a client's expectations to match reality. As an attorney, your time is limited and you cannot spend as much time on the cases as you feel they deserve, which can lead to feelings of impotence and depression. Judges and attorneys both bear witness to some truly horrific events as clients may be lost to violence, drug addiction or suicide. The vast majority of litigants are also under great financial pressure, which is particularly the case in poorer urban and rural areas. Repeated court appearances and prolonged litigation adds to the stress in their lives. Attorney wellness is adversely impacted by repeatedly representing family and criminal law clients who negatively experience child welfare, juvenile justice and criminal justice systems that reflect social and racial injustice.<sup>149</sup>

When there is a delay in these courts in assigning counsel to persons who are qualified to receive same, oftentimes it is due to a mistaken belief that they are better off representing themselves if they can't hire a "real attorney." When counsel does appear, the attorney and the client are already on shaky ground. These attorneys are put in very difficult situations, due to the fact that they are appointed late in the process yet are subjected to unrealistic expectations from both the court and the client. Unfortunately, the result is unnecessary delays, and even successive attorney appointments, which further exacerbates already volatile situations. Moreover, judges may find it convenient to appoint the same attorneys with regularity but also must be mindful that they may be inadvertently creating an untenable situation for these attorneys, by overburdening their already overwhelming practice.

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<sup>148</sup> See e.g. Matter of Shmulsky, 186 AD3d 1878 [2020]; Matter of Njogu, 170 AD3d 1320 [2019], reinstated 175 AD3d 800 [2019].

<sup>149</sup> See generally Jeh Johnson, Report from the Special Advisor on Equal Justice in the New York State Courts [Oct. 1, 2020].

While there is no easy answer, as a court system, and as individual judges, there are practices that can be implemented to mitigate the pressures of the practice of law and make the atmosphere less stressful for litigants and attorneys. Court Attorney Referees and Judicial Hearing Officers can be utilized in underserved areas. With consent of the parties, they can preside over cases, and in some situations may even be able to preside over hearings. Directing resources to underserved courts would also be a way to alleviate stress on the courts and increase efficiency in the resolution of matters. Some courts are overburdened by caseloads while other courts are not even working to capacity. As long as these inequities exist, the courts are missing out on a real opportunity to increase efficiency and assist litigants who are often desperate for help. Perhaps metrics could be developed to distribute help where it is most needed before it reaches crisis level. This reallocation of resources could also provide flexibility in adjourning cases and reduce the unfortunate, but necessary, practice of Family Court trials being drawn over long periods of time.

Attorneys, not only those in Family Court, face a myriad of stressors that negatively impact their well-being. Significantly, our Survey identified certain actions which could be taken by the judiciary to reduce stress and foster well-being. These actions include continuing certain virtual appearances post-pandemic, liberalizing adjournment requests where appropriate and not prejudicial, harmonizing the differing local rules and requirements, reducing emphasis on standards and goals and, importantly, adjusting judicial temperament. Judges should heed these comments and adapt our approach to better meet the needs of the litigants and the attorneys more fully.

### *The Judiciary Must Buy In*

It bears repeating that we in the legal profession face myriad challenges and contend with an alarmingly high degree of stress. When compared to the general population, lawyers present significantly elevated levels of anxiety, depression, substance abuse, problem drinking and other morbidities.<sup>150</sup> Anecdotally, lawyers experience and report stress derived from incivility, court deadlines, crushing student debt and other financial burdens, work-addiction, sleep deprivation, suicidal ideation, negative public perception, focus on profits and diversity concerns.<sup>151</sup> Of course these conditions affect emotional well-being, family life and negatively impact upon the administration of justice with respect to the zealous representation of clients and the efficacy and efficiency of court proceedings. Indeed, “[t]o be a good lawyer, one has to be a [clear thinking] healthy lawyer.”<sup>152</sup>

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<sup>150</sup> See Nat’l Task Force On Lawyer Well-Being, Am. Bar Ass’n, *The Path to Lawyer Well-Being: Practical Recommendations For Positive Change* (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

These impacts present a call-to-arms, compelling the judiciary to understand, support and foster attorney well-being. There are, however, other reasons why the judiciary must work together toward this fundamental goal. Judges have a responsibility to protect the safety and integrity of the courtroom. This encompasses emotional and physical safety parameters. Courtroom civility requires continuous judicial oversight and consistent judicial leadership. Attorney well-being maximizes successful client representation, apposite legal negotiation and litigation, as well as optimal courtroom performance. In the Federalist Papers, No. 78, Alexander Hamilton referred to the judicial branch as the “citadel of the public justice and the public security.” Accordingly, as leaders of the judiciary branch,<sup>153</sup> judges are gatekeepers, clothed with a sacred duty to foster the fair and proper administration of justice.<sup>154</sup> In this role, judges have the ability and tools to readily identify problem issues and promote attorney well-being for the benefit of the justice system. Since attorney competency is directly related to attorney well-being, promoting same is simply part of doing the job, and is directly related to a judge’s primary duty.

There are other reasons why the judiciary must support attorney well-being. As Pogo famously said, “we have met the enemy and he is us.”<sup>155</sup> Judges have the authority and responsibility to operate their courtrooms in the manner they see fit. With this authority comes a power, which may be abused and wielded in a way that enhances attorneys’ stress. Causing attorney stress in the courtroom is the antithesis of the role and duty of a judge. Our Task Force on Attorney Well-Being believes that it is intrinsically fair to ask judges to look in the mirror and determine whether some of the judiciary’s rules, actions and conduct should be modified to make it easier for lawyers to feel more comfortable in the courtroom, therein maximizing their ability to zealously represent clients. Judges have a responsibility to manage cases effectively, including case triaging by complexity as well as by filing timeframes. Attorney well-being is requisite to successful judicial case management.

There are other straightforward reasons why the judiciary must support attorney well-being: Judges are also attorneys, and those who practice in our courts are part of our extended judicial family. Fostering attorney wellness is simply the right thing to do and doing the right thing defines as the role of judges. The judiciary has an ethical responsibility to intervene when attorney wellness is compromised to the point it is detrimental to client representation and courtroom safety and civility. Judicial satisfaction is enhanced by implementing therapeutic jurisprudence, including ethically contributing to attorney wellness, where warranted and feasible. Finally, enhanced attorney well-being will contribute to judicial well-being, because the “well” attorney will be much more efficient and effective, promoting more reasonable outcomes and fostering courtroom civility.

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<sup>153</sup> Arch M. Cantrall, *The Judge as a Leader: The Embodiment of the Ideal of Justice*, ABA J. Vol. 45, No. 4 339-342 [Apr. 1959].

<sup>154</sup> See 22 NYCRR 100.0; American Bar Association Model Code of Judicial Conduct, Canon 1, note 4.

<sup>155</sup> Walt Kelly, *Earth Day*, Pogo comics, 1970.



## Calming the Perfect Storm: Emotional Well-Being

Given what we discovered about law education, the values of law culture and practice, ethics and discipline, and emotionally charged courtrooms, it is not surprising that, during the course of a lawyer's career turn around the Wheel, issues of emotional ill-being can begin to affect significant aspects of both personal and professional life. The nature of our training can contribute to the development of one or more the most common coping mechanisms for us: disconnection from feelings (alexithymia), anticipatory anxiety, perfectionism, control, imposter syndrome, and substance use disorders.<sup>156</sup> In fact, “a perfect storm can be observed where lawyers are predisposed to certain traits that cause stress and burnout, are then trained into anticipatory anxiety (professional worriers), which is known to be suboptimal psychology, and then are potentially stigmatized and perceived as weak when the burden becomes too much. Rather than seek professional help, many lawyers withdraw from peers, friends and family, or engage in ‘maladaptive coping behaviors’ such as self-medicating with alcohol and other substances.”<sup>157</sup>

### *Disconnection from Feelings*

Lawyers are taught to always be logical. In other words, we are taught that it is essential to the proper practice of law to be disconnected from our emotional experience. Lawyers are trained in a form of pessimism that questions everyone and everything. Over time, this disconnection can make it harder and harder for lawyers to respond authentically to their own needs or the needs of others including their clients, family, friends, and partners, without exhibiting suspicion, skepticism, or trying to analyze or problem-solve the interaction.

### *Anticipatory Anxiety*

Known for our skill of seeing every potential pitfall from every angle, lawyers become prodigious at anticipating everything that possibly could go wrong, running every scenario through our heads and playing out all possible countermeasures an opponent might make.<sup>158</sup> In other words, we become professional mind-readers – or so we think. The successful application of anticipatory anxiety requires a negative mindset. Optimism destroys the exercise. If we do it right, our work is exhaustive. Unfortunately, it also is exhausting, leads to burnout and can begin to “leak” over into other areas of our lives.

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<sup>156</sup> NYSBA Wellbeing Podcast, Epi. 1; <https://nysba.org/the-case-for-attorney-well-being-a-profession-in-change/>.

<sup>157</sup> M. Elizabeth Coreno & Kerry Murray O'Hara, PsyD, *Attorney Wellbeing: The Science of Stress and the Road to Well-Being*, NYSBA J., Oct. 2019.

<sup>158</sup> Brandon Vogel, *Vicarious Trauma Is Real and Really, Really Common with Lawyers*, NYSBA Bar News, 7/7/2020 citing M. Elizabeth Coreno, Esq., who states that lawyers are trained to worry and that relates to a high negative response to stressful situations, a negative perception of the future and pessimism. “Part of the training in becoming an attorney is to anticipate problems. It is to look at the future and what can go wrong, run that 3-D maze like a mouse, think of all the pitfalls and then literally experience it so your client doesn't have to. Over time, that creates a neural patterning for the human being, not the lawyer.” <https://nysba.org/vicarious-trauma-is-realand-really-really-common-with-lawyers/>

### *Perfectionism*

A component of anticipatory anxiety, perfectionism requires that we miss nothing.<sup>159</sup> If we miss something, we have dropped the ball. How do we know if we have missed something? Our opponent wins. And even if we win, self-doubt creeps in. Maybe your opponent missed something; then again, you almost missed that obscure point of law upon which everything hinged. Disaster is never far.

### *Control*

An extension of perfectionism, lawyers can become fixated on the idea that we can control the outcome by being perfect in our preparation, knowing exactly what is on our opponent's mind and anticipating every argument the other party could possibly make<sup>160</sup>. Then, of course we win – or at least that is what we tell ourselves. Over time, this overblown sense of control begins to convince the lawyer that every success and, more importantly, every failure, is entirely on their shoulders.

### *Imposter Syndrome*

Never feeling like *you* actually got the job done and feeling that *you* are working below expectations. We tell ourselves that we must work harder and someday we may be a fully functioning lawyer. The practical pessimism taught to lawyers is internalized, which can lead to profound self-doubt. It creates a negative feedback loop that can feel impossible to shake. And suddenly, we no longer can leave our lawyer mindset at the door. It is a way of life.

### *And Then Burnout*

Overworked, exhausted lawyers, who have the sense that their work is never good enough, that they do not matter, may be told they are suffering from “burnout.” It is the bone-weariness that comes of the relentlessness of being constantly on – to meet billable hour quotas and client demands. The problem with using the term “burnout” is that it is isolating. If we are burned out, it is on us as individuals, rather than looking at the whole picture of the culture of law.<sup>161</sup>

### *Stigma: Mental Health and Substance Use Disorders*

Stigma is the number one reason why attorneys, judges, and law students are reluctant to seek help for mental health, alcohol and drug problems. Legal professionals fear that stigma – “mark

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<sup>159</sup> *Id.*, noting that, “perfectionism has gotten you pretty far and has driven you to excel and exceed expectations so it can be very threatening to think about breaking it down -- but we don’t want to break down what is adaptive and lifts you up and makes you more effective.” Kerry Murray O’Hara, PsyD.

<sup>160</sup> See Coreno & O’Hara, *Attorney Well-being*, *supra* note 157.

<sup>161</sup> See Jill Lepore, *It’s Just Too Much*, *New Yorker*, May 24, 2021, p. 29, discussing the phenomenon of burnout and its origins in the 1970s, when “real wages stagnated and union membership declined,” turning the “responsibility for enormous economic and social upheaval and changes in the labor market back onto” workers.

of disgrace or infamy”<sup>162</sup> – will impact their reputation and standing. As raised previously in this Report, fear of stigma often prevents law students from seeking help, concerned it will affect their bar admission, image, or employability while lawyers and judges are concerned they will forever be characterized as having a problem that will negatively impact their careers. The most recent Diagnostic and Statistical Manual, 5th Edition (DSM-V) is used by clinicians to diagnose the presence and severity of a “substance use disorder” – a term that replaces words like addiction, dependence, alcoholic, and drug addict which promote stigma. Although science has proven that a substance use disorder is a chronic brain disease that can be successfully managed,<sup>163</sup> and that susceptibility to the physical and psychological manifestations of substance use are due to factors outside of a person’s control, such as genetics and environment, it still is viewed as a moral failing or character flaw.

Education is the most effective way to end the stigma, negative attitudes and fear that cause individuals who struggle with substance use issues to isolate and needlessly suffer. The primary goal of providing education about mental health and substance use disorders is to create a safe environment that encourages attorneys, judges, law students, staff and family members to seek help and assist the judiciary, law schools and legal employers in providing support, resources and appropriate accommodations. In fact, the ABA’s ongoing focus is on the importance of reinforcing education as the number one step in opening a productive dialogue, looking at the data and planning for ongoing discussion. Taking the first step in the Well-Being Pledge<sup>164</sup> “to provide enhanced and robust education to attorneys and staff on well-being, mental health and substance use disorders” has given us a path forward for addressing the prevalence of stigma.

### *It Takes a Toll*

Considering the volume of statistics available on lawyer rates of depression, anxiety, burnout, and substance use disorder, the Task Force decided to go beyond theories, data and numbers to instead ask lawyers about their beliefs as to why there are rampant rates of mental health decline in law. Further, the Task Force Survey asked what resources lawyers are aware of, which they have tried, and what keeps them from getting help. The results of the Survey confirmed largely what we have been told by experts for years concerning the high demands on lawyers, but they also resonated with some deep truths about the disconnect between how we are trained and how we are rewarded; how we feel and how we act; what we say we value and what we reward as valuable; what we say we will tolerate and what we actually tolerate; the nobility of the profession and its loss of humaneness.

*One morning in December of 1997 there was a knock on my door and I opened it to find a nervous, uneasy State Trooper standing in front of me. As a criminal defense trial lawyer I knew many State*

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<sup>162</sup> International Bipolar Foundation, <https://ibpf.org/stigma-%C2%96-a-mark-of-disgrace-or-infamy-a-stain-or-reproach-as-on-ones-reputation/>.

<sup>163</sup> See, e.g., <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics>.

<sup>164</sup> [https://www.americanbar.org/groups/lawyer\\_assistance/well-being-in-the-legal-profession/](https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/).

## Report of the Task Force on Attorney Well-Being

*Troopers but this was not the face of one I knew. He asked me to confirm my identity and then said, “Your son is dead”; at least that’s how I remember it.*

*My son had committed suicide during the night. I am a survivor of that suicide. The cost was immense.*

*As lawyers we are smart, in control, self-assured and able to find the answer to the problems our clients bring us. We don’t show weakness or vulnerability. That’s what lawyers are and do but it can be our downfall. I learned the first part early on and lived it, at least until the above events helped make it impossible. I soon found myself unable to complete even the simplest tasks. I lost my law license, then my wife. Finally in desperation I sought therapy.*

*Therapy taught me that I had suffered from depression most of my life which exacerbated the grief I felt in losing my son. I learned depression was a medical condition that could be treated. After several years of therapy I was finally able to be a productive person and become a practicing lawyer again.*

*I often heard people say that “something good always comes from something bad.” I believed it as a kid and still believe it now, even after all I’ve been through. When bad things happen to colleagues we need to reach out and take the time to listen, offer friendship and unwavering support. Your connection to your colleagues and friends can make the difference in their lives that helps them survive and appropriately deal with their tragedy, mental health issues or addiction. It can save their lives. Doing nothing is not an option.*

— Thomas Nicotera, Esq.

### *Survey Responses on Emotional Well-being*

In NYSBA’s Survey, when lawyers were asked to choose among a list of 15 answers what are the greatest impacts on their well-being as lawyers, they cited: “lack of boundaries”; “no downtime”; “never off.”<sup>165</sup> Client expectations and demands and the financial pressures of the business of law were also top choices. Then there is the pandemic, which has been a double-edged sword for many lawyers. Offices closed and work, meetings, and court all were conducted online. Business was no longer as usual and likely never will be. Online court appearances eased the burden of having to travel but all-online all-the-time meetings, conferences and client calls broke down any remaining semblance of client or office boundaries.

When asked whether lawyers had experienced a mental health-related problem or concern in the last three years, nearly 37% of lawyers indicated that they had. Yet, Legal Aid employees were the only group of practitioners where most respondents indicated they had thought about seeking professional support for a mental health concern in the past three years. Over 70% of judiciary and solo practitioners indicated they had not considered it.

Of the people who had considered seeking support, the majority (62%) found support; 44% of people who considered seeking support found support that was helpful. However, 26% of the people who indicated they had considered seeking support did not indicate whether they found it.

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<sup>165</sup> See NYSBA Attorney Well-Being Survey 2020, Summary, App. A.

Those who indicated they did not consider seeking support for a mental health-related concern in the past, 71% *did not* provide a reason. Of those who gave a reason, almost 19% indicated it was not needed, followed by another 2.5% indicating they already had supports in place. Another reason given was that they had no time.

After identifying how they are feeling and what is impacting their well-being, we then asked lawyers to let us know about helpful resources they are aware of, which ones they have accessed and found helpful, and, in other cases, why they have not. Certainly, it was important to discover whether New York lawyers faced the same help-resistance identified in the ABA National Task Force Report on Lawyer Well-Being and why. Its research included an expansive list of reasons why lawyers are so help-averse, including: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules.

Across all practice sizes, except one, a severe need of services would have made it more likely that someone would seek out supports, i.e., must be in crisis before seeking help. However, almost 29% of lawyers who answered this question are in firms sized 101-200 and they indicated that would only seek services if confidentiality were guaranteed. More than any other groups, people in firms of 101-200 lawyers had concerns about confidentiality.

Additionally, lawyers told us all kinds of personal reasons why they were not inclined to seek support for an issue of which they were aware. Other than 'lack of time' some of the most noteworthy responses included no or limited health insurance coverage and perceptions of shame for being a "weak" lawyer. Lawyers also told us what would make them more likely to seek support in the future such as availability of a counselor of like race or gender, availability of EAP, assurances of greater confidentiality.

While there are bar association-sponsored counseling services like North Carolina's Bar Cares Program<sup>166</sup> and Massachusetts' Lawyers Helping Lawyers<sup>167</sup> (a division of Mass LOMAP Massachusetts' Law Office Management Assistance Program), NYSBA is a voluntary bar association which provides its outreach, education, interventions and referrals through the Lawyer Assistance Programs at NYSBA, Nassau County Bar Association and the New York City Bar Association which are supported through grants and state funding. For New York lawyers, it is critical to understand the role LAPs have in reducing the stigma around substance

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<sup>166</sup> <https://www.ncbar.org/members/resources/barcares/>.

<sup>167</sup> <https://www.lclma.org/resources/>.

issues **and** mental health issues that often inhibits help-seeking behaviors as well as what additional resources will be necessary in the future.

*Going through a mental health struggle or addiction can feel like a very lonely place to be. We may think others don't understand, or, assume that if they really knew what we were dealing with, they would judge us poorly either at work or in our personal lives. This fear just keeps the loneliness inside and often does not lead to someone in need of help seeking it out.*

*The truth is you don't have to go it alone. You can get the support you need to recover, to stay well, and have confidentiality so that your condition remains private. One of the best ways to do this is to join a peer support for lawyers, whatever your situation may be.*

*I started a depression support group 14 years ago. My regular participation in this group of other attorneys who struggle with depression – just like me – has been one of the keys to managing my condition. I find it easy to talk to my group because first, they already know how tough lawyering is and second, how depression can make their jobs even more of a challenge. Over the years I have been in the group, and for that matter other such groups, Support groups are safe places not only share with others your struggles, but also celebrate your successes.*

– Dan Lukasik, Esq., Judicial Wellness Coordinator, NYS Office of Court Administration

## Facing Challenges, Getting Help: Substance Use Disorders, Mental Health and LAPs<sup>168</sup>

On July 15, 2020, an article in the *NY Times*, entitled “In the Shadow of the Pandemic, U.S. Drug Overdose Deaths Resurge Record,” indicated that a rise in drug-related deaths beginning in 2019 has continued to climb and perhaps worsened due to the coronavirus pandemic.<sup>169</sup> We can justifiably assume that many lawyers are “self-medicating” due to stress, anxiety, depression, fear and uncertainty about the future. In our own NYSBA Survey from late fall of 2020, when asked whether they had consumed more alcohol or drugs than intended or felt that they should “cut back” or “quit,” about 17% of lawyers told us that they were consuming more substances than they either previously had and/or felt the need to reduce or quit altogether. Another 4% admitted that they “were not sure” whether their substance use was a problem.<sup>170</sup>

There is no doubt that such statistics are moving in the wrong direction, and this sounds warning bells for the LAPs in New York. They, along with their committees, have the primary goal of delivering educational programs, on a statewide basis, to provide substance use and mental health education for every individual involved in the legal profession, including law students, recent graduates and new lawyers, new judges, seasoned practitioners, aging lawyers and judges,

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<sup>168</sup> This section of the Report is based on the report of the Working Group on Substance Use Disorders and Addiction, chaired by Hon. Sarah Krauss. The Working Group’s list of recommendations, included in this section, begins on page 79 and supplemental recommendations are included in Appendices C and D. The group would also like to acknowledge the work of the New York City and Nassau County Bar Association LAPs, which informed the group’s work.

<sup>169</sup> <https://www.nytimes.com/interactive/2020/07/15/upshot/drug-overdose-deaths.html>.

<sup>170</sup> NYSBA Attorney Well-being Survey 2020, Summary, App. A.

staff and family members. In sum, LAPs represent the only statewide unified front against the issues which are plaguing our profession. Too often, LAPs are involved only in crisis situations and are underfunded to the size and scope of their mission. We simply must do more.

### *History of LAPs in New York*

The history of the lawyer assistance movement is necessarily linked to the creation and expansion of the Alcoholics Anonymous (AA) movement in the United States. It began in 1930s when the basic textbook, commonly referred to as the “Big Book,” was published, explaining the core of which is the now well-known “Twelve Steps” of substance use disorder recovery. Much of “lawyer assistance” in the United States is largely the story of individual attorneys, themselves in recovery, who brought the message to other lawyers needing help.

By 1976, New York and Canadian attorneys in recovery met in Niagara Falls at an event that has since become known as International Lawyers in Alcoholics Anonymous (ILAA) and they continue to hold annual meetings throughout the U.S. and Canada. In 1978, Ray O’K, an attorney from Westchester County, was appointed by the NYSBA as Chair of a special committee created to address the problem of lawyer alcoholism and drug abuse. He contacted the presidents of the 62 county bar associations to form local Lawyer Helping Lawyer Committees.

In the late 1980s, as the Committee’s visibility increased, and the numbers of lawyers seeking assistance continued to grow, the Committee petitioned NYSBA to hire an individual to direct the program and provide initial assessments and referrals for treatment. Ray Lopez, the first NYSBA Lawyer Assistance Program Director, came on board in 1990. A major early success for the program and Committee was the enactment of Section 499 of the Judiciary Law, which grants confidentiality to communications between Lawyer Assistance Committee (LAC) members or its agents and lawyers or other persons.

### *The New York Lawyer Assistance Trust “NYLAT”*

As has been noted throughout our Report, New York State is geographically large – spanning four Judicial Departments, 13 judicial districts, and 62 counties over 54,000 square miles. The state is also a mix of very urban to very rural where the attorney population of a single urban firm can surpass that of several rural counties combined. With 177,035 lawyers, New York ranks first in the nation in terms of the number of licensed lawyers (2018). This diversity creates unique challenges for LAPs needing to serve populations with such varying degrees of needs and resources.

The New York Lawyer Assistance Trust (NYLAT or the Trust) was created in 2001 as an initiative of the Unified Court System, following the recommendation of the Commission on Alcohol and Substance Abuse in the Legal Profession. The Trust’s mission was to bring statewide resources and awareness to the prevention and treatment of alcohol and substance abuse among members of the legal profession. Its mission was later expanded to include mental



health issues as well. Responsibility for the administration and management of the Trust was vested in a 21-member board of trustees appointed by the Chief Judge, and the Trust worked to enhance the efforts of the bar associations' LAPs and committees. With the advent of the Trust and its grant program, additional part-time mental health professionals were added to enhance LAP staffs. Through its website and quarterly newsletters, NYLAT raised the conversation regarding impairment issues in the profession to new levels of "normalcy" and awareness was high.

NYLAT sponsored several conferences to raise awareness of LAP issues, targeted to particular segments of the profession. For example, the Law School Program targeted the need for education on LAP matters, early identification, and information regarding admission to the practice of law, for applicants who may have a history of infractions relating to impairments. Yet another event focused on gender-based issues; and a third, on reaching lawyers of color. Staff participated with the NYSBA Committee on Law Practice Continuity in the development of the "Planning Ahead Guide," which encouraged lawyers to prepare a strategy for facing disability, or exiting their practice. The NYLAT Judge Advisory Council convened to consider how best to reach out to judges who face impairment issues, and its work continues in the Judicial Wellness Committee of the New York State Bar Association.

