Identifying and Managing the

Occupational Risks of Practicing Law

**2021 CLE**

**The Virginia Judges and Lawyers Assistance Program**

**Summary**:

The panelists will identify a risk to wellness within the practice of law, as identified in the 2019 [report](https://www.vsb.org/docs/VSB_wellness_report.pdf), “The Occupational Risks of Practicing Law,” issued by the Virginia State Bar (VSB) President’s Special Committee on Lawyer Well-Being. They will discuss (i) how the risk manifested at different parts of their careers (in self or colleagues) and (ii) what practice pointers have worked to address it.  Then the floor will be open to participant questions; the panelists will answer as many as possible in the allotted time. This session will encourages members of the legal profession to developing positive coping strategies.

**CLE Date:** May 5, 2021 at 4:00 p.m. (1 hour)

**Presenters Biographies** (Current, Former, and Future VSB Presidents)**:**

**Jay Barry Myerson** (83rd President, 2021-2022): Jay Barry Myerson founded The Myerson Law Group, P.C. in 1986 and supervises a domestic, criminal, and civil litigation practice. Myerson was first elected to Bar Council in 2014, representing the 19th Judicial Circuit. Myerson was elected as the 2021-2022 president of VSB and is past president of the Fairfax Bar Association. He served in the ABA’s House of Delegates and is a past president of the George Mason American Inn of Court. In June 2018, he received The Virginia State Bar Conference of Local and Specialty Bar Associations Local Bar Leader of the Year Award in recognition of dedicated service, professionalism and inspiration to the bench, the Fairfax Bar Association and the community. A graduate of Georgetown University and Georgetown Law School, Myerson is a Fellow of the Virginia Law Foundation and a Fairfax Law Foundation director.

**Brian Lawrence Buniva** (82nd President, 2020-2021): Brian Lawrence Buniva has practiced law for more than 40 years, including working for the Virginia Attorney General’s Office, solo practice, practicing in small, medium-sized and large firms, as an “in-house” counsel for an international manufacturing company, and in his current solo practice at B.L. Buniva Strategic Advisor, PLLC. Buniva is current president of VSB and has served on Bar Council and the Executive Committee and has chaired the Administrative Law and Environmental Law Sections for both the VSB and the Virginia Bar Association. He served for many years as co-chair of the VSB Special Committee on Bench-Bar Relations, and as Chair of the VSB’s Access to Justice Subcommittee of Special Committee on The Future of the Practice of Law. A graduate of Georgetown University, Buniva received his law degree from the University of Richmond.

**Marni E. Byrum** (81st President, 2019-2020): Marni E. Byrum has practiced law for over 30 years, focusing on labor, employment and personnel law. She has litigated cases before state and federal courts, as well as the Merit Systems Protection Board, the Equal Employment Opportunity Commission and the Federal Labor Relations Authority. The kinds of cases she handles include wrongful termination, prohibited personnel practices, discrimination, and disability as well as security clearance appeals. She also advises clients in negotiating employment contracts and severance agreements. She also drafts policy and procedure manuals, provides in-house training and conducts neutral investigations and evaluations of personnel matters. She is a former president of VSB and Super Lawyers, through extensive evaluation, awarded her distinction as a top-rated practicing attorney from 2014 – 2020. Marni Byrum graduated in 1979 from Pepperdine University School of Law. Marni Byrum was admitted to practice law in 1979.

**Leonard C. Heath, Jr**. (80th President, 2018-2019): Leonard C. Heath, Jr. is a trial attorney and former president of VSB. He has extensive experience in trying cases across Virginia, in both state and federal courts. He has handled a wide variety of legal matters, including personal injury, wrongful death, business litigation, will/trust/estate disputes, and real estate litigation. This experience has earned him a place on the coveted Super Lawyers’ list, and has also helped him secure an “AV Preeminent” rating from Martindale Hubbell and a “Superb” rating from AVVO. In January 2020, Len was inducted as a Fellow of the Virginia Law Foundation. Fellows are recognized as leaders in the profession, not just in their practices, but in their communities. This honor is held by less than 1% of Virginia attorneys. Len is also a Fellow in the Litigation Counsel of America, which is a close-knit, peer-selected, and aggressively diverse honorary society of 3,500 trial lawyers across the country. Less than one-half of one percent of American lawyers are invited to join this organization.

