



Lawyers' Well-Being: A Laudable Goal

THE NATIONAL TASK FORCE on Lawyer Well-Being¹ has issued a report on how to improve well-being in the legal profession. It is directed to law firms, legal employers, bar regulators, Supreme Courts, admission officials, and others. It has a very simple premise: "To be a good lawyer, one has to be a healthy lawyer." It states that between 21 percent and 36 percent of lawyers qualify as problem drinkers, and that approximately 28 percent struggle with some level of depression, 19 percent suffer from anxiety, and 23 percent are dealing with stress symptoms. It advocates for change accompanied by a "wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer." The report's authors advocate for a holistic approach to giving lawyers a chance to enjoy life more. The Well-Being Report is a thoughtful amalgam of findings, recommendations, and resources. You can read the report by accessing this link on the VSB website: http://www.vsb.org/site/news/item/lawyer_well_being.

One lawyer commentator has posted helpful suggestions for law firms to carry out the recommendations of the Well-Being Report's recommendations:²

Form a Lawyer Well-Being Committee
Lawyers love to form committees but surprisingly, many law firms don't have a well-being committee. This is an obvious place to start. If your firm doesn't have a well-being committee, start one!

From the report, "...legal employers should launch a well-being initiative by forming a Lawyer Well-Being Committee or appointing a Well-Being Advocate."

Assess Lawyers' Well-Being

Gathering data should be a cornerstone of any well-being programs. Measure the impact of well-being programs.

Some suggestions for assessment:

- an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being
- stressors in the firm that significantly affect well-being
- organizational support for improving well-being in the workplace.

Monitor For Signs of Work Addiction and Poor Self-Care

Burnout, chronic stress, and anxiety is sadly the reality for too many lawyers in law firms. The report suggests establishing policies and practices to support lawyer well-being.

Numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction.

Another suggestion is to de-emphasize alcohol at law firm social events. This is a topic that comes up frequently in my conversations on planning wellness events.

My advice is to not eliminate alcohol but rather offer alternatives

and have events that do not involve alcohol.

For example:

- Offer a non-alcoholic signature drink
- Use drink coupons to reduce excess consumption
- Have morning yoga, meditation, fun run/walk the morning after a social event involving alcohol

Actively Combat Social Isolation and Encourage Interconnectivity

One of the most common thing I hear from lawyers who are struggling from chronic stress/anxiety, depression, alcohol/substance abuse is this — the feeling of isolation perpetuates the problem.

As discussed in the report, "Social support from colleagues is an important factor for coping with stress and preventing negative consequences like burnout."

Work on creating a work environment where it's safe to talk about personal struggles. For example, it would be acceptable to talk about your struggles with cancer at the office, right? Similarly, it should be okay to talk about mental health issues.

Recommendations

The report has specific recommendations for a regulatory bar such as the Virginia State Bar. Those recommendations are listed below with the VSB's response or stated intention:

Leaders Should Demonstrate a Personal Commitment to Well-Being

The officers of the VSB support the

core values and well-being concepts set forth in the Well-Being Report.

A Lawyer Well-Being Committee Should Be Created

The Supreme Court of Virginia has created a Lawyer Well-Being Committee, with Justice Mims chairing it. Len Heath, VSB president-elect, has been appointed to the SCV committee.

Provide High-Quality Educational Programs about Lawyer Distress and Well-Being

The VSB's support of Lawyers Helping Lawyers (LHL), Virginia's lawyer assistance program, is well known. The Bar has provided financial assistance to LHL since approximately 1995. The VSB is now the primary funding source for LHL at \$150,000, *just over one-half of its current budget*. *The Lawyer Well-Being Report recommends that all stakeholders ensure a stable and sufficient funding source. A recent informal survey of lawyer assistance programs serving similarly sized bar populations supports LHL's position that it is underfunded.*

The VSB also has several employees who serve on the LHL Board: Renu Brennan, deputy executive director, and Jim McCauley, ethics counsel.