In 2014, The Office of Court Administration provided a grant to NYSBA's LAP to support the development of the Lawyer Assistance Project. The Project came in the wake of the New York Lawyer Assistance Trust, an initiative of the Unified Court System in place from 2001-2011, which worked to bring statewide resources and awareness to the prevention and treatment of substance abuse, and mental health problems among members of the legal profession.<sup>171</sup>

#### *Lawyer Assistance: A National Perspective*

Lawyer Assistance Programs are now found in all 50 states, and the American Bar Association has a standing Commission on Lawyer Assistance Programs (CoLAP). CoLAP has the mandate to educate the legal profession concerning alcoholism, chemical dependencies, stress, depression and other emotional health issues, and to assist and support all bar associations and lawyer assistance programs in developing and maintaining methods of providing effective solutions for recovery.

On a national level, the results of two large studies analyzing the legal profession were published in 2016. As has been repeatedly cited by our Task Force, the first report was published by the ABA Commission on Lawyer Assistance Programs and the Hazelton Betty Ford Foundation. The 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

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<sup>171</sup> The Trust itself was the primary recommendation of the Bellacosa Commission.

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 10 years of practice and those working in private law firms experience the highest rates of problem drinking and depression.

The second study covered 15 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.

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.<sup>172</sup> 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.

What can LAPs do in the face of a culture that often does not even let them in the front door? And yet, the profession does appear to want to improve their lawyers’ mental health and substance use disorders. According to an article<sup>173</sup> discussing the results of ALM’s 2019 Mental Health and Substance Abuse Survey. The problem is that the mental health crises attorneys are experiencing are rooted in the business models that have made law firms enormously profitable. Survey respondents cited the tyranny of the billable hour, client demands, “unrealistic deadlines” and the inability to take vacation or other time off. One respondent spoke about the tension between making the billable hour quota versus taking needed time off: “If I take a week off for

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<sup>172</sup> The report can be found at <https://perma.cc/EY3P-5G9P>.

<sup>173</sup> Dylan Jackson, *Law Firms Want to Improve Mental Health, but They’re Failing to Take ‘Preventive Action,’* Law.com, <https://www.law.com/americanlawyer/2020/04/27/law-firms-want-to-improve-mental-health-but-theyre-failing-to-take-preventative-action/>. Discussing the results of ALM’s 2019 Mental Health and Substance Abuse Survey.

vacation, that's 40 hours I have to cram into the year somewhere else." Another noted that despite meeting the billable hour requirement, the lawyer was told in their review that they had "left money on the table," meaning the lawyer should have "billed more."

### *Increasing Resources and Education*

Given the mission of LAPs and the breadth of scope in terms of geography, services, and education for which they are responsible, the Task Force came to understand that focusing on both the individual health of lawyers and altering the culture of law itself would require a bridge. The root for "articulation" quite literally is derived from "to connect the parts"<sup>174</sup> and so it is more than appropriate that the LAPs charged with giving voice to the pains in our profession are also key to constructing the path between the lawyer and the system – helping us connect and offering safe passage. From their role in successful diversion cases, law student orientation, attorney case management and public health education, we must ensure adequate resources, access and sustainability for this mission.

*I was sober about three months and attending daily meetings of Alcoholics Anonymous when I was instructed to enroll in the Lawyers Assistance Program Monitoring Program. At that point I was still trying to find my footing in sobriety. I had known about the LAP for years but had not reached out for help with my alcoholism. I was scared, and I cloaked my fear in arrogance. I was certain I could get sober by myself. I obviously couldn't. The wonderful thing is that I did not have to. My daily AA meetings and my weekly discussions with my LAP monitor reminded me that I had a whole network of people supporting me in my sobriety and all rooting for me to succeed.*

*It is no secret that many in our profession suffer from mental health problems, alcoholism, and/or drug addiction. It is no secret yet so many continue to suffer in silence because of a fear that admitting to having such a problem will hurt an attorney professionally.*

*I have learned that I am only as sick as my secrets. The same goes for our profession. I am loud and proud of my sobriety. I am open and honest about my struggles and how I worked to overcome them. By doing so, I am letting others like me know that they are not alone, that there is hope and there is help. I now have an opportunity to give back by being a volunteer monitor to assist others like me on their path to recovery. I am but one beggar showing another beggar where to find bread.*

*– Robin Z, Esq.*

While the Report contains its "Resources and Recommendations" collectively in the final Section, the LAPs navigation role in lawyer well-being is so fundamental to the operation of the whole, that the recommendations of the Working Group on Substance Use Disorders and Addiction are encapsulated here in their entirety as potential pathways over the bridge.

### *Recommendations for Reducing Stigma, Increasing Education and Assisting in Lawyer Health*

1. **Rethinking Education:** Explore and identify ways that stigma affects lawyer wellbeing beyond substance use disorders and across areas such as mental illness, physical

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<sup>174</sup> <https://www.merriam-webster.com/dictionary/articulation>.

disabilities, etc. and include education on intervention, prevention, and resilience through experiential and inspirational models.

- a. Identify who, within law firms and legal departments, makes decisions and schedules staff development, well-being seminars, and CLE programs.
  - b. Identify ways to gain entree into law firms, non-profits, in-house counsel departments, government agencies and the judiciary.
  - c. Utilize experiential learning methods such as small group activities.
  - d. Conduct surveys to gain information regarding attorney attitudes, beliefs and stereotypes about substance use disorders.
  - e. Provide cultural sensitivity training to LAP members and volunteers to increase awareness of culturally specific ways that mental health issues and substance use may be experienced in different cultures.
  - f. Develop targeted, specialized educational materials to be made available to small and large law firms, solo practitioners, judges, law students, staff and family members in content areas such as wellness, substance use and mental health.
  - g. Use national events to publicize potential education materials (i.e., suicide awareness day, mental illness awareness week, lawyer well-being week).
  - h. Promote attorney wellness formats beyond CLE Credit programs such as wellness roundtables, town halls and peer support group formats.
2. **Increasing Outreach.** Develop specific strategies to reach out to small law firms and solo practitioners who may not be getting wellness, substance use and mental health education through the Working Group's "Bar Association and Law Firm Outreach Report" at Appendix C which highlights the following:
  - a. Create small law firm and solo practitioner outreach committee to include a member of the Executive Committee. Each of such committee members should be a member of the bar who has extensive contacts and exposure in the legal community to insure commitment and support from Bar Associations.
  - b. Develop and deliver a message to legal employers to normalize, through human resource policies, addressing attorney wellness (SUD, Addiction, Mental Health) issue so that it is treated with the same

respect and accommodation as any medical problem or serious physical illness that requires surgery or extensive treatment.

- c. Implement the plans for NY Courts with the NYS Unified Court system in the attached “Court Report” developed by the Working Group on Substance Use Disorder & Addictions Working Group at Appendix D.
  - d. Incorporate wellness, substance use, and mental health education into CLE’s and Bar Association programs (e.g., Wellness Programs) that are offered to Bar members, as many solo practitioners take advantage of these programs and CLEs.
- 3. **Law School Partnerships.** Develop strategies to enhance the well-being of law students in each of the 15 law schools in New York.
  - a. Work with key stakeholders in each law school responsible for organizing and scheduling educational presentations mental health, substance use and well-being.
  - b. Identify opportunities to address students at each level of their educational experience from orientation through graduation and LLMS, i.e. professional development and professional responsibility.
  - c. Encourage each school to identify a student LAP representative who would be available to provide peer support and liaison with LAPs to ensure that students are aware of the services available to them through LAPs.
  - d. Encourage schools to initiate Students Helping Students Programs. These programs not only provide peer support but organize mental health and wellness related activities and programs.
- 4. **Increase Diversity and Inclusion Efforts.** Develop a strategy of education for minority bar associations and law school minority communities to increase diversity and lower stigma in those communities.
  - a. Develop relationships with minority bar associations. Identify bar association members to collaborate with to plan and schedule educational presentations.
  - b. Develop culturally specific programing including focus group studies to determine need.
  - c. Recruit members of minority bar associations and law school minority communities as lawyer assistance committee members and volunteers.
- 5. **Media Messaging.** Recommend to NYSBA and other CLE accredited Bar Associations that a two-to-five minute PSA from LAP be provided in a video format for broadcast

during Zoom CLE's and the opportunity for in person presentations during eventual in-person CLE presentations.

### Staying Informed: Individual and Collective Continuing Legal Education

Following our legal education and subsequent demonstration of fitness to practice for bar admission, there is perhaps no greater career-long collective statement our profession makes about its values concerning education and professional excellence than Continuing Legal Education (CLE). Through the certification process of CLE programming, the lawyers of New York make a unified statement about the skills, knowledge and ethics which must be possessed, expanded upon, and revisited throughout the arc of our professional lives.

As is extensively addressed within the Task Force materials from several of the Working Groups, the legal profession needs a serious and deliberate critique of how it trains, incentivizes, supports and reinforces negative or ill-being beliefs and practices which can and do affect the health and wellbeing of lawyers. The information reviewed by the CLE Working Group was sobering and grim concerning the state of our profession in terms of statistical evidence of the rampant rates of anxiety, depression, substance use disorders, burnout, etc. As such, there is no purpose in debating *whether* CLE will play a role in addressing this professional health emergency, but rather *how* the NYSBA can employ CLE to best and most immediately effect needed change.

#### *CLE: An Educational Resource*

CLE provides a critical intercession and an educational tool for lawyers who have graduated law school and been admitted to practice. In fact, CLE may be the only opportunity that mental health and well-being educational providers, such as the LAPs (as noted above), have to pass along lifesaving information to practitioners. We already know that stigma is the number one reason why attorneys, judges, and law students are reluctant to seek help for alcohol and drug problems. As indicated, respondents to the NYSBA Attorney Well-being Survey 2020 noted their reluctance to seek assistance with mental health concerns, citing stigma and confidentiality as significant barriers. Several respondents specifically noted that they did not want to be perceived as “weak” by their colleagues or clients.<sup>175</sup> Certainly, fear of stigma often prevents law students from seeking help, who are concerned it will affect their bar admission and employability.<sup>176</sup>

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<sup>175</sup> NYSBA Attorney Well-being Survey 2020, Summary, App. A..

<sup>176</sup> See generally, *The Impact, Legality, Use and Utility of Mental Disability Questions on the NYS Bar Application*, NYSBA Working Group on Attorney Mental Health, Nov. 2019. <https://nysba.org/report-of-the-working-group-on-attorney-mental-health/>.

### *CLE Accreditation and the NYS CLE Board*

The CLE Program Rules are the Joint Rules of the Appellate Divisions (22 NYCRR 1500). Pursuant to Part 1500, Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Regulations and Guidelines have been promulgated by the New York State Continuing Legal Education Board (“CLE Board”) to clarify the “Mandatory Continuing Legal Education Program for Attorneys in the State of New York.” These Regulations and Guidelines are to be read with the Program Rules for a full understanding of New York State’s continuing legal education requirement.<sup>177</sup> It is notable that there are several successful CLE programs offered in New York which do address both mental health/stress management and substance use disorder education under practice management and ethics. However, it is also notable that New York does not currently mandate attorneys obtain credits in mental health or substance abuse education, while there are six states which do have such a mandate.<sup>178</sup> Unlike our sister states, New York has a unique process for developing the criteria for CLE and the credits which must be obtained by attorneys at different stages of their career. For purposes of general understanding, a short review of key definitions, the NYS CLE Board and the process for certification in New York is set forth below.

#### *The NYS CLE Board*

The Continuing Legal Education Board (CLE Board) consists of 16 resident members of the bench and bar. Three members are chosen by each of the Presiding Justices of the Appellate Divisions, and four are chosen by the Chief Judge of the State of New York. The Chief Judge designates the Chair. Board members serve at the pleasure of the Administrative Board of the Courts for a three-year term. The CLE Board is authorized to: “accredit providers of courses, programs, and other educational activities that will satisfy the requirements of the Program; determine the number of credit hours for which continuing legal education credit will be given for particular courses or programs; adopt or repeal regulations and forms consistent with these rules; examine course materials and the qualifications of continuing legal education instructors; consult and appoint committees in furtherance of its official duties as necessary; foster and encourage the offering of accredited courses and programs, particularly in geographically isolated regions; and report annually on its activities to the Chief Judge, the Presiding Justices of the Appellate Divisions and the Chief Administrator of the Courts.” The current New York State CLE Board Chair is Hon. Betty Weinberg Ellerin.

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<sup>177</sup> Program rules are available at: [http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/16a%20-%20CLE-Regulations\\_Guidelines-June%202018.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/16a%20-%20CLE-Regulations_Guidelines-June%202018.pdf).

<sup>178</sup> See *Support for Mental Health, Substance Use and Lawyer Well-Being Continuing Legal Education (CLE) Requirement for New York Attorneys*, New York City Bar Association, June 2020, p. 4, at: [https://s3.amazonaws.com/documents.nycbar.org/files/2020700-Mental\\_Health\\_CLE.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2020700-Mental_Health_CLE.pdf) (citing to California, North Carolina, Nevada, Oregon, Illinois, and South Carolina). Further note that North Carolina also maintains the North Carolina Bar Cares program which provides free mental health assessments to lawyers licensed in the state. <https://www.ncbar.org/members/resources/barcares/barcares-faqs/>.



### Current Mental Health, Substance Abuse & Wellbeing Programs in NYS

Attorney well-being courses and programming focusing on alcohol and substance abuse can be classified as “Ethics and Professionalism,” while time management and stress management programs fall under “Law Practice Management.” NYSBA has been successful in achieving accredited attorney wellbeing programs such as:

- Finding the Compassion Balance: Mindful Lawyering and Vicarious Trauma
- Practicing Law with Mindfulness
- Mindfulness for Lawyers in Times of Stress
- Lawyer Wellbeing: Ethical Considerations
- Wellbeing for the Senior Attorney
- Attorney Wellness/Substance Abuse in the Legal Profession
- What Makes Lawyers Happy
- Lawyer Assistance Program/Prevention Intervention

Yet, each course noted above is limited to the presentation of materials in lecture format and cannot contain any practical exercises to demonstrate techniques or practices. For example, if a course includes 10 minutes of meditation exercises, those minutes would not carry MCLE credit.

As such, it is apparent that the challenges of CLE programming present two distinct, but related, issues: (1) how to use CLE educational programming to reduce stigma about mental health and substance use disorders; and (2) how to increase the availability of preventive techniques and teachings to reduce incidences of cognitive and emotional decline.

### The New York City Bar Association CLE Proposal

In June of 2020, the New York City Bar Association (City Bar) issued a policy statement concerning its support for one (1) credit hour Mental Health/Substance Use CLE per reporting cycle for every admitted attorney in New York which credit is to be inclusive of (not in addition to) the existing CLE requirement. The conclusions reached by the City Bar related to misconduct cases, financial losses, mental illness, drug and alcohol abuse and the urgent need for destigmatizing efforts in the profession are beyond dispute.<sup>179</sup> The City Bar cites to the ABA’s Model Rule for MCLE Requirements which provides:

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<sup>179</sup> See *id.*, *Support for Mental Health, Substance Use and Lawyer Well-Being Continuing Legal Education (CLE) Requirement for New York Attorneys*, New York City Bar Association.

- (1) All lawyers with an active license to practice law in this Jurisdiction shall be required to earn an average of fifteen MCLE credit hours per year during the reporting period established in this Jurisdiction. [and]
- (2) As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:
  - (a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);
  - (b) *Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years);* and
  - (c) Diversity and Inclusion Programming (at least one Credit Hour every three years.)<sup>180</sup>

Within the City Bar proposal, there is a reference to the attorney disciplinary committees of the New York court system which “have also recognized the widespread and pervasive nature of these problems within the legal profession, as well as the need to need to provide attorneys with support to help overcome them.”<sup>181</sup> As is discussed at length by the Public Trust and Ethics Working Group, the 2016 diversionary rule, adopted by all four Appellate Divisions, allows for treatment to help attorneys avoid discipline through the selection of a monitoring program with one of the state’s three lawyer assistance programs. Education on these key issues not only helps raise awareness of warning signs and available services, but it also reduces stigma and ultimately protects the public from attorney malpractice.

#### [NYSBA Attorney Well-being Survey: CLE](#)

As part of the 2020 Survey, it was critically important to ask a broad range of lawyers from different backgrounds, geographic areas, firm sizes and levels of experience about their views concerning how NYSBA and the profession in general should approach our mental health and wellbeing crisis. Below is a summary of the five critical responses the Task Force received related to CLE:

##### [Importance of Mental Health and Substance Abuse CLEs](#)

The first question posed to over 3,000 lawyers who responded to the survey asked whether they believed mental health and/or substance abuse CLEs were important. Overwhelmingly and across every demographic criterion to which the responses were correlated, lawyers responded that education in the area of mental health and substance abuse was important, namely: 83.33%.

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<sup>180</sup> *Id.* at p. 4 (emphasis supplied).

<sup>181</sup> *Id.* at p. 6.

## Report of the Task Force on Attorney Well-Being

### **Q23: Do you believe that continuing legal education programs on mental health and/or substance abuse in the legal profession are important?**

Answered: 3,024 Skipped: 65

| ANSWER CHOICES | RESPONSES |       |
|----------------|-----------|-------|
| Yes            | 83.33%    | 2,520 |
| No             | 16.67%    | 504   |
| TOTAL          |           | 3,024 |

### Importance of Attorney Well-being CLEs

In order to draw a distinction between the Model ABA proposal and the highly relevant information presented by the City Bar, the NYSBA Task Force asked about the importance of wellbeing programming, as distinct from mental health and substance abuse only. Again, overwhelmingly the preventative-type of attorney wellbeing programming received broad, cross-demographic support. Slightly more lawyers agreed at about 85%.

### **Q24: Do you believe that continuing legal education programs on attorney well-being are important?**

Answered: 3,043 Skipped: 46

| ANSWER CHOICES | RESPONSES |       |
|----------------|-----------|-------|
| Yes            | 85.28%    | 2,595 |
| No             | 14.72%    | 448   |
| TOTAL          |           | 3,043 |

### Wellbeing CLE related to Public Trust

Yet, when we asked lawyers about whether providing for a requirement in the area of attorney well-being would strength the public trust in the profession, the result was much closer. A majority of attorney did not agree that it would – with 53% disagreeing.

## Report of the Task Force on Attorney Well-Being

### Q25: Would a continuing legal education requirement for attorney well-being assist in strengthening public trust in the legal profession?

Answered: 3,033 Skipped: 56

| ANSWER CHOICES | RESPONSES |       |
|----------------|-----------|-------|
| Yes            | 46.55%    | 1,412 |
| No             | 53.45%    | 1,621 |
| TOTAL          |           | 3,033 |

### Mandatory CLE for Attorney Wellbeing and Solo/Small Practice Lawyer

When the Task Force asked lawyers responding to the Survey whether a mandatory CLE credit should be adopted in New York, most did not support another mandatory credit hour. When the data analyst reviewed these responses against the demographic information, it was noted that over 70% of the survey respondents practiced in environments with fewer than 20 lawyers – i.e., small or solo practices. When the narrative responses (i.e. attorney could expand on answers with comments) were reviewed, it was clear that mandatory CLE presents a significant time and cost consideration to the population of lawyers who are identified as solo or small-firm practitioners. It is critical to consider not only the split on support of a mandatory requirement but also the lawyers who would be most impacted across New York State.

### Q26: Should a continuing legal education program on attorney well-being be required as part of the mandatory biennial CLE reporting cycle?

Answered: 3,050 Skipped: 39

| ANSWER CHOICES | RESPONSES |       |
|----------------|-----------|-------|
| Yes            | 44.82%    | 1,367 |
| No             | 55.18%    | 1,683 |
| TOTAL          |           | 3,050 |

### The Topics Attorneys Consider Necessary for CLE/Programming

The Task Force asked Survey respondents what topics they considered important for CLEs or other wellness programs. The Survey presented 13 choices, and the respondents could pick as many as they wanted. In the Survey analysis, the responses were correlated to the size of office and number of years in practice (See NYSBA Attorney Well-being Survey 2020, Summary, Appendix A, “CLE Resources.”) “Dealing with Difficult People” was the most popular topic for all types of practices except law firms with two or more employees. Their top selection was

“Stress Reduction” with “Dealing with Difficult People” as a close second. “Stress Reduction” was the second-place answer for all other types of practices. “Work-Life Balance” was also a popular selection for all types of practices, although it was slightly less popular with solo practitioners (56%) as compared with everyone else (approximately 65%). “Work-Life Balance” was the most popular topic for those in practice 0-5 years (79%), followed by “Stress Reduction” at 75%. “Dealing with Difficult People,” “Stress Reduction,” and “Work-Life Balance” were the clear top three choices regardless of number of years in the profession.

Lawyers also took the opportunity to write in about CLEs that they would like to have offered but do not have adequate access to currently. As noted in the Summary, tiered-based CLE on family law experience was suggested and strong suggestions were made to NYSBA to engage in anti-racism work, advocate for a 40-hour work week, closing the gender gap, and building understanding for lawyers with learning disabilities – as more impactful ways to combat attorney ill-being than a CLE. In fact, one lawyer wrote, “Everything that the profession likes to talk about in terms of well-being is a band-aid to treat the symptoms rather than facing up to the **underlying causes** of so much depression and misery – we shouldn’t need hotlines and mindfulness trainings, etc. in the first place, and we should ask ourselves what has gone so very wrong that we find ourselves in this position.”<sup>182</sup> (emphasis supplied)

In fact, many lawyers commented that CLE is just one more obligation to place on a lawyer and it implicitly blames the lawyer for the inability to cope with the stress of a profession without boundaries. One comment which was identified during the data analysis was a lawyer’s advice to:

Push back on clients’ unrealistic expectations and create a culture of protected time for attorneys. If you want to get a sense of what junior attorneys think of their law firms’ well-being initiatives, look up the countless memes online about how law firms require attorneys to bill 80-hour weeks and then encourage them to attend a mental health webinar, believing this fulfills their duty to look after attorneys’ mental health. Well-being CLEs and free meditation apps are band-aid solutions that ignore the root issue, which law firms refuse to address.<sup>183</sup>

### Evolving Landscape for CLE for Attorney Well-being – Short and Long Term

It is evident that there are several competing principles at play in the complex issue of attorney well-being and CLE. The first is that we do need to reduce stigma and find ways to encourage attorneys to receive the information they need which might save their lives or others. The second is that acquiring CLE credits can place a significant burden on lawyers depending upon their socio-economic status and size of law firm and increasing that load should not be done without

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<sup>182</sup> NYSBA Attorney Well-being Survey 2020, Summary, App. A.

<sup>183</sup> *Id.*

due consideration to that burden. The third is that lawyers are clear that placing the responsibility for their individual well-being solely on them ignores the overarching professional culture which creates the ill-being at the outset.

#### CLE Offerings at NYSBA and Credit Hours Available in the Immediate Term:

NYSBA should consciously focus on the routine development and offering of CLE programming to raise education and awareness for attorneys on a broad spectrum of well-being topics with the goal of making an immediate impact on attorneys in these areas as opposed to having a sole focus of long-term regulatory change with respect to CLE. As noted, the ability to change the mandatory CLE requirements does not rest with NYSBA but is a complex process which could encompass years of advocacy efforts by the City Bar, NYSBA and local bar associations. Relatedly, the addition of a Diversity, Equity and Inclusion (DEI) mandatory credit hour was a hard-fought victory. And it is our understanding that the CLE Board is in the midst of considering a mandatory technology credit hour even before addressing well-being.

Therefore, as long-term efforts remain on-going, the Task Force seeks to address what can be done immediately, at the NYSBA level, to address the concerns about access to CLE, stigma, cost, and other barriers to entry cited by lawyers within the NYSBA Attorney Wellbeing Survey. The CLE initiative at NYSBA shall be “Reducing Stigma and Increasing Access” and should include:

- a. Free well-being, mental health and substance use disorder programs offering CLE on a regular cycle;
- b. Require the incorporation of well-being programming as a “best practice” into section and committee CLE programs at NYSBA, especially half- and full-day programs, as well as section destination meetings;
- c. Make well-being CLE programming a standard inclusion in Bridging-the-Gap CLEs, which are often well-attended by young and new practitioners; and
- d. Offering a well-being CLE program as a standard offering for all newly-admitted attorneys.

#### Immediate Advocacy Efforts by NYSBA to the CLE Board

NYSBA, ideally through a newly-created standing Well-Being Committee, should seek advocacy efforts to explore modifications to the current CLE regulations with New York State’s CLE Board. These efforts should include, but not be limited to:

- a. Allowing for at least a minimum amount of skills development time with CLE credit offered for programs, as opposed to the current landscape where only presentations of theory are permissible for credit;

- b. Seeking to broaden programming to include credit for solutions-based programming; and
- c. Broadening well-being CLE programs offering ethics credit beyond simply substance abuse control, to consolidate with public trust and ethics work focusing on prevention for attorneys from needing to enter a diversionary program.

#### Expanding NYSBA Offerings for Education Beyond CLE

While it is extremely important that well-being programs are routinely offered on diverse topics that include CLE credit, NYSBA should highlight and make available programs, offerings, workshops and retreats which provide attorneys with an opportunity to explore the complex issues of attorney well-being, including how well-being intersects with diversity, equity, inclusion, disability, etc. NYSBA should not be restricted by accreditation issues, understanding that not all worthy programs must necessarily carry CLE credit and stand-alone programs offer invaluable collegiality such as peer-to-peer support groups, the Lawyer-to-Lawyer Wellbeing Roundtable, and other such opportunities, which help to remove stigma and increase vulnerability among colleagues. While many programs will carry credit and advocacy efforts will be ongoing to expand the type of program that may receive accreditation, NYSBA should offer programming, regardless of CLE credit status, that raise education and awareness for attorneys on issues of well-being.

