

Virginia Lawyers' Wellness Initiative

A Profession at Risk – Year Two Executive Update

This Supreme Court of Virginia Committee was convened after the National Task Force published its comprehensive report, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” The final report, *A Profession at Risk*, highlights national statistics and includes specific recommendations for Virginia stakeholders to improve the current wellness crisis in the legal profession. These recommendations were divided into 5 sections, listed below. Two years after the report’s publication, many of its recommendations have already been implemented.

Findings: National Studies

- “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” (2016) found that, among attorneys:
 - 21 – 36% qualified as problem drinkers.
 - 14% reported that problematic drinking began in law school.
 - 28% were experiencing some level of depression.
 - 11% had experienced suicidal thoughts.
- “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns” (2016) found that, among law students:
 - 25% were at risk for alcoholism.
 - 17% were experiencing depression.
 - 14% were experience severe anxiety.
 - 6% had experienced suicidal thoughts within the past year.

1. Structural and Funding Recommendations Implemented

- *Create a position and program within the Office of the Executive Secretary of the Supreme Court of Virginia (SCV) to coordinate comprehensive well-being initiatives.*
 - ✓ Margaret Hannapel Ogden was hired as the inaugural Wellness Coordinator in October 2019.
 - ✓ [The Virginia Lawyers' Wellness Initiative page on SCV's website](#) went live in December 2019, including a section for reports & other resources.
- *Provide adequate funding to Lawyers Helping Lawyers (LHL) (now the Virginia Judges and Lawyers Assistance Program: vjlap.org) for implementation of its statewide plan.*
 - ✓ VJLAP began receiving Attorney Wellness Fund money, administered by OES, in September 2019, [to expand their staff of 1.5 employees to 5.](#)
 - ✓ VJLAP hired Barbara Mardigian as Deputy Clinical Director in Richmond in September 2019. Angeline Saferight Lloyd and Janet van Cuyk began as the Southwest and Tidewater Regional Program Managers, respectively, in January 2020.
- *Funding for these initiatives should be the collective responsibility of all members of the Bar.*
 - ✓ Line item in Bar Dues first collected in 2019 to create the [Attorney Wellness Fund](#).
- *CLEs should be provided on a range of wellness topics.*
 - ✓ [MCLE Opinion 19](#) was amended in September 2018 to clarify that wellness topics may receive CLE credit.
 - ✓ In January 2020, [VA CLE introduced five no-cost modules focused on well-being](#) topics, of which attorneys may take up to two a year. They will continue to add two new courses annually to create a library of free CLEs to address a range of occupational risks.

- ✓ VJLAP has expanded its educational offerings, presenting a CLE course on burnout and compassion fatigue at the January 2020 meeting of the VBA.
- ✓ Justice Mims and Margaret Ogden shared a VLWI update at the March 2020 Bar Leadership Institute, encouraging local and specialty bar association Presidents to sponsor no- or low-cost CLEs on wellness topics.
- ✓ VJLAP and VLWI collaborated to host two virtual CLEs since the quarantine, “Occupational Wellness While Social Distancing” in June 2020 and “Occupational Wellness for Solo and Small Firm Practitioners During Times of Tumult” in July 2020.

2. Judicial Task Force Recommendations Implemented

- *Communicate that well-being is a priority and reduce the stigma of mental health and substance use disorders.*
 - ✓ Members of the SCV, the past-Virginia State Bar President, VJLAP Board members, and VSB staff attorneys have spoken locally and nationally on attorney well-being.
 - ✓ [OES issued a press release detailing the hiring of the Wellness Coordinator](#) and the creation of the Virginia Lawyers’ Wellness Initiative on January 7, 2020.
- *Recognize and fully support an assistance program for judges.*
 - ✓ LHL became VJLAP, with a new titular emphasis on judges, in 2019.
- *Provide well-being programming for judges and staff.*
 - ✓ Wellness topics were included in mandatory judicial conferences conducted by OES in 2019 and were expanded in 2020 as part of virtual conference programming.
 - ✓ In conjunction with National Lawyer Well-Being Week, the VLWI hosted a WebEx for judges entitled “Occupational Wellness: Clinical, Ethical, and Judicial Perspectives,” featuring Justice Mims, Judge John Tran of Fairfax Circuit Court, Barbara Mardigian, and Jim McCauley.
- *Monitor for impaired lawyers and partner with a lawyers’ assistance program.*
 - ✓ VJLAP staff presented its new pamphlet for “Signs & Symptoms of Impairment in the Legal Profession” at Pre-Bench Orientation for new judges in May 2020.
 - ✓ Judicial volunteers from VJLAP presented “Applying Lessons from Recovery to Enhance Judicial Well-Being” at the Judicial Conference for District Courts in August 2020.

3. Law Schools & Board of Bar Examiners Recommendations Implemented

- *Re-evaluate bar application inquiries about mental health history.*
 - ✓ The current Character and Fitness Questionnaire emphasizes “the mere fact of treatment for health problems is not, in itself, a basis on which an application is denied admission in Virginia, and the Board of Bar Examiners regularly licenses individuals who have demonstrated personal responsibility and maturity in dealing with health issues. The Board encourages applications who may benefit from treatment to seek it...The Board does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as relevant to the issue of whether and applicant is qualified to practice law.”
- *Create best practices for detecting and assisting students experiencing psychological distress. Provide training to faculty members relating to student mental health and substance use disorders.*
 - ✓ A Law Student Wellness Workgroup has been established with associate deans from each of the 8 law schools, the Wellness Coordinator, and representatives from VJLAP. The group held its first meeting at U of R in January 2020, and continues to hold monthly conference calls to collaborate on wellness programming for students and faculty.
- *Include well-being topics in courses on professional responsibility.*

