

Supreme Judicial Court Steering Committee on Lawyer Well-Being
Report to the Justices

Submitted July 15, 2019

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Honorable Gabrielle R. Wolohojian, Appeals Court

MEMORANDUM

TO: Justices of the Supreme Judicial Court

FROM: Margot Botsford *mb*

RE: Report of the Steering Committee on Lawyer Well-Being

DATE: July 12, 2019

In September of 2018, the Supreme Judicial Court appointed a Steering Committee on Lawyer Well-Being to explore and make a report to the Court on the state of well-being among practicing Massachusetts lawyers. I served as chair of the Steering Committee, and on its behalf, I am pleased to transmit our Report at this time.

As the Report explains, the sixteen members of the Steering Committee represent different sectors of the practicing bar, judges, bar-related regulatory and other entities, law students, and bar associations. Every member worked with a subcommittee of individuals in his or her respective area of legal practice or work to assess issues of well-being – or more particularly, issues that impede well-being – and to make recommendations for ways to address those issues. In addition to the Steering Committee’s Report, which focuses principally on common themes and joint recommendations, I commend to your attention the individual reports of the subcommittees. Each provides a more detailed discussion than the Report itself of specific issues that interfere with the well-being of lawyers, judges, or law students (collectively, lawyers) practicing in particular settings, and also includes recommendations for addressing those issues; each also describes what the lawyers value and appreciate about their areas of practice or work, which are important points to bear in mind as we think about the future of the profession.

Every member of the Steering Committee believes that the legal profession in Massachusetts is facing serious challenges to the well-being of its practitioners. The work represented by the Report is just a beginning. One of our recommendations is that this Court establish a standing committee on lawyer well-being that would be able both to examine more fully the issues interfering with lawyers' well-being, and to begin to implement recommendations for addressing those issues. The obvious goal, which we all share, is to help all Massachusetts lawyers attain greater success in achieving a healthy, positive, and productive balance of work, personal life, and health. Working to attain this goal would be of benefit not only to the lawyers themselves, but also to their clients and to the public interest, which the profession, at its core, seeks to serve.

I speak for all the Steering Committee in thanking the Court for the opportunity to work on this important issue. We have all learned a great deal about our fellow lawyers and the challenges they face, and we hope our work will assist the Court in determining how best to address the well-being of Massachusetts lawyers going forward. It has been a privilege to serve as the chair, and I am particularly grateful to the Steering Committee members for the commitment and serious sense of purpose they each brought to our work, as well as their, focus, energy, and even respect for deadlines. Finally, I want to acknowledge the invaluable assistance and guidance that Maureen McGee, aided by Christine Burak, provided to the Steering Committee and even more to me.

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Introduction

The Supreme Judicial Court established the Steering Committee on Lawyer Well-Being in September 2018 to explore the state of lawyer well-being in the Commonwealth and to recommend how the Massachusetts legal community can and should address the serious concerns documented by the National Task Force on Lawyer Well-Being (ABA Task Force).¹ As the ABA Task Force's co-chairs stated:

Our profession is falling short when it comes to well-being. [Recent national studies]² reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.³

At the Steering Committee's first meeting, on October 19, 2018, Chief Justice Ralph D. Gants asked the group to consider what aspects of legal practice are causing people to enjoy the practice of law less than they had hoped when they entered the profession, and to review issues affecting the profession as a whole and not only the challenges facing some lawyers who are, as the ABA Task Force

¹ This report refers to the National Task Force on Lawyer Well-Being as the "ABA Task Force." It was initiated by the ABA Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers and is comprised of entities within and outside the ABA, including the Conference of Chief Justices and the National Conference of Bar Examiners.

² P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016); M. Organ, D. Jaffe, & K. Bender, *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*, 66 J. LEGAL EDUC. 116 (2016).

³ National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017) (ABA Report), cover letter by Task Force co-chairs Bree Buchanan, Esq., Director, Texas Lawyers Assistance Program, State Bar of Texas, and James C. Coyle, Esq., Attorney Regulation Counsel, Colorado Supreme Court.

reported, “languishing.”⁴ While recent studies “reflect that the majority of lawyers and law students do not have a mental health or substance abuse disorder. . . . that does not mean that they’re thriving. Many lawyers experience a ‘profound ambivalence’ about their work and different sectors of the profession vary in their levels of satisfaction and well-being.”⁵ The Steering Committee agreed to recommend practical steps that the profession could take to make the practice of law in the Commonwealth more fulfilling. The Steering Committee also decided that it would direct its recommendations primarily to the leaders of each stakeholder group, as a “top down” approach has proven to be most effective in changing the culture in legal, as well as in other, workplaces.⁶

The sixteen members of the Steering Committee⁷ represent the various stakeholders to which the ABA Task Force’s recommendations are directed: legal

⁴ A 2016 study of nearly 13,000 practicing lawyers conducted by the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation found that between 21 and 36 percent qualify as problem drinkers and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress respectively. ABA Report at 7.

⁵ *Id.* Citing references in footnote 2 and D. L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 1 (2013).

⁶ “Policy statements alone do not shift culture. Broad-scale change requires buy-in and role modeling from top leadership.” ABA Report at 12-13, citing L. M. Sama & V. Shoaf, *Ethical Leadership for the Professions: Fostering a Moral Community*, 78 J. BUS. ETHICS 39 (2008).

As the Steering Committee’s in-house counsel subcommittee noted: “It is clear from both the subcommittee’s deliberations and the work of the Steering Committee as a whole that those in leadership positions have a particular ability and responsibility to address wellness issues. Managers and senior leaders are in the unique position to be influencers and enforcers of corporate culture.”

⁷ The Steering Committee included: Honorable Margot Botsford, Supreme Judicial Court (Ret.), Chair; Dorothy Anderson, Acting Bar Counsel; Travaun Bailey, Law Office of William Travaun Bailey; Joseph Berman, General Counsel, Board of Bar of Overseers; David A. Deakin, Deputy Chief, Criminal Bureau, Office of the Attorney General; Christine Hughes, Vice President and General Counsel, Emerson College; Lyonel Jean-Pierre, Jr., Clinical Instructor, Harvard Legal Aid Bureau; Anna Levine, Executive Director, Lawyers Concerned for Lawyers; Geraldine M. Muir, Associate Dean of Student Affairs, Boston University School of Law; Denise I. Murphy, Vice President, Massachusetts Bar Association; Richard M. Page, Jr.; Executive Director, Boston Bar Association; David P. Rosenblatt, Managing Partner,

employers, bar regulators, judges, law schools, bar associations, and lawyer assistance programs, as well as lawyers who practice in the public sector, in private firms, and as in-house counsel.⁸ The Steering Committee members were asked to consult with others in their area of legal work or responsibility to explore issues regarding well-being⁹ and to recommend best practices to advance lawyer well-being in that area, as well as in the profession as a whole. The Court charged the Steering Committee to submit a report setting forth its findings and recommendations.

The members formed eleven subcommittees to focus on well-being challenges and recommendations from the perspective of each of their areas of practice and responsibility.¹⁰ Based on their own discussions and consultations with others, the subcommittees each prepared a report that assessed the major issues affecting the well-being of lawyers in their respective areas; identified strategies to address those issues; and recommended action items in order of priority with

Burns & Levinson LLP; Pasqua Scibelli, Staff Attorney, Committee for Public Counsel Services; Mary Strother, First Assistant Attorney General; Marilyn J. Wellington, Executive Director, Massachusetts Board of Bar Examiners; and Honorable Gabrielle R. Wolohojian, Appeals Court.

⁸ The Steering Committee's approach differed from that of the ABA Task Force in one significant respect. We convened individual subcommittees to consider issues arising in various types of workplaces, including large firms, solo practices and small firms, legal aid offices, in-house counsel, and in public agencies, including the Office of the Attorney General, the Committee for Public Counsel Services and offices of the District Attorneys. In contrast, the ABA Task Force had a single subcommittee study all "legal employers," defined as "all entities that employ multiple practicing lawyers." ABA Report at 31.

⁹ The Steering Committee adopted the ABA Task Force's definition of lawyer well-being, "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 with others." ABA Report at 9, citing the World Health Organization and social science research.

¹⁰ Included were subcommittees comprising representatives of: the Committee for Public Counsel Services; in-house counsel; judges; large law firms; all Massachusetts law schools; legal aid lawyers; the Massachusetts Bar Association; the Boston Bar Association; public lawyers; regulators; small firms and solo practitioners. The members of each subcommittee are listed in appendix 1.

respect to their importance, feasibility and impact. The reports also described what subcommittee members valued about their work – what had initially drawn them to that practice area and what they still valued in their practices.

The Steering Committee then considered the subcommittees' reports as it developed the Committee's overall recommendations to the Court. Each member reviewed the priorities of the subcommittees to select the member's own priorities, as an individual looking at the profession globally and not simply as the representative of one practice area. The Steering Committee then met to discuss and select which of each member's individual priorities should be adopted by the Committee as a whole.

The Steering Committee met seven times, and individual members met with their respective subcommittees as frequently as needed to complete their assignments. The Steering Committee held a plenary educational session at the John Adams Courthouse in December 2018, to which all of the subcommittee members were invited. Approximately seventy members attended. The group shared information across subcommittees; heard personal stories from three practitioners who had faced various challenges in their professional lives – as a lawyer of color, as a recovering alcoholic and as a person who had suffered from anxiety and depression;¹¹ - and considered lessons that might be learned from the medical profession's efforts to address burnout and restore resilience in medicine.¹²

This Report sets forth the findings and recommendations of the Steering Committee and includes the reports of each of the subcommittees.¹³ The Report is presented in the hope that it will provide the Court with both useful analysis of the

¹¹ A roundtable discussion on "The Unseen Journey of Lawyering" was moderated by Barbara Bowe, LICSW, Lawyers Concerned for Lawyers (LCL), and April English, Chief of Organizational Development and Diversity, Office of the Attorney General.

¹² Les Schwab, MD, former Chief Medical Officer, Harvard Vanguard Medical Associates, made a presentation entitled "*Beyond Burnout and Restoring Resilience: the Current State in Medicine.*"

¹³ The subcommittees' reports are included as appendices 2 through 12.

current state of lawyer well-being in the Commonwealth and constructive proposals for improving that state. The Steering Committee urges the Court to take a leadership role in advancing the well-being of all lawyers in the Commonwealth and in encouraging leaders in each segment of the bench and bar to do the same.

Major Issues Affecting Lawyer Well-Being

The Steering Committee members agree that the following constitute major issues negatively affecting well-being in the legal profession.

1. Stigma: The perceived stigma associated with mental health and substance use disorders is widely cited as one of the most significant roadblocks to well-being not only among lawyers but among the population generally.¹⁴

According to the Massachusetts Bar Association (MBA) subcommittee:¹⁵

Destigmatizing the topic of attorney well-being is the first step to effectively address this problem. This must be a "top down" approach, coming from figures of authority, so that those who view themselves in a subordinate role will engage in discussions about their stressors and attorney well-being. Gaining the support from management is problematic, however, and in some cases unrealistic. It requires a cultural change that can only happen over time. . . . The hope is that the more ingrained the discussions about attorney

¹⁴ See, for example, S. E. Hanisch, C. D. Twomey, A. H. Szeto, U. W. Birner, D. Nowak, & C. Sabariego, *The Effectiveness of Interventions Targeting the Stigma of Mental Illness at the Workplace: A Systematic Review*, 16 BMC Psychiatry 1 (2016).

According to the ABA Report at 13, the "two most common barriers to seeking treatment for a substance use disorder . . . were not wanting others to find out they needed help and concerns regarding privacy or confidentiality." As reflected in the following paragraphs of the text, the Steering Committee members, based on their experience, agree that these also operate for Massachusetts lawyers as primary barriers to seeking treatment for substance use disorders and mental health conditions.

¹⁵ The MBA subcommittee included and surveyed practitioners representing plaintiffs' and defense bars, public and private sector practices and lawyers who accept court appointments. To explore issues re attorney well-being, they conducted confidential surveys, talking groups and in-person interviews. One survey went to 50 attorneys, of whom 30 responded. The other went to 200 attorneys, of whom 25 responded.

well-being are in our everyday discourse, the less stigma the subject will carry.

The public lawyers reported that their colleagues' well-being was compromised by "a professional norm of being strong despite external and internal events and affronts (e.g. being treated differently as a member of a minority, dealing with a personal crisis, presenting with a manageable mental health issue, and/or balancing professional and personal demands). The stigmatization of seeking help cuts across all types of professional issues and situations. For example, mental health issues are regularly unrecognized and, when identified, viewed as weakness."

In private firms, there is "significant stigma" associated with seeking help for all types of well-being issues. "Acknowledging the need to seek help in a large firm is seen as in conflict with a predominant culture where working hard, presenting as strong and confident, solving client problems and constantly being available are important virtues." This challenge is not limited to large firms. As one member stated, "the stigma associated with disclosing any type of vulnerability, either physical or mental, is all-pervasive in our profession. The size of the firm may impact how disclosure impacts the attorney, but fear of such disclosure is, without a doubt, universal."

Echoing the views of many members, the legal aid subcommittee noted that the "fear of being disciplined or shamed for self-reporting and/or seeking help voluntarily" makes it difficult to offer meaningful and timely help to attorneys in their offices. For solo practitioners, the problem is compounded; they are unlikely to seek help both to avoid stigma and because they do not have anyone who can take over their practice if they need time off to concentrate on their personal health. As a result, the problem continues until their practice is detrimentally affected.

Judges face similar, if not heightened, concerns. Based on their own experiences and observations, members of the judicial subcommittee agreed with the ABA report that:

[M]any judges have the same reticence in seeking help out of the same fear of embarrassment and occupational repercussions that lawyers have. The public nature of the bench often heightens the sense of peril in coming

forward. Many judges, like lawyers, have a strong sense of perfectionism at all times. Judges' staff can act as protectors or enablers of problematic behavior. These are all impediments to seeking help. In addition, lawyers, and even a judge's colleagues, can be hesitant to report or refer a judge whose behavior is problematic for fear of retribution.

The stigma associated with focusing on one's well-being seems to start during, or even before, law school. The subcommittee on law student well-being¹⁶ described students' fear that they would need to disclose any mental health diagnoses or treatment to bar examiners, and that such disclosures would jeopardize their bar admission. This has been a long-standing, widespread belief, based on the policies and practices of some jurisdictions.¹⁷ There is cause for hope that this will change, however, in response to the Conference of Chief Justices (CCJ)' urging all states to remove questions about mental health disorders from bar applications.¹⁸

This stigma contributes to students being at risk for negative behaviors, such as those reported in the 2014 national survey, "*Suffering in Silence: The Survey of*

¹⁶ The subcommittee included representatives of the student affairs offices of all Massachusetts law schools, the executive director of the Board of Bar Examiners, the executive director and a clinical staff member of LCL.

¹⁷ Massachusetts has never required this information of bar applicants.

¹⁸ At its February 2019 meeting, the CCJ adopted a resolution "In Regard to the Determination of Fitness to Practice Law," which urged its members and bar admission authorities to "eliminate from applications required for admission to the bar any questions that ask about mental health history, diagnoses, or treatment and instead use questions that focus solely on conduct or behavior that impairs an applicant's current ability to practice law in a competent, ethical, and professional manner."

According to a recent report, several states already have removed mental health inquiries from their bar applications and other states are studying the issue. For example, "[t]he new president of the New York State Bar Association is ... launching a blue-ribbon committee to determine if the state should remove questions about mental health disorders from applications to the bar ..."

<https://www.law.com/newyorklawjournal/2019/06/10/momentum-builds-for-allowing-ny-bar-applicants-to-keep-mental-health-history-secret/>)

Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns”, which found 25% of law students at risk for alcoholism; 17% reporting moderate to severe depression; 14% experiencing anxiety that inhibited academic work; and 6% experiencing suicidal ideations.¹⁹

2. The pace of work: The relentless pace makes it very difficult for lawyers to set boundaries between work and the rest of life, and appears to be significantly exacerbated by the technology-fueled demands for constant availability. This point was underscored by practitioners in firms of all sizes, public attorneys, and in-house counsel.

In private firms, the “pure volume of work expected from lawyers and the pressure to produce it can be overwhelming.”²⁰ Closely related to that pressure is the lack of boundaries. “Lawyers often feel that there is no line between being ‘on’ and ‘off’ duty and that they are expected to be available to respond to firm and client demands at all hours of the day and night.” The MBA report noted:

By far the single most common cause of stress . . . was technology. The fact that technology allows attorneys to always be accessible to colleagues, partners, clients, and courts creates the expectation that they *will always* be accessible. Technology impacted the ability of attorneys to unwind, relax, and focus on the non-legal aspects of their lives. . . . A common issue . . . is that they feel they never truly get away from work to recharge.

In-house counsel “face the same pressures as other lawyers. . . . work[ing] under client-imposed deadlines that can be unreasonable or unachievable. There is an expectation of 24/7 responsiveness.” Or, as one solo practitioner put it, “you can

¹⁹ Organ, Jaffe & Bender, *supra* note 2.

²⁰ According to the chair of the MBA subcommittee, the volume and pace of work impacts attorneys in all firms, as all are dependent on business generation and work-flow. But the ramifications of work volume impact small and mid-sized firms differently from large firms. If their work volume is high, they have access to fewer resources than attorneys in larger firms. Conversely, the stress of a low volume of work is more impactful. Most small and mid-size firms lack the financial wherewithal to withstand periods of decreased work, so they typically are willing to take whatever work is needed to ensure their financial stability.

NEVER unplug. Clients and lawyers expect you to be always on. My office is always in my pocket.”

Many public sector lawyers, particularly prosecutors, cited the sheer volume of cases – many of them very serious – as a major source of stress. Agency counsel often handle complex cases involving issues of first impression. For both prosecutors and agency counsel, stress also results from the public attention that many of their cases attract -- more so than most cases in the private sector.

Legal services attorneys reported that the stress they felt from seeking a manageable work/life balance was exacerbated by the reality that the balance is much harder to achieve than they had anticipated when choosing this type of practice.

3. Financial pressures: In virtually every sector of law practice, financial pressures drive or exacerbate the current challenges to lawyer well-being.²¹ Although these pressures manifest in different ways, they make it extremely difficult for lawyers to attend to their own wellness.

Solo practitioners described the financial pressures associated with the lack of a steady paycheck despite recurring bills (office rental, mortgage, liability insurance, etc.). Lawyers in solo and small practices face the added pressure of trying to collect payments from clients, especially those who receive an adverse outcome. According to the MBA subcommittee report:

Non-paying clients can literally mean the success or failure of their livelihood. Because dissatisfied clients resort to filing malpractice claims against them, especially if attorneys initiate collection actions for unpaid fees, they wait until the three-year statute of limitations expires before they initiate collection actions. Three years without payment is an extraordinary stressor on these attorneys.

²¹ The law student subcommittee reported that many law students are overwhelmed with unforeseeably high expenses related to their studies and then enter the profession burdened by substantial student loan debt, which only intensifies their financial pressures.

The MBA subcommittee identified billable hours as “a major source of stress and anxiety among attorneys. . . . Attempting to balance billable hour requirements with providing quality work create[s] enormous stress . . . [that] interferes with family time, self-care, and the opportunity to engage in outside activities, including developing practices of their own.” The pressure to bill hours in private practice²² is “exacerbated by the significant financial incentives to do so and penalties for failing to do so, particularly at the associate level.²³ There are different pressures at different levels of practice: associates feel pressure to bill hours; partners feel pressure to bring in business that will result in more billable hours. But lawyers at all levels feel pressure to “avoid taking full vacations or otherwise establishing time blocks when they are not available to work so that they do not fall behind on their office responsibilities or billable hour goals.”

Further, billable hour requirements and the expectation that associates or new attorneys must develop a practice often conflict or at least compete with each other. According to the MBA subcommittee report, “attorneys reported that the requirement to participate in networking events interfered with their ability to meet their billable hour goals. In turn, pressures to develop a practice and meet billable hours adversely affected most attorneys’ ability to enjoy time with family or experience self-care. They reported that the struggle for balance is an enormous stressor for practicing attorneys.”

For public sector lawyers, the financial pressure resulting from their relatively modest salaries is a significant factor negatively affecting their well-being.

²² The pressure to bill hours is universal, but the impact of failing to meet targets differs with firm size. According to the MBA subcommittee chair, the immediate economic viability of small or midsized firms is entirely controlled by billing and collecting on those hours. In contrast to larger firms, they have little or no buffer to get through times when work is slow or clients don’t pay. They feel as if they have to be accessible and receptive to client demands without interruption to ensure that their clients stay as their clients.

²³ Larger firms pay their associates much more than midsized and small firms, with the expectation that they will bill more hours. Attorneys who work in mid-sized or smaller firms report that there is a tradeoff: bill fewer hours, but make less money.

Low salaries create pressure on public attorneys to seek management positions not because they want to be managers but because it is a way to increase their salary. While the economics of public agencies are the product of a complex combination of social, economic, and legislative factors -- largely out of the control of the SJC -- the public lawyers nonetheless thought the low pay in their sector was an important issue to raise in the context of this inquiry into lawyer well-being in the Commonwealth.²⁴

Attorneys who accept appointments from the Committee for Public Counsel Services (CPCS), typically solo/small firm practitioners, often handle cases that require a lot of time. Nevertheless, their compensation is legislatively capped, regardless of how many hours they spend on a case. They often receive no payment for protracted periods of time, because payment is subject to funding for CPCS. Managing their law practices with such uncertain and low pay is a significant source of stress and anxiety among these practitioners.

According to the subcommittee on small firm and solo practitioners, these financial pressures directly impact well-being and access to needed care. "As a result of the financial difficulties often experienced maintaining and operating a business, solo practitioners can rarely afford health and disability insurance. Often, solo attorneys make too much money to qualify for MassHealth, yet make too little to pay for private insurance out of pocket."

4. Court deadlines and courtroom dynamics: All of the subcommittees of lawyers whose practices regularly bring them to court highlighted court deadlines, scheduling, and courtroom dynamics as among their most significant challenges.

The CPCS subcommittee, for instance, cited "time management stress created by court deadlines" as one of the "top stressors for their attorneys." Similarly, the public lawyers reported that a lack of control over their schedules "compounds the

²⁴ Some members would encourage the Steering Committee to advocate for more funding for public attorneys, which would ease the pressure to seek promotion to supervisory roles for financial reasons and enhance public employers' ability to recruit and retain members of the bar who are burdened by educational loans and other financial responsibilities.

stress of huge caseloads and makes it difficult to balance their professional and personal lives.” Prosecutors in particular are often required to be “available at the direction of the court.” Public sector lawyers feel that they are “often thought of as fungible to a degree that private-sector lawyers are not. In response to scheduling conflicts, courts seem much more willing to ask public-sector lawyers whether another lawyer from their office could cover the case than they are to ask the same thing of private-sector lawyers.” Overall, public lawyers report that the lack of control over their workload undermines their “autonomy and self-direction in a profession that is built on the exercise of independent professional judgment.”

According to the MBA subcommittee’s report, “both plaintiff and defense attorneys identified rigid adherence to . . . arbitrary court-imposed schedules and timelines[,] . . . excessive delays in receiving decisions, and extended wait times in court, as their major stressors in practices which involve litigation.”²⁵

The complexity of this set of issues – and the need to see it in a broad perspective -- was noted by one judge, who stated that “judges have different obligations than litigants. Every time a defense lawyer asks me for another three-month extension for his brief because his practice is busy, I worry about his incarcerated client.”²⁶

Legal aid attorneys reported that they are “often viewed as and treated as less than equal to private attorneys in the courtroom.” It seems as if their “time is not valued as much by judges because their time isn’t being billed like private attorneys’ time is.” Further, legal aid attorneys stated that they often find themselves wearing different hats in court both as a litigator and as a mental health counselor, especially when attempting to explain to a client the sometimes

²⁵ This was reported by some lawyers to be a significant source of stress when it occurs. It was not suggested that this is a common experience in all courtrooms.

²⁶ It is because of this complexity -- and the need to balance the differing perspectives and responsibilities of judges and litigators -- that the recommendations on pages 21, 22 and 26 call for bench/bar discussions, rather than specific changes in policies or procedures.

dismissive or hostile demeanor and actions of court personnel or a judge in a way that doesn't increase the clients' misgivings and lack of ease in court.

5. Alienation Resulting From a Lack of Diversity and Inclusiveness: As the ABA Task Force noted:

Research reflects that organizational diversity and inclusion initiatives are associated with employee well-being, including, for example, general mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, perceptions of organizational fairness and intentions to remain on the job. A significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included, and supported by others.²⁷

That more than half of the subcommittees prioritized efforts to enhance diversity, equity and inclusion underscores the significance -- and pervasiveness -- of this concern. The Boston Bar Association (BBA) subcommittee report noted that women, LGBTQ lawyers and lawyers of color often experience additional stresses as they are under-represented in the bar, particularly at the higher echelons of the profession, and may experience isolation, pressure to "over perform," and the effects of discrimination and bias throughout their careers.

The public lawyers identified the under-representation of diverse communities in government service as a significant source of isolation and stress. They reported both feeling alienated and recognizing alienation in colleagues as a result of the lack of diversity and inclusiveness in the Massachusetts bar. Noting that this feeling of alienation pervades the profession generally, public lawyers reported both overt and implicit discrimination based on race, gender, and other issues of identity. Some described having to deal with a "boys club mentality" in the legal profession. They noted that increasing diversity and inclusiveness "not only mitigates alienation and isolation but, at least equally important, improves morale, creativity, and the quality of work product for all employees." In-house counsel noted that they encounter bias grounded in race, gender, sexuality or other

²⁷ ABA Report at 15-16.

protected categories, just as other members of the profession do. In private firms, financial incentives can undercut efforts to enhance diversity, equity and inclusion. As one lawyer explained, although all partners feel pressure to bring in business, partners from traditionally underrepresented groups do not necessarily have the contacts necessary to bring in business because the connections lie within predominantly white- (and male-) controlled companies. To the extent that business generation tends to be the largest driver of compensation in large firms, if a partner cannot bring in much business (or overcome the obstacles to bringing in business) the partner's compensation suffers, which tends to create stress and unhappiness.

