

PUTTING LAWYERS FIRST TASK FORCE:

**A COMPREHENSIVE REPORT AND
RECOMMENDATIONS ON HOW TO IMPROVE THE
LEGAL PROFESSION FOR LAWYERS**

FEBRUARY 17, 2023



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¹ The PLF Task Force would like to thank Kellyn Celi, Intern (graduate of Montclair State University) and Samantha S. Hing, Rutgers Law School-Newark, J.D. Candidate, 2023 for their assistance with the research for this project.

² Sadly, our dear colleague and friend, Edward S. Snyder, Esq., one of the very best family law litigators in New Jersey passed away on February 3, 2023, shortly before this report was finalized. He will be greatly missed.

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INTRODUCTION

PUTTING LAWYERS FIRST TASK FORCE FOUNDER AND MEMBER AND NEW JERSEY STATE BAR ASSOCIATION PRESIDENT JERALYN L. LAWRENCE

The ability to advocate and to bring about change is infectious. The power to identify issues within the practice, to work collaboratively with all stakeholders and to present real solutions that are then acted upon and results achieved is incredibly rewarding. I thoroughly enjoy being part of a team that works hard to address issues that affect our lives and this comprehensive report by the PLF Task Force, led by Co-Chairs Robin C. Bogan, Esq. and Matheu D. Nunn, Esq., is a true testament to the power of collaboration and teamwork.

Ours is a hard and demanding profession. We have all read the statistics about the incredible number of attorneys who are depressed and anxious and too many of us have friends and colleagues who face these very real challenges every day. While we are all aware of the national headlines of the decline in attorney's health and well-being, our investigation has confirmed that New Jersey lawyers are also suffering. We are a profession in crisis. Our attorney health and wellness working group conducted a survey where 1637 lawyers responded. What that survey found was astonishing, scary and sad and the alarm bells are sounding.

Desmond Tutu once said: “we need to stop just pulling people out of the river. We need to go upstream and find out why they are falling in.”

I formed the Putting Lawyers First Task Force and presented this team of incredibly talented lawyers with the task of looking upstream to find out: Why are we falling in the river? What is the cause or the root of our stress? What can we do about this?

At a conference I attended, Chief Justice Rabner spoke of a book where people had grown comfortable living in an old, neglected house. If there was a leak in the roof, a bucket was placed under it or if there was a creaky floor, it was just stepped over. The Chief challenged the attendees to look deeper at the leaks and creaks and to be open to the possibility of change. I would ask the readers of this report to do the same when we look to areas that are making lawyers fall in the river of despair and to be open to real and meaningful change.

We know that the evolution of the business and practice of law and the ever-increasing demands from our clients will not slow down. Issues that are impacting attorney's physical and mental health and well-being need to be addressed. Ethics grievances and investigations, fee arbitrations, malpractice claims, not being paid in cases, not being relieved as counsel, dealing with negative, false and defamatory online reviews. These issues, and others, are the reasons lawyers are falling in.

“Putting Lawyers First” was an intentional name for this very important task force. Lawyers hardly ever, if ever, put themselves first. The court comes first, the client comes first, their firm comes

first, their family comes first. Never us. We need to make sure we are also looking out for ourselves. While that may be difficult for us to do as we raise our families, run our practices and lead our lives, this is exactly the kind of mission we can embrace on behalf of the profession.

The Putting Lawyers First Task Force created working groups to investigate: attorney health and well-being, the ethics and fee arbitration process, malpractice, on-line reviews, getting relieved as counsel, getting paid in cases, and challenges for solo practitioners and those new to the profession. Each working group analyzed the positives, areas for improvement and this report contains valuable recommendations for meaningful change. The goal of this report is to make an attorney's life in the profession better and to provide the tools needed to survive and thrive in the ever-changing legal landscape.

There are many issues to examine:

What can we do to ensure attorneys who are knowledgeable and specialize in the area of law that is at issue are on the very same committees that are evaluating attorneys when they are facing an ethics grievance, fee dispute or malpractice claim? We need attorneys who can bring their real-life practice experience to provide meaningful assistance and guidance to resolving these disputes. We need attorneys to volunteer for these very important committees.

Our ethics system was instituted to help protect the public, and that should be its focus. But, when ethics cases last for years, and cases are brought *sua sponte* years, or even a decade, after the alleged grievance, I suggest that we have lost our way. The NJSBA is here to help chart the course forward.

There is good and bad in every profession and ours is not immune – but we cannot allow the bad deeds of the few to impact our entire profession.

How can we allow best practices to exist in our cases, but ethics cases can go on without a reasonable end? Should there be a statute of limitations for when a grievance could be filed? Should there be a timeframe within which these cases must be completely disposed of or dismissed? Because every single second of every single day that an ethics case is pending, that ethics case is on the lawyer's mind causing strife and stress. It is a black cloud permeating their entire life.

How can we help attorneys who find themselves never being able to turn off work because technology has made it so easy to communicate that everyone expects instant replies? We have become a profession of instant messaging. *The pace of this practice is not sustainable*, and we need to find ways to create healthy boundaries. This is part of the reason why I love virtual proceedings. Not only have they provided significant, meaningful access to the court for our clients, but they are also extremely efficient and can ease a lot of the stress we face in trying to be many places at the same time, as well as allowing us to manage our inboxes and our office instead of our precious time being spent on unnecessary waiting and travel.

How can we help attorneys thrive in the evolving virtual marketplace where clients can leave false online reviews that have a significant impact on our reputations, or a competitor can purchase our name to intentionally re-direct potential clients to their own website?

We need to review the law surrounding how lawyers can be more easily relieved as counsel when they ask to do so as well as ways we can ensure lawyers are paid for services they have been contracted to provide and have provided. We know there is more to be done.

First, change starts with us. We must fix this crisis. Please consider doing your part to make this profession better. We all have difficulties and stress – even if it doesn't appear that we do. It is imperative that we treat each other the way we want to be treated. That we are kind and that we are compassionate and show grace. It is critical to our collective health and wellness that we be good adversaries – good colleagues – and good to each other.

We are always under enormous pressure and always will be, but it will help the profession to take our needs seriously and find ways to make this practice better.

When the NJSBA mobilizes and puts its weight behind a challenge, it can be an impressive force. There is much work to do, and this report sets forth a roadmap to lead our profession in a much better and healthier direction.

It has been a privilege and pleasure to form this task force and assemble it with the most dedicated and brilliant lawyers, all of whom are deeply and passionately committed to finding creative and constructive ways of Putting Lawyers First.

I am hopeful the contents of this report are enlightening. It likely will also evoke sadness and concern. The hope, however, is that the report effectuates change. There are more than fifty (50) recommendations contained herein designed to keep lawyers from falling into the river. The hope is that we adopt these recommendations so that we do just that.

MESSAGE FROM THE CO-CHAIRS

Strategic planning is vital for any business, non-profit organization, or law firm to ensure its success and longevity. In fact, it is recommended that a strategic plan is developed every three to five years for an entity to assess its current Strengths, Weaknesses, Opportunities and Threats. This is called a “SWOT” analysis.³ Many law firms across New Jersey routinely engage in this forward-thinking process. Law firms who implement a strategic plan are positioned to make deliberate decisions that are tailored to achieve their firm’s long-term goals and vision.

Nationally, there is evidence to support a conclusion that attorneys are suffering due to a variety of factors, including mental illness, substance use, financial stress—and in many instances a combination of all three. It is a logical conclusion that if attorneys are not operating at their best, the legal system cannot function at its best. The public’s access to justice and to our judicial system depends on attorneys and judges, court staff, sheriff officers, and all of the people that are involved in making our system run effectively and efficiently. A deficit in the performance of any one of those groups detrimentally impacts the legal system as a whole. In turn, the public suffers.

Our charge from NJSBA President Jeralyn Lawrence was to examine the problem through the prism of Desmond Tutu’s “river” quote—to uncover why attorneys are in crisis. Accordingly, we realized that we needed to investigate whether attorney health and well-being in New Jersey was actually on the decline and, if so, why? Based on the results of our investigation we further determined that we needed to provide an action plan designed to preserve attorney health and well-being.

The “Putting Lawyers First Task Force” applied the same strategic planning/ SWOT approach that other companies and organizations use to fortify their businesses to examine this complex problem. We established six working groups in the areas of: 1) Attorney Health and Well-Being; 2) Ethics Committee and Fee Arbitration; 3) Malpractice; 4) On-line Reviews; 5) Solo Practitioners, Small firms and Newly Admitted Attorneys; and 6) Attorneys Being Relieved as Counsel & Getting Paid. We then collected data using uniform surveys and questionnaires. For example, the Attorney Health & Wellness Working Group developed a 90-question survey with the assistance and guidance of the University of Utah, which generated 1637 valid responses. The Ethics Committee and Fee Arbitration Working Group developed a survey as well as interview questions for many stakeholders of those systems. Many attorneys reached out with their own personal stories that are reflected in this report. We looked at the strengths in these areas as well as the areas that require improvement. Most importantly, this report sets forth recommendations as a roadmap for positive change to tackle problems that were identified.

As you read this report, we hope you will find it to be moving, eye-opening, but most importantly, *motivating*. The data confirms that New Jersey attorneys are experiencing a decline in health and well-being in comparison to other professionals. Of the attorneys surveyed, 28% are looking to leave our profession. The most sobering statistic in our view were the number of our colleagues

³ Deeb, George, *The Top 6 Steps of Strategic Planning*, Forbes, December 4, 2018.
<https://www.forbes.com/sites/georgedeeb/2018/12/04/the-top-6-steps-of-strategic-planning/?sh=4a534d0935b2>

who had contemplated suicide in the two weeks prior to taking the survey. The data alone should be an impetus for taking steps necessary to temper or eliminate stressors that cause a detrimental impact on attorneys' health and well-being. The report also highlights areas that need to be further investigated.

Lastly, we thank our working group chairs and members, especially Bonnie C. Frost, Esq., Maritza Rodríguez, Esq., and Amy Wechsler, Esq. for their tireless efforts, dedication, and drive toward this initiative. We appreciate the hard work that Sylvia Breitowich, Esq., and Alison Satak, Esq. put into the section on removing the mental health question from the Character and Fitness application. We thank Jennifer Fortunato, Esq. and Linda Rehrer, Esq. for their substantial efforts. We thank Jeralyn L. Lawrence, Esq. for her vision and passion for the legal profession. We thank the NJSBA Officers and Board of Trustees for entrusting us with the responsibility of this important work. We encourage NJSBA to use this report as a catalyst to make necessary improvements in our profession –the health and success of New Jersey attorneys depends on it.

Robin C. Bogan, Esq., and Matheu D. Nunn, Esq.

ATTORNEY HEALTH & WELL-BEING WORKING GROUP

PART I – SURVEY RESULTS ARE A CALL TO ACTION

“The health of lawyers reflects the health of the profession[.]”⁴

Occupational hazards and wellness issues affecting lawyers have escalated to alarming levels on a national level. The Working Group on Attorney Health and Well-Being of the New Jersey State Bar Association’s “Putting Lawyers First Task Force,” co-chaired by Maritza Rodríguez, Esq. and Amy Wechsler, Esq. directed a spotlight on the deterioration in attorney wellness, which our profession can no longer ignore. Our working group developed a detailed 90-question survey to which 1,643 New Jersey lawyers responded in November 2022. The results of that survey revealed that New Jersey is no exception to the national crisis. Survey respondents reported levels of burnout, depression, suicidal ideation, substance use disorders, anxiety, and thoughts of leaving the profession multiple times higher than in other working populations. These lawyers reported burnout at nearly 2 times the level of any other working population⁵, suicidal ideations at 3 times the rate of other working populations⁶, problem drinking at 6 times the rate of working populations⁷, anxiety at 5 times the rate of normal working populations⁸ and depression at 3.5 times the rate reported for other working populations.⁹

These and other troubling findings as described herein are a call to action for all stakeholders in the profession—attorneys, judges, bar associations, law students, law schools and lawyer assistance programs—to take steps to promote attorney health and well-being. These steps and initiatives should not be limited to those that occur after problems affect a lawyer’s practice, but also before they happen. We need to be proactive. This report outlines some of the more significant findings of the survey and offers suggestions for developing strategies to raise awareness, reduce stigma, provide outreach and education, and offers resources to promote attorney wellness and make it an on-going priority before it becomes a permanent crisis.

⁴ Cheryl Ann Krause & Jane Chong, *Lawyer Well-being as a Crisis of the Profession*, 71 S.C. L. REV. 203, 244 (2019).

⁵ Tait D. Shanafelt et al., *Changes in Burnout and satisfaction with work-life integration in physicians and the general US working population between 2011 and 2020*, 97 MAYO CLINIC PROCEEDINGS 491 (2022).

⁶ Beth Han et al., *Suicidal ideation, suicide attempt, and occupations among employed adults aged 18-64years in the United States*, 66 COMPREHENSIVE PSYCHIATRY 176 (2016)

⁷ Donna M. Bush & Rachel N. Lipari, *Substance Use and Substance Use Disorder by Industry*, CBHSQ REPORT (Apr. 15, 2016), https://www.ncbi.nlm.nih.gov/books/NBK343542/pdf/Bookshelf_NBK343542.pdf.

⁸ 2021 *National Health Interview Survey*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/nchs/nhis/2021nhis.htm> (last visited Feb. 6, 2023).

⁹ Ronald C. Kessler et al, *The prevalence and correlates of workplace depression in the national comorbidity survey replication*, 50 J. OF OCCUPATIONAL & ENVIRONMENTAL MED. 381 (2008)

Background

Lawyers play a vital role in business, government, and the community, as well as direct decision-making involving some of the highest stake issues in people's lives. This daunting responsibility places enormous demands on attorneys to function at the highest levels. Attorney well-being is essential to fulfilling these roles. Recent studies have highlighted concerns over burnout, anxiety and depression, as well as unhealthy alcohol use among lawyers. Respondents to The American Lawyer's 2021 Mental Health and Substance Abuse Survey reported that 35% of respondents said they suffered from depression in 2021, a drop from the 37% who responded the same in 2020 but still a slight increase from the 31% who said they suffered from depression in 2019.¹⁰ Anxiety levels followed a similar pattern, with levels for 2021 at 67%, down from the 70.7% reported in 2020 but above the 2019 level of 64%.¹¹ Overall, the number of respondents who felt mental health and substance abuse in the legal industry were "at crisis levels" was up about 3 percentage points (44%) compared to 2019 (41%) and 2020 (41.7%).¹² Research conducted over the past several years confirms lawyers experience significantly higher than average amounts of psychological stress and other ill effects compared with other working populations, including physicians, dentists and other high stakes professionals.¹³ Efforts have been made to understand the magnitude of problems within the legal profession that are associated with the development of impaired psychosocial well-being.¹⁴

Ignored for far too long, well-being in the law was raised to a level of national concern in 2017, when the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published a joint study of nearly 13,000 practicing lawyers across 19 states to investigate and address lawyer well-being issues. Of the lawyers studied, between 21 and 36 percent qualified as problem drinkers, and approximately 28 percent, 19 percent, and 23 percent were struggling with some level of depression, anxiety and stress respectively.¹⁵

Notably, the study found that younger lawyers in their first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression.¹⁶ This study, along with one done on the well-being of law students, led to the creation of the ABA National Task Force on Lawyer Well-Being. The ABA Task Force published a report on August 14, 2017, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change"¹⁷ which provided a framework for how to begin to evaluate, assess and address attorney mental health and well-being. The ABA report specifically identifies six dimensions in which lawyers should seek

¹⁰ Patrick Smith, *Legal Industry's Mental Health Struggles Persisting*, 265 LEGAL INTELLIGENCER 1 (2022).

¹¹ *Id.*

¹² *Id.*

¹³ Shanafelt et al., *supra* note 5.

¹⁴ See Patrick R. Krill et. al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED. 46 (2016).

¹⁵ *Id.* at 47.

¹⁶ See *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, National Task Force on Lawyer Well-Being 1, 7 (2017).

¹⁷ *Id.* at 1.

to thrive. Those six dimensions are (1) emotional, (2) occupational, (3) intellectual, (4) spiritual, (5) social, and (6) physical.¹⁸ The recommendations of the ABA Task Force on how to address well-being is included as **Appendix A**.¹⁹

The preamble to the report provides in part –

“To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above²⁰ reveal that too many lawyers [. . .] 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.”²¹

The report was a call to action. Several states have since conducted surveys to assess the health and well-being of lawyers in their jurisdictions, and are implementing strategies and programs to promote attorney wellness.²² The Conference of Chief Justices passed a resolution in 2019 in support of the recommendations outlined in the National Task Force report and went even further by urging the judiciary to also follow the recommendations.²³ Along with the other initiatives undertaken in New Jersey by the NJSBA “Putting Lawyers First Task Force,” a detailed survey (“Survey”) was conducted to assess attorney health and well-being in our State.

After months of studying issues related to ethics, counsel fees, fee arbitration, online reviews, collecting counsel fees, getting out of cases, malpractice and other stresses that confront attorneys in New Jersey daily, the Task Force sought to survey New Jersey lawyers to confirm what we were seeing in terms of the impact on attorney health, mental health and well-being. The results demonstrate things are worse than we expected, and further confirm that action in all these areas is necessary.

Our Survey results have yielded a tremendous amount of data and analysis across the unique issues affecting the practice of law in New Jersey. **At the outset, it is important to consider that the boxes in dark red and red mark the relationships that have the strongest significance. The following table represents the highest frequency of strong relationships with outcomes of burnout, depression, suicidal thoughts, problem drinking, feeling isolated, and anxiety.**

¹⁸ *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, supra note 16, at 9.

¹⁹ Path To Well Being Report Appendix with Recommendations can be found in the **Appendix A**, *infra*.

²⁰ See generally Krill, supra note 14; Jerome M. Organ et al., *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. OF LEGAL EDUCATION 116, 127-136 (2016).

²¹ *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, supra note 16.

²² California, Colorado, Idaho, Kansas, Illinois, Massachusetts, Nebraska, New York, Virginia, Vermont, West Virginia, Wisconsin, Wyoming, and Utah.

²³ See *Resolution 5 In Regard to the Determination of Fitness to Practice Law*, Conf. of Chief Justices (2019), https://ccj.ncsc.org/_data/assets/pdf_file/0021/23484/02132019-determination-of-fitness-to-practice-law.pdf.

While 51% of New Jersey lawyers feel enthusiastic about being a lawyer often, very often or always, 68% reported feeling anxious in the past two weeks; 56% reported a high prevalence of alcohol misuse; 49% of lawyers reported moderate to high levels of burnout; 49% reported feelings of isolation; 23% reported a high prevalence of depressive symptoms; 28% of attorneys considered leaving the profession as a result of mental health, burnout or stress; and 10% reported thoughts of suicidal ideation. These findings are depicted on the following chart:

Table 3. Summary of relationships between Personal or occupational factors and well-being outcomes	Burnout	Depression	Suicidal	Problem Drinking	Feeling Isolated	Anxiety
Race/Ethnicity	0.31	2.19	3.53	1.71	1.80	2.62
Gender	0.52	0.67	0.73	1.38	1.96	0.26
Years Practicing	1.93	2.45	0.36	2.06	0.45	2.80
Position	1.41	3.00	0.17	0.52	3.08	2.69
Support Staff	3.33	3.03	0.38	0.59	2.80	2.37
Isolated	3.79	9.99	0.11	0.77	N/A	5.80
Hours Worked On Weekends	1.88	1.40	0.76	0.87	1.34	1.60
Days Per Month Worked On Weekends	3.91	0.58	0.35	0.76	1.40	1.62
Additional Hours On Weekends	5.15	3.44	0.50	1.33	0.62	2.64
Expected To Be Available Outside Normal Hours	2.13	1.95	1.54	1.33	0.52	1.50
Impact of Outside Hour Availability On Personal Life	5.26	5.83	0.33	0.70	2.51	3.52
Vacation Time	0.36	2.07	0.47	0.74	1.69	0.40
Time Off for Well-Being	10.26	18.20	0.17	1.33	4.94	7.00
Collection Of Client Debts	4.17	3.25	0.40	1.84	2.62	3.98
Annual Income	0.43	1.84	0.54	0.76	0.54	0.64
Student Loan Debt	2.77	2.66	0.42	1.77	1.83	2.55
Salary- Staying in Unwanted Job	3.74	3.85	0.33	0.88	2.39	3.53
Personal Financial Situation Causes Stress	5.48	8.62	0.14	1.08	3.65	7.86
Age	0.18	0.27	3.36	2.39	0.46	0.18
Professional Metal Health Counselor	0.54	1.80	2.59	0.97	0.64	2.12
Enthusiasm About the Profession	3.36	3.90	2.98	0.65	2.14	2.28

Table 3 Key for Color
No statistically significant results
Strongest OR=1.01 - 1.35
Strongest OR=1.36-1.74
Strongest OR=1.75-1.99
Strongest OR=2.00-2.49
Strongest OR=2.50-4.99
Strongest OR=5.00 +

While a full summary of the Survey results is attached as **Appendix B**, at the time of the writing of this report, our Working Group cautions that the Survey results highlighted here are only the proverbial “tip of the iceberg.” More investigation into the significant relationships between

factors and outcomes is necessary to gain a fuller picture of the state of attorney wellness in New Jersey. The survey presented the following striking statistics:

There were 1643 respondents to the Survey.

- Most of the respondents (51%) have been in practice for over 20 years;
- Respondents were most often from small firms with 2-10 lawyers (34%) or solo practitioners (18%);
- Most lawyers who responded are from private law office (75%), government (12%), public interest (4%) and in-house counsel, retired judge, law clerk, college or law professor, or retired attorney making up the remaining (9%);
- Most of the respondents (51%) reported feeling enthusiastic about being a lawyer often, very often or always; and
- Among practicing attorneys in-house counsel, prosecutors, public defenders, and public interest lawyers were the most enthusiastic about the profession. Associates were the least enthusiastic about practicing in the profession.
- Factors that contribute towards burnout, anxiety and depression include:
 - Lack of Boundaries for “down time” or “never off,”
 - Lawyers do not really or do not feel comfortable taking time off to address well-being (39%),
 - Lawyers who were not comfortable taking time off to address well-being were 10 times as likely to report burnout than those who felt they usually were comfortable taking time off, and
 - Lawyers who reported being younger than 34 years of age were 4 times as likely to report depression than a lawyer over the age of 65. Lawyers who reported having 0-3 years practice were 6 times as likely to report depression than those of 40 years of practice. Overall, 23% reported the highest prevalence of depressive symptoms.
- The top reasons respondents sought mental health assistance but did not obtain it, included:
 - High costs,
 - Lack of availability of providers covered by insurance, and
 - Not wanting to be seen as vulnerable.
- Almost 74% of respondents reported working on weekends. Members believe (51%) that their employers expect them to be available outside of normal business hours either frequently or always and (29%) believe that these expectations interfere with their personal lives frequently or always.
- Lawyers who reported feeling they did not have sufficient support staff were 2.5 times as likely to report considering leaving the profession than lawyers who felt that they did have sufficient support staff.

- There was a strong relationship between secondary trauma and public defenders. Public Defenders are 6 times more likely to have secondary trauma as compared to equity partner/ shareholder in law firms.
- Some of the initiatives requested by the respondents to help improve physical/ mental health included:
 - Discount on online or in-person fitness programs / gyms,
 - Free or Inexpensive CLEs on physical or mental health,
 - Mentoring, peer counseling or support groups,
 - CLEs on managing money and handling debts,
 - Offering group health insurance, and
 - Offering business coaching.
- Respondents (67%) believe that CLE programs on mental health and substance abuse in the legal profession are important.
- Members (72%) believe that CLE programs on attorney well-being are important and (48%) believed that attorney well-being CLEs should be part of the mandatory reporting cycle.

Methods

To investigate whether New Jersey lawyers faced similar occupational risks and rates of mental health and substance use disorders, we identified a research scientist at the Rocky Mountain Center for Occupational and Environmental Health at the University of Utah, Matt Thiese, Ph.D, MSPH. Together with Dr. Thiese the NJSBA Well-Being Working Group developed a questionnaire (“Questionnaire”) consisting of 90 questions.

NJSBA authorized the project, and the survey was approved by the University of Utah Institutional Review Board prior to data collection. Online informed consent was obtained prior to enrollment in the survey. Survey participants included lawyers and retired judges²⁴. Participants were asked to give consent, and those who did completed a questionnaire using the REDCap system at the University of Utah. The REDCap system is a HIPAA-approved research platform for electronic administration of questionnaire data. Responses were anonymous and all data was kept confidential. All participants were assigned a random ID number to protect their identity and no personally identifiable information was collected.

Recruitment

Recruitment for this survey was coordinated by NJSBA, which provided a short web address to the questionnaire and a QR code. This information was distributed by e-mail to all members of NJSBA, leaders of affinity and specialty bar associations who we asked to forward it to their members. NJSBA members were encouraged to share the Survey informally among their colleagues. It was also sent to two law schools to forward to attorneys on staff, faculty and alumni,

²⁴ The Administrative Office of the Courts advised that law clerks were not permitted to participate in the survey. N.J. Ct. R. Part 1 Appendix.

through print publication. The recruitment goal was for 1,500 lawyers to complete the questionnaire. Collection ran from November 1 through November 22, 2022. A total of 2,010 individuals began the consent process, of whom approximately 367 did not agree to the consent or begin the questionnaire. The remaining 1,643 participants completed at least some questions, and of those, 1,476 completed all or nearly all the questions.

Questionnaire

The Questionnaire consisted of 90 questions²⁵. Question domains included:

- Demographics
- Race and Ethnicity
- Years of practicing law
- Type of practice
- How much litigation is involved in their practice
- How many hours they work in an average week
- Feelings about being a lawyer
- Burnout
- Social support at work
- Demands and expectations outside of normal working hours
- Vacation time
- Student loan debt
- Equity between take home pay, debt, and lifestyle
- Past medical history
- Secondary trauma
- Physical activity
- Alcohol consumption and substance use disorder
- Depression
- Employer policies regarding attorney wellness
- Stigma associated with seeking care from mental health
- What could NJSBA do to improve physical or mental health and fitness
- Current behaviors taken to improve mental health and well-being
- Hours of sleep per night
- Professional mental health counseling
- Interest in CLE programs on mental health, substance abuse
- Whether they are considering leaving or have left the legal profession due to mental health problems, burnout, or stress
- Succession plan for solo practitioners
- The judiciary's role and promoting attorney well-being

²⁵ The full questionnaire can be found in **Appendix C**, *infra*.

Where possible, validated question sets were used to assess well-being and allow for comparisons with other populations. These include parts or all of the standardized Patient Health Questionnaire (PHQ-9) for depression, Alcohol Use Disorder Identification Test (AUDIT-C), Drug Abuse Screening Test (DAST), and the Social Support (Apgar) scale, as well as several questions from other national surveillance studies such as the National Health Interview Survey (NHIS) and the National Survey on Drug Use and Health (NSDUH).

The goal of the survey was to analyze the relationships between well-being measures such as: depression, anxiety, problem drinking, substance use disorder, burnout and secondary trauma and personal and occupational factors such as: race, gender, years of practice, position, practice type, firm size, occupational boundary levels, and age. The relationships between the well-being measures and the personal and occupational factors can be found in Table 3 on page 16. The numbers presented in this table are the most extreme odds ratio for each comparison. The color indicates the overall strength of the relationship, with the deeper red indicating a stronger relationship. Odds ratios are the likelihood of having the well-being outcome. An odds ratio of 1.0 means that individuals are no more likely and no less likely to have the well-being measure if they have the exposure. The higher the number indicates a stronger the relationship for a comparison between the personal or occupational factors on the side and the well-being outcomes across the top. The redder the cell, the higher the number and therefore stronger the relationship between the factor and the well-being outcome.

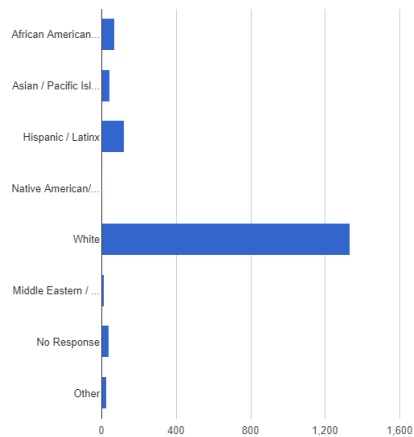
This report only focuses on 6 areas: Burnout, Depression, Suicidal Ideation, Problem Drinking, Feeling Isolated, and Anxiety. The Working Group recommends commissioning a further report analyzing all relationships for future review and study.

The Well-Being Measures outlined in this report need the added context of the main personal and occupational factors of Gender, Race, Age, Years Practicing Law, as well as Position and Size of Firm.

Gender: 883 or 54% reported being Female; 748 or 46% reported being Male; 3 or 0.2% reported as Intersex; 8 or .5% submitted responses of Prefer Not to Answer.

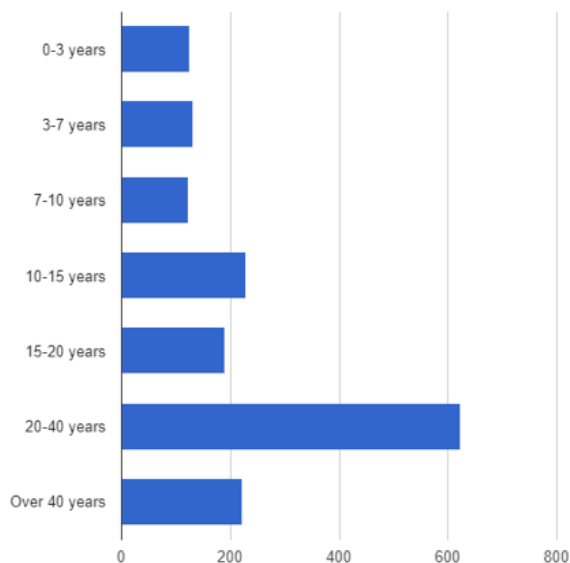
Race:

The race of the participants was as follows 81% of participants were identified as White (1332); Hispanic / Latinx (121) 7%; African American / Black (68) 4%; Asian/ Pacific Islander 43 or 3%; 1 Native American/ Alaskan Native; Middle Eastern/ North Africa 13 or .8%; Other 27 or 2%; No Response 37 or 2%



Age: Participants age ranges were as follows: 599 participants, or 37%, were in the age range between 35 and 50; 32% of the participants were between the ages of 51-65; 17% of the participants were over 65 and 15% of the participants were between the ages of 18-34.

Years Practicing Law: When asked about how long they have been practicing law, the responses ranged as follows: 8% of participants were in the range of 0-3 years, 8% were in the range of 3-7 years, 8% were in the range of 7-10 years, 14% were in the range of 10-15 years, 12% were in the range of 15-20 years, 38% were in the range of 20-40 years, and 14% had practiced more than 40 years.



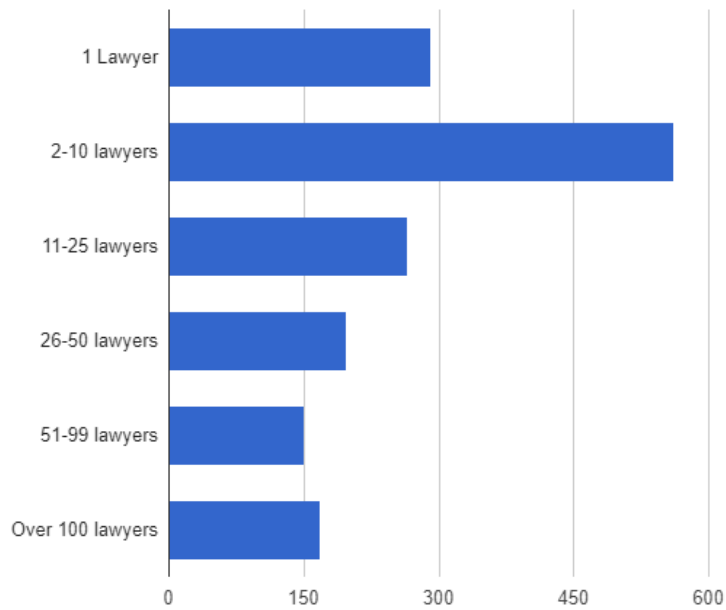
Position:

The makeup of the participants was as follows:

- Equity Partner/Shareholder (320, 20%)
- Non-equity Partner (234, 14%)
- Of Counsel (102, 6%)
- Associate (285, 17%)

- Solo Practitioner (276, 17%)
- Public Defender (134, 8%)
- In-House Counsel (79, 5%)
- Prosecutor (69, 4%)
- Public Interest (62, 4%)
- Other (not law practice) (22, 1%)
- Retired attorney (18, 1%)
- Mediator (11, 0.7%)
- Retired Judge (10, 0.6%)
- Law Clerk (5, 0.3%)
- College or Law Professor (13, 0.8%)

Size of Firm: Most of the NJ lawyers who responded to the survey worked at a law firm that had between 2-10 lawyers (34%).