**Doris Henderson Causey** (79th President, 2017-2018): Doris Henderson Causey is the managing attorney of the Richmond office of the Central Virginia Legal Aid Society, has been awarded the Clarence M. Dunnaville, Jr. Achievement Award, sponsored by the VSB Diversity Conference. In 2017, Causey made legal history in the Commonwealth when she was inducted as the VSB’s first African American president, and first president from the legal aid community. Throughout her legal career, Causey has made service a priority, both in her profession and for the legal community. Causey has provided many years of service on the VSB’s Executive Committee and Bar Council, as well as on the Old Dominion Bar Association’s Executive Committee, and as secretary of both the Old Dominion Bar and of the Hill Tucker Bar, Richmond Chapter.  Causey received her BA in Mathematics and Political Science from the University of Mississippi and her law degree from Texas Southern University, Thurgood Marshall School of Law.

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AGENDA

1. **Introduction**
   1. Overview
   2. Objectives
2. **Statistics**
   1. Mental Health Disorders
   2. Depression
   3. Suicide
   4. Prevalence of Substance Use and Other Mental Health Concerns
   5. ALM’s Mental Health and Substance Abuse Survey
   6. Pandemic Impact
3. **Occupational Risks of Practicing Law**
   1. Overview
   2. Risks Defined with Examples
   3. Specific Risks Discussed in the Presentation with Practice Pointers
4. **Attorney Personality Vulnerabilities**
5. **Why Care?** 
   1. Competence
   2. Rule 1.1 of the Rules of Professional Conduct (Competence)
   3. Top 10 basic lawyering skills considered necessary
   4. Impact of mental health and substance use concerns.
   5. Examples of problematic behaviors connected with lawyer mental health or substance use concerns
   6. Self-governing profession
   7. Ethical Responsibility
   8. Practical Implications
6. **VJLAP**