The subcommittee on law students reported ²⁸ that law students of color struggle with teaching that appears to interpret the law in ways that historically have advantaged certain populations and a lack of cultural competency among faculty and staff. These experiences, along with personal and cultural experiences outside law school, burden these students and tax their mental well-being in ways not experienced by their white peers. As the subcommittee pointed out, however, it is difficult to address diversity and equity issues without demographic data on the Commonwealth's bar.

6. Problems of isolation were cited by attorneys almost across the board, ²⁹ but particularly in the private sector. ³⁰

²⁸ The subcommittee cited its own 2018 surveys of Massachusetts law schools, Organ, Jaffe & Bender, *supra* note 2 at 1, and reports from The Steve Fund, an organization dedicated to the mental health and emotional wellbeing of students of color. Available at <https://www.stevelfund.org/> (last accessed February 5, 2019).

²⁹ Isolation is a challenge for law students as well: the law student subcommittee cited an internal survey by one institution showing that 60% of its law students described themselves as lonely.

³⁰ Isolation is not as much of an issue in legal services, although "attorneys of color may feel it," according to the legal aid subcommittee chair.

The MBA representative reported that “everyone has a sense of isolation.” The regulators’ subcommittee³¹ identified the isolation of solo practitioners as one of the challenges that bring lawyers into contact with the regulatory system.³² As one solo practitioner noted, “isolation is a constant stress. You’re practicing mostly by yourself. There is no one to give you direction and you need real relationships. List serves are not sufficient.”

Many lawyers in large firms feel isolated and disconnected from their colleagues and the overall mission of the organization.³³ “There is a sense that they function in a silo and come to work to produce revenue and little else. As a result, lawyers are not necessarily expected to care much about or be rewarded for supporting other goals or values of the overall enterprise, including collaboration with their peers and mentoring younger professionals.”

Members of the judicial subcommittee agreed that isolation was a challenge for judges in all courts and an issue that should be further explored if their colleagues are surveyed, pursuant to their recommendation.

Several subcommittees identified the pervasive pressure resulting from lawyers attempting to supervise other lawyers without being properly trained to do so and the stress – and feelings of isolation – created for the supervised lawyers in such situations. Lawyers promoted to managerial positions because they are good

³¹ The regulators’ subcommittee included the acting bar counsel, an assistant bar counsel, the general counsel to the Board of Bar Overseers (BBO), a member of the BBO, the executive director of LCL and the executive director of the Board of Bar Examiners (BBE).

³² Addressing generally the link between issues resulting in lawyer discipline cases and lawyer well-being, the regulators’ report stated that: “Many violations of the Rules of Professional Conduct are caused by substance abuse and addictive behavior, such as gambling. Other challenges include isolation of solo practitioners, an aging population of lawyers, stress and anxiety, depression, and economic pressures. These problems affect not only the lawyers, but also their clients and other members of the public. Addressing lawyer well-being is, accordingly, critical for public protection.” With respect to solo practitioners in particular, according to the Office of Bar Counsel, approximately three quarters of disciplined attorneys are solo practitioners.

³³ “To help alleviate the isolation of law firm lawyers, particularly newer lawyers,” the in-house counsel subcommittee recommended that in-house counsel share business context with law firm lawyers and explain the impact this question will have on the business.

lawyers often have no experience or training in managing others. As the public lawyers reported, “this is extremely stressful both for the managers and for the lawyers they are (mis-)managing.” The in-house counsel report noted that “managing others is a skill that lawyers must learn and practice.” As the chair of that committee stated, providing management training to lawyer/managers is “low hanging fruit” which would be easy to implement and go a long way to alleviating stress and isolation in legal workplaces.

7. Secondary Trauma: For many lawyers, the nature of their work and the magnitude of their clients’ challenges represent a major source of stress, which can lead to secondary/vicarious trauma and compassion fatigue. According to the MBA’s findings, the emotional distress attorneys experience by virtue of their immersion in their clients’ trauma is “real and often unrecognized”:

It impacts criminal defense attorneys, prosecutors, family and probate law attorneys, personal injury attorneys, and child and family welfare practitioners, all of whom are exposed to the very worst of human suffering . . . and yet engage in their respective professional practices with their common goal – to be zealous advocates for their clients, no matter what the circumstances. This focus comes with a price.

The public lawyers cited secondary trauma resulting from the high-stakes nature of their cases as among the major challenges affecting their well-being. CPCS also identified secondary trauma and compassion fatigue as among the major issues confronting their lawyers. And for legal services lawyers, the effects of vicarious trauma are pervasive:

Most if not all legal aid clients live in poverty and often need help with maintaining housing, preventing the loss of benefits, or obtaining protection from an abusive spouse or partner. The stakes are always high as the client’s ability to live and function are often on the line. The stress and pressure that legal services clients feel on a daily basis is often projected onto their attorneys. . . . The average week for a legal services attorney is crammed with crisis-driven days.

8. Incivility: The ABA Report recommended that all stakeholders develop and enforce standards of collegiality and respectful engagement, noting that:

Judges, regulators, practicing lawyers, law students, and professors continually interact with each other. . . . These interactions can either foment a toxic culture that contributes to poor health or can foster a respectful culture that supports well-being. Chronic incivility is corrosive. It depletes energy and motivation, increases burnout, and inflicts emotional and psychological damage. It diminishes productivity, performance, creativity and helping behaviors.³⁴

“Although civility is central to the ethical and public-service bedrock of the American legal profession, substantial evidence points to a steady rise in incivility within the American bar.”³⁵ The MBA subcommittee found that incivility among adversaries created stress for lawyers in all practice areas. Probate and family law practitioners especially noted a “significant lack of civility among that bar.”³⁶ In 2016, the MBA issued *Civility and Professionalism Guidelines*, which stated that “[o]ne of the most important responsibilities of all lawyers and judges is to protect and promote the integrity and respectability of the legal profession. . . . Incivility impugns the integrity of each of us individually and of the profession collectively. It also impedes the ability to resolve disputes rationally and efficiently for our clients, thereby diminishing respect for the law.”³⁷

³⁴ ABA Report at 15, citing C. B. Preston & H. Lawrence, *Incentivizing Lawyers to Play Nice: A National Survey on Civility Standards and Options for Enforcement*, 48 U. Mich. J.L. REFORM 701 (2015).

³⁵ *Civility as the Core of Professionalism*, Jayne R. Reardon, ABA Business Law publications, 09/19/2018. It is difficult to pin down the incidence of incivility and unprofessional conduct, however, because “incivility, without some associated violation of the ethical rules, historically has not been prosecuted by the regulatory authorities. Thus there is no systemic data on incivility’s prevalence.” *Id.*

³⁶ These practitioners further reported that attorney incivility was “exacerbated by judges who either lacked the resources or inclination to deal with incivility.”

³⁷ Preamble to *MBA Civility and Professionalism Guidelines* (2016).

This concern is not new. A widespread decline in the level of civility among members of the bar has been widely reported for many years. The 2002 BBA Task Force on Civility in the Legal Profession noted that it was the third BBA Task Force to consider civility in the legal profession. Nor is it limited to the legal profession,³⁸ although that is not a reason that the profession should fail to address it in as forceful a manner as possible.

To begin to address the major challenges described above, the Steering Committee developed the recommendations outlined below.

Recommendations to Enhance Lawyer Well-Being

The Steering Committee recommends the following specific actions to enhance the well-being of lawyers in the Commonwealth.³⁹

Supreme Judicial Court:

- **Establish a permanent SJC standing committee on lawyer well-being** to continue to examine issues affecting lawyer well-being, make recommendations concerning and advocate for proposals that will improve lawyer well-being, and monitor progress.⁴⁰ We ask the Court to charge this

³⁸ As Stephen L. Carter noted in his 1998 book, *Civility: Manners, Morals and the Etiquette of Democracy*: "Americans today are like Americans of every era. We think our nation's manners are falling apart. Some three out of four of us think civility has declined over the past decade. An even greater number think drivers are particularly uncivil. As for our politicians, they finish below professional athletes when the public is asked to rank different groups according to civility. In short, although we Americans have always thought civility is collapsing, I think, this time, we may be right." *Id.* at p. xi. He wrote that twenty-one years ago; it would be difficult to argue that we are being more civil to each other in 2019.

³⁹ The recommendations are grouped by the entity that would be primarily responsible for their implementation.

⁴⁰ In order to monitor progress, the standing committee should require that new programs and initiatives develop benchmark data about lawyer well-being so that they can track how well their efforts are working over time. The standing committee further should require that new programs and initiatives set timelines and define benchmarks to be achieved

new standing committee, inter alia, to consider the following proposals for future action that have been highlighted by one or more subcommittees:

- To study and make detailed recommendations regarding what array of well-being services should appropriately be offered to lawyers throughout the Commonwealth in order to implement the recommendations of this Report; what entity or entities will be necessary and appropriate to provide those services, and in what locations the services should be offered; this study should include, but not be limited to, the appropriate level of resources – drawn from bar dues -- to be provided to LCL and any other entity or entities providing or proposed to provide such well-being services.⁴¹
- To consider a mandatory education program, probably online, that every registered lawyer in the Commonwealth would be required to complete at regular intervals and that would focus exclusively on well-being and resources to address issues of well-being for attorneys. This would serve to “send a message from the top” that attorney well-being is important and decrease the stigma that prevents self-care;
- To consider how to address and potentially ameliorate various kinds of financial duress that affect much of the legal profession, including:

within a stated number of years. It is encouraging that, at least in part because of the focus on lawyer well-being that the Court initiated with the creation of the Steering Committee, the MBA will soon conduct an economic survey on the practice of law, which it will expand to include questions regarding attorney well-being issues. The data collected could serve as a very useful initial benchmark for assessing the impact of well-being initiatives that the standing committee may undertake.

The law student subcommittee reported that their institutions use regular surveys to assess the impact of new initiatives. This might be an area for collaboration between law schools and the standing committee, including co-sponsoring a survey on law student well-being, as recommended by the subcommittee.

⁴¹ The study and recommendations could be made by the new standing committee or by an ad hoc group appointed by the Court specifically to carry out this assignment.

- studying the possibility of student loan forgiveness for certain groups of practitioners and recommending which groups, if any, should be eligible and under what circumstances; ⁴² and
- exploring ways to help attorneys in solo and small firm practices access affordable health and disability insurance.
- To develop and implement a comprehensive plan to enhance civility throughout the profession;
- To develop and implement a plan for a centralized repository and directory of both well-being and mentoring programs for lawyers within the Commonwealth; ⁴³
- To propose a plan to encourage legal employers and community leaders -- in letters from the Justices or the Chief Justice, speaking engagements, and participation in bar and community programs -- to expand awareness of, and work to enhance, lawyer well being; promote diversity, equity and inclusion initiatives; and offer management training for lawyers in management positions; and
- To study the feasibility of instituting a Secured Leave Policy, which would guarantee scheduled time off for lawyers “with no questions asked” as North Carolina established in 2000. ⁴⁴

⁴² See, for example, the Massachusetts Loan Repayment Program for Health Professionals. According to the Department of Higher Education, Massachusetts offers loan repayment programs as an incentive for dental, medical, and mental health professionals to practice in communities where shortages of providers and barriers to access have been identified. <https://www.mass.edu/osfa/programs/healthprofessionals.asp>

⁴³ As one member noted, “the focus on well-being will be maintained only if it’s someone’s or something’s responsibility. In order to help all sectors of the bar learn of effective approaches and best practices, and to ensure that each keeps the interests of the others in mind, it would be important to create a place where individual initiatives intersect.”

⁴⁴ Attached as appendix 13 is a copy of the *Order Adopting Amendment to General Rules of Practice for the Superior and District Courts* (Adopted by the North Carolina Supreme Court on May 6, 1999; effective January 1, 2000).

- Encourage all member of the judiciary, in cooperation with bar associations and other entities, to sponsor and engage in bench/bar discussions ⁴⁵ to provide regular opportunities for judges and court staff to hear from lawyers about how their well-being is affected by a lack of control over their court schedules;
- Ask the Standing Advisory Committee on the Rules of Professional Conduct to add a comment to Rule 1.1 of the Massachusetts Rules of Professional Conduct to note that a lawyer's well-being and competence are connected;
- Revise S.J.C. Rule 1:25, Massachusetts Rules of Electronic Filing, Rule 4 (c), which sets the e-filing deadline for all Massachusetts courts at 11:59 p.m. -- long after business hours and potentially creating expectations that lawyers work into the middle of the night; ⁴⁶
- Send an annual letter from the Justices or the Chief Justice to all judges explaining the importance of well-being, listing the resources that are available to help, and encouraging judges to seek help when they need it; and
- Use the Court's review of this Report, and its endorsement of some or all of its recommendations, as an occasion to educate the legal and business community about the importance of lawyer well-being, the current well-being crisis in the profession, and the critical role of senior managers in mitigating that crisis.

⁴⁵ For example, Chief Justice Gants and Appeals Court Chief Justice Mark V. Green, in a July 3, 2019 *Lawyers Weekly* article, described how useful they and their colleagues found the appellate bench-bar conference sponsored by the Flaschner Judicial Institute on December 12, 2018. The Chief Justices called it "a unique opportunity for reflective and respectful conversations in seven breakout sessions that compared, and sometimes contrasted, the understandably different experiences of those on either side of the appellate bench." They noted that, "although the comments of the bar were overwhelmingly positive, there were also helpful critiques that invited further reflection by the justices and prompted our two appellate courts to initiate steps to address some of the concerns that were raised."

⁴⁶ See, for example, a copy of the Order of the Delaware Supreme Court *In re Work Life Balance Recommendations and the Adoption of New Filing Deadlines for All Delaware Courts*, signed July 18, 2018. Attached as appendix 14.

The Trial Court, Appeals Court and SJC:

- Develop and provide on-going well-being training for all judges, coordinated across the entire judicial branch, including training in mentoring for mentor/judges and management training for every chief justice and other judge in a management role;
- Develop, coordinate and provide well-being training, including training in management, for all magistrates, clerks, probation officers and other key personnel in the courts;
- Engage with the bar in ongoing efforts to sensitize judges and court staff about the effects of inflexible adherence to court deadlines as a significant source of stress for litigators;⁴⁷ and
- Consider ways to make the trial courts more “tech friendly” to lawyers and litigants by offering information – perhaps a step-by-step tutorial – about electronic filing, which seems to present a challenge particularly for older attorneys and those in small and solo firms.

Lawyers Concerned for Lawyers (LCL):

- Participate in the study of and recommendations concerning lawyer well-being services and of appropriate entities to offer such services proposed on pages 18-19.⁴⁸

Board of Bar Overseers (BBO):

- On a one-time basis, prepare and send an email to all registered members of the bar;⁴⁹

⁴⁷ This would include, but not necessarily be limited to, the bench/bar conversations noted on pages 21 and 26.

⁴⁸ The Steering Committee’s work has taken place at the same time that LCL has been working on a 2019 Strategic Plan that has not been released as of the date of this Report. It will be important for the Standing Committee and the ad hoc group to consider carefully the findings and recommendations of LCL’s Strategic Plan.

⁴⁹ This email would be an initial step towards accomplishing the broader recommendation on page 24 to design and implement an ongoing system to collect critical demographic data

- directing them to answer a confidential, anonymous questionnaire about their type of practice; the number of lawyers in their practice location; and
- requesting that they indicate their gender preference, race and ethnicity. We suggest that the email include a cover note from the Court explaining the reasons to collect this information;⁵⁰
- Include information about LCL and its Law Office Management Assistance Program (LOMAP)⁵¹ with the annual attorney registration notice; consider the possibility of providing additional information – e.g., regarding personal wellness as an attorney, wellness services, and what to do if one is concerned about the well-being of a colleague – in a short video that attorneys would watch as part of the annual registration process;

about the attorneys practicing in the Commonwealth. The recommendation is that the BBO send this one-time email as soon as possible so that critical demographic information about the makeup of the bar – with all personal identifying information omitted or protected – can be used to begin planning for more comprehensive lawyer well-being services and programs in accordance with the recommendations of this Report. Implementation of an ongoing system for collecting demographic data – a system that would be integrated into the annual registration process -- will take time, and in any event, will only collect the information on a staggered basis over the course of a year because the bar registration system operates on a staggered basis.

⁵⁰ See, for example: *"You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession;"* American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association 5 (2018), which provides "a comprehensive picture of how implicit gender and racial bias – documented in social science for decades – plays out in everyday interactions in legal workplaces and affects basic workplace processes such as hiring and compensation."

⁵¹ LCL and LOMAP currently provide well-being programs and services to members of the profession. LCL is a private, non-profit organization organized under G.L. c. 180 with a board of directors selected according to the organization's by-laws. LCL is funded by bar dues, in accordance with S.J.C. Rule 4:07. LOMAP is a part of LCL. With the exception of this recommendation and those set out below that relate specifically to the current LCL itself, in these recommendations, we are generally using "LCL" as a shorthand way of saying "entity or entities that provide well-being services to the bar through direction of the SJC."

- Design and implement a system to collect confidential demographic data⁵² about all attorneys practicing in the Commonwealth (including, inter alia, information on age, gender self-identity, race, ethnicity, type and location of practice, number of attorneys in same practice);
- With the Office of Bar Counsel, implement a policy to notify LCL immediately when an attorney has been administratively suspended by the SJC for failure to cooperate with Bar Counsel. If Bar Counsel were to alert LCL immediately to this public information, LCL might be able to help troubled attorneys before the consequences of their failing to cooperate become more dire; and
- Create a new “permanent retirement” status, which could be offered to certain respondent-attorneys to enable a “graceful exit” from the practice of law in appropriate circumstances.⁵³

Board of Bar Examiners (BBE):

- Establish a pilot mentoring program to connect newly admitted solo practitioners with attorneys who are retired or about to retire. This would reinforce skill-building and provide a safe space for new attorneys to recognize, accept and fix problems as they arise. It would afford attorneys at

⁵² The proposal is one of long standing. In 1994, an SJC Commission recommended that “the Board of Bar Overseers should collect, by voluntary self-identification, information on the race, ethnicity, and gender of the attorneys who are licensed to practice in Massachusetts.” SJC Commission to Study Racial and Ethnic Bias in the Courts Final Report at 14 (1994). The Commission “agreed that an important first step in any examination of bias in the courts is to understand the demographics of the general population and of the legal profession.” *Id.* at 8.

The law student subcommittee reported that the lack of demographic information about the Massachusetts bar stymies efforts to address students’ concerns about diversity, and to assess progress towards equitable participation in the Commonwealth’s legal community.

⁵³ Bar Counsel would establish internal guidelines for allowing a lawyer to choose permanent retirement status, which would permit bar counsel to close an investigation by allowing a respondent to take that status under three conditions: the respondent had reached the age of 65 or 70; age-related impairment appeared to be a factor in the misconduct; and the misconduct fit within certain parameters.

the end of their careers an opportunity to continue to contribute to the profession by sharing their knowledge and experience with newer attorneys;

- Design and implement a system to collect confidential demographic data about petitioners for Massachusetts bar admission (including, inter alia, information on age, gender self-identity, race, ethnicity, and where applicable, years of practice, types and location of practice, and number of attorneys in same practice); and
- Continue to work with Massachusetts law schools, LCL, and bar associations to promote well-being among law students.

Massachusetts Legal Assistance Corporation (MLAC):

- Develop and offer standard orientation procedures for new attorneys and ongoing training in all legal services offices to address systematically the challenges to well-being and to practicing with professionalism that arise in poverty law practice;
- Consider engaging consultants to facilitate mandatory, annual meetings for all legal services attorneys focused on well-being; provide on-going guidance to supervisors; and share best practices regarding attorney well-being;
- Work with legal services offices to institutionalize long-term mentoring as part of collective bargaining agreements; and
- Work with legal services offices to revise workplace disciplinary procedures to make it more likely that struggling lawyers will seek help without fearing loss of status or employment.

Legal Service Providers:

- Create formal, long-term, mandatory mentorship programs to match new attorneys with seasoned colleagues to support the mentee attorney in developing the knowledge and skills necessary to achieve success in the legal services setting while balancing professional and personal well-being;

- If a legal aid office has a collective bargaining agreement covering lawyers, negotiate the mentorship program into the contract and provide that trained mentors would receive an increase in pay; and
- Work with MLAC to accomplish its assignments outlined above.

Committee for Public Counsel Services (CPCS):

- In addition to the recommendations addressed to all legal employers, work with the organized bar and others to spearhead efforts to raise the hourly rates for privately assigned counsel because their low rate of compensation is one of the primary stressors for these attorneys.⁵⁴

Bar Associations:

- Initiate and host discussions throughout the Commonwealth in which judges, court staff and lawyers can listen to each other and discuss how the actions or inactions of each group can positively and negatively affect the well-being of members of other groups. Such discussions should include, but by no means be limited to, issues such as lawyers' concerns about how their lack of control over their court schedules affects their well-being;
- Promote and support diversity, equity and inclusion initiatives;
- Provide education on well-being topics to all lawyers and also law students through existing bar association channels and in cooperation with LCL;
- Introduce the topic of well-being into seminars, podcasts and legal conferences in an effort to de-stigmatize the topic and emphasize the importance of top-down support from figures of authority; and
- Annually review and assess the effectiveness of efforts to enhance attorney well-being through regular reporting about what well-being programs are

⁵⁴ For the Criminal Trial and Appeals Units and the Youth Advocacy Division, the hourly rates are \$53 for District Court, \$68 for Superior Court and \$100 for murder cases. For the Child Welfare Unit, the rates are \$53 - \$55 (except for a temporary increase to \$75 in Hampden County in FY19).

being offered and how well-being issues are being integrated into the bar association's other offerings.

Legal Employers, including those with In-House Counsel:

- Set an inclusive tone where those in “seats of power” publicly commit their leadership teams to making younger lawyers as well as women, persons of color and other historically marginalized groups feel welcomed and included;
- Provide employees with specific opportunities for well-being, for example, a focus on opportunities for physical activity, mental health and mentoring;
- When possible, offer flexible schedules and work-from-home options;⁵⁵
- Encourage employees to take vacations;⁵⁶ and
- Offer and promote management training for lawyers promoted to supervisory positions. Such training could:
 - teach basic management skills such as:
 - supporting and recognizing staff on a regular basis;
 - managing a diverse work force; and
 - promoting skill-building and confidence.
 - assist supervisors in acknowledging and recognizing stress in themselves and their subordinates and teach them skills to assist the attorneys they supervise; and
 - provide supervisors with tools to create a supportive work environment and reduce the stigma attached to seeking help.

⁵⁵ As the in-house counsel noted, it is undisputed that greater Boston has the nation's worst rush-hour traffic. “Lawyer/managers should enthusiastically embrace alternative work schedules, telecommuting, and similar logistical adjustments to reduce the stress of challenging commutes, caregiver duties, and self-care needs.”

⁵⁶ A study of 6,000 lawyers found that their number of vacation days was the strongest predictor of well-being of all activities measured in the study -- even stronger than income level. As the ABA Report states, “this suggests that legal employers should encourage taking of vacation – or at least not discourage or unreasonably interfere with it.” ABA Report at 60, citing L. S. Krieger & K. M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. 554 (2015).

Public Agencies: In addition to the recommendations addressed to all legal employers:

- Assign senior-level staff members to address issues affecting lawyer well-being. These should include a wellness officer independent of the administrative office and a chief diversity and inclusion officer. Such staff members could:
 - implement comprehensive stress-management programs and systems, as well as policies to reduce the stigma associated with seeking help;
 - offer and promote training to managers and staff on stress reduction;
 - reduce alienation by promoting recruitment and retention of members of traditionally under-represented groups; and
 - implement anti-bias programs and training.
- Develop stronger partnerships with agencies that support lawyers who encounter obstacles to well-being.

Private Firms: In addition to the recommendations addressed to all legal employers:

- Implement multi-dimensional evaluations of lawyers in which the number of hours billed is simply one factor and not the most important factor in evaluating lawyer performance and in determining bonuses and other compensation; if a firm has a minimum threshold expectation for billable hours and bonus availability, that standard should be set no higher than 1,800 billable hours annually;⁵⁷ [applicable to large firms]
- Better educate management and human resources personnel on the services provided by LCL and how to make referrals, perhaps by convening a committee of firm representatives and LCL personnel to develop and

⁵⁷ As a way to help alleviate stress, the in-house counsel subcommittee recommended that in-house counsel “strongly encourage law firms to embrace alternative fee arrangements . . . includ[ing] project-based billing, flat fees, holdbacks, and some billable hours.”

implement an outreach/marketing strategy targeted at firm lawyers;
[applicable to all firms]

- Invest in professional mental health training for human resources and other management personnel, including lawyers who supervise other lawyers, in order to enable personnel to identify and respond to warning signs of mental health issues in their colleagues more effectively; [applicable to large firms, and to others as resources permit] and
- Create an organized network of firms to connect and share with each other best practices for attorney well-being including programs and initiatives that have proven to be successful at their firms. [applicable to all firms, as resources permit]

Massachusetts Continuing Legal Education, Flaschner Judicial Institute, Judicial Institute, Law Schools, and other providers of legal education:

- Create and promote, in collaboration with LCL, continuing legal education on well-being topics and incorporate issues of well-being into educational programs across the legal community, including programs for law students, practitioners, and the judiciary, with a particular focus on education for those who are in management and supervisory roles.