- ✓ The VSB one day course on professional responsibility, which is given at all Virginian law schools, has been updated to include more hypotheticals dealing with lawyer impairment and general wellness topics.
- *Create a well-being course and lecture series for students.*
 - ✓ In February 2019, the first annual Law School Summit on Wellness was held in Charlottesville. Most of the members of the Supreme Court of Virginia attended as well as the Deans of all eight Virginia law schools. VJLAP, Virginia CLE and the VBA were sponsors of this event. The prominent people who attended the summit highlights the recognition and importance of wellness, mental health issues and substance abuse concerns that face law students and the legal profession at large.
 - ✓ Planning for the second annual summit is underway (originally scheduled for April 1, 2020 but postponed due to COVID-19) at the University of Richmond School of Law.

4. Public Sector Task Force Recommendations Implemented

- *Prioritize adequate and dependable funding for Lawyers Helping Lawyers.*
 - ✓ See Section 1 for a more detailed description of the funding process.
- *CLE requirements should be expanded to include wellness topics. Eventually, mandatory CLE credit requirements should be considered for mental health and substance abuse.*
 - ✓ See Section 1 for a more detailed description of MCLE changes.
- *Adopt regulatory objectives that prioritize the well-being of legal professionals.*
 - ✓ Comment [7] to Rule 1.1 of the VA Rules of Professional Conduct was added: “A lawyer’s mental, emotional, and physical well-being impacts the lawyer’s ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law.”
 - ✓ The disciplinary rule requirement of confidentiality during bar investigations was amended so that bar counsel may share information of a respondent’s possible mental health problems or substance abuse with a lawyer’s assistance program such as VJLAP.
 - ✓ Amendments to the VSB professional regulations and disciplinary procedures were made to facilitate retirement for a lawyer suffering from a permanent impairment such as an irreversible cognitive decline, by allowing retirement with dignity instead of the stigma of having the lawyer suspended on impairment grounds.
- *Add a wellness component to the Harry L. Carrico Course for new lawyers.*
 - ✓ “Professionalism: Work Life Balance” is now a stand-alone segment of the course. Hypotheticals have been added throughout that focus on attorney impairment and ethical issues.

5. Private Sector Task Force Recommendations Implemented

- *Strengthen the relationship between VJLAP and SCV.*
 - ✓ SCV appointed 8 new members to VJLAP’s Board of Directors in September 2019.
- *Make well-being more prominent in introduction of new lawyers to the profession.*
 - ✓ The mandatory professionalism course has been modified to increase its focus on well-being.
- *Form a blue-ribbon panel of lawyers and health care professionals to establish aspiration recommendations for lawyers to implement.*
 - ✓ VSB President Len Heath convened a committee, which published the landmark report, [The Occupational Risks of the Practice of Law](#) in May 2019. This report includes recommendations to ameliorate 20 unique risks within the legal profession, including physical, mental & emotional, adaptation, and self-actualization risks.
- *Prepare an informational pamphlet for lay audiences, such as families and staff of lawyers and law students.*

- ✓ Included in the VSB report is a “matrix of risk,” (see example below) which includes straightforward, well-sourced information designed to be accessible to non-lawyers.
- ✓ VJLAP materials have been updated in conjunction with the VLWI, including posters available beginning March 2020 for legal workplaces and law schools.

| MENTAL AND EMOTIONAL RISKS | | | |
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| Risk Description | Potential Effects | Practice Pointers for Individuals | Practice Pointers for Organizations |
| The Need to Display Confidence and Conceal Vulnerability | Law practice and legal education are inherently competitive, discouraging help-seeking behavior as an admission of weakness and incentivizing lawyers to wear a confident façade despite suffering wellness issues. | <ul style="list-style-type: none"> • Develop a support network of family, friends, and fellow attorneys with whom vulnerability can be safely discussed. • Law students should seek to understand that the character and fitness process is not a trap. • Do not fear seeking counseling or other treatment, if needed. • Understand “imposter’s syndrome.” • Participate in an Inn of Court. • Participate in bar association activities. • Seek an experienced mentor. | <ul style="list-style-type: none"> • Promote an organizational culture encouraging help-seeking behavior such that all employees know that nothing is wrong with knowing their limits and asking for help. • Consider developing wellness committees or providing counseling services. • Bar examiners should strive to create a transparent character and fitness process and make clear that those who need help should seek treatment without fear of penalty. • Offer an Employee Assistance Program (EAP). |
| ADAPTATION RISKS | | | |
| Risk Description | Potential Effects | Practice Pointers for Individuals | Practice Pointers for Organizations |
| Changing Legal Paradigms | The nature of law practice has changed dramatically since the digital revolution, with wildly fluctuating market conditions, new business models, and evolving technologies making adaptation challenging, but necessary. | <ul style="list-style-type: none"> • Develop the attitude of a lifelong learner. • Study the reports of VSB committees addressing the future of law practice. • Attend programming such as the VSB Techshow. • Participate in bar organizations to develop relationships and stay up-to-date on changing legal technologies. • Stay current on ethics guidelines and opinions addressing changing business models and evolving technologies. | <ul style="list-style-type: none"> • Study and emulate business models of “dynamic” law firms that are successfully adapting to the new practice realities. • Consider revising billing models, adopting new technologies, and overhauling internal workflows to better meet client needs. • Encourage attorneys to streamline their practice with the utilization of new technologies. • Stay current on ethics guidelines and opinions addressing changing business models and evolving technologies. |