Identifying and Managing the

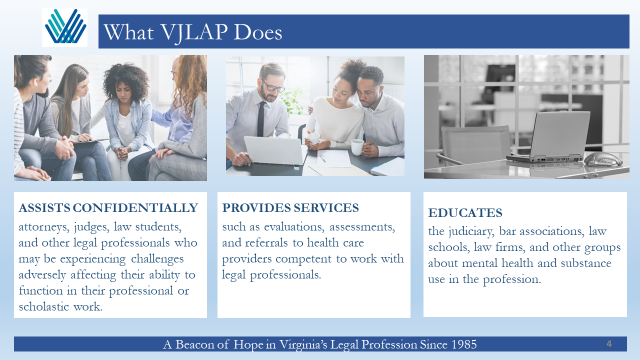
Occupational Risks of Practicing Law

WRITTEN MATERIALS

1. **Introduction:**
   1. **Overview:**
      1. The VSB Report, *The Occupational Risks of the Practice of Law*, identified the risks to well-being in the practice of law and noted that "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."
      2. The legal wellness movements in Virginia and across the country seek to raise awareness of these risks and support addressing them through preventative practices, early intervention, and seeking appropriate treatment resources when indicated.
      3. To reduce the stigma surrounding mental health and substance use concerns, this presentation provides a big dose of vulnerable "real-talk," from leaders in Virginia’s legal community. VSB past, current, and future Presidents will speak openly about different risks that they have seen during their careers, how these risks have affected their colleagues (or themselves), and coping skills for busy high-achievers.
   2. **Objectives:**
      1. To Provide Members of the Legal Profession with a Better Understand Risks to Wellness in The Legal Profession and (i) How They May Manifest in Themselves, a Colleague, or a Client and (ii) How to Reduce These Risks.
      2. To Increase the Chances of Members of the Legal Profession Adopting Wellness Practices to Reduce the Impact of the Occupational Risks of Practicing Law.
2. **Statistics:** Substance use and other mental health issues impact the legal profession more than most. Several studies have found that members of the legal profession have higher rates of addiction (twice move prevalent than in the general population) and mental health disorders. Below is an overview of some of that research.
   1. **Mental Health Disorders:** 
      1. In a 2014 VJLAP funded by ALPS and run by the College of William and Mary 14% of Virginia attorneys had been given a mental health diagnosis
      2. Lawyers are *three times more likely* to have a substance abuse or mental health problem than the general population.
   2. **Depression:** 
      1. 3 to 9 percent of the general population at any given time may be experiencing depression
      2. Lawyers are 3.6 times more likely to suffer from depression
      3. In a 2016 study conducted by the ABA/Hazeldon of almost 13,000 attorneys 28% reported problems with depression
      4. 1 in 3 lawyers are depressed at some point in their legal career
      5. Lawyers in their first ten years of practice and those working in a private practice have the highest rates of problem drinking and depression.
   3. **Suicide**
      1. Suicide is the third leading cause of premature death among attorneys and is 54% more likely than in the general population
      2. 2016 ABA/Hazeldon findings:
         1. 11.5% reported suicidal thoughts during their career
         2. 2.9% reported self-injurious behaviors
         3. 0.7% reported at least one suicide attempt
3. “**The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys**.” *Journal of Addiction Medicine*, February 2016, Volume 10, Issue 1**.** 
   * + 1. *Substantial rates* of behavioral health problems, with more than 20% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking
       2. Attorneys in the first 10 years of practice experiencing the highest rates of problematic substance use
       3. Working for private firm, probability higher for problematic use
       4. Audit Findings:
          1. 20.6 % scored at a level consistent with problematic drinking
          2. 36.4 % scored as problematic drinking when examining levels and frequency of use (c.f., Physicians = 15%)
          3. Higher scores for those working in private firms or bar associations
       5. Self-Reporting Concerns
          1. 22.6% felt their use of alcohol or substances was a problem sometime during their lives
          2. 27.6% reported problematic use prior to law school
          3. 14.2% reported problematic use started during law school
          4. 43.7 % reported problematic use started within the first 15 years following law school
          5. 14.5% reported problematic use started more than 15 years after law school
4. **ALM’s Mental Health and Substance Abuse Survey (2020)**
5. 74% said the legal profession has had a negative effect on their mental health over time;
6. 56% of respondents said mental health problems and substance abuse are worse in the legal industry than in other industries;
7. 41% of respondents said mental health problems and substance abuse are at a crisis level in the legal industry;
8. 17.9% of respondents said they have contemplated suicide during their professional legal career;
9. 31.2% of respondents said they are depressed;
10. 64% of respondents said they have anxiety;
11. 10.1% of respondents said they have an alcohol problem; and
12. 2.8% of respondents said they have a drug problem.
13. **Pandemic Impact.** One study, *Alcohol Consumption during the COVID-19 Pandemic: A Cross-Sectional Survey of US Adults*, “Almost two-thirds of 2020 participants (60.1%) reported that their drinking had increased compared to before COVID-19. Of those, 45.7% reported that their drinking had increased because of increased stress, 34.4% reported that their drinking had increased because of the increased availability of alcohol, and 30.1% reported that their drinking had increased because of boredom.”
14. **The Occupational Risks of Practicing Law:** 
    1. **Overview:**
       1. There are certain traits of the profession that put members of the legal profession at a higher rate of risk for developing problematic drinking patterns. Below is a summary of those as presented in The Virginia State Bar President’s Special Committee on Lawyer Well-Being, *The Occupational Risks of the Practice of Law.*
       2. The VSB Report for each risk detailed (i) the potential effects of the risk; (ii) practice pointers for individuals; and (iii) practice pointers for organizations.
       3. The VSB Report described the problem, noting that "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."
    2. **Occupational Risks Defined with Examples:** 
       1. **Physical Risks** – those that directly affect a lawyer’s bodily health
          1. **Sedentary Nature of Work:** Lawyers spend most working hours (and off-hours) in the seated position. Mounting evidence suggests that prolonged sitting can be as serious an issue as obesity and smoking, and can pose serious health risks, including an elevated risk of mortality.
          2. **Managing Long and Unusual Hours:** The competing demands of clients, employers, and the judiciary take a toll on a lawyer's time and energy. The result is a profession characterized by long and unusual working hours that can lead to stress, exhaustion and, ultimately, burnout.
          3. **Sleep Deprivation:** The nature and stressors associated with a lawyer's work upset sleep, making legal professionals among the most sleep-deprived in the work force. Too little sleep poses dire health consequences, the effects of which can lead to increased risk of illness and physical injury. Sleep deprivation can also lead to a lapse in judgment, affecting a lawyer's representation of clients and increasing malpractice risk.
          4. **Working Indoors:** A lawyer's indoor working environment disrupts the circadian rhythm, leads to vitamin deficiencies, and may contribute to Seasonal Affective Disorder (SAD).
          5. **Aging of Lawyers:** As lawyers age, our mental and physical capacities decline, creating risks to ourselves, our firms, and our clients. At the same time, other lawyers and legal employers should recognize that aging affects each individual differently, and age is not a litmus test for legal capacity.
       2. **Mental & Emotional Risks** – conditions of law practice that harm psychological well-being
          1. **Adversarial Nature of Work:** The adversarial nature of the legal profession promotes feelings of anger, guilt, and fear that can lead to depression and chronic stress.
