

Attorney Wellness:

THE SCIENCE OF STRESS AND THE ROAD TO WELL-BEING

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"To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to wellbeing . . . the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust." ABA National Task Force on Lawyer Well-Being (August 14, 2017)

"We know what we are, but know not what we may be." Shakespeare provides us a beautiful reminder in Hamlet that we are masters of our own fate. While we may be facing trying or difficult times today, it does not mean it will remain the same forever. It is a reminder that we must embrace uncertainty and live life with an open mind as to what is possible. And so it is with the status of health and well-being among the legal profession and lawyers generally - we know what we are in the current state of assessment, but know not what we may yet become.

The news concerning the statistics of the impact of the profession on the mental, emotional and physical well-being of lawyers is becoming more and more studied (and grim) - and yet solutions can feel elusive. From addiction to depression to suicide, it can feel hopeless to try to determine exactly what drives the sobering statistics among lawyer mental health and well-being. Fortunately, in the last several years enormous strides have been made in the quantitative study of lawyer well-being and happiness, thus pointing us toward the beginning of who we may yet become if we can approach the uncertainty of change with courage and an open mind.

In 2017, the American Bar Association released its report from the National Task Force on Lawyer Well-Being, which outlined recommendations in eight areas for our profession to assist in transforming the practice of law to one that is more focused on the health and well-being of its practitioners.¹ The Report was released on the heels of two other recent and significant quantitative studies of lawyer well-being: Lawrence Kreiger and Kenneth Sheldon's *What Makes Lawyers Happy: A Data-Driven Prescription to Redefine Professional Success*, *George Washington Law Review*, 2015, and the ABA/Hazelton Betty Ford Foundation's study in the *Journal of Addiction Medicine* on substance abuse and mental health issues among attorneys (2016). Yet, the correlation between attorney well-being and the demands of practice are not new. In fact, Johns Hopkins University released a study in 1990 which found that lawyers were nearly four times as likely as the general population to suffer from depression, anxiety, social isolation, and other forms of psychological distress.²

Sadly, in the decades between the Johns Hopkins University study on depression and the most recent findings, the health and well-being of lawyers has not improved. The Hazelton Betty Ford study found: (1) 20.6 percent of lawyers screened positive for alcohol-dependent drinking (higher among men and younger attorneys); (2) 28 percent of lawyers suffer from depression (higher among men); (3) 19 percent of lawyers struggle with anxiety (higher among women); and (4) 23 percent of lawyers experience significant stress.³ In this article, we will look at some of the causes of higher levels of mental health struggles and substance abuse issues in the legal profession and, more important, some of the recommended changes and techniques that can be implemented in lives of lawyers to help them go from striving to thriving.

THE LAWYER 'PERSONALITY'

In 2006, *Res Gestae* published an article by Stephen Terrell which contained the observation that "what makes for a good lawyer may make for an unhappy human being."⁴ The psychological underpinnings for the potential disruption to healthy emotional functioning can be drawn from aspects of the lawyer "personality" such as perfectionism, "Type A" attributes, and anticipatory anxiety (or pessimism). When healthy emotional functioning is disrupted, it is not uncommon to suffer from psychological and emotional distress that can often lead to substance use/abuse, burnout, relationship deterioration, and physical health impairment. "Mental health disorders can profoundly affect attorneys' daily functioning. Irritability, feelings of inadequacy, difficulty concentrating, a sense of worry and impending danger, sleep disturbances, heart palpitations, sweating, fatigue and muscle tension are all side effects of depression and anxiety."⁵

Perfectionism is a pattern of belief where nothing is ever good enough.⁶ Law school, law firms, judges and clients reinforce the notion that lawyers must be free from mistakes in order to be effective at their job.⁷ At every turn, there is the need to set and meet exceedingly high standards in one's self and in others. Holding the responsibility for the outcome of someone's life can be overwhelming, so all aspects need to be executed without flaws. In order to look at cases "effectively" and maintain a dispassionate detachment to achieve a "perfect" result, lawyers receive early training to be emotionally withdrawn - a trait that can help with professional effectiveness but have disastrous consequences personally.⁸ Significantly related to perfectionism is the lawyer trait of being detail-oriented - the ability to pay high-level attention to facts and data, consistently over time, to bring about the desired outcome. Paying attention over long periods of time at such a high level can lead to feelings of competitiveness, urgency, impatience, stress, or Type "A" attributes.⁹ Added together, the attributes that are highly prized in lawyers are also known to lead to mental health disturbances.¹⁰

