

Report of the Virginia State Bar
President's Special Committee
on Lawyer Well-Being

The Occupational Risks of the Practice of Law

Update
June 2022



INTRODUCTION

In the mid-2010s, lawyer well-being became a focal point of the legal profession. Lawyers had long anecdotally known that their profession suffered from wellness deficiencies, but the National Task Force on Lawyer Well-Being's landmark 2017 report elevated the discussions of lawyer well-being to a national level. Prompted by this report, the profession as a whole began a period of self-examination and evaluation. Other studies, reports, and initiatives focusing on lawyer wellness followed, but few attempted a detailed study of the reasons why lawyers experience wellness issues at a disproportionate rate compared to the general public.

In 2018, Virginia State Bar President Leonard C. Heath, Jr. sought to remedy this omission by convening the President's Special Committee on Lawyer Well-Being to identify specific aspects or characteristics of the practice of law that might serve as a risk to a lawyer's well-being. After an intensive year of research, study, discussions, and drafting, that Committee in May 2019 published a first-of-its-kind Report¹ identifying twenty occupational risks of the practice of law.

To maximize its usefulness to lawyers and other legal professionals, the Report adopted a novel structure by sorting the risks into four categories and presenting them in a digestible matrix format followed by more in-depth discussions of each risk and how individuals and organizations can combat them. The four categories are:

- **Physical Risks** that directly affect a lawyer's bodily health;
- **Mental and Emotional Risks**, which refer to conditions of law practice that harm psychological well-being;
- **Adaptation Risks** related to the changing nature of law practice in the twenty-first century; and
- **Self-Actualization Risks**, which borrowing from the final tier of Maslow's hierarchy of needs, refer to situations that prevent lawyers from flourishing or reaching a state of contentment.

1 THE OCCUPATIONAL RISKS OF THE PRACTICE OF LAW: REPORT OF THE VIRGINIA STATE BAR PRESIDENT'S SPECIAL COMMITTEE ON LAWYER WELL-BEING, May 2019, https://www.vsb.org/docs/VSB_wellness_report.pdf.

Since the Report's publication, the legal profession has endured the COVID-19 pandemic, which upended the practice of law more than any other single event in living memory. Depending on the month and ever-evolving virus, the pandemic disrupted the delivery of legal services. Observing this, in 2021, Virginia State Bar President Jay B. Myerson convened a second, smaller Special Committee on Lawyer Well-Being with a narrow mission: review the changes to the legal profession since May 2019 particularly with regard to those caused by the pandemic, and provide an update to the Report to address the ways the occupational risks of the practice of law have changed. President Myerson's goal was to keep lawyer well-being at the forefront of discussions within our profession and to build upon the Virginia State Bar's May 2019 report.

Seven individuals, including veterans of the original 2018–19 Special Committee on Lawyer Well-Being and new members representing a broad cross-section of the legal profession, were selected to carry out this update to the original 2019 Report. The members of the Committee are as follows:

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

Graham K. Bryant, Esq., Editor
Office of the Attorney General of Virginia
Richmond, VA

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Roanoke, VA

Dean Laura Shepherd
William & Mary Law School
Williamsburg, VA

Crista Gantz
Virginia State Bar Staff Liaison

After reviewing the changes to lawyer well-being wrought in the years since the 2019 Report, the Committee determined that the 20 occupational risks identified in that report continued to accurately reflect the primary occupational risks to lawyers. The Committee was unable to identify any additional risks that were meaningfully distinct from the 20 risks previously recognized. The Committee believed, however, that many of those risks were exacerbated by the pandemic. As an example, the risk designated “Business Management of the Practice of Law” saw new challenges. Lawyers managing their firms were confronted with implementing safety precautions, reacting to mandatory shutdowns, working with PPP loan applications and loan forgiveness forms, managing layoffs or reductions in force, setting up work-from-home infrastructure, and deciding when employees could safely return to the office. Similar examples could be provided for most of the previously identified risks.

As the Committee's work progressed this year, the country moved from COVID-19 pandemic phase to a COVID-19 endemic phase. Fortunately, with the arrival of vaccines and treatments, and a better understanding of the virus, society as a whole, and the profession in particular, returned to a somewhat “normal” routine. Nevertheless, the Committee believes that the pandemic has changed the profession. Rather than focusing its report on how the occupational

risks of the practice of law were impacted during the pandemic, the Committee decided to focus on those previously identified occupational risks that were impacted most by *lasting and continuing changes*. With this new and more focused scope, the Committee recognized that significant developments in the practice of law had affected in particular three occupational risks: Individual Work, Changing Legal Paradigms, and Lack of Diversity in the Legal Profession.

As the Report was being written, Committee members also decided to draft it in such a way as to document and memorialize for posterity's sake at least part of the struggles endured during the COVID-19 pandemic and the creative and effective means by which lawyers continued to provide much needed legal services.