The Legal Profession:

In addition to the specific recommendations outlined above, members of the bench and the bar -- both individually and collectively -- need to take steps to enhance the well-being of the profession in the Commonwealth. As the ABA Report stated: "we are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal service, to increase access to justice and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now."⁵⁸

⁵⁸ Cover letter to ABA Report, *supra* note 3.

In the course of the Steering Committee's work, several themes and overarching issues became apparent, which are evident throughout this Report. We urge the profession, as a whole, to take all necessary steps to address these issues.

- Civility, as noted above on pages 17-18, is central to the ethical and public-service bedrock of the American legal profession. Accordingly, as lawyers, we must keep civility at the forefront of our attention throughout our professional lives. A lack of basic civility is at the root of many of the stressors that have been identified through the Steering Committee's work;
- A strong and on-going commitment to enhancing diversity, equity and inclusion in all of our practices and in all parts of the judicial branch, is crucial to our individual and collective well-being; and
- We need to attend to our own well-being throughout the course of our careers, because, as the Conference of Chief Justices stated, lawyer well-being is "a critical component of lawyer competence."⁵⁹

Conclusion

The well-being of the Commonwealth's lawyers is vitally important not only for the lawyers themselves, but also for the clients they serve and the institutions and organizations with and for whom they work. Lawyers play an essential role in protecting the promises and values of our Constitution. But the well-being of our lawyers is in a troubled state. The Steering Committee accepted as a starting proposition that – as found by the ABA Report with respect to lawyers nation-wide – there are higher levels of alcohol and substance abuse and adverse mental health conditions in Massachusetts lawyers than in the adult population at large. This Report tries both to identify some of the major challenges to Massachusetts lawyers' well-being and to propose possible avenues of solution.

⁵⁹ Conference of Chief Justices, Resolution "Recommendation of the Report of the National Task Force on Lawyer Well-Being" adopted on August 9, 2017.

We have learned much in working together and in working with the different subcommittee members over the past nine months, and we are grateful to the Court for this opportunity. We end with three important lessons learned.

First, the importance of leadership from the top in addressing lawyer well-being. The Supreme Judicial Court, as the ultimate regulatory authority over the Massachusetts bar, can play a critical role in educating individual lawyers, the leaders of the firms, agencies, and other organizations for whom many lawyers work, and others served by lawyers about the importance of attending to individual lawyer well-being issues. But beyond the Court, the leaders of all such entities, private and public, also must recognize that lawyer well-being is an organizational responsibility, and that as leaders, they play the decisive role in ensuring that their own organization values and advances it. Their commitment to the well-being of the lawyers who work under their leadership must be personal and visible in words and actions towards others and in how they themselves act to protect their own well-being. And this commitment must be consistent over the long-term.

Second, individual lawyers in the Massachusetts bar themselves have an important part to play in advancing lawyer well-being – by paying attention to their personal health and well-being, but also by working together to address issues that collectively interfere with their own well-being as well as that of their fellow lawyers. This Report highlights some of these issues, including civility and increased diversity, inclusion and equity among different segments of the bar. But in addition, as the Steering Committee members found, there is much to be gained in terms of individual well-being from working “across the divides” – i.e., from breaking down silos of individual types of practices or work, and communicating about issues of common concern. The Report includes specific recommendations on this point in relation to judges and litigating lawyers as well as to in-house corporate counsel and the law firms they retain. But there are more synergies to be explored – for example, law firm leaders sharing best practices with each other in terms of protecting and advancing well-being among their associates; and public and private employers learning from each other on efforts such as management and well-being training for attorney supervisors.

Finally, the Steering Committee members have learned, and are proud, that in the Commonwealth a portion of bar registration fees are devoted to offering to every Massachusetts lawyer, judge, and law student, at no cost, services that can help identify and work to ameliorate problems, individual and organizational, that interfere with well-being. It is a tribute to our profession that, under the Court's leadership, the bar works to protect and advance the well-being of its own. As reflected in this Report, the Steering Committee urges the court to increase the funding of these services so that they may expand both geographically and in scope of services offered.

Appendix 1

Subcommittee Members of the Lawyer Well-being Steering Committee

Boston Bar Association

Rich Page, Executive Director
Various staff of the BBA

Committee for Public Counsel Services (CPCS)

Pasqua Scibelli
Bar Advocate Program Directors, administrators and attorneys
CPCS Training Directors, human resources staff, administrators and staff attorneys

In-House Counsel

Alex Aferiat - BT Americas
Tavares M. Brewington - Biogen
Christine Hughes - Emerson College
Danielle B. Lemack - Axiom/HP Hood
James W. Peck - Cognex Corporation
Helen Tsingos - formerly of Velcro Companies, now of Casa Systems, Inc.
Jennifer A. Watson - Liberty Mutual

Judicial

Hon. Wilbur P. Edwards, Jr. (ret.) - Housing Court
Hon. Linda S. Fidnick - Probate and Family Court
Hon. Lisa Grant - Boston Municipal Court
Hon. Mary Elizabeth Heffernan - District Court
Hon. David A. Lowy - Supreme Judicial Court
Hon. Mark Newman - Juvenile Court
Hon. Kathe M. Tuttman - Superior Court
Hon. Michael D. Vhay - Land Court
Hon. Gabrielle Wolohojian - Appeals Court

Large Firm

Joe Cacace - Todd & Weld
Elizabeth Johnston - American Tower
Anna Levine, Ex Officio - Executive Director, LCL
Hillary J. Massey - Seyfarth Shaw LLP
Cassie Ramos - Re: Sources, A Publicis Groupe Company
David Rosenblatt, Chair - Burns & Levinson
Tabitha Ross - Nixon Peabody
Richard Soden - Goodwin Proctor

Law Schools

Maris Abbene, Associate Dean of Students - Boston College Law School
Julie Cahill, Director of Student Engagement & Professional Development - UMass School of Law
Laura Ferrari, Esq., Dean of Students - Suffolk University Law School
Lisa Freudenheim, Professor of Academic Excellence and Director of the Academic
Enrichment Program - New England School of Law
Michelle Harper, Assistant Dean for Academic and Student Affairs -
Northeastern University School of Law
Michael Johnson, Esq., Associate Dean of Student Affairs and Enrollment
Planning - Western New England School of Law
Geraldine "Gerry" Muir, Associate Dean of Student Affairs - Boston University
Jacqui Pilgrim, Director of Student Services - New England School of Law
Marcia Sells, Esq., Dean of Students - Harvard Law School
Jaclyn Tayabji - Boston University (LAW '21) (student consultant)

Also participating in meetings:

Barbara Bowe, LICSW - MA Lawyers Concerned for Lawyers
Anna Levine, Executive Director - MA Lawyers Concerned for Lawyers (LCL)
Maureen McGee, Esq. - Supreme Judicial Court
Andrew Perlman, Dean and Professor of Law - Suffolk University Law School (consult)
Marilyn Wellington, Executive Director - MA Board of Bar Examiners

Legal Aid

Catherine Ady-Bell, Attorney - Central West Legal Services (Western MA)
Caddie Nath Folsom, Attorney - South Coastal Justice Center of South East Massachusetts
Donna Morelli, Attorney - Central West Justice Center (Western MA)
Amanda Montel, Attorney - Central West Justice Center (Central MA)
Kate Nemens, Attorney - Mental Health Legal Advisors Committee
Christopher Pierce, Social Worker - Harvard Legal Aid Bureau
Lyonel Jean-Pierre, Jr., Harvard Legal Aid Bureau

Massachusetts Bar Association

Alice B. Braunstein - Alice B. Braunstein, Attorney at Law
Andrew R. Ferguson - Coughlin Betke, LLP
Deborah A. Mason - Mason & Nasios, LLP
Michael E. Mone, Jr. - Esdaile, Barrett, Jacobs & Mone
Denise I. Murphy - Rubin and Rudman, LLP
Michael B. Ready - Ready, Kiernan & McNally, LLP
Richard J. Sweeney - Sweeney & Associates, LLC

Public Lawyers

Lester Blumberg, General Counsel, DMH
Margret Cooke, General Counsel, DPH
David A. Deakin, Deputy Chief, Criminal Bureau, AGO
April English, Chief of Organizational Development and Diversity, AGO
Rontear Farmer, Grand Jury Director / Assistant Attorney General, AGO
Alissa Goldhaber, Assistant District Attorney, Child Protection Unit, Suffolk County
District Attorney's Office
Jeremy Beth Kusmin, Chief, Family Protection Unit, Plymouth County District Attorney's Office
Lesly A. Leahy, Deputy Chief, Special Victims Unit, Bristol County District Attorney's Office
William B. Porter, Chief, Administrative Law Division, AGO
Deborah Steenland, Deputy General Counsel, Department of Elementary and
Secondary Education
Mary Strother, First Assistant Attorney General

Regulators

Dorothy Anderson, Acting Bar Counsel - Board of Bar Overseers (BBO)
Joseph Berman - General Counsel - BBO
Marianne LeBlanc - Sugarman & Sugarman, Member of the BBO
Anna Levine, Executive Director, LCL
Elissa Torto, Assistant Bar Counsel - BBO
Marilyn Wellington, Executive Director - Board of Bar Examiners

Small Firms and Solo Practitioners

Wm. Travaun Bailey, Esq.
Kathleen A. Cavanaugh, Attorney At Law
Patrick D. Nicoletti, Esq., Nicoletti & Brown, LLP.
Roderick B. O'Connor, Attorney At Law
Joseph M. Pacella, Esq.
Christina M. Turgeon, Esq.

To: Well-Being Steering Committee
From: Boston Bar Association Staff
Date: April 24, 2019

After a 2017 report from the American Bar Association's (ABA's) National Task Force on Lawyer Well-Being highlighted the difficulties lawyers face with substance abuse and mental health, the legal community has become increasingly aware of the necessity of confronting these problems and working to help affected lawyers get the treatment and support that they need. The well-being of lawyers and law school students needs to improve, but the stigma associated with seeking help means that those struggling often do not seek out the help they need.

The staff of the Boston Bar Association (BBA) has reviewed a number of options for addressing lawyer well-being in Massachusetts. We examined the issue from the perspective of voluntary bar associations. We recommend that the following options be considered:

- Provide education on well-being topics.
- Focus on promoting and supporting diversity, equity and inclusion initiatives.
- Facilitate increased access to well-being services.
- Aggregate and deliver best practices and other content for ongoing and remote use.
- Emphasize well-being at events.
- Launch a well-being committee.
- Pilot a mentoring program.
- Increase resources for Lawyers Concerned for Lawyers.
- Create a data-driven baseline for understanding well-being.

Please note that this report was prepared by the BBA staff for the purpose of offering suggestions to the Well-Being Steering Committee. As such, it does not necessarily represent the views of the BBA's governing body or members.

Issues Affecting the Well-Being of Lawyers

The recommendations of the ABA report suggest core steps that the profession can take to build a healthier culture. Bar associations in particular can facilitate improved well-being within the legal community, specifically by:

- Reducing the stigma surrounding help-seeking behaviors.
- Emphasizing that well-being is an indispensable part of a lawyer's duty of competence.
- Expanding educational outreach and programming on well-being issues.
- Changing the culture of the profession through numerous small steps.

Women, LGBTQ lawyers and lawyers of color often experience additional stresses, as they are under-represented within the bar, especially at the higher echelons of the

profession, and may experience isolation, pressure to “over perform,” and/or the effects of discrimination and bias throughout their careers. Membership in affinity bars can provide resources and support to such lawyers. However, those organizations may lack access to a wider range of resources and solutions. To get to the root of the issue, the entire bar needs to evolve in order to better facilitate and support the needs of a more diverse and inclusive profession.

Another stressor is the structure of the profession, and the training of lawyers. Lawyers are trained to manage to outcomes. They rise through the ranks because of their knowledge and success as lawyers, but not all are natural managers of people, and many have little interest in sacrificing billable time to receive in-depth management training. This structure and orientation can add to stress within firms, agencies and companies. Bar associations can facilitate training in certain areas of personnel and project management, and can also play a role in disseminating information on best practices.

At the opposite end of that spectrum are sole practitioners and lawyers in small firms, who don't have large structures to manage, but who also may have less flexibility, fewer options to seek help, and limited access to resources when it comes to managing stress or well-being. Bar associations can offer a way for such lawyers to build networks and gain access to information that provide support and guidance.

Unique Role of Bar Associations in Addressing Attorney Well-Being

Bar association membership in Massachusetts is voluntary. Massachusetts is home to several types of bar associations, including bars of general interest, local and county bars, affinity bars, and practice-area specific bars. Although many Massachusetts bar associations are loosely affiliated through participation in the Massachusetts Bar Association's House of Delegates, no one bar association truly dominates the landscape within the Commonwealth.

Lawyers join bar associations for many reasons, including member benefits, educational programs, business development opportunities (including referral services), publications, professional and personal networking opportunities, public service opportunities, and pride of affiliation, to name a few. Active members in voluntary bar associations are lawyers who are inclined toward person-to-person interactions and, in particular, to in-person learning and networking. Almost all of these opportunities arise through seminars, conferences or brown bag lunch or breakfast programs; most of the time, alcohol is not served, and when it is, there is a variety of other beverage options presented.

Bar associations have to market their programs, so they have databases and communications tools. So, bar associations are ideally positioned to play a role in educating lawyers about and alerting them to the importance of well-being, and publicizing information about resources to improve well-being. However, the bar association environment, which is one in which lawyers aspire to put their best foot forward, is not itself conducive to assisting lawyers who are actively looking for help in managing stress or

its attendant problems, especially if they want their concerns kept confidential. In a profession where there are sometimes winners and losers, and severe consequences for failure to adhere to the rules of the professional conduct, lawyers may choose not to seek help for fear of exposure, stigma or sanction.

There are a few important limitations on the engagement of bar associations. First, most bar association programming involves the law; the people who design and present such programs are typically lawyers, all of whom are experts in their practice areas. Wellness and management experts usually come from other realms and might have little or no involvement with bar associations.

Second, one size rarely fits all. That is especially true for the type of training contemplated here. Lawyers practice in many types of settings and places, with different demands on their time. They have different needs, opportunities and limitations. Bar associations can accommodate some of those variations, but they cannot address all of them.

Third, because Massachusetts is not an integrated bar jurisdiction, lawyers here are not required to join a single or in fact any bar association. We are not a mandatory CLE jurisdiction, either; other than the single-day Practicing with Professionalism program (which has been in existence for less than 10 years), Massachusetts lawyers aren't required to take any courses or to affirmatively certify their continued suitability to practice law.

Finally, "well-being" can be thought of in multiple ways. Bar associations can most directly help lawyers help themselves by encouraging them to adopt more productive and healthier behaviors and habits. However, lawyers facing mental health or substance abuse issues require help that only professionals in those fields can provide. Bar associations can best serve those lawyers by educating them about and directing them to available resources and services.

Recommendations

The ABA report provides specific recommendations for bar associations to help increase their members' quality of life and professional satisfaction.

Provide Education on Well-Being Topics

Many bar associations provide educational programming for their members. Although the BBA provides hundreds of hours of educational and practice management/development programs to members every year, very few of these are devoted to wellness-related topics. Wellness-related programs that do exist tend to be pitched to newer lawyers, and often in the form of practice management and professional development topics (such as the BBA's popular Friday Fundamentals Series). Attendance at such programs rarely, if ever, exceeds 20 people. That could be the consequence of a lack of

focus or strategic engagement with this issue; doing one program per year is not the same as establishing a presence in the area.

If well-being programs were regularly harnessed to other topics (such as associate development, or management programs for small firm practices), or even done on a regular schedule, bar associations could gradually be seen as a permanent resource and content provider. For example, Massachusetts Continuing Legal Education (MCLE) hosts an annual mindfulness program that serves as a workshop for cultivating resilience, focus, and well-being in law practices. The program allows attorneys to hear about the importance of mindfulness and to learn how to integrate various mindfulness practices into their life and work. The Chicago Bar Association also encourages improved well-being by hosting programs discussing sleep, meditation, diet, exercise, and stress management to allow lawyers to focus on different areas of their life that could be affecting their well-being.

Such programming would likely need to be done in partnership with experts who could design and deliver appropriate education on well-being. Many Massachusetts bar associations already work with Lawyers Concerned for Lawyers' (LCL's) Law Office Management Assistance Program (LOMAP) to deliver information about how to manage a law practice, especially as part of the mandatory *Practicing with Professionalism* program. Such sessions could be more regularly scheduled. Additionally, LCL could be given a regular slot on bar association calendars to specifically conduct sessions on well-being.

Many of the groups that are already active within bar associations play a role in shaping and delivering well-being programs that target various sub-sets of attorneys. For example, many BBA Sections and Forums (such as those serving solo and small firm lawyers, new lawyers, government lawyers, etc.) could work directly with LCL to assist in tailoring programming to address well-being issues at different career stages and in different practice settings.

Practice-area specific programming can also be valuable, especially with respect to practices in which lawyers disproportionately experience secondary trauma and compassion fatigue, such as criminal law, family law, immigration law, and poverty law, to name a few. Programming to assist those who are most at risk of secondary trauma could give such lawyers valuable tools and a network of support from similarly situated practitioners.

Focus on Promoting and Supporting Diversity, Equity and Inclusion Initiatives

The ABA report emphasized that lack of diversity and true inclusion within the profession is a significant impediment to the well-being of discrete populations within the bar. Diverse and inclusive workplaces can promote a sense of organizational belonging that can improve mental health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, and perceptions of organizational fairness. May bar associations and legal education providers currently host programs on leadership and advancement skills, facilitate networking and peer support among a wide range of lawyers, and present information about the value to an organization of an inclusive culture. But

such programs might be better integrated into the larger portfolio of well-being initiatives to help them attract a broader audience.

Facilitate Increased Access to Well-Being Services

Following the release of the ABA's report and rollout of the Well-Being Pledge for Legal Employers, some large firms have hired in-house wellness experts to develop policies and implement wellness initiatives to support a positive work environment. To introduce best practices and support to firms with more limited resources, a pool of wellness professionals might be identified to offer a series of mindfulness trainings and facilitate info-sharing roundtables for firm leaders. These programs could be offered to segments of firms categorized by size. Furthermore, firms might be able to contract with such professionals to regularly rotate through a series of firms on, for example, different days of the week. Bar associations might be able to work through such a consortium, or with LCL, to schedule individual time slots – or even office hours – in bar association offices that could be booked by lawyers who are not in larger firms or who would prefer an appointment outside the workplace.

Aggregate and Deliver Best Practices and Other Content for Ongoing and Remote Use

Bar associations, with their online and social media presence, as well as email and other distribution systems, can deliver materials on well-being and best practices as a regular feature in newsletters or through links in other materials. “Best practices” could be broadly defined to include managing stress and balance, identifying areas of vulnerability within a practice or practice setting, working to improve the culture of the profession, responding to lawyers in distress and undertaking succession planning, to name a few. Bar associations could work with LCL to identify and manage the delivery of content. Another way of addressing well-being would be to work with professional liability carriers to develop and distribute materials on how certain well-being practices might lead to loss prevention and perhaps even lower premiums.

Bar associations such as the Cincinnati Bar Association and the North Carolina Bar Association specifically designate a section of their newsletter to discussing lawyer well-being and sharing ideas for how lawyers can de-stress and increase mindfulness and resilience. Other bar associations, including the Cleveland Bar Association, list mental health resources on their website and provide links to a local crisis hotline and alcohol and drug addiction services. The Cleveland Bar Association has also created and distributed a toolkit for administrators at law firms to help them recognize the signs of mental disorders and substance abuse. By adding to their websites links to places to get help—such as the Suicide Hotline, Alcoholics Anonymous, and the Lawyers Concerned for Lawyers website—bar associations in Massachusetts can guide online visitors toward assistance or information through locally available resources.

By prominently featuring well-being in their communications and programming, bar associations can play an important role in helping to reduce the stigma that prevents lawyers from seeking help. When lawyers see that seeking help or guidance is not a badge

of shame – but an indication of healthy mindfulness and professional responsibility – they may feel more comfortable taking steps to address their problems or to encourage others to seek assistance.

Emphasize Well-Being at Events

Bar associations can themselves model best practices relating to lawyer well-being by de-emphasizing alcohol at networking events. Non-alcoholic “mocktails” and other drinks that will be appealing to attendees can reduce alcohol consumption at evening events.

Launch a Well-Being Committee

The ABA report recommends that bar associations create a standing committee to focus on well-being concerns. The Chicago and New York Bar Associations have formed, respectively, a Health and Wellness Committee and a Mindfulness and Well-Being Law Committee. Larger bar associations could form an internal standing committee that would coordinate and encourage well-being initiatives within their existing structures.

We have not studied whether such committees in other bar associations are consistently productive or demonstrably successful. The subject matter of such a group would require a very different knowledge base than voluntary bar associations typically encounter in members. In our experience, more generalized non-legal programming (as opposed to practice specific-programs) require a higher level of staff involvement, direction and management than the more routine sessions conducted by substantive law sections.

Accordingly, for bars of more general jurisdiction, we’d suggest using a hybrid staff/volunteer standing committee to explore the most appropriate mechanism – if any – for centralized oversight of well-being initiatives housed within that bar association. Additionally, affinity bars that lack staff support might be invited to participate in such an exploratory effort.

Pilot a Mentoring Program

Many states organize mentoring programs that match more experienced practitioners with those newer to practice; mentors and mentees meet and discuss various topics related to the profession. Well-being is typically only one of many topics covered by other state-wide mentoring programs, with many functioning as the state’s “introduction to practice” program for new lawyers. Mental health, substance abuse, and work-life balance are all covered by these programs, as are topics such as professionalism and ethics. In other states, the oversight body is typically either the state’s highest court or its attorney licensing agency. This structure enables information about the program to be disseminated to all attorneys. It also provides for uniformity in the program’s curriculum/ guidelines.

Massachusetts should explore the feasibility of implementing or piloting a voluntary statewide mentoring program through the Court that would enable experienced, trained practitioners to register as mentors and allow lawyers of any age to apply for mentoring assistance. There is an appetite for mentoring within the bar in Massachusetts, and many local and statewide bar associations have had success in recruiting practicing lawyers to serve as mentors. However, a mentoring program focused solely or even partially on well-being would need to vet and train mentors in collaboration with LCL, as most lawyers are not equipped to identify or assist with well-being issues that other lawyers might face.

Priorities that Support Achieving Goals

As the above recommendations make clear, bar associations will need to work with others if they are to make any headway in addressing well-being issues. We have identified two areas in which additional resources, capacity or attention would likely be needed.

Increase Resources for Lawyers Concerned for Lawyers

LCL would be the logical partner for the profession in all well-being initiatives. They understand the practice of law, and they have expertise in well-being issues. However, additional resources would enable them – and to an extent, LOMAP – to accomplish four things:

1. Participate in designing and presenting a wide range of general and customized self-help programs and programs on wellness that could then be presented through bar associations and other groups.
2. Create more capacity for one-on-one counseling at different locations throughout the Commonwealth, perhaps in coordination with local and statewide bar associations.
3. Establish offices in other parts of Massachusetts to make it as easy as possible for lawyers to get assistance closer to where they live and practice.
4. Invest in a robust communications platform that would ensure that information is easy to find and use and that would give LCL the capacity to push out material to the bar in Massachusetts.

Create a Data-Driven Baseline for Understanding Well-Being

Although we do not believe that wellness can be regulated, more can be done to understand how to effectively address wellness challenges. In that respect, more information could only help. We suggest that the Board of Bar Overseers could facilitate the development of data about the demographic composition of the bar in Massachusetts to make data-driven assessments of:

1. Where pockets of risk are and thus where resources should be allocated;
2. Whether, when and where lawyers are leaving the practice of law in order to better ascertain why they are leaving and whether action should be taken to address the reasons; and

3. Whether well-being programs are effective at reducing the risk of professional misconduct.

SJC Steering Committee on Lawyer Well-Being

COMMITTEE FOR PUBLIC COUNSEL SERVICES SUBCOMMITTEE REPORT

MAJOR ISSUES AFFECTING THE WELL-BEING OF LAWYERS

The ABA National Task Force Report¹ cited numerous studies showing a direct correlation between lawyer wellbeing and lower turnover, greater competency, client satisfaction, greater productivity and job fulfillment.

The Committee for Public Counsel Services (CPCS) is an agency which employs about 400 staff attorneys as well as administrative attorneys overseeing about 2,900 private assigned counsel (independent contractors)². CPCS provides legal representation in Massachusetts for those unable to afford an attorney in all matters in which the law requires the appointment of counsel. Staff and private assigned counsel attorneys practice at the trial and/or appellate level in Criminal Defense, Child Welfare, Juvenile Delinquency, Civil Commitment, Guardianship, Sexually Dangerous Persons (SDP), and Sex Offender Registry Board (SORB) matters.

This Summary was distilled from meetings with CPCS Training Directors of the different practice areas, Human Resources, private assigned counsel program Directors and Administrators, CPCS Administrators and individual staff and private assigned counsel attorneys.

Private assigned counsel and staff attorneys often mention the rewarding nature of the work they do in ensuring justice for indigent clients and upholding the constitution. This shared mission provides for a meaningful purpose and a belief in the importance of each attorney's impact. The difference that attorneys can make in the life of an indigent client is among the many rewards of working at CPCS.

Based on this sampling of agency stakeholders, the following issues affecting lawyer well-being are common stressors:

1. Financial stress caused by low hourly rate for private assigned counsel with the added financial stress of running an office in addition to the practice of law.

¹ The ABA task force study found high levels of distress in the legal profession. The report notes high levels of substance use disorders, depression, stress and suicide amongst attorneys as a group. See ABA Report, "National Task Force on Lawyer Well-Being," <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>

² Private assigned counsel are private attorneys who accept assignments to represent indigent clients as independent contractors.