As one lawyer reflected, "We have the perfect storm of both personality traits and career circumstances which are generally known to cause depression. Most lawyers are Type-A people who put way too much pressure on themselves. In our profession we are always being attacked, literally, from opposing counsel and other players in litigation. Other than professional boxing, I can't think of any other profession where the job requires constant fighting."¹¹

Perhaps the most notable of all lawyer traits is that of "anticipatory anxiety," or being trained to worry. Psychologist Tyger Latham notes that lawyers are "[p]aid worriers . . . [and] expected to predict the future, to anticipate threats and guard against anything that could arise. So they learn to see problems everywhere, even when they don't exist. And they start to perceive threats as life or death matters."¹² James A. Fassold, a lawyer in Phoenix, opined that "[Lawyers] constantly ask the question 'what's the worst that could happen?' As a result, lawyers are on a permanent 'fight or flight' mode, constantly on guard. They have nothing to sell but their time and advice. They're not cranking out widgets. They can't make more time."¹³

The training toward worry leads to high negative arousal states, a negative perception of the future, and pessimism. In fact, in the Johns Hopkins study from 1990, the legal profession was the only one where pessimism outperformed optimism.¹⁴ In the normal clinical setting, a trained psychotherapist would begin treatment with a patient to train them away from anticipatory anxiety; rather than toward it. Such worry is a hallmark of suboptimal psychology in a human being and yet is a cornerstone of lawyer training.

A CULTURE IN RESISTANCE

In its current state, the legal profession finds itself facing myriad issues above and beyond a mental health or substance abuse crisis. Lawyers also contend with a changing landscape that includes increased "social alienation, work addiction, sleep deprivation, job dissatisfaction, a 'diversity crisis,' complaints of work-life conflict, incivility, narrowing values in which profit predominates, and negative public perception."¹⁵ And yet, with all that is confronting the industry, the ABA's National Task Force on Attorney Well-Being noted in its 2017 Report a culture with deep barriers and resistance to discussing the problems in practicing law, seeking out help and services, and working as a community to establish best practices for the well-being of its membership.¹⁶ Perhaps most notable of all is that lawyers address these demonstrably high levels of unhappiness and dissatisfaction with "a sense of acceptance rather than outrage."¹⁷

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.¹⁸ The National Task Force on Lawyer Well-Being released its 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 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."¹⁹ Moreover, some state applications for the bar admission require disclosure by a lawyer if he or she has received treatment for any type of mental illness.²⁰

Attorney and author Jeena Cho observed that "Lawyers are risk averse. We don't want to be the first to try anything new because we love stare decisis. Not only is there a resistance to trying a different way of practicing law to reduce these issues lawyers struggle with, it appears that there is a deep level of denial. It's the lawyers at the other law firms who are struggling with depression, problematic drinking or substance abuse. When an attorney is exposed as struggling with these serious mental health issues, it's treated as an isolated incident, that the problem is unique to him or her - not as a systemic issue."²¹

As a result, 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."²² In essence, the contributing factors to a lawyer's unhappiness coupled with the resistance to seek help may lead to the higher than average levels of problem drinking and substance abuse, according to the most recent research.

CHANGE IS IN THE AIR

In 2015, Larry Kreiger and Kennon Sheldon published *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success* in the *George Washington Law Review*, which laid out the results of surveys taken from more than 6,200 lawyers throughout the country in every aspect of the profession.²³ For the first time, Kreiger and Sheldon provide lawyers with the statistical proof that the extrinsic values that drive the definition of "success" (power, prestige, money, highly prized achievements) do not bear "any relationship to the well-being of [lawyers]."²⁴ In fact, the authors found a direct correlation between well-being and intrinsic values such as autonomy, integrity, close relationships, and meaningful and purposeful work - which, when experienced, lead to higher levels of productivity, lower turnover, and overall workplace satisfaction.²⁵ The conclusions drawn from the data should make a change-resistant profession take notice of the importance of well-being, if not solely for the health of their colleagues writ large, but also because the estimated costs of attorney turnover among large firms is \$25 million per year.²⁶

Beyond the data and profitability implications, the ABA's National Task Force on Attorney Well-Being estimated in its 2017 Report that "40 to 70 percent of disciplinary proceedings and malpractice claims against lawyers involved substance abuse or depression, and often both."²⁷ The New York State Rules of Professional Conduct ("Rules") contain multiple references to the responsibility and duty of lawyers charged with the public and client trust. Rule 1.1 requires that a lawyer provide "competent representation" and Rule 1.3 prohibits the neglect of the client matter. In these two examples, it is self-evident that the lawyer must have the capacity to be both competent and attentive - two skills that are substantially affected when the lawyer's health and well-being is suboptimal. From a clinical perspective, the Report illustrated that suffering from depression directly impacts executive functioning that is necessary for memory, attention, and problem-solving, while nearly 80 percent of alcohol abusers suffer mild to severe cognitive impairment.²⁸

In addition to the workplace satisfaction, profitability, risk management, and ethical implications, lawyers are a cohort whose ecosystem is impacted by the health and well-being of one another from courtrooms to board rooms. In short, focusing on the well-being of the profession as a collective and individually is simply the right thing to do.