This 2022 Report is designed to supplement the 2019 Report. Accordingly, this Report includes updated discussion and matrix entries for these three previously identified occupational risks.²

Goals of the Committee

This Committee shares two of the goals of the 2018–19 President's Special Committee on Lawyer Well-Being. The first goal is for this Report to serve as an accessible resource for all those participating in the legal community, including lawyers, judges, law students, legal assistants, law office staff, and clerks of court and their staff. The second goal is for the Report to help those who, despite lacking familiarity with the legal profession, may nonetheless be most keenly aware of lawyers' or judges' wellness issues: the spouse, significant other, and family members of an affected legal professional. In addition, while the Committee was performing its work, the members came to the realization that this Report may also serve as a historical prospective of the impact of the pandemic on the legal profession. We are hopeful that with the passage of time, memories of the hardship inflicted on our profession, and that of society as a whole, may fade. This Report will hopefully serve as a small historical observation of the impact of the pandemic and the resilience of the legal profession. Let this Report be a remembrance that in the worst of times, members of our great profession found a way to continue to serve society and promote the Rule of Law.

Dedication

This Report is dedicated to Lawyers Helping Lawyers, the organization established in 1985 to assist impaired lawyers across the Commonwealth of Virginia. In 2019, Lawyers Helping Lawyers became the Virginia Judges and Lawyers Assistance Program. Prior to this transformation, Lawyers Helping Lawyers relied substantially upon charitable donations and the work of its core volunteers to provide a much-needed service to the legal profession and to protect the public. These volunteers were able to support Lawyers Helping Lawyers through difficult times and keep it operational long enough for its vision, utility, and value to be recognized during the Virginia Lawyers Initiative. As part of the Virginia Lawyers Initiative, Lawyers Helping Lawyers became the Virginia Judges and Lawyers Assistance Program, a fully, reliably, and permanently funded program dedicated to providing services to Virginia's judges, lawyers, legal staff, clerks of court, and law students.

² In addition, the Committee recommends that readers interested in a broader discussion of how the COVID-19 pandemic affected the legal profession beyond wellness considerations read the 2022 Future of Law Practice Report prepared by the VSB Special Committee on Technology and the Future of Law Practice and issued on May 24, 2022.

Supplemental Matrix of Occupational Risks to Lawyer Well-Being

| MENTAL AND EMOTIONAL RISKS | | | |
|----------------------------|--|---|---|
| Risk Description | Potential Effects | Practice Pointers for Individuals | Practice Pointers for Organizations |
| Individual Work | The individual nature of a lawyer's profession can lead to feelings of isolation. In fact, legal work in general has been considered the loneliest kind of work. The COVID-19 pandemic only exacerbated the loneliness problem by preventing in-office and in-person social interactions while increasing lawyers' stress. | <ul style="list-style-type: none"> • Proactively reach out to colleagues, even if working from home. • If feasible, go into the office several times a week to maintain relationships. • Go outside for your lunch break. • Intentionally schedule participation in bar association activities, conferences, and seminars. • Proactively schedule social time with friends and family. | <ul style="list-style-type: none"> • Recognize the importance of facilitating professional relationships and adjust office-attendance policies accordingly. • Develop a system to maintain regular contact with employees working from home to monitor their well-being — not to surveil them. • Redouble efforts to provide mentorship programs recognizing that prevalent work-from-home schedules inhibit professional interaction. • Create an environment that facilitates serendipitous interactions. |

| ADAPTATION RISKS | | | |
|--------------------------|--|---|--|
| Risk Description | Potential Effects | Practice Pointers for Individuals | Practice Pointers for Organizations |
| Changing Legal Paradigms | In addition to disruption caused by the digital revolution, pandemic-era innovations like working from home and the rise of videoconferencing have created new challenges for lawyers, including home office syndrome (stress and exhaustion associated with blurred boundaries between work and home life) and Zoom fatigue (burnout associated with overuse of virtual communication platforms). | <p>Home Office Syndrome</p> <ul style="list-style-type: none"> • Cultivate psychological boundaries between “work” and “home.” • Create dedicated work spaces. • Establish fixed start and end time for workday. • Follow a routine to replicate the rhythms of an in-office work day. • Wear different clothing for work and home time. • Establish routine that helps you transition from home mode to work mode, and vice versa. <p>Zoom Fatigue</p> <ul style="list-style-type: none"> • Avoid videoconferencing in full-screen and instead use a smaller window relative to the monitor size. • Maintain distance from screen and web cam. • Avoid multitasking and build in breaks for longer video calls. • Build in breaks for longer videoconferences. • Use speaker only view. • Appoint facilitator to run virtual meetings. • Avoid continuous use of videoconferencing by employing mix of communication methods (phone calls, emails, in-person conversations). • Use the 20-20-20 rule—focus on something 20 feet away for 20 seconds every 20 minutes of screen time. | <p>Home Office Syndrome</p> <ul style="list-style-type: none"> • Promote an organizational culture that encourages separating work from home, such as by permitting attorneys to turn off phones and computers after hours. • Provide those working from home with the resources they need to succeed, like standing desks, multiple monitors, blue-light/computer glasses, and laptop docks. • Implement software to minimize harms from extended use of screens. • Encourage in-person meetings when safe, including meetings outdoors. <p>Zoom Fatigue</p> <ul style="list-style-type: none"> • Implement software to minimize harms from extended use of screens. |