Well-Being Measures

Burnout

Nearly half (49%) of all participating lawyers reported moderate to high levels of burnout. These levels of burnout are nearly twice as high as reports in other working populations: The prevalence of burnout in 2017 among the US working population was 28%²⁶ and 25% in 2020; in the general US Working population it was 25%.²⁷

Burnout was associated with personal and occupational factors such as: age, whether you felt you had enough support staff, isolation, hours worked on the weekends, hours worked outside of normal business hours, the expectation felt by lawyers to be available outside of normal business hours, the amount of vacation time you took and whether you took time off for well-being.

Age: Lawyers between 35-50 years of age were 6 times as likely to report burnout than those over 65. Lawyers who were younger than 34 years of age were 4 times more likely to report burnout than those over 65.

Support Staff: Lawyers who felt they did not have sufficient staff were 3 times more likely to report burnout than those who did.

Isolation: Lawyers reporting that they felt isolated almost always were 4 times as likely to report burnout than those that hardly ever felt isolated.

Hours Worked on Weekends: Lawyers who worked 7 or more days on the weekends per month were 6 times as likely to report burnout than those who worked less than 1 day.

- 74% of respondents reported working on weekends
- 45% of respondents reported working 3 or more days on the weekends per month

Expectation to Be Available Outside of Normal Business Hours: Lawyers who felt that expectations to be available outside of normal business hours always interfered with their personal life were 16 times as likely to report burnout than those who felt the expectation never interfered with their personal life.

- 52% of respondents believed their employers expected them to be available outside of normal business hours either frequently or always
- 29% reported that their employer's expectation of them to be available outside of normal business hours interferes with their personal lives frequently or always (53% reporting this interferes occasionally)

Hours Worked Outside of Normal Business Hours: Lawyers who worked an average of 15-20 additional hours outside of normal business hours during the week were 8 times as likely to report burnout than those who reported rarely or never working outside of normal business hours.

²⁶ Tait D. Shanafelt et al., *Changes in Burnout and Satisfaction With Work-Life Integration in Physicians and the General US Working Population Between 2011 and 2017*, 94 MAYO CLINIC PROCEEDINGS 1681 (2019).

²⁷ Shanafelt et al., *supra* note 5.

- 72% of respondents reported answering emails outside of normal business hours during the week either frequently or always (every day)
- 39% of respondents reported taking calls from clients outside of normal business hours

Vacation Time: Lawyers who reported taking 5 days or less of vacation time were 4 times as likely to report burnout than those with more than 20 days.

Taking Time Off to Address Well-Being: The Survey reported that 39% of New Jersey lawyers do not feel comfortable taking time off to address well-being. Lawyers who responded that they were not comfortable taking time off to address well-being were 10 times as likely to report burnout than those who felt comfortable taking time off to address well-being.

Depression

The survey indicated that 23% of New Jersey lawyers reported the highest prevalence of depressive symptoms, approximately 3.5 times higher than other working population.²⁸ Depression was associated with personal and occupational factors such as: age, years practicing, position, whether you felt you had enough support staff, isolation, hours worked on the weekend, vacation time, and taking time off for well-being.

Age: Lawyers who reported being between 18-34 years of age were 4 times as likely to report depression than lawyers who were over 65 years of age.

Years Practicing: Lawyers who reported having less than 3 years of practice were 6 times as likely to report depression than those with over 40 years of practice. Lawyers who reported having 10-15 years of practice were 6 times as likely to report depression than those with over 40 years of practice.

Position:

- Lawyers who identified as associates were 3 times as likely to report depression than lawyers identifying as equity partner/shareholder.
- Lawyers who identified as in-house counsel were 2 times as likely to report depression than lawyers identifying as equity partner/shareholder.
- Lawyers who identified as non-equity partner were 2 times as likely to report depression than lawyers identifying as equity partner/shareholder.
- Lawyers who identified as solo practitioner were 2 times as likely to report depression than lawyers identifying as equity partner/shareholder.

Support Staff: Lawyers who reported that they felt they did not have sufficient support staff were 3 times as likely to report depression than those felt they did.

²⁸ This survey used the Patient Health Questionnaire 9, which assesses depressive symptoms over the past 2 weeks.

Isolation: Lawyers reporting that they felt isolated almost always were 10 times as likely to report depression than lawyers who hardly ever felt isolated at work. Similarly, lawyers who reported feeling isolated some of the time at work were 3 times as likely to report depression than lawyers who hardly ever felt isolated at work.

Time Worked On the Weekend: Lawyers who work 6-10 hours on the weekend were more likely to report depression as compared with lawyers who work 1-5 hours on the weekend.

Lawyers who reported working 15-20 additional hours on average per week were 6 times as likely to report depression than lawyers who reported rarely or never working additional hours.

Lawyers who rarely work or never work on the weekend were less likely to report depression as compared with lawyers who work 1-5 hours on the weekend.

Vacation Time: Lawyers who reported taking five or less days of vacation were 6 times as likely to report depression than those with more than 20 days of vacation.

Taking Time Off to Address Well-Being: Lawyers who reported not being comfortable taking time off to address well-being were 18 times as likely to report depression than those who were usually comfortable.

Suicidal Thoughts

Suicidal thoughts were related to personal and occupational factors such as: age, whether you have used professional mental health treatment in the past, and enthusiasm about the profession. When asked if they experienced suicidal ideation, 10% of New Jersey lawyers responded yes, which is between 2.5 and 3 times higher than other working populations.²⁹

Age: Lawyers younger than 34 years of age were 4 times as likely to report suicidal ideation than lawyers who were over 65 years of age.

Professional Mental Health Services in the Past: Lawyers who had never used professional mental health counseling services were 5 times as likely to report suicidal ideation as lawyers who were currently using professional mental health counseling services.

Enthusiasm About the Profession: Lawyers who reported almost never being enthusiastic being a lawyer (one month or less) were 7 times as likely to report suicidal ideation than lawyers who reported always being enthusiastic.

²⁹ Suicidal Ideation was assessed using a single question from the Patient Health Questionnaire 9, reporting thoughts of self-harm in the past 2 weeks. National Survey on Drug Use and Health reported suicidal ideation among adults in the US as 4.3% (2015-2019). Asha Z. Ivey-Stephenson et al., *Suicidal Thoughts and Behaviors Among Adults Aged ≥ 18 Years—United States, 2015–2019*, 71 MMWR SURVEILLANCE SUMMARIES 1 (2022).

Problem Drinking

Problem drinking was related to personal and occupational factors such as: age, experience, level of litigation practice, billable hour requirement. A high prevalence of alcohol misuse was reported among New Jersey lawyers in the Survey at 56 % which is approximately 4 times higher than a reported sample of full-time workers.³⁰

Age: Lawyers younger than 34 years of age were more likely to report problem drinking as compared to those ages 35-50.

Experience: Lawyers who had less than 10 years' experience were 2 times more likely to have problem drinking as compared to those who had been practicing 20-40 years.

Litigation: Lawyers whose practice involved more than 25% of litigation were 2 times more likely to have problem drinking than lawyers whose practice involved less than 25%.

Billable Hour Requirement: Lawyers who had a billable hour requirement of 1850-2000 were about 2 times as likely to have problem drinking as opposed to those whose billable requirement was less than 1850.

Isolation

Nearly half of the participating lawyers (49%) reported feelings of isolation. Isolation was closely tied to burnout, depression, and personal and occupational factors such as: enthusiasm about the profession.

Burnout: Lawyers reporting that they felt isolated almost always were 4 times as likely to report burnout than those that hardly ever felt isolated.

Depression: Lawyers who reported almost always feeling isolated at work were 10 times as likely to report depression than lawyers who hardly ever felt isolated at work. Similarly, lawyers who reported feeling isolated some of the time at work were 3 times as likely to report depression than lawyers who hardly ever felt isolated at work.

Enthusiasm about the Profession: Lawyers who reported almost always feeling isolated at work were 6 times as likely to consider leaving the profession than lawyers who hardly ever felt isolated at work. Similarly, lawyers who reported feeling isolated some of the time at work were 2 times as likely to consider leaving the profession than lawyers who hardly ever felt isolated at work.

Anxiety

Anxiety was linked to personal and occupational factors such as: age, years practicing, position, feelings of isolation, hours worked outside of normal business hours, expectation to be available outside of normal business hours, taking time off to address well-being and enthusiasm about the profession. Slightly more than two-thirds (68%) of New Jersey lawyers reported feeling anxiety

³⁰ Bush & Lipari, *supra* note 7.

in the past 2 weeks. This is approximately 5 times higher than the most recent 2021 National Health Interview Survey published by National Health Center for Statistics of the Center for Disease Control.³¹

Age: Lawyers who were younger than 34 years of age were 6 times as likely to report anxiety than lawyers who were over 65 years of age.

Years Practicing: Lawyers who practiced less than 7 years reported the highest levels of anxiety:

- Lawyers who reported practicing for less than 3 years were 7 times as likely to report anxiety than lawyers who have been practicing for over 40 years.
- Lawyers who reported practicing 3-7 years were 9 times as likely to report anxiety than lawyers who have been practicing for over 40 years.

Position: Associates were 3 times as likely to report anxiety than equity partner/shareholders.

Isolation: Lawyers who reported almost always feeling isolated at work were 6 times as likely to report anxiety than lawyers who hardly ever felt isolated. Similarly, lawyers who reported feeling isolated some of the time at work were 3 times as likely to report anxiety than lawyers who hardly ever felt isolated at work.

Additional Hours Worked Outside of Normal Business Hours: Lawyers who reported working 15-20 additional hours on average per week were 4 times as likely to report anxiety than lawyers who reported rarely or never working additional hours.

Expectation to Be Available Outside of Normal Business Hours: Lawyers who reported that employer expectations to be available outside of business hours always interfered with personal life were 10 times as likely to report anxiety than lawyers who reported that employer expectations never interfered. Similarly, lawyers who reported that employer expectations to be available outside of business hours frequently interfered with personal life were 7 times as likely to report anxiety than lawyers who reported that employer expectations never interfered.

Taking Time Off to Address Well-Being: Lawyers who reported not being comfortable taking time off to address well-being were 7 times as likely to report anxiety than those who were usually comfortable. Similarly, lawyers who responded that they were not really or sometimes comfortable were 4 times and 3 times as likely to report anxiety than lawyers who were usually comfortable respectively.

Enthusiasm About the Profession: Lawyers who reported rarely being enthusiastic about being a lawyer were 17 times as likely to report anxiety than lawyers who reported always being enthusiastic about the profession.

³¹ 2021 National Health Interview Survey, *supra* note 8.

Activities of Well-Being

When participants were asked about participation in activities to promote well-being, a majority (61%) reported participating in at least one activity. The survey listed several activities, and the table below describes the frequency lawyers reported for each activity. Unfortunately, we cannot draw a causal relationship between these activities and well-being outcomes. Nonetheless, responses shed light on activities and treatment that can be used as a preventive measure or to address negative well-being.

81. What specific activities are you doing to improve your mental health and well-being?		
Specific activities	Number of participants in each activity	Percentage of Sample (n = 1643)
Exercise	670	41%
Healthy Diet/Proper Nutrition	367	22%
Hobbies	356	22%
Counseling	241	15%
Meditation	239	15%
Journaling, Gratitude Practicing	209	13%
Volunteer/Community Service	180	11%
Anti-anxiety Medication	175	11%
Recreational Sports	171	10%
Antidepressant Prescription Medication	163	10%
Religious/Faith-Based Activities	158	10%
Yoga/Tai Chi/Pilates	113	7%
Performing or Visual Arts	83	5%
Competitive Sports	42	3%
Professional Coach	43	3%
12-Step Recovery/Other Support Group	23	1%
Other Psychotropic Medication (Anti-psychotic)	16	1.0%

Well-Being and Diverse Attorneys

This report only focuses on 6 areas: Burnout, Depression, Suicidal Ideation, Problem Drinking, Feeling Isolated, and Anxiety. The Working Group recommends commissioning a further report analyzing all relationships for future review and study. At the time of this report, a brief review of well-being measures across race showed that there were statistically significant relationships between lawyers reporting their credentials being questioned across both measures of race and gender. Females were more than twice as likely as males to have their credentials questioned. Breaking the figures down by race, 41% of African Americans and 30% of Hispanics reported credential questioning, while this was reported only by 17% of whites. A report analyzing the relationships between all well-being measures and its impact on diverse attorneys would be particularly important.

One of the causes of mental health disorders in marginalized individuals may be the experiences with microaggressions. Studies suggest that microaggressions may lead to mental health struggles and substance abuse.³² Microaggressions correlate with alcohol abuse and greater anxiety.³³ People who regularly experience microaggressions may also experience confusion, anger, anxiety, helplessness, hopelessness, frustration, paranoia, and fear, which lead to negative coping mechanisms, such as denial, withdrawal, and substance abuse.³⁴ According to a 2018 study by LeanIn.org, 64% of women have experienced microaggressions. Of those women surveyed, 71% of lesbian women reported experiencing microaggressions in the workplace.³⁵ Similarly, gay men are far more likely to hear demeaning remarks about themselves or others like them and to feel discouraged from talking about their personal lives at work.³⁶ Of lawyers surveyed in a 2006 American Bar Association study, 49% of women of color, 47% of white women and 34% of men of color reported experiencing demeaning comments or harassment.³⁷ An individual from a marginalized background is likely experiencing microaggressions and inequities on a regular basis. That, in addition to the stigma of mental illness may lead to a further detrimental impact. Therefore, the Working Group recommends working with affinity bars to review the Survey data and get ongoing data as to the relationships between the well-being measures and its impact on diverse attorneys.

³² See generally Arthur W. Blume et al., *The relationship of microaggressions with alcohol use and anxiety among ethnic minority college students in a historically white institution*, 18 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 45 (2012).

³³ *Id.*

³⁴ See generally Lucas Torres & Joelle T. Taknint, *Ethnic microaggressions, traumatic stress symptoms, and Latino depression: A moderated mediational model*, 62 J. COUNSELING PSYCH. 393 (2015).

³⁵ 2018 Women in the Workplace Key Findings, LEANIN.ORG, <https://leanin.org/women-in-the-workplace/2018/women-get-less-support-less-access-at-work> (last visited Feb. 2, 2023).

³⁶ *Id.*

³⁷ Janet E. Gans Epner, *Visible invisibility: Women of color in law firms*, AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION (2006), https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/panel_1-visible_invisibility_women_of_color_in_law_firms.pdf.

Role of Judiciary

Survey respondents overwhelmingly thought that the judiciary plays a role with respect to lawyer wellness. The Survey asked not only whether the Judiciary has an impact, but also and what efforts could be undertaken to address lawyer mental health and well-being. More than three-quarters (78%) of respondents believe the judiciary has an impact, specifically noting the following efforts that might help address lawyer mental health and well-being:

- 51% - Continue virtual appearances post-Covid
- 48% - More liberally grant timely adjournment requests
- 46% - Reduce emphasis on administrative goals
- 45% - Improve judicial temperament
- 30% - Promote uniformity
- 28% - Training for judges to spot stress issues among attorneys
- 25% - Encourage judicial participation in local bar association events
- 23% - More judicial training re implicit bias and diversity

A Call To Action

The Colorado Supreme Court’s Task Force on Lawyer Well-Being summed up lawyer stress as follows: “Anyone who practices law knows that life in this profession is stressful. Let’s face it: billable hours, client demands, deadlines, long hours, and pervasive conflict make our jobs hard. And the same work ethic that enabled us to survive law school and whether the bar exam can cause us to drive ourselves into the ground, particularly when the culture of our profession tends to reward and glorify workaholism and demand perfection. The stresses of the profession are taking a toll on our well-being. Left unaddressed, that toll has consequences for us, our clients, our communities, and the future of our profession”³⁸

Attorney well-being is important to people in the profession and the clients they serve. This report is not intended to be the finish line for this work, but a starting point for further well-being initiatives. Much work is needed to create a healthier legal profession. Further analysis and responsibility is needed to determine what we can do as individuals to improve well-being but also what employers, bar organizations, and the judiciary can do to support well-being.

³⁸ Monica M. Marquez & Jonathan White, *Call to Action: The Colorado Supreme Court’s Task Force on Lawyer Well-Being*, 96 DENV. L. REV. 247, 248 (2018).

RECOMMENDATIONS FROM ATTORNEY HEALTH & WELL-BEING WORKING GROUP (PART I):

1. ***Centralize and Coordinate Well-Being Efforts.*** Initial efforts as well as on-going analysis, planning and implementation will require coordination. These efforts, in turn, require on-going commitments from a centralized source working with representatives from all stakeholders.
 - a. Establish an on-going Task Force on Lawyer and Judicial Well-Being under the Administrative Office of the Courts.
 - i. Dedicate staff within the Judiciary to plan and coordinate initiatives, develop educational materials;³⁹ and
 - ii. Membership should be a cross-section of different practice groups, judiciary leaders, NJLAP representative; NJSBA representative; NJAJ representative; Specialty/Affinity bar representatives; young lawyers, Law School representatives; mental health and diversity experts; Office of Attorney Ethics representative; NJSBA Standing Committee on Attorney Well-Being representative.⁴⁰
2. ***Further Survey Analysis.*** As noted, the Survey yielded a great deal of information, however it only focused on six areas. The working group supports future efforts to conduct additional analyses of survey data.
3. ***Begin a State-wide Conversation About Attorney Well-Being.*** Promoting wellness involves personal, cultural and systemic changes to address stigma and attitudes and to encourage well-being.
 - a. Identify ways in which stigma inhibits lawyers, law school students and judges from seeking help;
 - b. Support and encourage efforts to build educational programs that focus on stigma-reduction. Testimonial videos and articles are known to be an effective vehicle for such efforts.
 - c. Speak more openly about mental health at state, county and specialty/affinity bar association meetings;
 - d. Include well-being agenda items in bar association section meetings;
 - e. Host well-being CLEs at the NJSBA annual meeting and mid-year meeting;
 - f. Begin a dialogue about suicide prevention;
 - g. Promote the creation of well-being committees/initiatives for law firms;

³⁹ Massachusetts established a Supreme Judicial Court Standing Committee on Lawyer Well-being which is staffed by a full-time director who is employed by the judiciary.

⁴⁰ The Utah Task Force on Lawyer and Judge Well-Being is co-chaired by a Utah Supreme Court Justice and the Utah State Bar President.

- h. Develop roadmap/manual for law firms on “Promoting Lawyer Well-Being;⁴¹
 - i. Encourage firms, bar associations, law schools, the judiciary and NJLAP to plan events and participate in the annual national Well-Being Week in Law initiative the first week in May;
 - j. Establish a monthly theme for wellness (e.g. financial wellness, occupational wellness, spiritual wellness, etc.) and devote 30-60 seconds at the start of each ICLE seminar to a wellness tip in keeping with the monthly theme;
 - k. Create an NJSBA blog that addresses attorney wellness;
 - l. Emphasize and promote the current NJSBA mentorship program and the importance of mentorship in support of well-being;⁴² and
 - m. Eliminate Question 12B on the Character and Fitness Application.
4. ***Outreach and Education.*** Identifying needs and educating lawyers, judges and law school students about stress, pitfalls and available resources to address problems and foster wellness.
- a. Develop resources and efforts for outreach and education targeting prevention/early intervention to young lawyers;
 - b. Meet with Affinity Bars to continue the discussion and get ongoing data. This Survey did not go in-depth on correlations between race and gender with regards to well-being measures;
 - c. Presentations to local and specialty bar associations – invite experts to discuss the connection between attorney wellness and professional resilience/performance.
 - d. Invite lawyers who have experienced crisis, gotten help and are practicing successfully to speak at events;
 - e. Marketing – include announcements/ads in all Law Journal issues, in section publications (e.g., NJ Family Lawyer), county bar publications; include information with annual registration forms; with certification/re-certification applications;
 - f. Coordinate efforts by NJLAP, bar associations and other stakeholders to expand outreach;
 - g. Publicize NJLAP and other hotlines/resources on a frequent, consistent and on-going basis;
 - h. Place NJLAP tables conspicuously at bar events;
 - i. Include a weekly attorney wellness column in the NJ Law Journal;

⁴¹ Anne M. Brafford, *Well-Being Toolkit for Lawyers and Legal Employers*, AMERICAN BAR ASSOCIATION (July 2018), https://lawyerwell-being.net/wp-content/uploads/2020/02/Toolkit-Full_Final_July-30-2018.pdf.

⁴² Mentorship fosters inclusiveness and respectful engagement. It can aid career progression, especially for women and diverse professionals. Coaching which is different from mentoring is also critical to enhancing the legal profession. Jayne Reardon, *Can Improving Attorney Well-Being Solve Law’s Diversity Problem?*, 2CIVILITY (July 11, 2018), <https://www.2civility.org/attorney-well-being-solve-diversity-problem/>.

- j. Solo and small firm outreach committee;
 - k. Develop outreach programs for attorneys who have been formally disciplined with the goal of rehabilitation; and
 - l. Develop and conduct extensive legal community education programs on the results of the survey and implications for different subgroups.
5. **Law Firms.** The well-being of law firm employees, including partners, associates and support staff is vital to effective representation of clients and the long-term success of the firm.
- a. Conduct internal wellness self-assessment;
 - b. Encourage organizations and employees to add benefits such as providing for paid time off specifically for mental health-related appointments;
 - c. Encourage usage of paid time off to reduce stigma around taking leave;
 - d. Develop educational programs, as well as procedures and practices that support identification and treatment of mental health and substance use problems;
 - e. Provide up-to-date information on available resources for mental health and addiction issues;
 - f. Reduce focus on alcohol at firm events;
 - g. Encourage firms to adopt a Well-Being pledge;
 - h. Adopt a “Wellness Toolkit” modeled after the ABA Well-Being Toolkit for Lawyers and Legal Employers,”⁴³ which defines a healthy workplace and provides guidance on creating and maintaining a workplace that fosters wellness;
 - i. Assist solo and small firms to develop succession plans and to work with NJSBA Solo/Small Firm section and with the Lawyers Helping Lawyers to provide CLE and materials for members to develop succession plans⁴⁴ and plans for when they face a medical crisis or disability to make sure matters are not neglected; and
 - j. Encourage efforts to explore business models that might reduce burnout risk factors, given strong correlations between weekend work, outside hour work, employer expectations for attorney availability at night and weekends, vacation, taking time off to address well-being, and burnout.
6. **Board-approved CLE.** Continuing legal education provides a state-wide forum for providing essential information about wellness issues.
- a. Allow credits for solutions-based well-being programs;
 - b. Include a well-being track at annual and mid-year meetings for CLE credits;
 - c. Encourage specialty and affinity bars, as well as NJ Association for Justice to include well-being in their programs;
 - d. Consider minimum annual well-being credit requirements for licensed attorneys;

⁴³ Brafford, *supra* note 41.

⁴⁴ Of the 355 participants who self-identified as solo practitioners, 71% reported that they do not have a succession plan in the event they are unable to practice.

- e. Include well-being as a topic in ethics seminars as it relates to professional responsibility;
- f. Provide free or low-cost CLEs, on such topics as:
 - i. Self-care,
 - ii. Meditation,
 - iii. Gratitude,
 - iv. Emotional well-being,
 - v. Physical well-being,
 - vi. Social well-being,
 - vii. Spiritual well-being,
 - viii. Occupational well-being,
 - ix. Financial well-being,
 - x. Resilience,
 - xi. Secondary (vicarious) trauma and compassion fatigue,
 - xii. Conflict management,
 - xiii. Mindfulness,
 - xiv. Self-compassion, and
 - xv. Positive-lawyering.
- g. Bring in professional speakers when feasible.

7. ***Bench-bar relations.*** The Judiciary has a significant impact on lawyer well-being, and judges and judiciary employees can benefit from well-being initiatives.

- a. Judiciary buy-in;⁴⁵
- b. Conduct a judicial well-being survey;
- c. Provide well-being programming for judges and staff;
- d. Educate judiciary (reduce stigma, spotting trouble; temperament), including training for new judge orientation, Judicial College annual trainings;
- e. Encourage more involvement of judges in bar association events;
- f. Address efficiency issues (delays; required appearances when no action will be taken; grant timely reasonable adjournment requests; realistic deadlines);
- g. Continue virtual appearances for many court events; and
- h. Encourage attorney and bar leaders to take appropriate opportunities to speak with judges about attorney well-being.

8. ***Law Schools***

- a. Address students at orientation, entry and at each level of law school re: professional responsibility, demands of practice, etc.;

⁴⁵ See *Resolution 6 Recommending Consideration of the Report of the National Task Force on Lawyer Well-Being*, Conf. of Chief Justices (2017), https://ccj.ncsc.org/_data/assets/pdf_file/0023/23684/08092017-recommending-consideration-report-national-task-force-lawyer-well-being.pdf.

- b. Presentations/programs in partnership with attorneys (speakers bureau) and other outside speakers regarding well-being;
 - c. Provide information to students about identifying problems and available resources for assistance and treatment; and
 - d. Incorporate wellness into the curriculum, including discussing mental health and substance use in ethics/professional responsibility courses.
9. ***New Jersey Lawyers Assistance Program (“LAP”)***. NJLAP is an important resource in outreach, programs and initiatives related to attorney mental health and well-being. These are recommendations for continuing and expanded programming by NJLAP:
- a. Provide programs that affirmatively address well-being, prevention, and health-promoting functions, as well as services that address dysfunction;
 - b. Collaborate with other stakeholders to develop and deliver seminars, programs and outreach;
 - c. Assess whether current funding/staffing levels adequately provide for outreach, screening, counseling, peer assistance, monitoring, and education;
 - d. Continue to develop and expand resources for attorneys with alcohol and substance use disorders;
 - e. Inventory available suicide prevention, depression, and anxiety-focused resources and educational programming and develop additional resources and outreach in these areas to strengthen support serious mental health struggles in the legal community;
 - f. Continue to develop peer and facilitated support groups and explore expansion and training of NJLAP’s network of prospective peer volunteers;
 - g. Consider adding advisors to the NJLAP team to address solo and small firm practice management concerns, and expand free and confidential practice management-related consultations; and
 - h. Involve NJLAP in CLE presentations on well-being and mental health topics.
10. ***Partnering with Third Parties***
- a) In addition to providing CLEs promoting physical health, explore ways to offer discounts for on-line or in-person fitness programs/gyms.
 - b) Explore ways to offer group health insurance benefits to solo and small firms.
 - c) Explore ways to partner with mental health agencies/providers to offer free or low-cost services to attorneys, possibly through grants or other funding.⁴⁶

⁴⁶ The Utah State Bar Association recently teamed up with third party companies Tava and Unmind to offer their members 6 free confidential virtual mental health sessions with licensed clinicians See: <https://www.utahbar.org/tava-and-unmind-well-being-services-now-available-for-utah-state-bar-members/>

PART II – WHETHER THE QUESTION ON MENTAL HEALTH CONDITIONS OR IMPAIRMENTS ON THE NEW JERSEY CHARACTER AND FITNESS APPLICATION SHOULD REMAIN OR BE REMOVED.

The second major task of the Attorney Well-Being working group was to examine the efficacy and legality of screening Bar applicants for mental health conditions or impairments and recommending whether Question 12B of the New Jersey Character and Fitness application. should be removed. This major undertaking was spearheaded by Sylvia Breitowich and Alison Sutak, and the co-chairs of this working group, Maritza Rodriguez and Amy Wechsler.

Question 12B seeks information on conditions or impairments, rather than conduct.⁴⁷ The text of the question is as follows:

12B. Other Disorders

Do you **CURRENTLY** 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 your ability to practice law in a competent, ethical and professional manner and in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable case law?

If yes, please describe any ongoing treatment programs you receive to reduce or ameliorate the condition or impairment.⁴⁸

After a review of the existing process, data, and the intended objective, the Subcommittee has concluded that question 12B is not effective at screening for a candidate's fitness to practice law. Moreover, the question itself violates federal law. New Jersey is not the first to challenge the efficacy of the question and whether it achieves any valid purpose. Other experts and jurisdictions have found that it does not. In 2017, the National Task Force for Lawyer Well-Being called for changes in bar character and fitness questions.⁴⁹ In February 2018, the ABA passed a resolution in support of the Task Force's recommendations.⁵⁰ In February 2019, the Conference of Chief Justices unanimously adopted Resolution 5 "In Regard to the Determination of Fitness to Practice Law" recommending that applications be updated and urging:

"state and territorial 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

⁴⁷ The elimination of 12B has been questioned based on the need for information about substance use disorders. This concern is sufficiently addressed in Question 12A which addresses conduct.

⁴⁸ See *Character & Fitness Questionnaire*, NEW JERSEY BOARD OF BAR EXAMINERS, <https://www.njbarexams.org/browseprintform.action?formId=2> (last visited Jan. 17, 2023) attached as **Appendix D.**

⁴⁹ See *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, NATIONAL TASK FORCE ON LAWYER WELL-BEING 1, 27–28 (2017), <https://lawyerwell-being.net/wp-content/uploads/2017/11/Lawyer-Well-being-Report.pdf>.

⁵⁰ See *Policy*, AMERICAN BAR ASSOCIATION COMMISSION ON LAWYER ASSISTANCE PROGRAMS (Jan. 17, 2023), https://www.americanbar.org/groups/lawyer_assistance/policy/.

behavior that impairs an applicant's current ability to practice law in a competent, ethical, and professional manner; BE IT FURTHER RESOLVED that reasonable inquiries concerning an applicant's mental health history are only appropriate if the applicant has engaged in conduct or behavior and a mental health condition has been offered or shown to be an explanation for such conduct or behavior.”⁵¹

The Institute for Well-Being in Law, comprised of volunteer committees including legal experts and scholars from national and local bar associations, law school deans, chief justices, researchers and well-being directors, recommended the elimination of mental health and substance use questions on the National Conference of Bar Examiners Sample Bar Application.⁵² Similarly, both New Jersey law schools, Rutgers University⁵³ and Seton Hall University⁵⁴ have come out in public support of removing 12B from the Character and Fitness application.

As of January 10, 2023, thirteen States do not take into consideration a candidate's mental health status when evaluating fitness.⁵⁵ These states do not have questions on their applications that ask about a mental health diagnosis or impairment.⁵⁶

The Subcommittee urges that Question 12B be removed because: 1) 12B relies on antiquated concepts, stigmatizes mental health conditions, and serves as a deterrent to seeking professional help for mental health; 2) neither the question nor the review process accomplish the goal of identifying those bar applicants whose mental health conditions render them unfit to practice law; and 3) the question violates the Americans with Disabilities Act. This report addresses the Subcommittee's findings and rationale for this conclusion.

A. Question 12B

The objective of Section 12 of the Character and Fitness Application,⁵⁷ as stated in the Preamble to the question, is to “protect the public by determining the current fitness of applicants to practice law.” The full text of the Preamble reads as follows:

⁵¹ *See In Regard to the Determination of Fitness to Practice Law*, CONF. OF CHIEF JUSTICES (2019), https://ccj.ncsc.org/_data/assets/pdf_file/0021/23484/02132019-determination-of-fitness-to-practice-law.pdf.

⁵² *MEMO Re: Recommendations for Elimination of Mental Health & Substance Use Questions on NBCE Sample Bar Applications*, INSTITUTE FOR WELL-BEING IN LAW (Dec. 6, 2022). The memorandum can be found in *Appendix E*, *infra*.

⁵³ Letter from Rutgers Law School Administration to Jeralyn L. Lawrence (Jan. 4, 2023). The letter can be found in *Appendix F*, *infra*.

⁵⁴ Letter from Seton Hall Law School Administration sent to Jeralyn L. Lawrence on January 27, 2023. The letter can be found in *Appendix G*, *infra*.

⁵⁵ The states are Arizona, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Mississippi, New York, Pennsylvania, Tennessee, Washington, and Wisconsin. AMERICAN BAR ASSOCIATION, MENTAL HEALTH CHARACTER & FITNESS QUESTIONS FOR BAR ADMISSION (Jan. 10, 2023), available at <https://www.americanbar.org/groups/diversity/disabilityrights/resources/character-and-fitness-mh/>.

⁵⁶ *Id.*

⁵⁷ Question 12A, which focuses on conduct or behavior, was not addressed by the Subcommittee.