2. Secondary Trauma/Compassion Fatigue/Burnout and Stress. Public Defender Study on Secondary Trauma found depression among public defenders at 39.5% vs. 10% in general population, higher levels of PTSD, and burnout at 37.4%.³ See:

<https://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?volume=84&issue=12&articleid=2356>

3. Time management stress created by court deadlines.

4. Stigma associated with getting help/self-care for mental health and substance use disorders.

STRATEGIES AND/OR ACTION ITEMS TAKEN OR RECOMMENDED TO ADDRESS THOSE ISSUES:

Section I addresses staff attorney initiatives, Section II addresses private assigned counsel initiatives, and Section III addresses diversity and inclusion challenges which are applicable to both staff and private assigned counsel.

I. Staff Attorneys

A. Financial Stress

1. Continue to implement annual salary increases.

2. Implement changes to the Massachusetts State Employee Retirement system to place public defender attorneys in Group 4. Public defenders face the same secondary trauma, occupational stress, and burnout as district attorneys and other public safety officers and officials in Group 4; pension parity with these occupations would add to attorney well-being.

B. Secondary Trauma, Stress and Stigma Associated with Mental Health and Substance Use Disorders; Encouraging Self Care

Managers and Administrators should communicate consistently about the importance of self-care and should routinely provide information on resources offered by Lawyers Concerned with Lawyers, Inc. (LCL), Employee Assistance Programs (EAP), and FMLA to lessen the stigma of accessing these valuable resources. Information should be provided at new attorney training sessions, and reinforced consistently.

³ See Levin, A.P., Albert, L., Besser, A., Smith, D., Zelenski, A., Rosenkranz, S. and Neria, Y., "Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients," (2011); Levin, A.P. and Greisberg, S., "Vicarious Trauma in Attorneys," Pace Law Review, 24:245 (2003).

Communication can happen directly to current staff, through trainings and in interviews for new attorney positions in the following ways:

1. Direct Communication: Office-wide or practice-wide newsletters, emails, annual conferences, meetings.

2. Training:

New Lawyer Training: Already Incorporating Resilience/Secondary Trauma/LCL Resources into New Lawyer Training.

- The initial training for attorneys joining the Public Defender, Juvenile Delinquency, Civil Commitment, and Child Welfare Divisions includes a segment on EAP presented by Human Resources and a presentation by LCL.
- During their first year of employment, new attorneys in the Public Defender division re-convene every four months for additional training that may include a small group led by a social worker to discuss what surprised the new attorneys in practice, issues that arose for them, how to get support, etc...

Current Staff Training: Provide Additional Resilience/Secondary Trauma Training and Incorporate LCL Resources.

- Incorporate EAP/ Well-Being/LCL resources into Annual Training for current staff.
- Provide secondary trauma and wellness training for current staff.
- Offer organization/time management skills training (See LOMAP⁴).

3. Survey: Conduct survey of staff attorneys to identify stressors and recommendations for what the agency can do to better support attorney well-being.

⁴ Massachusetts Law Office Management Assistance Program (LOMAP) is a program of LCL, Inc. to help attorneys licensed in Massachusetts establish and institutionalize professional office practices and procedures.

C. Employer Actions Taken

1. Encourage Vacations and Promote Work/Life Balance. (According to ABA report, the number of vacation days taken was the strongest predictor of well-being among all activities measured in cited study; this was a stronger predictor than income level). Also, this would help to resolve work addiction problems, which according to the ABA report has a greater prevalence among attorneys - 25% versus 10% for the general population.

- Endorse alternative work schedules that fit in with the needs of the agency.

2. Offer Mentorship Program for New Attorneys (work/consult with a more experienced attorney).

3. Provide Mentors and Support for Managers who face additional stressors of managing employees and running an office.

4. Offer Management Training on the following topics:

a.) FMLA process and use of HR ADA Coordinator to educate managers about reasonable accommodations;

b.) Diversity/Inclusion/Implicit Bias to create an environment where all voices are heard and all staff feel supported.

5. Creation of SERV type program – allow a certain amount of employee time for volunteer work in the community.

II. Enhancing Well-Being of Private Assigned Counsel/ Solo Practitioners

CPCS contracts with about 2,900 attorneys who practice as private assigned counsel in the areas of criminal defense, juvenile delinquency, child welfare, civil commitment, guardianship, SORB and SDP proceedings. Private assigned counsel includes attorneys practicing in the trial courts, before administrative tribunals, and in the appellate courts of Massachusetts. Most private assigned counsel are solo or small firm practitioners.

A. Financial Stress

- Increase hourly rates for private assigned counsel.
- Raise annual hourly billing cap.

CPCS has already implemented numerous changes to enhance private assigned counsel well-being.

B. Communicating Importance of Self-Care and Training on LCL/Resiliency

- Currently starting to incorporate LCL/LOMAP into Zealous Advocacy training for all new criminal defense and juvenile delinquency attorneys. Child Welfare Division already incorporates secondary trauma training for all new attorneys.
- Raise awareness of addiction/mental health issues through training for current private assigned counsel and incorporate short segment about LCL/LOMAP into advanced trainings.
- Continue to email attorneys on resources available at LCL/LOMAP.
- Provide additional secondary trauma trainings, workshops and webinars for private assigned counsel.

C. Expand LCL Offerings

1. Add support groups to support various issues in different areas.
2. Add training offered by LCL to support all types of employers, including workshops on well-being, financial planning, time management, office organization, and transition planning through private assigned counsel programs and bar associations across the state.
3. Expand monitoring and support programs for private assigned counsel attorneys experiencing substance use disorders.
4. Create an LCL App for stress relief.
5. Add peer support or an organization consultant to help solo and small firm attorneys with case management, time management, organization and billing.
6. Add LCL satellite offices in Western, Central, and Southeastern Massachusetts.

D. Time Management Stress Created by Court Deadlines

Solutions:

- Convene Judge/Bench committee to explore options for improving attorney well-being.
- Consider amendment of court rules to enhance well-being. See Delaware Supreme Court Order to Improve Work Life Balance for Legal Professionals (Disfavoring filing due dates on Mondays or the day after a holiday in non-expedited matters; adopting general practices that judge shall aspire to start trial day on time, predictable approach to breaks, and

end trial day no later than 5 p.m., etc...); See also North Carolina Secured Leave Policy.

E. Other

Problematic telephone systems in Massachusetts jails, Houses of Corrections and prisons make attorney client communication very difficult. New technology would reduce communication stress for attorneys and clients. For example, a New Hampshire county jail permits attorneys to call a client and be patched through to a private attorney-client phone line.

III. Diversity/Inclusion

Organizational belongingness is a significant contributor to well-being. CPCS has undertaken all of the steps below:

1. Enhanced mentoring program.
2. Offered staff membership to minority affinity bar associations.
3. Created an Equity and Inclusion Director position to support the recruitment, promotion, and retention of a diverse staff.
4. Trained managers and staff on diversity, inclusion and implicit bias.
5. Included diversity and inclusion as part of performance review process of managers.
6. Expanded recruiting to include nationwide public interest law career fairs; strengthened internship program; reached out to New England law school and bar association affinity groups.
7. Added Diversity Statement and EEO Statement to every job posting.
8. Improved assessment of recruitment and hiring data and private assigned counsel data.
9. Closely examined minimum requirements for every position and created bias free strategies for reviewing resumes and applications.
10. Incorporated interview questions to assess candidates' cultural competence and commitment to anti-racism.

RECOMMENDED PRIORITIES

1. One hour mandatory wellness CLE required for all new and current attorneys in Massachusetts. This would send a message from the top that attorney wellness is important and would help to remove the stigma that prevents self-care.

2. Expansion of LCL resources to include additional trainings for attorneys in every practice area and type of legal entity; additional confidential groups and counseling; additional financial planning and office consultations with solo and small firm attorneys; and satellite offices in different counties.

3. Including the LCL/LOMAP information on BBO website with link to LCL/LOMAP and in the annual BBO registration notice.

4. Joint Bar/ Bench Committee to recommend changes to Courts' practices that would enhance the well-being of attorneys in the Superior, District, Juvenile and Probate Courts.

SJC STEERING COMMITTEE ON LAWYER WELL-BEING
Subcommittee on In-House Counsel

Draft Subcommittee Report

March 18, 2019

I. Introduction of Subcommittee Members and Process

Subcommittee members were selected with an eye to the breadth and variety of in-house counsel positions. They include counsel to for-profit and not-for-profit entities, publicly traded and privately held companies, domestic and international companies, and large and small offices from a variety of industries. Since workplace uncertainty (the danger of losing one's position because of a merger or acquisition, for example) was one identified stressor for in-house counsel, the subcommittee included one attorney in between positions. The committee was diverse in several dimensions, including gender, race, sexual orientation, and years of experience. In alphabetical order, the subcommittee members are:

Alex Aferiat, BT Group (BT Americas, Inc.)
Tavares M. Brewington, Biogen
Christine Hughes, Emerson College
Danielle B. Lemack, Axiom/HP Hood
James W. Peck, Cognex Corporation
Helen Tsingos, formerly of Velcro Companies, now of Casa Systems, Inc.
Jennifer A. Watson, Liberty Mutual

Maureen McGee was SJC liaison and attended most meetings. When she was unavailable, Christine Burak attended in her place. The subcommittee met a number of times between November and February and is grateful to Boston Bar Association for arranging meeting space, meals and refreshments, and logistical support. The subcommittee also conducted business and drafting through email exchanges.

II. Description of In-House Bar Membership

In-house counsel practice in a wide variety of settings that run the gamut from single-lawyer offices to large, quasi-law firm offices. They advise a wide variety of industries, including technology, manufacturing, pharmaceutical, telecommunications, insurance, financial services, banking, construction, health care, food service, and retail, just to name a few. Their corporate clients can be for-profit or not-for profit, publicly traded or privately held, local, regional, national, and international. Most typically, in-house counsel have prior experience in a law firm setting, but some lawyers do begin their careers in house, and others may have public sector or government law experience as well. Forty years ago, an in-house counsel position might be considered a "lesser" path for those unsuccessful in a law firm setting. Today in-house positions are seen as highly desirable, and competition for in-house counsel positions can be fierce.

In-house counsel work often provides the opportunity to be a business partner and strategic partner to the client organization. It can be collaborative and collegial. In-house counsel are recognized as problem-solvers and prized for their ability to be practical and for their openness to appropriate risk-taking. The work can be highly varied and can offer many opportunities for personal and professional growth. It is intellectually challenging given the unpredictability of issues and the breadth of substantive practice areas. In-house lawyers generally work without the law firm pressures to track hours or generate business. With freedom from the tyranny of the billable hour, the in-house lawyer is able to focus on being effective, efficient, and preventative.

III. Major Issues Affecting the Well-Being of In-House Counsel

Unlike law firm lawyers, in-house counsel are not a revenue center for their clients—they are overhead. With that comes both pressure to demonstrate value and workplace financial pressure, such as the need to work to a budget, vulnerability to cost-cutting, and financial instability of the client organization. In-house counsel can be called upon to advise in “bet the farm” cases in which the very survival of the client organization is at stake because of a criminal investigation, significant regulatory enforcement, litigation threatening a key process, technology, or product, scandal, or other threat. Unlike law firm lawyers, who have multiple clients, in-house counsel have a single client entity. If that client environment is difficult or toxic, that affects every aspect of an in-house lawyer’s job. In-house lawyers can face the pressure to be physically present (navigating commutes into the office, face time with clients and colleagues, etc.), or the converse, the pressure of being isolated in a remote office and having to demonstrate value and cultivate relationships.

In addition, in-house counsel face the same pressures as other lawyers. They can encounter bias grounded in race, gender, sexuality, or other protected category. They work under client-imposed deadlines that can be unreasonable or unachievable. There is an expectation of 24/7 responsiveness. They may lack control over their workload. And, like all lawyers, they can face personal challenges such as illness, disability, a special needs child, caregiver responsibilities for children, aging parents, or a spouse, and difficult or challenging commutes.

IV. Analytical Framework

In-house counsel are distinctive because they function both as lawyers and as clients. Accordingly, we base our recommendations on the multiple roles that in-house counsel play, as:

- General counsels and other lawyer-managers
- Individual contributors, junior lawyers, and other non-manager in-house lawyers
- Clients of law firms

We conclude with some recommendations for the profession as a whole.

V. Recommendations for General Counsel and other Lawyer-Managers

It is clear from both the subcommittee's deliberations and the work of the Steering Committee as a whole that those in leadership positions have a particular ability and responsibility to address wellness issues. Managers and senior leaders are in the unique position to be influencers and enforcers of corporate culture. Tone, after all, is set at the top. Accordingly, the subcommittee makes the following recommendations, in order of priority, for general counsel and other lawyer-managers:

- Managing others is a skill that lawyers must learn and practice. We recommend that managers promoting line attorneys into management roles educate those lawyers in best practices in management. Lawyers who hold management positions and who have not studied best practices in management should make it a professional development priority to do so. Ideally, bar associations and continuing legal education providers will, over time, make such courses available as part of the regular array of CLE opportunities (see Section 8, recommendations for the profession as a whole).
- Lawyer-managers should model healthy behaviors such as self-care (exercise, taking lunch, taking true vacations, demonstrating work-life balance) and should encourage those who work for them to do the same.
- Lawyer-managers should encourage mental health days and vacation that specifically includes time away from work devices such as laptops and cell phones.
- Lawyer-managers should avoid sending emails and other communications outside of normal working hours unless absolutely necessary. Such after-hours communications "from the boss" carry a sense of urgency to the recipient that the lawyer-manager may not intend. If it is more efficient for the lawyer-manager to send a communication after-hours while s/he is thinking of it, then the lawyer manager should use the tool available on most email systems to time the delivery of the email to normal working hours.
- Lawyer-managers should be appropriately candid and transparent about stressors they have faced and overcome.
- Lawyer-managers should avoid glorifying workaholic behaviors. A lamentable example of what should be avoided is attached as Exhibit A (see page 3).
- Lawyer-managers should acknowledge the stressors on those they supervise and create authentic opportunities for individual contributors to articulate the stressors they experience and suggest solutions or mitigations.

- It is undisputed that the greater Boston area has the nation's worst traffic. [<https://www.boston.com/cars/commute/2019/02/12/boston-worst-rush-hour-traffic>] Lawyer-managers should enthusiastically embrace alternative work schedules, telecommuting, and similar logistical adjustments to reduce the stressors of challenging commutes, caregiver duties, and self-care needs (medical treatment, counselling, AA, etc.) As self-driven perfectionists, lawyers are particularly well suited to achieve in alternative work schedules.
- Lawyer-managers should promote support and wellness organizations, such as Lawyers Concerned for Lawyers and Alcoholics Anonymous. By allowing such organizations to make presentations at staff meetings or in similar settings, lawyer managers can signal that wellness and self-care are professionally appropriate and suitable topics of discussion in the workplace.

VI. Recommendations for/from Individual Contributors, Junior Lawyers, and other Non-manager In-house Lawyers

Lawyer-managers should encourage communities that create a sense of connectivity for the employee – often these are in the form of ERG's (employee resource groups, sometimes also referred to as affinity groups). These communities often provide a safe space for the ERG member to form relationships with similarly situated individuals who can relate to similar pressures – and can also act as a resource where the employee finds tools and opportunities to grow their career.

In addition to these efforts, the subcommittee recommends the following steps that management and senior leaders can implement to alleviate stress on individual contributors (non-managers):

1. Expectation setting by management and the individual contributor
 - Managers need to be clear about what they need from individual contributors. This should be an expression of clear, open, and regular communication and may be in the form of posted values or goals for the department. If the values or goals are not publicly posted, it may prove beneficial to provide management with talking points so that the message is consistent.
 - As much as possible, the expectations should reflect the overall corporation's culture and tone such that there is consistency across departments and so that each employee's experience, connectivity and opportunities are not subjective upon whether the employee has a "good" or "bad" manager.
 - Individual contributors need to be clear about what they need from managers. There should be a safe space in which the individual contributors

can express their needs from management. That may be in the form of an annual goals setting meeting or at an annual review.

- The methods by which these perspectives are shared should be evaluated based on the culture of the organization and team. It may not be practicable for persons on the same team, but in different offices, for example, to have a face-to-face conversation. There is a tradeoff between the efficiency of email and the efficacy of communicating in person – or at least by telephone.

2. Establishing a culture of inclusion and opportunity.

- Those in “seats of power” (historically predominantly white men), should set an inclusive tone and try to make younger lawyers, women, persons of color and other historically marginalized groups feel welcome and included.
- Management should implement transparency regarding available opportunities to take on new projects and career advancement. Transparency will avoid certain attorneys being given preferential treatment, access, and opportunity. Transparency positions all members of the team towards opportunity and avoids the situation where only the junior lawyers who look like the senior lawyers get a chance to do interesting work. Senior attorneys should be intentional about having diverse team and giving broad opportunities.
- Foster a knowledge-sharing culture, rather than one of competitiveness.
- In-house lawyers are often in reporting structures with non-lawyer organizational leaders. To ensure these leaders understand and support the work to enhance lawyer well-being, it will be important to inform organizational leaders of the legal department’s efforts. If legal managers don’t share and support that perspective, it will be difficult to create and maintain a supportive culture in the legal department.

3. Leadership tools and training.

- Managers should be trained in “strength based leadership” – focusing on the type of supervision that is effective with individual employees. Better training will benefit the entire department, the individual contributor and the manager who will reap the benefits of having lower turnover, and engaged employees.
- Managers should also be trained in the key factors of “burnout” to help identify individual contributors who may be at risk and develop mitigation strategies to avoid individual contributor burnout. For example, managers may observe the signs of burnout in individual contributors with extreme daily commutes and could provide a work-place flexibility schedule to ease the stressor. Knowing the signs of a burnt-out individual contributor—and

more importantly, knowing ways to help alleviate his or her stressors—can ensure better engagement, lower turnover, and higher productivity.

RECOMMENDED PRIORITIES. Depending on the organization, priorities for implementing these strategies to alleviate stress for the individual contributor will vary.

VII. Recommendations for In-house Counsel in their Role as Clients to Reduce Stressors on other Segments of the Bar

1. Creating stressors

In-house counsel create stress for lawyers in other sectors of the bar, in particular law firm lawyers.

- As clients, there is the real potential for a disconnect between the goals in-house counsel seek to achieve – creative, practical solutions which avoid conflict - and the incentives law firms emphasize – billable hours and profits (the “Billing Stress”).
- In-house counsel expect to work with experienced attorneys, and do not want to pay for junior attorneys to learn, but law firms need to allow junior attorneys to gain hands-on experience. As companies insist on diverse teams of lawyers, this can be a challenge for firms (the “Diversity Stress”).
- One of the benefits many in-house counsel lawyers tout is the fact that they are part of the business team. Outside counsel often do not have the same exposure to the business – they are being asked to resolve issues without all of the business context or full understanding of what is needed (the “Isolation Stress”).
- As clients, in-house counsel sometimes place unrealistic, unclear demands on law firm lawyers, which make it difficult for them to maximize the benefit of their work product (the “Demand Stress”).
- In-house counsel may not always show appreciation for the work done by outside counsel or share the outcomes resulting from the work done by outside counsel (success, or not). Outside counsel may feel disconnected to their work (the “Lack of Appreciation Stress”).

2. Strategies for reducing stressors

In-house counsel, working with law firm lawyers, can take a number of measures to help alleviate stressors.

- **Billing Stress.** In-house counsel should encourage law firms to embrace alternative fee arrangements. These arrangements can include project-based billing, flat fees, holdbacks, and some billable hours. Arrangements should include incentives for positive outcomes, such as preventative advice, efficiencies, practical solutions, creativity in problem solving, prioritization, high-value outcomes, and conflict avoidance. The goal should not necessarily be to spend less money with firms, but rather to align the ultimate interests of in-house and outside counsel.
- **Diversity Stress.** Diversity requires action from leadership in the legal industry - all segments of the bar need to work together. In-house counsel should insist on a diverse team of lawyers. However, they need to do more than insist on diverse teams of lawyers - in-house counsel need to be willing to allow and pay for junior lawyers to gain experience. This may mean some projects take more time, or cost more money, because they are being done by lawyers with less experience, but a true commitment to diversity requires action by the entire industry. As in-house counsel employ diversity efforts within their companies, they should share their experiences with law firms and use those initiatives with their teams of outside counsel. Law firms should be required to share how their hiring practices seek to increase diversity. Diversity can be measured with metrics. There are resources that can be consulted to determine how to best measure diversity in the legal profession. CLE programs about what diversity is, as well as how diversity can truly work, should be required throughout the industry. These should include programs about proper behaviors, as well as awareness training. In-house counsel need to create a welcoming culture in which all lawyers feel included - this should apply to both the in-house team, as well as the outside lawyer team.
- **Isolation Stress.** In-house counsel often are perceived as the “happiest” lawyers. This is in large part due to the fact that in-house counsel enjoy being part of the business team - they get to collaborate and help strategically move their business forward. Law firm lawyers are often isolated from the business team. To help alleviate the Isolation Stress, in-house counsel should share business context with law firm lawyers - don’t just ask for an answer, explain the context of the question, the scope of the project, what type of answer they need, and the impact this question will have on the business. When possible, in-house counsel should invite outside counsel to meet with their business teams. This can be done as training sessions or as part of a kick-off meeting for a new project. This allows outside counsel to develop a greater understanding of the business and produce better work product. It also allows outside counsel to feel a greater connection to the business and experience some of the satisfaction in-house counsel report as one of the top benefits of their jobs. CLE programs should be developed to help in-house counsel learn how to share the in-house experience. In addition, lawyer-managers should require all attorneys within their departments to prioritize educating outside counsel about their business.
- **Demand Stress.** As both providers and consumers of legal services, in-house counsel often place stressful demands on their outside counsel. In-house counsel

need to be able to distinguish between true crises and normal business stress. They need to set realistic expectations with their internal clients so that they can give outside counsel as much lead time as possible. In addition, in-house counsel need to be able to clearly explain their project needs – they need to set clear expectations about timing, work product, and budget, as well as any changes in the project that may arise. In-house counsel should work with their outside lawyers to ensure outside lawyers have back-up coverage in case their main point of contact is too busy, or is away on vacation. Lawyer-managers need to model these behaviors and ensure they train lawyers on their teams about how to manage outside counsel. Lawyer-managers also should empower their team members to set limits with their internal clients, and should advocate for their team internally. Performance reviews should place value on a lawyer’s ability to prioritize projects and minimize emergencies. CLE programs should be developed to help lawyers learn how to manage outside counsel with an eye to stress reduction and wellness.

- Lack of Appreciation Stress. In-house counsel need to show appreciation for outside counsel. Outside counsel often do not know what happens to the projects they submit. In-house counsel should make an effort to celebrate victories and successful projects. When outside counsel perform well, particularly junior lawyers, in-house counsel should commend them by sending a note to the overseeing partner. When an outside lawyer is underperforming, in-house counsel should try to mentor that lawyer and help them improve before complaining to their overseeing partner. Outside counsel should be treated as an extension of the internal team. Lawyer-managers should model this behavior both with the attorneys on their internal teams as well as the law firm counsel with whom they work. CLE programs should be developed to encourage lawyers to show appreciation. This is particularly important given that competition and individuality is valued in law school and law firm environments.

3. Priorities

- Develop and mandate CLE programs that teach in-house counsel management and prioritization skills, as well as how to implement diversity. Programs should include: Diversity Awareness, Inclusivity Training, Implicit Bias, Management for Lawyer-Managers, and Management Skills for all Lawyers, including Project Management and Communication Skills.
- Adopt alternative fee arrangements. Introduce an initiative with the goal of companies and law firms agreeing to participate.
- Adopt diversity metrics. All segments of the legal industry should commit to achieving these metrics within a reasonable period of time.
- Lawyer-managers need to model the behaviors encouraged in this section. Some of the “softer” communication and management skills should be included in lawyers’ performance reviews.

- In-house lawyers need to adopt the philosophy that outside counsel are an extension of their team. The same principles used internally should apply to their outside lawyers. Likewise, law firms need to show companies they are making a true commitment to supporting lawyers on their teams.

VIII. Recommendations for the Profession as a Whole

Major Issues

Many of the issues that in-house counsel face impact lawyers in the legal industry as a whole. Lawyers, by nature, tend to be perfectionists and hold themselves to high standards. They work hard, and as evidenced by the 2016 ABA study, many suffer from serious health issues (the “Burn-Out Stress”). Moreover, lawyers are trained and learn how to practice law. However, as lawyers progress in their careers, they are expected to manage others both inside and outside of their organization without any formal training (the “Management Stress”). In addition, in an effort to get their own jobs done, lawyers may unknowingly create stress for lawyers in different sectors (the “Interdependence Stress”).

Strategies

The legal industry can take a number of measures to help alleviate stressors.

Burn-Out Stress – The 2016 ABA and Hazelden Betty Ford Foundation study showed that lawyers are experiencing high levels of stress, as well as substance abuse problems. Many lawyers do not feel comfortable admitting they have a problem. Moreover, lawyers often are expected to prioritize their work over their personal lives. Many lawyers are juggling more work than they can do, particularly at the quality they want to achieve. The industry needs to prioritize well-being to help combat the Burn-Out Stress. This can be done several ways. First, CLE programs should be introduced to teach lawyers about time management, signs of burn-out, and overall wellness issues. Consideration should be given to giving lawyers CLE credits for attending yoga or exercise classes, or participating in an art or music program, or attending activities that allow lawyers time to relax and recharge. Second, lawyers, especially senior lawyers, should model wellness behaviors, such as going out to lunch, exercising, or taking time for family. In addition, lawyers should intentionally encourage all other lawyers in their department to do the same – invite junior lawyers to lunch and encourage them to go home at a reasonable hour. Finally, lawyers need to share their experiences – good and bad. If senior lawyers talk about their failures, or struggles with wellness, it will help normalize the experience for other lawyers they know and allow a struggling lawyer to see that these challenges do not preclude future success. By talking about the problem, we can help eliminate the stigma, and encourage lawyers to seek help.