FROM STRIVING TO THRIVING: THE ROAD TO WELL-BEING

While the definition of well-being may vary from person to person, clinical practitioners generalize health and wellness across eight distinct areas of life: social, physical, spiritual, emotional, occupational, financial, environmental, and intellectual.²⁹ The "Eight Dimensions of Wellness" have been roundly accepted as the integrative approach to assessing and addressing overall well-being - including by the U.S Department of Health and Human Services (Substance Abuse and Mental Health Services Administration).³⁰ In the Report, the ABA's National Task Force described well-being for lawyers as:

A continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational health, creative and intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer well-being is part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients.³¹

The recommendations from the National Task Force are sweeping - from law schools to Lawyer Assistance Programs to law firm and even malpractice careers.³² In summary, the Report encourages our profession to (1) identify stakeholders and the role each one can play in reducing toxicity; (2) work to eliminate the stigma associated with asking for and receiving help; (3) emphasize well-being as an "indispensable" part of a lawyer's duties; (4) educate the profession on issues affecting well-being; and (5) take steps to change how law is practiced and regulated with well-being in mind.

In light of the Report's recommendations, and as a direct result of the growing empirical data concerning the state of lawyer well-being, New York has become the sixth state in the nation to form a committee for Attorney Well-Being, which operates as a subcommittee to the Law Practice Management Committee of the New York State Bar Association. The purpose of the Attorney Well-Being subcommittee is to identify areas of support and to offer assistance to members who seek to implement ways of thriving professionally and personally, and partnering with other NYSBA Committees to bring awareness, programming, and leadership to the issues that both affect well-being and build resiliency.

As part of the NYSBA Annual Meeting in 2018, the authors of this article presented four steps that can be undertaken by firms and legal employers now to assist in facilitating well-being in the workplace. First, we encourage legal employers, law schools, and bar associations to invest in or make available mindfulness or stress reduction programs to law students and lawyers, as well as actively support the time commitment required for the course work. Beyond mindfulness, there are cognitive and dialectical behavioral techniques that can also be utilized to help build resiliency, distress tolerance, and emotional regulation. Programs that build leadership skills, increase competency, listening and empowerment are all part of the Eight Dimensions of Wellness and can have a profound effect on overall well-being. Second, we encourage lawyers, especially lawyers with influence and experience, to engage with leadership within the profession to assist in destigmatizing help-seeking for lawyers. It is the intent of the Attorney Well-Being subcommittee to provide online resources to members to facilitate ways to normalize and encourage wellness as a primary factor in the competency of lawyers. Third, we recommend developing best practices in organizations with lawyers (law schools, law firms, government, and bar associations) for addressing and reducing negative cultural messages that perpetuate the "lawyer personality" of pessimism and perfectionism. Programs are being developed that will specifically address the need for lawyers to develop the skills necessary to "turn on" their training to anticipate problems, but also to be able to turn it off so that life is not simply a series of worst-case scenarios. Finally, we invite all members of the NYSBA to review the self-evaluations and lifestyle management resources that are available at the Attorney Well-Being subcommittee's webpage. The availability of technology, apps, and education is wide - stretching across multiple areas of life from substance consumption to tech addiction to financial mindfulness.

CONCLUSION

As Shakespeare's Ophelia pondered philosophically in Hamlet, lawyers now know who they are in terms of well-being, but there is so much possibility in who we may yet become. From productivity and profitability to ethical concerns and the public trust, to the duty we owe to one another, there has never been more evidence or a greater mandate to work toward normalizing well-being in the legal profession. For a slow-to-change profession, the drumbeat continues its rhythm and only grows in volume. It will require courage and open minds to embrace the direction toward the improvement of the lives of lawyers and those who love them.

"The time is now to use your experience, status, and leadership to construct a profession built on greater well-being, increased competence, and greater public trust." The Report of the National Task Force on Attorney Well-Being, 2017.

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