| LACK OF DIVERSITY IN THE LEGAL PROFESSION | | | |
|--|---|--|--|
| Risk Description | Potential Effects | Practice Pointers for Individuals | Practice Pointers for Organizations |
| Lack of Diversity in the Legal Profession | Diverse and inclusive working environments foster lawyer wellness. A lack of diversity, however, can lead to isolation, a sense of exclusion, and ultimately poor performance and a lack of autonomy. The COVID-19 pandemic caused a mass transition to remote work, leaving many diversity initiatives behind. | <ul style="list-style-type: none"> • Intentionally seek out colleagues with different backgrounds, particularly when working remotely or in times of limited office exposure. • Consider implicit biases and how working from home may have changed or exacerbated them. | <ul style="list-style-type: none"> • Consider diversity when establishing remote work policies to ensure diverse employees have opportunities to participate even if not in the office. • Evaluate organizational priorities as altered by pandemic disruption and reassess the role of diversity in organizational goals and culture. • Virtual communications should be evaluated to ensure diverse participation, not only as to attendees but also as to organizers and presenters. |



MENTAL AND EMOTIONAL RISKS

Individual Work



The Risk

The COVID-19 pandemic made the legal profession even lonelier. Much of the legal profession experienced a work transformation between Friday, March 13 and Monday, March 16, 2020. During those four days, as a nation, we watched basketball tournaments canceled — sometimes mid-game. Phone calls were made from long-term care facilities to loved ones letting them know that the facilities would go on lockdown and that visitors would no longer be allowed. And, over the weekend, we went from a country that commuted to work every day to one that worked at home (if we were lucky).

At the beginning of the pandemic, there was a sense that we were all working together for the common good. People increased the frequency of calls to colleagues, friends, and neighbors to ensure that they were all right. Some people even reported feeling more engaged than before the pandemic.¹ But as weeks turned into months, a true sense of isolation and loneliness set in for many. Isolation was an important public health measure, but that isolation took its toll on mental health.

Law was already a lonely profession. The pandemic simply exacerbated the problem. A survey conducted by the American Bar Association between September 30 and October 11, 2020, in which over 4,200 ABA members responded, revealed the true extent of the transformation of the legal profession. Of all lawyers responding, 54% reported working from home close to 100% of the time. About 25% of respondents reported working from home between 25% and 75% of the time. Another 22% reported working from home close to 0% of the time. Beyond these figures, 60% of lawyers reported working on a flexible schedule. When focusing on those respondents with dependent children at home, that number increased to 65%.

¹ Kira M. Newman, *Seven Ways the Pandemic Is Affecting Our Mental Health*, GREATER GOOD MAGAZINE, (Aug. 11, 2020), https://greatergood.berkeley.edu/article/item/seven_ways_the_pandemic_is_affecting_our_mental_health.

The same survey reported that over 90% of lawyers were spending more time on videoconference calls. About 55% reported spending less time developing business or reaching out to clients. About 70% of lawyers reported spending more time with the people they lived with than the previous year.²

In the legal profession, just like society as a whole, the effect was more severe on the young and the old. Young lawyers noticed a drop in billable hours due to partners holding onto more work.³ There was no “clocking out” for young lawyers because many felt the need to be available 24/7.⁴ Younger lawyers who had not had an opportunity to create connections with coworkers and mentors struggled more than most lawyers. Lawyers with children at home faced additional hurdles. Over time, younger lawyers reached out for assistance with increasing frequency. Many commentators started to observe a “lost generation of lawyers.”⁵

Bar associations, both mandatory and voluntary, ended all in-person activities. Like law firms, these organizations had to quickly adapt from working in a brick-and-mortar office to operating in a virtual world, with everyone working from home. For most, this involved immediate upgrades in technology and installation of software that was never needed before. While bar associations adapted to this new environment, their members were cut off from vital services. And as pointed out by the Committee that drafted the 2019 Report, many of the identified occupational risks of the practice of law could be minimized by associating with professional organizations and attending bar meetings. This was particularly true with the Individual Work risk, where the 2019 Report recommended that lawyers “[a]ctively participate in bar functions and organizations and develop relationships with legal colleagues.”

The impact of the pandemic was even more severe on law students. Law students tend to learn just as much from interaction with classmates as with professors, and the personal connections created at law school often form lifelong professional bonds. But during the pandemic, structured virtual sessions replaced lively classroom discussions. The inability to get to know classmates in a meaningful way hampered the usual organic development of study groups. And, as the pandemic eased, law schools had to be creative and institute new orientation programs for second-year law students who had never physically been present in the law school building.

“There was no ‘clocking out’ for young lawyers because many felt the need to be available 24/7.”

2 STEPHANIE A. SCHARF ET AL., PRACTICING LAW IN THE PANDEMIC AND MOVING FORWARD: RESULTS AND BEST PRACTICES FROM A NATIONWIDE SURVEY OF THE LEGAL PROFESSION, AM. BAR ASS’N. (2021), <https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf>.