#### Self-Care as a Mandate: Physical Well-being for Lawyers

Responses to NYSBA's Attorney Well-being Survey<sup>184</sup> clearly demonstrate that the system and the culture of law are broken. As we work to repair and replace that which is broken, there is a significant role for lawyers, as individuals, to play in our own self-care and well-being. It is imperative that we do so.

Undeniably, the COVID-19 pandemic brought an already sedentary practice to a standstill. Lawyers and law students worked or studied remotely. Students abruptly found themselves in virtual classrooms, without the normal supports of study groups and office hours, facing exams for which they felt ill-prepared. Lawyers left their offices and practiced via Zoom. Lawyers and law students, who often report high levels of stress due to work and study pressures, have spent more than 16 months tethered to their home-office chairs, hunched over a laptop. This has resulted in increased stress. Modern humans are not evolutionarily suited for unremitting nonphysical stress.

Work stress sets off the fight or flight reaction. Our bodies respond as if work stress were a physical threat from a predator and prepares to react physically. The increased levels of

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<sup>184</sup> See NYSBA Attorney Well-being Survey 2020, Summary App. A.



adrenaline and cortisol cause increases in blood pressure, heart rate, and blood sugar levels.<sup>185</sup> If there were a physical threat, we would act by either fighting or running. But there isn't. We have to sit and write the brief, respond to the emails and then move on to the next pressing matter. The threat perceived never ends.

### *Stress and Sedentary Workstyle*

As stress builds, we can become anxious, irritable, and depressed. We might eat more to maintain our energy levels, which may become a factor in developing high blood pressure, heart disease, difficulty sleeping, hormonal imbalances and obesity, as well as diabetes from high blood sugar. The sedentary nature of legal work – sitting for extended periods during the day in front of the computer, talking on the phone and attending meetings – adds to the health problems caused by stress. Sitting too much by itself can be a factor in heart disease, cancer, and diabetes.<sup>186</sup> A recent study found that sitting for more than eight hours a day was detrimental to mental health. Those who sat for less than eight hours a day presented lower depression scores.<sup>187</sup>

Traditionally, bar associations have sought to help members suffering from depression, alcoholism or substance abuse through lawyer assistance programs. These programs, however, do not deal with the physical impacts of lawyer stress. Yet, stress has physical effects on the mind and body, its impact is susceptible to being treated holistically, by including physical activity, which can help to mitigate the mental and physical effects.

### *A Holistic Approach to Health: Mind, Body, Spirit*

NYSBA has become a leader in recognizing the importance of attorney well-being.<sup>188</sup> Under this holistic approach to stress, regular physical activity is acknowledged as effective in improving anxiety and depression.<sup>189</sup>

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<sup>185</sup> Bruce McEwan, *Physiology and Neurobiology of Stress and Adaptation: Central Role of the Brain*, [/journals.physiology.org/doi/full/10.1152/physrev.00041.2006](https://journals.physiology.org/doi/full/10.1152/physrev.00041.2006).

<sup>186</sup> <https://pubmed.ncbi.nlm.nih.gov/27475271/>.

<sup>187</sup> Paers, Kola-Palmer, De Azevedo, *The Impact of Sitting Time and Physical Activity on Mental Health During COVID-19 Lockdown*, Sports Sciences for Health, June 10, 2021. <https://link.springer.com/article/10.1007/s11332-021-00791-2>.

<sup>188</sup> NYSBA's work was instrumental in the courts' deleting the mental health questions from the Character and Fitness portion of the Application for Admission to the Bar in New York. See The Impact, Legality, Use and Utility of Mental Disability Questions on the New York State Bar Application, a report by the Working Group on Attorney Mental Health of the New York State Bar Association, Nov. 2, 2019. <https://nysba.org/report-of-the-working-group-on-attorney-mental-health/>. In 2019, NYSBA devoted its entire Journal to the question of attorney wellness. NYSBA Journal, *Wellness = Work + Life + Balance*, Aug. 2019, Vol. 91, No. 6.

<sup>189</sup> A. Ströhle, Physical activity, exercise, depression and anxiety disorders. J. Neural Transm. 116, 777 (2009). <https://doi.org/10.1007/s00702-008-0092-x>.

A study by Lawrence Krieger and Kennon M. Sheldon<sup>190</sup> found that subjects who engaged in regular exercise had greater well-being than other subjects and reported greater satisfaction in areas such as feelings of autonomy, relatedness and competence. The Centers for Disease Control and Prevention (CDC) notes that “[e]ven one session of moderate-to-vigorous physical activity reduces anxiety, and even short bouts of physical activity are beneficial.”<sup>191</sup> In addition to these mental health benefits, regular physical activity improves physical health. According to the CDC, people who are physically active for 150 minutes a week have a 33% lower risk of all-cause mortality than those who are physically inactive.<sup>192</sup>

Physical activity may be more important in light of the COVID-19 pandemic and its aftermath. COVID has had a great impact on the legal profession as lawyers began working from home, surrounded by their families, the demand for legal services dropped and the economy faltered.<sup>193</sup> Law students had to study remotely and recent graduates faced uncertain job prospects and postponement of the bar exam. April Campbell of the Association of Legal Administrators (ALA) characterized associates in the 25-to-45 age range as being “at the breaking point.”<sup>194</sup>

A wide range of maladies and conditions can be cured or improved if one becomes more active. For example, physical activity has been proven to lower blood pressure, lower blood sugar, improve cholesterol levels, and increase insulin sensitivity. Regular physical activity cuts the risk of heart attack, stroke, diabetes, certain types of cancer such as colon and breast cancers, osteoporosis and fractures, obesity, and certain types of dementia and cognitive decline.<sup>195</sup> Physical activity helps build muscle mass, increase functional strength and improve sleep quality and overall quality of life.<sup>196</sup> It has been shown to slow the aging process and prolong lifespan. People who are physically active have a much lower risk of all-cause mortality, but benefits start to accumulate with any amount of moderate or vigorous physical activity.<sup>197</sup> Further, regular physical activity also strengthens the immune system, making it better able to fight off infection, including from COVID-19. It also prevents one from developing the underlying conditions of

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<sup>190</sup> Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 Geo. Wash. L. Rev. 554 (2015); [https://ir.law.fsu.edu/articles/94\\_](https://ir.law.fsu.edu/articles/94_)

<sup>191</sup> CDC Physical Activity Basics, <https://www.cdc.gov/physicalactivity/basics/index.htm>. See also CDC Physical Activity Guidelines, 2d Ed., <https://www.cdc.gov/physicalactivity/basics/adults/index.htm>. Strength training is generally considered to be anaerobic exercise. It involves short bursts of activity involving maximum power such as lifting weights, calisthenics, and sprinting, which raises one’s overall metabolism, which burns calories.

<sup>192</sup> See *id.*, CDC Physical Activity Guidelines.

<sup>193</sup> Debra Cassens Weiss, *More work shifted to law partners as demand for legal services dropped, new report says*, ABA J., Aug. 13, 2020; <https://www.abajournal.com/news/article/more-work-shifted-to-law-partners-as-demand-for-legal-services-dropped-report-says>.

<sup>194</sup> Conversation between Working Group on Physical Well-being Chair Robert Herbst and April Campbell, Executive Director of ALA on August 4, 2020.

<sup>195</sup> CDC Physical Activity: Active People Healthy Nation [https://www.cdc.gov/physicalactivity/downloads/Active\\_People\\_Healthy\\_Nation\\_at-a-glance\\_082018\\_508.pdf](https://www.cdc.gov/physicalactivity/downloads/Active_People_Healthy_Nation_at-a-glance_082018_508.pdf).

<sup>196</sup> CDC Physical Activity Guidelines, 2d Ed., <https://www.cdc.gov/physicalactivity/basics/adults/index.htm>.

<sup>197</sup> *Id.*

obesity, high blood pressure, heart disease, and diabetes, which the CDC warns can make infection with the coronavirus more severe or even fatal.<sup>198</sup>

### *Making Time for Physical Activity*

Guidelines released by the Department of Health and Human Services (HHS) recommend at least 150 minutes of moderate intensity aerobic or 75 minutes of vigorous intensity physical activity or an equivalent combination each week.<sup>199</sup> On November 26, 2020, the World Health Organization (WHO) released its own updated guidelines, in part to combat inactivity related to COVID-19 and to prevent certain underlying conditions that increase the severity of infection with COVID-19.<sup>200</sup> The guidelines recommend that adults do at least 150–300 minutes of moderate-intensity aerobic physical activity; or at least 75–150 minutes of vigorous-intensity aerobic physical activity; or an equivalent combination of moderate- and vigorous-intensity activity throughout the week and should also do muscle-strengthening activities at moderate or greater intensity that involve all major muscle groups on two or more days a week.

Examples of aerobic activity include walking, running, swimming, and cycling.<sup>201</sup> The CDC also recommends that adults do two or more days a week of moderate or high intensity strength training exercises that use the major muscle groups.<sup>202</sup>

### *Making YOU a Priority*

The CDC reports that only 53.3% of adults meet the guidelines for aerobic activity and only 23.2% meet the guidelines for both aerobic and muscle strengthening activity.<sup>203</sup> The actual numbers may be much lower, as the figures come from self-reported data, which tend to be biased upwards.<sup>204</sup> According to the Bureau of Labor Statistics, only about 19% of the population was engaged in sports and exercise in 2017.<sup>205</sup> The reasons are numerous – cost, lack of time, lack of facilities, inconvenience, lack of motivation, a lack of energy, child care, family obligations, boredom when doing certain activities, injuries or other conditions which make

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<sup>198</sup> See CDC at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>; US Dep't Health & Human Servs., <https://health.gov/our-work/physical-activity/current-guidelines/scientific-report>.

<sup>199</sup> <https://jamanetwork.com/journals/jama/fullarticle/2712935>.

<sup>200</sup> World Health Organization 2020 Guidelines on Physical Activity and Sedentary Behaviour, <http://dx.doi.org/10.1136/bjsports-2020-102955>.

<sup>201</sup> Aerobic activity, or “cardio,” conditions the cardiovascular system by increasing the body’s demand for oxygen, raising the rate of breathing and heart rate.

<sup>202</sup> CDC Physical Activity Guidelines, 2d Ed., <https://www.cdc.gov/physicalactivity/basics/adults/index.htm>.

<sup>203</sup> <https://www.cdc.gov/nchs/fastats/exercise.htm>.

<sup>204</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0036345>.

<sup>205</sup> See Physical Activity: Statistics and Facts, citing Bureau of Labor Statistics Report, <https://www.statista.com/topics/1749/physical-activity/>; <https://www.statista.com/statistics/189562/daily-engagement-of-the-us-population-in-sports-and-exercise/>.

certain activities painful, a lack of perceived results, and not wanting to do certain activities either alone or in the presence of others.<sup>206</sup>

The innate nature of the legal profession may cause the rate of lawyer participation to be as low as or lower than for Americans generally.<sup>207</sup> Those in the legal profession work long hours, often in high-pressure situations. Lawyers were taught to outwork everyone else, whether by preparing more thoroughly than their opponents a case, by billing more hours than their colleagues or by spending more time on client development. Then there is the fact that law firms make money by having lawyers at their desks working. The bottom line discourages lawyers from taking time off. Thus many fear that they would be viewed negatively by their peers and by more senior attorneys, who could affect their careers, if they took time away from the office to engage in self-care. This too can be a barrier, making the act of taking the time to improve their health an additional source of stress. Lawyers may be unwilling to take the time for self-care or may even be afraid to reveal a need to do so as it may be seen as a sign of weakness.

Therefore, the nature of being under stress may itself inhibit lawyers from participating in physical activity. When people are under stress, they will generally prefer the comfort of inactivity and avoid exertion.<sup>208</sup> Avoidance of physical activity becomes the default.

### *Finding a Community and What Works*

In looking for ways to increase participation in physical activity, research shows that the three most important tools are: (1) making social connections, (2) allowing the person to feel a sense of competence, and (3) helping the individual to find activities that are truly and intrinsically enjoyable.<sup>209</sup>

Social connection is in our DNA. Certain neurophysiological mechanisms developed that caused our hunter-gatherer ancestors to work together cooperatively, to increase their chances of survival.<sup>210</sup> Research suggests that humans are biologically tuned to be social creatures, and that social bonding helped to quiet the fight-or-flight response.<sup>211</sup> As such, joint participation in a moderately intense physical activity has been shown to improve group cohesion.<sup>212</sup> Group cohesion may also facilitate participation in physical activity. That may explain the popularity of group-oriented activity programs such as CrossFit or spin class. Group support may help people

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<sup>206</sup> Felipe Reichert, et al., *The Role of Perceived Barriers to Engagement in Leisure-Time Physical Activity*, Am. J. Pub. Health, Oct. 2011, <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2005.070144>.

<sup>207</sup> This is based on the observations of the Physical Well-being Working Group's chair Robert S. Herbst. He discussed this in his article *The Case for Attorney Wellness*, NYSBA J. (Mar. 2020) and more generally in *Attorney Wellness in a Nutshell*, NYSBA J. (Aug. 2019).

<sup>208</sup> Matthew A. Stults-Kolehmainen & Rajita Sinha, *The Effects of Stress on Physical Activity and Exercise* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3894304/>.

<sup>209</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6549388/>.

<sup>210</sup> Nigel Nicholson, *How Hardwired is Human Behavior*, Harvard Bus. Rev. (July-Aug. 1998)

<sup>211</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1868418/>.

<sup>212</sup> Social Bonds and Exercise: Evidence for a Reciprocal Relationship, PLoS One. 2015; 10(8): e0136705. Published online 2015 Aug 28. doi: 10.1371/journal.pone.0136705.

push themselves and overcome their reluctance to join, while their entry increases group cohesion and accountability for participation.<sup>213</sup>

### *Making Physical Health a Priority: Our Culture*

Social support does not necessarily mean having others in the gym or on the track sweating alongside each other. Rather, lawyers need to know that their taking time away from work for self-care will have the approval and encouragement of their superiors and colleagues and will not have negative consequences. In a profession where absolute commitment is demanded, “the culture of the law industry” must “consider well-being and make it a priority.”<sup>214</sup>

Having the right social support and encouragement from law firm leadership can strengthen law firm/legal department cohesion and help lawyers to spend some portion of their time and energy on physical activity, which they likely would not do on their own. Firm and bar leaders must sincerely demonstrate that physical health is a priority. A lawyer who engages in regular physical activity is healthier, and therefore a better and more productive lawyer. Workplace wellness programs in general have also been shown to cut costs. An analysis of well-being programs found that employer medical expenses decrease \$3.27 and absenteeism related costs decrease \$2.75 for every dollar spent on the programs.<sup>215</sup> According to British researchers, workers who spent 30 to 60 minutes in physical activity at lunchtime reported an average performance boost of 15%. Sixty percent of workers saw improved time management skills, mental performance, and ability to meet deadlines on days they exercised.<sup>216</sup> Law firms have seen significant gains in billable hours from reduced absenteeism and have received a positive return on investment from the costs of having a well-being program.<sup>217</sup>

Moreover, having a well-being program will also aid lawyer recruitment and retention. Colleges now feature wellness centers instead of gyms and many law schools have well-being curricula and activities which teach law students ways to handle stress. Young associates are more willing to come forward and avail themselves of assistance out of concern for their well-being.<sup>218</sup>

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<sup>213</sup> See *id.*; Alex Abad-Santos, *After the Coronavirus Pandemic, Group Fitness Will Never Be the Same*, Vox.com (May 18, 2020).

<sup>214</sup> Kathryn Fyfe, *Legal Culture Must Change for Attorneys to Thrive*, NYSBA Journal, 22, 23 (Sept./Oct. 2020).

<sup>215</sup> Erin Brereton, *Constructing the Ideal Health and Wellness Initiative*, Legal Mgmt. (Jan. 2019).

<sup>216</sup> *Exercising at Work and Reported Self Performance*, Int’l J. Workplace Health Mgmt. 1(3):176-197, Sept. 2008.

<sup>217</sup> A large international law firm whose well-being program includes a fitness center at its New York office with strength and cardio equipment, in-person and virtual fitness classes, personal training, and physical therapy has reported to this Working Group that the prevalence rates fell for hypertension by 36%, elevated blood sugar by 28%, and high stress levels by 49%. Firm members report 44% fewer work loss days due to illness. In 2019, the firm received a 2.2:1 return on investment based upon reduced time away from productive activity resulting in billable hours compared with the cost of operating the program. For a discussion of the benefits of well-being programs to law firms’ bottom lines see generally the “Business Case for Change” section of this Report. It is adapted from Jarrod F. Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 Vill. L. Rev. 361 (2020).

<sup>218</sup> NYSBA Attorney Well-being Survey 2020 Summary, App. A.

Further, polls show that millennials value work life balance over increased compensation.<sup>219</sup> To take advantage of these trends, firms are pointing to their well-being programs in their recruiting materials and as part of their benefits package.

Solo and small firm practitioners, who must rely on themselves or a small group of colleagues, need the support and encouragement of the legal community to engage in self-care. They should understand that putting their clients ahead of their own well-being can damage their practice and lead to ill health. Instead, they should make themselves their most important client; otherwise, their other clients will suffer. Taking part in physical activity will help keep them grounded and reduce the stress levels that many report.<sup>220</sup>

Perhaps the most important factor in increasing participation in physical activity is whether the chosen activity is intrinsically motivating and enjoyable. In our society, the general concept of being physically active comes with a lot of baggage.<sup>221</sup> Physical activity is seen as “exercise,” a word which, for many, has negative connotations – especially for those who were not very successful in gym class. The idea exercise success is out of reach is perpetuated by the exercise videos and infomercials that show toned, enthusiastic people moving in an accomplished manner, which can be hard to achieve.

Also, the fitness industry tends to emphasize improving sports performance, not health. When newcomers enter a gym and see gym-goers pushing themselves with intense effort under the mantra of “no pain, no gain,” that can make the notion of physical activity seem unattractive, unpleasant, and unwelcoming. It is something for athletes – not for them.

In its updated Guidelines, the WHO stopped using the term “exercise” and instead concentrated on physical activity, which it defined as “any bodily movement produced by skeletal muscles that requires energy expenditure. Physical activity refers to all movement including during leisure time, for transport to get to and from places, or as part of a person’s work.”<sup>222</sup>

We can harness our natural drive to seek comfort when under stress. All movement, even movement which is not seen as traditional exercise but which is still enjoyable and feels good to the body, such as riding a bicycle to the store or gardening, will improve health as long as it is sufficiently intense.<sup>223</sup> When something is intrinsically pleasing, people will default to it for

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<sup>219</sup> See Reich, *supra*, note 217; Ginger Christ, *Millennials Value Work Life Balance Over Money*, EHS Today (Apr. 12, 2016).

<sup>220</sup> NYSBA Attorney Well-being Survey 2020, Summary, Appendix A.

<sup>221</sup> Timothy D. Nelson, *Negative Attitudes Toward Physical Activity: Measurement and Role in Predicting Physical Activity Levels Among Preadolescents*, J. Pediatric Psych., Vol. 35, Issue 1, Jan./Feb. 2010, pp. 89–98, <https://academic.oup.com/jpepsy/article/35/1/89/918283>.

<sup>222</sup> World Health Organization 2020 Guidelines on Physical Activity and Sedentary Behaviour <http://dx.doi.org/10.1136/bjsports-2020-102955>

<sup>223</sup> US Dep’t Health & Human Servs., <https://health.gov/our-work/physical-activity/current-guidelines/scientific-report>; CDC Physical Activity Guidelines, 2d Ed., <https://www.cdc.gov/physicalactivity/basics/adults/index.htm>; see



comfort.<sup>224</sup> After a long and stressful day of meetings and phone calls, answering e-mails, legal research or marking up documents, they will seek out taking a walk in the fresh air. Then, as they do the activity, their body will produce endorphins and endocannabinoids which will increase their enjoyment and feeling of well-being and lower their stress level. The more often they do the activity, the more they will enjoy it as their body adapts and they develop an overall sense of well-being from being fit. They will then want to repeat the activity and they will make it a priority.<sup>225</sup>

### *Physical Fitness Survey Results*

The NYSBA Task Force Survey on Attorney Well-Being<sup>226</sup> asked lawyers, “What resources and member benefits would you like the NYSBA to provide to help you improve your physical fitness and health?” The results showed that of those responding:

- 18.3% wanted discounts on gym memberships, training sessions, equipment, etc.
- 10.6% wanted resources such as classes, information, programs, and CLE on nutrition, exercise, weight loss, and other well-being topics.<sup>227</sup>
- 7.4% wanted programs for stress management such as yoga and meditation classes.
- 5.47% wanted coaches, counselors, trainers or therapists, including mental health therapists.
- 5.2% wanted opportunities for peer support and to make social connections which would help them be physically active.

Perhaps most telling, were the answers to the question asking about ways to improve lawyers’ physical health: 9.2% of respondents saw a connection between their physical and mental health expressly used the term “mental health” in their answer. Overall, 23% of the answers indicated that attorneys were looking for ways to reduce their stress and improve their mental health.<sup>228</sup> The holistic approach is intuitive to lawyers. Now they need a culture that supports a holistic approach to help lawyers get – and stay – fully well.

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Tanner Garrity, *Does Yardwork Count as Exercise?*, InsideHook, Apr. 24, 2020, <https://www.insidehook.com/article/health-and-fitness/yard-work-gardening-exercise>,

<sup>224</sup> W. Jack Rejeski & Jason Fanning, *Models and Theories of Health Behavior and Clinical Interventions in Aging: a Contemporary, Integrative Approach*, Clin Interv Aging. 2019; 14: 1007–19, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6549388/>; Self Determination Theory, APA PsycNet, <https://psycnet.apa.org/record/2011-21800-020>

<sup>225</sup> Robert S. Herbst, *A Winter Wellness Wonderland*, NYSBA J., Jan. 2020, p. 35.

<sup>226</sup> See NYSBA Attorney Well-being Survey 2020, Summary App. A.

<sup>227</sup> Several respondents answered Question 13 by saying that the number of required CLE hours should be reduced because they are non-compensated time and take away from time that could be spent with family or on self-care.

<sup>228</sup> Notably, Question 27 of the Survey asked, “What topics, skills, continuing training or programs do you believe would be beneficial CLE in the area of well-being (check all that apply).” The answers reflected the overstressed state of the profession: 45.53% chose Physical Fitness & Mental Clarity (including yoga) and 40.41% selected Nutrition for Busy Lawyers, while 69.53% asked for CLE on Stress Reduction, 66.02% sought programs on Work-Life Balance, and 48.59% chose CLE on Mental Health Issues.



## NYSBA: Navigating the Wheel of Well-Being for Lawyers; Recommendations for Change

We can now see possibilities that we could not see two years ago. Covid-19, the closures and the lockdowns brought the situation to a head. Not because we didn't already know that reform is needed, we just didn't know that change was possible. And now we know. Out of necessity, we made enormous changes in how law firms, law schools, court systems, government agencies and legal services operate. NYSBA formed task forces, held regular informational meetings, and offered many resources to lawyers who navigated the shutdown in real time. We made these changes quickly; we had to.

Now, as we collectively catch our breath, we have begun to look at our assumptions about our profession, our health and well-being – the law school model, the reward structure of law firms, access to resources, the role of the judiciary, ethics and triggers for professional problems – with the understanding that this will reveal what we value.

NYSBA is committed to leading the way for a profession in change, especially as it pertains to our fitness to practice. Through the Task Force process, we have come to understand that attorney well-being is an individual's concern but a collective responsibility. Such issues are pervasive in law and must be addressed on multiple, inter-related levels for real, meaningful change. We must make these changes with a collective, sustained effort.

Nationwide, bar associations are highlighting and instituting programs to address the attorney well-being crisis. NYSBA, along with other commercial CLE providers, has begun to regularly offer well-being programs and the New York delegation has supported the ABA resolution for well-being. While NYSBA is a voluntary bar association state and cannot mandate state-wide programs to address the issues raised in this Report, New York bar associations represent the collective voice of their member attorneys and have an obligation to address member concerns as well as ensuring the protection of the public. NYSBA acknowledges and accepts its critical position and role for state-wide efforts to address attorney well-being issues.