Preamble

Section 12 addresses recent mental health, chemical, alcohol, and/or psychological dependency matters. The Committee on Character (“Committee”) asks these questions because of its responsibility to protect the public by determining the current fitness of an applicant to practice law, and the purpose of these questions is to determine the current fitness of an applicant to practice law. Each applicant is considered on an individual basis. The mere fact of treatment for mental health problems or chemical, alcohol, or psychological dependency is not, in and of itself, a basis on which an applicant is ordinarily denied admission to the New Jersey bar. The Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical, alcohol, or psychological dependency issues. The Committee encourages applicants who may benefit from treatment to seek it and the Committee views such treatment as a positive factor in evaluating an application. As indicated in the Regulations Governing the Committee, all information is treated confidentially by the Committee and the Committee’s Offices and all proceedings are confidential. On occasion, a license may be denied when an applicant’s ability to function is impaired in a manner that indicates that the applicant is currently unfit to practice law at the time the licensing decision is made, or when an applicant demonstrates lack of candor and/or credibility by his or her responses. Each applicant is responsible for demonstrating that he or she possesses the qualifications necessary to practice law. Your responses may include information as to why, in your opinion or that of your treatment provider, your condition will not affect your ability to practice law in a competent and professional manner.

The Committee does not seek information that is characterized as situational counseling, such as stress counseling, domestic counseling, and grief counseling. Generally, the Committee does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

Question 12B seeks information on conditions or impairments, rather than conduct. It purports to protect the public and the integrity of the practice of law by preventing those individuals who may be unfit to practice from being admitted to the bar. It is highly doubtful that the question meets this stated purpose.

B. Question 12B Relies on Antiquated Concepts, Stigmatizes Mental Health Conditions and Serves as a Deterrent to Seeking Help.

The language of Question 12B, particularly with respect to alcohol and substance use is antiquated and, by virtue of this fact alone perpetuates stigma and misconceptions respecting mental health and substance use disorders. Since 2013, the language around addictive disorders has changed and

the word “abuse” has been substituted by “use” disorder.⁵⁸ This may seem like a difference without a distinction, but the words “abuse” and “use” have very different connotations, the former suggesting fault and evoking an image of a bad actor (someone with nefarious or malignant intentions), while the latter is decidedly value neutral.

Statistics show a high prevalence of mental health issues and struggles amongst law students that appear to increase after enrollment.⁵⁹ Students are reluctant to seek treatment for mental health issues as they remain fearful that seeking treatment will affect their admission to the bar.⁶⁰ This fear often results in students not seeking needed treatment to avoid any diagnosis or formal labels and thereby they are not required to reveal them on applications.⁶¹ For some who experience these issues, lack of treatment can lead students (and thereafter, admitted attorneys) to “self-medicate” with alcohol or drugs.⁶² In short, the very harm that Question 12B seeks to prevent may be exacerbated by the question’s very existence. The question effectively punishes people who seek help for their concerns and effectively rewards those who live in denial. A person who has never sought help may answer Question 12B in the negative; but that does not mean that they do not have mental health challenges that could impact their ability to practice law.

Mental health issues and struggles amongst law students appear to worsen after enrollment.⁶³ In a 2014 Survey of Law Student Well-Being (hereinafter, “SLSWB”) sponsored by the American Bar Association, 42% percent of surveyed law students believed they needed help for an emotional or mental health issue in the past year, but only half sought assistance.⁶⁴ The same survey was again done in 2021 and the percentage of respondents who screened positive for depression doubled

⁵⁸ See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 481-591 (5th ed. 2013).

⁵⁹ See Christine Charnosky, *Study: Law Schools That Ignore Students’ Mental Health ‘Shirk’ Their Responsibilities*, LAW.COM (July 13, 2022), <https://www.law.com/2022/07/13/study-law-schools-that-ignore-students-mental-health-shirk-their-responsibilities/>. See also Krystia Reed et al., *Problem Signs in Law School: Fostering Attorney Well-Being Early in Professional Training*, 47 Int’l J.L. & Psychiatry 148, 152 (2016).

⁶⁰ See e.g. Organ, J, Jaffe, D., and Bender, K., *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, 141 (2016). In this survey, which involved students at 15 separate law schools, 43% of respondents cited “potential threat to bar admission” as a factor that would discourage them from seeing a health professional specifically for mental health concerns. See also Jerome M. Organ et al., *The 2021 Survey of Law Student Well-Being: More Progress Needed in Fostering Help-Seeking among Law Students*, 91 BAR EXAMINER 8 (2022), available at: <https://thebarexaminer.ncbex.org/article/summer-2022/2021-survey-of-law-student-well-being/>.

⁶¹ Organ, *supra* note 20.

⁶² Jerome M. Organ et al., *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. OF LEGAL EDUCATION 116, 127-136 (2016).

⁶³ Organ, *supra* note 20.

⁶⁴ See *Survey of Law Student Well-Being*, AMERICAN BAR ASSOCIATION COMMISSION ON LAWYER ASSISTANCE PROGRAMS (Mar. 30, 2020), available at https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey/.

from 17% in 2014 to 34% in 2021.⁶⁵ The percentage of respondents diagnosed with anxiety at any point increased from 21% in 2014 to 39.8% in 2021.⁶⁶

In total, slightly more than half of those responding to the 2021 SLSWB had some type of mental health diagnosis, roughly doubling from the more than one-quarter of respondents reporting having one or more diagnoses in 2014 (depression, anxiety, eating disorders, psychosis, personality disorder, and/or substance use disorder).⁶⁷

On a less encouraging note, both surveys asked the extent to which respondents agreed with the statements “[i]f I had a drug or alcohol problem, my chances of getting admitted to the bar are better if the problem is hidden,” and the same statement regarding a mental health problem.⁶⁸ As to substance use concerns, there was no change in the percentage who agreed or strongly agreed with the statement—coming in at 49% in both 2014 and 2021.⁶⁹ Regarding mental health concerns, there was modest improvement with the percentage who agreed or strongly agreed with the statement coming in at 43% in 2014 and at 40% in 2021.⁷⁰

Law students are aware of what they will be asked on the bar admission application. They fear that their privacy will be invaded, or they will be judged unfairly, even though nothing in their conduct or behavior would suggest they are not fit, and end up possibly either conditionally admitted or not admitted at all to practice based on mental health issues. Law students are hesitant to seek treatment for mental health issues because it will mean they have a mental health “condition” or “impairment” which may negatively affect bar admission.⁷¹ The 2021 survey asked what may deter a student from seeking help for a substance use or mental health related concern. Overall, 59.6% reported being deterred by “potential threat to bar admission”; 58.6% were deterred by “potential threat to job or academic status”; 39% by “social stigma”; 41% had “privacy concerns.”⁷² Students are self-reporting that they are struggling and not seeking help for mental health and substance abuse issues out of fear of repercussions to their admission to the bar or future employment.⁷³

The Institute for Well-Being in Law, in recommending elimination of these questions, noted, “Some of the strongest advocates are legal educators and administrators who witness firsthand students failing to receive help they need for fear that their future will be jeopardized because of inquiries about their mental health or substance use history, diagnosis, or treatment on the bar

⁶⁵ David Jaffe et al., *‘It Is Okay Not to Be Okay’: The 2021 Survey of Law Student Well-Being*, 60 UNIV. OF LOUISVILLE L. REV. 441, 464 (2021).

⁶⁶ *Id.*

⁶⁷ *Id.* at 442.

⁶⁸ *Id.* at 475.

⁶⁹ *Id.*

⁷⁰ The question regarding mental health concerns: “If I had a mental health problem, my chances of getting admitted to the bar are better if the problem is hidden.” *Id.*

⁷¹ *Id.* at 445.

⁷² *Id.* at 469.

⁷³ *Id.* at 470.

application ...We encourage NCBE to be a leader in this well-being movement and consider the elimination of any mental health or substance use inquiry as part of the bar application process.”⁷⁴

Law students may decide to venue shop to avoid states in which they are required to answer mental health questions. New Jersey might be losing potentially talented lawyers to neighboring jurisdictions, where lived experience is valued as contributing to the fabric of the legal profession, rather than an indicator of unfitness or poor character. If students fail to seek needed help, their conditions can worsen and they may end up self-medicating with alcohol or drugs, which, if continued as admitted attorneys, can affect their fitness to practice.

C. Question 12B and the Application Review Process Do Not Effectively Identify Individuals Who May Be Unfit to Practice Law

1. The Committee on Character Application Review Process

As part of this review, our working group posed the following questions: 1) What mental health conditions is an applicant expected to disclose; 2) How many applicants disclose a mental health condition and of those, how many are flagged in the review process; and 3) What happens after an applicant discloses a mental health condition on an application.

2. What/Who Is the Committee on Character (“COC”)?

The COC is appointed by the Chief Justice of the New Jersey Supreme Court and serves as an arm of the Board of Bar Examiners.⁷⁵ The COC reviews applications to practice law in New Jersey and identifies individuals who may be deemed unfit to practice. Accordingly, in addition to analyzing the language of 12B itself, the Subcommittee reviewed the process the COC follows to determine fitness, specifically in connection with Question 12B.⁷⁶

The COC is comprised of fifty (50) volunteer licensed New Jersey attorneys, appointed by the Court for renewable 3-year terms, tasked with determining whether candidates for admission to the New Jersey bar have the “requisite good character and fitness to practice law.”⁷⁷ Seven of those members are selected to sit on the Statewide Panel, which is the policy and oversight board of the COC.⁷⁸ The Court designates one committee member to serve as Statewide Chair to serve as the administrative head of the COC Statewide Panel.⁷⁹ The COC is supported by 16 Judiciary staff

⁷⁴ *Id.* at 448-49.

⁷⁵ *See Supreme Court Regulations Governing the Committee on Character*, N.J. BD. OF BAR EXAM’RS (Oct. 1, 2002), <https://www.njbarexams.org/committee-on-character-regulations>.

⁷⁶ *See Report & Recommendations*, SUPREME COURT AD HOC COMM. ON THE CHARACTER REV. PROCESS (Oct. 27, 2017), <https://www.njcourts.gov/sites/default/files/characterreviewprocess.pdf> [hereinafter “Report & Recommendations”]; *N.J. Ct. R.* 1:25. We sought to involve the COC in this process, including requesting statistical data and asking to meet with COC leadership. Our request for information was denied and our request to meet and discuss these issues with COC leadership was left unanswered. We were, however, able to speak to an attorney member of the COC, who asked to remain anonymous (referred to herein as “COC Interview”).

⁷⁷ *Report & Recommendations*, *supra* note 29 at 5.

⁷⁸ *Id.*

⁷⁹ *Id.*

within the Bar Admissions Unit, which is divided into two units: 1) General bar administration and admissions (10 employees), and Staff to the Committee on Character (6 employees).

3. The Application Review Process

The COC conducts a multi-step character review of each candidate seeking admission to the bar. The process is governed by regulations adopted by the COC and approved by the Supreme Court under Rule 1:25 which states, “Except as provided by these Regulations, the Committee has complete discretion over its procedures.”⁸⁰ Therefore, the COC is almost entirely responsible for the design and regulation over the character reviews that it conducts.

Every applicant for admission is required to complete a Certified Statement of Candidate which is alternatively known as a Character and Fitness Questionnaire (“CFQ”).⁸¹ The 2017 Report and Recommendation states, “The candidate has a general duty to disclose all available information requested by the Committee on Character. RG. 202:1. The candidate must diligently pursue his or her certification and must respond in writing to inquiries and forward requested documentation to the Committee on Character. RG. 202:2. The candidate has a continuing obligation to update any responses that change during the pendency of his/her application until the candidate is sworn in as an attorney.”⁸² Further, “the admissions process and candidate’s duty is [sic] explained early and often to the students at each New Jersey law school and at several Pennsylvania and New York law schools through information sessions provided by staff at each school, as well as public outreach provided by representatives of the Committee on Character and Bar Admissions unit.”⁸³ The impact of these explanations on law students is discussed below.

COC staff assist with administration, answer questions about the forms and applications, receive the assembled submissions with all additional documents, assemble applications in a file for each candidate, and “may also perform a general cursory review of the Character and Fitness Questionnaire, taking note of potential issues.”⁸⁴ Each candidate’s file is assigned to one of the volunteer attorneys for independent review and recommendation.⁸⁵ If a candidate is deemed to be fit by the volunteer attorney, the file is prepared for certification.⁸⁶ If there is a question, the attorney may ask the candidate, or any other individual with knowledge relevant to the applicant’s character and fitness, to appear for an “informal” interview.⁸⁷ This interview can result in “admission subject to specific conditions,” RG. 302.2(b), or if the file or interview indicate further review is necessary, the matter may be referred to staff for further investigation and/or to schedule a hearing.⁸⁸

⁸⁰ *Id.*

⁸¹ *Id.* at 6.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 7.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Applicants with “prior incidents or conduct involving alcohol, drug and/or mental health issues or a pattern of such issues may be referred for a substance abuse/mental health evaluation.”⁸⁹ Each applicant can obtain a free evaluation from the New Jersey Lawyers Assistance Program or a private evaluation at the applicant’s own cost.⁹⁰ A written report must be provided to the committee setting forth the evaluator’s “understanding of the issues involved, the candidate’s diagnosis and prognosis, the evaluator’s determination whether the candidate’s condition affects his or her ability to practice law, and the evaluator’s recommendations as to whether continued treatment is necessary.”⁹¹

A reviewing attorney can determine that an applicant should not be certified for admission or that the determination should be made by a Panel by way of a 303 hearing.⁹² In this instance, a 303 hearing is conducted under RG. 303:1, but not until **after** an applicant passes the bar exam.⁹³

This working group was able to interview a member of the COC who confirmed that there have been no changes to the procedure as outlined above.⁹⁴ The member also confirmed that determinations as to whether a candidate should be certified or not are almost completely subjective and at the discretion of the staff member and the reviewing attorney.⁹⁵ There is no policy or procedure to identify what mental health “conditions or impairments” are to be disclosed. There is no instruction or clarification provided to the applicant or to the reviewing attorneys as to what the Report and Recommendations defines as a “mental health issue or a pattern of such issues.”⁹⁶

D. The COC Review Process Is Unreasonably Subjective

If the COC is unclear or unaware of which mental health issues or diagnoses are to be disclosed, it logically follows that an applicant to the bar would be even less certain what must be disclosed. Further, which mental health issues or diagnoses are significant enough to warrant further review? Is it simply a diagnosis, or should it be conduct that calls into question a candidate’s character? The COC member interviewed could not provide clarification or answers to this question, other than to purport that each reviewing attorney handles an applicant file at their discretion.⁹⁷ This level of subjective review is concerning for many reasons. First, it means that each COC attorney is reviewing each application through a different lens and therefore the process is not consistent for each applicant. This may not matter for candidates with a history of conduct or behavior involving alcohol, drug use, criminal conduct, but Question 12B does not ask about conduct; it requires disclosure without providing clarity to applicants as to what must be disclosed or what is not required to be disclosed. Two identical applications being reviewed by two different attorney members could lead to two different results. This subjective review leaves too much discretion up

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 8.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ COC Interview, *supra* at 76.

⁹⁵ *Id.*

⁹⁶ Report & Recommendations, *supra* note 76 at 7.

⁹⁷ COC Interview, *supra* at 76.

to the reviewing attorney who is essentially permitted to impose personal bias, personal experience, and personal feelings into the review process.

E. Lack of Uniformity and Expertise in Evaluating 12B Responses

The absence of a uniform review process and view on the answer to 12B within the COC is consistent with the premise that the decision as to **what** to disclose is left to the discretion of the applicant, who often is a student. Question 12B requires an applicant to decide if a condition limits his/her/their ability to practice law. How is a law student, who has no practical experience in the practice of law other than from a scholarly perspective, able to accurately make such a determination? What becomes of the student who a COC reviewer believes answered this question “incorrectly” because information was omitted that, from the subjective perspective of the attorney, should have been included?

What about an applicant who suffers from a condition such as Attention Deficit Disorder (“ADD”) or Attention Deficit Hyperactivity Disorder (“ADHD”)? What differentiates a neurological condition from a mental health condition? Could law students with any of these conditions, who successfully obtained a law degree and passed the bar presume they are fit to practice, and the condition would not negatively impact their ability to practice, so they see no need to disclose it? What if the reviewing attorney presumes that those with ADD or ADHD diagnoses tend to be disorganized or ill-focused and, as such, should have disclosed it to the COC so the COC can determine if the applicant has the condition “under control”? Did the applicant answer the question incorrectly? Overall, the review process as it pertains to 12B specifically, is grossly unfair and overly subjective. Moreover, failure to reveal a condition may lead to non-certification or conditional admission when the underlying condition itself does not have an impact on the candidate’s fitness.

This working group further inquired from COC as to how many applicants actually disclose a mental health condition and how many of those applications are flagged in the review process. COC staff advised that such data and records are not maintained, and no information could be provided in response.⁹⁸ As such, there is no available empirical evidence to support the view that question 12B provides the information and analysis needed to determine whether an applicant is fit to practice.

Question 12A specifically addresses past conduct of an applicant, not the status of having a mental health issue or condition, and the impact that conduct will have on the fitness to practice. This inquiry, more than 12B, clearly provides the disclosure the COC is seeking to obtain, thereby making 12B unnecessary, despite being ineffective, at accomplishing the goal of the Committee. Our working group therefore reiterates its recommendation that question 12B be removed from the New Jersey State Character and Fitness application.

⁹⁸ Although the COC representative cited confidentiality concerns, no identifying information was sought – only statistics.

There is no indication that COC staff or volunteer attorneys have the requisite education, expertise or skills needed to assess what is or is not a mental health impairment or condition. Yet, 12B places them in a position that requires them to conduct an investigation and make that assessment any time a candidate answers “yes” to the question.

Our working group recognizes the necessity of the COC to protect the integrity of the practice of law and to ensure that only those fit to practice law are granted admission. However, our working group respectfully submits that a determination as to a person’s fitness to practice law should be made based on someone’s behavior and conduct rather than on their status as a person who has an ill-defined mental “condition” or “impairment.” Conditions or impairments for which there is no evidence that it affects their individual fitness to practice law.

F. Question 12B Violates the Americans with Disabilities Act

In addition to creating confusion among applicants, Question 12B violates the Americans with Disabilities Act. Question 12B asks applicants to self-identify their *status* as a person with a condition or impairment. It does not inquire into an applicant’s *conduct* or *behavior*, but solely inquiries about their status.

The Americans with Disabilities Act of 1990 (ADA)⁹⁹ prohibits discrimination based on disability. Title II of the ADA applies to all public entities, including any department, agency, or instrumentality of a state or local government, and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities.¹⁰⁰ The New Jersey Board of Bar Examiners, including the COC, as appointed by the Supreme Court of New Jersey, is subject to the provisions of Title II.

The United States Department of Justice (hereinafter “DOJ”) has issued regulations relating to Title II. These regulations state that “[a] public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration ... that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.”¹⁰¹ Additionally, “[a] public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability.”¹⁰² The DOJ Regulations also state that “[a] public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying a service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”¹⁰³

Arguably, merely asking the question of whether a candidate for admission has a mental condition or impairment does not subject that candidate to discrimination or screen out the candidate. However, the resulting process of review and disclosure of otherwise private and protected medical information, which occurs *only* for those candidates who identify themselves as having a mental

⁹⁹ 42 U.S.C. § 12101 (1990).

¹⁰⁰ 42 U.S.C. § 12182 (1990); 28 C.F.R. § 35.130 (1991).

¹⁰¹ 28 C.F.R. § 35.130(b)(3)(i) (1991).

¹⁰² 28 C.F.R. § 35.130(b)(6) (1991).

¹⁰³ 28 C.F.R. § 35.130(b)(8) (1991).

condition or impairment, *does* have the effect of imposing additional criteria to those candidates and does screen out or tend to screen out those candidates.

The COC's focus on a candidate's status, rather than on their behavior or conduct, does not accurately predict a candidate's ability to practice law. Courts have regularly held "[i]n the context of other anti-discrimination statutes, ... to be fundamental that an individual's status cannot be used to make generalizations about that individual's behavior."¹⁰⁴ The best predictor of future conduct is past conduct.

In a retrospective study conducted by the Minnesota Board of Bar Examiners, the bar applications of 52 attorneys who had been disciplined for professional misconduct were reviewed. That study found that of those 52 attorneys, only two had received mental health treatment prior to their application and admission. That study also found that attorneys who had disclosed prior problematic *conduct*, such as arrests, academic probation, or employment termination, were more likely to be disciplined for misconduct as attorneys.¹⁰⁵

When examining a similar question in Rhode Island's bar admissions process, the Supreme Court of Rhode Island found that "there is no empirical evidence demonstrating that lawyers who have had psychiatric treatment have a greater incidence of subsequent disciplinary action by the bar ... in comparison with those who have not had such treatment. Moreover, most disciplinary problems and grievance issues arise after an attorney has been in practice for a number of years, and in nearly all such cases no indicators of future difficulty manifested themselves at the time of original licensure."¹⁰⁶

RECOMMENDATION FROM ATTORNEY HEALTH & WELL-BEING WORKING GROUP (PART II) REGARDING QUESTION 12B:

In conclusion, 12B does not meet the threshold for determining the fitness of an applicant to practice law. Our working group recommends that Question 12B be removed from the New Jersey Character and Fitness application as soon as practicable. The evidence demonstrates that this question actually causes more harm than good. It deters applicants from seeking mental health treatment, which, in turn, may encourage self-medication through substance use following admission to the bar. Question 12B lacks efficacy in screening out individuals who may be unfit to practice law, as it is an applicant's conduct, not their status, which should be the focus of determining their character and fitness. Further, it violates the Americans with Disabilities Act in its screening process by imposing additional criteria on those candidates who self-identify as having a mental health condition or impairment.

¹⁰⁴ *Med. Soc'y of New Jersey v. Jacobs*, No. 93-3670, 1993 WL 413016, at *7 (D.N.J. Oct. 5, 1993)

¹⁰⁵ Jon Bauer, *Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 177 (2001).

¹⁰⁶ *In re Petition & Questionnaire for Admission to Rhode Island Bar*, 683 A.2d 1333, 1336 (R.I. 1996)

ETHICS COMMITTEE AND FEE ARBITRATION

WORKING GROUP

Since the 1993 report from the New Jersey Ethics Commission,¹⁰⁷ there has not been a review of the overall functioning¹⁰⁸ of the attorneys' ethics system. At that time, litigants complained about delays in the process and contended that their grievances against lawyers were being dismissed without investigation.¹⁰⁹ Among other things, the *Michels Commission Report* recommended a central intake office to handle all grievances, which the Supreme Court rejected.¹¹⁰ Instead, the Supreme Court created mechanism in which a district secretary was prohibited from dismissing a grievance before investigation without the approval of a lay member of the committee.¹¹¹¹¹² In January 1995 (effective March 1, 1995), as a result of the *Michels Commission Report* and its own *Administrative Determinations*, the Supreme Court overhauled the ethics system. The Supreme Court opened the discipline system to public view with amendments to *Rule* 1:20-3. It also eliminated the "private reprimand," a form of discipline that remained unknown to the public. In its place, the Court implemented the "admonition." As a result, all discipline is now available to the public after a complaint has been filed.¹¹³ Since 1995, there exists one substantial clarification/change to the ethics system, which occurred because of *Robertelli v. N.J. Office of Attorney Ethics*, 224 N.J. 470 (2016). In *Robertelli*, the Supreme Court held that OAE, in its discretion, could revive and investigate a grievance that a local committee had declined to docket for investigation.

Now, 30-years later, in an effort to provide the Court with information regarding the current functioning of the disciplinary and fee arbitration systems, the *PLF Task Force – Working Group on Ethics and Fee Arbitration* ("*Ethics Working Group*"), through its Chair, Bonnie C. Frost, Esq., conducted an investigation that resulted in the collection of information and data from a wide-array of individuals and sources.

First, the *Ethics Working Group* reviewed the 2021 Office of Attorney Ethics Annual Report. According to that report, 36,367 attorneys were engaged in private practice of New Jersey law

¹⁰⁷ Report of the New Jersey Ethics Commission ("*Michels Commission Report*"), 133 N.J.L.J. 905 (March 15, 1993); *see also Report of New Jersey Ethics Commission* (February 26, 1993)(the New Jersey Law Journal published the report on March 15, 1993).

¹⁰⁸ The *Michels Commission's* task was to evaluate the ethics system and recommend changes to make it "as effective, as efficient, and as responsive as possible." *Id.* at 905.

¹⁰⁹ *Id.* at 913-14.

¹¹⁰ *Administrative Determinations Relating to the Report of the New Jersey Ethics Commission* ("*Administrative Determinations*"), 137 N.J.L.J. 1177 (July 18, 1994).

¹¹¹ "No grievance shall be dismissed, however, unless that dismissal is concurred in by a public member designated by the Chair, all as set forth above." *Ibid.*

¹¹² For the sake of completeness, it bears mentioning that in 2001, the Supreme Court created a Commission, chaired by retired Justice Stewart Pollock and known as the *Pollock Commission*, which suggested revisions to New Jersey's R.P.C.s to eliminate the "appearance of impropriety doctrine[.]" Kevin H. Michels, *New Jersey Attorney Ethics—The Law of New Jersey Lawyering* 4 (2006). However, the last "top-to-bottom" review occurred with the *Michels Commission*.

¹¹³ The Supreme Court also implemented "diversion" in lieu of formal discipline for minor misconduct.

(21,018 attorneys were engaged in full-time practice of law; 7,845 practiced on a part-time basis; 7,444 occasionally practiced; and 60 were unspecified).¹¹⁴ Of the 21,028 attorneys engaged in the full-time practice of law, 124 attorneys were subject to discipline in the fiscal year 2021, which was down from 167 in 2020.¹¹⁵ That means that one-half of one percent were sanctioned.

In 2021, 768 grievances were filed, a reduction from a high of 1,318 in 2017; of that number, 166 received complaints, which means that the investigator deemed there existed reasonable prospect of proving unethical conduct by clear and convincing evidence. The age of investigations for the Office of Attorney Ethics and local Ethics Committee differed. The OAE investigative time increased from 196 days in 2020, to 241 days in 2021. Similarly, local committee investigative time increased from 177 days in 2020 to 194 days in 2021.¹¹⁶

In 2021, 49 attorneys were approved for Diversion (commonly referred to as “PTI for ethics”).¹¹⁷ Diversion is an opportunity for an attorney who does not have an ethics record, and who engaged in minor misconduct, to avoid an ethics record if they remediate their behavior as recommended by the Office of Attorney Ethics (“OAE”). If the attorney takes remedial steps to assure future compliance with the Rules of Professional Conduct (“R.P.C.”) and successfully completes the conditions of diversion, the underlying grievance is dismissed, and no record of discipline is recorded.

Next, the *Ethics Working Group* reviewed the 2022 Quarterly Disciplinary Reports. According to those report, 138 attorneys received final discipline as verified by the Quarterly Disciplinary Reports from the Office of Attorney Ethics¹¹⁸:

- 13 disbarments;
- 55 suspensions;
- 27 censures;
- 26 reprimands; and
- 15 admonitions.

¹¹⁴ Office of Attorney Ethics, *2021 State of the Attorney Disciplinary System Report*, available at: <https://www.njcourts.gov/sites/default/files/attorneys/office-attorney-ethics/2021oaeannualrpt.pdf> (hereinafter “*OAE 2021 Report*”).

¹¹⁵ *OAE 2021 Report* at 3, 10.

¹¹⁶ *OAE 2021 Report* at 5.

¹¹⁷ *OAE 2021 Report* at 30.

¹¹⁸ Information available at the website for New Jersey Courts:
<https://www.njcourts.gov/sites/default/files/attorneys/1stqtr2022.pdf>
<https://www.njcourts.gov/sites/default/files/2ndqtr2022.pdf>
<https://www.njcourts.gov/sites/default/files/3rdqtr2022.pdf>
<https://www.njcourts.gov/sites/default/files/attorneys/4rdqtr2022.pdf>

As of December 31, 2022, 89 complaint/hearings were pending at the local level and 89 were pending at the OAE level for a total of 178 pending matters at the hearing stage.¹¹⁹

The *Ethics Working Group* also undertook a process that included surveys and interviews, both of which relied on uniform questions to ensure that the results maintained validity.

- 1. The NJSBA sent a survey to all NJSBA members with questions about their contact and experience with the ethics and fee systems, OAE employees, and local district volunteers. 188 lawyers responded.¹²⁰ The survey questions are attached as Appendix H.**

The most frequent response groups were ethics volunteers, respondents of ethics complaints, fee arbitration volunteers, and subjects of fee arbitration and ethics grievances. Most attorneys were solo practitioners; the second most represented group was attorneys in firms with two-to-four attorneys.

- 2. Individual telephone calls were made by volunteers of the PLF Task Force to local ethics and fee arbitration secretaries to survey their opinions. To that end, and in an effort to maintain uniformity, the PLF Task Force circulated a list of identical questions for each interview. A copy of the questions is attached as Appendix I.**

There are 17 ethics secretaries and 16 fee arbitration secretaries. Once the OAE learned that the PLF Task Force members called secretaries to ask questions about the process, on October 3, 2022, the OAE held a meeting for all the ethics secretaries at which they were told not to speak to any representative of the PLF Task Force because this process was not approved by the OAE and, regardless, all ethics matters were confidential.¹²¹ As a result, on October 5, 2022, NJSBA President Jeralyn L. Lawrence wrote to the newly appointed Director of the OAE, Johanna Barba Jones, asking for her cooperation to “improve our ethics system and to provide the most sound guidance to attorneys who have an ethics matter under investigation.” Ms. Jones responded that she had asked secretaries to share with her any concerns they might have about the system. Copies of both letters are attached as Appendix J.

Thereafter, on October 13, 2022, Isabel McGinty, the Statewide Coordinator, sent an e-mail on behalf of Ms. Jones to members of both the ethics and fee arbitration committees. She advised the members to “be mindful of the confidentiality requirements of *R. 1:20-9*, *R. 1:20A-5*, *R. 1:38-2* and *R. 1:38-5*.” Ms. McGinty further advised that they were welcome to share constructive feedback with Ms. Jones with a copy to Ms. McGinty. See Appendix K. Of the 17 ethics secretaries, 9 were willing to answer questions asked by a member of the PLF Task Force. Of the 16 fee arbitration secretaries, 5 answered questions from a member of the PLF

¹¹⁹ Information available at the website for New Jersey Courts:

<https://www.njcourts.gov/sites/default/files/attorneys/office-attorney-ethics/publichearinglist.pdf>

¹²⁰ If a participant in the survey did not have any involvement with the ethics system or fee arbitration system, the survey ended. Accordingly, the 188 participants represent those attorneys who interacted with either (or both of) ethics/fee arbitration systems.

¹²¹ The two individuals who, separately, provided this information asked to remain anonymous.

Task Force. Several secretaries, who wished to remain “anonymous,” advised that they were told they *could not* speak with any PLF Task Force member. Several others advised that they needed to check with OAE before speaking to a member of the PLF Task Force; they did not call back.¹²²

3. The PLF Task Force compiled a list of all attorneys who represented respondents in ethics matters in the last two years. The PLF Task Force members called the attorneys on the list and gathered their insights into the ethics process. Again, a list of questions was composed for the attorney representatives to use in each interview in order to maintain uniformity to the questioning. See Appendix L.

24 attorneys agreed to be interviewed by a PLF Task Force member. They answered both uniform questions and provided narrative answers.

4. Efforts were made to obtain OAE participation.¹²³

On January 4, 2023, Ms. Frost wrote an e-mail to Ms. McGinty asking her to participate in a phone call and discuss the ethics system. In response, Ms. Jones replied on January 12, 2023, that “in a spirit of helpfulness,” she copied Mr. Peter McAleer, director of communications. See Appendix M. On January 18, 2023, Mr. McAleer asked that Ms. Frost e-mail him questions so “we can provide a response as quickly as possible.” See Appendix N. On January 23, 2023, Ms. Frost e-mailed Mr. McAleer the questions. See Appendix N. As of February 17, 2023, Ms. Frost had not received a response.

In addition, on February 10, 2023, NJSBA President Lawrence wrote to Director Jones regarding an OAE memorandum that requires District Ethics and Fee Arbitration Committees to maintain “declination” data and related documents in the OAE e-filing InfoShare system. See Appendix O. As of February 17, 2023, NJSBA President Lawrence had not received a response.

¹²² Notes from each individual interview and any contact with a potential interviewee are maintained by the Chairperson of the *Ethics Working Group*.