3 Debra Cassens Weiss, *More Work Shifted to Law Partners as Demand for Legal Services Dropped, New Report Says*, ABA JOURNAL (Aug. 13, 2020), <https://www.abajournal.com/news/article/more-work-shifted-to-law-partners-as-demand-for-legal-services-dropped-report-says> (ABA news article describing findings of 2020 Thomson Reuters Peer Monitor Index report).

4 Stacey A. Whiteley & Robin Belleau, *Supporting Associates Amid Pandemic’s Mental Health Toll*, LAW360, (Mar. 15, 2021) <https://www.kirkland.com/publications/article/2021/03/supporting-associates-amid-pandemic>.

5 Weiss, *supra*.

Fortunately, from this Committee's perspective, the worst of the exacerbation of this particular occupational risk appears to be temporary as society returns to a normal and robust way of life. Certain pandemic accommodations, however, likely will remain an integral part of the practice of law. As discussed elsewhere in this supplemental Report, working from home and videoconferencing have become embedded in the legal community. Working from home provides flexibility, eliminates unproductive commute time, is better for the environment, and is viewed as an employee benefit. Virtual meetings, when used correctly, can be effective and eliminate the time and expense associated with travel. Used in the court system, virtual appearances can decrease the expenses associated with litigation, making the courts more accessible. Although working from home and employing virtual conferencing provide great work benefits and may promote work efficiency, they can contribute to a sense of loneliness and being isolated.⁶

Practice Pointers

Several tips may help to avoid feeling lonely when working remotely. First, be proactive in reaching out to colleagues.⁷ Although working from home may require more work in scheduling interactions with others, initiating an impromptu video or audio call to communicate and brainstorm with others will help you feel included and less lonely. These types of unplanned encounters regularly occur when attorneys work within the confines of a physical office, sometimes running into others in the hallway or popping into a colleague's office to bounce ideas off them.

Second, if possible, actually go into the office a day or two each week to help maintain work relationships. Third, go outside for your lunch break. Getting outside for a break can keep your body moving, clear your head, and help maintain perspective. An added bonus may be encountering others while on your walk to provide human connectivity. Fourth, purposefully include opportunities to attend bar association meetings, conferences, and seminars in your schedule. When deciding whether to attend such functions virtually or in person, be cognizant that in-person meetings are important to your social and mental well-being. Finally, be proactive in making plans after work that involve being with family and friends. Knowing that you will have a chance to socialize later will help you feel less lonely throughout your workday.⁸ Such plans will also force you to separate your workday from your personal day.

Legal organizations must be mindful of evolving lawyer well-being problems associated with working remotely. Simply stated, people who feel lonely cannot do their best work, and legal teams staffed with lonely attorneys cannot operate at peak levels.⁹ Some organizations have discovered a need to return to the office to refresh and perpetuate the culture of the organiza-

6 Matthew Pears et al., *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/content/pdf/10.1007/s11332-021-00791-2.pdf>.

7 Benjamin Rojas, *Five Tips to Avoid Feeling Lonely When Working Remotely*, FORBES (Aug. 26, 2021), <https://www.forbes.com/sites/theyec/2021/08/26/five-tips-to-avoid-feeling-lonely-when-working-remotely/?sh=71fd6fc54f88/>.

8 *Id.*

9 Constance N. Hadley & Mark Mortensen, *Are Your Team Members Lonely?*, MIT SLOAN MGMT. REV. (Winter 2021), <https://sloanreview.mit.edu/article/are-your-team-members-lonely/>.

tion.¹⁰ A 2022 LinkedIn poll conducted by Fortune surveyed 2,800 workers. A top motivation factor for returning to the office was a desire to socialize with colleagues. Organizations that allow for remote work must also be aware of lost informal mentoring activities. To counter these lost mentoring opportunities, the organization may need to build into its organizational structure alternatives to promote mentoring.

Additionally, organizations should enact procedures to reach out to employees who work remotely to monitor employee well-being. This is particularly true for younger lawyers. As observed by the National Task Force on Lawyer Well-Being, to be a good lawyer, one has to be a healthy lawyer. Add to this the new challenges created by remote work and an evolving realization that, while productivity has increased as a result of remote working, innovation has shown signs of decreasing due to reduced serendipitous interactions.¹¹

¹⁰ John M. Bredehoft, VBA Practice Management Advisor Live Chat (April 15, 2022).

¹¹ Jeffrey Sanchez-Burks & Maxim Sytch, *Reimagining the Office for Immensely Human Interactions*, MIT SLOAN MGMT. REV. (June 07, 2021), <https://sloanreview.mit.edu/article/reimagining-the-office-for-immensely-human-interactions/>.



ADAPTATION RISKS

Changing Legal Paradigms



The Risk

The “Changing Legal Paradigms” section of the 2019 Report focused on, among other things, the digital revolution and how evolving technologies affected the practice of law. The COVID-19 pandemic made the decades-long digital revolution look like it occurred on a geologic time scale. In a matter of weeks, the pandemic upended nearly every aspect of the legal profession and ushered in an entirely new form of law practice. Mandatory shutdowns and isolation required law firms, which traditionally have relied upon physical offices, to transform into virtual firms consisting of attorneys working from home connected by technology. Prior to the arrival of COVID-19, only a small portion of lawyers worked remotely. With the arrival of the pandemic, virtually every lawyer and legal staff member had to work from home.