Management Stress – Lawyers learn how to analyze, write, argue, and think. Lawyers are not trained to manage, yet, at some point, all lawyers have some level of management

responsibility. This can create stress for the lawyer-managers, as well as those being managed. Law school classes and CLE programs should be introduced to train lawyers to manage. CLE providers could partner with local business schools and colleges to offer a management course for professionals. With the growth on line classes, this could be done in a flexible setting with opportunity for online dialog, as well as some in-person classes. In addition, lawyer-managers should intentionally take the time to train the lawyers on their team. Lawyers should be given management opportunities and should receive feedback on how they perform.

Interdependence Stress – All sectors of the bar are interdependent and each segment needs to recognize its role in creating stress for other areas. As discussed above, in-house counsel can create stress for law firm lawyers. Judges can create stress for the lawyers appearing before them. Government lawyers can wield a lot of power. Litigators can create stress for the other lawyers in a court room. Lawyers need to intentionally act in a courteous and respectful manner, keeping in mind that their actions can create stress for lawyers in other segments. We are one group of professionals, and even though we play different roles, we are practicing law to support our legal system and seek just outcomes. Lawyers should solicit feedback about how their actions impact other lawyers in different sectors. CLE and/or training programs can be offered to give examples of what and what not to do.

Priorities

CLE classes offer ample opportunity to help better train lawyers for the non-legal issues we face and combat a number of the stressors. In order for these classes to work, the industry has to make a real commitment to honoring and valuing the time spent in those classes. CLE should count towards hours worked and it should not be assumed that lawyers will perform CLE during non-work hours. If CLE become another task a lawyer has to do, CLE is likely to contribute to further stress, as opposed to reducing stress. Research could be done to determine how to best implement a meaningful CLE program. In addition, lawyers need to model the behaviors discussed throughout and mentor other lawyers on their team. Finally, lawyers need to reflect on their own behaviors and have the courage to ask for feedback.

TO: Steering Committee on Lawyer Wellbeing

FROM: Judicial Subcommittee

Hon. Wilbur Edwards (ret.)
Hon. Linda Fidnick
Hon. Lisa Grant
Hon. Mary Elizabeth Heffernan
Hon. David Lowy
Hon. Mark Newman
Hon. Kathe Tuttman
Hon. Michael Vhay
Hon. Gabrielle Wolohojian

DATE: April 19, 2019

RE: Recommendations

INTRODUCTION

The members of the subcommittee note the profound rewards and satisfaction that come from being a judge. In particular, the ability to be of service to our communities, to earn the trust and respect of the litigants and attorneys who appear before us, to place our skills at the disposal of all those who need them regardless of their wealth, to have a direct impact on peoples' lives, to resolve disputes and to solve problems -- in short, the opportunity to deliver justice with humanity and fairness -- all these fuel our sense of satisfaction and mission. We feel privileged to be judges, to work with our judicial and nonjudicial colleagues, and to have a positive impact on peoples' lives and the law.

That said, the subcommittee agrees with the ABA's National Task Force Report's assessment that being a judge can take a toll on one's health and wellbeing.

"Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily. . . . Other judges face the stress of presiding over criminal cases with horrific underlying facts. Also stressful is the increasing rate of violence against judges inside and outside the courthouses. Further, many judges contend with isolation in their professional lives and sometimes in their personal lives. When a judge is appointed to the bench, former colleagues who were once a source of professional and personal support can become more guarded and distant. Often, judges do not have feedback on their performance. A number take the bench with little preparation, compounding the sense of going it alone. Judges also cannot 'take of the robe' in every day interactions

outside the courthouse because of their elevated status in society, which can contribute to social isolation. . . . Limited judicial resources coupled with time-intensive, congested dockets are a pronounced problem. More recently, judges have reported a sense of diminishment in their estimation among the public at large. Even the most astute, conscientious, and collected judicial officer can struggle to keep these issues in perspective."

Based on our own experiences and observations, we also agree with the ABA report's view that:

"[M]any judges have the same reticence in seeking help out of the same fear of embarrassment and occupational repercussions that lawyers have. The public nature of the bench often heightens the sense of peril in coming forward. Many judges, like lawyers, have a strong sense of perfectionism at all times. Judges' staff can act as protectors or enablers of problematic behavior. These are all impediments to seeking help. In addition, lawyers, and even a judge's colleagues, can be hesitant to report or refer a judge whose behavior is problematic for fear of retribution."

In light of the above, we make the following specific recommendations, which we note meet all of the major recommendations proposed by the ABA task force. We endorse each of our recommendations. However, at the request of the Steering Committee, we identify first those we believe deserve priority.

PRIORITY RECOMMENDATIONS

I. TRAINING

Develop and coordinate wellness training across the judicial branch

Wellness, resilience, and related topics should be regularly included in judicial education programming. We note that many of the trial court divisions and the Appeals Court have already included such programming, and that the Superior Court has already devoted an entire day of an educational conference to the topic. These efforts should continue, not only to disseminate information but to reduce stigma.

Because wellness issues are not particular to any one court (although the stressors may vary from court to court), we recommend that such programming be coordinated branch-wide and be made available to judges regardless of their court so as to maximize its reach. We also recommend that a person be designated to coordinate, organize, and oversee these training efforts, whether through the Judicial Institute or otherwise.

Training for all new judges

Wellness/resilience training should be a component of new judge education/orientation in all courts. We note that such training has already been included in the new judge training for all trial court divisions. We recommend that all new judges (whether appointed to trial or appellate courts) receive such training, which we feel could (and should) be conducted for the new judges together, regardless of the court to which they have been appointed.

The training should include: (a) learning how to identify stressors; (b) techniques for recognizing when stress is affecting one's performance, demeanor, or judgment; (c) techniques for avoiding stressors (either work-related or otherwise) that affect one's work performance if possible and, if not possible, for effectively dealing with them; (d) information on where to turn for help; (e) lessons from experienced judges; (f) how to avoid causing stress to lawyers, colleagues and others; (g) vicarious trauma; (h) compassion fatigue; and (i) burnout.

Training for every chief or other judge in a management role

Judges sometimes are elevated to management positions without training, guidance, or resources on how to best support colleagues whose performance is affected by stress or other wellness issues. Chiefs and other judges in management roles should receive training on: (a) how to help/talk to judges whose performance is affected by stress, substance use, or other wellness issues, or whose performance is causing stress to others; (b) information on what resources are available, including Lawyers Concerned for Lawyers, the ABA Commission on Lawyer Assistance Programs' judicial peer support network, and the National Helpline for Judges Helping Judges (1-800-219-6474); (c) learning to feel comfortable intervening when a judge's performance is impaired; and (d) learning to feel comfortable referring an impaired judge to judicial or lawyer assistance programs.

Training for all judicial mentors (J2] or otherwise)

Most of the trial and appellate courts have judicial mentoring programs, although the details of those programs differ among courts. We recommend that all judicial mentors receive training on how to address wellness issues with their judicial mentees. Such training should include: (a) how to help/talk to judges whose performance is affected by stress or other wellness issues, or whose performance is causing stress to others; (b) information on what resources are available; (c) information on when/how to intervene or seek help from a chief.

II. COMMUNICATING THE IMPORTANCE OF WELL-BEING AND REDUCING STIGMA

We believe that the Supreme Judicial Court has an important role in communicating the importance of well-being and reducing the stigma that often poses an obstacle to seeking treatment or help. For this reason, we recommend that the Chief Justice send an annual letter to all judges about the importance of wellness, setting out the resources that are available to help, and encouraging judges to seek help when they need it. This letter could be timed to coincide with our recommendation for a mandatory online self-assessment tool (see below).

III. PROFESSIONAL HELP/SUPPORT

Because judges (and chief justices) are not equipped to provide the support a struggling colleague may need, we recommend that a psychologist or other professional experienced in dealing with the particular types of stress judges experience (vicarious trauma, workload, high-stakes public decisionmaking and criticism, inadequate resources, etc.) should be made available at no expense to the judges. This service should be completely confidential.

IV. HELPING ENHANCE LAWYER WELLBEING

The trial court divisions should examine/assess the collective and individual practices of the judges in that division that affect lawyer wellbeing. It might be useful in this regard for the trial divisions in each county to solicit the input and recommendations from the local bar. There should be training or court-wide discussion about case management decisions (deadlines, extensions, etc.) and courtroom conduct and demeanor that unnecessarily adversely affect attorney wellbeing.

The Supreme Judicial Court should examine what judicial branch-wide practices could be adopted to help reduce stress on lawyers. We note, for example, that the e-filing deadline was recently changed for all Massachusetts courts to 11:59 p.m. -- long after business hours and potentially creating expectations that lawyers work until the middle of the night.¹ We draw attention to the attached

¹ SJC Rule 4(c)(2) provides:

(c) Determination of date of filing and commencement of civil action

(1) Date of Filing. Any document submitted through the e-filing system by 11:59 P.M. on a business day shall be deemed filed on that date, unless it is rejected by the court. See Rule 4(d). A document submitted on a Saturday, Sunday, or legal

order of the Delaware Supreme Judicial Court in this regard, and note that we think that strong statements from a state's highest court are particularly meaningful in conveying the judicial branch's commitment to fostering the wellbeing of practicing attorneys.

OTHER RECOMMENDATIONS

I. WRITTEN GUIDELINES ON WHEN/HOW TO INTERVENE

As part of the training programs recommended above, every chief, other judge in a management position, and mentor should receive written guidelines for when and how to intervene. We do not believe such guidelines now exist and, therefore, we recommend that the Supreme Judicial Court develop such guidelines with the help of knowledgeable professionals.

II. TRAINING/SUPPORT FOR JUDGES DEALING WITH MEDIA-RELATED STRESS

Judges are presented from time to time with highly publicized hearings or trials that entail interaction with various official and unofficial media entities including print, bloggers, radio, local cable and larger market television. These entities can have different technical requirements within the courtroom and often seek unfettered access to the judge, court staff, litigants and witnesses. Many of the media representatives are not familiar with Court rules and practices. We suggest as part of a judge's initial training that there be a segment dedicated to media-related issues that arise during a heavily-publicized trial. There are resources available to judges, such as the Supreme Judicial Court Public Information Office, to assist in conducting a fair and open trial within the rules for media set forth by the SJC.

We have also noted that following a decision in a hearing (perhaps a bail or sentencing decision in a criminal matter) or trial or post-court actions by a suspect or defendant, a judge may become the subject of extreme criticism through media outlets. We suggest continued judicial "best practices" training to have judges proactively explain on the record the reasons for their decision and further, designate judges or other professionals to respond and support judges who face heightened stress and criticism from the media related to controversial decisions or post-decision negative outcomes.

III. MANDATORY ONLINE WELLNESS SELF-ASSESSMENT TOOL

holiday shall be considered filed the next business day, unless it is subsequently rejected by the court.

Judges are extremely busy and may not have the time or impetus to reflect on the state of their wellbeing, and whether their performance is being affected by stress, substance abuse, or other factors. For this reason, we recommend a mandatory annual online wellness self-assessment tool (having no recorded answers) that will help the judge assess his or her own wellbeing. We also recommend that, in connection with annual circulation of the self-assessment tool, that a list of wellness resources also be circulated to judges. We understand that the Judicial Institute has the capacity to circulate both the self-assessment tool and the resources list.

IV. JUDICIAL SURVEYS

There are two sorts of survey we recommend. The first (which could be designed by the chief of each court) would seek to elicit practical solutions from the judges and significant managers of that court to reduce the systemic stressors in that court. An organizational psychologist or other professional should be made available to the chief to assist in this effort.

The second (which should be designed by a qualified professional) would survey the judges about the state of their wellbeing. A survey would help to develop future steps to aid judicial wellbeing. We note that the ABA has developed a national survey of judicial wellbeing and that the ABA will support each state's efforts to survey its judges. The ABA survey may be found at https://americanbar.qualtrics.com/jfe/form/SV_7afya1LWc29YC7b

V. COMMISSION ON JUDICIAL CONDUCT

In situations where it appears that a judge's performance has been affected by stress, substance abuse, mental health, or other wellness issues, the CJC should be encouraged to refer/recommend judicial or lawyer assistance programs to judges where it appears appropriate.

SUPREME JUDICIAL COURT'S
STEERING COMMITTEE ON LAWYER WELL-BEING

Report from the Large Firm Subcommittee

The Large Firm Subcommittee is comprised of individuals who presently or formerly worked at large law firms in Boston. The members come from a range of backgrounds in terms of race, gender and age and have held a variety of positions in their firms including: associate, managing partner, senior equity partner, and human resource director. The diversity of experience within the Subcommittee provided valuable perspective on issues relating to lawyer well-being in large firms. The Subcommittee's discussions drew upon the members' experiences and observations of large law firm life as well as the considerable work on attorney well-being already ongoing in many of the firms. The Subcommittee strongly believes that attending to attorney well-being is not only critical to the profession, but is also essential to building and maintaining successful law firms.

As we assess and recommend ways in which large firms can be more attentive to the well-being of its attorneys, it is important to appreciate the many positive and rewarding aspects of working in this setting. Large firms can provide lawyers with interesting and challenging work in a wide variety of practice specialties. Younger attorneys often have the opportunity to learn and be trained by some of the top professionals in the field. Further, the ready availability of support staff and technology tools, if managed properly, can make it easier and less stressful for attorneys to accomplish their work.

A. Major Sources of Stress

The Subcommittee identified and discussed several major sources of stress that lawyers face in large firms. While some of these stressors are not unique to large law firms, they appear to be exacerbated in the large law firm setting. They include the following:

1. **Volume of work:** The pure volume of work expected from lawyers and the pressure to produce it can be overwhelming. The pressure to bill hours is further exacerbated by the significant financial incentives to do so and penalties for failing to do so, particularly at the associate level. Lawyers at all levels feel pressure to avoid taking full vacations or otherwise establishing time blocks when they are not available to work so that they do not fall behind on their office responsibilities or billable hour goals.

2. **Lack of boundaries:** Lawyers often feel that there is no line between being "on" and "off" duty and that they are expected to be available to respond to firm and client demands at all hours of the day and night. As a result, there is no true "down time" for lawyers when they can recharge and be fully present with other aspects of their lives. There is a sense that being available 24/7 is a "badge of honor" in a large firm and a necessary "attribute" for long-term advancement.

3. Isolation: Many lawyers in large firms feel isolated and disconnected from their colleagues and the overall mission of the organization. There is a sense that they function in a silo and come to work to produce revenue and little else. As a result, lawyers are not necessarily expected to care much about or be rewarded for supporting other goals or values of the overall enterprise, including collaboration with their peers and mentoring younger professionals:

4. Stigma: There is a significant stigma in large law firms associated with seeking help for all types of well-being issues which is different in nature from many other employment situations. Acknowledging the need to seek help in a large firm is seen as in conflict with a predominant culture where working hard, presenting as strong and confident, solving client problems and being constantly available are important virtues. Also, coming forward and seeking help is potentially complicated by the possibility of disciplinary proceedings or other intervention from the bar. Further, lawyers often do not know what resources exist or how to access those resources to address mental health issues in a safe and confidential way

B. Action Items

The Subcommittee considered many general and specific ways in which to address the major sources of stress in large law firms and to make assistance for well-being issues more available. These strategies and action items are listed below in rough order of priority.

1. General Well-Being Action Items.

a. Billable Hours: The Subcommittee supports holistic evaluations of lawyers where the amount of hours billed are simply one factor and not the most important factor in evaluating lawyer performance and in determining compensation. The Subcommittee recommends that if a firm has a minimum threshold expectation for billable hours and bonus availability, that standard should be set at no higher than 1,800 billable hours annually. In addition, any formulaic or tiering approach to the specific amount of bonus should be decoupled from the number of billable hours worked. Firms should also seek to increase the use of alternative billing arrangements to help separate the measure of productivity from the raw number of hours worked.

b. Exercise and Relaxation: Firms should encourage attorneys to stay physically and mentally fit and support efforts to do so. Firms should sponsor or subsidize yoga, meditation and gym memberships and hold on a regular basis in-house speakers, seminars and training programs on coping with stress and addressing well-being issues. Enhancing the physical, mental and emotional well-being of lawyers should be seen as an important initiative for large law firms.

c. Vacations. Lawyers should be encouraged to take their full allotment of vacation time as an essential component of their job responsibilities. Lawyers should be discouraged from remaining "on the grid" while on vacation. Lawyers should be encouraged to cover for others who are away so that any disruption of service to clients is

minimal. Vacation time should be tracked and inquiry made by attorney supervisors or the human resources department if attorneys are failing to take most of their allotted time to make sure that the failure to take vacation is not an early warning sign of burn-out or other mental health issues.

d. Parental Leave/ Flexible Work Policies: Firms should work to ensure that their attorneys take advantage of parental leave policies and that doing so does not negatively impact professional advancement at the firm. Firms should also recalibrate their policies to account for the time it takes for parents of young children to return to a full workload after returning from parental leave. Firms should allow attorneys to work remotely when necessary and should consider allowing attorneys to do so regularly, particularly when attorneys need to do so to meet childcare needs.

e. Part-time Work Policies: Firms should develop policies to permit and encourage longer-term work arrangements whereby lawyers are permitted to work less than full-time on a regular basis. Firms should embrace the concept that for some attorneys, over the arc of a career, there may be periods of time (or even permanently) where a 1,800 (or more) billable hour pace is not possible, yet they are still able to make valuable contributions to the firm during those intervals. Given the requirements of certain practice areas and corresponding matter and client demands in large firms, the participation of any attorney in such a program will need to be determined on a case-by-case basis with consideration of appropriate levels of compensation and advancement in the firm.

f. Discussion Groups: Firms should organize small peer cohort groups within the organization to provide confidential and safe forums to discuss well-being issues.

g. Establish strong mentoring programs: Firms should commit to strong mentoring programs. Pairing more junior attorneys with seasoned veterans can serve to combat the sense of isolation and disconnection in large firms. It should be made clear that the mentoring relationship is not only an outlet for training and professional guidance, but also as a sounding board and support for well-being issues.

h. Sabbaticals: Lawyers of certain tenure should be afforded the opportunity to take an extended period away from the firm (say, 3-6 months) to relax, recharge and pursue other interests (with pay). The goal of these sabbaticals is to provide a structure whereby lawyers may rejuvenate themselves from the grind of practice with the understanding that such conduct is expected and encouraged and that their client and other professional responsibilities will be covered by others in the firm in their absence.

i. Clearinghouse for Best Practices: Firms should develop an organized network among themselves to connect and share with each other best practices for attorney well-being including programs and initiatives which have proven to be successful at their firms. Attorney well-being is a profession-wide challenge. Advances made by firms on these issues should be readily shared with others.

j. Well-being support for non-attorney personnel: While beyond the scope of this initiative which focuses on attorneys, the overall health of large law firms depends upon the well-being of all personnel. In most large firms, individuals who are not attorneys constitute a majority of the firm's employees. While the sources of stress for non-attorneys can be different in large firms, many of them are the same. Effort should be made to include all firm personnel in well-being programs and initiatives.

k. Take the Pledge: In 2018, following the release of the ABA Study on Well-Being, the ABA announced its Well-Being Pledge for Legal Employers. The Pledge is a seven-point framework outlining general steps firms can take to improve well-being. The Pledge may be found at:

https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_working_group_pledge_and_campaign.PDF.

All large firms, not already signatories, should sign the pledge and publicize its adoption, internally and externally, as a commitment from the firm to these important goals.

2. Accessing Mental Health Assistance

a. Lawyers Concerned for Lawyers: The Subcommittee has learned much about a primary local resource available to address lawyer mental health issues, Lawyers Concerned for Lawyers (the Executive Director of LCL served on the Subcommittee). Unfortunately, LCL receives very few referrals from large firms as most of its clientele comes from solo and small firms. Large firm management and human resource departments need to be better educated on the services provided by LCL and how to make referrals. One approach to consider would be the formation of a special committee of large law firm representatives and LCL personnel to develop and implement an outreach/marketing strategy targeted at lawyers in the large firms.

b. On-Site Counseling: The large firms should consider offering on-site professional counselling services within secure spaces in their firms. Large firms may want to consider pooling resources with other firms so that a counsellor is available at certain times each week/month with the mental health professional(s) rotating among the firms. Strategies should be developed to enable lawyers to seek such assistance confidentially on a "walk in" or appointment basis.

c. Training: Firms should invest in professional mental health training for human resources and other management personnel, including lawyers who are functioning in a supervisory capacity over other lawyers. The purpose of these trainings is to enable law firm personnel to more effectively identify and respond to warning signs of mental health issues in their colleagues.

TO: Massachusetts Supreme Judicial Court Committee on Lawyer Well-being

FROM: Subcommittee on Law Student Well-being
Maris Abbene, Associate Dean of Students, Boston College Law School
Julie Cahill, Director of Student Engagement & Professional Development,
UMass School of Law
Laura Ferrari, Esq., Dean of Students, Suffolk University Law School
Michelle Harper, Assistant Dean for Academic and Student Affairs,
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Geraldine Muir, Esq., Associate Dean of Student Affairs, Boston University
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Marcia Sells, Esq., Dean of Students, Harvard Law School

SUBJECT: Recommendations for Enhancing Law Student Well-Being from the
Chief Student Affairs Officers of the Commonwealth's Law Schools

DATE: June 21, 2019

Process Overview

The Massachusetts Supreme Judicial Court Subcommittee on Law Student Well-being ("Subcommittee") was charged with a review of law student well-being in the Commonwealth, and the production of recommendations on how the Massachusetts legal community can, and should, address the serious concerns documented by the National Task Force on Lawyer Well-Being,¹ and the 2014 Survey of Law Student Well-Being.^{2 3} All nine Massachusetts-based law schools were represented on the Subcommittee by their chief student affairs administrators. These institutional members were regularly joined by Marilyn Wellington, Executive Director, Massachusetts Board of Bar Examiners; Anna Levine, Executive Director, MA Lawyers Concerned for Lawyers; Barbara Bowe, LICSW, MA Lawyers Concerned for Lawyers; Maureen McGee, Esq., of the Supreme Judicial Court; with a plan for consultation by Andrew Perlman, Dean and Professor of Law at Suffolk University and Jaclyn Tayabji, Boston University Student and recovery advocate.⁴ The Subcommittee's membership is provided in Appendix A.

¹ National Task Force on Lawyer Well-Being, *"The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, Report of the National Task Force on Lawyer Well-Being."* Available at <http://lawyerwellbeing.net/> (last visited February 5, 2019).

² Jerome, M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., *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*, 66 J. Legal Educ., Autumn 2016, at 1, 116-56.

³ Statement of charge modified from "SJC Steering Committee on Lawyer Well-Being: Mission Statement." (2018).

⁴ The creation of this Subcommittee Report is based on the contributions of the committee members only. Each institution will be surveyed as to their plan for implementation of the report's recommendations.

To develop the recommendations discussed in this report, the Subcommittee first distributed a survey to a subset of its constituents for direct feedback, and then met in November 2018 to discuss mental health and wellness trends found on their campuses. The responses received from the survey and summary of the Subcommittee's initial meeting are provided in Appendices B and C, respectively. The Subcommittee then sent several representatives to the SJC Steering Committee's Training Meeting in December 2018, where discussions of needs and options continued. In February 2019, the Subcommittee reviewed and commented on a draft report, and then again in May comments were collected on the amended draft through an online shared document.

Major Issues Affecting Law Student Well-Being

Through our meetings, a review of the survey, and our own professional experiences, the Subcommittee identified five major themes related to Law Student Well-Being. The listing of themes is alphabetical, and not meant to prioritize one need or recommendation over another, as depending on the person(s) involved, different needs and recommendations would be prioritized. The Subcommittee acknowledges that there are law student stressors not in the five themes.

Academic Preparation and Program Administration

Students entering law schools have varying levels of preparation for self-directed study, high-level critical thinking and analysis. This discrepancy in preparation, coupled with the common practice of grading 1L classes on a section-based curve, such that students are graded on criteria beyond their own control, heightens students' experience of anxiety, identity fraud, and their belief that they are on an uneven playing field when addressing academics. Also, some students coming into law school who do not have experience, nor access to mentors who can familiarize them, with the expectations for law school prior to enrollment, such as first-generation students, perceive themselves as falling behind in the first term, which limits options for their future. The lack of access to mentors, and information that would level the academic field, frustrates personal empowerment, building control or self-regulation related to the work.

Bias, Diversity, Inclusion and Equity

Through the Subcommittee survey, the 2014 Study on law students well-being, and current reports from The Steve Fund⁵- an organization dedicated to the mental health and emotional well-being of students of color - law students of color were found to struggle with repeated microaggressions, teaching bias towards interpreting law as it has historically advantaged certain populations, and a lack of cultural competency among faculty and staff. These experiences, along with personal and cultural experiences beyond their law schools, create a substantive burden on these students and tax their mental well-being in a manner unique to their white peers. In addition to racial bias, concerns were expressed related to the legal community having a misogynistic bias.

Disability Accommodations

⁵ Available at <https://www.stevefund.org/> (last accessed February 5, 2019).