The August 2017 *Virginia Lawyer* has two featured articles on LHL, including a discussion of LHL's lighthouse plan. The articles are consistent with, and implement, core suggestions in the Well-Being Report about educating lawyers about lawyer distress and well-being, and support of LHL programs.

LEO 1886, approved by the Court effective December 15, 2016, is currently a centerpiece of LHL CLEs. LEO 1886 covers the ethical duty of partners and supervisory lawyers in a law firm when another lawyer in the firm suffers from significant impairment. VSB Ethics Counsel Jim McCauley appeared at the February 2017 VBA meeting and talked extensively on LEO 1886 during the LHL CLE. VSB Deputy Executive

Director Renu Brennan went to the July VBA meeting to accomplish the same goal. LHL presented panels on September 12 to JIRC and on September 20 at the VSB Solo & Small-Firm CLE. Also, LEO 1887, approved by the Court effective August 30, 2017, is another way the VSB has been proactive in addressing and assisting lawyers with substance abuse issues. It deals with the duty of oversight of lawyers with substance abuse issues who do not practice in a firm setting.

Recommendation to De-Emphasize Alcohol at Social Events

The report recommends that alcohol be de-emphasized at social events. One suggestion is to have a broad selection of non-alcoholic beverages. Do our members think that there is too much emphasis on alcohol at VSB events? What should be done about it?

Recommendation 20.1: Adopt Regulatory Objectives³ that Prioritize Lawyer Well-Being

The Department of Professional Regulation has been asked to craft regulatory objectives, including a lawyer well-being objective. Currently, no such objective exists. The Study Committee revising the UPL rules is also drafting regulatory objectives. The Future of Law Practice Committee is also looking at regulatory objectives.

Recommendation 20.2: Modify the Rules of Professional Conduct to Endorse Well-Being as Part of a Lawyer's Duty of Competence

The Standing Committee on Legal Ethics will consider the issue of amending Rule 1.1 to include a well-being component at its next meeting in September.

Recommendation 20.3: Expand Continuing Education Requirements to Include Well-Being Topics.

The MCLE Board briefly discussed the issue of whether the MCLE rule should be amended to include a well-being requirement at its meeting on August 21, 2017. No decision was reached. To date, Virginia does not require that any of its MCLE hours be limited to any one particular area, except for the two hours required for ethics/professionalism. The MCLE Board is going to amend MCLE Opinion #19, which deals with approval of courses dealing with substance abuse, mental health disorders, stress, and work/life balance topics to specifically address and clarify that well-being topics will be approvable. There will be more discussion by the MCLE Board on the topic of well-being.

Recommendation 22.1: Implement Proactive Management-Based Programs (PMBP) that Include Lawyer Well-Being Components

The Department of Professional Regulation is surveying what other disciplinary agencies have proposed or adopted for proactive management-based regulation. The Future of Law Practice Committee is also looking at proactive management-based regulation as part of its study of the future of law practice.

Recommendation 22.2: Adopt a Centralized Grievance Intake System to Promptly Identify Well-Being Concerns

The VSB has a centralized grievance intake system that identifies well-being concerns.

Recommendation 22.3: Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information from Regulators to Lawyer Assistance Programs

The Standing Committee on Lawyer Discipline will consider a recommendation from the VSB Department of Professional Regulation that Paragraph

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which may not be reasonable. See Rule 1.5 (a lawyer’s fee shall be reasonable and adequately explained to the client). Some are concerned whether the ALS website informs a consumer accurately of all the necessary expenses and fees associated with all of the fixed-fee limited-scope services it advertises on its website. Lawyers have an obligation to advertise and explain their fees accurately and not make any misleading statements about the fees they charge for legal services. Rule 7.1.