With this forced changing legal paradigm came new challenges to lawyer well-being which were not recognized prior to the arrival of the pandemic. The two most prominent challenges can best be categorized as home office syndrome and Zoom fatigue. The Committee determined that these two new challenges warranted inclusion in this report, not as new risks, but being products of the previously identified Changing Legal Paradigms risk.

Home Office Syndrome

The COVID-19 pandemic upended nearly every aspect of the legal profession, but perhaps the most significant change — and the change most likely to remain a permanent part of law practice — has been the rise of working from home. Before any vaccines or other treatments for COVID-19 were available, the most reliable way to mitigate the disease’s spread was to social distance. As a result, spring 2020 saw a forced abandonment of the office.

Workspaces with efficient multi-monitor setups, accessible law libraries, and ample copying, printing, and mailing resources were replaced by whatever nook would accommodate a laptop

at home. As working from home transitioned from a necessary novelty to a routine fact of life, many attorneys upgraded their home office spaces to accommodate the new norm of remote law practice. In order to efficiently and effectively provide legal services compliant with the Rules of Professional Conduct, law firms invested in hardware and software to promote and support home offices. In a matter of weeks, the legal profession was forced to advance tech-

nologically in what would have normally taken years to accomplish. Even though many firms have now returned to the office, many lawyers are resisting that return. Practicing law from home, then, is likely to be a longstanding part of our profession.

Working from home has many upsides — it can be convenient (especially for working parents), offers flexibility, and eliminates the time loss and environmental impact of a commute. But it also has downsides, which are the focus of this discussion.



“Home office syndrome” is the name penned by some psychologists for the feelings of stress, loneliness, exhaustion, and being overwhelmed resulting from a blurring of boundaries between work and home life.¹ Lawyers working from home will often find themselves not fully working, but not fully relaxing either. They strive to accomplish tasks that absolutely must be done and meet their billable-hour requirements, but their time is often interrupted by spouses and children, a dog that needs to be taken outside, a household repair that comes up, or countless other distractions. In addition, a lack of routine can result in lawyers working even longer hours at home because work time melds into personal time.

Worsening the blur between work and home is the fact that many lawyers’ at-home workspaces are in locations intimately associated with feelings of being off the clock. The kitchen table is where family meals, not conference calls, are supposed to happen. The living room is for socializing, not for billing. Injecting aspects of law practice into these sacred spaces — spaces that traditionally have recharged lawyers so that they can be better grounded and more resilient — cause lawyers to experience cognitive dissonance that exacerbates the already difficult balance of work and life.

Not to be ignored is the fact that going to the office also provides respite from the rigors of home life, especially for parents. For many lawyers during the pandemic, there was no sanctuary from work life or home life because both existed simultaneously in the “home office.”

¹ Alex Dimitriu, *Home Office Syndrome*, PSYCHOL. TODAY, Apr. 13, 2020, <https://www.psychologytoday.com/us/blog/psychiatry-and-sleep/202004/home-office-syndrome>.

 **Practice Pointers**

Lawyers and their employers should recognize that working from home and home office syndrome are now facts of life in the legal profession. Most strategies for coping with home office syndrome involve establishing boundaries between work life and home life.

For individual lawyers, one of the most effective ways to separate work from home is to designate a home office space solely for business, eliminating the “but-I’m-at-home” mental fog.² Of course, this approach may not be feasible for lawyers who live in smaller spaces or who have to share the only available office space with a spouse or child also working from home or attending school virtually.

Another step is to cultivate psychological boundaries between work and home by adopting routines that replace the rhythms of an in-office workday. For instance, the office commute—though often reviled for good reasons—functions as a ritual to transition from being at home to being at work. Establishing a fixed starting and ending time for the workday, as well as standard wake-up and lunch times, and then sticking to that routine, can help create a psychological barrier between work and home in much the same way as the office commute once did. Ending work at a consistent time also ensures you allow time for interacting with family and friends, as well as time for relaxation.

In addition, wearing professional clothing—or at least something a touch more formal than sweatpants and a hoodie—can help put your mind in work mode. Slipping into something more comfortable at your designated end time can equally switch your mind back to being at home, helping you leave work behind. Any routine that helps you transition from home mode to work mode, and vice versa, should be recognized, honored, and employed. Something as simple as taking a walk around the block before work to prepare for your business day and then a walk around the block at the end of your workday to decompress can provide a method to transition from home life to work life and vice-versa.

Organizations also have a role to play in easing home office syndrome. Recognizing that the best way to combat the mental and emotional downsides of working from home is to create psychological barriers between home and office, employers should intentionally develop a culture that promotes such barriers. Organizations can encourage their attorneys to set aside their phones and not feel obligated to check email after working hours. Of course, lawyers will always have times when they need to be available after hours. Litigators have stressful filing or trial days and transactional attorneys have down-to-the wire closings. But outside of days like those, organizations should ensure their members feel comfortable not being on call. It is all but impossible to establish a meaningful separation between work and home when lawyers are expected by their firms to monitor their phones and emails at all hours at home.