As new technologies are developed and our understanding of student learning improves, more students with disabilities are coming to law school having been successful academically in their undergraduate programs. Challenges arise for those who previously attained accommodations that cannot be applied to the law school curriculum. For example, some undergraduate programs provide for triple-time in the administration of exams, the distribution of instructor notes, and/or the elimination of oral reports (public speaking), for students entering law school. In a law program, such accommodations would fundamentally affect the program's learning outcomes. The availability and process for the evaluation and administration of disability accommodations must be clear to manage expectations and empower students' choices.

Finances

Similar to academic preparation, students come to law school with widely different financial resources, and knowledge, available to them. All schools provide financial aid advising and a diverse array of scholarship opportunities; yet, for many students, unexpected costs create stress, or even food instability or homelessness. Also, implementation of federal programs, such as public loan forgiveness, have proven unreliable, adding to uncertainty for students as they prepare for their careers in law.

Mental Health Generally: Anxiety, Depression, Self-Medication through Drug Use

Throughout this process, the Subcommittee's institutional members have expressed concern about the growing mental health crisis among our communities. Our observations are affirmed through research, with one institution's internal survey finding that 60% of its law students describe themselves as lonely, and another institution's counseling program reporting that 40% of their clients are law students. We find the statistical findings of the national study of law students reflected in our own populations. That study reported findings that included: 25% of law students were at risk for alcoholism; 17% experienced moderate to severe depression; 14% experienced anxiety that inhibited their academic work; and 6% had held suicidal ideations.⁶ The committee's outreach and work found the sources of this increased anxiety, depression, and lowered resilience came from multiple sources, and thus require multiple actions for remediation.

Strategies and/or Action Items to Address the Five Themes: What is being Done, and What Should be Prioritized, based on the Recommendation of the Subcommittee

Each of the nine law schools in Massachusetts have committed substantial resources to addressing the five major themes listed above. Below are examples of current institutional efforts to address these needs, as well as recommendations for additional actions that can be completed by the institutions and/or the broader legal community.

Academic Preparation and Program Administration

Current Institutional Efforts to Address this Need

- Institutions have hired, or are hiring, professional staff and faculty to provide academic coaching, study skills training, and opportunities for formative

⁶ Organ, Jaffe & Bender, available at <https://jle.aals.org/home/vol66/iss1/13/> (last accessed Feb. 5, 2019).

assessments, focusing primarily on 1L skills and 3L/graduate bar exam preparation. The range of services include individual topic-based programs, to academic enrichment workshop series, to credited coursework.

- Institutions are providing academic advising, often with faculty and alumni partners who are trained to know institutional and community resources.

Recommendations from the Subcommittee:

- Each institution should consider adopting, or otherwise review its administration of, orientation, academic support and student affairs programming to ensure the needs of students with different types of preparation for law school can be brought to a more equitable level of knowledge. Schools should identify and publish the skills and subject matter topics with which students should be familiar before starting law school, and provide for training prior to matriculation. Institutions should share their recommendations through annual reporting to the Subcommittee or a designee of the Supreme Judicial Court.
- Each institution should consider adopting and publishing technical standards, or "Essential Performance Standards," that are published and available to applicants outlining the academic and performance requirements needed for competent participation in their academic programs. The publication of technical standards provides greater transparency on expectations related to academic and professional conduct, and should be transparent at the application stage.
- Institutional representatives should reach out to LSAC or pre-law advising groups to facilitate greater pre-law advising on personal wellness, and self-care as part of pre-law advising. The institutions may propose a state-wide conference for pre-law students and/or advisors to assess their understanding of resources and techniques related to law students' self-direction, personal wellness, and academic preparation.
- Institutional representatives expressed support for the American Bar Association's Section of Legal Education and Admissions to the Bar's efforts to increase the use of formative assessments in legal education, and recommend a minimum standard for formative assessments be requested of the accreditor.

Bias, Diversity, Inclusion and Equity

Current Institutional Efforts to Address this Need

- Institutions are providing a wide-variety of programs, from orientation through graduation, addressing self-identity, cultural competency, diversity and inclusion discussions, critical race theory as applied to law, and related topics
- Institutions and student groups are providing advising and peer support networks through administrative and group networks.
- Institutions are reviewing hiring and admission policies and procedures to provide the most diverse learning communities possible.

Recommendations from the Subcommittee:

- The Supreme Judicial Court and state regulators are asked to consider implementing a demographic census of currently admitted, or if not feasible, an annual information collection of newly admitted, members of the Commonwealth's legal bar. Currently, there is no demographic information collected related to the

membership of the Massachusetts legal bar, so there is no way to address student concerns about a lack of diversity in the Commonwealth's legal community, or to create programs to better address the needs related to equitable participation in the legal community without this foundational information.

- The Supreme Judicial Court and state regulators are asked to implement a climate survey to the Commonwealth's legal bar to determine the areas of strength, and areas for improvement as related to equitable experiences within the practice of law. Campuses have embraced the use of surveys on a regular basis as a way to assess community members' experience and the impacts of new initiatives as well as on-going resources. The implementation of a climate survey could provide foundational information related to the experience of attorneys from all backgrounds within the Commonwealth, from which the community could determine needs, and allocate resources.
- The Supreme Judicial Court and state regulators are asked to implement a mandatory continuing education requirement related to the reduction of bias in the administration of our legal system.

Disability Accommodations

Current Institutional Efforts to Address this Need

- All institutions publish policies and procedures for the administration of disability accommodations. Some utilize centralized university resources, others have training and autonomy within the law school.
- All institutions partner with the Massachusetts Board of Bar Examiners to provide information on the disability accommodation process for the bar exam.

Recommendations from the Subcommittee:

- Institutions should consider, and where appropriate, adopt technical standards/essential performance standards: technical standards provide notice to applicants and students of the basic functions they must be able to meet in order to successfully complete the program. Examples can include, speaking in class, meeting deadlines, and/or independently learning new concepts. Technical standards provide notice of the academic program's requirements, so students can prepare for the rigors of law school with greater transparency.
 - If not through technical standards, providing notice of performance expectations, including self-care, is recommended.
- Institutions must seek out training on disability accommodations, especially those related to mental health, to understand how the accommodation can best be provided in the academic environment to facilitate the student's success in the professional environment.
- Institutions must review communications related to accommodations to minimize any perception of stigma for utilizing an accommodation.
- Institutions must review policies and procedures related to disability accommodations to ensure timely and consistent implementation of the process while remaining up-to-date with changing technologies and new accommodation options.

Finances

Current Institutional Efforts to Address this Need

- All institutions provide financial aid advising, and resources related to scholarship and general financial planning.
- Some institutions have targeted programs, such as access to a food bank, programs for faculty or alumni to help students buy interview suits, reduced-cost tickets for their community programs, lower textbook/casebook rental/purchase options, or lower cost housing options.

Recommendations from the Subcommittee:

- Institutions should consider developing model budgets for newly admitted students, including not only textbook costs, but bar preparation, attendance at community building events, interviewing, and other law-specific costs.
- Institutional representatives, with the support of the Supreme Judicial Court and Massachusetts Legal Bar, should explore the development of a Massachusetts Loan Repayment Program (MLRP) for Public Interest Legal Professionals. This type of incentive program, successful in MA for Health Professionals, could facilitate not only greater access to justice for Massachusetts citizens, but career paths that align to student interests that would otherwise be derailed by student loan repayment obligations.

Mental Health Generally: Anxiety, Depression, Self-Medication through Drug Use

Current Institutional Efforts to Address this Need

- All institutions engage in community building programs, offer wellness training and support, information sessions, social programming, peer networks, professional development trainings, and some are developing classes related to mediation, wellness and self-care.
- All institutions provide access to on-campus and/or community counseling resources. At least one institution has hired a social worker, in collaboration with the health services office, to work primarily with the law students.
- All institutions offer advising programs, involving students, faculty and/or alumni.
- Some institutions are developing social programming that does not include alcohol, or the presence of alcohol is secondary to the purpose of the events.

Recommendations from the Subcommittee:

- Institutions should develop systems for regular reporting by faculty and staff of concerns related to students. These systems should include a review of attendance policies, training for all faculty and staff, and possibly students, on signs of depression, anxiety and other mental health challenges, and training on the procedures for sharing information so that individuals can be offered resources to address their health challenges in a timely manner.
- Institutions should consider developing academic content addressing self-care and personal wellness as related to an attorney's obligation to provide competent representation. Faculty teaching Professional Responsibility would be strongly

encouraged to include these module(s) into their course instruction. Rule 1.1 of Professional Conduct⁷ states:

Rule 1.1. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Institutions, such as the University of Pennsylvania, are incorporating such modules into their professional responsibility courses. Should an institution's faculty not adopt a module into the professional responsibility course, the institution would then be encouraged to determine if another course related to self-care, or a co-curricular program, best addresses the need for their students.

- Institutions should adopt technical/essential performance standards, as noted above, to provide notice for students of standards required to be met for the program.
- Institutions should make express efforts to reduce the amount or frequency of alcohol when planning events.
- Institutions should publish campus and community mental health resources annually.
 - Recommended that the resources include in-person, online and text-based options.
- The Subcommittee requests additional training and guidance from state bar examiners regarding character and fitness disclosures, especially as related to mental health treatment, and the role institutions hold in the character and fitness assessment process.
 - Relatedly, the Subcommittee fully supports the efforts of the Conference of Chief Justices to address the disclosure of mental health treatment and diagnosis in state bar admission forms, noting that such disclosure requirements deter law students from seeking treatment for mental health needs.
- Institutions should promote more direct access and interventions between law students and Lawyers Concerned for Lawyers to facilitate use of this common resource throughout their careers.
 - The Supreme Judicial Court's Steering Committee is requested to advocate for more funding for counselors at Lawyers Concerned for Lawyers.
- Institutions, with the support of the Supreme Judicial Court, should implement a survey related to law student well-being, similar to the tool utilized in 2014 by Jerome, M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., from which they published, *"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."*

⁷ Mass. Rules of Professional Conduct, Rule 1.1: Competence, available at <https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-11-competence> (last accessed Feb. 6, 2019)

Recommended Priorities

When developing the above recommendations, the Subcommittee members discussed how institutional mission and priorities would make some recommendations more applicable to some institutions, but not necessarily all of the law schools in Massachusetts. Going forward, the members will bring these recommendations to their respective communities, for broader discussion and, where applicable, implementation. As for recommended priorities for the SJC Committee, the Subcommittee for Law Students requests support for the proposed Access to Justice/Public Service Loan Repayment program; additional guidance on character & fitness standards from state regulators; the collection and dissemination of information on the demographics of Massachusetts's bar membership; and, training on well-being and diversity topics.

After the Supreme Judicial Court Steering Committee's spring discussions of each subcommittee's recommendations are finalized, the Subcommittee for Law Student Well-Being will reconvene to finalize our plans for implementing the recommendations that lie within our areas of expertise and resources. It is our belief that, with the support and participation of the SJC Committee, the Subcommittee members can move forward with seeking institutional support of the subcommittee's recommendations, as well as the SJC Committee's final priorities. At the present time, and until institutional buy-in has been developed, the recommendations are limited to only the individual members of the Subcommittee. As the recommendations for the SJC Steering Committee are finalized, the members of the Subcommittee will consider how the recommendations may best be communicated to, and implemented at, their respective institutions.

Special Recognition for Massachusetts Lawyers Concerned for Lawyers

Throughout the work of the Subcommittee, the Massachusetts Lawyers Concerned for Lawyers (LCL) leadership, and Marilyn Wellington, Executive Director of the Massachusetts Board of Bar Examiners have offered invaluable guidance and support. While every member of the Subcommittee contributed substantially, as non-institutional members their expertise, prerogatives, and experience enriched the discussion in a unique manner. Also, throughout the development of the recommendations, various institutional members noted the great contribution provided to the institutions by both the MA Board of Bar Examiners and LCL, in the administration of our mental health and bar preparation programs. We are not aware of any other state that has such a seamless involvement between its institutions and its Board of Bar Examiners or LCL; and we believe the law students of Massachusetts are all the better for this collaboration.

The Subcommittee recognizes that it does not have the means to develop a proposal for an increase of financial support for LCL's counseling and programming services; yet, the Subcommittee fully supports an increase of financial allocation to LCL to grow its staff and widen its reach to have even more of a presence on campuses throughout the Commonwealth.⁸ Also, the Subcommittee would like to commend the MA Board of Bar

⁸ MA Lawyers Concerned for Lawyers is currently going through its Strategic Planning Process. The recommendation of increased support should support LCL's determined mission and goals, and in no way interfere or subjugate the work of this valued institutional partner.

Examiners, and Supreme Judicial Court Chief Justice Gants, for their efforts to engage a national discussion of the connection of bar admissions to law students' hesitation to seek mental health care at the 2019 Conference of Chief Justices (CCJ). Chief Justice Gants introduced Resolution V - *In Regard to the Determination of Fitness to Practice Law*, a resolution recommending that state bar admission authorities focus all inquiries of applicants on conduct, and eliminate questions from the admissions process regarding mental health history, diagnoses, or treatment. (Appendix E). As bar admission authorities are overseen by the highest level state court in every jurisdiction, this action by the CCJ should trigger significant review and actions across the nation. The Subcommittee is grateful to Chief Justice Gants, for introducing the resolution to the Conference, and for his advocacy on all matters related to lawyer well-being in the Commonwealth of Massachusetts.

The Subcommittee wishes to thank the SJC Steering Committee for its guidance throughout this process, noting especially the leadership of the Honorable Justice Botsford and the stewardship of Maureen McGee.

SJC Steering Committee on Lawyer Well-Being

LEGAL AID SUBCOMMITTEE REPORT

MAJOR ISSUES AFFECTING THE WELL-BEING OF LAWYERS IN THEIR AREA:

The legal aid subcommittee identified several issues it felt affected attorney well-being and were unique to attorneys in a legal aid setting.

The expectation of achieving work life balance and struggling to actually do it was a primary issue of focus. Most, if not all, legal aid attorneys choose to engage in this type of work understanding that high salaries and financial wealth would most likely not result from the time and effort put into the practice of law in a legal aid office. In exchange, legal aid attorneys anticipate receiving other benefits outside of financial success such as more manageable work hours, above average health and dental coverage, healthy contributions to retirement accounts and case work flexibility. Because of the benefits, legal aid attorneys are viewed as the happy lawyers. In reality, however, the work is extremely challenging and demanding and achieving the work-life balance that was expected can be difficult and lead to disappointment and burnout. In legal services, there needs to be more of a focus on skill-building in order to better prepare newer attorneys for the stresses and challenges that come with legal services work.

The subcommittee also identified the effects that vicarious trauma often has on legal services attorneys. Most if not all legal aid clients live in poverty and often need help with maintaining housing, preventing the loss of benefits, or obtaining protection from an abusive spouse or partner. The stakes are always high as the client's ability to live and function are often on the line. The stress and pressure that legal services clients feel on a daily basis is often projected onto their attorneys. As their clients' face numerous challenges, legal or otherwise, legal service attorneys constantly find themselves in crisis management mode trying to play the dual role of attorney and social worker. The average week for a legal services attorney is crammed with crisis driven days. Exacerbating the problem is that the Court experience itself can add to the stress of the client and of the attorney. In court, legal aid attorneys often find themselves trying to wear different hats as a litigator and mental health counselor, especially when attempting to explain to a client the sometimes dismissive or hostile demeanor and actions of judges and court personnel in a way that doesn't increase the clients' misgivings and lack of ease in court. When judges through their statements and decisions appear not to care, for instance, about experiences of survivors of domestic violence, the relationship between the client and their child will be impacted negatively. The attorney may also be impacted and turn to unhealthy ways to manage the disappointment through drug or alcohol abuse. They may also experience increased depression and burnout if these types of experiences become the norm.

Financial stress can also contribute to poor self-care. Legal services advocates earn much less than attorneys who work in a private law firm setting regardless of years of experience. However, the decision to practice in legal services was intentional and made with the expectation that the work would be rewarding and allow the attorney to advancing certain social ideals and causes through their work. The rewarding nature of engaging in legal services work, nevertheless, does not always overcome the insecurities that arise when the lawyer struggles to pay back student loans, acquire property, pay weekly and monthly expenses, or afford newer clothes. There is a stigma associated with lawyers who do not track and charge clients for billable hours. Legal Services Attorneys “who do not hunt what they kill” are not actual lawyers. To some people, including clients, providing services free of charge cheapens the value of the attorney and his or her ability to practice law. This stigma can sometimes carry over to the court room where the legal aid attorney is viewed as and treated as less than equal to private attorneys.

The subcommittee also observed that legal services attorneys often identify with and feel connected to the communities they serve and worry whether or not they are truly being effective agents of change and progress. When the attorney comes face to face with some of the intractable problems that often arise in poverty cases it can have a negative impact. Legal services attorneys entered into their work intending to meet the needs of the client and community, while achieving work-life balance. A lack of success with either can lead to a generalized exhaustion and feeling that he or she is not capable of getting the job done.

Another issue discussed was the lack of promotions and pay increase in legal aid. Normally, within a legal services office structure, there is no real opportunity for advancement. Even though advocates are putting in more hours, and in some cases as many hours as private attorneys, than the minimum required there’s not much opportunity for growth into higher paying, more responsible positions in the legal services setting. Management and supervisors tend to stay in their positions for long periods of time and management is loath to have a “top heavy” office structure. This can contribute to early burnout and a high turnover of talent. For those who do stay for the long haul as “lifer attorneys” within legal services, there can be an increase in apathy, frustration, and impatience when dealing with clients.

Lastly, we recognized that there exists a general lack of awareness of the signs of depression, and PTSD, in legal services attorneys. Whether it is an intentional avoidance or the product of poor training, failure to recognize these signs make it difficult to offer meaningful and timely help. Adding to the problem is the fear of being disciplined or shamed for self-reporting and/or seeking help voluntarily. Those who experience symptoms of depression or PTSD and/or abuse substances in order to put their mind at ease, may refrain from taking any action in order to avoid the stigmas associated with help-seeking behavior. The isolation that comes with feeling unable to ask for help or feeling like the only one experiencing difficulties in

the office will lead to a continued lack of self-care and engaging in further destructive behaviors.

STRATEGIES AND/OR ACTION ITEMS TO ADDRESS THOSE ISSUES; WHAT IS BEING DONE, OR COULD BE DONE TO ADDRESS THOSE ISSUES:

Mentoring/ Supervision: Each legal aid office should implement a mandatory mentoring program matching up new employees with more seasoned employees. Preferably the mentor and mentee will be engaged in the same specialty practice (though it is not required). It is expected that the mentor shall support the mentee attorney in developing the foundational knowledge and skills necessary to achieve success within the practice of law while balancing professional and personal well-being. Mentors will meet with mentees at least one time per month for a period not to exceed one year. After one year, it is encouraged that the mentorship continues in a more informal manner. Hopefully, there will be an organic continuation of the relationship that will last for many years afterwards. If a legal aid office is subject to a bargaining unit agreement, a mentorship program should be negotiated into whatever the contract that exists between the employer and employees and said contract should create a mentoring position that comes with an increase in pay. The mentorship program should include training and guidance for the mentors prior to taking on a mentee. Training shall include methods for detecting signs of vicarious trauma, including substance abuse, and depressive and injurious behaviors in staff that are being mentored and supervised. Mentors and supervisors will learn how to have initial conversation about concerns that arise and how to make referrals to therapists and/or organizations that can further intervene to assist staff. It will be critical to address and create a structure that informs both mentors and mentees about the level of confidentiality expected and how to manage any conflicts that arise. Ideally, the mentor is not a case supervisor and would not be obligated to report to management about sensitive issues that affect case work. It is important for the mentor to maintain the mentees trust and to work closely with the mentee to resolve whatever issues may arise.

Orientation/ continuing education: Massachusetts Legal Assistance Corporation (MLAC) should develop or require legal aid offices to develop standard orientation procedures for new staff that address topics such as achieving well-being, the challenges of practicing poverty law, and maintaining professionalism inside and outside of the court room. MLAC should also consider employing a consultant to travel to legal aid offices across the state who can facilitate mandatory, yearly meetings and continue discussing the major issues affecting attorney well-being and professionalism within each office and throughout the legal services community as a whole. Employers should also ensure that lawyers have access to programs such as Lawyers Concerned for Lawyers and should foster participation in continued legal education courses. Employers should ensure that orientation, continuing education, and wellness activities are treated as part of an attorney's workload and can be accounted for as work time.

Work from home options/ extended leave options: Employers should consider allowing attorneys, after so many years of service (three to five), to utilize work from home options, particularly, on non-court days. A more radical suggestion is to allow attorneys with eight or more years of service the opportunity to take an extended period of unpaid leave (three to six months). This has happened in some legal aid offices but is a rare occurrence. Such flexibility may assist attorneys with managing the stress of the job especially as it pertains to dealing with the effects of vicarious trauma and high stress case handling. More out of office time can help balance professional responsibility with family/non-work related obligations. At a minimum, legal aid offices should consider developing self-care initiatives and/or task forces to ensure that staff feel supported in their efforts to manage their individual care. Time away from the office to attend regularly scheduled therapy appointments, exercise classes, or engaging in group activities should be encouraged, not discouraged.

Access to social worker: Legal aid programs should seek funding to retain part-time or full-time social workers who can consult with the attorneys and, when needed, provide direct assistance to clients. Legal Aid programs should hire and/or improve access to social workers who can help address the needs of clients that lawyers (especially new lawyers) may not be equipped to handle and social workers trained in trauma who can consult clinically with staff about the effects they experience while working with their clients. The integration of social workers into legal aid practice will help support attorneys and hopefully reduce the effects of vicarious trauma and the stress of crisis driven days, weeks, and months. However, in doing so special attention should be paid towards creating a standardized structure that takes into consideration the competing interests of social workers as mandatory reporters and attorneys as fiduciaries to their clients. Otherwise, attorneys will be unlikely to utilize this resource.

Opportunities for advancement: Legal Aid offices should make a concerted effort to develop advancement opportunities that reward attorneys for their excellent work and contributions with not only new titles and responsibilities but also with commensurate increase in pay. For example, mentors like supervisors can be used as a method of promotion. Given the reality that legal aid offices do not necessarily have the flexibility to expand and turnover can be slow, individual offices who are concerned about becoming too top heavy with supervisors and managers should strongly consider providing other benefits such as work from home or leave options which become more critical towards promoting attorney well-being.

Caseload Cap: Employers should implement a mandatory cap on the number of open cases each advocate can manage at one time. A reasonable cap may help advocates achieve more of a directed focus on their individual cases and feel less on the edge of malpractice. Capping and/or reducing the number of cases each advocate manages may also lessen the overall impact the intensity of representing low-income individuals, who face extreme and dire circumstances daily, may have on the

attorney. Any and all caps should be specific to a practice area. The number of housing cases that an attorney can responsibly handle may not necessarily be the same as the number of family law or immigration cases. If a legal aid office is subject to a bargaining unit agreement, the cap can be negotiated into the union contract.

Stronger community presence/commitment. The Mass Legal Assistance Corporation (MLAC) should take steps to create a more active and vocal voice in communities throughout the Commonwealth. Promoting the work of legal aid advocates while engaging with the communities they serve can foster good will and confidence that the attorneys are providing valuable and effective services. Organizing community listening sessions, engaging in community outreach initiatives and forums, and inviting former clients to share success stories with community partners can strengthen legal aid's connections to the community at large.

Review of disciplinary measures: Each legal aid office should review disciplinary policies to ensure that lawyers and staff who falter or struggle to perform up to expected standards are provided substantial opportunity to understand and address the causes of their missteps without being unnecessarily punished or prematurely terminated. Employers should develop and implement strategies that prioritize supporting and working with employees to manage, improve and, in some cases, recover from the stressors that interfere with their ability to perform at acceptable levels. Written warnings and forced arbitration hearings should be avoided or at least not utilized as a default response as they tend to only serve as scare tactics and feed into the stigmas that cause employees to shelter themselves and spiral in silence in the first place.

RECOMMENDED PRIORITIES. In this section, discuss recommended action steps in order of priority with respect to their importance, feasibility, and impact.

Mentoring/ Supervision: Some legal aid offices already assign mentors to incoming employees to perform informal check-ins. Creating a more formal, longer lasting, and impactful mentor-mentee relationship should not be too much of a stretch. The impact can be tremendous and lead to sustained self-care for newer attorneys so long as the mentors receive the training necessary to help them recognize early the warning signs of trouble (i.e. PTSD, depression). The mentorship will hopefully reinforce some of the skill building that would be introduced through orientation while also providing a safe space for new attorneys to recognize, accept, and fix problem areas that may arise.

Orientation/ continuing education: Legal services attorneys across the state should receive similar, if not the same, orientation training on important topics such as attorney-wellbeing and the challenges of working on legal aid cases. Skill-building

would be a critical component to the orientation which, hopefully, would set a good foundation for new attorneys to rely on throughout their careers. Getting each and every legal aid office to create a uniform orientation package could be challenging but coordination through the Massachusetts Legal Assistance Corporation (MLAC) could offer a solution. Uniformity will help create a baseline model of expectations for all attorneys who practice in legal aid. Just as important as establishing the expectation, however, will be continuing the conversation. MLAC and/or the SJC can be instrumental in developing regularly held programs and events that highlight and address the topics associated with attorney well-being and skill-building on a regular basis.

Review of disciplinary measures: The shame and fear associated with admitting one's failures caused by mental and physical difficulties can be crippling. Disciplinary measures focused primarily on punishment to deter poor behavior and performance need to be re-worked so that employees who struggle can feel certain that he or she can accept that there is a problem and take corrective measures without fearing loss of status or employment. This could be an extremely difficult task for those offices who are unionized and must address discipline through collective bargaining. However, struggling employees will be more likely to remain in the shadows and isolated if they are afraid.