¹²³ Recently, an OAE investigator, Ms. HoeChin Kim, was slated to speak at an ethical seminar but declined, stating, “given the political tenor of your president’s statement and remarks about the attorney disciplinary system, I am bowing out of the presentation, as I do not wish to run afoul of the code of conduct for judiciary employees.” See Appendix P. The Working Group cites this development as it appears to reflect OAE’s overall sentiment about involvement with the current NJSBA President’s initiative(s).

I. RESULTS OF THE STATE BAR SURVEY: ETHICS COMMITTEES.

A. Strengths of the System:

- Dedicated and diligent volunteers and committee members.
- Lawyer and lay members presented a good balance in the committees and hearing panels.
- OAE has improved training and materials for volunteers.

B. Areas of Improvement/Concern:

1. **Most suggestions referred to better screening of cases to “weed out” frivolous grievances at the outset because clients often misuse the system to avoid paying their legal fees. Commenters also believed that: there needs to be a deterrent for clients who make false claims; and there exists far too much discretion in docketing/rejecting grievances.**

Commenters’ Suggestion for Improvement:

- (i) Client must reimburse attorney for time and expense of responding so that the client, who lodges the grievance, has skin in the game, not only the attorney.
2. **The second most cited area for improvement centered around the length of time the ethics process takes (i.e., commenters believe that the process takes too long).**

Commenters’ Suggestion for Improvement:

- (i) A more specific schedule of when to expect “things” will be filed and occur.
- (ii) Have a system where a person can plead to a known act and thus move the docket faster.¹²⁴
3. **The third most cited concern centered on the consumption of attorneys’ time in preparing a response to frivolous grievances.**

¹²⁴ *Ethics Working Group* Comment: this system is in place, but it is clear from the commenters that many are unaware of its existence.

Commenters' Suggestion for Improvement:

- (i) Respondents make a brief statement of facts and if the investigator believes more detail is required, then—and only then—would the respondent answer.
 - (ii) Attorneys should have the opportunity to respond to an allegation of unethical conduct before a formal grievance is filed.¹²⁵
- 4. The fourth most frequent concern was that the investigator should be from the same area of law as the respondent so that the investigator has a better understanding of customary practices in a particular area of law.**
- 5. The fifth most frequent area of concern was the perception that OAE has a “bias” against lawyers and is more concerned with protecting the public. In a similar vein, commenters believed that the OAE staff is bureaucratic and rigid.**

Commenters' Suggestion for Improvement:

- (i) Rule change where the burden of proof is on the grievant not the lawyer.¹²⁶ OAE needs training on empathy and less focus on numbers. OAE needs sensitivity training.
 - (ii) OAE needs to exercise more prosecutorial discretion.
- 6. The sixth most frequent suggestion is for uniformity as to procedures.**

Commenters' Suggestion for Improvement:

- (i) Give volunteers a financial incentive to serve.¹²⁷
- (ii) There should be a greater distinction between intentional and unintentional violations.
- (iii) Have a statewide program, as opposed to county-level.

¹²⁵ *Ethics Working Group* Comment: in theory this does happen as the respondent is part of the investigative process. It is possible that the commenter meant that the respondent should be able to discuss diversion with the OAE before a complaint is filed.

¹²⁶ *Ethics Working Group* Comment: a grievant is unlikely familiar with the Rules of Professional Conduct and, in turn, unlikely to know whether they have been violated.

¹²⁷ *Ethics Working Group* Comment: ethics committee volunteers receive ethics CLE credits.

- (iv) There should be a greater distinction between intentional and unintentional violations.
- (v) The diversion process for a minor infraction should be made simpler.
- (vi) Privacy so attorney is not punished for eternity.
- (vii) Limit on random audits (one commenter, a solo practitioner, was subject to three random audits).
- (viii) More use of emails.
- (ix) More user-friendly website.

II. RESULTS OF THE STATE BAR SURVEY: FEE ARBITRATION.

A. Strengths of the System:

- Volunteers take their role seriously.
- Volunteers are knowledgeable, dedicated, and thorough.
- In general, determinations are quickly made.

B. Areas of Improvement/Concern:

1. **The largest area of concern was that the process took too long and that it favored clients because clients do not have to pay for attorneys' time.**

Commenters' Suggestion for Improvement:

- (i) Have a master calendar which can be checked online by lawyers and clients alike.¹²⁸
- (ii) Have a two-tier process: (i) mediation and (ii) arbitration.
- (iii) Allow retired attorneys to participate.
- (iv) Better understanding of timelines and process.

¹²⁸ *Ethics Working Group* Comment: this suggestion raises serious privacy concerns.

2. The second area most frequently noted is that lawyers have to “chase” clients for payment because judges do not always confirm the fee arbitration award.

Commenters’ Suggestion for Improvement:

- (i) A fee arbitration award is automatically converted to a judgment without having to file a lawsuit and payment should be made within 30 days.
- (ii) Client should post bond or pay the amount owed into a fund so that the money is there if there is an award in the attorney’s favor. If not, the client is refunded the money.
- (iii) The \$50 fee to file is too little and therefore the client files merely to avoid paying the bill.
- (iv) Lawyers should be able to seek fee arbitration and not be at the mercy of the client.
- (v) Attorney on panel should have knowledge of area of law.
- (vi) Clients should be required to set forth precise billing issue(s) because there is too much ambiguity in clients’ paperwork.
- (vii) Greater deference to retainer agreements. Panelists regularly eliminate interest, but this should not occur if retainer has that interest will accrue.
- (viii) Volunteers should get CLE credits.
- (ix) Better training for panelists.
- (x) Increased authority to deal with repeat offenders (i.e., attorneys who “pad” their bills).
- (xi) A panel’s prior finding against an attorney should be able to be used by a second panel.
- (xii) Both client and attorney should be able to appeal the finding of fee arb.¹²⁹

¹²⁹ *Ethics Working Group* Comment: this process already exists.

III. RESULTS OF THE ETHICS SECRETARIES' SURVEY.

A. Strengths of the System:

- The strength of the system is its volunteers and the integrity of the officers of the local committees.
- The strength of the system is the mix between volunteer and paid employees.
- The system is fair. Members of local committees are professional. Autonomy and diversity of committee works well. Better to have a lawyer judged by their peers than a state employee who may or may not have practiced law in private practice.

B. Areas of Improvement/Concern:

1. Change in “tone” and “micromanagement” of the local committees by the OAE.

Secretaries' Feedback:

- (i) One secretary said the turnover of investigators at the OAE has caused dysfunction in that office. The secretary added that the OAE intervenes in a “haphazard” way that results in the mishandling of cases.¹³⁰
- (ii) “Tone” from the OAE and under the current Statewide Coordinator is different than under Ms. Granuzzo (the prior Statewide Coordinator). There is not the sense of “comradery” with OAE as in the past. The focus appears to be on numbers and forms. A feeling of post-COVID micromanagement of the local committees by the OAE.
- (iii) The approach now is: “let’s see what an attorney has done wrong”; not centrally focused on protecting the public.
- (iv) New attorney members are taught by OAE that the first question to ask when beginning an investigation is to find out if there has been a retainer agreement sent to, and signed by, a client. They are then advised to search for other mistakes *in addition to* the contents of the grievance.

¹³⁰ *Ethics Working Group* Comment: no specific example or elaboration was provided.

- (v) In the “last 4 or 5 years,” members must sign a confidentiality agreement which is kept by Trenton. This was instituted by the present statewide liaison officer. Prior to that, confidentiality was part of training and attorney volunteers knew that had to keep their investigations confidential.¹³¹
- (vi) As a result of COVID, OAE established an inbox for distribution of grievance forms and thus, grievants would return grievances to OAE. One secretary said that during COVID, 75% of grievances came from OAE. If a grievance arrives as a result of filing it with OAE, several secretaries complained about the delay in time before the grievance reached the local secretary (as long as from six weeks to 4-5 months). The grievant then waits for an extensive period of time to have the grievance acknowledged. When the grievant calls the local secretary and asks about the status of the grievance, the secretary is unaware because it has been returned to.
- (vii) One secretary said that OAE does not get involved in the initial stage of the grievance entering the system, but another said if the grievance is filed through the portal with the OAE who knows if OAE keeps grievances and investigates them itself? Others said they did not have this concern.
- (viii) One secretary said they have a strong committee and will stand up to OAE to let them do their job. A different secretary said OAE is more of an overseer and wants to do the secretary’s job and that the local committee is losing its autonomy.

2. Communication avenues and timely turnarounds.

Secretaries’ Feedback:

- (i) Presently, communication is by fax or regular mail due to confidentiality concerns. One secretary said they would discourage a grievant from having the ability to email as that would “bog down” the flow of information and distract the investigator.

¹³¹ *Ethics Working Group* Comment: Several secretaries were unaware of the reason for confidentiality agreement; others had not even heard of it. One said they thought it came into existence with e-filing. One secretary said that the agreement is a certification that the member would not disclose any information about the case unless a complaint has been filed and is, therefore, public knowledge. One secretary states that the Statewide Coordinator instituted this requirement and that OAE keeps a copy of this agreement.

- (ii) There is a handbook of “form letters” but they are “confidential”. Secretaries would not share any form letters or the handbook with the PLF Task Force members.
- (iii) There is no indication that lawyers are told that they have a right to an attorney at any stage of the investigation.

3. OAE Involvement in the Investigative stage.

Secretaries’ Feedback:

- (i) Even though the investigative report is reviewed by the panel chair and the committee chair, the OAE may question the report (for thoroughness or mistakes). There are more questions of an investigator from OAE when there is a dismissal after investigation. The prior director (Mr. Charles Centinaro) would review the reports and tell members to make changes without talking to the Chair of the committee.
- (ii) Another secretary said there was a great deal of intrusiveness into the investigations and the reports from the Statewide Coordinator (Ms. McGinty) who would demand “more counts” or instruct a member to investigate issues that may or may not be raised in the grievance. And, according to one secretary, once that avenue was investigated it frequently turned out to be nothing of substance for a charge, yet the attorney had to cooperate on a frivolous charge.
- (iii) Investigators nearing the end of their term who are also nearing the completion of a report, were not allowed to finish their reports; OAE would assign the matter to a new investigator who would have to review the file and begin anew.
- (iv) Another secretary said that the director and the Statewide Coordinator would become very involved with the investigators in certain cases and review reports and complaints and return them if “not enough” charges were made. They would tell the investigator what to do and how to revise the complaint. If the chair and the investigator agreed, the OAE might nevertheless fail to respect their opinion. They even called an investigator and told that investigator to add another person to the complaint even though the case was already in excess of a year old.

4. Ethics Committee Meetings

Secretaries' Feedback:

- (i) As a result of the pandemic, an OAE member attends every meeting by zoom and, per one secretary, the Statewide Coordinator will occasionally attend. When the Statewide Coordinator attends the meeting by zoom, she interjects and tells the investigator to call her, and she will tell them what to do rather than let committee members brainstorm and problem-solve amongst themselves.
- (ii) At meetings, the committee members are only permitted to discuss matters in a general sense. Matters are discussed in terms of docket numbers and initials but not by name.
- (iii) The committee meetings can be as short at 20 minutes due to the lack of ability to discuss cases or help other investigators because OAE has imposed strict “confidentially” that prohibits further discussions. As a result, the Statewide Coordinator has directed that the meeting must have an educational component. In the past, the meetings were the opportunity to discuss matters where the volunteers helped each other with charges (i.e., if there is enough to charge a certain R.P.C. based on the facts) and answer questions about an area of the law they might not be familiar with.
- (iv) Another long-serving secretary observed that the meeting which previously had been problem-solving sessions where lawyers shared questions/ideas and offered help is a “thing of the past” due to the need for “confidentiality.”
- (v) Several secretaries felt the meetings where free-wheeling discussion resulted were valuable to the functioning of the committee and that value has been lost.

5. Hearing Panel selection.

Secretaries' Feedback:

- (i) The Statewide Coordinator has directed the secretaries to form panels with one member knowing the legal substance of the matter. For example, “there should be a litigator” on this panel but, there may be only one or two litigators on the entire committee. As a result, hearing panels can get backed up and those two people who are litigators could carry more of the workload of the committee. Then, when the coordinator reviews the final panel report, this secretary has been criticized by the Statewide Coordinator because the “right” lawyers were not on the panel.

6. Data Collection Requirements by OAE.

Secretaries' Feedback:

- (i) Two secretaries are very concerned about the level of data and document collection OAE has now required be sent to OAE. OAE wants all files of every matter even those declined and never docketed. They are collecting large files, reports, even drafts, why? There is information in the grievances that is personal. “Why is the OAE collecting this information?” For a secretary who is a member of a small or one person firm, this is burdensome. What are these boxes costing OAE in terms of storage or in man hours to scan into a system for 17 districts? Another secretary confirmed that the Statewide Coordinator required them to pull all non-docketed files for the last five to seven years and ship them to the OAE.

7. Time goals/issues.

- (i) If an investigator is falling behind the time goals, OAE will follow up with the investigator rather than the officer or secretary. One secretary said they were having problems with committee recruitment because lawyer members would not reup because they did not like the nagging micromanagement of their cases by the OAE.
- (ii) The prior director had even called a secretary on a holiday, at night, to discuss the timeline of cases. The prior director would call the chair,

vice chair and the secretary every three months about their numbers even though they saw the monthly reports posted on the portal.

- (iii) Time goals set by OAE and the nature of the case and the volunteer work may not always be aligned.
- (iv) Monthly Status sheets produced by OAE are redacted for “confidentiality,” but the secretaries do not know what has been redacted and they are the ones along with the officers who monitor progress.
- (v) OAE can email grievances to the secretary but the secretary, grievant or respondents’ attorney cannot email the secretary, investigator, or panel chair because of “confidentiality”.
- (vi) There is a concern about the ability to recruit members.

Commenters’ Suggestions for Improvement:

- “Clean up” the court rules.¹³²
- A grievance is submitted *without* a copy to a lawyer. Why isn’t the lawyer copied? If copied, does it trigger malpractice coverage issues? But, shouldn’t a lawyer know their client has filed a grievance against them? Lawyers *may* be copied on declination, which is the first time a lawyer hears that a grievance has been filed against them.
- There should be a fourth standard for declination: “standard-of-plausibility” (in addition to ongoing litigation, no jurisdiction, and assuming all facts as true).
- There should exist a statute of limitations.
- There should be a limitation as to who can file a grievance against an attorney.
- Why must OAE be the only ones to argue before the Supreme Court? At the moment, this is required by Rule. Why can’t the local committee member who investigated and presented the case argue before the Supreme Court? This would be a recruiting tool for young attorneys to become involved knowing that they might be able to argue before the Supreme Court.

¹³² *Ethics Working Group* Comment: this statement was not followed with a suggestion.

- Local committees should be permitted to have free and open discussions about matters under investigation. If any concerns arise about discussions tainting the eventual hearing, the hearing can be transferred to a different committee.

IV. **RESULTS OF FEE ARBITRATION SECRETARIES' SURVEY.**

A. Strengths of the System:

- The greatest strength of the committee is the volunteers - *every* secretary noted this asset.
- Every secretary commented that OAE is responsive to requests for assistance and to answer questions; everyone is helpful.
- The Fee Arbitration system is fair and less stressful than having to litigate the matter in court to get paid, which *every* secretary cited as a strength.

B. Areas of Improvement/Concern:

1. Staffing panels is an issue.

Secretaries' Feedback:

- (i) New members cannot serve until they have training.
 - a. Training should be conducted via webinar.
- (ii) Several secretaries noted that it is difficult to recruit new members.
- (iii) Members are required to take a one-year break.
 - a. Members should be able to serve longer terms.
 - b. Employ a statewide recruiter rather than just by county-by-county (especially now that hearings are done by zoom).
 - c. Public members who are interested should be permitted to extend their terms.
 - d. Terms should be extended for members serving on hearing panels where a decision/hearing etc. is outstanding.

2. Communication between members and officers.

Secretaries' Feedback:

- (i) Establish a secure email portal for secretary and committee members to use, which would cut down turnaround times rather than faxing or mailing.
- (ii) Since Covid-19, OAE may get online fee arb requests-there can be a time lag in getting those requests from OAE – as much as 4-5 months.
- (iii) Handbook sets out form letters for members to use-it is marked confidential not to be shared with anyone. However, *Rule 1:20-9(d)(5)* provides that these manuals are public documents.
- (iv) There is a confidentiality agreement which members are to sign but it is kept by OAE.

V. RESULTS OF INTERVIEWS OF ATTORNEYS WHO HAVE REPRESENTED RESPONDENTS.

1. ATTORNEYS WITH PRIMARY FOCUS OF PRACTICE.¹³³

A. Strengths of system:

- It is public.
- Regulated by a Supreme Court that gives due regard to the findings of the local committee.
- The volunteers are professional and treat them well.
- Volunteers on panels are well-prepared.

B. Weaknesses/Areas of Improvement:

- OAE mindset is overly prosecutorial.

¹³³ The first section, (V)(A), is based on information provided by 6 attorneys who regularly (i.e., a primary source of practice) represent individuals in ethics matters. Several attorneys represented more than 50 attorneys in ethics matters over the last 5 years. A few have represented more than 100 respondents and served on ethics committees. Most of these attorneys handled matters dealing with the OAE although they dealt with local committees as well. All have been hired to represent individuals at various stages of the process: random audits-investigation, hearing, Disciplinary Review Board, and Supreme Court matters.

- Respondents do not appreciate/understand that they can and should have counsel at all stages.
- Diversion Process is confusing and too limited.

2. OAE Mindset.

Attorneys' Comments:

- (i) Too many prosecutorial minded staff at OAE.
- (ii) Staff members' range of experience and sense of perspective is uneven (believed by one commenter to reflect the turnover of staff).
- (iii) One Attorney noted the lack of continuity; he had 3 or 4 investigators in one matter and he has dealt with a non-attorney investigator (he gave an example of a retired police officer) who was inadequately trained. He also noted his belief that the auditors are not attorneys.
- (iv) OAE investigators fail to consider the emotional and monetary toll that investigations take on attorneys.
- (v) One attorney said that the greatest "accomplishment" in the OAE is to get someone disbarred.
- (vi) Prosecution-minded; not justice minded. One commenter referenced a situation in which an OAE investigator asked a *witness* his opinion as to whether he thought respondent's behavior was unethical. The witness said he "would not practice as he does" and the investigator then told him that he (witness) could be charged with failing to cooperate with an ethics investigation when the witness did not further elaborate. The OAE Investigator threatened the witness with being charged with an ethics violation 2 or 3 times during the brief phone interview. The OAE Investigator also raised his voice.
- (vii) One attorney said: "They wrote the rules, they interpret the rules and they enforce the rules, that is why it feels uneven."

3. Lawyers representing respondents at the beginning of the process.

Attorneys' Comments:

- (i) Disciplinary authorities do not advise respondents to hire counsel.

- (ii) Indigents are never told they can obtain counsel under the Rules.
- (iii) One attorney suggested that a better education program should exist to inform lawyers about the process and procedure, including a recommendation that attorneys hire counsel.

4. Random Audits.

Attorneys' Comments:

- (i) All noted that a random audit letter can lead to an ethics investigation.
- (ii) One attorney said that the random audit in one case led to a giant financial case where all the client files had to be reproduced and all the financial records had to be produced. It became a burdensome and expensive investigation when there was only a minor misstep with the finances which was found early on in the investigation.
- (iii) Demand audits can also lead to an ethics investigation.
- (iv) Many times, auditors operate on speculation rather than on facts.

5. Treatment by OAE staff members and volunteers.

Attorneys' Comments:

- (i) The attorneys said that they were generally treated with respect by members of the OAE.
- (ii) The attorneys said that their clients were generally treated with respect when they have been represented.
- (iii) There have been times where they have had to “push back” and get the cooperation they need for extensions of time, documents, etc., but they generally obtained the consideration they needed.
- (iv) It was noted by all of the lawyers that on occasion, OAE investigators can act like “bullies” especially with unrepresented attorneys.

6. Time goals.

Attorneys' Comments:

- (i) The time goals are meant to be aspirational not jurisdictional.
- (ii) The time goals are unevenly enforced among respondents. However, when attorneys representing respondents asked for additional time to comply with requests, it has been granted.
- (iii) One attorney felt that OAE lacks internal control to keep track of time frames. Cases at the OAE get lost in the “abyss.”
- (iv) One attorney has three current cases in the investigative stage which are 19 months old, and one which is 20 months old and on a third investigator.
- (v) Another attorney echoed that it is dispiriting that he cannot tell a client how long something will take in that the OAE; it could take “8 weeks or 16 months!”
- (vi) Several attorneys noted that the rules provide that the ethics investigator is not bound by the four corners of the grievance and thus the investigation can go beyond the grievance, which leads to extended, lengthy investigations.

7. Diversion.

Attorneys' Comments:

- (i) One attorney said that as an attorney representing a respondent, he always asks for the courtesy of a call if a complaint is going to be filed so that they can start preparing to request diversion.
- (ii) The “system” should mention diversion before investigation is completed because once a complaint is filed, it is too late; but respondents do not know when a complaint has been filed.
- (iii) Eligibility for diversion is the sticking point.
- (iv) One attorney stated that there should be a procedural requirement *prior* to any report being prepared or complaint being drafted that the investigator meet and discuss with the respondent what the “big picture” looks like so that “neither side gets handcuffed into trying a case as there is minimal ability to negotiate after a report which recommends a compliant is written.”

- a. This sentiment was echoed by another attorney who characterized this as a major flaw in the system. The investigator has no duty to discuss findings prior to issuing a report and diversion must be negotiated prior to the recommendation or filing of a complaint.
 - b. He suggested that the rule be changed to provide that the investigator must discuss findings 30 days *prior* to issuing a report that recommends a complaint so that the respondent can seek a diversion.
- (v) Diversion is not being promoted or encouraged by the OAE as that means less cases for hearings etc. for OAE.
- (vi) The Statewide Coordinator is the roadblock to diversions as she will decide whether there is a disciplinary history and even if there is not, she may not approve diversion.
- (vii) There is a lack of reasonable discretion being exercised.
- (viii) Several attorneys believed that diversions are being refused when they are justified.
- (ix) One attorney noted that in one case a respondent's conduct was a *de minimus* infraction, but that person was denied diversion and had to submit to discipline by consent—and when the matter went to the DRB, the DRB dismissed the grievance.
 - a. One ethics secretary noted this as a problem. Ms. McGinty would not approve diversion so there had to be a hearing, which was “waste” of volunteers’ time and the panels’ time.

8. Investigation stage.

Attorneys’ Comments:

- (i) Better education is needed.
- (ii) An attorney noted that it is important to be involved in the investigation step because it is at that stage where you can build a record.
- (iii) Respondents should use the duty to cooperate as the opportunity to prove his or her case and disprove the allegations.

- (iv) Pre-hearing discovery. Investigative notes of witness interviews are not work product. One attorney always asks for notes and for the audio disk of the respondents or the witness' interview (it is not under oath).

9. DRB.

Attorneys' Comments:

- (i) One attorney said the DRB has "original jurisdiction," which provides "unbelievable latitude" and then engages in "hyper enforcement" by recommending discipline higher than what OAE or the committee suggests. He said the DRB "over enforces the RPCS to impose draconian consequences."¹³⁴
- (ii) Large disconnect between DRB and situations in which the parties involved and OAE agree on course of actions.
- (iii) Chair of DRB always lobbying for disbarment when discipline is much less than disbarment (censure).

Commenters' Suggestions for Improvement:

- Create a mechanism by which an attorney's legal fees and costs to defend are reimbursed when no misconduct is found.
- Attorneys should be able to file a motion at the Supreme Court at the time the grievance is filed based on a constitutional challenge.
- DRB should not have "original jurisdiction" (or de novo review) over an OAE recommendation or a Special Master's decision or a hearing panel's decision.
- Clarify R.P.C. 8.4, which one attorney commented is a "floating standard."
- If OAE truly has a prosecutorial function, they should have greater discretion akin to "prosecutorial discretion" in criminal matters. When the public is not at risk, more discretion should be exercised, and more creative means should be employed to steer lawyers along a corrective path to avoid future misconduct.

¹³⁴ *Ethics Working Group* Comment: the converse is also true. There is a recent instance in which the OAE recommended suspension and the DRB recommended censure. The Supreme Court then concluded that a suspension was warranted. In another matter, the OAE/DRB recommended a censure, and the Supreme Court dismissed the matter. Of note, only the Supreme Court imposes discipline.

- Overcharging should be minimized.
- *De minimis* violations should not even be diversions (the example provided was an inadvertent deposit into a bank account followed by an immediate transfer into trust account).
- Diversion should not be limited to minor misconduct, but also conduct where a reprimand may result.
- Diversion should be available at any stage of proceeding.

2. ATTORNEYS WITH NON-PRIMARY FOCUS OF PRACTICE.¹³⁵

A. Strength of system:

- Strength of system is that a complaint is presented to a “Jury of one’s peers.”
- The strength of the system is its volunteer component.
- Local committees are critical to the investigative process as they know what lawyers face day to day. This was echoed by several other attorneys as they (attorneys on local committees) understand that not all mistakes are unethical.

B. Weaknesses/Areas of Improvement:

1. Treatment of attorneys and clients by the investigators or the OAE.

Attorneys’ Comments:

- (i) Volunteer lawyers need to make sure that the system is not abused as grievants can be abusive.
- (ii) One attorney believes that OAE presenters are reasonable, however they refuse to meet face to face and insisted on email and correspondence which interfered with resolving the matter.

¹³⁵ The *Ethics Working Group* conducted 18 interviews of attorneys who have represented individuals in ethics matters, but not as a primary focus of their respective practices. 17 of the 18 attorneys had represented respondents at *all* levels of the system.

2. **Overcharging by ethics authorities:**

Attorneys' Comments:

- (i) One attorney said that after a hearing, only an admonition was recommended and eventually imposed by the Supreme Court. Diversion should have been offered early in the process.
- (ii) Another attorney stated that in one matter which went to hearing, the respondent was not found to have violated any R.P.C.
- (iii) There should be consequences for false allegations against attorneys.
- (iv) At no time were they advised of the investigator's findings prior to the investigator writing the report.

3. **OAE Tone and Approach:**

Attorneys' Comments:

- (i) At times, requests for information by the OAE were onerous or not necessary because there was no merit to the claims, *but generally* the requests have been fair.
- (ii) At times there was an inflexibility taken as to positions on discipline when otherwise matters could have been resolved.
- (iii) OAE is overly litigious, and they litigate matters which could have been handled in a less onerous fashion.
- (iv) One attorney was representing a respondent in a zoom hearing at which Ms. McGinty was present; she was "rude and downright nasty" to the respondent who could not read an instruction as requested because he was legally blind. Otherwise, he and his clients were treated with respect.
- (v) Punishments are overly harsh—there has been a big shift in the last five years.¹³⁶

¹³⁶ *Ethics Working Group* Comment: OAE does not impose punishment.

- (vi) One attorney stated that the investigator “talked down” to him and his client. He acted as if he were the court not an investigator. The investigator also used *ad hominem* attacks in their brief.
- (vii) The OAE overcharges respondents. One attorney had a matter which started out with 7 charges and in the end, only two were left.
- (viii) The system has become harsher in the last several years, and not in a good way. The OAE has a narrow view of what they are looking at. They do not consider alternatives to prosecution. If there is no true victim of an R.P.C. volition, then there should be a mild sanction for unethical behavior.
- (ix) Ethical matters can be costly for respondents so one respondent conceded to a diversion instead of an investigation because of the cost.
- (x) When David Johnson was in charge [as OAE Director], the OAE tried to help lawyers in ethical trouble. Now the attitude is to prosecute not help lawyers.
- (xi) A lawyer said the investigator tried to bully her client and was not nice to her or the client at all. The attitude has changed, but not for the better.
- (xii) Lawyers need to be aware that the OAE is taping everything.
- (xiii) OAE’s attitude is to make it difficult for lawyers. In one matter, the respondent agreed to a reprimand, but the OAE demanded a suspension. The Supreme Court ordered an admonition.
- (xiv) The entire office of the OAE disrespected his client.
- (xv) There has been a substantial change in the overall approach from the time when Dave Johnson was Director of OAE and when Charles Centinaro assumed the role in the last 6+ years it has been much more aggressive against lawyers.

Commenters’ Suggestions for Improvement:

- More seasoned lawyers on hearing panels.
- It is too easy to file a grievance against a lawyer; there needs to be a disincentive for the filing of frivolous complaints.

- The initial letter to the respondent wherein they have only 10 days to respond is unrealistic. This time frame should be expanded.
- Have a “Skills and Methods” course in which lawyers must do their own accounting of a trust account. *Small firms do not have protection which occurs in a large firm.*
- The system failed Dionne Laurel Wade, she did her accounting perfectly for 4 years before the matter was heard by the Supreme Court, and then they disbarred her. She should have been given assistance, not disbarment as no one was harmed—no individual lost any money. She was working out of her kitchen. The system should be more attuned to helping lawyers do things right than looking at severe punishment in cases such as hers where no one was harmed, and she had been performing perfectly for four years.
- One lawyer felt that there is an implicit bias against people representing underrepresented people of color. *California found attorneys of color 3 times more likely to be disbarred.*
- Diversion permitted later in the process and should not be foreclosed once a complaint is filed.
- More seasoned lawyers should be on the committees and lawyers in the area of law the respondent practices should be the investigators as they have a better feel for what may or may not be unethical.
- Lawyers must be educated that they should be represented by an attorney as soon as possible in this process. Lawyers should be told immediately by OAE or the local committee with the initial letter that they have the right to an attorney. Advising lawyers that they may retain a lawyer would enhance the fairness of the system.
- Need a wider application of the diversion process; need to look more into if attorney suffers from mental health or substance use issue which may be undiagnosed.
- Statute of limitations on when a grievance can be filed.
- The system needs to use more common sense in enforcing the RPCs against lawyers. The Supreme Court stresses that the system is to protect the public not to punish lawyers, yet the Court must look to do justice for clients and lawyers.
- Apply this principle: “[T]he primary duty of a prosecutor is not to obtain convictions but to see that justice is done. ‘It is as much [a prosecutor’s] duty to refrain from

improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” *State v. Timmendequas*, 161 N.J. 515, 587 (1999) (internal citation omitted) (quoting *State v. Farrell*, 61 N.J. 99, 105 (1972) (quoting *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314, 1321 (1935))).

ETHICS & FEE ARBITRATION WORKING GROUP

RECOMMENDATIONS:

The first five sections of this report contain feedback and answers from a variety of individuals: lawyers who have had substantive involvement with the ethics and fee systems; ethics and fee arbitration secretaries; lawyers who have represented respondents; and OAE staff members. The PLF Task Force strived to provide both positive and negative feedback as supplied by the individuals who responded to the survey and to questions during individual interviews. The recitation of feedback from interviewees does not represent the opinions of the PLF Task Force. As a general premise, the PLF Task Force concluded that although the ethics and fee arbitration systems generally work, there should be a much greater emphasis placed on helping lawyers “do the right thing” and to exact justice for the public *and lawyers*. Based on this information, our recommendations are as follows:

1. *A New Commission Study.*

- a. The Supreme Court should establish a Commission, akin to the *Michels Commission*, to conduct a comprehensive study of both the ethics system and fee arbitration system and address the issues raised in this report. The Commission should also consider whether these systems suffer from implicit bias, including an implicit bias against solo practitioners and small law firms.
- b. The OAE should be compelled to participate in that study.
- c. The Committee should explore whether the *Rules* should be amended to implement the recommendations of this report and/or whether implementation can be effectuated through other, administrative means.

2. *The Filing of a grievance stage.*

- a. Because the most frequently cited concern was the docketing of frivolous grievances, clients must post a bond of some amount so that they have “skin in the game.” If the grievance does not turn into final discipline, then the bond is turned over to the attorney as partial compensation for time taken away from work, hiring an attorney, etc.

- b. Change the standard for declination to one where there must be some standard of plausibility to the allegations for docketing and if not, then the grievance is not docketed.
- c. *Rule 1:20-8(a)* creates “aspirational” time goals for investigations, but as noted in this report, these goals are rarely attained. The tremendous time commitment—and emotional toll—exacted on attorneys’ mental health requires greater certainty for time goals. This may require a rule change.
- d. Respondents should be copied on *any* grievance that is filed.
- e. Response time for respondents should be expanded from 10 days to 30 days.
- f. The first letter sent to the respondent, which provides notice of the docketing of the grievance should set time goals for completion of tasks akin to Case Management Orders.
- g. This the first letter to a respondent should also state that the respondent has the right to hire an attorney and it should require that an attorney who proceeds without counsel should sign a written waiver of their ability to hire counsel.
- h. This first letter to a respondent should list options to resolve an ethics matter such as diversion, stipulation of facts, or a consent to discipline.
- i. Respondents should be able to request diversion *before* any investigative report is filed.
- j. Investigators must discuss findings with respondents and their attorneys 30 days prior to filing a report that recommends discipline.
- k. Establish a private portal for fee arbitration participants and ethics grievants.
- l. Establish a program within fee arbitration, wherein the first hour is utilized to mediate the fee dispute.
- m. A fee arbitration award should automatically convert to a judgment if a certification is filed by an attorney that the client has not paid.
- n. Permit lawyers to file for fee arbitration with a caveat that the client can object and remove it from fee arbitration within 30 days of the attorney’s filing.
- o. Clients should be required in their initial fee arbitration filing to state with specificity the exact billing entries in dispute. Instructions should be included

with examples, so clients understand what is being asked of them when they file.