Therefore, the Task Force on Attorney Wellbeing submits the following recommendations to be considered by the NYSBA House of Delegates:

| Recommendations for NYSBA                                      | Suggested Considerations and Implementations   |
|--|--|
| Formation of a NYSBA standing Committee on Attorney Well-Being | Tasked with (a) the development and implementation of well-being programs and initiatives for all New York attorneys and law students, (b) the state-wide coordination and advancement of well-being programs and resources for bar associations, the judicial system and employers, and (c) the encouragement of a “culture change” in which the stigma and other barriers to participation in well-being programs are lowered. |

|                                  |  |
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| Well-Being Committee Composition | <p>NYSBA President may consider the following criteria for appointment to a newly-formed Committee:</p> <ul style="list-style-type: none"> <li>a. A representative from each New York State LAP.</li> <li>b. Representatives from diverse areas of New York State, including non-lawyer well-being professionals.</li> <li>c. Representatives from newly-admitted and senior attorneys.</li> <li>d. Other stakeholders such as OCA, NY law schools and other local and affinity bar associations.</li> </ul>   |
| Well-Being Committee Mission     | <p>NYSBA may wish to consider the following initiatives for the work of the Committee on Well-Being:</p> <ul style="list-style-type: none"> <li>a. Implementation of the Task Force recommendations from the Report.</li> <li>b. The role of the current Lawyer Assistance Committee for cross-Committee initiatives.</li> <li>c. Develop outreach programming for attorneys who have been formally disciplined, with goal of rehabilitation.</li> <li>d. Work with LAPs, bar associations and others to advocate to NYS CLE Board regarding possible modifications of CLE regulations including: <ul style="list-style-type: none"> <li>i. Skills development programs with CLE credit; currently, only presentations of theory offer credit;</li> <li>ii. Include credit for solutions-based well-being programming, rather than focusing on the negative aspects of ill-being; and</li> <li>iii. Broaden well-being CLEs offering ethics credit to include public trust and ethics work, focusing on prevention rather than the need for diversionary programs.</li> </ul> </li> <li>e. Develop online resources and materials on topics which support well-being and the importance of self-care.</li> <li>f. Develop and promote a “Law Firm Roadmap for Well-Being Best Practices” for law firms or other legal employers in offering social opportunities which enable people to enjoy shared physical activity.</li> <li>g. Collaborate with the court system (OCA) to create a referral network of clinicians with specific experience</li> </ul> |

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|                             | dealing with the legal profession, such as North Carolina's Bar Cares program and Massachusetts' LOMAP.   |
| NYSBA Well-Being Priorities | <p>As overall well-being policy and support, NYSBA may wish to consider:</p> <ul style="list-style-type: none"> <li>a. Member benefits which facilitate participation in physical activity and other means of self-care.</li> <li>b. Consideration of mentoring in professional liability areas and civility.</li> <li>c. Devote part of Law Practice Management programming to educating on the business case for lawyer wellness.</li> <li>a. Budget for participation in national programs and conferences on attorney well-being for the Committee.</li> </ul>  |
| NYSBA LAP Funding Advocacy  | <p>NYSBA House of Delegates should consider a resolution which establishes such a priority for NYSBA's LAP and urges a similar commitment for other LAP programs and a commitment by OCA (see Appendix E). The Committee should assist in addressing:</p> <ul style="list-style-type: none"> <li>a. The LAPs as the foundation of other well-being programs.</li> <li>b. Ensure access to at least one clinician at each LAP in New York.</li> <li>c. Examine past and current funding, sustainability of existing LAPs (NYSBA, NYC Bar, Nassau County Bar).</li> <li>d. Consider supporting Lawyer Assistance Programs in other New York bar associations.</li> <li>e. Develop and present CLE programming on attorney well-being, emphasizing well-being as a component of compliance with the Rules of Professional Conduct; maintain dedicated webpage to educate law firms and lawyers about mental health resources and develop free or low-cost counseling opportunities.</li> </ul> |

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| <p>NYSBA and CLE</p>                                 | <p>NYSBA could create a signature CLE initiative entitled “Reducing Stigma and Increasing Access” which would include:</p> <ul style="list-style-type: none"> <li>a. Free well-being, mental health and substance use disorder programs offering CLE on a regular cycle;</li> <li>b. Require incorporation of well-being programming as a “best practice” into NYSBA section and committee CLEs, as well as at section destination meetings;</li> <li>c. Make well-being CLE programming a standard inclusion in Bridging-the-Gap CLEs; and</li> <li>d. Develop a well-being CLE program as a standard offering for all newly-admitted attorneys.</li> <li>e. Expand NYSBA offerings CLE, such as workshops and retreats which allow attorneys to explore the complex issues of attorney well-being, as well as how well-being intersects with diversity, equity, inclusion, disability, etc.</li> </ul>  |
| <p>NYSBA collaboration with New York law schools</p> | <p>NYSBA is in a leadership position to expand collaboration with all New York law school which may include:</p> <ul style="list-style-type: none"> <li>a. Meetings of wellness liaisons at law schools and legal employers.</li> <li>b. Co-host virtual programming across law schools and among State bar, law firms, public interest organizations, the judiciary and law schools.</li> <li>c. Develop a roundtable program (LAP) tailored to the law student audience; consider reintroducing NYSBA’s toolkit.</li> <li>d. Host yearly meetings between NYSBA LAP and deans of students of all NY law schools to foster statewide collaboration in law school well-being.</li> <li>e. Offer mental health training focused on detection and response for law faculty, staff, administrators throughout the state (in collaboration with Mental Health First Aid).</li> <li>f. Create a wellness pledge for law schools and legal employers.</li> <li>g. Collaborate with law schools on programs to address student debt load and financial well-being, particularly within the context of pursuing public service or public interest positions in the State of New York.</li> <li>h. Convene quarterly meetings with affinity bar associations and the law schools in the State to discuss issues of diversity, equity and inclusion in legal education and the legal profession.</li> </ul> |

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|  | <p>Communication initiatives to include:</p> <ul style="list-style-type: none"><li>a. Stories of members of the legal profession who are prioritizing their holistic health and well-being on state bar websites, programming, and materials.</li><li>b. Educate the legal profession on NYSBA's effort to help eliminate mental health questions from the character and fitness application. Increase transparency for law schools and law students about how mental health diagnosis and treatment will affect bar admission through programming and information campaigns.</li></ul>   |
|  | <p>Curriculum initiatives to include:</p> <ul style="list-style-type: none"><li>a. Partner with leading faculty and practitioners statewide to develop a unit and/or teaching resources on wellness to be incorporated into professional responsibility courses required for graduation.</li><li>b. Advocate for New York to become a national leader in by requesting that the Court of Appeals and Board of Law Examiners require completion of a course on wellness as a condition of graduation from a NY-accredited law school and/or as a condition of licensure.</li><li>c. Provide and highlight no or low-cost well-being initiatives to address law schools' resource limitations.</li><li>d. Convene at least one meeting of the states' law school deans a year about how NYSBA can assist with achieving representational diversity in faculty hiring, consistent with each school's mission and goals, to address barriers to belonging that negatively impact student mental health.</li></ul> |

| Recommendations for Law Schools   | Suggested Considerations and Implementations   |
|---|--|
| <p><i>Collaboration Across the Profession:</i> Law student wellbeing is the collective responsibility of several constituencies: students, faculty, staff, the bench, and the practicing bar. The following recommended best practices can help each of these constituencies advance and achieve the collective goal.</p> | <ol style="list-style-type: none"> <li>1. Appoint a wellness liaison at each school to coordinate with NYSBA on issues of well-being. Liaisons to meet regularly to share current events, strategies, and program ideas.</li> <li>2. Develop a list of providers, vendors, campus and community partners for wellness programming and resources, to share with students and counterparts throughout the State – especially critical for law schools in more remote parts of the State.</li> <li>3. Collaboration with local law schools and professionals about financing a legal education, information that may serve to lessen the stresses relating to financial burdens.</li> <li>4. Offer counseling services on site at the law school, if possible, preferably staffed by providers who have experience with the unique stressors of the law school experience.</li> <li>5. Host an LAP program as early as Orientation to reduce stigma, encourage help-seeking behaviors, and introduce students to resources and mentors in the profession.</li> <li>6. Develop programming focusing on marginalization of individuals of color, first-generation students, disabled students and students who are members of the LGBTQ+ community and the importance of diversifying the legal arena and having a sense of belonging. Work to eliminate the barriers to an affordable legal education that impact the numbers who make it to and through law school.</li> <li>7. Develop resources to support disabled students to lessen the negative impact on their mental state and wellness while in law school.</li> <li>8. Offer training to law students to support their fellow students, possibly in conjunction with legal employer professional development partners.</li> <li>9. Present wellness programs in partnership with members of NYSBA that reduce and address stigma, demystify the daily work of attorneys, and encourage and assist students in developing habits that help their health and well-being.</li> </ol> |

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| <p><i>Communication on Well-being:</i><br/>Reducing the stigma associated with mental health issues and giving law students and lawyers permission to make their well-being a priority are laudable aims that are more relatable and, thus, achievable when admired members of the profession share their personal stories of success and struggle.</p>  | <ol style="list-style-type: none"> <li>1. Encourage law schools to have a dedicated page on their websites that identifies wellness resources.</li> <li>2. Implement systems for students and faculty to share wellness concerns with responsible administrators or campus health professionals. For example, faculty awareness and reporting of excessive absences, which often signal an underlying wellness issue.</li> <li>3. Host special events commemorating mental health awareness days. Address well-being during orientation and reorientation programs, including a wellness-focused perspective on law school and wellness resources.</li> <li>4. Establish a culture of wellness throughout the institution – e.g., feature law faculty speakers at wellness-focused events, including faculty discussing their own struggles, would help remove the facade of perfectionism endemic to the culture of law.</li> </ol>  |
| <p><i>Curricular Innovations:</i><br/>The role of faculty governance over law school curriculum cannot be underestimated. Through their empowered governance and leadership functions, law school faculty can greatly influence and shift the culture of legal education, demonstrating that wellness is a valued priority of the legal academy and profession as a whole, not an “add-on” to be sacrificed for academic success or client and supervising attorney needs.</p> | <ol style="list-style-type: none"> <li>1. Proactively incorporate wellness into the curriculum through for-credit or non-credit bearing courses.</li> <li>2. Discuss mental health and substance use in Professional Responsibility courses as well as client counseling and clinical courses.</li> <li>3. Develop opportunities to discuss professional identity formation to encourage students to be mindful of their individual values, strive for a career path aligned with those values and promote self-awareness.</li> <li>4. Include lectures or a workshop series on wellness topics in both doctrinal and experiential courses throughout the curriculum.</li> <li>5. Promote well-being in the classroom by mindful attention to use of the Socratic method and engaging in conversations that raise awareness on issues of diversity, equity and inclusion.</li> <li>6. Acknowledge the impact of the lack of representational diversity at the podium, particularly in required doctrinal courses and commit to addressing this through examination of the composition of and charges to faculty appointments committees.</li> <li>7. Adopt learning outcomes and, possibly, technical or essential performance standards, specific to wellness (e.g., tools needed to promote personal and professional well-being).</li> </ol> |



| <b>Recommendations for Employment and Culture Change</b>  | <b>Suggested Considerations and Implementations</b>   |
|---|---|
| Promote attorney well-being as an ethical and professional obligation of lawyers, as well as a business imperative. | Attorney well-being: (i) reduces expensive turnover, results in higher client satisfaction and loyalty, higher productivity and profitability; and (ii) it is a core to a lawyer's Duty of Competence under the Rules of Professional Conduct; competent representation suffers when a lawyer's health declines.  |
| Develop a "Law Firm Roadmap" for Well-Being Best Practices  | <ol style="list-style-type: none"> <li>1. Creation of lawyer and staff well-being committees and strong mentoring programs and sponsorship programs;</li> <li>2. Cap billable hours and bonus availability no higher than 1800 hours; consider alternative billing arrangements and client expectation of value;</li> <li>3. Support taking full allotment of vacation time and parental leave/flexible work policies; actively encourage fathers to take parental leave;</li> <li>4. Sign the ABA "Well-Being Pledge for Legal Employers."</li> <li>5. Develop best practices tailored to the firm and institutionalize periodic HR assessment of attorneys' well-being, at least annually.</li> <li>6. Actively manage client expectations; create a formal "coverage" system to avoid disruption of services to clients.</li> <li>7. Establish discussion groups for confidential and safe forums for lawyers to discuss well-being issues.</li> <li>8. Encourage sabbaticals; emphasize the importance of HR intervention or involvement.</li> <li>9. Resources tailored to smaller firms and solo practitioners to developed by the NYSBA Well-Being Committee and LPM including coverage policies, programs on work/life balance, technology assistance, health/disability insurance affordability, student loan forgiveness, etc.</li> </ol> |
| <b>Recommendations for Courts</b>   | <b>Suggested Considerations and Implementations</b>   |
| In the Courtroom  | <ol style="list-style-type: none"> <li>1. Judiciary should make a greater effort to seek attorney input when establishing scheduling orders, when requests for virtual appearances are made and must be more flexible when valid attorney concerns call into question the feasibility of that schedule;</li> <li>2. Allow virtual appearances to continue for certain proceedings.</li> <li>3. Standardize the Rules of Court for particular courts within the Unified Court System (UCS) as a whole, to the greatest extent possible.</li> <li>4. Accommodations for attorneys with disabilities should include the opportunity to participate virtually.</li> </ol>   |

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|                          | <ol style="list-style-type: none"> <li>5. Assign attorneys at the earliest possible point in the courts that are highly charged arenas – i.e., family court, criminal court and housing court.</li> </ol>   |
| Well-Being and Diversion | <ol style="list-style-type: none"> <li>1. All Appellate Divisions to use diversion programs when disciplinary proceedings are brought against attorneys engaging in conduct due to issues with mental health, substance and alcohol abuse.</li> <li>2. Take steps to minimize the potential for an ignored complaint of professional misconduct/grievance; and</li> <li>3. Develop and implement mandatory pre-admission professionalism courses.</li> </ol>  |
| Well-Being and Education | <ol style="list-style-type: none"> <li>1. OCA to join NYSBA in supporting the tenets of the following Attorney Wellness Policy Statement (Appendix E).</li> <li>2. UCS to institutionalize services and policies relating to substance use, mental health and other addiction disorders, including education, training, peer support and access to treatment.</li> <li>3. Judicial training programs should stress the importance of judges treating members of the bar with dignity and respect; the challenges of mental health challenges and substance use disorders prevalent in the profession; and the ethical obligations to avoid even the appearance of bias.</li> <li>4. Provide court system leaders with specific objectives including, but not limited to: <ol style="list-style-type: none"> <li>a. A commitment to establish “wellness liaisons” in every District to act as initial points of contact;</li> <li>b. A commitment to offer and encourage attendance at regularly scheduled wellness programming throughout each District; and</li> <li>c. A commitment to set aside funding in each District’s annual budget to ensure consistent provision of wellness programs.</li> </ol> </li> </ol> |

## APPENDIX A

### New York State Bar Association Attorney Well-Being Survey (2020)<sup>229</sup>

#### *SUMMARY*

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<sup>229</sup> The Task Force engaged Spa City Consulting, LLC to evaluate the quantitative and qualitative information received given the volume of the responses and the complexity of the information to be analyzed. On March 7, 2021, the firm provided the Task Force with “The New York State Bar Association’s Well-Being Survey 2020: Selected Areas of Analysis Results,” which is the basis for this Summary.

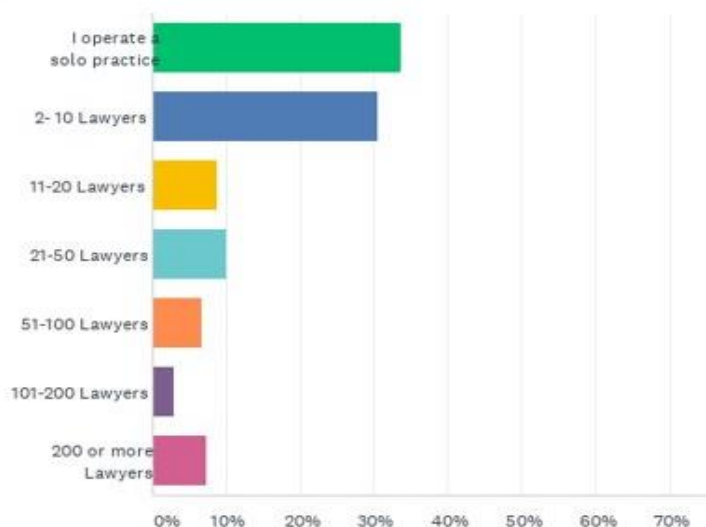


### Demographic Survey Results

Nearly two-thirds of all respondents (63%) practice law in either a solo or small firm (2-10) setting which is the same demographic of solo/small practice survey (63%) from the 2019 ABA Legal Technology Survey Report: Volume III: Law Office Technology.<sup>230</sup> It is also largely consistent with the statewide findings of the NYS Commission to Examine Solo and Small Firm Practice Report from 2006 which cited to the 2004 NYSBA Desktop Reference on The Economics of Law Practice in New York State,<sup>231</sup> as well as the 2019 NYSBA Report and Recommendations on Rural Justice Task Force Report.<sup>232</sup> In sum, New York State remains a solo and small practice jurisdiction where the vast majority of lawyers (respondents to the survey or otherwise) work in small offices settings; presenting unique challenges to their well-being as compared to their large firm or government counterparts.

### Q2: How many lawyers practice at your office?

Answered: 3,037 Skipped: 52



<sup>230</sup> [https://www.americanbar.org/groups/law\\_practice/publications/techreport/abatechreport2019/solosmallfirm19/](https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/solosmallfirm19/)

<sup>231</sup> <https://www.nycourts.gov/LegacyPDFS/IP/jipl/pdf/ssfreport.pdf> ; <https://www.nysba.org/app/uploads/2020/03/Report-and-Recommendations-of-the-Task-Force-on-Rural-Justice-as-of-3.18.2020.pdf>

<sup>232</sup> <https://www.nysba.org/app/uploads/2020/03/Report-and-Recommendations-of-the-Task-Force-on-Rural-Justice-as-of-3.18.2020.pdf>

## Report of the Task Force on Attorney Well-Being

### Q2: How many lawyers practice at your office?

Answered: 3,037 Skipped: 52

| ANSWER CHOICES            | RESPONSES |       |
|---------------------------|-----------|-------|
| I operate a solo practice | 33.72%    | 1,024 |
| 2- 10 Lawyers             | 30.59%    | 929   |
| 11-20 Lawyers             | 8.76%     | 266   |
| 21-50 Lawyers             | 10.11%    | 307   |
| 51-100 Lawyers            | 6.62%     | 201   |
| 101-200 Lawyers           | 2.83%     | 86    |
| 200 or more Lawyers       | 7.38%     | 224   |
| TOTAL                     |           | 3,037 |

Notably, an overwhelming majority of respondents are in private practice and are in their second-half of practice lives. The breakdown of (1) the type of office lawyers are practicing in and (2) the lawyers in the first 20 years of their professional experience is as follows:

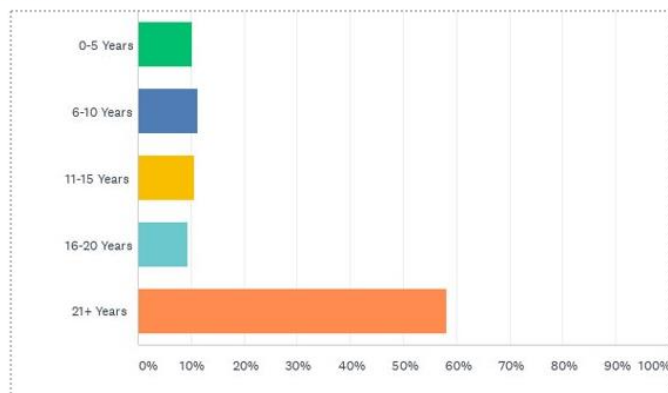
### Q3: What is the type of office in which you practice?

Answered: 3,074 Skipped: 15

| ANSWER CHOICES              | RESPONSES |       |
|-----------------------------|-----------|-------|
| Law Firm                    | 64.15%    | 1,972 |
| In-house counsel department | 6.96%     | 214   |
| Government or agency        | 10.51%    | 323   |
| Legal Aid                   | 5.43%     | 167   |
| Judiciary                   | 4.33%     | 133   |
| Other (please specify)      | 8.62%     | 265   |
| TOTAL                       |           | 3,074 |

### Q1: How many years have you been licensed to practice?

Answered: 3,076 Skipped: 13



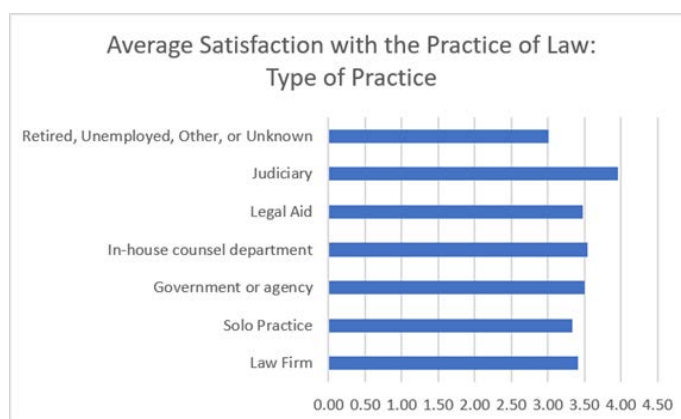
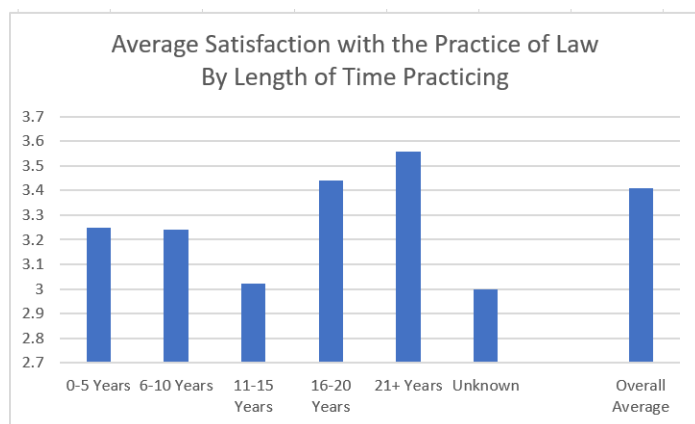
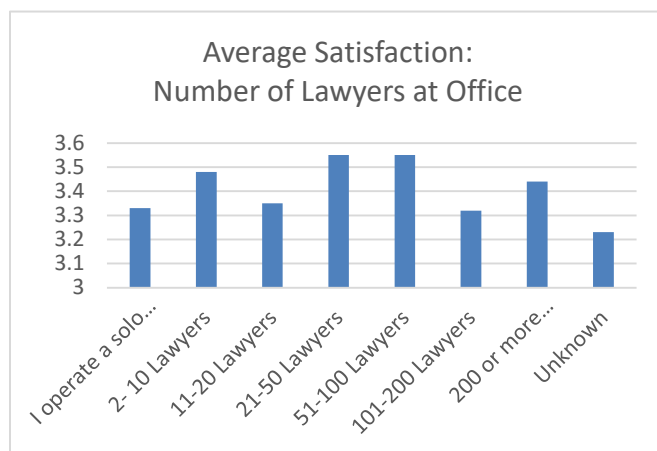
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| ANSWER CHOICES | RESPONSES |       |
|----------------|-----------|-------|
| 0-5 Years      | 10.34%    | 318   |
| 6-10 Years     | 11.28%    | 347   |
| 11-15 Years    | 10.76%    | 331   |
| 16-20 Years    | 9.36%     | 288   |
| 21+ Years      | 58.26%    | 1,792 |
| TOTAL          |           | 3,076 |

By cross-analyzing the well-being responses from the Survey against the demographic information of the respondents, a much clearer picture emerged regarding the disparate ways in which stress, anxiety, physical health, access to resources, and day-to-day impacts affected different cohorts of lawyers. Areas of examination included overall satisfaction, impacts on wellbeing, access to resources, program and skills training, physical and mental health, and the role of the judiciary. We also received feedback concerning the importance of wellbeing for lawyers and what lawyers believed can and should be done to address the problem. A summary of the Survey results is provided in the next section.

### Overall Satisfaction in the Practice of Law

We learned a great deal about the arc of a lawyer's career and how each stage affects individual lawyers differently. We learned that lawyer satisfaction was generally greatest for those in government or other service positions, such as Legal Aid, and that, for most lawyers, their level of satisfaction did not rise or fall in tandem with their salary. The lawyers who expressed the most satisfaction with their positions were further along in their careers.





We also learned that years 5-15 of practice are often the most stressful, peaking at around year 10. Here is where the disconnect between expectations of what lawyering would be like, and the reality of actual practice, sets in, which can trigger what is known as “professional identity crisis”<sup>233</sup>. At that point, lawyers often feel they have lost their place in the legal system, sometimes in society itself. They feel disconnected from the profession they have poured so much of themselves into, and no longer understand their roles in it or how they fit in. Importantly, we understand that this can be a tipping point for lawyers.



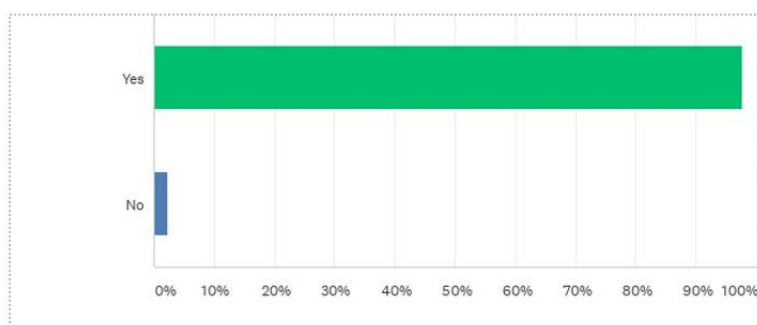
In summary, the overall satisfaction with the practice of law was 3.42 on a scale of one to five. Lawyers who have been practicing for 21 or more years were most satisfied with the profession. The judiciary also reported higher satisfaction than the other types of practice. Congruent with the overall results, solo practitioners in the field for 21 or more years had the most satisfaction. Solo practitioners with 6-15 years of experience were some of the least satisfied individuals with the profession, with averages under three. Respondents with 101-200 lawyers at their office were least satisfied, while those with 21-50 were most satisfied.