Caseload Cap; Work from home options/ extended leave options; Stronger community presence/commitment; Access to social worker; Opportunities for advancement: These measures are important for promoting attorney well-being but are less of a priority to the four action steps identified above. Addressing increased case loads, flexibility with work hours, hiring social workers, and promotion opportunities are idealistic goals that if achieved would have impact. However, the impact would be minimal without first developing a foundation that creates a culture of awareness, understanding and acceptance within legal services which the first four action steps aim to accomplish.

OTHER ISSUES OF NOTE: If there are issues or questions your subcommittee discussed and would like to bring to the attention of the Steering Committee, which are not addressed in the above questions, please describe in this section.

MEMORANDUM

To: SJC Task Force on Attorney Well-Being

From: Denise I. Murphy, Chair of The Massachusetts Bar Association,
Subcommittee on Attorney Well Being

Re: Draft Report of the Massachusetts Bar Association to the SJC's Steering
Committee on Attorney Well-Being

Date: April 29, 2019

The Massachusetts Bar Association ("MBA") established a subcommittee on attorney well-being comprised of practitioners representing plaintiffs and defense bars, public and private sector practices, and private practitioners who accept court appointments ("Subcommittee"). Because the MBA's constituents are spread throughout the Commonwealth, the Subcommittee was charged with assessing the issues impacting attorney well-being in each of their respective practice areas.

The Subcommittee members employed various strategies to elicit information about forces which impact attorney well-being from their peers. Two members conducted surveys while others preferred to engage in talking groups or in-person interviews. Those who conducted the surveys of their peers did so in a manner designed to ensure confidentiality, thereby eliciting uncensored responses. Since confidentiality was a concern for the others who engaged in talking groups and in-person interviews, they assured their respondents that their identities would remain anonymous. In general, the responding attorneys were candid and forthright in their responses.

One survey, comprised of thirteen (13) specific questions on the topic of attorney well-being, sought to elicit responses from at least 50 attorneys. Thirty attorneys responded with detailed answers, the contents of which are discussed further below. The other survey was distributed to a group of two hundred attorneys to which twenty-five attorneys responded. Those responses provided an overview of the pressures which these practitioners experienced. They, too, are discussed further below.

Gathering this information was a difficult and time-consuming task for each of the Subcommittee members who also had to contend with maintaining their personal lives and respective law practices. Of note, throughout this information gathering process, two Subcommittee members confronted their own major health issues, while others had to deal with serious health conditions of close family members. These Subcommittee members each agreed that this effort is vital, despite their burdens and participated to the extent possible. To them, and to each and every Subcommittee member, the MBA extends its grateful appreciation.

Major Issues

By far, the single most common cause of stress among all the disparate areas of legal practice was technology. The fact that technology allows attorneys to always be accessible to colleagues, partners, clients, and courts creates the expectation that they will *always* be accessible. Technology impacted the ability of attorneys to unwind, relax, and focus on the nonlegal aspects of their lives. They expressed concern that, if they do not respond to partners' emails, texts or calls immediately, that they will lose their positions. They also believe that law firm culture demands that they remain accessible in order to meet billable hour requirements and to advance within the firm.

Client expectations of full-time access with no boundaries is bolstered by the competitive nature of the practice of law. Attorneys reported that they fear that clients who demand immediate responses to emails and cellphone access, regardless of the date and time, will go elsewhere if the attorneys do not respond quickly enough. Reviewing work emails, text messages, and responding to work-related phone calls at all hours interferes with family time, social interactions, and self-care. A common issue among the responding attorneys is that they feel they never truly get away from work to recharge.

Conversely, some responding attorneys reported that it was their lack of familiarity with technology which created stress and anxiety for them. These attorneys self-identified as older attorneys. They reported that they felt inadequately trained to conduct online research. They also believed that they were missing the ability to utilize social media as a marketing tool because they did not know how to use it. They reported feeling intimidated by electronic filing and electronic document production. These practitioners cited either embarrassment about having to acknowledge their lack of technological skills or lack of time to take advantage of available resources to gain the aptitude in technology as major stressors for them.

The Court System

Both plaintiff and defense attorneys identified rigid adherence to court deadlines as a significant stressor in their lives. They assert that rigid adherence to arbitrary court-imposed schedules and timelines, judges and clerks who deny requests for mutually agreed-upon extension of times, excessive delays in receiving decisions, and extended wait times in court, as their major stressors in practices which involve litigation. Some responders expressed the belief that many judges and clerks are indifferent to the demands of practicing law. They expressed concern that some judges and clerks either forget what it is like to practice law, or they had no experience as a trial lawyer and do not understand what litigation entails.

While all practice areas reported that the issue of incivility among adversaries created stress in their lives, probate and family law practitioners especially noted a significant lack of civility among that bar. They reported that attorney incivility within that system was exacerbated by judges who either lacked the resources or inclination to deal with incivility.

Financial Issues

With the exception of attorneys who practice in the public sector, billable hour requirements were identified as a major cause of stress and anxiety among attorneys. The responders reported that attempting to balance billable hour requirements with providing quality work created enormous stress. Responding attorneys identified billable hours as interfering with family time, self-care, and the opportunity to engage in outside activities, including developing practices of their own. They report that, in order to reach their expected billable hours, they resort to constant use of technology, eschew networking and marketing opportunities, and endure failed personal relationships. Reduced to its most basic form, attorneys earn their living by charging clients for their services. Law firms operate based upon the work their attorneys bill to their clients. This basic structure of the practice of law does not appear amenable to change. It can be ameliorated, however.

For smaller and solo practitioners across the Commonwealth, the financial conflicts are the same, with the added pressure of trying to collect payments from clients, especially those who receive an adverse outcome. For these practitioners, non-paying clients can literally mean the success or failure of their livelihood. Because dissatisfied clients resort to filing malpractice claims against them, especially if the attorneys initiate collection actions for unpaid fees, these practitioners wait until the expiration of the three-year statute of limitations for malpractice before they initiate collection actions. Three years without payment is an extraordinary stressor on the financial burdens of these attorneys.

Private attorneys who accept work for CPCS are typically solo or small firm practitioners. They represent clients in court systems with typical court dates that can require day long wait times for a hearing. Nevertheless, the hours for which they are compensated are capped, regardless of how many hours they are in court representing their client. Further, because payment for their services are subject to funding for CPCS, they endure protracted periods of time in which they receive *no* payment at all. Managing their law practices with such uncertain and low pay is a significant cause of stress and anxiety among these practitioners.

Secondary Trauma

The emotional distress attorneys experience by virtue of their immersion in their clients' trauma is real and often unrecognized. It impacts criminal defense attorneys, prosecutors, family and probate law attorneys, personal injury attorneys, and child and

family welfare practitioners, all of whom are exposed to the very worst of human suffering. These attorneys seek the very best outcome for their clients, oftentimes in matters in which there appears to be no such thing. These attorneys witness the worst of human suffering and yet engage in their respective professional practices with their common goal – to be zealous advocates for their clients, no matter what the circumstances. This focus comes with a price. Many of these responding attorneys described feelings of isolation and recited reliance upon alcohol and drugs to help them transition from work to their home environment.

Stigma

Not surprisingly, the attorneys who practice in areas of the law involving child and family welfare issues were more forthcoming about identifying the stresses that impact them. They were not, however, the norm. Overwhelmingly, the respondents demanded confidentiality, both in responding to the individual Subcommittee members and in the information gathering process itself. Most of the respondents did not want to be identified as a person who acknowledges that stress negatively impacts them.

There also seems to be a gender influence in a respondent's willingness to answer questions about attorney well-being. One Subcommittee member identified male members as "reticent" about their professional difficulties because they were not comfortable about discussing what they perceived as their "weaknesses." Attorneys reported that they do not want to appear "weak" or less than capable and would not discuss professional/personal obstacles for fear of being so labeled. Some female responders stated that their reluctance to discuss stressors was because they feared that it would support gender stereotypes from predominately male partners/supervisors. Other attorneys reported that they felt that their clients would view them with disfavor, especially in litigation where their clients expected them to be "warrior-like" and not subject to human frailties. They expressed concern that their adversaries would exploit their weaknesses and use them to their advantage in disputes.

Competing Demands

Billable hour requirements conflict with the expectation that associates or new attorneys must develop a practice. The pressure to achieve or exceed billable hours increased the longer the attorney practiced law. Responding attorneys reported that the requirement to participate in networking events interfered with their ability to meet their billable hour goals. In turn, pressures to develop a practice and meet billable hours adversely impacted most attorneys' ability to enjoy time with family or experience self-care. They reported that this struggle for balance is an enormous stressor for practicing attorneys.

Strategies to Address Issues

- Normalize the discussion: Implement attorney well-being discussions into every educational opportunity, conference, and law related meeting.
- Educate and invite affinity bar associations to do the same. Partner with them in their efforts to eliminate the stigma of the topic.
- Rebrand Lawyers Concern for Lawyers (“LCL”). Most respondents did not realize that LCL offers so much more than substance abuse counseling. When asked about resources which they utilized to gain support, *only one* practitioner identified LCL.
- Encourage firms and agencies to integrate wellness training into their work day. Yoga, meditation, and exercise breaks could be implemented into the daily work routine.
- Create a diverse group of leaders in the legal community to evaluate and oversee the success of the focus of this task force.
- Meet with and encourage firm managers, employee administrators, and department supervisors and obtain their buy-in to recognize and focus on the need to address attorney well-being.
- Suggest that these legal managers encourage vacations, set limits on client access, and allow attorneys to establish boundaries to allow them to devote time to self-care and family life, without fear of retribution.
- Introduce attorney wellness into every aspect of the MBA’s established mentoring projects and collaborate with affinity bars to encourage them to do the same.

The MBA is willing to participate in all of the above strategies and is, in fact, already partnering with LCL to address the focus to our membership.

Priorities

Destigmatizing the topic of attorney well-being is the first step to effectively address this problem. This must be a “top down” approach, coming from figures of authority, so that those who view themselves in a subordinate role will engage in discussions about their stressors and attorney well-being. Gaining the support from management is problematic, however, and in some cases unrealistic. It requires a cultural change that can only happen over time. Bar associations should initiate well-being into seminars, podcasts and legal conferences. This is perhaps the easiest way to reach attorneys throughout the

Commonwealth. Leaders should develop consistent talking points for those events and encourage bar leaders to share them. The hope is that the more ingrained the discussions about attorney well-being are in our everyday discourse, the less stigma the subject will carry.

The bar needs to engage in discussions with the trial courts to sensitize judges and court staff about these results. The courts should consider review of rigid time standards and the pressure placed on judges to move cases with dispatch. The trial courts should encourage judges and clerks and the judicial staff to be less rigid and to demonstrate to the attorneys that they understand the competing influences involved in the practice of law. Discussions between the Bench and Bar about this topic would go a long way toward alleviating stresses on practitioners.

The MBA remains committed to engaging in the discussions about attorney well-being and developing and creating avenues by which attorney well-being can be a priority for all petitioners.

Memo

To: Supreme Judicial Court Steering Committee on Lawyer Well-being
From: Public Lawyer Subcommittee
cc:
Date: April 22, 2019
Re: Report of proceedings of the subcommittee

This memorandum summarizes the conversations among the members of the Public Lawyer Subcommittee. The subcommittee convened several times as a group. In those conversations, we explored issues related to the well-being of public lawyers, learned what is currently being done to support well-being, and proposed additional steps to advance that effort. There was a unanimous consensus that attorneys in the public sector are drawn to this work by a sense of mission and a commitment to applying our skills and knowledge to public service. Although we are busy and often work under crushing caseloads and demanding timelines, we are driven not by the need to generate billable hours, but instead, by the missions of the agencies we represent. We draw great satisfaction in the belief that our work matters at levels beyond an individual client's interest and desires and that we are providing benefit and service to our communities and the Commonwealth at large. We enjoy the opportunity to interact with colleagues and other government officials at all levels of legal advocacy, public policy, and public education. We agreed that the personal reward of public service is a powerful counterbalance to the challenges and stressors we have identified in this report.

The subcommittee's discussions were both lively and productive. We identified a number of issues affecting the well-being of public lawyers, and in this memorandum, we have listed them according both to the frequency with which subcommittee members identified them and our consensus about the scope and significance of their effect on lawyer well-being. Before discussing the issues of concern individually, our memorandum

sets out three global recommendations. These are recommendations that could be implemented relatively easily and that, if implemented, could address several of our key concerns simultaneously. We refer to these as global recommendations as they are meant to address several systemic concerns at once.

Global Recommendations

1. Public agencies should assign senior-level staff members to address issues affecting lawyer well-being. These should include both a wellness officer *not associated with the administrative office* and a chief diversity and inclusion officer. Such staff members could:
 - A. Implement comprehensive stress management programs and systems, as well as policies to reduce the stigma associated with seeking help;
 - B. Provide training to managers and staff on stress reduction;
 - C. Reduce alienation by promoting recruitment and retention of members of under-represented groups in the legal profession; and
 - D. Implement anti-bias programs and training.
2. Public agencies should promote management training for lawyers promoted to supervisory positions. Such training could:
 - A. Assist supervisors in acknowledging and recognizing stress in themselves and their subordinates and teach them skills to assist the attorneys they supervise; and
 - B. Provide supervisors with tools to create a supportive work environment and reduce the stigma attached to seeking help.
3. Public agencies should develop stronger partnerships with agencies, such as Lawyers Concerned for Lawyers (LCL), that support lawyers who encounter obstacles to well-being. This is a step that is straightforward and inexpensive and that could have a disproportionately large impact on lawyer well-being, particularly in environments like the public sector in which various types of stress are common.

Major Issues Affecting the Well-being of Public Lawyers and Proposed Solutions

Stress resulting from the size of caseloads, the high-stakes nature of cases, and the related issue of secondary trauma.

Many members of the subcommittee, particularly prosecutors, cited the sheer volume of cases – many of them very serious – that public lawyers handle. The prosecutors also pointed to secondary trauma resulting from the suffering involved in many of their cases. Agency counsel noted that they often handle complex cases, many involving issues of first impression. Both agency counsel and prosecutors noted that stress also results

from the public attention that many of their cases attract – more so than most cases in the private sector.

The members of the subcommittee identified the lack of control over one's schedule as a factor that compounds the stress of huge caseloads and makes it difficult for public lawyers to balance their professional and personal lives. Prosecutors in particular identified the requirement that they be "available at the direction of the court" as a source of stress. Additionally, public lawyers are often thought of as fungible to a degree that private-sector lawyers are not. In response to scheduling conflicts, courts seem much more willing to ask public lawyers whether another lawyer from their office could cover the case than they are to ask the same thing of private-sector lawyers. Overall, public lawyers report that their lack of control over workload undermines "autonomy and self-direction in a profession that is built on the exercise of independent professional judgment."

The public lawyers identified these potential solutions. Agencies should:

- implement comprehensive stress management programs and systems, including programs identifying secondary trauma;
- provide mandatory yearly training on resources to promote well-being and decrease stress;
- create more active partnerships with Lawyers Concerned for Lawyers (LCL) to help develop and implement such programs;
- train supervisors to acknowledge stress and secondary trauma, to encourage staff to care for themselves, and to communicate that reaching out for help is "a smart step, not a sign of weakness";
- create an environment in which stigmas attached to seeking help are acknowledged and resisted by encouraging stressed lawyers to seek help before they become overwhelmed and create opportunities for difficult conversations to take place;
- promote and encourage self-care to relieve stress and provide trainings and information about how we can support ourselves and our colleagues;
- develop capacity within agencies for staff to support one another, including providing trainings and structure for support and coping;
- institute regular bench-bar collaboration aimed at designing procedures and systems that preserve the ability of the court to manage dockets efficiently while heightening lawyer input into scheduling and increasing the predictability of lawyers' court schedules; and
- foster awareness on the part of judges and supervisors of the importance of retaining control over one's personal schedule and the potential pitfalls of an approach to managing dockets that does not take this into account.

Stigmatization of Seeking Help

Subcommittee members identified as compromising public lawyer well-being a professional norm of being strong despite external and internal events and affronts (e.g. being treated differently as a member of a minority, dealing with a personal crisis, presenting with a manageable mental health issue, and/or balancing professional and personal demands). The stigmatization of seeking help cuts across all types of professional issues and situations. For example, mental health issues are regularly unrecognized and, when identified, viewed as weakness.

Members of the subcommittee suggested that agencies:

- identify an agency wellness officer *not associated with the administrative office*;
- educate staff and offer options for assistance (e.g. LCL and employee assistance programs); and
- create office environments in which stigmas are acknowledged and seeking help is supported and that encourage lawyers to reach out to their supervisors (and/or mentors) when they feel overwhelmed or isolated.

Alienation Resulting from a Lack of Diversity and Inclusiveness

Members of the subcommittee reported both feeling alienated and recognizing alienation in peers and colleagues as a result of the lack of diversity and inclusiveness in the Massachusetts bar. The subcommittee recognizes that this lack of diversity pervades the legal profession generally and is not limited to public lawyers. Subcommittee members reported both overt and implicit discrimination based on race, gender, and other issues of identity. Some pointed to a “boys club mentality” in the legal profession. They also reported feeling alienated by a range of types of implicit bias. Additionally, subcommittee members identified the under-representation of diverse communities in government service – as well as in the profession generally as a source of isolation and stress.

The subcommittee’s discussions emphasized that increasing diversity and inclusiveness not only mitigates alienation and isolation but, at least equally important, improves morale, creativity, and quality of work product for all employees. The subcommittee’s recommendations, below, therefore focus on developing strategies to institute a systemic commitment to diversity and inclusiveness.

Subcommittee members recommended that agencies:

- create a chief diversity officer position in upper management;
- develop a strategic plan to address bias – both explicit and implicit – and increase awareness of diversity and inclusiveness at every level of the organization;

- educate and train all staff yearly on anti-racism, other anti-discrimination strategies, including training on implicit bias; and
- commit to increased efforts to recruit and retain members of under-represented groups in the legal profession.

Lack of Managerial Expertise and Training

The subcommittee identified as pervasive the pressures resulting from lawyers attempting to supervise other lawyers without being properly trained to do so and the stress created for the supervised lawyers in such situations. Lawyers promoted to managerial positions because they are good lawyers often have no training or experience in managing others. This is extremely stressful both for the managers and for the lawyers they are

(mis-)managing. Compounding the problem is that financial pressures push lawyers to seek managerial positions to earn more rather than out of an inclination to management.

- The subcommittee proposed that agencies develop and implement comprehensive training for new managers and ongoing training and support for all attorney/managers in public offices.

The Conflict in Public Agencies Between the Roles of Advocate and Counselor

Agency counsel pointed to the tension between their responsibility to help their clients achieve their goals and their responsibility to the public to assure that their clients act within acceptable legal parameters. This often puts agency counsel in the uncomfortable position of telling their clients that they cannot – or should not – do what they want to do.

- As a solution, agency counsel proposed that they should provide increased information/education to their clients about the role of the government lawyer.

Financial Pressures Resulting from Relatively Modest Salaries

Subcommittee members identified this as a significant factor affecting the well-being of public attorneys. Although subcommittee members acknowledged that the economics of public agencies are the product of a complex combination of social, economic, and legislative factors, they nonetheless felt that it is an important issue to put before the Steering Committee. Some subcommittee members would encourage the Steering Committee to advocate for more government funding for public attorneys, which would also lessen the pressure to seek promotion to supervisory roles for financial reasons (see above) and create an opportunity to recruit and retain diverse members of the bar who are burdened with educational loan debt and other financial responsibilities.

In a related discussion, subcommittee members also identified as negatively affecting well-being the public perception of government service and government lawyers as being less able or hard-working than lawyers in the private sector. Similarly, members of the subcommittee identified difficult workplace conditions – including lack of privacy, drab work spaces, lack of support staff, and lack of amenities – as affecting the well-being of public lawyers.

SJC STEERING COMMITTEE ON LAWYER WELL-BEING REGULATORS' SUBCOMMITTEE REPORT

Introduction

The Regulators' Subcommittee is comprised of representatives from the Board of Bar Overseers, the Office of Bar Counsel, the Board of Bar Examiners, and Lawyers Concerned for Lawyers. As Regulators, we are aware of the toll that mental health and substance abuse issues can have on lawyers. We also see many opportunities to improve well-being in the profession.

Of note, some of these recommendations would require approval by governing boards. Thus, we offer them as proposals to be considered by the Steering Committee as well as our respective boards.

Major Areas Affecting the Well-Being of Lawyers

Mental health and substance abuse issues are primary sources of problems for lawyers who come into contact with the regulatory system. Many violations of the Rules of Professional Conduct are caused by substance abuse and addictive behavior, such as gambling. Other challenges include isolation of solo practitioners, an aging population of lawyers, stress and anxiety, depression, and economic pressures. These problems affect not only the lawyers, but also their clients and other members of the public. Addressing lawyer well-being is, accordingly, critical for public protection.

Strategies to Address the Issues

To address the issues discussed in the prior section, we discuss eight initiatives or ideas to promote lawyer well-being.

Recommendation #1 – Add a Comment to Rule 1.1 of the Massachusetts Rules of Professional Conduct to Include Well-being as a Part of “Competence”

Implementation: The SJC's Standing Committee on the Rules of Professional Conduct should initiate the process of revising Massachusetts Rules of Professional Conduct Rule 1.1: Competence, to incorporate the concept that a lawyer's well-being and competence are interconnected.

Background: A comment to the Rules of Professional Conduct would generate publicity for and attention to the idea of prioritizing lawyer well-being. It would also communicate to lawyers that their well-being is a priority of the profession's governing structure and

reinforce the notion that not only is maintaining well-being a good idea, it is a professional obligation. In implementing the new comment, the court could provide guidance on how lawyers might satisfy this obligation.

To date, only two states have addressed well-being in their rules of professional conduct. California changed the language of the rule, while Virginia made the change via rule commentary. We recommend the Virginia approach.

Suggested language (based on Virginia):

Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law. When problems in these areas arise that may reasonably be expected to affect professional functioning, it becomes a lawyer's responsibility to seek appropriate assistance/treatment as applicable.

Recommendation #2 – Provide an Option of Permanent Retirement Status

Implementation: The Board of Bar Overseers should recommend to the Court that it create a new status called "Permanent Retirement," which would be available to certain respondent-attorneys, at bar counsel's option, enabling a "graceful exit" from the practice.

Background: The Board would create a status of Permanent Retirement. For the Board's internal purposes, the status would read as Permanent Retirement, and once in that status, an attorney would be unable to move to any other status. For the outward-facing web site and in response to requests from the public, however, the attorney's status would be merely "Retired."

Bar counsel would establish internal guidelines for offering a lawyer the option of choosing Permanent Retirement status. The guidelines would permit bar counsel to offer to close an investigation by allowing the respondent to take Permanent Retirement status in situations where the attorney had attained age 65 or 70, where age-related impairment appeared to be a factor in the misconduct, and where the misconduct fits within certain parameters.

Several other states have either created a similar status or considered doing so. Virginia enacted a new rule effective in January 2019 "to facilitate retirement for a lawyer suffering from a permanent impairment, such as an irreversible cognitive decline, by allowing retirement with dignity instead of having the lawyer's license suspended on impairment grounds." Florida's retirement rule has a permanent option, requiring the permission of the Bar's Executive Director, and could be used for attorneys who are suffering from an age-related incapacity, though it appears to be open to all. Illinois's permanent retirement rule applies to any attorney regardless of age or condition, requires disciplinary counsel's

consent, and is not applicable where a pending investigation demonstrates clear and convincing evidence that the attorney misappropriated funds, engaged in criminal conduct reflecting dishonesty, or owes restitution that has not been made. Missouri considered enacting a permanent retirement rule at one point, but ultimately did not; its intended targets were “senior lawyers who face complaints or allegations of misconduct or impairment, and who should not be practicing law, but whose conduct does not require a serious disciplinary sanction such as suspension or disbarment.” Other jurisdictions (like Ohio) permit an attorney to apply for retirement at any point, but the disciplinary counsel makes recommendations to the court whether to accept or deny it, and if it’s accepted, whether the attorney’s status should be “resigned with disciplinary action pending” instead of “retirement,” without the attorney’s consent.

Recommendation #3 – Provide Information About LCL’s Services to Attorneys as Part of the Registration Process and to Law Students Through BBE Programs

Implementation: The Board of Bar Overseers and the Board of Bar Examiners should enact policies by which registered attorneys and law students are provided information about LCL’s services on a regular basis. For licensed attorneys, the Board of Bar Overseers would provide information about LCL’s services, and/or a link to LCL’s web site, to attorneys in its annual emailed notifications about upcoming registration cycles. The Board of Bar Examiners would include information about LCL’s services as a part of the programming it provides to law students at Massachusetts law schools.

Background: One of the themes that emerged from a review of the various subcommittee reports was that many practicing attorneys in Massachusetts are underinformed about the services available to them through LCL. By having the Board of Bar Overseers and the Board of Bar Examiners affirmatively publicize the services and assistance available through LCL, we could increase awareness significantly among active attorneys and law students, hopefully resulting in more attorneys utilizing the services when they are in need.

Recommendation #4 – Increase Sharing of Lawyer Well-Being Related Information with LCL

Implementation: The Board of Bar Overseers and the Office of Bar Counsel should enact a policy by which bar counsel’s office affirmatively notifies LCL of attorneys who are administratively suspended by the SJC for failure to cooperate with bar counsel.

Background: Under the rules governing administrative suspensions, SJC Rule 4:01, § 3(2) & (3), attorneys may be administratively suspended from practice for failing to cooperate with bar counsel in an investigation of the attorney’s conduct. Attorneys who are

administratively suspended have thirty days to comply by providing bar counsel with the materials sought or appearing for a statement. If the attorney does not comply within thirty days, the attorney must cease the practice of law and become subject to other requirements of SJC Rule 4:01, § 17.