          2. **Individual Work:** The individual nature of a lawyer's profession can lead to feelings of isolation. In fact, legal work in general has been considered the loneliest kind of work. Lonely lawyers face a host of health-related risks and impairments, perform poorly, change jobs frequently, and experience greater job dissatisfaction.
          3. **Professional Demands:** The practice of law is a demanding one, and the pressure lawyers face from clients, employers, and the judiciary contribute to virtually every risk outlined in this matrix, along with their incident effects and symptoms.
          4. **Vicarious Trauma and Managing Others' Problems:** Prolonged exposure to our clients' legal problems and dilemmas can be mentally and physically stressful, exhausting and debilitating.
          5. **The Duty of Confidentiality:** Ethical adherence to the duty of confidentiality can cause lawyers to feel isolated, delay necessary case-related tasks, and exacerbate the existing disincentives to seek help.
          6. **Educational Debt:** Law school debt is debilitating. Most law students take out significant debt with the unrealistic and unlikely expectation that they will land a high-paying job. As a result, many will be saddled with crushing monthly payments for the foreseeable future, contributing significantly to overall feelings of stress, anxiety, and disenfranchisement with the profession.
          7. **Business Management of the Practice of Law:** Managing the business component of the practice of law is stressful. New lawyers largely enter practice without any formal financial education, contributing to financial stress.
          8. **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.
       3. **Adaptation Risks** – related to the changing nature of law practice in the twenty-first century
          1. **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.
          2. **Technology Addiction:** Ever-connected lawyers who feel obligated to be available at all hours experience reduced attention span and productivity, harm to personal relationships, and risk revealing confidential information through sloppy data use.
          3. **Lack of Diversity in the Legal Profession:** Diverse and inclusive working environments foster lawyer wellness. A lack of diversity, however, can lead to isolation, a sense of exclusion, and ultimately poor performance and a lack of autonomy.
          4. **External Pressures on Lawyer Independence:** Economic pressures and changing market dynamics, such as the rise of alternative legal business structures and attorney-client matching services (ACMSs), are incentivizing attorneys to compromise their independence, risking professional sanction and harm to the rule of law.
       4. **Self-Actualization Risks** – those that prevent lawyers from flourishing or reaching a state of contentment between their professional, social, and personal lives
          1. **Losing Control of Professional Destiny:** Becoming trapped in a particular area of law or type of legal employment the lawyer does not enjoy is at best unfulfilling and at worst actively detrimental to a lawyer's health and well-being.
          2. **Values Conflict with Client or Practice Setting:** Lawyers carrying out instructions or practicing in a subject area contrary to their personal beliefs experience cognitive dissonance that can harm not only their practices, but also their sense of personal integrity.
          3. **The Expectations-Reality Gap in Law Practice:** Many people enter law school with certain expectations about life as an attorney, only to have those expectations disappointed by practical realities, resulting in career regret and a sense of feeling trapped.
    3. **Specific Risks Discussed in the Presentation with Practice Pointers**
       1. **Working indoors, for long hours, under constant stress**.
          1. **Get Outside**: Try walking meetings; take lunch away from your desk; replenish your Vitamin D; maintain a balanced diet; use a full spectrum lightbox; make the most of the outside in your non-office hours.
          2. **Movement**: Stand up, sit less, and move more including low-intensity, non-exercise activities. Every little movement counts (e.g., parking at a distance from the building, using stairs instead of elevators, setting reminders to stand up and move, work at a standing desk, take stretch breaks, walk at lunch).
          3. **Time Management**: organize your work day; deep an activity log; set priorities; use a planning tool; reduce clutter/get organized; block time; delegate/ask for help; stop procrastinating; manage external time; avoid multi-tasking; stay healthy with time to relax and recharge physically and mentally. Vacationing is important for revitalization.
       2. **Imposter syndrome** (culture within the profession to constantly display confidence and conceal vulnerability)
          1. Reduce the stigma against help-seeking behaviors (encouraging help-seeking behaviors will actually increase productivity/profitability).
          2. Encourage and participate in well-being/wellness committees; promote team building among colleagues.
          3. Build a supportive network where “real life” issues can be addressed without judgement or professional stigma; develop a support network outside of the legal community; build healthy social, familial, and spiritual communities.
       3. **Business management** preparation
          1. Pair with other solo/small firms; retain services of competent professionals (e.g., accountants, insurance agents, technology specialists).
          2. Consider taking business classes through local colleges; encourage trainings through bar associations, even if the training does not qualify for CLE credit.
          3. Seek advice and guidance for lawyers with extensive relevant experience.
       4. **Technology and compulsive behaviors**
          1. Adopt realistic strategies for digital detoxing: recognize your tendencies; establish necessary connections and distinguish from discretionary; set realistic goals; adopt incremental steps; afford yourself rewards.
          2. Have “device-free” times (e.g., dinner, before bed).
       5. **Lack of diversity**
          1. Adopt measures to increase diversity and inclusion; develop or enhance mentoring programs; engage with mentoring programs.
          2. Foster a positive working environment with a team mentality and use of recognition and appreciation practices.
          3. Nurture awareness of implicit biases; attend CLEs on diversity and inclusion.
       6. **Values conflict** within and reality gap in expectations prior to and reality after starting practice
          1. Before joining a new legal employer or assuming new responsibilities, see to understand and identify the central values promoted by that employer/practice area.
          2. Develop a plan and decision-making framework to deal with conflicts when they arise (maintaining good communication with supervisors and clients; maintain an accountability or support relationship with friends, clergy, or fellow attorneys to work through potential personal conflicts.
15. **Attorney Personality Vulnerabilities:** 
    1. Adversarial nature fosters stress response
    2. Tremendous fear of being perceived as weak by others
    3. Fear of being taken advantage of if perceived to be weak
    4. Competition creates stress
    5. Expectations of clients are unrealistic
    6. Decline of professionalism, collegiality: “dog eat dog” mentality
    7. Frustration of long, drawn out struggle with no clear victory
    8. Inability to separate professional from personal life
    9. Overachievers/Competitive
    10. Perfectionists: Organization, details, fear of malpractice
    11. Compartmentalized: Helps with focus but dangers relationships
    12. Independent: Taught that we can think our way out of any situation
    13. Work-focused: Limited or zero concept of “enough is enough”
    14. Risk Adverse
    15. Externally motivated: Directed towards external rewards (e.g., money, honors, avoidance of guilt or fear, or pleasing/impressing others)