“Organizations can encourage their attorneys to set aside their phones and not feel obligated to check email after working hours.”

² Adam Dachis, *How to Craft the Perfect Home Office*, LIFEHACKER (Nov. 4, 2013), <https://lifehacker.com/how-to-craft-the-perfect-home-office-1455516163>.

Organizations should also strive to make sure attorneys who regularly work from home have the resources they need to be successful. Preparing a home office checklist for necessary and recommended furnishings, equipment, devices, and programs should promote well-being at an institutional level. Providing standing desks, webcams, laptop docks, and extra monitors go a long way to ensuring a home workspace is as productive as the office. Employers have a vested interest in taking this step: a well-equipped attorney working from home will likely be more effective, efficient, and productive than a similar attorney making do with just a laptop and a dining room table.

Zoom Fatigue³

Prior to the pandemic, business and social relationships were conducted by various means, including in person, over the phone, and via email. Lawyers used computers, tablets, and smartphones a great deal, but meetings still primarily occurred in conferences rooms, hearings were in courtrooms, and social events were anywhere but on the computer.

With the COVID-19 lockdowns, all that changed. Social-distancing requirements and stay-at-home orders limited lawyers' personal interactions almost exclusively to computer screens. While email remained an effective means of communication, telephone communication was hampered because people were no longer stationed at the desk where the office phone was situated. The pandemic intensified lawyers' prior reliance on email, online legal research, word processing, and other computer-intensive activities essential to law practice. Virtual platforms rapidly became an accepted alternative to face-to-face interactions, professional and social. Virtual hearings, negotiations, meetings, and even happy hours became an integral part of legal life.

Although widespread vaccination and effective mitigation measures have now reduced the pandemic's effect and have allowed most attorneys to resume many in-person activities, the concept of staying at home and working virtually is likely here to stay as many professionals have appreciated the flexibility and cost efficiency that virtual meetings provide.

However, this convenience — and during the pandemic a life-line — has come with a price. Prolonged usage and dependence on virtual meetings, and its accompanying deleterious effects, have become known as “Zoom fatigue”—tiredness, worry, or burnout associated with the overuse of virtual platforms of communication, particularly videoconferencing.⁴ Zoom fatigue became a familiar term during the pandemic when use of videoconferencing software skyrocketed due to people working from home.

³ “Zoom fatigue” refers to fatigue induced by excessive audiovisual conferencing. The term does not apply solely to the audiovisual platform known as Zoom. Instead, just like the word “Band-Aid,” which is the name of a specific product, became synonymous for self-adhering bandages, the term “Zoom” became synonymous with audiovisual conferencing. The members of this Committee were all grateful to discover the existence of the Zoom platform during the pandemic, as was most of the legal profession. The term “Zoom” became both a noun and a verb over the course of the pandemic, e.g., “let’s Zoom today at 2:00 p.m.”

⁴ Carolyn Reinach Wolf, *Virtual Platforms Are Helpful Tools but Can Add to Our Stress*, PSYCHOL. TODAY, May 14, 2020, <https://www.psychologytoday.com/us/blog/the-desk-the-mental-health-lawyer/202005/virtual-platforms-are-helpful-tools-can-add-our-stress>.

While videoconferencing can be effective and is often necessary, it also can be exhausting. Virtual meetings require structure and hierarchy. Individuals have to wait their turn to participate. In an in-person conference, several conversations may take place among sub-groups. In virtual meetings, however, more than one person talking creates a cacophony, rendering the virtual meeting useless.

In remote meetings we must intently listen to each speaker because we do not have the luxury of asking the person next to us about information that might have been missed.⁵ Add to this the unusual social dynamic of observing an individual face close up, and also wondering who might be watching you in a similar fashion. If you look away, will you appear to be distracted or not listening?⁶ Many of us may be more obsessed with our own appearance when our own video image is staring back at us. Having to engage in a constant gaze makes us uncomfortable and tired. Then there is the temptation to turn off the video camera so we can do other things, which is something we might rarely do in an in-person meeting.

Relatedly, “computer vision syndrome” is a condition in which prolonged working on a computer causes the user headaches, eye strain, eye watering, eye redness, or blurred vision. Other physical effects associated with screen use include decreased attention, sleep disorders, depression, and depletion of mental or physical capacity and inertia.⁷

Professor Jeremy Bailenson, founding director of the Stanford Virtual Human Interaction Lab, explained the physical mechanism behind why extensive videoconferencing can be harmful to the eyes and increase overall fatigue.⁸ Rather than looking around, people engaged in videoconferencing fix their eyes at an individual for an extended period. Depending upon the size of the monitor, faces can appear quite large, which affects not only individual comfort levels with respect to personal space, but also the amount of strain being placed on the eye.