In bar counsel's experience, attorneys who fail to cooperate with her investigations, and particularly those who fail to meet the thirty-day deadline, are likely to be experiencing mental health or substance abuse issues. If bar counsel were to notify LCL when the Court orders an attorney administratively suspended for non-cooperation, LCL could attempt to reach the attorney and offer services either during or after the initial thirty-day period. In some cases, therefore, LCL potentially could reach troubled attorneys before the consequences of their failing to cooperate with bar counsel become more dire.

Recommendation #5 – Continue/Increase Use of Diversionary Programming and Monitored Probation Agreements

Implementation: As appropriate, bar counsel and the Board should increase their use of diversion programs for attorneys who are alleged to have committed minor misconduct; increase the use of monitored probation agreements for attorneys who could appropriately receive stayed suspensions as a disciplinary sanction; and for attorneys who are suspended or disbarred, as a prerequisite to reinstatement. (See Recommendation 22.4 of the Report of the National Task Force on Lawyer Well-Being).

Background: In accordance with the policy statement developed in 2008, bar counsel is committed to considering and recommending, and the Board is committed to approving, diversion of an attorney to LCL for appropriate educational, remedial and rehabilitative programming in situations where the attorney's misconduct is related to substance abuse or mental health problems, and where the misconduct meets other qualifications enumerated in the policy. Among those requirements is that the misconduct be relatively minor.

In other circumstances, an attorney's misconduct is too serious to qualify for diversion but not so serious as to merit suspension or disbarment and appears to have resulted from – or been exacerbated by – a substance abuse or mental health condition afflicting him or her. In such cases, bar counsel remains committed to crafting, and the Board remains committed to accepting, disciplinary recommendations that include a probationary period with a referral to LCL and the creation of an appropriate programming and monitoring agreement or a requirement that the attorney submit to an evaluation and comply with recommended aftercare. Completion of the requirements will be a condition upon which the suspension remains stayed.

In situations where an attorney's misconduct is serious enough to merit suspension or disbarment and is related to a substance abuse or mental health impairment, bar counsel and the Board are committed to recommending that reinstatement of the attorney be conditioned on a rehabilitation program. Thus, where an attorney has been suspended or disbarred, and bar counsel has reason to believe that a substance abuse or mental health issue was a contributing factor, bar counsel will provide notification to such attorney of the availability of LCL's services within thirty days of entry of the disciplinary order, to facilitate the attorney's access to those services.

Recommendation #6 – Create Proactive Management-based Programs that Address Well-being

Implementation: The Board of Bar Overseers should investigate the efficacy of creating tools for lawyers to use on either a voluntary or required basis to self-assess their physical and mental well-being as well as general practice management. These tools could be part of the annual registration renewal process or could simply be available on the BBO web site, along with information about resources (and perhaps a video on well-being). In addition, professional liability insurers could be encouraged to use a self-assessment tool as part of insurance renewals. (A related idea would be to give a premium discount to lawyers who complete the self-assessment, but this would likely require approval of the Division of Insurance, even assuming that the insurers agreed to it).

Background: Proactive Management-Based Programs ("PMBP") may be a useful supplement to traditional regulations. Under PMBP, regulators provide tools to lawyers to encourage them to address issues before they develop into disciplinary problems. An example of PMBP is using a self-assessment survey or check-list for attorneys to examine their own mental health as well as their law practices in general. Surveys can be useful in promoting self-reflection. They also destigmatize mental health issues. In a few states, notably Illinois, New Mexico, and Colorado, these surveys are available to lawyers on a voluntary basis. The Board should seek information from those and other states, as applicable, about the success of those programs and consider implementing such a program in Massachusetts.

A corollary to PMBP is the collection of data on Massachusetts lawyers, another proposal that would require BBO approval and which may be controversial. Currently, the BBO collects limited demographic data about lawyers. Some information could be collected as part of the initial application for admission and other information could be collected as a part of the annual registration process. This information would include: age; gender; race; geographic location of practice; and type of practice (such as private practice (and size of

firm), government lawyer, in-house, etc.). Additional data could be collected as part of a voluntary survey.

Recommendation #7 – Encourage Attorneys to Participate in Continuing Legal Education Focused on Well-being

Implementation: The Court should recommend that all Massachusetts licensed attorneys attend programs on well-being on a regular basis, including programs offered by bar associations and the Practicing with Professionalism program.

Background: Supreme Judicial Court Rule 3:01, §3.16 requires that newly-admitted Massachusetts attorneys complete a Practicing with Professionalism course within eighteen months of bar admission. This course offers tips on a multitude of topics that are key to the successful practice of law, including a segment on the importance of maintaining and attending to well-being. This course segment focuses on the importance of maintaining professional and personal well-being amidst the stress that accompanies the practice of law. Recognizing how issues such as alcohol and drug addiction and recovery, chronic stress and anxiety, or depression and bipolar disorder, can impact the personal and professional lives of an attorney, attendees are offered practical tips and strategies to manage time and stress, recognize problems, and get help through the resources available from Lawyers Concerned for Lawyers (LCL), and the Law Office Management Assistance Program (LOMAP). While it continues to be important that newly-admitted lawyers receive this information and guidance, it is equally important to more seasoned practitioners. The Regulators' Subcommittee therefore recommends that attorneys be offered this program periodically throughout their careers. The state and local bar associations should also create and offer wellness programs, and as appropriate, allow lawyers to attend on a reduced-fee or scholarship basis.

Recommendation #8 – Encourage Other State Bar Application Administrators to Remove Questions About Mental Health History and Educate Massachusetts Law Schools About the Practices of Other States

Implementation: The Board of Bar Examiners should educate Massachusetts law school administrators and students on the specific inquiries relative to character and fitness for admission in other U.S. jurisdictions, and work through national organizations to encourage state bar admission authorities to assess eligibility for bar admission based on current character and fitness and solely on factors arising from previously exhibited conduct or behavior that evidences an impairment in ability to practice law ethically and competently.

Background: State bar admission authorities often inquire into bar applicants' history of mental health, alcohol, or substance abuse issues as part of the bar admission process. Bar application questions seeking disclosures regarding mental health require that applicants respond to whether they have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects [their] ability to practice law in a competent, ethical, and professional manner.¹ These inquiries reportedly often keep law students from seeking assistance and treatment that would benefit them as they complete their legal education. The Massachusetts BBE does not make such an inquiry, rather basing all inquiries as to fitness for bar admission on conduct and behavior, with an affirmative response resulting in the potential release of applicant treatment records.

Any progress to be made in moving state bar admission authorities forward in assessing eligibility for bar admission based on current character and fitness, and solely on factors arising from previously exhibited conduct or behavior that evidences an impairment in ability to practice law ethically and competently, could assist in encouraging law students to seek out the treatment and care that they need. In support of this premise, on February 13, 2019, the Conference of Chief Justices adopted a resolution encouraging state bar admission authorities to assess eligibility for bar admission based on current character and fitness and solely on factors arising from previously exhibited conduct or behavior that evidences an impairment in ability to practice law ethically and competently. While in Massachusetts, bar admission inquiries are based solely on conduct or behavior, this issue remains a concern in many other states, and this has a direct impact on Massachusetts law students planning to seek admission in other states.

¹ National Conference of Bar Examiners, Request for a Character Report.

SJC Steering Committee on Lawyer Well-Being

Subcommittee on Small Firms and Solo Practitioners

Members: Travaun Bailey, Kathleen Cavanaugh, Patrick Nicoletti, Roderick O'Connor, Joseph Pacella, Brittany Smith and Christina Turgeon

As a subcommittee, we convened to identify common issues that small firms and solo practitioners routinely suffer from in their practice. What follows is a comprehensive but not exhaustive list of potential stressors that we identified, as well as the committee's initial recommendations.

ISSUES THAT CREATE ANXIETY AND STRESS FOR SOLO PRACTITIONERS:

1. **Law Office Management:** Software management, hiring and firing of staff, meeting payroll, etc.
2. **Lack of Guidance and Isolation:** Constant issue for solo practitioners. By the nature of their practice, solo practitioners are practicing law alone. This type of practice model does not generally allow for attorneys to have a mentor or create "real" relationships with colleagues.
3. **Time Management and Home/Life Balance:** Difficulty in balancing financial obligations, home life and other obligations. Managing day-to-day tasks and prioritizing client files.
4. **Financial Obligations:** Issues with private bar advocate funding for many solo practitioners, lack of a steady paycheck despite recurring bills (office rental, mortgage, liability insurance, car payments, etc.). Student debt is a large issue with all attorneys who graduate from law school but particularly for solos. Solos do not have the benefit of enrolling in a student debt forgiveness program that may be offered by private employers, including Committee for Public Counsel Services, and therefore carry large amounts of burdensome debt.
5. **Personal Health Issues:** When solo practitioners suffer from illness and substance abuse, unfortunately, they are unlikely to seek assistance for these issues because of the stigma of reaching out for assistance. Solos are also reluctant to reach out for help because of the anxiety created by not having anyone that can take over their practice if time is required to recover and concentrate on their personal health. As a result, the problem continues until their practice is detrimentally affected.

Technology: Although technology serves to improve efficiency, it can increase anxiety and isolation. In many cases, solo practitioners use their personal cellular telephones in practice. Providing their personal phone numbers to clients means an attorney's office is never closed. This likely creates an expectation that no matter the time of day, they should be available to clients, and provide an immediate response to legal needs.

Health/Disability Insurance: As a result of the financial difficulties often experienced maintaining and operating a business, solo practitioners can rarely afford health and disability insurance. Often, solo attorneys make too much money to qualify for MassHealth, yet make too little to pay for private insurance out of pocket.

Toxic Environment and Cultural Issues: A lack of respect and concern for attorneys by the court staff including the judiciary creates additional stress for attorneys. When solo practitioners are either ill or need to reschedule cases because of a family issues or other personal matters, there seems to be an overall lack of compassion or consideration from the court and adversaries.

RECOMMENDATIONS FOR SMALL AND SOLO PRACTITIONERS TO ADDRESS LAWYER WELL-BEING IN ORDER OF PRIORITY:

1. **Insurance:** Insurance companies should be contacted to determine if they would be willing to offer affordable health and disability coverage rates for the growing population of small and solo practitioners that makes up the majority of practicing lawyers in the Commonwealth.
2. **Student Loan Forgiveness:** The Commonwealth should offer a Student Loan Forgiveness program for all public interest lawyers and solo practitioners. We recommend that after ten (10) years of service, that the balance of student loans be forgiven for those attorneys representing the indigent. This will allow these attorneys that earn income from public service positions to be able to stay in their field of choice, rather than leaving their positions to pursue more lucrative employment, which could lead to depression.
3. **Scheduled Time Off:** The Supreme Judicial Court ("SJC") and the Board of Bar Overseers ("BBO") should make it mandatory that the trial court offer to all attorneys practicing in the Commonwealth scheduled time off with "no questions asked" from the bench or bar. The recommendation would be for thirty (30) days annually for every attorney to use as they please. The time can be used for emergencies, family obligations or just to recharge and refresh. If notice is required to use this benefit, we recommend in emergency situations, that the attorney need only site the emergency and not be required to provide explanation or advanced notice. The purpose of this suggestion is to allow attorneys the benefit of much needed "down time" without it negatively impacting their clients and their practice.
4. **Re-Education/Modification to Cannons of Ethics:** To address the toxic environment in the court, we recommend that all staff, including the judiciary, be provided mandatory sensitivity training focused to include issues of diversity inclusion, implicit bias, and courtesy/respect. Specifically, as it pertains to the judiciary, it is recommended that a portion of their training annually include some education about the issues that solo practitioners face in practicing and running a law office so that there is better understanding of the practitioners that normally appear before them.

In order to aid attorneys in utilizing the benefit of scheduled time off, we recommend that the cannons of ethics be modified to observe the need for personal time off and for health issues. We feel this modification is necessary so that attorneys need for personal time is recognized and followed by the Court universally. If for any reason a member of the judiciary refuses a legitimate request for time off, then an attorney would have the cannons of ethics to support their request.

5. **Statewide Study on Health of the Profession:** There seems to be a lack of statistical data available on the health of the legal profession as it pertains to issues of well-being and burnout. Therefore, we recommend that a study be done to determine the overall health of our profession. We believe this to be important for two reasons: (1) it will provide a baseline for the SJC BBO to understand the extent of the problem of burn out and lack of well-being in our profession; and (2) it will provide data for review to determine if any of the implemented recommendations are effective. Similar to the study that was done for the American Medical Association, we propose that the study should be funded through grants.
6. **Mandatory Wellness CLE:** The SJC and BBO should require all practicing attorneys to attend a CLE on well-being annually. During the Committee's evaluation of lawyer well-being issues, we were struck by how little we knew about lawyer well-being and organizations created to improve well-being, such as Lawyers Concerned for Lawyers. We would hope that this education on available programming and resources might destigmatize the concerns of reaching out for assistance and recommending assistance for others. Attendees would be provided CLE credit for attendance for possible liability insurance discounts or credit required for multiple-bar admitted practitioners. We also recommend that the program be offered as an online webinar to make the CLE as convenient as possible for attorneys.
7. **Mentorship Program:** A mentorship program should be developed and required for all newly admitted attorneys (0-5 years of experience) practicing as small firm and solo practitioners. The hope is that new attorneys will be paired with more experienced attorneys (minimum 10 years experience) to provide guidance and direction when needed. The mentors would ideally be compensated for mentorship.
8. **Adjustment in Law School Curriculum:** Law schools should offer a universally required educational course on the practical preparation for the practice of law. It would be a class that centers on attorney well-being and the issues attorneys suffer in the practice of law (ie. depression, anxiety, stress, substance abuse, work-life balance, etc.). The class should provide warning signs for lawyers and what to do and where to turn if the student or attorney is suffering from such issues.

Further, law schools should offer an elective course that educates interested law students on how to open and operate a solo practice. The curriculum in the course should be focused on everything one would need to know about managing a solo practice (renting office space, hiring, retention and management of staff, budgeting a payroll, generating business, paying taxes, etc.). We also recommend that the curriculum focus on educating students on how to make money without getting into trouble.

9. **Well-Being Seminar:** Seminars should be developed and offered to address topics to better deal with burn out and stress that is inherent in the legal profession. We recognize that there are many private organizations in the community that offer education for professionals on stress reduction. We propose that the seminar include these organizations on a panel to educate and provide tips on how to prevent burn out.

This panel should also include other attorneys who could provide anecdotal information on how they suffered and then dealt with issues around stress in their practice, should those wish to participate in such a forum.

10. Lawyers Concerned for Lawyers:

The Committee invited and heard from Lawyers Concerned for Lawyer (“LCL”) to see what

services are offered to lawyers struggling with issues of well-being. After the presentation, the committee offers recommendations to improve LCL as a resource for attorneys in need:

1. LCL be granted additional financial resources to expand existing services and to make the services they provide more available to the attorneys living outside the greater Boston area.
2. LCL should be offering free educational programs run on a regular basis to better publicize their services. Greater effort should be made to work with the various bar associations throughout the state to assist in organizing and presenting the educational programs. For those who are not able to physically attend the program, we recommend that the program be streamed online.
3. With greater resources, LCL should hire additional social workers and psychologists to be on staff. Currently, LCL employs only two psychologists and one social worker for the entire state of Massachusetts. The committee believes that the current numbers of clinical staff could not be nearly adequate for the entire state. New additions to the staff would ideally be in western MA and in Worcester County, where it did not appear that LCL had much of a presence.
4. LCL needs to drastically improve its marketing throughout the state. We would also like to see LCL have a physical presence in at least every region in the state. The committee was struck by how few attorneys were aware of what LCL was or what services they provide. LCL’s lack of presence must contribute to the legal populations’ ignorance of their services.

Reasons Members of the Subcommittee Were Initially drawn to be Solo Practitioners and Reasons they Continue to Appreciate Being a Solo Practitioner:

The members identified the following reasons:

1. Flexibility of being able to work at the pace and frequency as desired;
2. Not having a billable hour requirement means less external pressure for Solos from employers who may be evaluating their place in their respective firm by how much work is billed;
3. You are only accountable to yourself (if you wish to work hard you can, if you wish not to that is an option as well);
4. Opportunities for a better work life balance.;
5. More opportunities to develop relationships with clients;

6. The freedom to work on the areas of the law that interest you rather than having a superior dictating to you what practice areas you are allowed to concentrate on;
and
7. Setting your own hours.

**Order Adopting Amendment to General Rules of Practice
for the Superior and District Courts**

Pursuant to the authority of Article IV of the Constitution of North Carolina and N.C.G.S. §7A-34, the General Rules of Practice for the Superior and District Courts are amended by adding a new Rule 26 to read:

"26. Secure Leave Periods for Attorneys

(A) Purpose, Authorization. In order to secure for the parties to actions and proceedings pending in the Superior and District Courts, and to the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy one or more secure leave periods each year as provided in this Rule.

(B) Length, Number. A secure leave period shall consist of one or more complete calendar weeks. During any calendar year, an attorney's secure leave periods pursuant to this Rule and to Rule 33A of the Rules of Appellate Procedure shall not exceed, in the aggregate, three calendar weeks.

(C) Designation, Effect. To designate a secure leave period an attorney shall file a written designation containing the information required by subsection (D), with the official specified in subsection (E), and within the time provided in subsection (F). Upon such filing, the secure leave period so designated shall be deemed allowed without further action of the court, and the attorney shall not be required to appear at any trial, hearing, in-court or out-of-court deposition, or other proceeding in the Superior or District Courts during that secure leave period.

(D) Content of Designation. The designation shall contain the following information: (1) the attorney's name, address, telephone number and state bar number, (2) the date of the Monday on which the secure leave period is to begin and of the Friday on which it is to end, (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule and to Rule 33A of the Rules of Appellate Procedure, (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding, and (5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, peremptorily set or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.

(E) Where to File Designation. The designation shall be filed as follows: (1) if the attorney has entered an appearance in any criminal action, in the office of the District Attorney for each prosecutorial district in which any such case or proceeding is pending; (2) if the attorney has entered an appearance in any civil action, either (a) in the office of the trial court administrator

for each superior court district and district court district in which any such case is pending or, (b) if there is no trial court administrator for a superior court district, in the office of the Senior Resident Superior Court Judge for that district, (c) if there is no trial court administrator for a district court district, in the office of the Chief District Court Judge for that district; (3) if the attorney has entered an appearance in any special proceeding or estate proceeding, in the office of the Clerk of Superior Court of the county in which any such matter is pending; (4) if the attorney has entered an appearance in any juvenile proceeding, with the juvenile case calendaring clerk in the office of the Clerk of Superior Court of the county in which any such proceeding is pending.

(F) When to File Designation. To be effective, the designation shall be filed: (1) no later than ninety (90) days before the beginning of the secure leave period, and (2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.

(G) Procedure When Court Proceeding Scheduled Despite Designation. If, after a designation of a secure leave period has been filed pursuant to this rule, any trial, hearing, in-court deposition or other in-court proceeding is scheduled or peremptorily set for a time during the secure leave period, the attorney shall file with the official by whom the matter was calendared or set, and serve on all parties, a copy of the designation with a certificate of service attached. Any party may, within ten days after service of the copy of the designation and certificate of service, file a written objection with that official and serve a copy on all parties. The only ground for objection shall be that the designation was not in fact filed in compliance with this Rule. If no objection is filed, that official shall reschedule the matter for a time that is not within the attorney's secure leave period. If an objection is filed, the court shall determine whether the designation was filed in compliance with this Rule. If the court finds that the designation was filed as provided in this Rule, it shall reschedule the matter for a time that is not within the attorney's secure leave period. If the court finds the designation was not so filed, it shall enter any scheduling, calendaring or other order that it finds to be in the interests of justice.

(H) Procedure When Deposition Scheduled Despite Designation. If, after a designation of a secure leave period has been filed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the designation with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period. Any dispute over whether the secure leave period was properly designated pursuant to this Rule shall be resolved pursuant to the portions of the Rules of Civil Procedure, G.S. 1A-1, that govern discovery.

(I) Nothing in this Rule shall limit the inherent power of the Superior and District Courts to reschedule a case to allow an attorney to enjoy a leave during a period that has not been designated pursuant to this Rule, but there shall be no entitlement to any such leave.

Adopted by the Court in Conference this 6th day of May, 1999, on the recommendation of the Chief Justice's Commission on Professionalism. This amendment is effective January 1, 2000, and applies to all actions and proceedings pending in the Superior and District Courts on and after that date. This amendment shall be promulgated by publication in the Advance Sheets of

the Supreme Court and Court of Appeals and by distribution by mail to each superior and district court judge, district attorney, clerk of superior court, and the North Carolina State Bar.

Wainwright, J.

For the Court

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE WORK LIFE BALANCE §
RECOMMENDATIONS AND THE §
ADOPTION OF NEW FILING DEAD- §
LINES FOR ALL DELAWARE COURTS §

ORDER

This 18th day of July 2018, it appears to the Court that:

WHEREAS, a report was presented to the Delaware judiciary by certain members of the Delaware Bar regarding recommended improvements courts could make to improve work life balance for legal professionals in response to the Chief Justice's call to address work life balance for attorneys in his list of Judicial Branch priorities in 2014. The Report is available on the Delaware State Courts' website: <https://courts.delaware.gov/rules/>;

WHEREAS, the Report, in part, reflects information collected by the Work Life Balance Committee (the "Committee");

WHEREAS, the Committee, composed of members of the Supreme Court Rules Committee, the Court of Chancery Rules Committee, and the Superior Court Rules Committee, was formed to explore changes the courts could make to create a more sensible structure for the practice of law that would improve both the quality of practice and the work life balance of legal professionals in Delaware, and the Committee was unable to reach consensus as to the alteration of the existing filing deadline;

WHEREAS, the Report also contains an analysis of electronic filing statistics of the Delaware courts and the criticisms and concerns that were raised by the Committee;

WHEREAS, as reflected in the Report, courts only accepted documents for filing during regular business hours, with few exceptions, before the advent of electronic filing;

WHEREAS, adoption of electronic filing changed these expectations and allowed legal professionals to file documents until 11:59 p.m.;

WHEREAS, this extension of the filing deadline has contributed to a culture of overwork that negatively impacts the quality of life for Delaware legal professionals without any corresponding increase in the quality of their work product or the functioning of the judiciary;

WHEREAS, the Report recommends a 5:00 p.m. filing deadline in non-expedited cases because it would ease the burden of the existing 11:59 p.m. filing deadline on staff and attorneys;

WHEREAS, the Report recommends additional steps the courts could take to help lawyers, their staffs, litigants, and jurors have a better experience in the courthouse and more quality time outside of the courthouse;

WHEREAS, these additional steps include: (i) disfavoring filing due dates on Mondays or the day after a holiday in non-expedited matters; (ii) disfavoring

issuance of non-expedited opinions after 4:00 p.m. as a general matter and after noon on Fridays; (iii) adopting general practices that every trial judge shall aspire to in all non-expedited trials, when practicable, to start the trial day on time, have a predictable approach to breaks, and end the trial day no later than 5:00 p.m.; (iv) disfavoring the scheduling of arguments or trials in August, except in cases involving exigent circumstances or where there is an important reason for proceeding at that time; (v) the Court of Chancery preparing written electronic filing requirements and guidelines and updating these filing requirements and guidelines on a regular basis; and (vi) returning to the practice of attaching non-confidential filings to the electronic filing notices, rather than the current practice of having to log in and download filings;

WHEREAS, the Supreme Court, as reflected in its Internal Operating Procedures, already has adopted some of the recommended best practices set forth in the Report, including practices disfavoring the issuance of non-expedited opinions after certain times and the scheduling of oral arguments in July and August, except in expedited matters or where there is an important reason for proceeding;

WHEREAS, based on the Report, the Chief Justice, as the administrative head of all the Delaware courts, with the concurrence of the Justices of the Supreme Court, concludes that the recommendations in the Report are sensible best practices that will improve the work life balance of legal professionals and enhance the quality of

their work product and will improve the administration of justice if adopted by the Delaware courts.

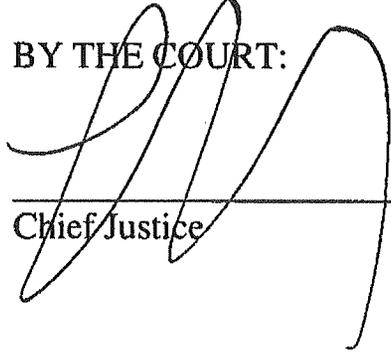
NOW THEREFORE, IT IS ORDERED THAT:

1. The courts shall amend their rules and/or electronic filing policies to require that all electronic filings in non-expedited matters, except for initial pleadings and notices of appeal, must be completed by 5:00 p.m. Eastern Time in order to be considered timely filed that day. All initial pleadings, notices of appeal, and electronic filings in expedited matters must be completed before midnight Eastern Time in order to be considered timely filed that day, except for expedited matters where the parties have agreed upon, or the court has ordered, a different filing deadline. The 5:00 p.m. filing deadline shall become effective September 14, 2018.
2. The trial courts shall consider adopting practices and policies disfavoring: (i) filing due dates on Mondays or the day after a holiday in non-expedited matters; (ii) the issuance of non-expedited opinions addressing dispositive motions or post-trial relief after 4:00 p.m. as a general matter and after noon on Fridays; and (iii) the scheduling of oral arguments and trials in August, except in expedited matters or where there is an important reason for proceeding at that time. The trial

courts shall report on their consideration and progress on or before March 15, 2019.

3. In concert with the deliberations under paragraph 2, the trial courts shall consider the remaining recommendations in the Report carefully and adopt those and other practices that will improve the quality of professional practice by and quality of life of Delaware legal professionals.
4. The Clerk of the Court is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE COURT:



Chief Justice