Under the current rules, the “marketing fee” charged by ALS cannot be construed as a reasonable and usual payment for advertising and marketing, but rather an improper sharing of legal fees with a nonlawyer and an improper payment for a recommendation of

employment. Nevertheless, the questions and concerns raised by ALS have generated an extensive and vigorous policy debate over whether these Rules of Professional Conduct unreasonably stifle innovative methods of delivering legal services, and that alternative business methods such as ALS fill a legal need or “gap” that more traditional methods of marketing and providing legal services have left unfulfilled. On the other hand, a business model such as ALS raises traditional and fundamental concerns that nonlawyer entities should not control or manage the delivery of legal services or interfere with the lawyer-client relationship and a lawyer’s professional judgment and independence. See Cmt. [1], Rule 5.4.

Endnotes:

- 1 Supreme Court of Ohio, Bd. Of Prof. Conduct, Ethics Op. 2016-3 (June 3, 2016); South Carolina Bar Ethics Op. 16-06 (July 14, 2016; Pennsylvania Bar Assoc. Legal Ethics & Prof. Resp. Comm. Op. 2016-200 (September 2016). A joint opinion issued by three committees appointed by the Supreme Court of New Jersey, ACPE Joint Opinion 732 (June 21, 2017) accompanied by an alert to all bar members, warned that it is impermissible for lawyers to participate in Avvo Legal Services, Legal Zoom, Rocket Lawyer, and other similar online companies. The latest opinion issued by the New York State Bar Association on August 8, 2017 holds that a lawyer may not pay the current marketing fee to Avvo Legal Services without violating New York’s Rules of Professional Conduct. New York State Bar Ass’n Comm. on Prof. Ethics, Op. 1132 (August 8, 2017)
- 2 North Carolina State Bar. Proposed 2017 Formal Eth. Op 6 (July 27, 2017)

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13 be amended to provide for one-way communication of confidential information to LHL in certain circumstances.

Recommendation 22.4: Adopt Diversion Programs and Other Alternatives to Discipline that are Proven Successful in Promoting Well-Being

The Department of Professional Regulation is studying what other states have done regarding diversion programs and other disciplinary alternatives. The question is whether a rule change can be fashioned allowing certain complaints to be closed with no disciplinary record if the affected lawyer complies with terms and conditions that address the lawyer’s well-being. This is a significant step beyond the abbreviated investigation (“proactive investigation”) process that Intake uses now.

Please review the Well-Being Report in full and give us your

thoughts and comments on its recommendations. The well-being of Virginia’s lawyers is important to the profession and public protection, which is integral to the VSB’s mission. As always, you can contact me at gould@vsb.org.

Endnotes:

- 1 The Task Force was chaired by Bree Buchanan, Texas State Bar Lawyers Assistance Program Director, and James C. Coyle, Attorney Regulation Counsel for the Colorado Supreme Court. Members were Chief Justice Donald Lemons; Anne Brafford; Donald D. Campbell; Josh Camson; Charles Gruber; Terry L. Harrell; David Jaffee; Tracy Kepler; Patrick R. Krill; Saray Myers; Chris Newbold; Jayne Reardon; Judge David Shaheed; Lynda Shely and William Slease.
- 2 <http://jeenacho.com/2017/08/20/can-law-firms-promote-well-suggestions-national-task-force-lawyer-well/>.
- 3 Regulatory objectives are a statement of the goals you attempt to achieve through regulation.

VSB Seeks Representative for the ABA House of Delegates

The Virginia State Bar is seeking a representative to immediately fill a two-year term as a representative in the ABA House of Delegates. The current representative had to step down as a VSB delegate after being elected to represent Virginia as its State Delegate. In addition, the Virginia State Bar is recruiting members interested in serving as alternates in the ABA House of Delegates in the event any of its regular delegates are unable to attend a meeting. Such an appointment would need to be made with very little notice. Persons interested in either position should submit their letters of interest and resumes by November 1, 2017, to Karen A. Gould, Executive Director, Virginia State Bar, 1111 E. Main St., Suite 700, Richmond VA, 23219-0026, or e-mail to nominations@vsb.org.