**V. Why Care? A well-balanced lawyer is a productive, happy lawyer.**

1. **Competence:** The first rule for lawyers
   1. Rules of Professional Conduct, Preamble
      1. *…In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law*. …
      2. … *Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.*
      3. *Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.* …
2. **Rule 1.1 of the Rules of Professional Conduct (Competence)**
   1. ***A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.***
   2. Comment Maintaining Competence … [7] *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.*See also*Rule 1.16(a)(2).* (Note: Comment [7] became effective on October 31, 2018).
3. **Top 10 basic lawyering skills considered necessary in the short term (ABA)**
   1. Keeping confidentiality.
   2. Arriving on time.
   3. Honoring commitments.
   4. Integrity and trustworthiness.
   5. Treating others with courtesy and respect.
   6. Listening attentively and respectfully.
   7. Responding promptly.
   8. Diligence.
   9. Having a strong work ethic.
   10. Paying attention to detail.
4. **Impact of Mental Health and Substance Use Concerns**
   1. Depressed, anxious, substance abusing lawyers struggle with follow through, attention, integrity, trustworthiness, responding promptly, diligence.
   2. There is an interface between these struggles and ethical violations.
5. **Examples of Problematic Behaviors Connected to Lawyer Mental Health or Substance Use Concerns with Potential Ethical Consequences**
6. Missed deadlines
7. Sub-par work product
8. Lack of communication with clients and/or colleagues
9. Failure to advocate for client’s interests
10. Late for or missed appointments and/or hearings
11. Errors in fiscal management
12. **Self-governing profession**
    1. Protect the public
    2. Protect the profession
13. **Ethical responsibility** 
    * 1. Competence (mental, emotional, and physical)
      2. Impairment
      3. Malpractice
      4. Discipline
14. **Practical Implications**
    1. Productivity
    2. Reputation
15. **VJLAP** (www.vjlap.org; info@vjlap.org)

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