- p. Fee arbitration volunteers should receive ethics CLE credits.

3. ***Diversion.***

- a. Diversion should be available at any stage of the proceeding if warranted by the facts.
- b. Diversion should be available for infractions that would ordinarily result in a reprimand *if the public has not been placed at risk*.
- c. A lawyer who only has a reprimand on his or her record for 5 years should be permitted to petition the Court to erase/expunge the matter.
- d. Three members of the OAE should review requests for diversion. The discretion should not be vested in any one or two individuals.
- e. *De Minimis* violations should not result in diversion.

4. ***Random Audits.***

- a. Maximum of one random audit every 5 years for any attorney if no prior random audits resulted in discipline.
- b. OAE should share costs of production of documents if the costs exceed \$250.
- c. Attorneys should be advised, in writing, that they have the right to hire an attorney and attorneys who do not hire counsel should sign a written waiver of their ability to hire counsel.

5. ***Volunteers.***

- a. Lawyers who investigate the respondent should be from the same area of the law as the respondent.
- b. Volunteers may serve consecutive terms on ethics committees.
- c. Eliminate the one-year break requirement and limitation on terms.

- d. Volunteers should include retired attorneys to expand the pool of participants.

6. **OAE.**

- a. OAE should implement a system to track, and make public record of, the number of grievances that are initiated by the public *as well as* the number of grievances that emanate from OAE. This statistical breakdown will help further the mission of the ethics system to protect the public and ensure that the public's concerns are addressed.
- b. OAE should implement a system to track and make public record of: (i) the counts to a complaint added by OAE; and (ii) the number of attorney added by OAE. This statistical breakdown will help address commenters' concerns about overreach and lack of "prosecutorial" discretion used by OAE.
- c. Guidance to the OAE to avoid prosecution of frivolous ethics investigations and expend less effort to expand beyond "the four corners" of the grievance and cease overcharging.
- d. Training at the OAE level as well as an "attitude"¹³⁷ adjustment as to how to exercise their discretion (i.e., if their function is as prosecutors, they must also have—and use—appropriate "prosecutorial discretion").
- e. Training/guidance for OAE to better appreciate and understand the substantial emotional and financial burdens these investigations cause attorneys, particularly unrepresented attorneys and solo/small firm attorneys.
- f. Training/guidance for OAE to better appreciate and understand whether mental health or substance use issues are a contributing underlying problem for a respondent.
- g. Volunteers should not have to sign a confidentiality agreement to be members of the committees.
- h. Permit volunteers to extend their term to finish a report or hearing in which they are involved in.
- i. Permit volunteers to discuss docketed matters at meetings.
- j. Permit members to discuss matters by name, not by docket number.

¹³⁷ "Attitude" was referenced by interviewees throughout this process.

- k. If a matter goes to complaint, then the hearing is sent to another committee so that the respondent and grievant are not facing a panel who has discussed the case at meetings.
- l. OAE should not “second guess” the local committee assignments of hearing panel members.
- m. OAE should be less involved at local meetings and allow the local meetings to occur outside the presence of an OAE member.
- n. Permit training of volunteers to be conducted by webinar so that volunteers can be immediately trained.

7. *Fee Arbitration.*

- a. Permit one attorney to attend fee arbitration as opposed to every attorney who billed on a matter (e.g., allow a Partner to appear as opposed to a Partner and three Associates).
- b. Allow attorneys who have been adverse to each other to serve as panelists if the responding attorney provides written consent. (We learned through this process that the current practice in some districts is that the Secretary does not even give the responding attorney the opportunity to waive the potential conflict).

Other Recommendations:

- 8. Create a pathway to reinstatement for disbarred attorneys.
- 9. Establish a statute of limitations on the filing of an ethics grievance 7 years from the last contact with the client (as this comports with how long an attorney needs to keep a client’s file).
- 10. Constitutional challenges can be made at any time in the proceeding by making a motion to the Supreme Court rather than having to wait until the end of a long investigation and hearing and appellate review by the DRB.
- 11. Permit local committee volunteers to argue before the Supreme court. This would require a rule change.
- 12. When an attorney is given, and completes, a diversion, the matter should not be listed on their ethical record with the Court.

13. OAE must pay for administrative costs for frivolous complaints that are dismissed in random audits where no misconduct is uncovered.
14. Training of volunteers should include training by both OAE, and volunteers; NJSBA Leadership should be present at training sessions.
15. Create a skills and methods course in which lawyers must conduct a comprehensive accounting akin to “real world” practice.
16. On or about January 24, 2023, OAE Director Jones issued Director’s Memorandum 2023-01. Among other instructions, the OAE Director wrote: “This Director’s Memorandum also formalizes the pre-existing instruction *that declination data and documents must be maintained in the OAE e-Filing InfoShare system*, which District Secretaries and Committee members access through their eCourts login.” *Id.* at 2. The PLF Task Force recommends that this process, which does not appear to align with *Rule 1:20-9(j)*, is abandoned.
17. On July 21, 2022, the Chairman of the Disciplinary Review Board, Maurice J. Gallipoli, A.J.S.C. (ret.), stated in a letter to New Jersey Supreme Court members that, absent a rule change, he will continue voting to disbar attorneys who fail to file the affidavit required under *Rule 1:20-20*.¹³⁸ Clearly, the *Rule*, on its face, does not require disbarment for failure to file the *Rule 1:20-20(b)(15)* Affidavit. However, considering that the stated position of the *Chairman* is that failure to file the *Rule 1:20-20(b)(15)* Affidavit should result in an automatic disbarment, the Commission recommended in **Recommendation One: A New Commission Study**, should consider a *Rule* change to directly address Judge Gallipoli’s comment.

¹³⁸ <https://www.law.com/njlawjournal/2022/07/21/i-will-continue-to-vote-for-disbarment-over-unfiled-rule-120-20-affidavits-says-disciplinary-review-board-chair-gallipoli/>

MALPRACTICE WORKING GROUP

The Putting Lawyers First Task Force formed this malpractice working group to review inequities in the context of malpractice claims as they apply to lawyers. Lawyers currently are bound to a six-year statute of limitations for malpractice (as opposed to a two-year statute), have been burdened with a jury charge for legal malpractice that has not kept up with the case law, and further are subject to an affidavit of merit statute that does not require matching practice experience of the affiant.

As the six-year statute of limitations has long been a prioritized topic and has generated much work and discussion over the years for our association, we opted not at this time to reanalyze the issue. It remains the opinion of our working group that realizing a change in statute of limitations to match the applicable 2-year statute in the medical/nursing context is the most significant way to affect legal malpractice for attorneys.

Despite the foregoing, we looked at two separate areas worthy of attention. First, we questioned whether attorneys warrant a similar affidavit of merit standard to that applicable to physician specialists or subspecialists recognized by the American Board of Medical Specialties or the American Osteopathic Association. When such physicians are sued and where the care or treatment at issue involves that specialty or subspecialty, the physician issuing the affidavit of merit “shall have specialized at the time of the occurrence” in that specialty “that is the basis for the action.” N.J.S.A. 2A:53A-41(a).

N.J.S.A. 2A:53A-41 provides, in pertinent part, that:

In an action alleging medical malpractice, a person shall not give expert testimony or execute an affidavit pursuant to the provisions of P.L. 1995, c. 139 (C. 2A:53A-26 et seq.) on the appropriate standard of practice or care unless the person is licensed as a physician or other health care professional in the United States and meets the following criteria:

a. If the party against whom or on whose behalf the testimony is offered is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association and the care or treatment at issue involves that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the person providing the testimony shall have specialized at the time of the occurrence that is the basis for the action in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, as the party against whom or on whose behalf the testimony is offered, and if the person against whom or on whose behalf the testimony is being offered is board certified and the care or treatment at issue involves that board specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the expert witness shall be:

(1) a physician credentialed by a hospital to treat patients for the medical condition, or to perform the procedure, that is the basis for the claim or action; or

(2) a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association who is board certified in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, and during the year immediately preceding the date of the occurrence that is the basis for the claim or action, shall have devoted a majority of his professional time to either:

(a) the active clinical practice of the same health care profession in which the defendant is licensed, and, if the defendant is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association, the active clinical practice of that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(b) the instruction of students in an accredited medical school, other accredited health professional school or accredited residency or clinical research program in the same health care profession in which the defendant is licensed, and, if that party is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association, an accredited medical school, health professional school or accredited residency or clinical research program in the same specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) both.

Thus, in broad terms, regarding physicians in board certified specialties or subspecialties, the statute requires that a physician issuing an affidavit have a matching specialty and work within that specialty. In the context of legal malpractice, there is no statutory provision addressing specialties, sub-specialties or board certifications of experts against attorneys, or, frankly, any other professionals covered by the affidavit of merit statute. Thus, the subcommittee is familiar with legal malpractice cases where an attorney affiant signs an affidavit of merit on behalf of the plaintiff without possessing any experience in the particular area of law in question.

The second issue this subcommittee reviewed is the jury charge in legal malpractice cases, *M.J.C. 5.51*, which, upon review, has yet to amend its language to conform with *Morlino v. Med. Ctr. Of Ocean Cnty.*, 152, N.J. 563 (1998). When this working group began its research, we targeted *M.J.C. 5.51* as it had not been revised over the past 40 years and still used the “mistake or error” language, which was rejected many years ago for medical malpractice cases. This very issue is one which the Plaintiff Medical Malpractice Bar had brought to the attention of the Model Jury Charge Committee, and which had yet to be addressed.

This committee formulated a detailed analysis in conjunction with the efforts that other organizations, namely NJAJ, had brought forth to the Court. Our working group subsequently learned that the *M.J.C.* 5.51 had in fact finally been amended. The disconcerting language that had the potential to confuse the jury, which no lawyer defendant would have wanted, had finally been amended. Thus, our subcommittee's wish list item actually came into fruition prior to making our recommendations.

RECOMMENDATIONS OF MALPRACTICE WORKING GROUP:

There are inequities in how legal malpractice is treated relative to other professional malpractice and the ultimate effect frivolous and stale claims can have on attorneys is a great concern for counsel on both sides of the "V".

As with many issues with inherent political components or divisive practical impediments, common ground can still be found. It often occurs in the context of specific sets of facts – be it through a case in the Appellate Division or Supreme Court, or through media. The NJSBA must keep a vigilant eye for the proper set of facts that will allow for our unified support in changing how lawyers are treated in the context of alleged malpractice. In other words, we need a "hook" to bring attorneys together so that we can advocate to change the requirements of the affidavit of merit statute so that in legal malpractice cases where an attorney affiant signs an affidavit of merit on behalf of the plaintiff, they must possess experience in that particular area of the law.

In addition to this vigilance, the subcommittee reiterates that we must keep our finger on the political pulse of our state. If an opportunity arises for a change in the statute of limitations as a result of a change in the political climate, we must be prepared to use the political connections of our membership to try to achieve this change.

“SOLO/SMALL FIRM AND NEW LAWYERS” WORKING GROUP

The parts we can't tell, we carry them well

But that doesn't mean they're not heavy

- Dear Evan Hansen

The Solo/Small Firm/New Lawyer working group was tasked with providing an overview of ways that the NJSBA and the judiciary can assist solo attorneys, attorneys in small firms and new attorneys thrive in the profession. This working group, co-chaired by Michael Hoffman and Sheryl Seiden, identified three core areas that require specific attention. If the practice of law is like a highway, our working group found that practitioners need help with navigating the On-Ramps, Pit-Stops and Off-Ramps. Our working group found that attorneys need tools and training to help them get up to speed safely. They need to feel safe and comfortable taking breaks when needed. Lastly, our working group found that lawyers need assistance in planning for their exit from the practice.

I. On-Ramps (New Attorneys).

Young lawyers and attorneys new to the profession do not arrive at their first job equipped with all the legal skills and full business acumen necessary to succeed. As seasoned attorneys, we expect them to learn by doing. From our law schools to our continuing education requirements, we must help and support these new practitioners (comprising a majority of our practice) navigating onto the highway of legal practice. Our working group reached out to Assistant Deans of Rutgers Law School and Seton Hall Law School and reviewed the initial results of the attorney well-being survey with them to help further identify the problems that lawyers in our state are facing. It remains our hope that in collaboration with these law schools, we can continue to discuss and develop means of assisting lawyers from the onset of their careers.

As a part of our working group's charge, from Rutgers law school, we spoke with Victoria Williams, Assistant Dean of New Programs, Victoria Chase, Associate Dean for Academic Affairs for Rutgers Camden and Carolina Young, Associate Dean for Academic Affairs for Rutgers Newark. From Seton Hall, we spoke with Cara Forest, Associate Dean for Academics. In speaking with these Assistant Deans, we learned that they do appreciate the significant issues that plague lawyers and the challenging mental health issues that the legal culture creates.

The competitive nature of being a lawyer begins in law school with students being divided into sections. Those students are often then pinned against each other. When law students become lawyers, the big firm culture requires significant billable hours, and lawyers are expected to prioritize work over their family and personal lives. Lawyers are rewarded for this behavior with bigger bonuses along with an increase in the demand for billable hours. As a result, this cycle

creates immense burn out and mental health issues within our profession.¹³⁹ Putting Lawyers First is a major task that must start with the leadership and culture at the big law firms. One Assistant Dean commented that without an adjustment to this culture, it will be difficult to achieve success with our mission.

Attorney wellness is currently a recognized, identified and required training at both New Jersey law schools as part of ABA accreditation (See Revised ABA Standard 303 and <https://www.nalp.org/revised-aba-standards-part-1>). While teaching students and newly formed solos/small firms to become lawyers, these aspects of wellness must be interwoven into curriculum to avoid a crisis in our profession. Rutgers Law has engaged in offering several courses, including a wellness course. That course has received significant enrollment as an elective and is being offered on both campuses in the upcoming semester. Seton Hall Law has both courses and student engagement to identify, discuss and manage questions of law student wellness. While those skills focus on mindfulness and skills for dealing with stress, they offer a general overview, but not specific practical tools to deal with their matriculated student career wellness. Both schools, properly, focus on the high stress environment of law school. However, because their students enter such a wide array of practices, in a wide array of jurisdictions, training on New Jersey wellness as a lawyer is only available as a general provision. We learned that the wellness aspect of their programing is being provided as a separate course as student interest in separate wellness seminars appears to be very low.

RECOMMENDATIONS FOR NEW ATTORNEYS:

- 1) We recommend that the NJSBA, NJICLE and New Jersey's Law Schools work together to create a roadmap course, which educates attorneys on wellness, managing trust accounts, the fee arbitration system, accounting issues and the inner workings of the ethics systems so that new lawyers are informed on these important topics. It is our vision that these courses would be offered in two separate arenas: to students who are currently in law school and to law practitioners running a solo or a small firm. The basics for this course are being discussed and are in the process of being developed as of the writing of this report.
- 2) We recommend that the NJSBA, and its partners work with educators to develop a curriculum to support and prepare solo and small firm lawyers, as well as lawyers new to the practice, to accomplish the goals of practical competence and personal wellness which is offered to law students as well as alumni and other law practitioners.

II. Pit-Stops (Struggling with Disability or Disease)

Several attorneys reached out to our working group to share their personal struggles with disability, and we have incorporated two powerful testimonials. Additionally, this issue was thoroughly addressed by Past-President John Keefe and his "Lawyers Helping Lawyers" Task Force who issued the NJSBA's 2019 "Lawyers Helping Lawyers" Task Force Report. That report is fully incorporated by reference and is attached as **Appendix Q**. With health issues arising out of

¹³⁹ See the results of the survey conducted by the Attorney Health & Wellness Working Group on pages 21-25 herein demonstrating factors that contribute towards burnout, anxiety and depression in younger lawyers.

COVID and the mental health crises identified in our well-being survey, this is the time to act decisively and urgently to address these issues.

TESTIMONIAL - LEP

LEP is a New Jersey attorney who has been diagnosed and suffers from relapsing/remitting multiple sclerosis. While not life threatening, it can be a very painful and debilitating disease especially during relapse. LEP has been hospitalized several times, even during the COVID epidemic, because of symptoms and sequelae from multiple sclerosis. LEP can best tell her stories, however, a quick synopsis of the systemic and interpersonal issues that she has encountered is as follows:

- LEP's doctors recommended that she take 6 months off from the practice of law to recover from the latest relapse. That was not realistic due to the current rules and inability to make money under those circumstances. The types of law she practices (i.e., immigration, municipal court, criminal, domestic violence, special civil part defense and education) do not have rules which allow for transfer of cases to other attorneys that might involve payment on those matters. As a result, if LEP does not work her family would not have the money needed to survive through a disability period. No disability insurance covers this type of situation.
- Sadly, certain opposing counsel questioned the true impact of her disability upon her ability to practice. They argued to the Court that it was an excuse for delay or neglect of a client's case, which was untrue. At least one of those opposing counsel sits as a municipal court judge. Our membership, leadership and judiciary need to be both cognizant and accepting of an attorney who acknowledges a lack of full ability to perform and asks for help.
- While she is able to share this, countless others suffer, struggle and fight through disease and disability because we believe it a sign of weakness or incompetence. The Judiciary should provide an avenue for anonymous intervention to help out an attorney in need, either at their own request, the request of a colleague or a concerned third party. The Vicinage Ombudsman would seem a reasonable conduit for such alerts.

RECOMMENDATIONS FOR ATTORNEYS STRUGGLING WITH DISABILITY OR DISEASE:

We recommend that the NJSBA and the Judiciary review, reconsider and enact recommendations of the "Lawyers Helping Lawyers" Task Force, especially with regard to attorney mental health, well-being and temporary disability which recommended the following actions be taken to help attorneys and protect clients:

- 1) Urge the New Jersey Supreme Court to adopt a proposed amendment to R. 1:20-1(c);
- 2) Create a portal on the New Jersey State Bar Associations website that will aid attorneys in creating an emergency preparedness plan. The portal should provide information, sample documents and other resources;

- 3) Invite county and affinity bar associations to maintain a list of those attorneys, by practice area, willing to volunteer their time to help oversee an attorney's practice; and
- 4) Give further study and consideration to the creation of a temporary disability status as contemplated in the draft new Rule 1:28C-1, contained in this report as **Appendix Q**.

III. Off-Ramps (Lack of Succession plans)

Our working group learned that too many attorneys do not have a plan for what will happen if they become unable to practice law. There is a lack of clear rules for exactly what happens when an attorney becomes permanently disabled or passes away. There are permissions in the rules, but no real guidance. There is also no roadmap for an attorney who chooses to cease her practice, and what she can and must do to voluntarily end her practice.

Specifically, the judiciary nor the rules of court offer training or checklists regarding what happens upon an attorney's disability or death. (The exception to this is that solo attorneys, on their annual registration, are required to name who will be responsible for their practice upon their death or disability. Our survey suggested that even among that population, solo practitioners were 2.5 times more likely not to have such a plan in place.)¹⁴⁰ We do not have clear rules about who determines who takes over if there is an unlikely or unexpected death or disability of an attorney. Anecdotally, some Vicinages report that they have the Assignment Judge ask an attorney of their own choosing. Others report that the President of the county bar association is asked to make such an assignment. While there are provisions allowing for the sharing of fees with non-lawyers only in the circumstances of a closed practice to the non-lawyer spouse of a deceased/disabled attorney, there needs to be more consideration for what happens in matters where there is a small firm, or no spouse, estrangement of the spouse, children who are/aren't lawyers, and what ethical guidelines apply.

Ultimately, the Courts are interested in the way that clients' cases are managed, as that reflects upon the legal system as a whole. What does it say about our profession, if we cast off our dead and remember them with a plaque or plinth, but never write out clear rules and guidelines for those who remain as to what should happen in this ubiquitously inevitable circumstance? Death, similar to mental illness, has significant stigma surrounding it. We should do more to normalize the process of leaving the practice of law, both temporarily or permanently, to best serve all that may become involved in this confusing web.

TESTIMONIAL - MAH

MAH practiced law with his father in New Jersey for 15 years in a debt collection practice. In 2015, under great financial strain and an untenable shift in practices within the Court, MAH had to leave practicing with his father upon the firm being shut down. MAH's father passed away in 2017. MAH asked the Assignment Judge to take over as trustee for the assets of the firm in 2017 and his request was denied. As of the end of 2022, while most of the cases have been transferred from the firm he shared with his fat

her, almost daily, a request is made, or phone call received about a case held by the former firm.

¹⁴⁰ See results to Question #89 to **Appendix B** and *supra* note 44.

MAH has moved on to practice different areas of law than he had during those first 15 years, but they serve an important function. In debt collection, the attorney's lien on a file was considered reasonable and anecdotal. That lien could remain upon the transfer of a file by substitution of attorney. The Administrative Office of the Courts (AOC) created a \$35 per case cost on filing those substitutions in 2015. For a high-volume case practice (like MAH's father's 25,000+ active cases), that created an \$875,000.00 restraint on the alienation of something that MAH and his father believed an asset -- their 40 years of work on collection matters with an attorney's fee lien on judgments totaling over \$40,000,000.00. The created cost eliminated any value of that lien, and the assignment judge moved them, without the costs, but also without any attenuated lien. MAH's father practiced 45 years and MAH 15 years, and upon the liquidation of the practice, that work ended up with no value.

While unusual as a case study, this testimonial offers the real-world fallout from the closure of a firm. MAH's mother, a non-lawyer, was forced to make decisions about assets (like closed files) and their maintenance or destruction, without being held to any ethical guidelines or rules. Even if she did, she would likely not be subject to any discipline as a non-lawyer in that circumstance. However, her decisions on those issues, where she asked MAH for advice, may potentially ethically imperil MAH. That conflict created a significant estrangement. Due to the escalation of those ethical considerations, MAH has not been able to speak to his mother and sisters in over a year. During that year, his mother was diagnosed with stage 4 bone cancer.

MAH's story of unintended consequences must be examined. Where there are rules, if they are malleable for the situation, that can help attorneys in need. If there are no rules, then absence creates a vacuum. Systemically, this is a failing is something that can and should be corrected. Guidelines and responsibilities need to be set out from the inception of a practice to address its demise or subsumption.

RECOMMENDATIONS TO ADDRESS LACK OF SUCCESSION PLANS FOR ATTORNEYS EXITING THE PRACTICE:

That the NJSBA and the Supreme Court Practice Committee amend Court rules which should provide guidance and support for those exiting or exited from the practice as well as those who are tasked with managing that exit. Further, guidelines and rules must be developed for practicing solo and small firm attorneys to encourage and empower them to have contingency plans in place for their matters after their demise or disability.

“ON-LINE REVIEWS” WORKING GROUP

This working group, chaired by Thomas DeCataldo, was tasked with conducting an in-depth review of attorneys’ rights to respond when confronted with an online review from a former client potentially causing reputational harm. As part of this investigation, the core focus of our working group’s undertaking was a critical examination of the permissible bounds of responding to such reviews under New Jersey’s Rules of Professional Conduct, with a specific focus on R.P.C. 1.6(d)(2). This subsection of the Rules of Professional Conduct allows attorneys the right to disclose confidential information in limited circumstances as necessary to establish a claim or defense in response to a “controversy” with a former client. The core question that emerged is whether an online review is sufficient to establish a “controversy” within the meaning of R.P.C. 1.6(d)(2), or if this is an informal dispute that does not authorize an attorney to share otherwise confidential information.

New Jersey has answered this question in the negative in Advisory Opinion ACPE 738, issued on December 9, 2020. As discussed below, ACPE 738 makes clear that under current ethical principles in New Jersey, an online review is not sufficient to establish a controversy entitling an attorney to share confidential information to establish a claim or defense. Our working group recommends that this determination be reviewed, as it is our opinion that this *should be* a sufficient controversy allowing attorneys the safe harbor provisions available under R.P.C. 1.6(d)(2).

To reach this opinion, our working group extensively researched guiding ethical principles in other jurisdictions to evaluate whether more expansive rights exist for the attorney to respond in other jurisdictions, without undertaking the risk of unethical conduct. After researching the law of other jurisdictions, we also participated in virtual meetings with bar leaders from Colorado and Arizona to discuss developments in the Rules of Professional Conduct in those jurisdictions, specifically with regard to the parameters of counsel responding to online reviews.

Additionally, we spoke with numerous New Jersey attorneys that experienced first-hand, real-life harm from inaccurate negative online reviews and examined the various methods of managing negative reviews through the internet vendors directly.¹⁴¹ For example:

One attorney experienced a very negative online review on Avvo from a former client. The former client specifically advised the public to avoid using this attorney and made several representations that were false as part of the lengthy negative review, including that they were forced to settle, and that they were involved in post judgment litigation because of the attorney’s mistakes. The attorney possessed detailed evidence of the communications that showed the former client’s statements in the review were objectively untrue but felt without recourse because none of the information that would correct the public’s perception could permissibly be shared.

¹⁴¹ While we have chosen to simply highlight a few egregious examples, numerous attorneys came forward to our working group to share details of damaging and inaccurate negative reviews.

At least two other attorneys faced a situation where a series of negative reviews from a former client's spouse were intentionally authored in an attempt to harm the attorney's reputation. In one of the situations, the review inaccurately reported that the children at issue were psychologically harmed during the course of representation, all of which could be corrected if the attorneys had greater rights to respond and correct the record.

We also examined the decisional law surrounding defamation to assist attorneys dealing with negative reviews to establish a "playbook" with as many options as possible to manage negative reviews, particularly those that are untruthful.

In summary, this working group recommends that New Jersey R.P.C. 1.6(d)(2) be immediately expanded to include online reviews as a "controversy between the lawyer and client," given the serious and lasting reputational harm this can cause an attorney, particularly if misleading or inaccurate. We also believe an updated Advisory Opinion should be issued modifying ACPE 738.

Finally, we also believe attorneys should have readily available knowledge of the respective rights to address negative reviews through the various websites or forums where such content may exist, as this may be a viable precursor to disclosing confidential information.

New Jersey Law Currently Precludes Attorneys from Responding to Online Reviews with Confidential Information

To begin this undertaking, our working group was guided by New Jersey Advisory Opinion ACPE 738, issued on December 9, 2020. The opinion specifically indicates that it was issued in response to "several lawyers" seeking guidance from the Advisory Committee regarding negative online reviews.¹⁴² Our working group agrees and acknowledges that this is an ongoing issue of paramount concern to the bar, and that the online playing field will only grow larger with advances in technology.

Pursuant to ACPE 738, New Jersey allows attorneys to respond to online reviews posted by clients, former clients, or prospective clients but that response cannot reveal "*information relating to representation*," except information that is "*generally known*," unless the client consents. Attorneys may express general disagreement, but they may not reveal confidential information relating to the representation.

Of significance, R.P.C. 1.6(d)(2) *does* allow attorneys to respond and reveal confidential information to the extent the lawyer reasonably believes it is necessary to "establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client or to establish a defense . . . based upon the conduct in which the client was involved."

However, ACPE 738 makes clear that '*an informal 'controversy'*' between a lawyer and a prospective or former client, arising from the posting of a negative online review, does not fall within the safe harbor of Rule of Professional Conduct 1.6(d)(2). The opinion goes on to advise

¹⁴² Advisory Opinion ACPE 738, December 9, 2020.

that “lawyers may not disclose confidential information merely to protect their online reputation in response to negative comments of this type.”¹⁴³

In reaching this conclusion, the Advisory Committee on Professional Ethics indicates in ACPE 738 that it reviewed the approaches of other jurisdictions. Only one of the referenced opinions is more recent than 2016, and the ACPE specifically relied upon the approach of the Pennsylvania Bar Association Formal Opinion 2014-200, which is from 2014¹⁴⁴. ACPE 738 notes that Pennsylvania requires an attorney responding to an online review to be “proportionate and restrained,” and the opinion even suggests the following standardized response:

*A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.*¹⁴⁵

ACPE 738 concurs that this response “accords with New Jersey lawyers’ ethical obligations.”

New Jersey’s framework is consistent with the handling of this issue by nearly all jurisdictions, including Formal Opinion 496, issued by the American Bar Association shortly thereafter in January 2021.

Colorado appears to be the only jurisdiction as of yet that has tacitly authorized confidential information to be shared in response to an online controversy. In Formal Opinion 136 issued by the Colorado Bar Association in 2019, the opinion discusses attorneys disciplined for responding to online controversies with confidential information¹⁴⁶. However, the attorney at issue was disciplined for disclosing a “full range” of confidential information to “embarrass” and “discredit,” not necessarily for a *per se* disclosure of confidential information. Since the disclosure of confidential information was not the basis for discipline, one could conclude that this is tacitly authorized so long as the response is not unreasonable. However, the opinion acknowledges that this does not provide a clear bright line rule for prospective situations, noting:

“In other words, the extant Colorado authorities delineate how a lawyer may not respond, but they provide little guidance as to how a lawyer may respond, consistent with Colo. RPC 1.6(b)(6). And they do not clarify whether online criticism can result in a “controversy” such that Colo. RPC 1.6(b)(6) could apply at all.”

Given our research, this is a timely issue arising all over the country, and it is of critical importance to the bar. All jurisdictions confronting this issue look to sister jurisdictions for guidance. Against that backdrop, New Jersey has an opportunity to lay the groundwork for improving the ability of attorneys to manage the problem of inaccurate online reviews and to provide a framework for other jurisdictions to emulate.

¹⁴³ *Id.* (emphasis supplied).

¹⁴⁴ After this opinion, the ABA issued Formal Opinion 496 in January 2021 which mirrors ACPE 738.

¹⁴⁵ Pennsylvania Bar Association Formal Opinion 2014-200 (2014).

¹⁴⁶ The Colorado Bar Association acknowledges that ABA Formal Opinion 496 disagreed with Formal Opinion 136 when issuing its opinion two years later.

We recommend that the determination in ACPE 738 that online controversies are “informal” and should not fall under R.P.C. 1.6(d)(2) is a finding that we believe should be reconsidered and revised. It is the opinion of this working group that such controversies *should* fall within the safe harbor provisions of R.P.C. 1.6(d)(2), thereby allowing attorneys to respond with confidential information as necessary to establish a claim or defense against the negative review.

In reaching this conclusion, our working group is sensitive to the widespread reputational harm an attorney could suffer, based upon information that may or may not be factually accurate. Not only does this have the potential to unfairly harm practicing attorneys, but it also has the potential to mislead the public, with no meaningful opportunity for the truth to be presented.

We are guided in our rationale by the reasoning set forth in draft opinion No. EO-19-001 authored by the Supreme Court of Arizona’s Attorney Ethics Advisory Committee attached as **Appendix R**.¹⁴⁷ (Notably, this opinion was approved by the Supreme Court of Arizona on December 6, 2022). The draft opinion notes the rise of blogs and social media platforms that allow disgruntled clients a wider and more diverse audience to spread information, or misinformation, and that most online content is more or less permanent. There is an added risk that readers of such content further disseminate the information, and our working group freely acknowledges the harm this can cause an attorney’s reputation, most notably if the content is objectively untrue.

The draft opinion concludes that declining to include online reviews as a “controversy” authorizing an attorney to respond with confidential information is problematic for two reasons. First, there is no specified definition of ‘controversy’ and if the word is taken literally, it “clearly encompasses” and “aptly describes” “a disagreement between the lawyer and former client about the lawyer’s competence, diligence, responsiveness, performance, or billing practices, particularly when the client’s negative opinions on such matters are expressed in a public forum.”

Second, the draft opinion posits that the self-defense safe harbor of the R.P.C. 1.6(d)(2) does not require that an actual action be commenced, and that a response with confidential information to a negative online review may be “reasonably necessary” to defend an inaccurate claim. The attorney responding is not only addressing the client leaving a negative review, but also the general public that may read the review.

The opinion notes, and our working group agrees, that an attorney’s duty of confidentiality is to protect a client, but that a client may forfeit that protection. As the opinion suggests, a client may not use confidentiality as both a sword and a shield in legal or disciplinary proceedings, and similarly that should not be permissible when making public accusations of misconduct.

