

President's Message

by Leonard C. Heath Jr.



End Zones, Ethics, and Epiphanies

THE LEGAL PROFESSION and the NFL have something in common. Each recently experienced epiphanies born of a series of studies, indicating that we both have a problem. We have spent decades watching talented NFL athletes make spectacular plays on the field. For players on defense, that usually means inflicting crushing blows. For players on offense, it means holding onto the ball even after the player has had “his bell rung.” But after watching these players survive increasing amounts of kinetic energy being applied to their brains, medical professionals began to observe that many players were suffering from memory loss, confusion, inability to control emotions or impulses, depression, and dementia. For some, these symptoms led to early death, occasionally by suicide. It was not until these symptoms became pronounced on a larger scale that the search for the cause of the symptoms began. For the first time, we learned of a little-known medical condition . . . chronic traumatic encephalopathy, or CTE. Having discovered CTE, the NFL is now reexamining the game to try to make it safer.

The legal profession has its own talented players — lawyers and judges — who go to work every day aspiring to the high ideals of supporting the Rule of Law, serving others, and mak-

ing society better. We assist in the orderly flow of business, the governance of human affairs, the fair and efficient operation of government, and the proper delivery of justice. And, like the NFL, it took years of observing, and perhaps suffering, the effects of our problem before we finally acknowledged that our profession *actually has a problem*. Depending on the study you read, 21 to 36 percent of attorneys are problem drinkers. Twenty-eight percent suffer from some form of depression, nineteen percent experience anxiety, and twenty-three percent have elevated stress. Twenty-five percent are clinically classified as having a work addiction. Moreover, our profession has an unacceptably high suicide rate.

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On August 14, 2017, a landmark report was issued by the National Task Force on Lawyer Well-being. The report, entitled “*The Path to Lawyer Well-being: Practical Recommendations for Positive Change*,” can be found at <http://bit.ly/lawyerhealth>. In a cover letter submitting the report, the Task Force summarized our situation:

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being . . . [S]tudies . . . 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.

This report is a clarion call to our profession to take a critical self-evaluation. It is simply not enough to say that lawyers suffer high rates of mental illness. We must take a hard look at ourselves and find out why. This will mean drilling down to the actual causes

of wellness issues. There is a direct correlation between impaired attorneys and ethics violations that may lead to disciplinary proceedings. However, while the report addresses impaired lawyers, the report is more than a report on “impaired lawyers.” Wellness issues arise long before lawyers become impaired. And, most lawyers who suf-

fer from wellness issues, may never get to the point of actually being clinically impaired. However, even wellness problems that fall short of clinical impairment can affect our clients, our families, and the profession.

In Virginia, we have proud connections to the National Task Force report. Three individuals involved in the report have either direct or close ties to the Commonwealth of Virginia. First, Chief Justice Donald W. Lemons is one of the co-authors of the report. Justice Lemons has always been an advocate for the profession and for lawyers in general and his leadership in the issuance of this report is something for which we should be grateful. Second, the Virginia State Bar's own Kathleen M. Uston served as a peer reviewer for the report. Finally, Chris Newbold is also a co-author. Chris serves as ALPS liaison to the VSB through our endorsed lawyer professional liability carrier program.

The National Task Force report has already had an impact in Virginia. First, our executive director has forwarded the report to all components of the VSB to address wellness issues. Positive institutional change has already been effectuated in this regard. In addition, Chief Justice Lemons asked Justice William Mims to convene a panel to examine well-being issues in Virginia. That committee continues its deliberations and should have a report forthcoming before the end of this calendar year. You may have also noticed that CLE providers are addressing wellness issues in their presentations. I highly commend these programs.

As we begin our self-evaluation, we know that the answers will not be simple. Personally, I have compiled a list of "occupational risks to lawyer well-being." As I write this article, I have a list of 19 specific elements of the practice of

law that can affect lawyer mental health. Not all of the characteristics apply to every lawyer, but each characteristic can cause well-being issues. What we are finding is that well-being issues impact "Big Law" and solos, trial attorneys and business attorneys, and government attorneys and those in the private sector. When it comes to age, at least the initial studies reflect that wellness issues impact younger lawyers more than seasoned attorneys. And, shockingly, at least one report shows that wellness issues arise as early as the second year of law school.

For those of us who simply feel honored to have been allowed to participate in our great profession, these wellness statistics are unacceptable. I am proud to be a lawyer. I like being with lawyers. One of my children is on the path to becoming a lawyer. So, if you cannot tell by now, wellness will be at the top of my agenda for the coming year. Please feel free to contact me with your thoughts and suggestions on the topic. The "experts" are the attorneys across this great commonwealth who, day in and day out, actually practice law. We are the ones who must participate in the critical self-evaluation, not only for ourselves, but for those attorneys yet to come. But, most importantly, we are compelled to do this for our clients and the public trust.

Heath continued from page 13

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Heath, Overbey, Verser & Old, PLC

Virginia State Bar:

Executive Committee
Council
Legal Ethics
Budget and Finance
Better Annual Meeting Committee
Bench – Bar Relations
Future of Law Practice
Lawyer Insurance
Mandatory Continuing Legal Education
Study Committee on the Future of Law
Professionalism Course Faculty

Other Affiliations:

Fellow in the Litigation Counsel of America
American Bar Association
Newport News Bar Association
Virginia Bar Association
Virginia Trial Lawyers Association
Williamsburg Bar Association

Education:

The College of William & Mary, B.B.A.
The College of William & Mary Marshall-Wythe School of Law, J.D.

Family:

Len and Kim Heath are the parents of three children: Jordan, Caitlin, and Kyle

**Read more about Lawyer Well-Being on the VSB website at
http://www.vsb.org/site/members/lawyer_well_being**