### Greatest Impacts on Well-Being

The overwhelming majority of lawyers, when asked, agree that “fitness to practice” is part of our duty and responsibility as lawyers. The results exceeded 97% in the affirmative – the most significant collective response in the entire Survey.

#### Q6: Do you consider your “fitness to practice” as part of your responsibility as a lawyer?

Answered: 3,072 Skipped: 17



So, lawyers are keenly aware that their health and fitness to practice is an indelible part of their role. We then endeavored to discover what they believe impacts that responsibility. When we asked lawyers about the greatest impacts to their wellbeing, they were provided a list of 15 choices from which they could select up to

5, as well as have the opportunity to provide free-text of the response of their choosing. The overall top answers for the greatest impacts on one’s well-being as a lawyer were:

- Lack of boundaries regarding “down time” or “never off”

<sup>233</sup> See Mary Walsh Fitzpatrick & Rosemary Queenan, *Professional Identity Formation, Leadership and Exploration of Self*, 89 UMKC L. Rev. 539, Spring 2021.

## Report of the Task Force on Attorney Well-Being

- Client expectations and demands
- Financial pressures in the “business of law
- Judges/Judiciary and COVID Impacts as the most common write-in answer.

Even when the results were cross analyzed against type of practice, the size of the office, or the number of years in practice, the results did not differ widely.

| Type of Practice                       | Top Answer   | Number of Responses | Total Population | Percentage of Responses |
|--|--|---------------------|------------------|-------------------------|
| Law Firm                               | Lack of boundaries for “down time” or “never off”    | 719                 | 1195             | 60%                     |
| Solo Practice                          | Lack of boundaries for “down time” or “never off”    | 463                 | 969              | 48%                     |
| Government or Agency                   | Culture of law and/or the culture of my work setting | 175                 | 299              | 59%                     |
| In-house counsel department            | Lack of boundaries for “down time” or “never off”    | 117                 | 208              | 56%                     |
| Legal Aid                              | Lack of boundaries for “down time” or “never off”    | 114                 | 183              | 62%                     |
| Judiciary                              | Isolation  | 61                  | 135              | 45%                     |
| Retired, Unemployed, Other, or Unknown | Lack of boundaries for “down time” or “never off”    | 56                  | 100              | 56%                     |

| Years Have You Been Licensed to Practice? | Top Answer  | Number of Responses | Total Population | Percentage of Responses |
|---|---|---------------------|------------------|-------------------------|
| 0-5 Years                                 | Lack of boundaries for “down time” or “never off” | 191                 | 318              | 60%                     |
| 6-10 Years                                | Lack of boundaries for “down time” or “never off” | 225                 | 347              | 65%                     |
| 11-15 Years                               | Lack of boundaries for “down time” or “never off” | 204                 | 331              | 62%                     |
| 16-20 Years                               | Lack of boundaries for “down time” or “never off” | 164                 | 288              | 57%                     |
| 21+ Years                                 | Lack of boundaries for “down time” or “never off” | 879                 | 1792             | 49%                     |
| Unknown                                   | Lack of control over schedule                     | 8                   | 13               | 62%                     |

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| <b>How Many Lawyers Practice at Your Office?</b> | <b>Top Answer</b>                                    | <b>Number of Responses</b> | <b>Total Population</b> | <b>Percentage of Responses</b> |
|--|--|----------------------------|-------------------------|--------------------------------|
| I operate a solo practice                        | Lack of boundaries for “down time” or “never off”    | 492                        | 1024                    | 48%                            |
| 2- 10 Lawyers                                    | Lack of boundaries for “down time” or “never off”    | 489                        | 929                     | 53%                            |
| 11-20 Lawyers                                    | Lack of boundaries for “down time” or “never off”    | 166                        | 266                     | 62%                            |
| 21-50 Lawyers                                    | Lack of boundaries for “down time” or “never off”    | 189                        | 307                     | 62%                            |
| 51-100 Lawyers                                   | Culture of law and/or the culture of my work setting | 106                        | 201                     | 53%                            |
| 101-200 Lawyers                                  | Lack of boundaries for “down time” or “never off”    | 63                         | 86                      | 73%                            |
| 200 or more Lawyers                              | Lack of boundaries for “down time” or “never off”    | 145                        | 224                     | 65%                            |
| Unknown  | Lack of boundaries for “down time” or “never off”    | 20                         | 52                      | 38%                            |

Other notable information from the cross-analysis on impacts to lawyer well-being included:

- Several government or agency respondents indicated that lack of options for advancement and lack of appreciation contribute to their lack of satisfaction with the field of law.
- Discrimination against lawyers with disabilities, racism, sexism, and ageism were all noted as contributors to lack of satisfaction by some solo practitioners.
- E-discovery and increasing rules and regulations were indicated as stressors by some of those who work as in-house counsel.
- Billable hours were cited as something that causes stress to individuals who work in law firms.
- High caseloads were called out by several people working for Legal Aid as well as by lawyers with 21-50 people at the office.
- Lack of agency/autonomy noted by several individuals in firms of 200 or more.
- Inadequate support was noted by some individuals in firms with 2-10 lawyers.
- Because the question permitted free-text responses, it is notable that several respondents noted that all the given answer choices skewed negative and a few listed positive aspects

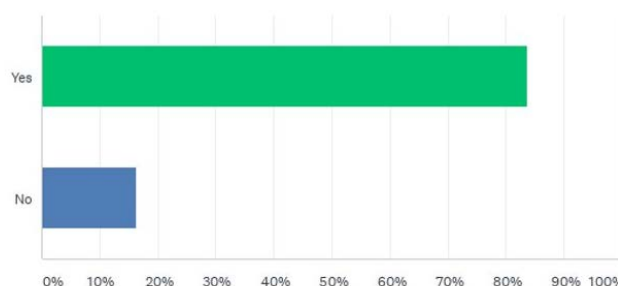
of being a lawyer (e.g., helping clients brings satisfaction, good colleagues have a significant positive impact) while others noted things they do to improve their well-being, such as exercise.

### The Role of the Judiciary

As noted above, the most common text-free response to the impact to lawyer wellbeing was “judge/judiciary.” The Survey responses indicate that lawyer overwhelmingly believe that the judiciary and the courts have a role to play in the promoting lawyer wellbeing – by a margin of about 84%.

#### Q7: Do you believe the judiciary has a role to play in promoting lawyer well-being and mental health?

Answered: 3,076 Skipped: 13



The next question concerned how the judiciary impacts lives of attorney and their wellbeing. Once again, lawyers were given a series of suggested choices and were also permitted to write responses in narrative form.

#### Q8: What actions could the judiciary take to reduce your stress and foster well-being? (Please select 5 choices)

Answered: 3,014 Skipped: 75

| ANSWER CHOICES   | RESPONSES    |
|--|--------------|
| Liberalize adjournment requests where appropriate and not prejudicial      | 51.73% 1,559 |
| Reduce emphasis on standards and goals                                     | 34.37% 1,036 |
| Allow letter briefs in certain cases                                       | 29.16% 879   |
| Increase on the record conferences   | 14.86% 448   |
| Continue certain virtual appearances even after the pandemic ceases        | 67.42% 2,032 |
| Ensure that judges have ready access to mental health referrals            | 16.49% 497   |
| Add training for judges to spot stress issues among the Bar                | 27.47% 828   |
| Adjust judicial temperament  | 53.35% 1,608 |
| Increase access to Court Attorneys   | 22.00% 663   |
| Harmonize differing rules and requirements of judges within the same court | 58.10% 1,751 |
| Other (please specify)   | 16.62% 501   |
| Total Respondents: 3,014   |              |

The overall top answers for actions the judiciary could take to reduce one’s stress and foster well-being across all demographics (office setting, practice area, years in practice) were:

- (1) Continue certain virtual appearances even after the pandemic ceases

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(2) Harmonize differing rules and requirements of judges within the same court

(3) Adjust judicial temperament

Other noteworthy text responses included:

- Virtual appearances made their practice more efficient, although some people advocated for a full return to in-person operations.
- Courts need to address racism.
- The judiciary should be respectful of attorneys' time.
- Some solo practitioners and lawyers in smaller offices indicated they feel the judiciary favors lawyers from larger firms.
- Apply rules equally to plaintiffs' and defendants' counsel.
- Improve transparency in election/selection of judges and foster true diversity and equity across race, ethnicity gender and class.
- Big law firms often bully small firms - courts should be aware of this and stop giving such deference to large firms.
- Most Judges are courteous and accommodating. It is only a few that make life difficult.
- Ask attorneys when they want a case to be adjourned to instead of picking it based on their schedule alone.

**Lawyers with Disabilities in the Courtroom:** The narrative responses and cross-analysis revealed that 88% (7 out of 8) lawyers who self-disclosed a disability stated that continuing certain virtual appearances even after the pandemic ceases is something the judiciary can do to help with disabled lawyer well-being. For the judiciary, the comments from individuals that identified as having a disability were as follows:

- Video has reduced the need for adjournments. It also provides greater access for disabled counsel.
- Provide opportunities for disabled attorneys.
- Understand disabilities; I am in a wheelchair.

**Stereotyping in the Courtroom:** Additionally, the Survey brought to light that more than 20% of lawyers have had

**Q16: If you answered yes to Question #15, please check the applicable boxes below that apply to you.**

Answered: 947 Skipped: 2,142

| ANSWER CHOICES                      | RESPONSES |     |
|-------------------------------------|-----------|-----|
| LGBTQ                               | 7.29%     | 69  |
| Male                                | 23.13%    | 219 |
| Female                              | 49.74%    | 471 |
| Person of Color                     | 15.31%    | 145 |
| Attorney admitted ten years or less | 29.14%    | 276 |
| Attorney admitted ten years or more | 34.00%    | 322 |
| Prefer not to answer                | 17.53%    | 166 |
| Total Respondents: 947              |           |     |

their credentials to practice law questioned by another attorney, the judiciary, court officer or lay person while in the course of their duties. The results indicate a demonstrable intersection of stereotyping, discrimination and “othering” and well-being. In other words, lawyer well-being is inextricably linked to diversity and inclusion efforts as lawyers who identify in minority groups experience these targeted impacts to their mental and emotional health differently than majority groups.

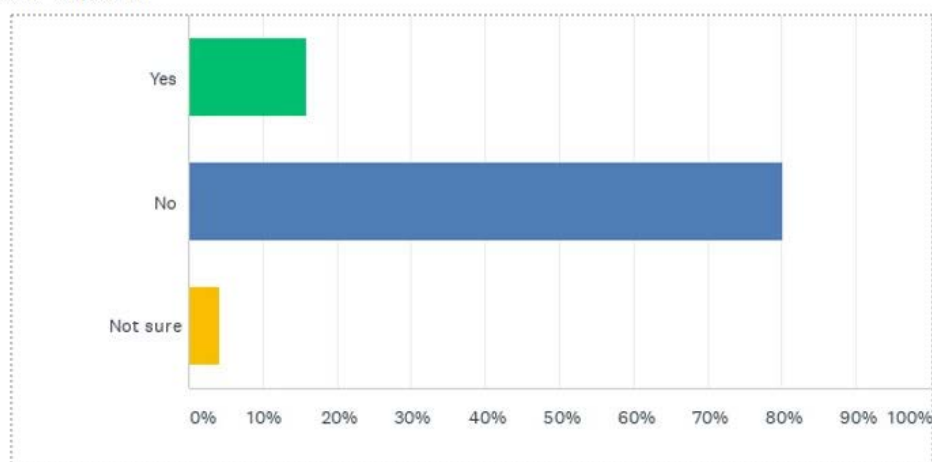
### State of Emotional Well-Being Before and During COVID

We next asked lawyers to tell us about their perspectives on their own emotional well-being in the last three years, as well as the use of substances during the COVID-19 pandemic. It was important to the Task Force to understand how lawyers self-assessed their own mental health and coping mechanisms during such an unprecedented time in our history.

When asked whether they had consumed for alcohol or drugs than intended or felt that they should “cut back” or “quit,” lawyers told us that about 17% of them were consuming more substances than they either previously had and/or felt the need to reduce or quit altogether. Another 4% admitted that they “were not sure” whether their substance use was a problem.

**Q17: Since the COVID 19 pandemic has descended upon us, have you consumed more alcohol or drugs than you intended, or felt you should cut back or quit but could not?**

Answered: 3,058 Skipped: 31



When asked whether lawyers had experienced a mental health-related problem or concern in the last three years, nearly 37% of lawyers indicated that they had. Legal Aid employees were the only group of practitioners where most respondents indicated they had thought about seeking professional support for a mental health concern in the past three years. Over 70% of judiciary and solo practitioners indicated they had not considered it.

Of the people who had considered seeking support, the majority (62%) found support and 44% of people who considered seeking support found supports that were helpful. However, 26% of

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the people who indicated they had considered seeking support did not indicate whether they found it.

| Type of Practice                       | Yes                 |                         | No                  |                         |
|--|---------------------|-------------------------|---------------------|-------------------------|
|  | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses |
| Law Firm                               | 393                 | 33%                     | 795                 | 67%                     |
| Solo Practice                          | 266                 | 28%                     | 695                 | 72%                     |
| Government or agency                   | 115                 | 39%                     | 181                 | 61%                     |
| In-house counsel department            | 76                  | 37%                     | 131                 | 63%                     |
| Legal Aid                              | 98                  | 54%                     | 83                  | 46%                     |
| Judiciary                              | 30                  | 22%                     | 105                 | 78%                     |
| Retired, Unemployed, Other, or Unknown | 41                  | 42%                     | 57                  | 58%                     |
| <b>Grand Total</b>                     | <b>1019</b>         | <b>33%</b>              | <b>2047</b>         | <b>67%</b>              |

| Did You Find Support?      | Did You Find Support Helpful? |                               |                           |                               |                           |                               |                           |                               |                           |                               |                                 |                         |
|----------------------------|-------------------------------|-------------------------------|---------------------------|-------------------------------|---------------------------|-------------------------------|---------------------------|-------------------------------|---------------------------|-------------------------------|---------------------------------|-------------------------|
|                            | Yes                           |                               | No                        |                               | Somewhat                  |                               | N/A                       |                               | (blank)                   |                               | Total<br>Number of<br>Responses | Total % of<br>Responses |
|                            | Number<br>of<br>Responses     | Percentage<br>of<br>Responses | Number<br>of<br>Responses | Percentage<br>of<br>Responses | Number<br>of<br>Responses | Percentage<br>of<br>Responses | Number<br>of<br>Responses | Percentage<br>of<br>Responses | Number<br>of<br>Responses | Percentage<br>of<br>Responses |                                 |                         |
|                            |                               |                               |                           |                               |                           |                               |                           |                               |                           |                               |                                 |                         |
| Yes                        | 451                           | 44%                           | 28                        | 3%                            | 135                       | 13%                           |                           | 0%                            | 15                        | 1%                            | 629                             | 62%                     |
| No                         |                               | 0%                            |                           | 0%                            | 1                         | 0%                            | 68                        | 7%                            |                           | 0%                            | 69                              | 7%                      |
| Somewhat                   | 1                             | 0%                            | 10                        | 1%                            | 12                        | 1%                            |                           | 0%                            | 2                         | 0%                            | 25                              | 2%                      |
| N/A - did not seek support |                               | 0%                            |                           | 0%                            |                           | 0%                            | 9                         | 1%                            |                           | 0%                            | 9                               | 1%                      |
| (blank)                    | 21                            | 2%                            | 4                         | 0%                            | 1                         | 0%                            | 1                         | 0%                            | 260                       | 26%                           | 287                             | 28%                     |
| Grand Total                | 473                           | 46%                           | 42                        | 4%                            | 149                       | 15%                           | 78                        | 8%                            | 277                       | 27%                           | 1019                            | 100%                    |

Of the people who had indicated they did not consider seeking support for a mental health-related concern in the past, 71% *did not* provide a reason. Of the responses obtained, the top three were: (1) support not needed; (2) no time; and (3) already had supports in place.



| If you did not consider seeking help, why not?   | Number of Responses | Percentage of Responses |
|--|---------------------|-------------------------|
| (blank)  | 1456                | 71.1%                   |
| Not needed                                       | 380                 | 18.6%                   |
| No time  | 40                  | 2.0%                    |
| Already had supports                             | 32                  | 1.6%                    |
| worked it out or attempted to work out on my own | 22                  | 1.1%                    |
| Did not feel it would help                       | 21                  | 1.0%                    |
| Found support                                    | 21                  | 1.0%                    |
| Confidentiality concerns                         | 13                  | 0.6%                    |
| Not severe enough                                | 13                  | 0.6%                    |
| Other  | 9                   | 0.4%                    |
| Stigma   | 9                   | 0.4%                    |
| Cost and time                                    | 7                   | 0.3%                    |
| Unsure of resources available                    | 7                   | 0.3%                    |
| Cost   | 6                   | 0.3%                    |
| Uncomfortable seeking help                       | 5                   | 0.2%                    |
| too overwhelmed                                  | 4                   | 0.2%                    |
| Seeking now or plan to seek                      | 1                   | 0.0%                    |
| Difficulty finding support/ support unavailable  | 1                   | 0.0%                    |
| <b>Grand Total</b>                               | <b>2047</b>         | <b>100.0%</b>           |

### Accessing Resources

After identifying how they are feeling and what is impacting their well-being, we then asked lawyers to let us know about helpful resources they are aware of, which ones they have accessed and found helpful, and, in other cases, why they have not. Certainly, it was important to discover whether New York lawyers faced the same help-resistance identified in the ABA National Task Force Report on Lawyer Well-Being and why. Its research included an expansive list of reasons why lawyers are so help-averse, including: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules. Moreover, while not in New York, state applications for the bar admission require disclosure by a lawyer if he or she has received treatment for any type of mental illness.<sup>234</sup> Perhaps most importantly, we desired feedback from New York lawyers about what *they* believed would help in breaking down these barriers.

<sup>234</sup> M. Elizabeth Coreno & Kerry Murray O'Hara, PsyD, *Attorney Wellbeing: The Science of Stress and the Road to Well-Being*, NYSBA J., Oct. 2019.

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### *Access to Emotional Support Services*

We asked lawyers to tell us, if they sought emotional support, how did they go about accessing it? It was an entirely free-text, narrative question and all 566 unique responses were consolidated into a summary of the qualitative data. From a baseline perspective, there was a 74% response rate for individuals who did seek support for their emotional well-being concerns. Individuals who work in law firms with two or more lawyers were most likely to ask their doctor for assistance, whether to obtain a referral or other help. Solo practitioners, government or agency staff, Legal Aid, and retired, unemployed, other, or unknown all were most likely to seek a recommendation from a family member or friend. Members of the judiciary were most likely to connect with their health insurer. Several people across types or practices found a mental health specialist through a Psychology Today search.

Lawyers in the early years of practice (0-5 years) were most likely to do an internet search for supports. People in the field 6-10 years were most likely to either do an internet search or to get a recommendation from a friend or family member. Individuals in the field 11-15 years or 21 or more years were most likely to ask for a recommendation from a friend or family member, whereas people with 16-20 years of experience would most likely reach out to their health insurer.

| If you sought support how did you go about finding it? | 0-5 Years  | 6-10 Years | 11-15 Years | 16-20 Years | 21+ Years  | Unknown  | Total Number | Total Percentage |
|--|------------|------------|-------------|-------------|------------|----------|--------------|------------------|
| (blank)  | 41         | 47         | 40          | 28          | 113        | 1        | 270          | 26%              |
| Recommendation from friend or family                   | 14         | 25         | 27          | 18          | 69         |          | 153          | 15%              |
| Asked my doctor  | 14         | 18         | 22          | 14          | 61         |          | 129          | 13%              |
| Internet search  | 35         | 25         | 18          | 1           | 14         | 1        | 94           | 9%               |
| Health insurer   | 16         | 21         | 10          | 19          | 22         | 1        | 89           | 9%               |
| Already had support                                    | 8          | 4          | 6           | 8           | 11         |          | 37           | 4%               |
| Did not seek support                                   | 3          | 6          | 10          | 4           | 11         |          | 34           | 3%               |
| Independent search                                     | 5          | 5          | 6           | 3           | 8          |          | 27           | 3%               |
| EAP  | 6          | 7          | 1           |             | 8          |          | 22           | 2%               |
| Referral   | 1          | 2          | 2           | 2           | 10         |          | 17           | 2%               |
| Found a mental health professional                     | 2          |            | 1           | 2           | 12         |          | 17           | 2%               |
| Professional connections                               | 3          | 1          | 1           | 2           | 9          |          | 16           | 2%               |
| Mental health professional used in the past            |            | 6          | 2           | 1           | 7          |          | 16           | 2%               |
| Other  | 6          | 1          | 1           | 1           | 5          |          | 14           | 1%               |
| LAP  |            |            | 3           | 2           | 9          |          | 14           | 1%               |
| Recommendation from another attorney                   | 1          | 2          | 1           | 2           | 7          | 1        | 14           | 1%               |
| Bar Association resource                               |            | 1          | 3           | 1           | 5          |          | 10           | 1%               |
| Psychology Today search                                | 2          | 1          | 4           | 1           | 1          |          | 9            | 1%               |
| Spoke with friends/ family/ faith leader               |            | 1          | 1           |             | 6          |          | 8            | 1%               |
| Called providers                                       | 1          | 2          |             | 1           | 2          |          | 6            | 1%               |
| Local provider search                                  | 3          |            |             |             | 3          |          | 6            | 1%               |
| Privately  | 1          |            |             |             | 4          |          | 5            | 0%               |
| Through the veterans' organizations                    |            |            | 1           |             | 2          |          | 3            | 0%               |
| Could not find   | 1          |            |             |             | 2          |          | 3            | 0%               |
| Through mental health providers                        | 1          |            | 1           |             |            |          | 2            | 0%               |
| I don't remember                                       |            |            | 1           |             | 1          |          | 2            | 0%               |
| Still seeking  |            |            |             |             | 2          |          | 2            | 0%               |
| <b>Grand Total</b>                                     | <b>164</b> | <b>175</b> | <b>162</b>  | <b>110</b>  | <b>404</b> | <b>4</b> | <b>1019</b>  | <b>100%</b>      |

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Perhaps as important were the reasons provided why resources *were not* accessed for a lawyer who had identified a mental health concern.

Most lawyers who did not seek support (71%) did not indicate why. Of those who gave a reason, almost 19% indicated it was not needed, followed by another 2.5% indicating they already had supports in place. More than any other groups, people in firms of 101-200 lawyers and those in firms of unknown size had concerns about confidentiality.

Across all practice sizes, except one, a severe need of services would have made it more likely that someone would seek out supports, i.e. must be in crisis before seeking help. However, almost 29% of lawyers who answered this question are in firms sized 101-200 and they indicated that would only seek services if confidentiality were guaranteed.

Additional analysis was necessary to discern the volume of reasons for not seeking support in the narrative, free-text responses. Lawyers told us all kinds of personal reasons why they were not inclined to seek support for an issue of which they were aware. Some of the most noteworthy and common narrative responses are paraphrased below:

- I live in a small city (town).
- I do not have time.
- My health insurance covers a fraction of the cost.
- It takes too much time away from all the other directives that are being thrown at us.
- Felt I should be able to handle it on my own. No one wants a “weak” lawyer.

| Why didn't you seek support?                     | Percentage Did Not Seek Support for This Reason |               |               |               |                |                 |                     |               |
|--|---|---------------|---------------|---------------|----------------|-----------------|---------------------|---------------|
|  | I operate a solo practice                       | 2- 10 Lawyers | 11-20 Lawyers | 21-50 Lawyers | 51-100 Lawyers | 101-200 Lawyers | 200 or more Lawyers | Unknown       |
| (blank)  | 70.1%   | 72.4%         | 68.8%         | 73.1%         | 73.6%          | 62.5%           | 68.0%               | 81.6%         |
| Not needed                                       | 21.5%   | 17.1%         | 16.2%         | 15.6%         | 18.6%          | 16.7%           | 18.4%               | 13.2%         |
| Already had supports                             | 2.0%  | 2.4%          | 2.9%          | 3.8%          | 2.3%           | 6.3%            | 3.2%                | 0.0%          |
| No time  | 1.2%  | 1.5%          | 4.0%          | 2.7%          | 1.6%           | 6.3%            | 4.0%                | 0.0%          |
| Worked it out or attempted to work out on my own | 1.4%  | 1.0%          | 2.3%          | 0.5%          | 0.0%           | 0.0%            | 0.8%                | 0.0%          |
| Did not feel it would help                       | 0.7%  | 1.1%          | 0.6%          | 1.1%          | 1.6%           | 2.1%            | 2.4%                | 2.6%          |
| Not severe enough                                | 0.3%  | 1.3%          | 0.6%          | 1.1%          | 0.8%           | 0.0%            | 0.0%                | 0.0%          |
| Confidentiality concerns                         | 0.7%  | 0.5%          | 0.6%          | 1.1%          | 0.0%           | 2.1%            | 0.0%                | 2.6%          |
| Other  | 0.3%  | 0.5%          | 1.2%          | 0.5%          | 0.8%           | 0.0%            | 0.0%                | 0.0%          |
| Stigma   | 0.3%  | 0.3%          | 0.6%          | 0.5%          | 0.0%           | 2.1%            | 1.6%                | 0.0%          |
| Unsure of resources available                    | 0.5%  | 0.3%          | 0.6%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%          |
| Cost and time                                    | 0.7%  | 0.3%          | 0.0%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%          |
| Cost   | 0.4%  | 0.3%          | 0.0%          | 0.0%          | 0.8%           | 0.0%            | 0.0%                | 0.0%          |
| Uncomfortable seeking help                       | 0.0%  | 0.3%          | 1.2%          | 0.0%          | 0.0%           | 0.0%            | 0.8%                | 0.0%          |
| Too overwhelmed                                  | 0.0%  | 0.2%          | 0.6%          | 0.0%          | 0.0%           | 2.1%            | 0.8%                | 0.0%          |
| Seeking now or plan to seek                      | 0.0%  | 0.2%          | 0.0%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%          |
| Difficulty finding support/ support unavailable  | 0.0%  | 0.2%          | 0.0%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%          |
| <b>Grand Total</b>                               | <b>100.0%</b>                                   | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b>  | <b>100.0%</b>   | <b>100.0%</b>       | <b>100.0%</b> |

Lawyers allowed told us what would make them more likely to seek support in the future. The narrative responses were pulled and categorized for the following summary:

- Availability of a counselor of my race and gender.

