

# PROFESSIONAL COUNSEL<sup>SM</sup>

ADVICE AND INSIGHT INTO THE PRACTICE OF LAW<sup>®</sup>

## Making Lawyer Well-Being a Priority in the Daily Practice of Law

### Introduction

“How are you doing?” That is a simple question that people ask of one another each and every day. The American Bar Association (“ABA”) recommends that lawyers contemplate this question as it relates to both their professional and personal activities. How lawyers are conducting themselves in their professional and personal lives is an issue that has led to the creation of the National Task Force on Lawyer Well-Being. This task force represents a call to action to change the profession and improve the lives of lawyers regarding issues of alcohol, substance use, mental health and help-seeking behavior.<sup>1</sup>

*We are happiest and healthiest when we adopt healthy work habits and lifestyle choices. Importantly, though, we won't be successful on our own. Well-being is a team sport.*

– Anne Brafford, JD, MAPP, PhD in progress.  
*Well-Being Toolkit for Lawyers and Legal Employers.*

### Recognition and Resolution

As a new year begins and the topic of resolutions is discussed and forgotten, another resolution should be noted by lawyers. Namely, lawyers should commit themselves to the principles expressed in Resolution 105, drafted by the ABA Working Group to Advance Well-Being in the Legal Profession, Commission on Lawyer Assistance Programs, Standing Committee on Professionalism and National Organization of Bar Counsel. Resolution 105 states:

**RESOLVED**, That the American Bar Association supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students; and

**FURTHER RESOLVED**, That the American Bar Association urges all federal, state, local, territorial, and tribal courts, bar associations, lawyer regulatory entities, institutions of legal education, lawyer assistance programs, professional liability carriers, law firms, and other entities employing lawyers to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.

The [report](#) supporting Resolution 105 addresses research related to lawyers and their use of alcohol and substances, mental health issues and help-seeking behavior.

<sup>1</sup> The research into lawyer well-being includes data on law students. As this publication is directed to lawyers, the information discussed will not include the information on law students.

## Research Data

In 2015, the ABA Commission on Lawyer Assistance Programs worked with the Hazelden Betty Ford Center to survey lawyers regarding alcohol use, substance use, and mental health issues, as well as help-seeking behaviors. With the assistance of 16 bar associations, survey responses were collected from 12,825 licensed and employed lawyers.<sup>2</sup>

The [results](#) demonstrated that one-fifth of the respondents scored at a level consistent with problematic drinking. This statistic represented almost twice that of a similar study of a highly educated workforce.<sup>3</sup> Results related to depression revealed that one fourth of the respondents reported some level of depression. Almost half of the respondents reported having experienced depression at some point in their careers. With respect to anxiety, the data demonstrated that approximately one fifth of respondents reported suffering from anxiety. Six out of ten had suffered anxiety at some period in their careers. Suicidal thoughts were experienced by one out of ten respondents while practicing law. Notably, 0.7 percent of respondents reported at least one prior suicide attempt. The report notes that if this result were extrapolated over the 1.3 million lawyers in the United States, it would lead to the conclusion that 9,100 lawyers have attempted suicide.

In addition to examining lawyer behavior, the research also looked into attempts by lawyers to get help for alcohol use, substance use, and mental health issues. These results showed that many were reluctant to seek help due to privacy and confidentiality issues, with concerns that others may learn of their circumstances.

## Responding to the Research

In the summer of 2016, the National Task Force on Lawyer Well-Being was created. Its work culminated in a report entitled, [The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#), published in August, 2017.<sup>4</sup> The Task Force cited the following reasons to take action: organizational effectiveness, ethical integrity and humanitarian concerns. It also defines “lawyer well-being” as a “continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections.”

The Task Force report also identifies the “stakeholders” in this process as the following: The judiciary; regulators; legal employers, including law firms; law schools; bar associations; professional liability insurers; and lawyer assistance programs. General recommendations for implementation are provided, as well as recommendations tailored to the role of each stakeholder.

## Making a Change to Support Lawyer Well-Being

Another vital resource created to support lawyer well-being is the [Well-Being Toolkit for Lawyers and Legal Employers](#) created by Anne M. Brafford for use by The American Bar Association.<sup>5</sup> The toolkit provides multiple resources for implementing and prioritizing lawyer well-being in the daily practice of law. It also includes a directory of the Lawyer Assistance Program Contacts by State.

*If the stakeholders are not motivated to support the initiative of lawyer well-being from a humanitarian perspective, then risk mitigation and avoiding legal malpractice claims that may arise from alcohol use, substance use or mental health concerns should provide a strong incentive to support the goals of well-being in the legal community.*

2 P.R. Krill, R. Johnson, and L. Albert, “The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys,” *J. Addiction Med.* January/February 2016. Volume 10, Issue 1, p 46-52.

3 Matano RA, Koopman C, Wanat SF, Whhittell SD, Borggrefe A, Westrup D. “Assessment of binge drinking of alcohol in highly educated employees.” *Addict Behav* 2003;28:1299–1310.

4 *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. American Bar Association National Task Force on Lawyer Well-Being. (August, 2017)

5 *Well-Being Toolkit for Lawyers and Legal Employers*, Created by Anne M. Brafford for Use by the American Bar Association. American Bar Association. (August, 2018)

## Competence

*ABA Model Rule of Professional Conduct 1.1* on Competence states: A lawyer shall provide competent representation to a client. Competent representation, of course, requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Clearly, attorneys confronting challenges related to alcohol abuse, substance use or mental health issues and not seeking help may be unable to provide competent legal representation to their clients. If the stakeholders are not motivated to support the initiative of lawyer well-being from a humanitarian perspective, then risk mitigation and avoiding legal malpractice claims that may arise from alcohol, substance use or mental health concerns should provide a strong incentive to support the goals of well-being in the legal community.

## Conclusion

The results of the research exploring attorney use of alcohol, substance use, mental health and help-seeking behavior raise significant concerns. The American Bar Association is leading the charge to improve attorney well-being by providing information and research results to the legal profession. Following notice of the issue, resources have been created to implement lawyer well-being by all stakeholders in the daily practice of law. Most importantly, the legal profession requires competent and healthy practitioners to maintain client confidences and the profession itself. By adopting the available tools to address the issues raised in the Task Force report, progress can be realized in this area.

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