Practice Pointers

A solution suggested by Bailenson to reduce screen fatigue associated with videoconferences is to avoid videoconferencing in full-screen and instead use a smaller window relative to the monitor size. Doing so minimizes face size on screen and its associated physical and psychological discomfort. Bailenson also suggested laptop users to connect an external keyboard to further increase personal space rather than hunching near an integrated webcam.

Other simple steps can help minimize Zoom fatigue. First, avoid multitasking while in a virtual meeting. When you multitask, you simply cannot remember things as well as when you are more singularly focused on your peers. Avoid emailing or texting others, particularly when

⁵ Liz Fosslien & Mollie West Duffy, *How to Combat Zoom Fatigue*, HARVARD BUSINESS REVIEW (Apr. 29, 2020), <https://hbr.org/2020/04/how-to-combat-zoom-fatigue>.

⁶ *Id.*

⁷ Jon Johnson, *Negative Effects of Technology: What to Know*, MEDICAL NEWS TODAY, Feb. 25, 2020, <https://www.medicalnewstoday.com/articles/negative-effects-of-technology>.

⁸ Jeremy N. Bailenson, *Nonverbal Overload: A Theoretical Argument for the Causes of Zoom Fatigue*, TECHNOLOGY, MIND, AND BEHAVIOR, <https://assets.pubpub.org/3xtduwvl/21614092702823.pdf>.

unrelated to the virtual meeting.⁹ Second, build in breaks for longer calls.¹⁰ And schedule 10 to 15 minute breaks between separate virtual meetings. Third, reduce your onscreen stimuli. Research shows that if you are on a video, you are more likely to spend time gazing at your own face. This is easily avoided by hiding yourself from view. Also, consider using the speaker only view, so you are not watching others not actively speaking.¹¹

Fourth, make sure that a facilitator is appointed to run the meeting. The facilitator should open the meeting by stating the order in which people should participate, so everyone gets to speak. This will eliminate anxiety for participants trying to figure out when they should or should not chime into the conversation. Fifth, incorporate phone calls and emails into your communications. In this world of high tech, many folks will welcome the opportunity to take a break from a videoconference and simply talk by phone. Sixth, along the same lines, for communications outside of your office, avoid defaulting to video, especially if you do not know the other participants well. A video call is fairly intimate for many and can even feel invasive. From a different perspective, limiting video conferencing initiated by others is also appropriate. For example, if a client or opposing attorney Facetimes without warning, it is acceptable to decline and suggest an old-fashioned phone call instead.¹²



Consider using the 20-20-20 rule to limit screen fatigue. This rule suggests that for every 20 minutes spent looking at a screen, one should take a 20 second break and focus on an object at least 20 feet away, which relaxes the eye muscles for 20 seconds and gives the brain much-needed respite. Some people find it helpful to set an alarm for every 20 minutes when using a computer as a reminder to get up and change focus. The rationale behind the rule is that it takes 20 seconds for the eyes to fully relax. Every 20 minutes for 20 seconds, walk around the room, rest the eyes by closing them, or focusing on another object.

Others have found improvement in screen fatigue by implementing the following techniques:

1. Blinking often,
2. Using artificial tears or eye drops,
3. Increasing the text on the computer to prevent squinting,
4. Getting regular eye checkups to ensure that prescriptions are up to date,
5. Using an anti-glare screen filter, and
6. Sitting at least 25 inches from the screen (at arm's length)

9 Fosslien & Duffy, *supra*.

10 *Id.*

11 *Tip Sheet: Avoiding Zoom and Screen Fatigue*, GEORGETOWN UNIVERSITY: INSTRUCTIONAL CONTINUITY (2022), <https://instructionalcontinuity.georgetown.edu/pedagogies-and-strategies/avoiding-zoom-and-screen-fatigue/>.

12 Fosslien & Duffy, *supra*.

Ultimately, the main issue appears to be the extent that lawyers rely on screens. This reliance is unlikely to change even as attorneys return to the office and resume face-to-face meetings again.

Organizations can help ease their lawyers' screen fatigue by encouraging in-person meetings when safe, including meetings outdoors. In addition, implementing interface changes and providing users with software that reduce the screen fatigue may be beneficial. These apps include Night Shift, Awareness, and F.lux that reduce contrast and make screens less harsh. Finally, individuals may consider purchasing—and organizations may want to provide—computer glasses designed to reduce eye strain caused by blue light,¹³ which can reduce eye irritation from light sensitivity.

Lack of Diversity in the Legal Profession

The Risk

The 2019 Report recognized the lack of diversity in the legal profession as a well-established risk. It noted that diversity and wellness had a “symbiotic” relationship such that a lack of diversity in the legal profession was a cause of isolation, stress, anxiety, depression, and a feeling of lack of self-empowerment or professional achievement — in short, a wellness impairment.

Since the Report's publication, the COVID-19 pandemic profoundly affected all aspects of life — including diversity in the legal field. The results have been mixed and indicate that, for all the efforts to advance the cause of diversity and in turn wellness, more needs to be done.¹⁴

COVID-19 roiled all aspects of society in the summer 2020. The killing of George Floyd and other events led to a national examination of racial injustice, including whether and to what extent structural injustice existed and perpetuated a barrier to racial progress. Diversity within the legal profession was necessarily a part of this examination. The Supreme Court of Virginia, as well as other courts across Virginia, issued statements, and in some cases plans of action, addressing the inherent imperative of equal justice, access to justice, and due process under the law.¹⁵ Bar associations, law schools and other law-related entities undertook similar examinations.