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- If I did not feel comfortable confiding in family or friends, I would avail myself of my employer's EAP services.
- If there was some way to address my issues without repercussions from the judiciary.
- Greater certainty of confidentiality, which will probably never be certain, so I'll continue to suffer in isolation and without getting help.
- Nothing. No time to stop for something like that.

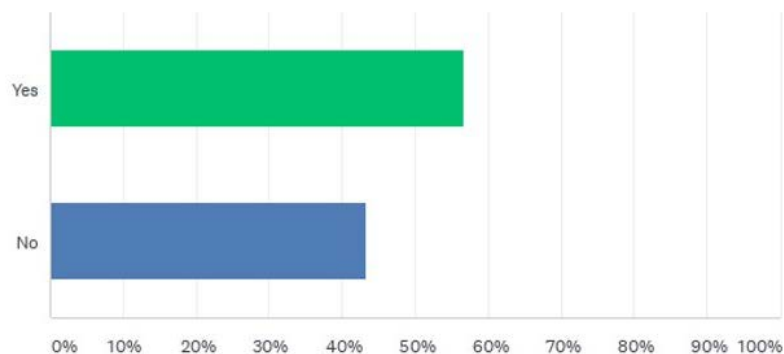
| If you didn't seek support, what, if anything, would have made it more likely that you would seek support? | I operate a solo practice | 2- 10 Lawyers | 11-20 Lawyers | 21-50 Lawyers | 51-100 Lawyers | 101-200 Lawyers | 200 or more Lawyers | Unknown | Grand Total |
|--|---------------------------|---------------|---------------|---------------|----------------|-----------------|---------------------|---------|-------------|
| A severe need  | 42.9%                     | 54.0%         | 36.8%         | 7.7%          | 73.3%          | 0.0%            | 25.0%               | 33.3%   | 42.3%       |
| A supportive work environment  | 0.0%                      | 4.0%          | 5.3%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%    | 1.6%        |
| Anonymity  | 4.8%                      | 2.0%          | 0.0%          | 23.1%         | 0.0%           | 0.0%            | 0.0%                | 0.0%    | 3.8%        |
| Decreased stigma   | 1.6%                      | 6.0%          | 5.3%          | 7.7%          | 0.0%           | 0.0%            | 8.3%                | 33.3%   | 4.4%        |
| Ease of access   | 3.2%                      | 4.0%          | 10.5%         | 0.0%          | 0.0%           | 14.3%           | 0.0%                | 0.0%    | 3.8%        |
| Easily accessible telephonic resources   | 1.6%                      | 0.0%          | 0.0%          | 0.0%          | 0.0%           | 0.0%            | 0.0%                | 0.0%    | 0.5%        |
| Extra time   | 4.8%                      | 2.0%          | 21.1%         | 7.7%          | 6.7%           | 0.0%            | 16.7%               | 0.0%    | 6.6%        |
| Free or low cost services  | 9.5%                      | 4.0%          | 15.8%         | 15.4%         | 0.0%           | 14.3%           | 0.0%                | 0.0%    | 7.7%        |
| Guaranteed confidentiality   | 9.5%                      | 8.0%          | 0.0%          | 0.0%          | 0.0%           | 28.6%           | 16.7%               | 0.0%    | 7.7%        |
| Lack of support from family and friends  | 1.6%                      | 2.0%          | 0.0%          | 15.4%         | 6.7%           | 14.3%           | 0.0%                | 0.0%    | 3.3%        |
| Other  | 12.7%                     | 4.0%          | 5.3%          | 7.7%          | 13.3%          | 14.3%           | 8.3%                | 33.3%   | 9.3%        |
| Remote counseling options  | 1.6%                      | 6.0%          | 0.0%          | 15.4%         | 0.0%           | 14.3%           | 16.7%               | 0.0%    | 4.9%        |
| Vetted referrals   | 6.3%                      | 4.0%          | 0.0%          | 0.0%          | 0.0%           | 0.0%            | 8.3%                | 0.0%    | 3.8%        |

### Addiction and Lawyer Assistance Resources

It was critical for the Task Force to understand the depth to which Lawyer Assistance Program (LAP) education and outreach has penetrated the profession, as these programs are so vital to attorneys, law students, and judges. We asked lawyers whether they were aware of the NYSBA LAP, the NY City Bar Association LAP, or the Nassau County LAP and the services that are offered. The majority of all lawyers who responded (3,067) they *were* aware of at least one of the programs and its services – at a rate of nearly 57% percent.

**Q14: Are you aware of the Lawyers Assistance Program at the New York State Bar Association, the New York City Bar Association and the Nassau County Bar Association and the free and confidential services they offer?**

Answered: 3,067 Skipped: 22

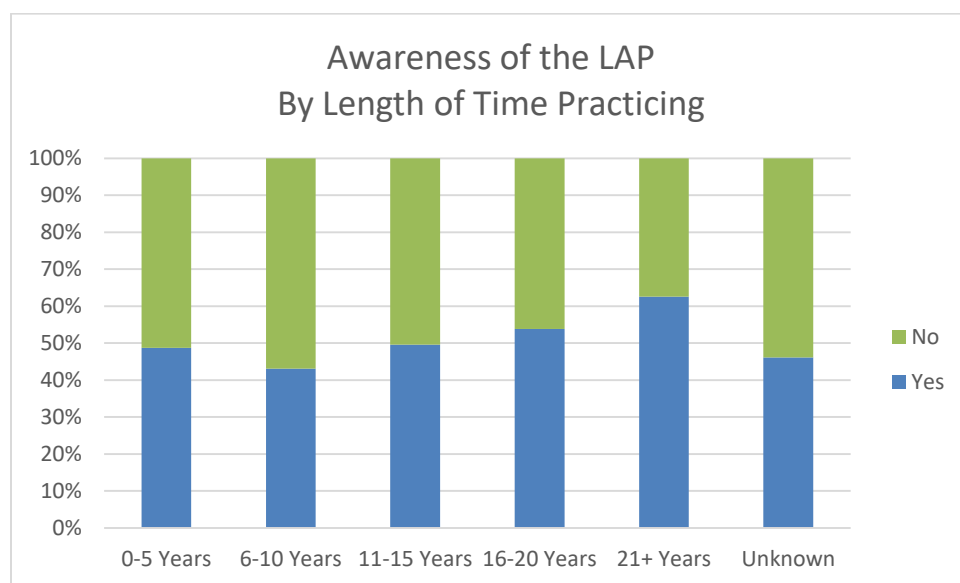


When cross analyzed against the demographic information, solo practitioners, the judiciary, and Legal Aid employees were most familiar with the LAP, with in-house counsel being least aware.

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Individuals in the profession for 6 to 10 years were least likely to be aware of the LAP, and practitioners in the field for 21+ years were most likely to know about it.

| Type of Practice                       | Yes                 |                      | No                  |                      |
|--|---------------------|----------------------|---------------------|----------------------|
|  | Number of Responses | Percent of Responses | Number of Responses | Percent of Responses |
| Law Firm                               | 660                 | 55.56%               | 528                 | 44.44%               |
| Solo Practice                          | 587                 | 61.21%               | 372                 | 38.79%               |
| Government or agency                   | 153                 | 51.34%               | 145                 | 48.66%               |
| In-house counsel department            | 93                  | 44.93%               | 114                 | 55.07%               |
| Legal Aid                              | 108                 | 59.02%               | 75                  | 40.98%               |
| Judiciary                              | 83                  | 62.41%               | 50                  | 37.59%               |
| Retired, Unemployed, Other, or Unknown | 53                  | 53.54%               | 46                  | 46.46%               |
| <b>Grand Total</b>                     | <b>1737</b>         | <b>56.64%</b>        | <b>1330</b>         | <b>43.36%</b>        |

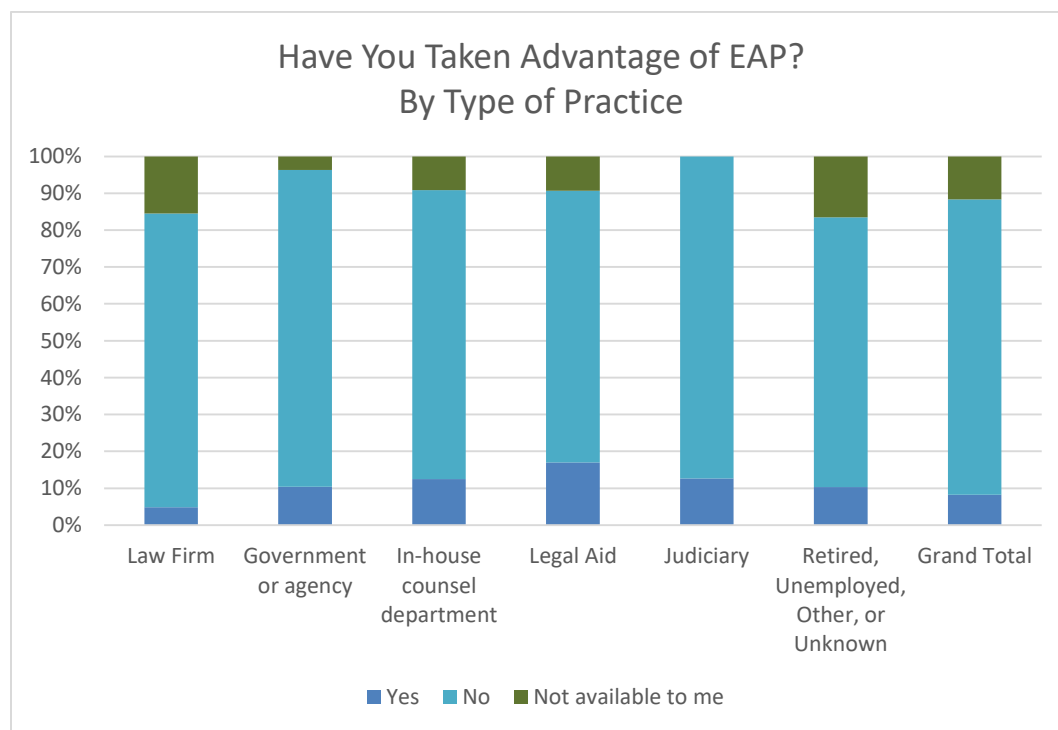


### *Employment Resources*

When asked about Employee Assistance Programs for well-being, only 8% of lawyers indicated having used the resources when available. Those results were brought into further understanding when cross-analyzed with demographic information. Legal Aid attorneys were the most likely to use EAP services (17%) and law firm attorneys the least (5%). Likelihood of using EAP services was reduced to single digits for lawyers who have been practicing for more than 21 years.

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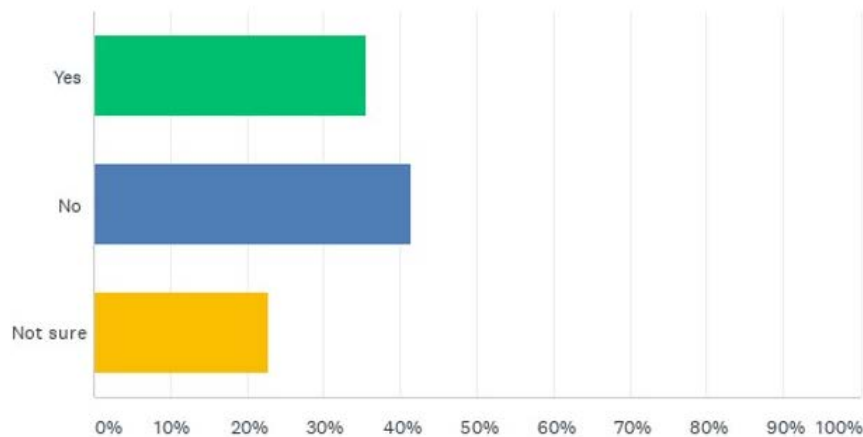
| Length of Time Practicing Law | Yes                 |                         | No                  |                         | Not available to me |                         | Total Number of Responses |
|-------------------------------|---------------------|-------------------------|---------------------|-------------------------|---------------------|-------------------------|---------------------------|
|                               | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses |                           |
| 0-5 Years                     | 27                  | 10%                     | 209                 | 76%                     | 40                  | 14%                     | 276                       |
| 6-10 Years                    | 28                  | 10%                     | 211                 | 76%                     | 39                  | 14%                     | 278                       |
| 11-15 Years                   | 19                  | 8%                      | 188                 | 76%                     | 41                  | 17%                     | 248                       |
| 16-20 Years                   | 23                  | 11%                     | 165                 | 81%                     | 15                  | 7%                      | 203                       |
| 21+ Years                     | 76                  | 7%                      | 911                 | 83%                     | 109                 | 10%                     | 1,096                     |
| Unknown                       |                     | 0%                      | 7                   | 70%                     | 3                   | 30%                     | 10                        |
| <b>Grand Total</b>            | <b>173</b>          | <b>8%</b>               | <b>1,691</b>        | <b>80%</b>              | <b>247</b>          | <b>12%</b>              | <b>2,111</b>              |



When we turned to ask about other employer resources, outside of EAP, lawyers provided information about their access and barriers to access from the solo practitioner to the large firm and government agency perspective. The first question we asked was to determine the number of employers with lawyer well-being policies at the firm level, as recommended by the National Task Force Report (2016). About 35% of the lawyers who responded are aware of their employers' policy for attorney well-being and another 21% were not sure whether one existed.

### Q10: Does your employer have a policy to assist you in taking the time needed to address attorney wellness issues?

Answered: 3,026 Skipped: 63



We also asked lawyers what they believed employers could do to better support their well-being, both mental and physical. Almost half of survey respondents, 46%, (excluding solo practitioners) elected *not* to provide an answer to this free-text, narrative question. Of the 1,135 responses received, nearly all were unique, however some patterns emerged.

- 6% of people in law firms, government or agencies, in-house counsel departments and the judiciary indicated that their employer already provides adequate supports, and 9% of people working for Legal Aid and 7% of “other” respondents indicated this was the case.
- An overarching theme was time off. Many people requested work-life balance, increased vacation time, sick time, or mental health days. Many of those requesting such things noted that they need to feel that the time off will truly be “off,” meaning no expectations regarding calls or e-mails. Several people indicated that having backup support, so they do not come back to an overwhelming workload is important.
- Other people noted that even if an office’s policies allowed for adequate time off, they felt pressure not to take it from partners or other people in authority.

As the responses were cross analyzed by demographics, the top three constructive answers for each type of practice are as follows:

- Law Firm: Ability to take time off/ work/life balance, reduce billable hour requirements/caseloads, adjust office culture to support mental health.
- Government or agency: Additional staffing (attorneys or support staff), check in with me/ treat me with respect, and flexibility to work remotely.



- In-house counsel department: Ability to take time off/ work/life balance, additional staffing (attorneys or support staff), adjust office culture to support mental health.
- Legal Aid: Flexibility to work remotely, realistic expectations, additional staffing (attorneys or support staff).
- Retired, Unemployed, Other, or Unknown: Ability to take time off/ work/life balance, adjust office culture to support mental health, and flexibility to work remotely.

In what was the likely the most illuminating aspect of reviewing the volume and breadth of attorney responses, the testimonials, stories, fears and anger poured out of lawyers in response to this question and provided important harbingers of a profession moving quickly towards inhumane and a collective burnout. The comments below have been paraphrased and summarized to highlight key themes from the responses to what lawyers believed employers could do to help them:

- As an associate, greater empathy and attention to workload from the partners – but the whole system seems hopelessly broken. Everything that the profession likes to talk about in terms of well-being is a band-aid to treat the symptoms rather than facing up to the underlying causes of so much depression and misery – we should not need hotlines and mindfulness trainings, etc. in the first place, and we should ask ourselves what has gone so very wrong that we find ourselves in this position.
- I think management needs to actually support the grunt work. I am lucky and my bosses encourage us to take time off or “enjoy the nice weather,” but it’s also unrealistic because we are so busy and sometimes the comments are more frustrating than supportive. So, I think providing actual support (more collaboration perhaps) and showing that you have a real understanding of our work, so that we can actually take the suggested break and feel supported in that way-like you actually want to be involved to support us.
- Let us use sick days or take medical leave when we need it without lines like “if you’re not better when you come back, maybe you’re not cut out to be an attorney.” Everyone heals at a different rate. We suffer from varying severity of diseases and injuries. There is a learning curve to managing new disability or diagnosis with a chronic disease. Surgery does not fix everything, and there are non-surgical treatments that require recovery time as well. And in the age of unprecedented ways to work and communicate without being in the office in person, we are most effective as lawyers when we are allowed to manage our own health. Managing partners that shame us for trying to take care of ourselves and blindly micro-manage the health of their attorneys only perpetuate the lack of attorney well-being.
- Push back on clients’ unrealistic expectations and create a culture of protected time for attorneys. If you want to get a sense of what junior attorneys think of their law firms’

well-being initiatives, look up the countless memes online about how law firms require attorneys to bill 80-hour weeks and then encourage them to attend a mental health webinar – believing this fulfills their duty to look after attorneys’ mental health. Well-being CLEs and free meditation apps are band-aid solutions that ignore the root issue, which law firms refuse to address.

- Set the example. Never being “off” gives the impression that no one else can either.

### *NYSBA Resources*

Since the vast majority law practice in New York is small practice, it was important to the Task Force to identify the resources that NYSBA, as a statewide organization, might consider offering lawyers who otherwise do not have access to larger firm resources. So, we asked lawyers to tell us what services and resources they would be interested in from NYSBA to improve their overall well-being.

The question was asked in a fully open format and allowed lawyers to write any manner of response. Of the 2,149 responses provided, 1,484 answers were unique, requiring a full review to consolidate them and track for themes. After consolidating similar answers, the top three overall requests of NYSBA to assist with physical fitness and health were:

- A gym or fitness membership discount, or discounted fitness equipment (479)
- A request that NYSBA advocate for cultural change (147)
- Free or low-cost counseling (114)

By practice type, solo practitioners indicated that group health insurance would be valuable to them. Solos also requested resources geared toward them, including support groups. In-house counsel and members of the judiciary indicated that webinars, seminars, literature, newsletter articles would be useful to them. Some people took the opportunity to request specific CLEs, like ones tiered based on family law experience.

It is also important to note that “cultural change” meant different things to different people. Many people said that NYSBA should advocate for 40-hour workweeks and flexible business practices in firms and with the courts, where others invited NYSBA to engage in anti-racism work, closing the gender gap, and building understanding for lawyers with learning disabilities.

Noteworthy suggestions to NYSBA from respondents include:

- As a solo practitioner, it would be helpful if the Association could arrange for attorneys to step in when mental health issues, exhaustion takes one’s focus away from the practice.
- Something about how to access benefits without shame.

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- The firm environment, which is not supportive of women and minorities and parents is my major problem. Collecting and publishing hiring and retention data on these issues to make firms publicly accountable would help.
- The thing that is missing is for solo and small firms having to deal with the pressures of too much work (need to take the case to earn a living) vs. the time that each case requires.
- Training for the judiciary to correct racial bias, bias against women, and bias against legal aid attorneys.
- Reduced membership fee with CLE on fitness.
- I know the idea is it would be confidential but far too many things across many fields that were supposed to be confidential ended up not being so I do not think I would be comfortable doing this through the NYSBA.

Funding for wellbeing programs by New York State also appeared in the Survey results, including whether lawyers would support a modest fee increase in the biennial registration if it was solely limited to attorney well-being. Most lawyers supported the initiative (49.51%) in its entirety, while another 25.41% would support increased funding without an increase in the registration fee. The balance of respondents did not support increased funding (25.08%).

Additionally, lawyers were supportive of reduced malpractice insurance premiums if the lawyers demonstrated engagement with specified well-being training (83.24%).

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| What could NYSBA provide to help you improve your physical fitness and health?           | Law Firm | Solo Practice | Government or agency | In-house counsel department | Legal Aid | Judiciary | Retired, Unemployed, Other, or Unknown | Grand Total |
|--|----------|---------------|----------------------|-----------------------------|-----------|-----------|--|-------------|
| Online or In-Person Fitness program/membership discounts or home gym equipment discounts | 36.4%    | 34.6%         | 47.6%                | 35.7%                       | 51.7%     | 48.3%     | 46.5%                                  | 38.8%       |
| Advocate for cultural change   | 16.7%    | 11.3%         | 15.4%                | 13.0%                       | 5.5%      | 7.7%      | 14.5%                                  | 13.5%       |
| Free or low cost counseling  | 10.3%    | 10.1%         | 10.7%                | 5.0%                        | 12.1%     | 2.6%      | 0.0%                                   | 9.4%        |
| Other  | 8.4%     | 11.9%         | 2.6%                 | 5.0%                        | 7.9%      | 9.8%      | 2.4%                                   | 8.4%        |
| Webinars, seminars, literature, newsletter articles                                      | 7.3%     | 5.6%          | 3.4%                 | 9.5%                        | 5.6%      | 6.6%      | 11.2%                                  | 6.5%        |
| sponsored leisure activities   | 4.4%     | 3.5%          | 10.0%                | 9.4%                        | 5.9%      | 4.2%      | 4.2%                                   | 5.2%        |
| Mentoring, Peer Counseling, or Support Groups  | 2.9%     | 4.8%          | 2.2%                 | 2.0%                        | 5.5%      | 8.8%      | 1.9%                                   | 3.7%        |
| Group health (medical, drug, dental) plan  | 1.4%     | 6.8%          | 0.0%                 | 4.5%                        | 1.7%      | 0.0%      | 0.0%                                   | 3.1%        |
| EAP-like services  | 3.8%     | 2.8%          | 1.1%                 | 7.2%                        | 0.6%      | 2.5%      | 2.2%                                   | 3.1%        |
| Free or cheaper CLEs, or fewer CLE hours   | 0.5%     | 1.7%          | 3.9%                 | 0.0%                        | 1.7%      | 3.6%      | 3.4%                                   | 1.5%        |
| Comprehensive discounts to various services  | 1.2%     | 1.6%          | 1.2%                 | 1.9%                        | 0.0%      | 0.0%      | 4.0%                                   | 1.4%        |
| CLE on wellbeing, mental health, or avoiding burn out                                    | 1.1%     | 1.5%          | 0.7%                 | 2.2%                        | 0.0%      | 2.4%      | 0.0%                                   | 1.1%        |
| Career assistance  | 1.0%     | 0.6%          | 1.1%                 | 0.0%                        | 0.0%      | 3.5%      | 2.8%                                   | 0.9%        |
| CLE or dues payment assistance   | 0.5%     | 1.2%          | 0.0%                 | 2.2%                        | 0.0%      | 0.0%      | 0.0%                                   | 0.7%        |
| Nutrition counseling   | 0.5%     | 0.9%          | 0.0%                 | 2.5%                        | 0.0%      | 0.0%      | 0.0%                                   | 0.7%        |
| Expanded Lawyer Assistance Program   | 1.3%     | 0.4%          | 0.0%                 | 0.0%                        | 0.0%      | 0.0%      | 0.0%                                   | 0.6%        |
| Substance use treatment and supports   | 0.8%     | 0.4%          | 0.0%                 | 0.0%                        | 1.8%      | 0.0%      | 0.0%                                   | 0.6%        |
| Financial Counseling to advise on how best to manage money, reduce student debt, etc.    | 0.6%     | 0.0%          | 0.0%                 | 0.0%                        | 0.0%      | 0.0%      | 6.9%                                   | 0.5%        |
| Business coaching  | 1.0%     | 0.4%          | 0.0%                 | 0.0%                        | 0.0%      | 0.0%      | 0.0%                                   | 0.5%        |

Since confidentiality has repeatedly emerged as a significant barrier to lawyers seeking out and receiving the help they need, we asked them if they would take advantage of a confidential bar association resource for emotional health – and if it cost a modest fee. Most lawyers (54%) said they would participate – with about that number still willing to participate if it cost a modest fee. Meanwhile, approximately 45% of lawyers said they would not participate, free or not.