Finally, our working group does not believe that adopting some form of the draft opinion meaningfully alters the intentions of ACPE 738. We agree with the parameters suggested at the conclusion of the opinion, and with the existing tenets of R.P.C. 1.6, such that if an attorney is

¹⁴⁷ This opinion is currently under review by the Supreme Court of Arizona and has not yet been adopted, but we have been given permission by the Arizona Attorney Ethics Advisory Committee to utilize the draft within our report.

authorized to respond to an online controversy, the following should be required to ensure the response is reasonable under the circumstances:

- 1) The attorney should confirm that the former or current client authored the online review before confidential information belonging to that client is shared;
- 2) The attorney should be limited to responding to actual, specific allegations, not simply an opinion or generalized frustration;
- 3) The attorney should exhaust all options short of disclosing confidential information (i.e. asking the website to remove the content, asking the client to remove the review);

(To assist with complying with this requirement, we have prepared a “playbook” of various popular online forums that set forth the process for an attorney to request that content be removed which is attached as Appendix S.)

- 4) That the disclosure of confidential information be narrowly tailored and limited to what is reasonably required to establish a defense in response to the online review.

Unrelated to responding to online reviews, attorneys should also be mindful of the right to pursue a defamation claim for any online reviews that are inaccurate and cause reputational harm. As an added resource to the bar, we have included a recent summary of defamation cases pertaining to online reviews.¹⁴⁸

This working group acknowledges that the existing limits on an attorney’s right to respond to negative online reviews remain an ongoing source of frustration for many New Jersey attorneys. It is common knowledge that online forums are omnipresent in our society, and the reputational harm lawyers can suffer in these venues have limitless and untold reach.

RECOMMENDATIONS FROM THE “ONLINE REVIEWS” WORKING GROUP:

Based on the foregoing, our working group recommends:

- 1) Online reviews should qualify as “controversies” under *R.P.C.* 1.6(d)(2). The NJSBA should actively pursue petitioning New Jersey’s Advisory Committee on Professional Responsibility to issue a new Advisory Opinion modifying ACPE 738, and for RPC 1.6(d)(2) to include online disputes as eligible controversies akin to a legal dispute or disciplinary hearing.
- 2) Attorneys should be apprised of less intrusive means to remove inaccurate or misleading reviews by first attempting to contact the online forums directly.

¹⁴⁸ See *Online Reviews and Reputational Damage: The Fine Line Between Opinion and Defamation*, Nicholas Duston and Annamaria Del Buono, NJLJI, December 1, 2022 attached as Appendix T.

“ATTORNEYS BEING RELIEVED AS COUNSEL AND GETTING PAID”

WORKING GROUP

This working group, co-chaired by Jeffrey Fiorello and Christine Fitzgerald, reviewed the laws that address being relieved as counsel and allowing lawyers to be paid when there are outstanding fees. As part of that investigation, this working group sought to find out why attorneys get stuck in cases where they are not getting paid, to examine how attorneys can facilitate getting paid and whether attorneys can report clients that owe money to a credit bureau.

I. Being Relieved as Counsel

In civil (non-family and municipal court actions) and criminal cases, *Rule 1:11-2* governs the withdrawal of counsel. This rule provides that counsel may withdraw prior to the entry of a plea in a criminal action or prior to the trial date in a civil action with the client’s consent. After the entry of a plea or a trial date has been fixed in a civil action, an attorney only may withdraw with leave of court upon the filing of the client’s written consent, among other specific requirements.

In the Family Part, an attorney may withdraw from representation under *Rule 5:3-5(e)*, which allows for the withdrawal ninety days or more prior to the scheduled trial date on the client’s consent in accordance with *Rule 1:11-1(a)(1)* or if the client does not consent or there is less than ninety days until the scheduled trial dates, the attorney may withdraw by leave of court.

In municipal court, *Rule 7:7-9(b)* through (e) provides for withdrawal of counsel in municipal court actions. Specifically, an attorney may withdraw as counsel without leave of court so long as the client consents prior to the receipt of discovery in a municipal court matter. Prior to the completion of discovery and setting a trial date, an attorney may also withdraw with the client’s consent and without leave of court so long as the withdrawal will not cause a delay. After completion of discovery and the setting of a trial date, leave of court is required for withdrawal of the attorney.

All of these rules require a client’s consent to withdraw without leave of court and require leave of court after a specific time during the litigation, making it harder for attorneys to be relieved mid-case.

The RPCs also must be considered when making a determination as to whether an attorney can be relieved as counsel. Our ethical obligations make withdrawal and being relieved even harder. RPC 1.16 Declining or Terminating Representation details when an attorney must withdraw and when they may seek to withdraw and the factors that must be considered in the withdrawal.

Subsection a of RPC 1.16 states: “Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; or (3) the lawyer is discharged.”

The Rules of Professional Conduct require specific factors to be addressed in addition to the requirements of the Court Rules. Specifically, RPC 1.16(b) states that “a lawyer may withdraw from representing a client if:

(1) the withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer’s services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyers considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.”

Subsection c of RPC 1.16 provides that when “a lawyer shall continue representation notwithstanding good cause for terminating the representation” if the Court orders so.

These rules do not provide protection for the attorney. Thus, there are a number of problems that must be addressed:

1. There is no mechanism for an attorney to withdraw from representation without a motion when the client does not consent. This can be a costly endeavor – often when an attorney is already owed a substantial amount of counsel fees. There should be a mechanism by which the Court can address the issue without a formal motion.
2. If the reason for the representation is protected by attorney/client privilege, then RPC 1.6 Confidentiality becomes an issue. An attorney would not have the ability to be candid with the Court about the wrongdoings or difficulty of the client/attorney relationship without potentially violating confidentiality and prejudicing the client with the Court.
3. The Court may still require the attorney to continue the representation even when there is good cause to terminate the relationship. This leaves an attorney open to potential lawsuits, malpractice claims, ethical grievances, large receivables that they may not collect, and may even affect the lawyer’s well-being if the reason for withdrawal is health related, case load related, or some other life issue.
4. The specific dates by which a withdrawal with a client’s consent is permitted are applied inconsistently. Trial dates are often given out too soon, even at the first Case Management Conferences. Those trial dates, especially post the Covid-19 pandemic and accompanying backlog, are rarely actual trial dates. As a result, a deadline to withdraw is being established based on trial dates that are not real.

5. There is no mechanism for withdrawal when the client wishes the attorney to withdraw after the specific deadlines without the filing of a motion. This causes unnecessary costs for clients when they no longer wish to be paying the attorney. A litigant has the right to have the representation of their choice.

As a working group, we reviewed other states that have similar demographics, either in terms of population, population density, and wealth. Specifically, we reviewed New York, Massachusetts, Connecticut, Rhode Island, Maryland, Florida, Illinois, and California. The results were varied and are discussed in the attached **Appendix U**.

Overall, California, Connecticut, Florida, Illinois, and Rhode Island require a motion and do not provide for the withdrawal without leave of Court. New York allows for the withdrawal with client's consent without leave of Court. Massachusetts and Maryland allow for the withdrawal without leave of Court if the client has new counsel, but Massachusetts requires there be no motion pending and no trial date set.

The RPCs are extremely similar in all states reviewed.

II. Attorney's Fees and Getting Paid

Fee collection causes many practitioners' tremendous stress. Yet, it is critical to a successful practice. While one might believe that a happy client would be a paying client, there are times when even the client's desire to pay for the services rendered is not enough. The client may not have the immediate means to pay fees owed pending the litigation. The client may have the means upon resolution of the matter but chose not to pay his or her attorney. A New Jersey would collect the fees owed to them from his own client in the following ways:

1. A fee arbitration notice must be sent before an attorney can seek to collect through the Courts or through an attorney's lien;
2. An attorney's lien can be sought; and
3. A complaint for collection in Superior Court.

Attorney's Lien

The right of an attorney or firm to seek a lien on a matter is codified by New Jersey Statute. N.J.S.A. 2A:13-5. Lien for services, specifically provides:

After the filing of a complaint or third-party complaint or the service of a pleading containing a counterclaim or cross-claim, the attorney or counsellor at law, who shall appear in the cause for the party instituting the action or maintaining the third-party claim or counterclaim or cross-claim, shall have a lien for compensation, upon his client's action, cause of action, claim or counterclaim or cross-claim, which shall contain and attach to a verdict, report, decision, award, judgment or final order in his client's favor, and the proceeds thereof in whosoever hands they may come. The lien shall not be affected by any settlement between the parties before or

after judgment or final order, nor by the entry of satisfaction or cancellation of a judgment on the record. The court in which the action or other proceeding is pending, upon the petition of the attorney or counsellor at law, may determine and enforce the lien.

To obtain an attorney's lien, the attorney must file an application while the underlying case is ongoing. If granted, a lien is would attach to the property that the client or former client actually receives in the judgment or settlement. "An attorney's lien is merely a right in the attorney to a lien on any judgment recovered for the attorney's client. Even where an attorney" has obtained a pre-judgment lien on assets," if "there is no recovery" by the client of those assets, "there is nothing to which the attorney's lien can attach." *Cole, Schotz, Bernstein, Meisel & Forman, P.A. v. Owens*, 292 N.J. Super. 453, 460-61 (App. Div. 1996).

Superior Court Action

An attorney may also file a civil suit for collection of unpaid fees, after a fee arbitration notice has been sent provided the client does not elect fee arbitration. This requires a complaint, and an attorney may seek the principal amount owed, both contractual and prejudgment interest, and attorney's fees and costs.

Fee Arbitration

The Office of Attorney Ethics describes the Fee Arbitration Process as follows:

The fee arbitration process helps litigants and attorneys resolve disputes over legal fees without going to court. This binding arbitration program is conducted by impartial fee arbitration committees composed of volunteer attorneys. The process is fair, inexpensive, and generally quicker than litigation....

Upon receipt of a notice, the client has the opportunity to pursue fee arbitration formally. After the payment of \$50, a fee arbitration request is considered by the district fee arbitration secretary in the county where the firm operates its office. Fee arbitration is not necessarily available in every case. For example, if the fee is greater than \$100,000, or if legal questions regarding the fee such as legal malpractice are also at issue, the secretary may not accept the request. Other exceptions also exist for the secretary to refuse to allow the case to proceed.

Reporting to Credit Agency

RPC 1.6 prohibits attorneys from releasing information relating to their representation of a client to third parties with exception to prevent death, substantial bodily harm or injury to financial interests of another person or to prevent criminal or illegal acts or to establish a claim or defense in a matter between the client and attorney.

Some states have opined that reporting clients to a credit bureau would violate RPC 1.6 Confidentiality such as South Carolina, Wisconsin, South Dakota and New York. Most authorities consider that the contention of reporting a client to a credit bureau does not fall within an exception

to RPC 1.6 and would require the reporting of information confidential. South Carolina Bar, Ethics Advisory Op 94-11 also pointed out that it is not necessary to establish the claims against the client, it risks disclosure of confidential information and “smacks” of punishment. Although New Jersey does not have an opinion on point, there was an opinion that provided that the sale of an account receivable to a third party and/or retaining a collection agency would violate RPC 1.6. Our working group does not foresee that this issue will be able to be addressed to allow attorneys to report to a credit agency.

The identified issues with the mechanisms for collecting and getting paid are:

1. Attorneys have to file an application in the underlying action and while it is still pending, lawyers are put in the middle of the conflict. Attorneys have no option for a lien once the matter is concluded.
2. If the client does not receive an award, then there are no assets to attach a lien. There needs to be an alternative option for a lien to attach to an asset other than the judgment.
3. Under the current system, an attorney who is already owed money from a client, either has to incur additional costs by filing an application or a complaint and/or has to wait longer to be paid what they are owed.
4. Most other debts are permitted to be reported to credit agencies, which incentivizes clients into paying their bills. Clients do not have the same incentive to pay their legal bills.
5. Our system ensures that professionals who assist attorneys in the litigation are paid such as forensic accountants, experts, appraisers, and mediators, but not the attorneys themselves.

The issue of getting paid and collecting fees causes attorneys stress and financial hardship, which often affect an attorney’s well-being (both mentally and financially). Looking at the chart on page 16 setting forth the Summary of relationships between Personal or occupational factors and well-being outcomes there is strong statistical significance between “Collection of Client Debts” and burnout, depression, feelings of isolation and anxiety. By assisting attorneys in getting paid for their hard work will help not just the attorneys but the general public.

RECOMMENDATIONS FROM THE ATTORNEYS BEING RELIEVED AS COUNSEL AND GETTING PAID WORKING GROUP:

A. Withdrawal

1. The Court Rules must be reviewed and revised to allow an attorney to be relieved as counsel at the litigant’s consent regardless of whether discovery is complete, a plea has been entered or a trial date has been scheduled. Litigants should have the right to be

represented by the person of their own choosing, even if they chose to be self-represented. Proposed Revisions to the Court Rules are attached as **Appendix V**.

2. There should be a procedure whereby the Presiding Judge of Each Division and/or Part reviews and decides motions to be relieved as counsel to allow for the attorney to address the issue without prejudicing their client to the Judge that will be hearing the case. If the Presiding Judge is assigned to the matter, then an alternate Judge should be assigned to hear the Presiding Judge's motions to be relieved as counsel.
3. Subsection C of RPC 1.16 must be deleted from the Court Rules as there should be no circumstance in which good cause is found, but the withdrawal from representation is not permitted. If the litigant has failed to meet financial obligations owed to the attorney, the attorney must be permitted to withdraw, or the court shall determine a funding source for the attorneys to be paid and shall order counsel fees to be paid.

B. *Getting Paid*

1. The Case Management Orders shall be revised to include a section to address counsel fees and funding the attorney's fees. Counsel shall be permitted to raise the issue at the initial Case Management Conference without the necessity of filing a formal motion.
2. An attorney lien should automatically attach to every client at the start of a case. Attorneys can periodically update the court on the amount owed to the attorney throughout the case. Perhaps these updates should be provided at each court appearance. If there is no readily available source to fund the litigation, then any asset that is not liquid should be identified to have a lien against it for future attorney fees.
3. In cases where money is being held in escrow for a client, a judgment search must be made to ensure there is no child support owed. A judgment search for attorney's fees owed in the relevant matter should also be a requirement so that if a client fires an attorney and the new attorney later holds funds, the new attorney will have a requirement to either release the amount owed to the former attorney or hold the money until the issue is resolved.
4. The fee arbitration process must become more efficient. Although our Working Group was not specifically tasked with this issue, we generally note that the process takes too long. This is consistent with the results of the State Bar Association survey on Fee Arbitration conducted by the Ethics Committee and Fee Arbitration Working Group stated herein that found, "The largest area of concern was that the process took too long and that it favored clients because clients do not have to pay for attorneys' time."
5. The Court should have forms available that can be easily filled in – similar to forms provided to pro-se litigants for clients so that attorneys can easily request fees.
6. In cases that do not settle, the Judge should be required to make a finding as to how the attorneys are being paid. If the attorneys are owed money, the attorney should be permitted to make an application for fees from their own client at that time.

SUMMARY OF “PUTTING LAWYERS FIRST TASK FORCE” RECOMMENDATIONS

Attorney Health & Well-Being Working Group

1. ***Centralize and Coordinate Well-Being Efforts.*** Initial efforts as well as on-going analysis, planning and implementation will require coordination. These efforts, in turn, require on-going commitments from a centralized source working with representatives from all stakeholders.
 - a. Establish an on-going Task Force on Lawyer and Judicial Well-Being under the Administrative Office of the Courts.
 - i. Dedicate staff within the Judiciary to plan and coordinate initiatives, develop educational materials;¹⁴⁹ and
 - ii. Membership should be a cross-section of different practice groups, judiciary leaders, NJLAP representative; NJSBA representative; NJAJ representative; Specialty/Affinity bar representatives; young lawyers, Law School representatives; mental health and diversity experts; Office of Attorney Ethics representative; NJSBA Standing Committee on Attorney Well-Being representative.¹⁵⁰
2. ***Further Survey Analysis.*** As noted, the Survey yielded a great deal of information, however it only focused on six areas. The working group supports future efforts to conduct additional analyses of survey data.
3. ***Begin a State-wide Conversation About Attorney Well-Being.*** Promoting wellness involves personal, cultural and systemic changes to address stigma and attitudes and to encourage well-being.
 - a. Identify ways in which stigma inhibits lawyers, law school students and judges from seeking help;
 - b. Support and encourage efforts to build educational programs that focus on stigma-reduction. Testimonial videos and articles are known to be an effective vehicle for such efforts.
 - c. Speak more openly about mental health at state, county and specialty/affinity bar association meetings;
 - d. Include well-being agenda items in bar association section meetings;
 - e. Host well-being CLEs at the NJSBA annual meeting and mid-year meeting;
 - f. Begin a dialogue about suicide prevention;
 - g. Promote the creation of well-being committees/initiatives for law firms;
 - h. Develop roadmap/manual for law firms on “Promoting Lawyer Well-Being;”¹⁵¹

¹⁴⁹ Massachusetts established a Supreme Judicial Court Standing Committee on Lawyer Well-being which is staffed by a full-time director who is employed by the judiciary.

¹⁵⁰ The Utah Task Force on Lawyer and Judge Well-Being is co-chaired by a Utah Supreme Court Justice and the Utah State Bar President.

¹⁵¹ Brafford, *supra* note 41.

- i. Encourage firms, bar associations, law schools, the judiciary and NJLAP to plan events and participate in the annual national Well-Being Week in Law initiative the first week in May;
 - j. Establish a monthly theme for wellness (e.g. financial wellness, occupational wellness, spiritual wellness, etc.) and devote 30-60 seconds at the start of each ICLE seminar to a wellness tip in keeping with the monthly theme;
 - k. Create an NJSBA blog that addresses attorney wellness;
 - l. Emphasize and promote the current NJSBA mentorship program and the importance of mentorship in support of well-being;¹⁵² and
 - m. Eliminate Question 12B on the Character and Fitness Application.
4. **Outreach and Education.** Identifying needs and educating lawyers, judges and law school students about stress, pitfalls and available resources to address problems and foster wellness.
- a. Develop resources and efforts for outreach and education targeting prevention/early intervention to young lawyers
 - b. Meet with Affinity Bars ¹⁵³ to continue the discussion and get ongoing data. This Survey did not go in-depth on correlations between race and gender with regards to well-being measures;
 - c. Presentations to local and specialty bar associations – invite experts to discuss the connection between attorney wellness and professional resilience/performance.
 - d. Invite lawyers who have experienced crisis, gotten help and are practicing successfully to speak at events;
 - e. Marketing – include announcements/ads in all Law Journal issues, in section publications (e.g., NJ Family Lawyer), county bar publications; include information with annual registration forms; with certification/re-certification applications;
 - f. Coordinate efforts by NJLAP, bar associations and other stakeholders to expand outreach;
 - g. Publicize NJLAP and other hotlines/resources on a frequent, consistent and on-going basis;
 - h. Place NJLAP tables conspicuously at bar events;
 - i. Include a weekly attorney wellness column in the NJ Law Journal;
 - j. Solo and small firm outreach committee; and

¹⁵² Mentorship fosters inclusiveness and respectful engagement. It can aid career progression, especially for women and diverse professionals. Coaching which is different from mentoring is also critical to enhancing the legal profession. Jayne Reardon, *Can Improving Attorney Well-Being Solve Law's Diversity Problem?*, 2 CIVILITY (July 11, 2018), <https://www.2civility.org/attorney-well-being-solve-diversity-problem/>.

¹⁵³ There were statistically significant relationships between lawyers reporting their credentials being questioned across both measures of race and gender. Females were more than twice as likely as males to have their credentials questioned. Breaking the figures down by race, 41% of African Americans and 30% of Hispanics reported credential questioning, while this was reported only by 17% of whites.

- k. Develop outreach programs for attorneys who have been formally disciplined with the goal of rehabilitation.
 - l. Develop and conduct extensive legal community education programs on the results of the survey and implications for different subgroups.
5. **Law Firms.** The well-being of law firm employees, including partners, associates and support staff is vital to effective representation of clients and the long-term success of the firm.
- a. Conduct internal wellness self-assessment;
 - b. Encourage organizations and employees to add benefits such as providing for paid time off specifically for mental health-related appointments;
 - c. Encourage usage of paid time off to reduce stigma around taking leave;
 - d. Develop educational programs, as well as procedures and practices that support identification and treatment of mental health and substance use problems;
 - e. Provide up-to-date information on available resources for mental health and addiction issues;
 - f. Reduce focus on alcohol at firm events;
 - g. Encourage firms to adopt a Well-Being pledge;
 - h. Adopt a “Wellness Toolkit” modeled after the ABA Well-Being Toolkit for Lawyers and Legal Employers,”¹⁵⁴ which defines a healthy workplace and provides guidance on creating and maintaining a workplace that fosters wellness; and
 - i. Assist solo and small firms to develop succession plans and to work with NJSBA Solo/Small Firm section and with the Lawyers Helping Lawyers to provide CLE and materials for members to develop succession plans¹⁵⁵ and plans for when they face a medical crisis or disability to make sure matters are not neglected.
 - j. Encourage efforts to explore business models that might reduce burnout risk factors, given strong correlations between weekend work, outside hour work, employer expectations for attorney availability at night and weekends, vacation, taking time off to address well-being, and burnout.
6. **Board-approved CLE.** Continuing legal education provides a state-wide forum for providing essential information about wellness issues.
- a. Allow credits for solutions-based well-being programs;
 - b. Include a well-being track at annual and mid-year meetings for CLE credits;
 - c. Encourage specialty and affinity bars, as well as NJ Association for Justice to include well-being in their programs;
 - d. Consider minimum annual well-being credit requirements for licensed attorneys;
 - e. Include well-being as a topic in ethics seminars as it relates to professional responsibility;

¹⁵⁴ Brafford, *supra* note 41.

¹⁵⁵ Of the 355 participants who self-identified as solo practitioners, 71% reported that they do not have a succession plan in the event they are unable to practice.

- f. Provide free or low-cost CLEs, on such topics as:
 - i. Self-care,
 - ii. Meditation,
 - iii. Gratitude,
 - iv. Emotional well-being,
 - v. Physical well-being,
 - vi. Social well-being,
 - vii. Spiritual well-being,
 - viii. Occupational well-being,
 - ix. Financial well-being,
 - x. Resilience,
 - xi. Secondary (vicarious) trauma and compassion fatigue,
 - xii. Conflict management,
 - xiii. Mindfulness,
 - xiv. Self-compassion, and
 - xv. Positive-lawyering.
 - g. Bring in professional speakers when feasible.
7. ***Bench-bar relations.*** The Judiciary has a significant impact on lawyer well-being, and judges and judiciary employees can benefit from well-being initiatives.
- a. Judiciary buy-in;¹⁵⁶
 - b. Conduct a judicial well-being survey;
 - c. Provide well-being programming for judges and staff;
 - d. Educate judiciary (reduce stigma, spotting trouble; temperament), including training for new judge orientation, Judicial College annual trainings;
 - e. Encourage more involvement of judges in bar association events;
 - f. Address efficiency issues (delays; required appearances when no action will be taken; grant timely reasonable adjournment requests; realistic deadlines);
 - g. Continue virtual appearances for many court events; and
 - h. Encourage attorney and bar leaders to take appropriate opportunities to speak with judges about attorney well-being.
8. ***Law Schools***
- a. Address students at orientation, entry and at each level of law school re: professional responsibility, demands of practice, etc.;
 - b. Presentations/programs in partnership with attorneys (speakers bureau) and other outside speakers regarding well-being;
 - c. Provide information to students about identifying problems and available resources for assistance and treatment; and
 - d. Incorporate wellness into the curriculum, including discussing mental health and substance use in ethics/professional responsibility courses.

¹⁵⁶ See *Resolution 6 Recommending Consideration of the Report of the National Task Force on Lawyer Well-Being*, Conf. of Chief Justices (2017), https://ccj.ncsc.org/_data/assets/pdf_file/0023/23684/08092017-recommending-consideration-report-national-task-force-lawyer-well-being.pdf.

9. ***New Jersey Lawyers Assistance Program (“LAP”)***. NJLAP is an important resource in outreach, programs and initiatives related to attorney mental health and well-being. These are recommendations for continuing and expanded programming by NJLAP.
- a. Provide programs that affirmatively address well-being, prevention, and health-promoting functions, as well as services that address dysfunction;
 - b. Collaborate with other stakeholders to develop and deliver seminars, programs and outreach;
 - c. Assess whether current funding/staffing levels adequately provide for outreach, screening, counseling, peer assistance, monitoring, and education
 - d. Continue to develop and expand resources for attorneys with alcohol and substance use disorders.
 - e. Inventory available suicide prevention, depression, and anxiety-focused resources and educational programming and develop additional resources and outreach in these areas to strengthen support serious mental health struggles in the legal community.
 - f. Continue to develop peer and facilitated support groups and explore expansion and training of NJLAP’s network of prospective peer volunteers.
 - g. Consider adding advisors to the NJLAP team to address solo and small firm practice management concerns and expand free and confidential practice management-related consultations.
 - h. Involve NJLAP in CLE presentations on well-being and mental health topics.

10. ***Partnering with Third Parties***

- a. In addition to providing CLEs promoting physical health, explore ways to offer discounts for on-line or in-person fitness programs/gyms.
- b. Explore ways to offer group health insurance benefits to solo and small firms.
- c. Explore ways to partner with mental health agencies/providers to offer free or low-cost services to attorneys, possibly through grants or other funding.¹⁵⁷

11. ***Remove Question 12B from the New Jersey Character and Fitness Application.***

Question 12B does not meet the threshold for determining the fitness of an applicant to practice law. Our working group recommends that Question 12B be removed from the New Jersey Character and Fitness application as soon as practicable. The evidence demonstrates that this question actually causes more harm than good.

¹⁵⁷ The Utah State Bar Association recently teamed up with third party companies Tava and Unmind to offer their members 6 free confidential virtual mental health sessions with licensed clinicians See: <https://www.utahbar.org/tava-and-unmind-well-being-services-now-available-for-utah-state-bar-members/>

Ethics Committee & Fee Arbitration Working Group

1. *A New Commission Study.*

- a. The Supreme Court should establish a Commission, akin to the *Michels Commission*, to conduct a comprehensive study of both the ethics system and fee arbitration system and address the issues raised in this report. The Commission should also consider whether these systems suffer from implicit bias, including an implicit bias against solo practitioners and small law firms.
- b. The OAE should be compelled to participate in that study.
- c. The Committee should explore whether the *Rules* should be amended to implement the recommendations of this report and/or whether implementation can be effectuated through other, administrative means.

2. *The Filing of a grievance stage.*

- a. Because the most frequently cited concern was the docketing of frivolous grievances, clients must post a bond of some amount so that they have “skin in the game.” If the grievance does not turn into final discipline, then the bond is turned over to the attorney as partial compensation for time taken away from work, hiring an attorney, etc.
- b. Change the standard for declination to one where there must be some standard of plausibility to the allegations for docketing and if not, then the grievance is not docketed.
- c. *Rule 1:20-8(a)* creates “aspirational” time goals for investigations, but as noted in this report, these goals are rarely attained. The tremendous time commitment—and emotional toll—exacted on attorneys’ mental health requires greater certainty for time goals. This may require a rule change.
- d. Respondents should be copied on *any* grievance that is filed.
- e. Response time for respondents should be expanded from 10 days to 30 days.
- f. The first letter sent to the respondent, which provides notice of the docketing of the grievance should set time goals for completion of tasks akin to Case Management Orders.
- g. This the first letter to a respondent should also state that the respondent has the right to hire an attorney and it should require that an attorney who proceeds without counsel should sign a written waiver of their ability to hire counsel.
- h. This first letter to a respondent should list options to resolve an ethics matter such as diversion, stipulation of facts, or a consent to discipline.
- i. Respondents should be able to request diversion *before* any investigative report is filed.
- j. Investigators must discuss findings with respondents and their attorneys 30 days prior to filing a report that recommends discipline.
- k. Establish a private portal for fee arbitration participants and ethics grievants.
- l. Establish a program within fee arbitration, wherein the first hour is utilized to mediate the fee dispute.
- m. A fee arbitration award should automatically convert to a judgment if a certification is filed by an attorney that the client has not paid.

- n. Permit lawyers to file for fee arbitration with a caveat that the client can object and remove it from fee arbitration within 30 days of the attorney's filing.
- o. Clients should be required in their initial fee arbitration filing to state with specificity the exact billing entries in dispute. Instructions should be included with examples, so clients understand what is being asked of them when they file.
- p. Fee arbitration volunteers should receive ethics CLE credits.

3. ***Diversion.***

- a. Diversion should be available at any stage of the proceeding if warranted by the facts.
- b. Diversion should be available for infractions that would ordinarily result in a reprimand *if the public has not been placed at risk*.
- c. A lawyer who only has a reprimand on his or her record for 5 years should be permitted to petition the Court to erase/expunge the matter.
- d. Three members of the OAE should review requests for diversion. The discretion should not be vested in any one or two individuals.
- e. *De Minimis* violations should not result in diversion.

4. ***Random Audits.***

- a. Maximum of one random audit every 5 years for any attorney if no prior random audits resulted in discipline.
- b. OAE should share costs of production of documents if the costs exceed \$250.
- c. Attorneys should be advised, in writing, that they have the right to hire an attorney and attorneys who do not hire counsel should sign a written waiver of their ability to hire counsel.

5. ***Volunteers.***

- a. Lawyers who investigate the respondent should be from the same area of the law as the respondent.
- b. Volunteers may serve consecutive terms on ethics committees.
- c. Eliminate the one-year break requirement and limitation on terms.
- d. Volunteers should include retired attorneys to expand the pool of participants.

6. ***OAE.***

- a. OAE should implement a system to track, and make public record of, the number of grievances that are initiated by the public *as well as* the number of grievances that emanate from OAE. This statistical breakdown will help further the mission of the ethics system to protect the public and ensure that the public's concerns are addressed.
- b. OAE should implement a system to track and make public record of: (i) the counts to a complaint added by OAE; and (ii) the number of attorney added by OAE. This statistical breakdown will help address commenters' concerns about overreach and lack of "prosecutorial" discretion used by OAE.

- c. Guidance to the OAE to avoid prosecution of frivolous ethics investigations and expend less effort to expand beyond “the four corners” of the grievance and cease overcharging.
- d. Training at the OAE level as well as an “attitude”¹⁵⁸ adjustment as to how to exercise their discretion (i.e., if their function is as prosecutors, they must also have—and use—appropriate “prosecutorial discretion”).
- e. Training/guidance for OAE to better appreciate and understand the substantial emotional and financial burdens these investigations cause attorneys, particularly unrepresented attorneys and solo/small firm attorneys.
- f. Training/guidance for OAE to better appreciate and understand whether mental health or substance use issues are a contributing underlying problem for a respondent.
- g. Volunteers should not have to sign a confidentiality agreement to be members of the committees.
- h. Permit volunteers to extend their term to finish a report or hearing in which they are involved in.
- i. Permit volunteers to discuss docketed matters at meetings.
- j. Permit members to discuss matters by name, not by docket number.
- k. If a matter goes to complaint, then the hearing is sent to another committee so that the respondent and grievant are not facing a panel who has discussed the case at meetings.
- l. OAE should not “second guess” the local committee assignments of hearing panel members.
- m. OAE should be less involved at local meetings and allow the local meetings to occur outside the presence of an OAE member.
- n. Permit training of volunteers to be conducted by webinar so that volunteers can be immediately trained.

7. *Fee Arbitration.*

- a. Permit one attorney to attend fee arbitration as opposed to every attorney who billed on a matter (e.g., allow a Partner to appear as opposed to a Partner and three Associates).
- b. Allow attorneys who have been adverse to each other to serve as panelists if the responding attorney provides written consent. (We learned through this process that the current practice in some districts is that the Secretary does not even give the responding attorney the opportunity to waive the potential conflict).

¹⁵⁸ “Attitude” was referenced by interviewees throughout this process.

