

Wellness as a Path to Preventing Lawyer Discipline

by Jackie Kruszewski

Supreme Court of Virginia Justice Williams Mims likes to drive SAABs, even though, he's told, only "weird, quirky people" are SAAB owners.

Plenty of cars have only four or five cylinders and run fine, said Mims at the bar's 2018 Disciplinary Conference. But with a 6-cylinder SAAB—if one breaks, as they frequently do, the car goes wonky. Humans, according to the justice, are like SAABs, and our cylinders are the six dimensions of wellness: social, physical, emotional, occupational, intellectual, and spiritual.

The analogy framed his July 27 remarks at the annual conference that brings together members of the bar's disciplinary system for training, education, and professional fellowship. Mims offered advice on and examples from each of the six dimensions, as well as stories of his personal experience trying to achieve balance.

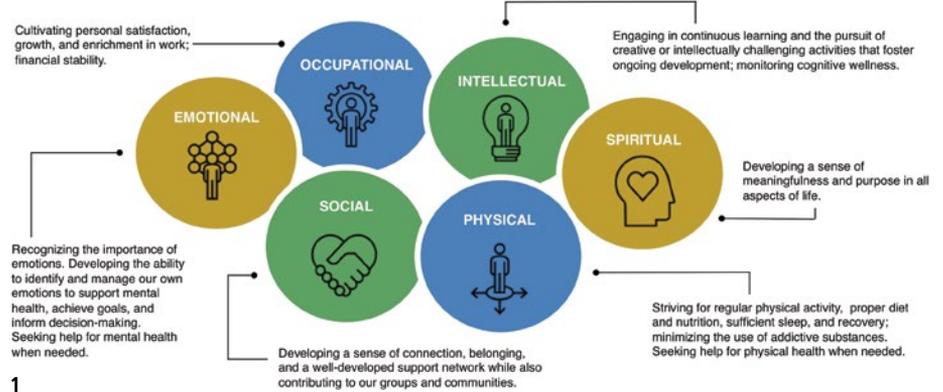
The justice said he struggled with depression after a particularly busy four years that ended with his appointment to the court. "I had reached the pinnacle of professional success, but I really believe that I had neglected my emotional health, my behavioral health."

Mims regrets not seeing a counselor during that time, but he did write out a list of names of four people he could call if he felt himself sliding deeper. "I made a commitment to myself that I would talk with these people. And I then did."

Wellness and lawyer well-being are the focus of a statewide committee chaired by Mims, and fellow committee members joined him on a panel at the conference about the intersection of lawyer discipline and wellness. The committee formed last year in response to an ABA-initiated task force on lawyer well-being whose August 2017 report on the topic is now a rallying point for bars across the country grappling with the outsized impact of mental health issues and substance abuse on the legal community.

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



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"People who go to law school are usually high achievers," said VSB President Leonard Heath. "They've usually done very well in undergrad, and statistically, after the first semester, exactly 50 percent of those students are going to be in the bottom half of their class. They get very hard on themselves."

Problems can arise as early as the second year of law school, the task force's report showed. And they are often later compounded by professional stresses like billable hours. Former VSB President Doris Henderson Causey and Assistant Bar Counsel Katie Uston spoke on the panel about the vicarious trauma that lawyers can experience when they handle clients' difficult cases. And Lawyers Helping Lawyers Executive Director Tim Carroll advocated for his organization as a resource for Virginia lawyers.

"Vicarious trauma is a perfect example," Mims said of the value of the nonprofit lawyer assistance organization. "A nonlawyer might wonder why an individual is having PTSD symptoms. But a lawyer would understand that that person had just finished a horrific murder trial. Or that person was just guardian ad litem in a case of terrible sexual abuse." Lawyers Helping Lawyers offers a safe, confidential space in a profession-specific setting.



1. Graphic: courtesy of Anne Brafford, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change"
2. Supreme Court of Virginia Justice Mims leads a panel on the intersection between lawyer wellness and the disciplinary system with Assistant Bar Counsel Katie Uston, Bar President Leonard C. Heath Jr., Lawyers Helping Lawyers Executive Director Tim Carroll, and Immediate Past President Doris Henderson Causey.
3. Bar members and staff make time for self-care and wellness Friday morning with a group walk and run.

A focus on wellness works in tandem with the disciplinary system and the bar's mission of self-regulation and self-discipline, panel members stressed. "To the extent that an attorney's alcohol abuse, drug abuse, or depression impacts

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their ability to practice ethically, that is not a defense to ethical misconduct,” said Uston.

The disciplinary system’s primary commitment is to public protection. “If someone needs to be removed from the pool, you remove them from the pool,” said Heath.

Mims said the key to the wellness initiative is an attempt to intervene before misconduct is committed. “Better than punishing a lawyer for doing something wrong is preventing the wrong from ever being committed,” he said.

Being pro-active, added Uston, “that is also protecting the public.”

A report from the statewide committee coming out in the next few months will make specific recommen-

dations for Virginia legal institutions in the public sector, the private sector, as well as the judiciary and law schools. A few examples include incorporating wellness into mandatory professionalism programs and discouraging alcohol-centric events in school and at firms.

Several of the bar’s recent rule changes and legal ethics opinions — some proposed and some already adopted — get a head start on some recommendations. They, for example, offer lawyers a chance to retire with dignity in certain circumstances and allow VSB counsel to do a one-way referral to Lawyers Helping Lawyers of an attorney that bar counsel feels may need assistance.

It’s adding tools to the toolbox, panel members said. But it also places a duty on lawyers to be self-aware, to practice self-care — and on firms to be responsible for making sure their lawyers are doing so.

Ending his speech on spiritual wellness, Mims related the story of a rabbi who kept a piece of paper in each pocket, both with a statement from the Talmud. “One said, ‘O man, you are but dust.’ And the other one said, ‘For you the world was created,’” said Mims. “If we remember that we are but dust, but for us the world was created, we have balance.”

As for those six-cylinder SAABs? Well, you might be better off with a different car.