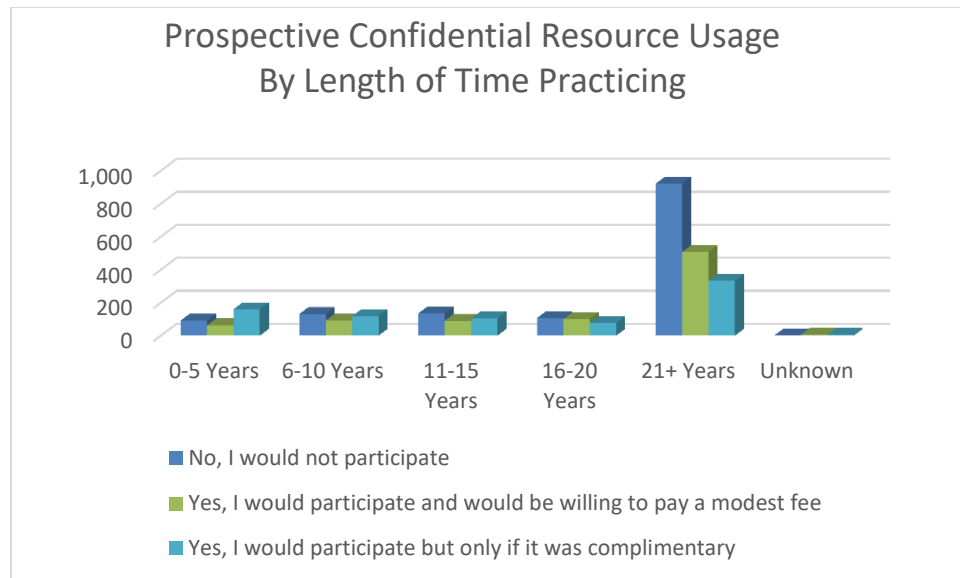
**Q12: If the bar association, or an affiliated organization, provided a confidential resource to help you manage your stress, family issues, work/life balance or other wellness issues would you participate? If so, would you be willing to pay a modest fee for it?**

Answered: 3,046 Skipped: 43

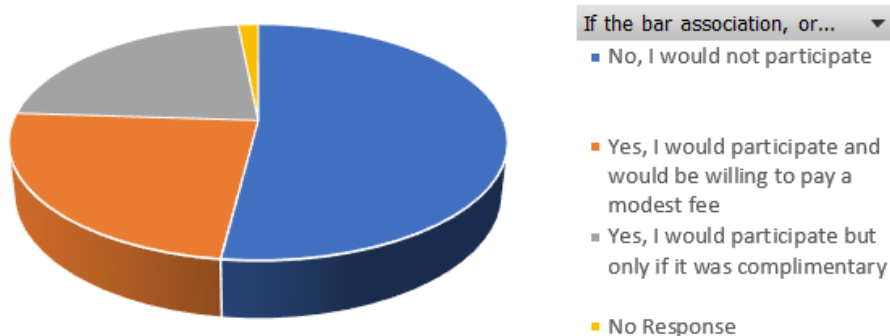
| ANSWER CHOICES  | RESPONSES |              |
|---|-----------|--------------|
| No, I would not participate                                       | 45.63%    | 1,390        |
| Yes, I would participate but only if it was complimentary         | 26.13%    | 796          |
| Yes, I would participate and would be willing to pay a modest fee | 28.23%    | 860          |
| <b>TOTAL</b>  |           | <b>3,046</b> |

When we looked more closely at the results, we discovered that individuals working for Legal Aid were the most willing to use a confidential resource provided by the bar association or an affiliated organization, and members of the judiciary were least willing to use such a resource. 71% of new lawyers (those practicing 0-5 years) indicated they would participate in such a resource, but 51% of those practicing 0-5 years would only use it if it were free. A majority (52%) of people who had never sought or found help previously indicated they would not avail themselves of such a resource.





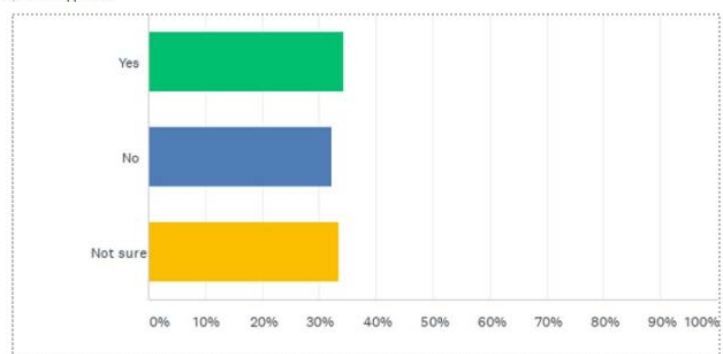
### Propsective Confidential Resource Usage By Individuals Who never Sought or Found Help



When we asked lawyers whether they would be interested in *serving* as a confidential mentor to an attorney seeking support, there was an even share of respondents who said that would serve (33.37%), who would not be interested (32.28%) or who were unsure (34.35%).

#### Q21: Would you be willing to serve as a confidential mentor to an attorney seeking support?

Answered: 3,037 Skipped: 52



Finally, we asked lawyers whether they would be interested in a variety of services which either have been or could be provided by NYSBA to assist in

lawyer well-being. Respondents could choose any or all of the options presented. Regardless of type of practice, the majority of respondents indicated they would be most interested in receiving additional information on professional assistance when needed. The least popular response was a confidential consult with someone as to what actions might be appropriate to take care of any issues noted in the self-assessment. Other free-text responses throughout this survey revealed wariness on the part of attorneys to trust that confidential services are truly confidential, so it is possible that sentiment is responsible for the interest level for this support.

| Would you be interested in any of the below?  | Law Firm    | Solo Practice | Government or agency | In-house counsel department | Legal Aid  | Judiciary  | Retired, Unemployed, Other, or Unknown | Total       |
|---|-------------|---------------|----------------------|-----------------------------|------------|------------|--|-------------|
| Receive additional information on professional assistance where needed  | 340         | 269           | 100                  | 72                          | 72         | 40         | 34                                     | 927         |
| Participate in attorney support groups where appropriate  | 284         | 266           | 75                   | 56                          | 62         | 29         | 26                                     | 798         |
| A Meeting with a mentor who could give ethical and practical guidance on a confidential basis                                     | 231         | 194           | 71                   | 36                          | 46         | 19         | 21                                     | 618         |
| Confidential consult with someone as to what actions might be appropriate to take care of any issues noted in the self-assessment | 211         | 149           | 55                   | 26                          | 35         | 21         | 21                                     | 518         |
| <b>Total</b>  | <b>1195</b> | <b>969</b>    | <b>299</b>           | <b>208</b>                  | <b>183</b> | <b>135</b> | <b>100</b>                             | <b>3089</b> |

### *CLE Resources*

New York lawyers overwhelmingly believe that Continuing Legal Education (CLE) programs on attorney wellbeing are important with 85% in support. The support for CLE programs regarding mental health and substance use remained equally high at 83%. However, when asked whether CLE for attorney wellbeing should be mandated as part of the biennial reporting cycle, New York lawyers were split with 46.43% in support and 53.57% opposed. Nearly the same ratio of lawyers appeared when asked whether a mandatory CLE credit in attorney wellbeing would strengthen public trust in the legal profession – 47.7% saying yes and 52.3% saying no.

With respect to the content of the CLE desired by lawyers (mandatory or otherwise), respondents were provided with 13 choices and could select as many as they wanted. “Dealing with Difficult People” was the most popular topic for all types of practices except law firms with 2 or more employees – their top selection was “Stress Reduction” with “Dealing with Difficult People” a close second. “Stress Reduction” was the second-place answer for all other types of practices. “Work-Life Balance” was also a popular selection for all types of practices, although it was slightly less popular with solo practitioners (56%) as compared with everyone else (approximately 65%).



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“Work-Life Balance” was the most popular topic for those in practice 0-5 years (79%), followed by “Stress Reduction” at 75%. “Dealing with Difficult People,” “Stress Reduction,” and “Work-Life Balance” were the clear top three choices regardless of number of years in the profession.

| What topics, skills, and continuing training or programs do you believe would be beneficial CLE in the area of well-being? | Law Firm    | Law Firm % | Solo Practice | Solo Practice % | Government or agency | Government or agency % | In-house counsel department | In-house counsel department % | Legal Aid  | Legal Aid % | Judiciary  | Judiciary % | Retired, Unemployed, Other, or Unknown | Retired, Unemployed, Other, or Unknown % | Total Responses |
|--|-------------|------------|---------------|-----------------|----------------------|------------------------|-----------------------------|-------------------------------|------------|-------------|------------|-------------|--|--|-----------------|
| Dealing with Difficult People  | 801         | 67%        | 682           | 70%             | 215                  | 72%                    | 147                         | 71%                           | 147        | 80%         | 92         | 68%         | 69                                     | 69%                                      | 2,153           |
| Stress Reduction   | 806         | 67%        | 599           | 62%             | 196                  | 66%                    | 145                         | 70%                           | 127        | 69%         | 86         | 64%         | 63                                     | 63%                                      | 2,022           |
| Work-Life Balance  | 777         | 65%        | 542           | 56%             | 184                  | 62%                    | 136                         | 65%                           | 122        | 67%         | 90         | 67%         | 69                                     | 69%                                      | 1,920           |
| Mental Health issues   | 530         | 44%        | 379           | 39%             | 155                  | 52%                    | 106                         | 51%                           | 112        | 61%         | 76         | 56%         | 55                                     | 55%                                      | 1,413           |
| Physical Fitness & Mental Clarity (including yoga)   | 497         | 42%        | 408           | 42%             | 126                  | 42%                    | 97                          | 47%                           | 79         | 43%         | 68         | 50%         | 49                                     | 49%                                      | 1,324           |
| Mindfulness  | 468         | 39%        | 364           | 38%             | 137                  | 46%                    | 98                          | 47%                           | 84         | 46%         | 62         | 46%         | 48                                     | 48%                                      | 1,261           |
| Implicit Bias  | 411         | 34%        | 324           | 33%             | 148                  | 49%                    | 101                         | 49%                           | 121        | 66%         | 67         | 50%         | 59                                     | 59%                                      | 1,231           |
| Nutrition for Busy Lawyers   | 459         | 38%        | 321           | 33%             | 124                  | 41%                    | 88                          | 42%                           | 87         | 48%         | 55         | 41%         | 41                                     | 41%                                      | 1,175           |
| Substance Use issues   | 439         | 37%        | 319           | 33%             | 118                  | 39%                    | 77                          | 37%                           | 93         | 51%         | 67         | 50%         | 42                                     | 42%                                      | 1,155           |
| Resiliency   | 374         | 31%        | 315           | 33%             | 108                  | 36%                    | 90                          | 43%                           | 88         | 48%         | 55         | 41%         | 44                                     | 44%                                      | 1,074           |
| Leadership   | 330         | 28%        | 181           | 19%             | 96                   | 32%                    | 81                          | 39%                           | 65         | 36%         | 39         | 29%         | 36                                     | 36%                                      | 828             |
| Vicarious Trauma   | 203         | 17%        | 219           | 23%             | 117                  | 39%                    | 45                          | 22%                           | 130        | 71%         | 48         | 36%         | 30                                     | 30%                                      | 792             |
| Vulnerability and Authenticity Training  | 184         | 15%        | 143           | 15%             | 64                   | 21%                    | 53                          | 25%                           | 64         | 35%         | 31         | 23%         | 23                                     | 23%                                      | 562             |
| <b>Total</b>   | <b>1195</b> |            | <b>969</b>    |                 | <b>299</b>           |                        | <b>208</b>                  |                               | <b>183</b> |             | <b>135</b> |             | <b>100</b>                             |  |                 |

| What topics, skills, and continuing training or programs do you believe would be beneficial CLE in the area of well-being? | 0-5 Years  | 0-5 Years % | 6-10 Years | 6-10 Years % | 11-15 Years | 11-15 Years % | 16-20 Years | 16-20 Years % | 21+ Years   | 21+ Years % | Unknown   | Unknown % | Total Responses |
|--|------------|-------------|------------|--------------|-------------|---------------|-------------|---------------|-------------|-------------|-----------|-----------|-----------------|
| Dealing with Difficult People  | 213        | 67%         | 233        | 67%          | 231         | 70%           | 203         | 70%           | 1265        | 71%         | 8         | 62%       | 2,153           |
| Stress Reduction   | 237        | 75%         | 238        | 69%          | 216         | 65%           | 188         | 65%           | 1135        | 63%         | 8         | 62%       | 2,022           |
| Work-Life Balance  | 250        | 79%         | 235        | 68%          | 218         | 66%           | 189         | 66%           | 1021        | 57%         | 7         | 54%       | 1,920           |
| Mental Health issues   | 210        | 66%         | 202        | 58%          | 173         | 52%           | 144         | 50%           | 677         | 38%         | 7         | 54%       | 1,413           |
| Physical Fitness & Mental Clarity (including yoga)   | 162        | 51%         | 164        | 47%          | 138         | 42%           | 121         | 42%           | 734         | 41%         | 5         | 38%       | 1,324           |
| Mindfulness  | 159        | 50%         | 155        | 45%          | 137         | 41%           | 127         | 44%           | 678         | 38%         | 5         | 38%       | 1,261           |
| Implicit Bias  | 176        | 55%         | 170        | 49%          | 151         | 46%           | 133         | 46%           | 594         | 33%         | 7         | 54%       | 1,231           |
| Nutrition for Busy Lawyers   | 177        | 56%         | 159        | 46%          | 137         | 41%           | 115         | 40%           | 584         | 33%         | 3         | 23%       | 1,175           |
| Substance Use issues   | 142        | 45%         | 147        | 42%          | 129         | 39%           | 111         | 39%           | 620         | 35%         | 6         | 46%       | 1,155           |
| Resiliency   | 124        | 39%         | 137        | 39%          | 112         | 34%           | 109         | 38%           | 590         | 33%         | 2         | 15%       | 1,074           |
| Leadership   | 114        | 36%         | 122        | 35%          | 102         | 31%           | 106         | 37%           | 381         | 21%         | 3         | 23%       | 828             |
| Vicarious Trauma   | 134        | 42%         | 120        | 35%          | 108         | 33%           | 90          | 31%           | 338         | 19%         | 2         | 15%       | 792             |
| Vulnerability and Authenticity Training  | 110        | 35%         | 97         | 28%          | 69          | 21%           | 60          | 21%           | 223         | 12%         | 3         | 23%       | 562             |
| <b>Total</b>   | <b>318</b> |             | <b>347</b> |              | <b>331</b>  |               | <b>288</b>  |               | <b>1792</b> |             | <b>13</b> |           |                 |



## APPENDIX B

### Task Force Co-Chairs, Working Group Chairs & Advisors



Task Force Co-Chairs:

*M. Elizabeth “Libby” Coreno, Co-Chair*

M. Elizabeth Coreno (“Libby”) provides counsel and consulting services to individuals, regional businesses, and international corporations in the real estate and construction industries. She is currently General Counsel to Bonacio Construction, Inc., and manages a small boutique practice (Law Office of M. Elizabeth Coreno, Esq. PC) for clients who need expertise in zoning, planning, and real property development; complex commercial and real estate transactions; land use and SEQRA actions. Over the last 17 years, Ms. Coreno has acted as land use counsel to some of the largest economic and real estate development projects in the Capital and Mohawk Valley regions of New York State.

Ms. Coreno is a long-time advocate and speaker on the issue of attorney well-being and worked to form the first-ever Attorney Wellbeing Subcommittee at the New York State Bar Association, as part of its Law Practice Management Committee. When she was President of the Saratoga County Bar Association, she brought about the establishment of SCBA’s Lawyers Assistance Committee and currently serves as the committee’s chair. Ms. Coreno was also a contributing member of NYSBA’s Working Group for Mental Health which successfully advocated for the removal of mental health screening questions for admission to the New York State bar in 2019.

In 2020, Ms. Coreno and her colleague, Dr. Kerry Murray O’Hara, PsyD, hosted the first-ever five-part *Attorney Wellbeing Podcast* for NYSBA which focused on the foundations of the attorney suffering and methods to begin to shift change. When the COVID-19 shutdown began, Ms. Coreno and Dr. O’Hara developed a confidential, weekly Zoom gathering solely focused on well-being impacts to the lives of lawyers. The *Lawyer-to-Lawyer Well-Being Roundtable* met for 54 free sessions between 2020 and 2021 in which lawyers collectively shared fears and concerns about depression, anxiety, court closures, racial injustice, political upheaval – but ultimately obtained skills for their lives, tools for their practices and a sense of belonging. She is the author of several articles on attorney well-being including, *Attorney Wellness: The Science of Stress and the Road to Well-Being* (with Dr. O’Hara) (NYSBA Bar Journal, Oct. 2018) and *Never Alone: Addiction, Recovery & Community* (NYSBA Journal, Dec. 2018). She has been interviewed by national publications on issues facing lawyers and their well-being including [law.com](http://law.com), the *New York Law Journal*, *Bloomberg Law*, and the American Bar Association’s *Bar Leader*. Ms. Coreno, along with Dr. O’Hara, are nationally recognized speakers and workshop leaders in lawyer well-being, specifically advocating for culture change and teaching skills for the rehumanizing of law and its lawyers.

*Hon. Karen K. Peters, Co-Chair*

The Honorable Karen Peters is a trailblazer in New York’s legal community, with a judicial career spanning nearly 35 years, including as the former Presiding Justice of the New York State Supreme Court, Appellate Division, Third Department.

Justice Peters began her legal career in private practice (and taught gender discrimination in the law and criminal law as an Assistant Professor at the State University of New York at New Paltz). She later served as an Assistant District Attorney in Dutchess County, New York; as counsel to the New York State Division of Alcoholism and Alcohol Abuse; and as Director of the New York State Assembly's Government Operations Committee. Her judicial career began in 1983, when she became the first woman elected to Ulster County's Family Court bench. In 1992, she became the first woman elected to the New York State Supreme Court in the Third Department (and was reelected in 2006). In 1994, she was appointed to the Appellate Division, Third Department, and, in 2012, became the first woman named as Presiding Justice of the Third Department. Justice Peters retired from the bench in December 2017.

She is of counsel to Epstein Becker Green and currently serves as the Chair of the New York State Permanent Judicial Commission on Justice for Children (formed in 1988 to improve the life chances of justice-involved children and adolescents) and the New York State Unified Court System's Commission on Parental Legal Representation. Justice Peters also serves on the Unified Court System's Advisory Committee on Judicial Ethics, as well as NYSBA's Committees on Children and the Law, Judicial Wellness, Procedures for Judicial Discipline and The New York State Constitution.

In addition to those notable accomplishments, Justice Peters is the recipient of numerous honors, including the 2017 Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare, the 2017 Betty Weinberg Ellerin Mentoring Award, the New York State Bar Association's Judicial Section Inaugural Award for Advancement of Judicial Diversity, the Center for Women in Government and Civil Society's Public Service Leadership Award, the Capital District Women's Bar Association's Justice Kaye Distinguished Membership Attorney Award, Albany Law School's Kate Stoneman Award, and the Robert L. Haig Award for Distinguished Public Service.

### Working Group Chairs

#### *James R. Barnes, Chair, Working Group on Continuing Legal Education*

James R. Barnes, a shareholder of Burke & Casserly, P.C., focuses his practice in elder law, trusts and estates, guardianship, special needs planning, business formation and succession planning, and real estate. He is Chair of NYSBA's Committee on Continuing Legal Education and is a past Chair of NYSBA's Young Lawyers Section.

Mr. Barnes is a Trustee of the Foundation for Ellis Medicine in Schenectady, and serves on the board of directors of the Visiting Nurse Service of Northeastern New York. He conducts regular speaking engagements in various community and professional forums, lecturing about current topics affecting seniors and their families.

*Meredith Heller, Chair, Working Group on Emotional Well-being*

Meredith S. Heller, a solo practitioner based in New York City, represents criminal defendants in both federal and state criminal courts, including before the Second Circuit Court of Appeals and the New York Court of Appeals. She has also counseled attorneys facing discipline and bar applicants on the admissions process.

A speaker at the Orientation Program for Newly Admitted Attorneys in the First Department and a frequent presenter at Continuing Legal Education programs, Ms. Heller discusses quality of life issues, substance abuse and the resources available through the Lawyers Assistance Program. She is a past Chair of the New York City Bar Association's Professional Responsibility Committee and NYCBA's Lawyers Assistance Program Committee. She also has served on NYSBA's Professional Discipline Committee.

*Robert S. Herbst, Chair, Working Group on Physical Well-being*

Robert S. Herbst has been a law firm partner and a public company General Counsel, including for the largest health club chain in the northeast which owns the New York Sports Clubs. He is a former Chair of the NYSBA Committee on Courts of Appellate Jurisdiction. He is a 19-time World Powerlifting Champion and member of the AAU Strength Sports Hall of Fame and is an internationally recognized authority on exercise, fitness, and well-being.

*Glenn Lau-Kee, Chair, Working Group on Bar Associations*

Glenn Lau-Kee is a partner in the Lau-Kee Law Group PLLC, a law firm in New York City, which concentrates on real estate, business, and trusts and estates planning.

A former president of the New York State Bar Association, Mr. Lau-Kee was appointed by former Chief Judge Judith Kaye to the Committee to Promote Public Trust and Confidence in the Legal System and the Commission to Examine Solo and Small Firm Practice. Mr. Lau-Kee is a former president of the Asian-American Bar Association of New York, a former co-vice chair of the Commission on Human Rights of the City of New York, and has served on the boards of directors of the New York County Lawyers' Association, Legal Services for New York City, Fund for Modern Courts, Queens Legal Services Corporation, YMCA of Greater New York and US-Asia Institute in Washington, D.C.

*Hon. Sarah L. Krauss, Chair, Working Group on Substance Use Disorders and Addiction*

Hon. Sarah (Sallie) L. Krauss served as an Acting Supreme Court Justice in both the Supreme Court and the Family Court in Brooklyn, New York, from 2005 until her retirement in 2012. Prior to her elevation to state Supreme Court, Judge Krauss served in the Brooklyn Civil and Criminal Courts.



Throughout her career, Justice Krauss has worked extensively in support of attorney and judicial wellness. She chaired the American Bar Association's Commission on Lawyer Assistance Programs and its Judicial Assistance Initiative, where she published an ABA resource guide entitled "Judges Helping Judges; Resource and Education." For 30 years she has been a member of New York State Bar Association's Lawyer Assistance Committee, which she also chaired, and has served on NYSBA's Judicial Wellness Committee since its inception.

*Kathryn Grant Madigan, Chair, Working Group on Law Culture and Employment*

Kathryn Grant Madigan is Senior Partner and Founding Chair of the Elder Law Practice Group at Levene Gouldin & Thompson, LLP, where she concentrates her practice on elder law and trusts and estates. She is a Trustee of the IOLA Fund of New York and serves on the Third Department Judicial Screening Committee.

Ms. Madigan is past president of the New York State Bar Association, and a past president of the Broome County Bar Association, the youngest and the first woman to hold that office. She is a noted lecturer in estate planning and elder law, leadership and professionalism, work/life balance, stress management, and the legal and psycho-social aspects of aging.

She received the Kate Stoneman Award, given by Albany Law School for actively seeking change and expanding opportunities for women, and the Ruth G. Schapiro Award, given by NYSBA for noteworthy contributions to the concerns of women. In 2003, she, with then-Law Practice Management Director Stephen Gallagher, pioneered NYSBA's Women on the Move, an annual CLE program.

Ms. Madigan has long served the SUNY Binghamton community and currently serves as Chair of the Binghamton University Council.

*Rosemary Queenan, Chair, Working Group on Law Education*

Rosemary Queenan is Associate Dean for Student Affairs and Professor of Law at Albany Law School, Albany, NY. In her role as Associate Dean, she assists with the administration of the law school, develops programming and initiatives focused on student life and wellness, counsels students, and serves as advisor to students and student organizations.

Her scholarship is focused on education and disability law. Her most recent work includes, "Delay & Irreparable Harm: A Study of Exhaustion Through the Lens of the IDEA," published in the North Carolina Law Review (2021) and "Professional Identity Formation, Leadership and Exploration of Self," published in the University of Missouri Kansas City Law Review (2021), which she co-authored with Albany Law School Assistant Dean Mary Walsh Fitzpatrick.

*Marian C. Rice, Chair, Working Group on Public Trusts and Ethics*

Marian C. Rice is managing partner at the Melville, NY law firm L'Abbate, Balkan, Colavita & Contin, LLP, where she concentrates her practice on the representation of attorneys and risk management for lawyers, and also serves as General Counsel to the Firm. Ms. Rice is currently Co-Chair of the New York State Bar Association Law Practice Management Committee, Chair of the NYSBA Working Group on Re-Opening Law Firms, a member of NYSBA's Committee on Professional Ethics and serves as an alternate to the NYSBA Nominating Committee. She is a Past President of the Nassau County Bar Association, the largest suburban bar association in the country.

*Hon. Shirley Troutman, Chair, Working Group on the Judiciary and the Courts*

Hon. Shirley Troutman is Associate Justice in the Appellate Division, Fourth Department. She was appointed by former Governor Andrew M. Cuomo in February 2016. Previously, Justice Troutman had served as a trial judge in New York State Supreme Court. Prior to her election to Supreme Court, Justice Troutman was a County Court Judge and served as a City Court Judge.

Before joining the bench, Justice Troutman was an Assistant United States Attorney for the Western District of New York, Assistant State Attorney General and an Assistant District Attorney. She was appointed by Chief Judge Janet DiFiore as co-chair of the Franklin H. Williams Judicial Commission, which is responsible for developing programs to improve the perception of fairness within the court system and to help ensure equal justice in New York State. She previously served as a member of the Advisory Committee on Judicial Ethics of the NYS Unified Court System.