Other Recommendations:

8. Create a pathway to reinstatement for disbarred attorneys.
9. Establish a statute of limitations on the filing of an ethics grievance 7 years from the last contact with the client (as this comports with how long an attorney needs to keep a client's file).
10. Constitutional challenges can be made at any time in the proceeding by making a motion to the Supreme Court rather than having to wait until the end of a long investigation and hearing and appellate review by the DRB.
11. Permit local committee volunteers to argue before the Supreme court. This would require a rule change.
12. When an attorney is given, and completes, a diversion, the matter should not be listed on their ethical record with the Court.
13. OAE must pay for administrative costs for frivolous complaints that are dismissed in random audits where no misconduct is uncovered.
14. Training of volunteers should include training by both OAE, and volunteers; NJSBA Leadership should be present at training sessions.
15. Create a skills and methods course in which lawyers must conduct a comprehensive accounting akin to "real world" practice.
16. On or about January 24, 2023, OAE Director Jones issued Director's Memorandum 2023-01. Among other instructions, the OAE Director wrote: "This Director's Memorandum also formalizes the pre-existing instruction *that declination data and documents must be maintained in the OAE e-Filing InfoShare system*, which District Secretaries and Committee members access through their eCourts login." *Id.* at 2. The PLF Task Force recommends that this process, which does not appear to align with *Rule 1:20-9(j)*, is abandoned.
17. On July 21, 2022, the Chairman of the Disciplinary Review Board, Maurice J. Gallipoli, A.J.S.C. (ret.), stated in a letter to New Jersey Supreme Court members that, absent a rule change, he will continue voting to disbar attorneys who fail to file the affidavit required under *Rule 1:20-20*. Clearly, the *Rule*, on its face, does not require disbarment for failure to file the *Rule 1:20-20(b)(15)* Affidavit. However, considering that the stated position of the *Chairman* is that failure to file the *Rule 1:20-20(b)(15)* Affidavit should result in an automatic disbarment, the Commission recommended in **Recommendation One: A New Commission Study**, should consider a *Rule* change to directly address Judge Gallipoli's comment.

Malpractice Working Group

1. The NJSBA must keep a vigilant eye for the proper set of facts that will allow for our unified support in changing how affidavits of merit are handled in the context of alleged malpractice so that an attorney affiant who signs an affidavit of merit on behalf of the plaintiff must possess experience in that particular area of the law. In other words, we need a "hook" to bring attorneys together.
2. If an opportunity arises for a change in the statute of limitations as a result of a change in the political climate, we must be prepared to use the political connections of our membership to try to achieve this change.

Solo, Small Firm & Newly Admitted Attorneys Working Group

1. We recommend that the NJSBA, NJICLE and New Jersey's Law Schools work together to create a roadmap course, which educates attorneys on wellness, managing trust accounts, the fee arbitration system, accounting issues and the inner workings of the ethics systems so that new lawyers are informed on these important topics. It is our vision that these courses would be offered in two separate arenas: to students who are currently in law school and to law practitioners running a solo or a small firm. The basics for this course are being discussed and are in the process of being developed at the writing of this report.
2. We recommend that the NJSBA, and its partners work with educators to develop a curriculum to support and prepare solo and small firm lawyers, as well as lawyers new to the practice, to accomplish the goals of practical competence and personal wellness which is offered to law students as well as alumni and other law practitioners.
3. Urge the New Jersey Supreme Court to adopt a proposed amendment to R. 1:20-1(c);
4. Create a portal on the New Jersey State Bar Associations website that will aid attorneys in creating an emergency preparedness plan. The portal should provide information, sample documents and other resources;
5. Invite county and affinity bar associations to maintain a list of those attorneys, by practice area, willing to volunteer their time to help oversee an attorney's practice; and
6. Give further study and consideration to the creation of a temporary disability status as contemplated in the draft new Rule 1:28C-1, contained in this report as **Appendix Q**.
7. That the NJSBA and the Supreme Court Practice Committee amend Court rules which should provide guidance and support for those exiting or exited from the practice as well as those who are tasked with managing that exit. Further, guidelines and rules must be developed for practicing solo and small firm attorneys to encourage and empower them to have contingency plans in place for their matters after their demise or disability.

On-line Reviews Working Group

1. Online reviews should qualify as "controversies" under *R.P.C.* 1.6(d)(2). The NJSBA should actively pursue petitioning New Jersey's Advisory Committee on Professional Responsibility to issue a new Advisory Opinion modifying ACPE 738, and for RPC 1.6(d)(2) to include online disputes as eligible controversies akin to a legal dispute or disciplinary hearing.
2. Attorneys should be apprised of less intrusive means to remove inaccurate or misleading reviews by first attempting to contact the online forums directly.

Attorneys Being Relieved as Counsel & Getting Paid Working Group

Withdrawal

1. The Court Rules must be reviewed and revised to allow an attorney to be relieved as counsel at the litigant's consent regardless of whether discovery is complete, a plea has been entered or a trial date has been scheduled. Litigants should have the right to be represented by the person of their own choosing, even if they chose to be self-represented. Proposed Revisions to the Court Rules are attached as **Appendix V**.
2. There should be a procedure whereby the Presiding Judge of Each Division and/or Part reviews and decides motions to be relieved as counsel to allow for the attorney to address the issue without prejudicing their client to the Judge that will be hearing the case. If the Presiding Judge is assigned to the matter, then an alternate Judge should be assigned to hear the Presiding Judge's motions to be relieved as counsel.
3. Subsection C of RPC 1.16 must be deleted from the Court Rules as there should be no circumstance in which good cause is found, but the withdrawal from representation is not permitted. If the litigant has failed to meet financial obligations owed to the attorney, the attorney must be permitted to withdraw, or the court shall determine a funding source for the attorneys to be paid and shall order counsel fees to be paid.

Getting Paid

4. The Case Management Orders shall be revised to include a section to address counsel fees and funding the attorney's fees. Counsel shall be permitted to raise the issue at the initial Case Management Conference without the necessity of filing a formal motion.
5. An attorney lien should automatically attach to every client at the start of a case. Attorneys can periodically update the court on the amount owed to the attorney throughout the case. Perhaps these updates should be provided at each court appearance. If there is no readily available source to fund the litigation, then any asset that is not liquid should be identified to have a lien against it for future attorney fees.
6. In cases where money is being held in escrow for a client, a judgment search must be made to ensure there is no child support owed. A judgment search for attorney's fees owed in the relevant matter should also be a requirement so that if a client fires an attorney and the new attorney later holds funds, the new attorney will have a requirement to either release the amount owed to the former attorney or hold the money until the issue is resolved.
7. The fee arbitration process must become more efficient. Although our Working Group was not specifically tasked with this issue, we generally note that the process takes too long. This is consistent with the results of the State Bar Association survey on Fee Arbitration conducted by the Ethics Committee and Fee Arbitration Working Group stated herein that found, "The largest area of concern was that the process took too long and that it favored clients because clients do not have to pay for attorneys' time."

8. The Court should have forms available that can be easily filled in – similar to forms provided to pro-se litigants for clients so that attorneys can easily request fees.
9. In cases that do not settle, the Judge should be required to make a finding as to how the attorneys are being paid. If the attorneys are owed money, the attorney should be permitted to make an application for fees from their own client at that time.

APPENDIX A

National Task Force on Lawyer Well-Being Report: The Path to
Lawyer Well-Being: Practical Recommendations for Positive Change
(August 14, 2017)

TASK FORCE CHAIRS

Bree Buchanan
James C. Coyle

ENTITIES REPRESENTED:

ABA LAW PRACTICE DIVISION
ABA CPR PROFESSIONALISM
ABA/HAZELDEN STUDY
APRL
ALPS
CoLAP
CONFERENCE OF CHIEF JUSTICES
NCBE
NOBC

TASK FORCE MEMBERS:

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Tracy Kepler
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Sarah Myers
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Jayne Reardon
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Lynda Shely
William Slease

STAFF ATTORNEY:

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NATIONAL TASK FORCE ON LAWYER WELL-BEING


Creating a Movement To Improve
Well-Being in the Legal Profession

August 14, 2017

Enclosed is a copy of *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* from the National Task Force on Lawyer Well-Being. The Task Force was conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). It is a collection of entities within and outside the ABA that was created in August 2016. Its participating entities currently include the following: ABA CoLAP; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Wellbeing Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; National Conference of Chief Justices; and National Conference of Bar Examiners. Additionally, CoLAP was a co-sponsor of the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers and of the 2016 Survey of Law Student Well-Being.

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above 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.

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, 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. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.



This report's recommendations focus on five central themes: (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The members of this Task Force make the following recommendations after extended deliberation. We recognize this number of recommendations may seem overwhelming at first. Thus we also provide proposed state action plans with simple checklists. These help each stakeholder inventory their current system and explore the recommendations relevant to their group. We invite you to read this report, which sets forth the basis for why the legal profession is at a tipping point, and we present these recommendations and action plans for building a more positive future. We call on you to take action and hear our clarion call. The time is now to use your experience, status, and leadership to construct a profession built on greater well-being, increased competence, and greater public trust.

Sincerely,

Bree Buchanan, Esq.
Task Force Co-Chair
Director
Texas Lawyers Assistance Program
State Bar of Texas

James C. Coyle, Esq.
Task Force Co-Chair
Attorney Regulation Counsel
Colorado Supreme Court

"Lawyers, judges and law students are faced with an increasingly competitive and stressful profession. Studies show that substance use, addiction and mental disorders, including depression and thoughts of suicide—often unrecognized—are at shockingly high rates. As a consequence the National Task Force on Lawyer Well-being, under the aegis of CoLAP (the ABA Commission on Lawyer Assistance programs) has been formed to promote nationwide awareness, recognition and treatment. This Task Force deserves the strong support of every lawyer and bar association."

*David R Brink**
Past President
American Bar Association

* David R. Brink (ABA President 1981-82) passed away in July 2017 at the age of 97. He tirelessly supported the work of lawyer assistance programs across the nation, and was a beacon of hope in the legal profession for those seeking recovery.



THE PATH TO LAWYER WELL-BEING:

Practical Recommendations
For Positive Change

[THE REPORT OF THE
NATIONAL TASK FORCE ON
LAWYER WELL-BEING]

August 2017

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29. Empower Students to Help Fellow Students in Need.

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Task Force Member Biographies and Acknowledgments

THE PATH TO LAWYER WELL-BEING: Practical Recommendations For Positive Change

Although the legal profession has known for years that many of its students and practitioners are languishing, far too little has been done to address it. Recent studies show we can no longer continue to ignore the problems. In 2016, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published their study of nearly 13,000 currently-practicing lawyers [the “Study”]. It 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.¹ The parade of difficulties also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis,” complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception.² Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression. The budding impairment of many of the future generation of lawyers should be alarming to everyone. Too many face less productive, less satisfying, and more troubled career paths.

Additionally, 15 law schools and over 3,300 law students participated in the Survey of Law Student Well-Being, the results of which were released in 2016.³ It found

that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended.

The results from both surveys signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture. The analysis of the problem cannot end there, however. The studies reflect that the majority of lawyers and law students do not have a mental health or substance use disorder. But that does not mean that they’re thriving. Many lawyers experience a “profound ambivalence” about their work,⁴ and different sectors of the profession vary in their levels of satisfaction and well-being.⁵

Given this data, lawyer well-being issues can no longer be ignored. Acting for the benefit of lawyers who are functioning below their ability and for those suffering due to substance use and mental health disorders, the National Task Force on Lawyer Well-Being urges our profession’s leaders to act.

¹P. 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).

²A. M. Brafford, *Building the Positive Law Firm: The Legal Profession At Its Best* (August 1, 2014) (Master’s thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), available at http://repository.upenn.edu/mapp_capstone/62/.

³J. 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).

⁴See D. L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 1 (2013).

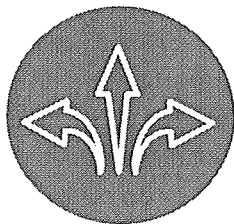
⁵J. M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225 (2011); L. S. Krieger & K. M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. 554 (2015).

REASONS TO TAKE ACTION

We offer three reasons to take action: organizational effectiveness, ethical integrity, and humanitarian concerns.

First, lawyer well-being contributes to organizational success—in law firms, corporations, and government entities. If cognitive functioning is impaired as explained above, legal professionals will be unable to do their best work. For law firms and corporations, lawyer health is an important form of human capital that can provide a competitive advantage.⁶

For example, job satisfaction predicts retention and performance.⁷ Gallup Corporation has done years of research showing that worker well-being in the form of engagement is linked to a host of organizational success factors, including lower turnover, high client satisfaction,



Reasons to Improve Attorney Well-Being

- ✓ Good for business
- ✓ Good for clients
- ✓ The right thing to do

and higher productivity and profitability. The Gallup research also shows that few organizations fully benefit from their human capital because most employees (68 percent) are not engaged.⁸ Reducing turnover is especially important for law firms, where turnover rates can be high. For example, a 2016 survey by Law360 found that over 40 percent of lawyers reported that they were likely or very likely to leave their current law firms in the next year.⁹ This high turnover rate for law firms is expensive—with estimated costs for larger firms of \$25 million every year.¹⁰ In short, enhancing lawyer health and well-being is good business and makes sound financial sense.

Second, lawyer well-being influences ethics and professionalism. Rule 1.1 of the ABA's Model Rules of Professional Conduct requires lawyers to “provide competent representation.” Rule 1.3 requires diligence in client representation, and Rules 4.1 through 4.4 regulate working with people other than clients. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline. But it will not enable them to live up to the aspirational goal articulated in the Preamble to the ABA's Model Rules of Professional Conduct, which calls lawyers to “strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.”

Troubled lawyers can struggle with even minimum competence. At least one author suggests that 40 to 70 percent of disciplinary proceedings and malpractice claims against lawyers involve substance use or depression, and often both.¹¹ This can be explained, in part, by declining mental capacity due to these conditions. For example, major depression is associated

⁶C. Keyes & J. Grzywacz, *Health as a Complete State: The Added Value in Work Performance and Healthcare Costs*, 47 J. OCCUPATIONAL & ENVTL. MED. 523 (2005).

⁷T. A. Judge & R. Klinger, *Promote Job Satisfaction through Mental Challenge*, in HANDBOOK OF PRINCIPLES OF ORGANIZATIONAL BEHAV. (E. A. Locke ed., 2009).

⁸J. K. HARTER, F. L. SCHMIDT, E. A. KILLHAM, & J. W. ASPLUND, Q12 META-ANALYSIS, GALLUP CONSULTING (2006), https://strengths.gallup.com/private/resources/q12meta-analysis_flyer_gen_08%2008_bp.pdf; see also Brafford, *supra* note 2, for a summary of studies linking engagement and other positive employee states to business success factors.

⁹C. Violante, *Law360's 2016 Lawyer Satisfaction Survey: By the Numbers*, Law360, Sept. 4, 2016, <https://www.law360.com/articles/833246/law360-s-2016-lawyer-satisfaction-survey-by-the-numbers>.

¹⁰M. Levin & B. MacEwen, *Assessing Lawyer Traits & Finding a Fit for Success Introducing the Sheffield Legal Assessment* (2014) (unpublished), available at <http://therightprofile.com/wp-content/uploads/Attorney-Trait-Assessment-Study-Whitepaper-from-The-Right-Profile.pdf> (discussing associate turnover statistics and estimated cost of turnover in large law firms).

¹¹D. B. Marlowe, *Alcoholism, Symptoms, Causes & Treatments*, in STRESS MANAGEMENT FOR LAWYERS 104-130 (Amiram Elwork ed., 2d ed., 1997) (cited in M. A. Silver, *Substance Abuse, Stress, Mental Health and The Legal Profession*, NEW YORK STATE LAW ASSISTANT TRUST (2004), available at <http://www.nylat.org/documents/counselnabox.pdf>).

with impaired executive functioning, including diminished memory, attention, and problem-solving. Well-functioning executive capacities are needed to make good decisions and evaluate risks, plan for the future, prioritize and sequence actions, and cope with new situations. Further, some types of cognitive impairment persist in up to 60 percent of individuals with depression even after mood symptoms have diminished, making prevention strategies essential.¹² For alcohol abuse, the majority of abusers (up to 80 percent) experience mild to severe cognitive impairment.¹³ Deficits are particularly severe in executive functions, especially in problem-solving, abstraction, planning, organizing, and working memory—core features of competent lawyering.

Third, from a humanitarian perspective, promoting well-being is the right thing to do. Untreated mental health and substance use disorders ruin lives and careers. They affect too many of our colleagues. Though our profession prioritizes individualism and self-sufficiency, we all contribute to, and are affected by, the collective legal culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.

DEFINING “LAWYER WELL-BEING”

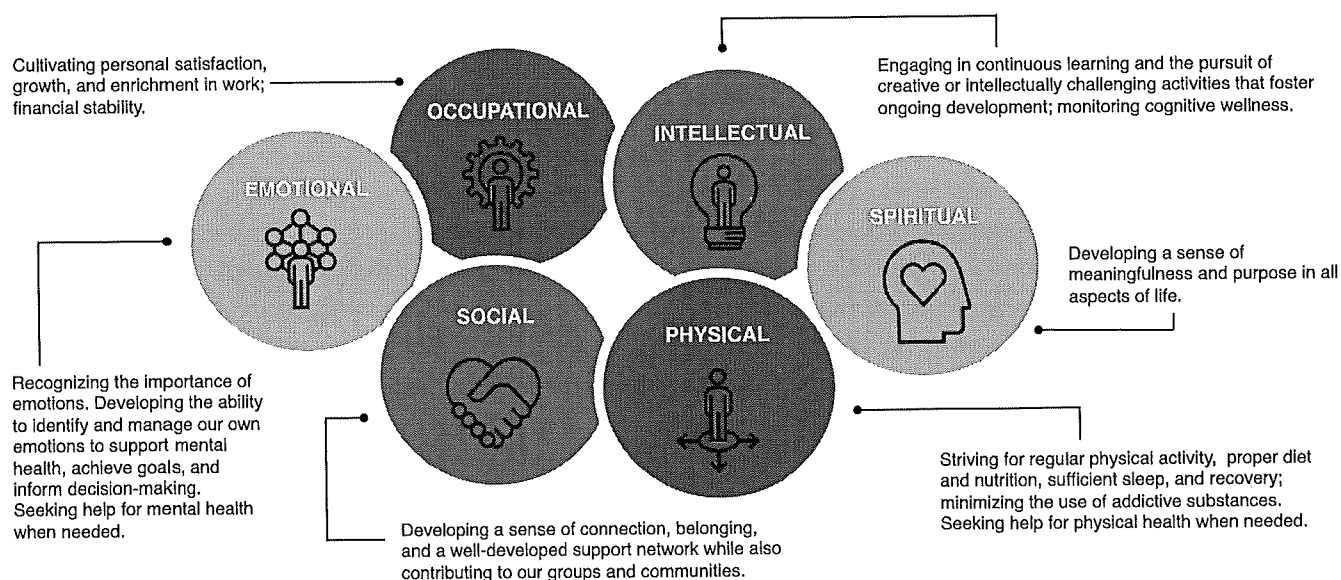
We define lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer well-being is part of a lawyer’s

“Well-Being”: A Continuous process toward thriving across all life dimensions.

ethical duty of competence. It includes lawyers’ ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long term well-being. This definition highlights that complete health

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



¹²P. L. Rock, J. P. Roiser, W. J. Riedel, A. D. Blackwell, *A Cognitive Impairment in Depression: A Systematic Review and Meta-Analysis*, 44 PSYCHOL. MED. 2029 (2014); H. R. Snyder, *Major Depressive Disorder is Associated with Broad Impairments on Neuropsychological Measures of Executive Function: A Meta-Analysis and Review*, 139 PSYCHOL. BULL. 81 (2013).

¹³C. Smeraldi, S. M. Angelone, M. Movalli, M. Cavicchioli, G. Mazza, A. Notaristefano, & C. Maffei, *Testing Three Theories of Cognitive Dysfunction in Alcohol Abuse*, 21 J. PSYCHOPATHOLOGY 125 (2015).¹⁴The WHO’s definition of “health” can be found at: <http://www.who.int/about/mission/en>. The definition of “mental health” can be found at: http://www.who.int/features/factfiles/mental_health/en/.

is not defined solely by the absence of illness; it includes a positive state of wellness.

To arrive at this definition, the Task Force consulted other prominent well-being definitions and social science research, which emphasize that well-being is not limited to: (1) an absence of illness, (2) feeling happy all the time, or (3) intra-individual processes—context matters. For example, the World Health Organization (WHO) defines “health” as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” It defines “mental health” as “a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.”¹⁴

Social science research also emphasizes that “well-being” is not defined solely by an absence of dysfunction; but nor is it limited to feeling “happy” or filled with positive emotions. The concept of well-being in social science research is multi-dimensional and includes, for example, engagement in interesting activities, having close relationships and a sense of belonging, developing confidence through mastery, achieving goals that matter to us, meaning and purpose, a sense of autonomy and control, self-acceptance, and personal growth. This multi-dimensional approach underscores that a positive state of well-being is not synonymous with feeling happy or experiencing positive emotions. It is much broader.

Another common theme in social science research is that well-being is not just an intra-personal process: context powerfully influences it.¹⁵ Consistent with this view, a study of world-wide survey data found that five factors constitute the key elements of well-being: career, social relationships, community, health, and finances.¹⁶

The Task Force chose the term “well-being” based on the view that the terms “health” or “wellness” connote only physical health or the absence of illness. Our definition of “lawyer well-being” embraces the multi-dimensional

concept of mental health and the importance of context to complete health.

OUR CALL TO ACTION

The benefits of increased lawyer well-being are compelling and the cost of lawyer impairment are too great to ignore. There has never been a better or more important time for all sectors of the profession to get serious about the substance use and mental health of ourselves and those around us. The publication of this report, in and of itself, serves the vital role of bringing conversations about these conditions out in the open. In the following pages, we present recommendations for many stakeholders in the legal profession including the judiciary, regulators, legal employers, law schools, bar associations, lawyers’ professional liability carriers, and lawyer assistance programs. The recommendations revolve around five core steps intended to build a more sustainable culture:

- (1) Identifying stakeholders and the role that each of us can play in reducing the level of toxicity in our profession.
- (2) Ending the stigma surrounding help-seeking behaviors. This report contains numerous recommendations to combat the stigma that seeking help will lead to negative professional consequences.
- (3) Emphasizing that well-being is an indispensable part of a lawyer’s duty of competence. Among the report’s recommendations are steps stakeholders can take to highlight the tie-in between competence and well-being. These include giving this connection formal recognition through modifying the Rules of Professional Conduct or their comments to reference well-being.
- (4) Expanding educational outreach and programming on well-being issues. We need to educate lawyers, judges, and law students on well-being issues. This includes instruction in recognizing mental health and

¹⁴The WHO’s definition of “health” can be found at: <http://www.who.int/about/mission/en>. The definition of “mental health” can be found at: http://www.who.int/features/factfiles/mental_health/en/

¹⁵E.g., I. Prilleltensky, S. Dietz, O. Prilleltensky, N. D. Myers, C. L. Rubenstein, Y. Jin, & A. McMahon, *Assessing Multidimensional Well-Being: Development and Validation of the I-COPPE Scale*, 43 J. CMTY. PSYCHOL. 199 (2015).

¹⁶T. RATH & J. HARPER, WELL-BEING: THE FIVE ESSENTIAL ELEMENTS (2010).

substance use disorders as well as navigating the practice of law in a healthy manner. To implement this recommendation effectively, more resources need to be devoted to promoting well-being.

- (5) Changing the tone of the profession one small step at a time. This report contains a number of small-scale recommendations, such as allowing lawyers to earn continuing legal education (CLE) credit for well-being workshops or de-emphasizing alcohol at bar association social events. These small steps can start the process necessary to place health, resilience, self-care, and helping others at the forefront of what it means to be a lawyer. Collectively, small steps can lead to transformative cultural change in a profession that has always been, and will remain, demanding.

Historically, law firms, law schools, bar associations, courts, and malpractice insurers have taken a largely hands-off approach to these issues. They have dealt with them only when forced to because of impairment that can no longer be ignored. The dedication and hard work of lawyer assistance programs aside, we have not done enough to help, encourage, or require lawyers to be, get, or stay well. However, the goal of achieving increased lawyer well-being is within our collective reach. The time to redouble our efforts is now.

RECOMMENDATIONS

Below, the Task Force provides detailed recommendations for minimizing lawyer dysfunction, boosting well-being, and reinforcing the importance of well-being to competence and excellence in practicing law. This section has two main parts. Part I provides general recommendations for all stakeholders in the legal community. Part II provides recommendations tailored to a specific stakeholder: (1) judges, (2) regulators, (3) legal employers, (4) law schools, (5) bar associations, (6) lawyers' professional liability carriers, and (7) lawyer assistance programs.



“None of us got where we are solely by pulling ourselves up by our bootstraps. We got there because somebody bent down and helped us pick up our boots.” — Thurgood Marshall

First, we recommend strategies for all stakeholders in the legal profession to play a part in the transformational process aimed at developing a thriving legal profession.

1. ACKNOWLEDGE THE PROBLEMS AND TAKE RESPONSIBILITY.

Every sector of the legal profession must support lawyer well-being. Each of us can take a leadership role within our own spheres to change the profession's mindset from passive denial of problems to proactive support for change. We have the capacity to make a difference.

For too long, the legal profession has turned a blind eye to widespread health problems.

For too long, the legal profession has turned a blind eye to widespread health problems. Many in the legal profession have behaved, at best, as if their colleagues' well-being is none of their business. At worst, some appear to believe that supporting well-being will harm professional success. Many also appear to believe that lawyers' health problems are solely attributable to their own personal failings for which they are solely responsible.

As to the long-standing psychological distress and substance use problems, many appear to believe that the establishment of lawyer assistance programs—a

necessary but not sufficient step toward a solution—has satisfied any responsibility that the profession might have. Lawyer assistance programs have made incredible strides; however, to meaningfully reduce lawyer distress, enhance well-being, and change legal culture, all corners of the legal profession need to prioritize lawyer health and well-being. It is not solely a job for lawyer assistance programs. Each of us shares responsibility for making it happen.

2. USE THIS REPORT AS A LAUNCH PAD FOR A PROFESSION-WIDE ACTION PLAN.

All stakeholders must lead their own efforts aimed at incorporating well-being as an essential component of practicing law, using this report as a launch pad. Changing the culture will not be easy. Critical to this complex endeavor will be the development of a National Action Plan and state-level action plans that continue the effort started in this report. An organized coalition will be necessary to plan, fund, instigate, motivate, and sustain long-term change. The coalition should include, for example, the Conference of Chief Justices, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the ABA, state bar associations as a whole and specific divisions (young lawyers, lawyer well-being, senior lawyers, etc.), the Commission on Lawyer Assistance Programs, state lawyer assistance programs, other stakeholders that have contributed to this report, and many others.

3. LEADERS SHOULD DEMONSTRATE A PERSONAL COMMITMENT TO WELL-BEING.

Policy statements alone do not shift culture. Broad-scale change requires buy-in and role modeling from top

¹⁷E. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP (2010); R. R. Sims & J. Brinkmann, *Leaders As Moral Role Models*, 35 J. BUS. ETHICS 327 (2002).

leadership.¹⁷ Leaders in the courts, regulators' offices, legal employers, law schools, and bar associations will be closely watched for signals about what is expected. Leaders can create and support change through their own demonstrated commitment to core values and well-being in their own lives and by supporting others in doing the same.¹⁸

4. FACILITATE, DESTIGMATIZE, AND ENCOURAGE HELP-SEEKING BEHAVIORS.

All stakeholders must take steps to minimize the stigma of mental health and substance use disorders because the stigma prevents lawyers from seeking help.

Research has identified multiple factors that can hinder seeking help for mental health conditions: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules.¹⁹

The Study identified similar factors. The two most common barriers to seeking treatment for a substance use disorder that lawyers reported were not wanting others to find out they needed help and concerns regarding privacy or confidentiality. Top concerns of law students in the Survey of Law Student Well Being were fear of jeopardizing their academic standing or admission to the practice of law, social stigma, and privacy concerns.²¹

Research also suggests that professionals with hectic, stressful jobs (like many lawyers and law students) are more likely to perceive obstacles for accessing treatment, which can exacerbate depression. The result of these barriers is that, rather than seeking help early, many wait until their symptoms are so severe that they interfere with daily functioning. Similar dynamics likely apply for aging lawyers seeking assistance.

Removing these barriers requires education, skill-building, and stigma-reduction strategies. Research shows that the most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder. Ideally, this person should be a practicing lawyer or law student (depending on the audience) in order to create a personal connection that lends credibility and combats stigma.²² Viewing video-taped narratives also is useful, but not as effective as in-person contacts.

The military's "Real Warrior" mental health campaign can serve as one model for the legal profession. It is designed to improve soldiers' education about mental health disorders, reduce stigma, and encourage help-seeking. Because many soldiers (like many lawyers) perceive seeking help as a weakness, the campaign also has sought to re-frame help-seeking as a sign of strength that is important to resilience. It also highlights cultural values that align with seeking psychological help.²³

5. BUILD RELATIONSHIPS WITH LAWYER WELL-BEING EXPERTS.

5.1. Partner With Lawyer Assistance Programs.

All stakeholders should partner with and ensure stable and sufficient funding for the ABA's Commission on Lawyer Assistance Programs (CoLAP) as well as

¹⁸L. M. Sama & V. Shoaf, *Ethical Leadership for the Professions: Fostering a Moral Community*, 78 J. BUS. ETHICS 39 (2008).

¹⁹T. W. Britt, T. M. Greene-Shortridge, S. Brink, Q. B. Nguyen, J. Rath, A. L. Cox, C. W. Hoge, C. A. Castro, *Perceived Stigma and Barriers to Care for Psychological Treatment: Implications for Reactions to Stressors in Different Contexts*, 27 J. SOC. & CLINICAL PSYCHOL. 317 (2008); S. Ey, K. R. Henning, & D. L. Shaw, *Attitudes and Factors Related to Seeking Mental Health Treatment among Medical and Dental Students*, 14 J. C. STUDENT PSYCHOTHERAPY 23 (2000); 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); K. S. Jennings, J. H. Cheung, T. W. Britt, K. N. Goguen, S. M. Jeffers, A. L. Peasley, & A. C. Lee, *How Are Perceived Stigma, Self-Stigma, and Self-Reliance Related to Treatment-Seeking? A Three-Path Model*, 38 PSYCHIATRIC REHABILITATION J. 109 (2015); N. G. Wade, D. L. Vogel, P. Armistead-Jehle, S. S. Meit, R. J. Heath, H. A. Strass, *Modeling Stigma, Help-Seeking Attitudes, and Intentions to Seek Behavioral Healthcare in a Clinical Military Sample*, 38 PSYCHIATRIC REHABILITATION J. 135 (2015).

²⁰Krill, Johnson, & Albert, *supra* note 1, at 50.

²¹Organ, Jaffe, & Bender, *supra* note 3, at 141.

²²P. W. Corrigan, S. B. Morris, P. J. Michaels, J. D. Rafacz, & N. Rüsch, *Challenging the Public Stigma of Mental Illness: a Meta-Analysis of Outcome Studies*, 63 PSYCHIATRIC SERV. 963 (2012).

²³Wade, Vogel, Armistead-Jehle, Meit, Heath, Strass, *supra* note 19. The Real Warrior website can be found at www.realwarriors.net.



for state-based lawyer assistance programs. ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment.²⁴ Many lawyer assistance programs employ teams of experts that are well-qualified to help lawyers, judges, and law students who experience physical or mental health conditions. Lawyer assistance programs' services are confidential, and many include prevention, intervention, evaluation, counseling, referral to professional help, and on-going monitoring. Many cover a range of well-being-related topics including substance use and mental health disorders, as well as cognitive impairment, process addictions, burnout, and chronic stress. A number also provide services to lawyer discipline and admissions processes (e.g., monitoring and drug and alcohol screening).²⁵

Notably, the Study found that, of lawyers who had reported past treatment for alcohol use, those who had used a treatment program specifically tailored to legal professionals reported, on average, significantly lower scores on the current assessment of alcohol use.²⁶ This at least suggests that lawyer assistance programs, which are specifically tailored to identify and refer lawyers to treatment providers and resources, are a better fit than general treatment programs.

Judges, regulators, legal employers, law schools, and bar associations should ally themselves with lawyer assistance programs to provide the above services. These stakeholders should also promote the services of state lawyer assistance programs. They also should emphasize the confidential nature of those services to reduce barriers to seeking help. Lawyers are reluctant

to seek help for mental health and substance use disorders for fear that doing so might negatively affect their licenses and lead to stigma or judgment of peers.²⁷ All stakeholders can help combat these fears by clearly communicating about the confidentiality of lawyer assistance programs.

We also recommend coordinating regular meetings with lawyer assistance program directors to create solutions to the problems facing the profession. Lawyer assistance programs can help organizations establish confidential support groups, wellness days, trainings, summits, and/or fairs. Additionally, lawyer assistance programs can serve as a resource for speakers and trainers on lawyer well-being topics, contribute to publications, and provide guidance to those concerned about a lawyer's well-being.

5.2. Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts.