The pandemic created an upheaval in the traditional practice of law, including the necessity of shutting down many brick and mortar law offices and requiring working from home. Law firm viability, priorities, and projects all had to be reexamined. Bar associations, law schools, and other law-related entities were similarly affected. The upheaval's effects were felt in, among other areas, diversity and corresponding wellness in the legal profession. As law firm

13 Mark Smirniotis & Leigh Krietch Boerner, *What Are Computer Glasses (and Do They Work)?*, N.Y. TIMES, Apr. 27, 2017, <https://www.nytimes.com/wirecutter/blog/what-are-computer-glasses-and-do-they-work/>.

14 *Id.*; see generally Jamillah Bowman Williams, *COVID-19 Widens Disparities for Workers of Color*, 35 ABA J. LABOR & EMP. L. 1 (2020), https://www.americanbar.org/content/dam/aba/publications/aba_journal_of_labor_employment_law/v35/number-1/covid-19-widens.pdf.

15 See *Statement to Members of the Judiciary and the Bar of Virginia*, Supreme Court of Virginia, June 16, 2020, https://www.vacourts.gov/news/items/2020_0616_scv_%20statement.pdf.

hiring and promotions were necessarily (although thankfully temporarily) reduced, efforts to promote diversity fell behind.

Along with the advent of remote law practice and attendant virtual communication, a concept referred to as “distance bias” began to emerge, recognizing a disproportionate impact on legal professionals of color and other diverse backgrounds.¹⁶ Many positive aspects of diversity that thrived in normal settings became challenging when working remotely replaced in-person law practice. Diverse professionals who had attained the proverbial seat at the conference table, or hoped to someday gain a seat, instead found themselves sitting at home. Not only were their voices less able to be heard, but they also lost the benefits of daily in-person professional interactions.

The pandemic and the necessity of working from home also disproportionately impacted women attorneys, and in particular those who are parents, as the line between professional career and home life often disappeared. These attorneys found themselves simultaneously performing as lawyer, parent, and teacher while sitting at the kitchen table with their children. Many women attorneys faced unique challenges and struggled with burnout as multi-tasking without a clearer separation of work and home became significantly more challenging.¹⁷

“As the pandemic’s effects may forever change how legal organizations operate, they should reevaluate how to promote diversity in their work.”



Practice Pointers

As Margaret Ogden, Wellness Coordinator in the Supreme Court of Virginia’s Office of the Executive Secretary and a member of this Committee observed in The Weekly Wellnote email on January 24, 2022: “One of the best ways to build inclusivity is to listen to the voices of our colleagues who come from under-represented backgrounds.” A group consisting of those with similar backgrounds is less likely to be able to consider a broader spectrum of views and, in turn, offer innovative solutions to the issues before them. Diversity of individuals engenders diversity of ideas and ideals. It makes inclusion possible, and inclusion makes a law firm better able to serve its clients. Diversity offers a wider scope of knowledge and a fuller

understanding of the realities of life that are presented in the challenges of each client’s wants and needs.

As the pandemic’s effects may forever change how legal organizations operate, they should reevaluate how to promote diversity in their work. For example, virtual communications should be evaluated in the context of ensuring appropriate diverse participation, not only as attendees

¹⁶ Nelson D. Schwartz, *Working From Home Poses Hurdles for Employees of Color*, N.Y. TIMES, Sept. 6, 2020, <https://www.nytimes.com/2020/09/06/business/economy/working-from-home-diversity.html>.

¹⁷ Liane Jackson, *How Pandemic Practice Left Lawyer-Moms Facing Burnout*, ABA Women in the Law, ABA J., Aug. 1, 2021, <https://www.abajournal.com/magazine/article/how-pandemic-practice-left-lawyer-moms-on-the-verge>; see also Liane Jackson, *Female Lawyers Face Unique Challenges During the COVID-19 Pandemic*, ABA J., Oct. 1, 2020, <https://www.abajournal.com/magazine/article/female-lawyers-face-pandemic-challenges>; Gabriele C. Pelura, *COVID-19 and Its Effect on Gender Diversity in the Law*, ABA J., Feb. 9, 2021, <https://www.americanbar.org/groups/litigation/committees/woman-advocate/practice/2021/covid19-and-its-effect-on-gender-diversity-in-the-law/>.

but also as organizers and presenters in audio-visual conferences. Just as diversity and inclusion at the conference table is a goal, opportunities for diverse interaction and particularly the ability to participate meaningfully in virtual spaces should be provided.

The events of the last couple of years have also illuminated the need to understand and address unconscious or implicit bias. Recognizing biases can help address their impact on perceptions, promote understanding of others, and facilitate effective and creative solutions. A goal of diversity and inclusion initiatives should always be the creation of a more positive and productive environment. And luckily a by-product of this is the promotion of lawyer well-being.