*Advisors:*

[Robin Belleau, JD, LCPC](#), has been the Director of Wellbeing for Kirkland & Ellis since 2019 and was a lawyer with eight years of practice experience as a public defender and state's attorney before earning a master's degree in counseling. Following her degree, Robin joined the Illinois LAP as clinical director before becoming the executive director of the organization. She was also a member of the ABA National Task Force on Attorney Wellbeing and contributed to the 2016 Report. During the COVID 19 shutdown, Ms. Belleau shared her expertise and wisdom about lawyer wellbeing at the NYSBA Women's Section, Women on the Move (2020) program as well as assisted the Working Group on Emotional Wellbeing.

[Jason Fanning, Ph.D.](#), is Assistant Professor and Wells Fargo Faculty Scholar in the Department of Health and Exercise Science at Wake Forest University with an appointment in Internal Medicine at Wake Forest School of Medicine. Dr. Fanning is a National Institutes of Health-funded behavioral scientist who directs the Wake Forest Behavioral Medicine Laboratory. He teaches courses in health psychology and biostatistics and conducts clinical trial research on the promotion of physical activity across the lifespan. To date, he has published more than 60 peer

reviewed papers on the psychology of physical activity promotion. Dr. Fanning was an invaluable advisor to the Working Group on Physical Well-being. We appreciate his knowledge, insight, and guidance in working to improve the physical and mental health of the legal community.

**Kathleen Fyfe**, founder of Fyfe Consulting, LLC, is a culture sleuth, change strategist, and community builder. She brings decades of experience working with individuals and organizations, both large and small. Believing that the people and their choices are the most important resources a company has, she customizes trainings based on the needs of the company and how they want to grow. Her expertise includes culture, strategic planning and development, organizational assessments, emotional intelligence, leadership and management training, team building and coaching. Ms. Fyfe has appeared as a guest expert on the NYSBA Attorney Well-being Podcast and contributed “Legal Culture Must Change for Attorneys to Thrive” as part of the *NYSBA Journal*, September 2020 edition.<sup>235</sup> Her remarkable insights about law culture and systems provided the Task Force with the framework for addressing systemic barriers for collective well-being for all Working Groups.

**Stephen P. Gallagher** was the first Director of Law Office Economics and Management for NYSBA from 1990 through 2003. He spent the balance of his career in coaching lawyers through transition, teaching marketing strategy to MBA students; and committing time each day to moving his personal journey through growth and renewal forward. He remained a dedicated friend to the NYSBA community, including and especially this Task Force. Mr. Gallagher contributed “Finding a Healthy Way to Transform Our Lives as We Retire” to the *NYSBA Journal*, September 2020 edition,<sup>236</sup> as well as provide countless hours of participation, research and assistance to the co-chairs and several of the Working Groups.

**Robert Goldman, Psy.D.**, is a licensed psychologist and attorney with over 18 years of experience in combining law and psychology. He served as the supervising psychologist for the Suffolk County Probation Department and Suffolk County Mental Hygiene Services and has lectured nationally on topics ranging from restorative justice, educational law, forensic evaluations and the treatment of anxiety and depression among teens and adults. He is also the co-chair of the Neuroscience and Law Committee and an adjunct professor at Hofstra University and St. Joseph’s College. Dr. Goldman recently started a company, TLC-Virtual Resiliency, which provides virtual support to help employees develop resiliency. Dr. Goldman contributed “Lawyers Who Accept War-like Personas Carry Heavy Burden” to the *NYSBA Bar Journal*, September 2020 edition,<sup>237</sup> as well as provided clinical expertise and guidance to the Working Group on Emotional Well-being.

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<sup>235</sup> <https://nysba.org/legal-culture-must-change-for-attorneys-to-thrive/>.

<sup>236</sup> <https://nysba.org/finding-a-healthy-way-to-transform-our-lives-as-we-retire/>

<sup>237</sup> <https://nysba.org/lawyers-who-accept-war-like-personas-carry-heavy-burden/>.

**Terry Harrell** is the Executive Director of the Indiana Judges and Lawyers Assistance Program, graduated from Maurer School of Law and is a Licensed Clinical Social Worker (LCSW), a Licensed Clinical Addictions Counselor (LCAC) and has a Master Addictions Counselor certification (MAC). Ms. Harrell is active with the Indiana State Bar Association and is a Fellow of the Indiana Bar Foundation. She serves on the American Bar Association's Commission on Lawyer Assistance Program's Policy and Well-Being Committees and serves on the National Task Force on Lawyer Well Being. Ms. Harrell authored the brilliant piece entitled, "Beyond the Silence: Removing Stigma Around Addiction" for the NYSBA Bar Journal, September 2020 edition<sup>238</sup>, as well as providing guidance and expertise to the Working Group on Substance Use Disorders and Addiction.

**Deborah Epstein Henry** is an expert, consultant, best-selling author, and public speaker on careers, workplaces, women and law. She runs DEH Consulting where she consults and speaks internationally. Ms. Epstein Henry conceived of Best Law Firms for Women, a benchmarking survey and competition she ran for a decade with Working Mother. She wrote two ABA best-selling books, *Law & Reorder* (author, 2010) and *Finding Bliss* (co-author, 2015). In 2011, Ms. Epstein Henry co-founded Bliss Lawyers to employ lawyers to work in temporary roles for in-house and law firm clients. In 2020, her company was acquired by Axiom, the global leader in high-caliber, on-demand legal talent, and she now serves as their executive consultant. Ms. Epstein Henry authored "What Makes Virtual Lawyer Happy" for the NYSBA *Journal*, September 2020 edition<sup>239</sup> as well as providing information and consulting services to the Working Group on Law Culture and Employment.

**Kerry O'Hara, Psy.D.**, is a clinical psychologist and the Director/Founder of DBT Wellness & Psychological Services in Saratoga Springs, N.Y. She has over 25 years of experience in a variety of clinical settings including inpatient, residential, forensic, outpatient, and academic. Over the course of the last seven years, Dr. O'Hara has focused on the mental health crisis and wellness for the field of law. Dr. O'Hara has provided more than a dozen free, educational CLE programs for NYSBA and lawyers across the state about the unique impacts of the practice of law on the individual, co-hosts the NYSBA Attorney Well-being podcast with Task Force Co-chair Libby Coreno, and she co-facilitated the weekly NYSBA Lawyer-to-Lawyer Roundtable during the entirety of the COVID19 shutdown. She also contributed "How a Lunch Between Dear Friends Led to a Movement to Change the Legal Culture" for the NYSBA *Journal*, September 2020 edition,<sup>240</sup> as well as provided the co-chairs, the Emotional Well-Being, and Law Culture Working Groups with clinical and experiential expertise.

**Jarrod F. Reich** is a member of the faculty of the University of Miami School of Law, where he currently teaches first-year and upper-level writing courses as well as evidence, and serves as faculty

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<sup>238</sup> <https://nysba.org/beyond-the-silence-removing-the-stigma-around-addiction/>.

<sup>239</sup> <https://nysba.org/what-makes-a-virtual-lawyer-happy/>.

<sup>240</sup> <https://nysba.org/how-a-lunch-between-dear-friends-led-to-a-movement-to-change-the-legal-culture/>

advisor to the Miami Law Mental Health Collective. Previously, he served on the faculties of Georgetown University Law Center and Florida State University College of Law, as well as the Benjamin N. Cardozo School of Law as an adjunct professor, teaching courses in legal writing, appellate advocacy, alternative dispute resolution, and seminars for judicial externs, in-house counsel externs, and legal writing fellows. He focuses his scholarship on lawyer and law student well-being: among other things, his scholarship has appeared in the *Villanova Law Review* and Harvard Law School's *The Practice*. He is a member of the Institute for Well-Being in Law's Advisory Board of Directors, and he presents on well-being topics both nationally and internationally. In 2020, he was Chair of the Association of American Law Schools' award-winning Section on Balance in Legal Education and serves on its Executive Committee. Prof. Reich writes and presents on legal writing, and is the co-author of the fourth edition of *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing*, the premier legal writing textbook for practitioners. Prior to teaching full-time, he was Counsel at the firm Boies Schiller Flexner LLP, where he focused his practice on complex litigation. His work in the field of lawyer and law student well-being informed portions of this Report and he contributed the section of this Report entitled "Business Case for Change: Attorney Well-Being as an Ethical and Business Imperative."

## APPENDIX C

### Bar Association and Law Firm Outreach Report



NYSBA Attorney Well-being Task Force SUD and Addictions Work Group  
Bar Association and Law Firm Outreach Report by Elaine Turley 10/27/2020

I. Bar Association and Law Firm Leadership Issues

Our committee must address the low incidence of response by law firms and managing attorneys of organizations to requests by lawyer assistance programs to present information, recommendations or model policies for attorney wellness.

Law firm participation in lawyer assistance and attorney wellness programs will help firms to increase productivity, improve the quality of the representation the firm provides clients, and avoid losses due to potential attorney grievance or malpractice matters.

A. OUTREACH AND COMMUNICATIONS TO LAWYERS AND LAW FIRMS:

1. Outreach and communications between colleagues on a person to person basis is likely the best option. Following are recommendations for implementation:
  - a. Create a law firm outreach committee in each county comprised of one representative of the executive committee of each bar association and one member of each county's lawyer assistance committee who is also a member of the NYSBA lawyer assistance committee. Each of such committee members should be a member of the bar who has extensive contacts and exposure in the legal community wherever possible.
  - b. Advocate and arrange for each county bar association to designate an administrative person who will assist the outreach committee in creating, printing and disseminating correspondence and other communications.
  - c. The outreach committee will plan and implement ways to make contact with law firms including
    - i. Making personal contact with colleagues to identify and facilitate introduction to personnel and attorneys in firms and organizations (create a contact tree);
    - ii. Identifying and facilitating introduction to the individual(s) who make(s) decisions regarding staff development and seminars.
2. Use national events to publicize potential education materials (i.e., suicide awareness day, mental illness awareness week, lawyer well-being week);
3. Every bar association must include information about the services provided by the county lawyer assistance programs or committees and the NYSBA LAP on a slide



at the beginning of each CLE and other bar association presentation and include such statement in all written materials disseminated at CLEs and other events. LAPs and LACs must advocate for, confirm implementation of, and oversee continuation of such announcement.

4. Posters and pamphlets for NYSBA LAP or county LAPs must be placed and maintained at county bar associations, all court buildings, and other sites serving the legal community. It would be helpful for the NYSBA to have an employee work with someone on the county level to implement this program.
5. Publish articles in county bar association newspapers/journals. Example: In Suffolk County the LHL committee acts as “editor/sponsor” of a monthly edition of the Suffolk Journal each year. The LHL committee must arrange for and collect 4-8 articles for publication and must review, edit and deliver to the bar association each article. This has been very effective in making judges, bar association members, and other attorneys aware of the issues related to SUD and services provided by lawyer assistance.

**B. OUTREACH AND COMMUNICATIONS TO BAR ASSOCIATIONS:**

1. The lawyer assistance committee of each county should obtain a commitment from each county bar association to convene a special meeting once or twice a year at which the county lawyer assistance committee and the NYSBA LAP will together make a presentation to the officers and directors of the bar association on matters related to the lawyer assistance programs in NYS and the particular county and to discuss how the county bar association can improve awareness of and access to lawyer wellness and substance use recovery resources.
2. The county lawyer assistance committee/NYS LAP should make one or two CLE presentations for credit to each committee of the county bar associations. For example: In Suffolk County there are approximately 38 committees within the bar association. The committee chairs often try to make CLEs for credit available to their committees and inviting a LAC/LAP to do so would relieve the committee chairs of having to create and submit materials for approval. Considering some committees meet for joint meetings for special programming the LAC/LAPs could potentially make 25-35 presentations to committees within the Suffolk County Bar Association alone and reach the individual members who practice in the area of law represented by the committees, including law firm partners and managing partners.

**C. Programming**

1. Create a series of presentations that are CLE eligible and include video to be

presented by a personal moderator. Make a list of attorneys and other professionals willing and able to act as personal moderators.

2. To achieve maximum participation video-taped presentations should be approved for CLE credit, be no longer than 1.5 hours and preferably 1 hour, and should be offered at a low or no cost so the law firm will be willing to pay for the credits for all attorneys in the practice or organization or the attendees at a bar association committee meeting are willing to participate. Consideration must be given to making video presentations or audio presentations available for attorneys to view or listen to on demand at a location of their choosing.
3. Create video-taped presentations suitable for personnel departments, law firm staff, etc., that can be easily presented on short notice by a personal moderator or viewed at home/office or listened to as desired.



## APPENDIX D

### Working Group on Substance Use & Addiction Court Report



## **Working Group on Substance Use Disorder & Addictions**

### **COURT REPORT**

The New York State Unified Court System (and its approximately 16,000 employees) present an opportunity to provide valuable information to these legal professionals regarding available services for substance use, mental health and other addiction disorders. We have identified five (5) specific areas of concern which must be addressed. These are leadership, consistency, frequency, penetration and action and each will be addressed sequentially below.

**Leadership:** Access to, and support from, UCS leadership will be crucial in developing and maintaining a successful and collaborative program. The leaders must be willing to set this as a priority or it is unlikely that otherwise staff will become adequately sensitized to these issues. Therefore, it is absolutely essential that those in the highest leadership positions fully endorse this initiative. This obviously leads to the question of how to secure that commitment, particularly in a Court System where leadership positions change regularly. The answer is institutionalization. If these policies become part of the daily fabric of the organization, they are likely to endure despite changes in leadership and the consequent shifts in priorities. Accordingly, we should seek to engage leadership with a focus of securing a commitment to the institutionalization of services related to substance use, mental health and other addiction disorders including education, training, peer support and access to treatment.

It should be noted that one critically important byproduct of institutionalization is the reduction in stigma which often inhibits individuals from seeking help. Conversely, a failure to address stigma will result in an absolute bar to institutionalization. Therefore, the elimination of stigma must be a primary goal for institutionalization. In order for conversations about substance use, mental health and other addiction disorders to become as common and comfortable as discussing any other health issue, leadership must provide a consistent message that it is safe to raise these matters without fear of stigma or any other negative repercussions.

**Consistency:** Consistency is one avenue towards normalization and ultimately institutionalization. An unrelenting effort to deliver this message, through regularly scheduled programming, is required to educate and develop the level of comfort and competency which eliminates stigma and encourages open discussion. This can be accomplished by instituting mandatory trainings on an annual or semi-annual basis along with monthly updates and informational sessions. These trainings should consistently highlight the treatability of substance use, mental health and other addiction disorders and endeavor to destigmatize conversations around these issues.

**Frequency:** At a minimum, leadership should consider mandatory online and in-person trainings (similar to those for cyber security and/or sexual harassment issues) on an annual or semi-annual basis. Periodic updates and informational sessions would be a helpful adjunct and

would support stigma reduction efforts. Monthly peer group gatherings, either remotely, in-person or as a hybrid should be developed to encourage open discussion of these issues. Simultaneously, care must be taken to avoid over saturation and the potential for a disruption in operations. The frequency of scheduled trainings, seminars or activities needs to be finely tuned and targeted to achieve maximum impact.

**Penetration:** Any proposed substance use, mental health or other addiction disorders policy and/or protocol needs to be distributed and absorbed universally in order to achieve institutionalization. However, this information must simultaneously appeal to and encourage those suffering from substance use, mental health and other addiction disorders to seek assistance. Trainings and distributed materials should be formatted so that they facilitate access to treatment and other services as well as educate and reduce stigma.

**Action:** The foregoing is of no avail unless followed by concrete actions. Beginning with organizational leadership, the following specific actions constitute proposed first steps towards implementing a plan of institutionalizing policies related to substance use, mental health and other addiction disorders.

- 1.) Identify current allies among the Administrative Judges, Supervising Judges, District Executives, Court Managers and the Office of Justice Court Support and enlist their assistance in advocating on behalf of substance use, mental health and other addiction disorders education.
  - a. Provide these leaders with specific objectives including, but not limited to, the following;
    - i. A commitment to establish “wellness liaisons” in every District who can act as initial points of contact.
    - ii. A commitment to offer and encourage attendance at regularly scheduled wellness programming throughout each District.
    - iii. A commitment to set aside funding in each District’s annual budget to ensure consistent provision of wellness programs.
  - b. Develop collaborative partnerships with, among others, the Judicial Institute, the Office for Justice Initiatives and the Office of Policy and Planning to provide information and educational programming during their annually scheduled training programs.
  - c. Consistently reinforce to leadership and all supervisory staff within the Court System four (4) basic truths:

- i. That there are grave consequences associated with substance use, mental health issues and other addictive behaviors.
- ii. That these are commonplace and impact the daily functioning of the court system.
- iii. That there is a need for, and readily available, effective treatment modalities.
- iv. That every manager, at every level, will encounter these issues in the workplace. That when identified, these matters should be addressed openly, honestly and nonjudgmentally, because there is something we can do about it.





## APPENDIX E

### Resolution of the Working Group on the Judiciary and the Courts



**Attorney Wellness Initiative Policy Statement  
in support of the Lawyers Assistance Program**

**WHEREAS**, the New York State Bar Association understands that in order for our citizens to have trust and confidence in the legal system, the profession itself must be mentally, emotionally and physically healthy.

WHEREAS, the New York State Bar Association is committed to assisting persons in the legal profession who are dealing with impairment issues that affect job performance; and

WHEREAS, practice management studies have demonstrated that early intervention and treatment of law firm or legal department professionals can assist a firm or department to avoid negative consequences that can result from a failure to deal with impairment and to protect the interests of the clients; and

WHEREAS, The New York State Bar Association's Lawyers Assistance Program has experienced periods of funding cuts which have been detrimental to its functioning in assisting lawyers, judges, law students and their families with issues of stress, impairment, and the ethical practice of law, and

WHEREAS, the New York State Bar Association has developed a policy to enhance the wellbeing of all attorneys through the establishment of the Attorney Wellbeing Task Force, and

WHEREAS, the Attorney Wellbeing Task Force has published many recommendations to assist New York attorneys in developing and maintaining healthy practices to ensure their fitness to practice law,

**WHEREAS**, the New York State Bar Association further understands that an impaired profession adversely impacts the fair administration of justice and that said impairment may impact disproportionately people of color and those who are economically disadvantaged;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association urges all stake holders to fully support Lawyer Assistance Programs by creating a supportive work environment that encourages impaired members of the legal profession to seek assistance and to fully commit to providing the necessary financial resources for said programs and NYSBA pledges to continue to support the Lawyers Assistance Program(LAP) and commits to ensuring that the organization and funding of the LAP is sufficient to enable LAP to function in New York State as best practices of the Model Lawyer Assistance Program adopted by the ABA House of Delegates - February 2004.



APPENDIX F

“My Time in Rural Private Practice”

By William Pulos, Esq.



## MY TIME IN RURAL PRIVATE PRACTICE

by Bill Pulos

The physical environment in rural New York State is beautiful, the economic landscape is not. Running a rural general law practice as a solo or small firm practitioner has to be one of the toughest challenges anywhere.

I've lived for 66 years, and for 10+ years have had my solo office, in Allegany County, the third poorest county per capita in New York. It is one of the 420 counties in the Appalachian Regional Commission. I've been my own boss for 40 years, and the experience has taught me that a general practitioner has to work *very* hard. Sadly, over time, the risk and exposure of a general practice has increased, while opportunities have shrunk, with potential clients that many times shop for lawyers as if they are going to Wal-Mart.

But I am very lucky to have lived this life and am very grateful to my family, law partner Timothy Rosell, friends and clients who have supported me in my dream and mission of being a small-town lawyer. Without them I wouldn't have made it. I practice in and near the community where I grew up, having left only for law school in Albany. I've embraced my freedom and independence and I'm thankful for that. I've done my best to give back to my community and I'm very proud of what I've done.<sup>1</sup>

But make no mistake, making an upper middle-class income from a rural general practice, having a happy family life and putting kids through college is extremely difficult. The sand is running through the hour-glass as general practice lawyers, particularly rural lawyers, are becoming anachronisms. The problem is a lot bigger than the academics/big firm leaders think.

"Rural lawyer wellness" is something you don't see written about much. For me, the discussion of lawyer wellness is inextricably intertwined with protecting, preserving and enhancing one's physical, mental, emotional, spiritual and financial health. For many rural lawyers, financial health is an enormous factor in their well-being. There is no lawyer wellness without happiness and joy; and no happiness or joy without at least a modicum of financial stability.

Early on, I learned of an Allegany County lawyer who, in the 1960s and '70s, used to wrap himself in aluminum foil at his office desk to keep warm in winter. Forty years ago he was one of the first rural lawyers to "hit it big" by getting permanent government employment. Salary, health insurance, regular hours, paid time off, retirement pension, promotion and perks. That can't be easily matched in a rural law practice.

To start, I did part-time outside work, earning about \$10,000 a year, no benefits. It helped me survive while starting the business, paying the bills and servicing my debts. Over the next 18 years I continued with outside work as an adjunct professor and speaker at local colleges with stints as town attorney and village attorney.

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\* <https://www.billpulos.com/the-40-years-public-service-of-attorney-william-whitaker-pulos/>.



The challenges of what it takes to succeed in rural private practice without steady, stable government work can't easily be explained – or taught. The freedom and independence of starting/owning/running your own shop is alluring, but it can come with a steep price that few can comprehend. Most newbie graduates and most lawyers couldn't do it 40 years ago, and it is more difficult now, with or without high tech.

### Some Advice

To have a chance, those contemplating a rural practice today need to:

- 1) be independently wealthy and/or well-known via a long-established prominent family with a long reach of palpable government, political and business influence;
- 2) walk into and/or buy an established practice with a file cabinet full of lucrative wills and a heavy dose of guaranteed-paying legal work, such as a prominent bank as a client;
- 3) intend from the start to obtain a full-time W-2 government job and stick with it for about 35 years, to reap the benefits of pay, promotion, pension and perks;
- 4) intend from the start to obtain a long-term, W-2, \$50,000+ part-time government job (including pension and health insurance) to supplement the lawyer's fledgling private practice; or
- 5) plan to work 60-80 hours+/week by taking everything that walks in the door, including assigned counsel, family court, bankruptcy, divorce, local courts and DWIs. Notably, maintaining wellness in private practice while working in these fields can be very difficult. This option is toughest of all if the lawyer is interested in a loving, fulfilling balanced family life, particularly with children included. A working spouse is pretty much a necessity.

Truthfully, if your plan is to start/find/buy/pursue a profitable, prosperous and fulfilling a pure, rural private practice, you are up against nearly insurmountable odds.

And if option 5 is your only option, after some years you likely will begin to question whether any reward, of any kind, is worth the risk and the cost to grind it out in a rural practice for 40 years. Physically, mentally, emotionally, spiritually and financially, it takes a toll. The truth is, you can lose altruism pretty quickly.

With rare exception, government pay and benefits are the rural lawyer's mother lode. Anecdotally, many rural lawyers aren't able to save enough purely from private practice for their retirement. That's why many old-time small-town lawyers practiced law till they died. They had savings, perhaps, but no cash-flow retirement fund. Thus I was not surprised to see a prominent rural personal injury attorney retire from his practice and take a county job at the end of his career, to earn some retirement credit. That should tell you something.

### Some More Advice and a Word of Caution:

Compare the rural private lawyer's income with that of a mid-level government lawyer with a \$100,000/year job (perhaps part-time), and 30 years of retirement credit. The government lawyer is entitled to a lifetime pension of \$5,000/month, \$60,000 a year, *state tax-free*. In a small town, that's not chicken feed.

There are many government lawyers whose pensions will exceed \$60,000/year, on top of their Social Security. When rural private lawyers make the inevitable comparison to their contemporaries' government wages, benefits and work requirements, along with those of other non-lawyer government employees, it can make small town, general practice lawyering look like one hell of a lot of school work, testing, loans, degrees, sweat and stress for the financial return.<sup>2241</sup>

For a private practitioner to receive the same \$5,000 monthly (after NYS tax) requires accumulating \$1.3 million for a withdrawal rate of 5% annually. Many times, that financial reality comes too late to a private practitioner. Once it does, achieving retirement security becomes difficult. Many times, this realization is followed by disillusionment and depression and the almost inevitable family, alcohol, drug, money and health problems of a lawyer in crisis.

While young lawyers would be well advised to start saving, investing and compounding 10% of their gross yearly income with the goal of saving at least \$30,000 (tax-deferred) by age 30, that is very difficult to do while paying down law school debt. I know; I had it – 40 years ago. Saving money while starting out in a rural law practice? That is mostly an oxymoron.

### Rural Lawyer Well-being

For many attorneys, financial problems are major factors in attorney ill-being, but the problem is compounded for rural private practitioners. However, the problems are not just financial: Many rural lawyers in private practice have deep and abiding commitments to their communities and many older rural lawyers do not retire because there is no one to take their place. People in rural areas need representation. Who will serve the people they serve?<sup>242</sup> This crisis of conscience can be a factor in attorney well-being. There are steps that must be taken by bar associations, lawyer assistance programs, and other stakeholders to address the well-being crises faced particularly by rural lawyers.

*To all involved with attorney wellness, thank you very much for your efforts and resolution on this very important issue.*

Bill Pulos

Hornell, New York

May 30, 2021

<https://www.billpulos.com/>.

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<sup>241</sup> Look up anyone paid with taxpayer dollars; everyone can do the math. <https://www.seethroughny.net/>.

<sup>242</sup> See Taier Perlman, Rural Law Practice in New York State, Report of the Gov't Law Ctr., Albany Law School, Apr. 2019; see also Joan Fucillo, *A Look at the Lives of Five Rural Lawyers*, <https://nysba.org/a-look-at-the-lives-of-five-rural-lawyers/>. Ms. Fucillo edited Mr. Pulos' piece.