We also recommend partnerships with lawyer well-being committees and other types of organizations and consultants that specialize in relevant topics. For example, the American Bar Association's Law Practice Division established an Attorney Well-Being Committee in 2015. A number of state bars also have well-being committees including Georgia, Indiana, Maryland, South Carolina, and Tennessee.²⁸ The Florida Bar Association's Young Lawyers Division has a Quality of Life Committee "for enhancing and promoting the quality of life for young lawyers."²⁹ Some city bar associations also have well-being initiatives, such as the Cincinnati Bar Association's Health and Well-Being Committee.³⁰ These committees can serve as a resource for education, identifying speakers and trainers, developing materials, and contributing to publications. Many high-quality consultants are also available on well-being subjects.

²⁴The ABA Commission on Lawyer Assistance Programs' (CoLAP) website provides numerous resources, including help lines and a directory of state-based law assistant programs. See http://www.americanbar.org/groups/lawyer_assistance.html.

²⁵COMM'N ON LAWYER ASSISTANCE PROGRAMS, AM. BAR ASS'N, 2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS 34-37 (2014).

²⁶Krill, Johnson, & Albert, *supra* note 1, at 50.

²⁷*Id.* at 51.

²⁸The State Bar of Georgia, "Lawyers Living Well," <https://www.gabar.org/wellness/>; The Indiana State Bar Association Wellness Committee, <https://inbar.site-ym.com/members/group.aspx?id=134020>; Maryland State Bar Association Wellness Committee, <http://www.msba.org/Wellness/default.aspx>; South Carolina Bar Lawyer Wellness Committee, <http://discussions.scbar.org/public/wellness/index.html>; Tennessee Bar Association Attorney Well Being Committee, <http://www.tba.org/committee/attorney-well-being-committee>.

²⁹The Fla. Bar Ass'n, Young Lawyers Division, Committees, Quality of Life, <https://flayld.org/board-of-governors/committees/> (last visited June 8, 2017).

³⁰Cincinnati Bar Ass'n Health and Well-Being Committee, <http://www.cincybar.org/groups/health-and-well-being.php> (last visited June 28, 2017).



Care should be taken to ensure that they understand the particular types of stress that affect lawyers.

6. FOSTER COLLEGIALLY AND RESPECTFUL ENGAGEMENT THROUGHOUT THE PROFESSION.

We recommend that all stakeholders develop and enforce standards of collegiality and respectful engagement. Judges, regulators, practicing lawyers, law students, and professors continually interact with each other, clients, opposing parties, staff, and many others.³¹ Those 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 physiological damage. It diminishes productivity, performance, creativity, and helping behaviors.³²

Civility appears to be declining in the legal profession. For example, in a 1992 study, 42 percent of lawyers and 45 percent of judges believed that civility and professionalism among bar members were significant problems. In a 2007 survey of Illinois lawyers, 72 percent of respondents categorized incivility as a serious or moderately serious problem³³ in the profession. A recent study of over 6,000 lawyers found that lawyers did not generally have a positive view of lawyer or judge professionalism.³⁴ There is evidence showing that

women lawyers are more frequent targets of incivility and harassment.³⁵ Legal-industry commentators offer a host of hypotheses to explain the decline in civility.³⁷ Rather than continuing to puzzle over the causes, we acknowledge the complexity of the problem and invite further thinking on how to address it.

Incivility appears to be on the rise.

As a start, we recommend that bar associations and courts adopt rules of professionalism and civility, such as those that exist in many jurisdictions.³⁸ Likewise, law firms should adopt their own professionalism standards.³⁹ Since rules alone will not change culture, all stakeholders should devise strategies to promote wide-scale, voluntary observance of those standards. This should include an expectation that all leaders in the profession be a role model for these standards of professionalism.

Exemplary standards of professionalism are inclusive. 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,

³¹See 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); AM. BAR ASS'N RESOL. 108 (August 2011), http://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/civility.authcheckdam.pdf; AM. BAR ASS'N RESOL. 105B (August 2014), http://www.americanbar.org/news/reporter_resources/aba-2014-annual-meeting/2014-annual-meeting-house-of-delegates-resolutions/105b.html.

³²J. E. Dutton & E. D. Heaphy, *The Power of High-Quality Connections*, in *POSITIVE ORGANIZATIONAL SCHOLARSHIP: FOUNDATIONS OF A NEW DISCIPLINE* 263-278 (K. S. Cameron, J. E. Dutton, & R. E. Quinn eds., 2003); C. M. Pearson & C. L. Porath, *On the Nature, Consequences and Remedies of Workplace Incivility: No Time for "Nice"? Think Again*, 19 ACAD. OF MGMT. EXECUTIVE 7 (2005); B. M. Walsh, V. J. Magley, D. W. Reeves, K. A. Davies-Schrlis, M. D. Marmet, & J. A. Gallus, *Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief*, 27 J. BUS. PSYCHOL. 407 (2012).

³³S. S. DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES (2004).

³⁴D. E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility As An Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99 (2012); see also IL. SUP. CT. COMM'N ON PROFESSIONALISM, *Survey on Professionalism, A Study of Illinois Lawyers 2007 & Survey on Professionalism, A Study of Illinois Lawyers 2014* (2007 & 2014); L. Brodoff & T. M. Jaasko-Fisher, *WSBA Civility Study*, NW LAWYER, Dec. 2016/Jan. 2017, at 22, available at http://nwlawyer.wsba.org/nwlawyer/dec_2016_jan_2017?pg=22#pg22.

³⁵Krieger & Sheldon, *supra* note 5.

³⁶L. M. Cortina, K. A. Lonsway, V. J. Magley, L. V. Freeman, L. L. Collinsworth, M. Hunter, & L. F. Fitzgerald, *What's Gender Got to Do with It? Incivility in the Federal Courts*, 27 LAW & SOC. INQUIRY 235 (2002); see also L. M. Cortina, D. Kabat-Farr, E. A. Leskinen, M. Huerta, & V. J. Magley, *Selective Incivility as Modern Discrimination in Organizations: Evidence and Impact*, 30 J. MGMT. 1579 (2013).

³⁷E.g., Campbell, *supra* note 34; A. T. Kronman, *THE LOST LAWYER* (1993); J. Smith, *Lawyers Behaving Badly Get a Dressing Down from Civility Cops*, WALL ST. J., Jan. 27, 2013, at A1; Walsh, Magley, Reeves, Davies-Schrlis, Marmet, & Gallus, *supra* note 32.

³⁸Examples of professionalism codes can be found on the ABA Center for Professional Responsibility's website: https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standingcommitteeonprofessionalism2/professionalism_codes.html; see also AM. BAR ASS'N RESOL. 108 (2011), available at http://www.americanbar.org/content/dam/aba/directories/policy/2011_am_108.authcheckdam.pdf.

³⁹See 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).



perceptions of organizational fairness, and intentions to remain on the job.⁴⁰ 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. A weak sense of belonging is strongly associated with depressive symptoms.⁴¹ Unfortunately, however, a lack of diversity and inclusion is an entrenched problem in the legal profession.⁴² The issue is pronounced for women and minorities in larger law firms.⁴³

6.1. Promote Diversity and Inclusivity.

Given the above, we recommend that all stakeholders urgently prioritize diversity and inclusion. Regulators and bar associations can play an especially influential role in advocating for initiatives in the profession as a whole and educating on why those initiatives are important to individual and institutional well-being. Examples of relevant initiatives include: scholarships, bar exam grants for qualified applicants, law school orientation programs that highlight the importance of diversity and inclusion, CLE programs focused on diversity in the legal profession, business development symposia for women- and minority-owned law firms, pipeline programming for low-income high school and college students, diversity clerkship programs for law students, studies and reports on the state of diversity within the state's bench and bar, and diversity initiatives in law firms.⁴⁴

6.2. Create Meaningful Mentoring and Sponsorship Programs.

Another relevant initiative that fosters inclusiveness and respectful engagement is mentoring. Research has shown that mentorship and sponsorship can aid well-being and career progression for women and diverse professionals. They also reduce lawyer isolation.⁴⁶ Those who have participated in legal mentoring report a stronger sense of personal connection with others in the legal community, restored enthusiasm for the legal profession, and more resilience—all of which benefit both mentors and mentees.⁴⁷ At least 35 states and the District of Columbia sponsor formal mentoring programs.⁴⁸

7. ENHANCE LAWYERS' SENSE OF CONTROL.

Practices that rob lawyers of a sense of autonomy and control over their schedules and lives are especially harmful to their well-being. Research studies show that high job demands paired with a lack of a sense of control breeds depression and other psychological disorders.⁴⁹ Research suggests that men in jobs with such characteristics have an elevated risk of alcohol abuse.⁵⁰ A recent review of strategies designed to prevent workplace depression found that those designed to improve the perception of control were among the

⁴⁰E.g., M. M. Barak & A. Levin, *Outside of the Corporate Mainstream and Excluded from the Work Community: A Study of Diversity, Job Satisfaction and Well-Being*, 5 COMM., WORK & FAM. 133 (2002); J. Hwang & K. M. Hopkins, *A Structural Equation Model of the Effects of Diversity Characteristics and Inclusion on Organizational Outcomes in the Child Welfare Workforce*, 50 CHILD. & YOUTH SERVS. REV. 44 (2015); see generally G. R. Ferris, S. R. Daniels, & J. C. Sexton, *Race, Stress, and Well-Being in Organizations: An Integrative Conceptualization*, in THE ROLE OF DEMOGRAPHICS IN OCCUPATIONAL STRESS AND WELL-BEING 1-39 (P. L. Perrewé, C. C. Rosen, J. B. Halbesleben, P. L. Perrewé eds., 2014).

⁴¹W. D. Cockshaw & I. M. Shochet, *The Link Between Belongingness and Depressive Symptoms: An Exploration in the Workplace Interpersonal Context*, 45 AUSTRAL. PSYCHOL. 283 (2010); W. D. Cockshaw, I. M. Shochet & P. L. Obst, *Depression and Belongingness in General and Workplace Contexts: A Cross-Lagged Longitudinal Investigation*, 33 J. SOC. & CLINICAL PSYCHOL. 448 (2014).

⁴²D. L. Rhode, *Law Is The Least Diverse Profession in The Nation. And Lawyers Aren't Doing Enough to Change That*, WASH. POST, Post Everything, May 27, 2015, available at https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.a79ad124eb5c1; see also Aviva Culyer, *Diversity in the Practice of Law: How Far Have We Come?*, G.P. SOLO, Sept./Oct. 2012, available at http://www.americanbar.org/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come.html.

⁴³L. S. RIKLEEN, NAT'L ASSOC. WOMEN LAWYERS, REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2015), available at <http://www.nawl.org/2015nawlsurvey>; S. A. SCHARFL, R. LIEBENBERG, & C. AMALFE, NAT'L ASSOC. WOMEN LAWYERS, REPORT OF THE EIGHTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2014), available at <http://www.nawl.org/p/bl/et/blogid=10&blogaid=56>; see also FLA. BAR ASS'N YOUNG LAW. DIVISION COMM'N ON WOMEN, <https://flayld.org/commission-on-women/>.

⁴⁴See C. U. Stacy, *Trends and Innovations Boosting Diversity in the Law and Beyond*, L. PRAC. TODAY, March 14, 2016, available at <http://www.lawpracticetoday.org/article/trends-and-innovations-boosting-diversity-in-the-law-and-beyond>; IL. SUP. CT. COMM'N ON PROFESSIONALISM, DIVERSITY & INCLUSION TOOLKIT, <https://www.2civility.org/programs/cle/cle-resources/diversity-inclusion>.

⁴⁵Ferris, Daniels, & Sexton, *supra* note 40; A. Ramaswami, G. F. Dreher, R. Bretz, & C. Wiethoff, *The Interactive Effects of Gender and Mentoring on Career Attainment: Making the Case for Female Lawyers*, 37 J. CAREER DEV. 692 (2010).

⁴⁶R. NERISON, LAWYERS, ANGER, AND ANXIETY: DEALING WITH THE STRESSES OF THE LEGAL PROFESSION (2010).

⁴⁷D. A. Cotter, *The Positives of Mentoring*, YOUNG LAW. DIV., AM. BAR ASS'N (2017), available at http://www.americanbar.org/publications/tyl/topics/mentoring/the_positives_mentoring.html; M. M. Heekin, *Implementing Psychological Resilience Training in Law Incubators*, 1 J. EXPERIENTIAL LEARNING 286 (2016).

⁴⁸Of the 35 programs, seven are mandatory (GA, NV, NM, OR, SC, UT, and WY) and some are approved for CLE credits. See the American Bar Association for more information: http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/mentoring.html.

⁴⁹J-M Woo & T. T. Postolache, *The Impact of Work Environment on Mood Disorders and Suicide: Evidence and Implications*, 7 INT'L J. DISABILITY & HUMAN DEV. 185 (2008); J. M. Griffin, R. Fuhrer, S. A. Stansfeld, & M. Marmot, *The Importance of Low Control at Work and Home on Depression and Anxiety: Do These Effects Vary by Gender and Social Class?*, 54 SOC. SCI. & MED. 783 (2002).

⁵⁰A. J. Crum, P. Salovey, & S. Achor, *Rethinking Stress: The Role of Mindsets in Determining the Stress Response*, 10 J. PERSONALITY & SOC. PSYCHOL. 716 (2013).



most effective.⁵¹ Research confirms that environments that facilitate control and autonomy contribute to optimal functioning and well-being.⁵²

We recommend that all stakeholders consider how long-standing structures of the legal system, organizational norms, and embedded expectations might be modified to enhance lawyers' sense of control and support a healthier lifestyle. Courts, clients, colleagues, and opposing lawyers all contribute to this problem. Examples of the types of practices that should be reviewed include the following:

- Practices concerning deadlines such as tight deadlines for completing a large volume of work, limited bases for seeking extensions of time, and ease and promptness of procedures for requesting extensions of time;
- Refusal to permit trial lawyers to extend trial dates to accommodate vacation plans or scheduling trials shortly after the end of a vacation so that lawyers must work during that time;
- Tight deadlines set by clients that are not based on business needs;
- Senior lawyer decision-making in matters about key milestones and deadlines without consulting other members of the litigation team, including junior lawyers;
- Senior lawyers' poor time-management habits that result in repeated emergencies and weekend work for junior lawyers and staff;
- Expectations of 24/7 work schedules and of prompt response to electronic messages at all times; and
- Excessive law school workload, controlling teaching styles, and mandatory grading curves.

8. PROVIDE HIGH-QUALITY EDUCATIONAL PROGRAMS ABOUT LAWYER DISTRESS AND WELL-BEING.

All stakeholders should ensure that legal professionals receive training in identifying, addressing, and supporting fellow professionals with mental health and substance use disorders. At a minimum, training should cover the following:

- The warning signs of substance use or mental health disorders, including suicidal thinking;
- How, why, and where to seek help at the first signs of difficulty;
- The relationship between substance use, depression, anxiety, and suicide;
- Freedom from substance use and mental health disorders as an indispensable predicate to fitness to practice;
- How to approach a colleague who may be in trouble;
- How to thrive in practice and manage stress without reliance on alcohol and drugs; and
- A self-assessment or other check of participants' mental health or substance use risk.

As noted above, to help reduce stigma, such programs should consider enlisting the help of recovering lawyers who are successful members of the legal community. Some evidence reflects that social norms predict problem drinking even more so than stress.⁵³ Therefore, a team-based training program may be most effective because it focuses on the level at which the social norms are enforced.⁵⁴

Given the influence of drinking norms throughout the profession, however, isolated training programs are not sufficient. A more comprehensive, systemic campaign is likely to be the most effective—though certainly the most challenging.⁵⁵ All stakeholders will be critical players in such an aspirational goal. Long-term strategies should consider scholars' recommendations to incorporate mental health and substance use disorder training into broader health-promotion programs to help skirt the stigma that may otherwise deter attendance.

⁵¹S. Joyce, M. Modini, H. Christensen, A. Mykletun, R. Bryant, P. B. Mitchell, & S. B. Harvey, *Workplace Interventions for Common Mental Disorders: A Systematic Meta-Review*, 46 PSYCHOL. MED. 683, 693 (2016).

⁵²Y.-L. Su & J. Reeve, *A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy*, 23 EDUC. PSYCHOL. REV. 159 (2011).

⁵³D. C. Hodgins, R. Williams, & G. Munro, *Workplace Responsibility, Stress, Alcohol Availability and Norms as Predictors of Alcohol Consumption-Related Problems Among Employed Workers*, 44 SUBSTANCE USE & MISUSE 2062 (2009).

⁵⁴C. Kolar & K. von Treuer, *Alcohol Misuse Interventions in the Workplace: A Systematic Review of Workplace and Sports Management Alcohol Interventions*, 13 INT'L J. MENTAL HEALTH ADDICTION 563 (2015); e.g., J. B. Bennett, W. E. K. Lehman, G. S. Reynolds, *Team Awareness for Workplace Substance Abuse Prevention: The Empirical and Conceptual Development of a Training Program*, 1 PREVENTION SCI. 157 (2000).

⁵⁵Kolar & von Treuer, *supra* note 54.



Research also suggests that, where social drinking has become a ritual for relieving stress and for social bonding, individuals may resist efforts to deprive them of a valued activity that they enjoy. To alleviate resistance based on such concerns, prevention programs should consider making “it clear that they are not a temperance movement, only a force for moderation,” and that they are not designed to eliminate bonding but to ensure that drinking does not reach damaging dimensions.⁵⁶

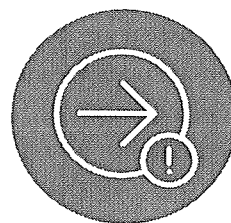
Additionally, genuine efforts to enhance lawyer well-being must extend beyond disorder detection and treatment. Efforts aimed at remodeling institutional and organizational features that breed stress are

Well-being efforts must extend beyond detection and treatment and address root causes of poor health.

crucial, as are those designed to cultivate lawyers’ personal resources to boost resilience. All stakeholders should participate in the development and delivery of educational materials and programming that go beyond detection to include causes and consequences of distress. These programs should be eligible for CLE credit, as discussed in Recommendation 20.3. **Appendix B** to this report offers examples of well-being-related educational content, along with empirical evidence to support each example.

9. GUIDE AND SUPPORT THE TRANSITION OF OLDER LAWYERS.

Like the general population, the lawyer community is aging and lawyers are practicing longer.⁵⁷ In the Baby Boomer generation, the oldest turned 62 in 2008, and the youngest will turn 62 in 2026.⁵⁸ In law firms, one estimate indicates that nearly 65 percent of equity partners will retire over the next decade.⁵⁹ Senior lawyers can bring much to the table, including their wealth of experience, valuable public service, and mentoring of new lawyers. At the same time, however, aging lawyers have an increasing risk for declining physical and mental capacity. Yet few lawyers and legal organizations have sufficiently prepared to manage transitions away from the practice of law before a crisis occurs. The result is a rise in regulatory and other issues relating to the impairment of senior lawyers. We make the following recommendations to address these issues:



Planning Transition of Older Lawyers

- 1. Provide education to detect cognitive decline.**
- 2. Develop succession plans.**
- 3. Create transition programs to respectfully aid retiring professionals plan for their next chapter.**

⁵⁶R. F. Cook, A. S. Back, J. Trudeau, & T. McPherson, *Integrating Substance Abuse Prevention into Health Promotion Programs in the Workplace: A Social Cognitive Intervention Targeting the Mainstream User*, in PREVENTING WORKPLACE SUBSTANCE ABUSE: BEYOND DRUG TESTING TO WELLNESS 97 (W. K. Lehman, J. B. Bennett eds., 2003).

⁵⁷A recent American Bar Association report reflected that, in 2005, 34 percent of practicing lawyers were age fifty-five or over, compared to 25 percent in 1980. See LAWYER DEMOGRAPHICS, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR (2016), available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf.

⁵⁸E. A. McNickle, A Grounded Theory Study of Intrinsic Work Motivation Factors Influencing Public Utility Employees Aged 55 and Older as Related to Retirement Decisions (2009) (doctoral dissertation, Capella University) (available from ProQuest Dissertations and Theses Database).

⁵⁹M. P. Shannon, *A Short Course in Succession Planning*, 37 L. PRAC. MAG. (2011), available at http://www.americanbar.org/publications/law_practice_magazine/2011/may_june/a_short_course_in_succession_planning.html.



First, all stakeholders should create or support programming for detecting and addressing cognitive decline in oneself and colleagues.

Second, judges, legal employers, bar associations, and regulators should develop succession plans, or provide education on how to do so, to guide the transition of aging legal professionals. Programs should include help for aging members who show signs of diminished cognitive skills, to maintain their dignity while also assuring they are competent to practice.⁶⁰ A model program in this regard is the North Carolina Bar Association's Senior Lawyers Division.⁶¹

Third, we recommend that legal employers, law firms, courts, and law schools develop programs to aid the transition of retiring legal professionals. Retirement can enhance or harm well-being depending on the individual's adjustment process.⁶² Many lawyers who are approaching retirement age have devoted most of their adult lives to the legal profession, and their identities often are wrapped up in their work. Lawyers whose self-esteem is contingent on their workplace success are likely to delay transitioning and have a hard time adjusting to retirement.⁶³ Forced retirement that deprives individuals of a sense of control over the exit timing or process is particularly harmful to well-being and long-term adjustment to retirement.⁶⁴

To assist stakeholders in creating the programming to guide and support transitioning lawyers, the Task Force sets out a number of suggestions in **Appendix C**.

10. DE-EMPHASIZE ALCOHOL AT SOCIAL EVENTS.

Workplace cultures or social climates that support alcohol consumption are among the most consistent predictors of employee drinking. When employees drink

together to unwind from stress and for social bonding, social norms can reinforce tendencies toward problem drinking and stigmatize seeking help. On the other hand, social norms can also lead colleagues to encourage those who abuse alcohol to seek help.⁶⁵

In the legal profession, social events often center around alcohol consumption (e.g., "Happy Hours," "Bar Reviews," networking receptions, etc.). The expectation of drinking is embedded in the culture, which may contribute to over-consumption. Legal employers, law schools, bar associations, and other stakeholders that plan social events should provide a variety of alternative non-alcoholic beverages and consider other types of activities to promote socializing and networking. They should strive to develop social norms in which lawyers discourage heavy drinking and encourage others to seek help for problem use.

11. UTILIZE MONITORING TO SUPPORT RECOVERY FROM SUBSTANCE USE DISORDERS.

Extensive research has demonstrated that random drug and alcohol testing (or "monitoring") is an effective way of supporting recovery from substance use disorders and increasing abstinence rates. The medical profession has long relied on monitoring as a key component of its treatment paradigm for physicians, resulting in long-term recovery rates for that population that are between 70-96 percent, which is the highest in all of the treatment outcome literature.⁶⁶ One study found that 96 percent of medical professionals who were subject to random drug tests remained drug-free, compared to only 64 percent of those who were not subject to mandatory testing.⁶⁷ Further, a national survey of physician health programs found that among medical professionals who completed their prescribed treatment requirements (including monitoring), 95 percent were licensed and actively

⁶⁰See generally W. SLEASE ET AL., NOBC-APRL-COLAP SECOND JOINT COMMITTEE ON AGING LAWYERS, FINAL REPORT (2014), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_nobc_aprl_colap_second_joint_committee_aging_lawyers.authcheckdam.pdf.

⁶¹Senior Lawyers Division, N. C. Bar Ass'n, <https://www.ncbar.org/members/divisions/senior-lawyers/>.

⁶²N. Houffort, C. Fernet, R. J. Vallerand, A. Laframboise, F. Guay, & R. Koestner, *The Role of Passion for Work and Need for Satisfaction in Psychological Adjustment to Retirement*, 88 J. VOCATIONAL BEHAVIORS 84 (2015).

⁶³*Id.*

⁶⁴E. Dingemans & K. Henkens, *How Do Retirement Dynamics Influence Mental Well-Being in Later Life? A 10-Year Panel Study*, 41 SCANDINAVIAN J. WORK, ENV'T & HEALTH 16 (2015); A. M. Muratore & J. K. Earl, *Improving Retirement Outcomes: The Role of Resources, Pre-Retirement Planning and Transition Characteristics*, 35 AGEING & SOC. 2100 (2015).

⁶⁵J. B. Bennett, C. R. Patterson, G. S. Reynolds, W. L. Wiitala, & W. K. Lehman, *Team Awareness, Problem Drinking, and Drinking Climate: Workplace Social Health Promotion in a Policy Context*, 19 AM. J. HEALTH PROMOTION 103 (2004).

⁶⁶R. L. DuPont, A. T. McLellan, W. L. White, L. Merlo & M. S. Gold, *Setting the Standard for Recovery: Physicians Health Programs Evaluation Review*, 36 J. SUBSTANCE ABUSE TREATMENT 159 (2009).

⁶⁷J. Shore, *The Oregon Experience with Impaired Physicians on Probation: An Eight Year Follow-Up*, 257 J. AM. MED. ASS'N 2931 (1987).



working in the health care field at a five year follow-up after completing their primary treatment program.⁶⁸ In addition, one study has found that physicians undergoing monitoring through physician health programs experienced lower rates of malpractice claims.⁶⁹

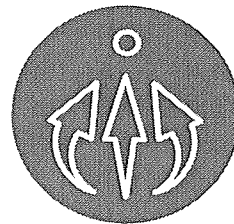
Such outcomes are not only exceptional and encouraging, they offer clear guidance for how the legal profession could better address its high rates of substance use disorders and increase the likelihood of positive outcomes. Although the benefits of monitoring have been recognized by various bar associations, lawyer assistance programs, and employers throughout the legal profession, a uniform or “best practices” approach to the treatment and recovery management of lawyers has been lacking. Through advances in monitoring technologies, random drug and alcohol testing can now be administered with greater accuracy and reliability—as well as less cost and inconvenience—than ever before. Law schools, legal employers, regulators, and lawyer assistance programs would all benefit from greater utilization of monitoring to support individuals recovering from substance use disorders.

12. BEGIN A DIALOGUE ABOUT SUICIDE PREVENTION.

It is well-documented that lawyers have high rates of suicide.⁷⁰ The reasons for this are complicated and varied, but some include the reluctance of attorneys to ask for help when they need it, high levels of depression amongst legal professionals, and the stressful nature of the job.⁷¹ If we are to change these statistics, stakeholders need to provide education and take action. Suicide, like mental health or substance use disorders, is a highly stigmatized topic. While it is an issue that touches many of us, most people are uncomfortable discussing suicide. Therefore, stakeholders must make a concerted effort towards suicide prevention to demonstrate to the legal community that we are not

afraid of addressing this issue. We need leaders to encourage dialogue about suicide prevention.

One model for this is through a “Call to Action,” where members of the legal community and stakeholders from lawyer assistance programs, the judiciary, law firms, law schools, and bar associations are invited to attend a presentation and community discussion about the issue.



Call to Action

- ✓ Organize “Call to Action” events to raise awareness.
- ✓ Share stories of those affected by suicide.
- ✓ Provide education about signs of depression and suicidal thinking.
- ✓ Learn non-verbal signs of distress.
- ✓ Collect and publicize available resources.

When people who have been affected by the suicide of a friend or colleague share their stories, other members of the legal community begin to better understand the impact and need for prevention.⁷² In addition, stakeholders can schedule educational presentations that incorporate information on the signs and symptoms of suicidal thinking along with other mental health/

⁶⁸R. L. DuPont, A. T. McLellan, G. Carr, M. Gendel, & G. E. Skipper, *How Are Addicted Physicians Treated? A National Survey of Physician Health Programs*, 37 J. SUBSTANCE ABUSE TREATMENT 1 (2009).

⁶⁹E. Brooks, M. H. Gendel, D. C. Gundersen, S. R. Early, R. Schirmacher, A. Lembitz, & J. H. Shore, *Physician Health Programs and Malpractice Claims: Reducing Risk Through Monitoring*, 63 OCCUPATIONAL MED. 274 (2013).

⁷⁰R. Flores & R. M. Arce, *Why Are Lawyers Killing Themselves?*, CNN, Jan. 20, 2014, <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>. If you or someone you know is experiencing suicidal thinking, please seek help immediately. The National Suicide Prevention Lifeline can be reached at 1-800-273-8255, <https://suicidepreventionlifeline.org>.

⁷¹*Id.*

⁷²The Colorado Lawyer Assistance Program sponsored one such Call to Action on January 21, 2016, in an effort to generate more exposure to this issue so the legal community better understands the need for dialogue and prevention.



substance use disorders. These can occur during CLE presentations, staff meetings, training seminars, at law school orientations, bar association functions, etc. Stakeholders can contact their state lawyer assistance programs, employee assistance program agencies, or health centers at law schools to find speakers, or referrals for counselors or therapists so that resources are available for family members of lawyers, judges, and law students who have taken their own life.

It's important for all stakeholders to understand that, while lawyers might not tell us that they are suffering, they will show us through various changes in behavior and communication styles. This is so because the majority of what we express is non-verbal.⁷³ Becoming better educated about signs of distress will enable us to take action by, for example, making health-related inquiries or directing them to potentially life-saving resources.

13. SUPPORT A LAWYER WELL-BEING INDEX TO MEASURE THE PROFESSION'S PROGRESS.

We recommend that the ABA coordinate with state bar associations to create a well-being index for the legal profession that will include metrics related to lawyers, staff, clients, the legal profession as a whole, and the broader community. The goal would be to optimize the well-being of all of the legal profession's stakeholders.⁷⁴ Creating such an index would correspond with a growing worldwide consensus that success should not be measured solely in economic terms. Measures of well-

being also have an important role to play in defining success and informing policy.⁷⁵ The index would help track progress on the transformational effort proposed in this report. For law firms, it also may help counter-balance the "profits per partner metric" that has been published by *The American Lawyer* since the late 1980s, and which some argue has driven the profession away from its core values. As a foundation for building the well-being index, stakeholders could look to, for example, criteria used in *The American Lawyer's* Best Places to Work survey, or the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession.⁷⁶

⁷³ALBERT MEHRABIAN, SILENT MESSAGES: IMPLICIT COMMUNICATION OF EMOTIONS AND ATTITUDES (1972).

⁷⁴See R. E. FREEMAN, J. S. HARRISON, & A. WICKS, MANAGING FOR STAKEHOLDERS: SURVIVAL, REPUTATION, AND SUCCESS (2007); J. MACKEY & R. SISODIA, CONSCIOUS CAPITALISM: LIBERATING THE HEROIC SPIRIT OF BUSINESS (2014).

⁷⁵L. Fasolo, M. Galetto, & E. Turina, *A Pragmatic Approach to Evaluate Alternative Indicators to GDP*, 47 QUALITY & QUANTITY 633 (2013); WORLD HAPPINESS REPORT (J. Helliwell, R. Layard, & J. Sachs eds., 2013), available at http://unsdsn.org/wp-content/uploads/2014/02/WorldHappinessReport2013_online.pdf; G. O'Donnell, *Using Well-Being as a Guide to Public Policy*, in WORLD HAPPINESS REPORT.

⁷⁶The Tristan Jepson Memorial Foundation's Guidelines are available at http://tjmf.client.fatbeehive.com.au/wp/wp-content/uploads/TJMFmentalHealthGuidelines_A4_140427.pdf.





“A tree with strong roots laughs at storms.” — Malay Proverb

Judges occupy an esteemed position in the legal profession and society at large. For most, serving on the bench is the capstone of their legal career. The position, however, can take a toll on judges’ health and well-being. Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily.⁷⁷ Some report lying awake at night worrying about making the right decision or the consequences of that decision.⁷⁸ Other judges face the stress of presiding over criminal cases with horrific underlying facts.⁷⁹

Also stressful is the increasing rate of violence against judges inside and outside the courthouse.⁸⁰ Further, many judges contend with isolation in their professional lives and sometimes in their personal lives.⁸¹ 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.⁸² Often, judges do not have feedback on their performance. A number take the bench with little preparation, compounding the sense of going it alone.⁸³ Judges also cannot “take off the robe” in every day interactions outside the courthouse because of their elevated status in society, which can contribute to social isolation.⁸⁴ Additional stressors include re-election in certain jurisdictions.⁸⁵ Limited judicial resources coupled with time-intensive, congested dockets are a pronounced problem.⁸⁶ More recently, judges have reported a sense of diminishment

in their estimation among the public at large.⁸⁷ Even the most astute, conscientious, and collected judicial officer can struggle to keep these issues in perspective.

We further recognize that many 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.⁸⁸ Many judges, like lawyers, have a strong sense of perfectionism and believe they must display this perfectionism at all times.⁸⁹ 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 these barriers and the stressors inherent in the unique role judges occupy in the legal system, we make the following recommendations to enhance well-being among members of the judiciary.

14. COMMUNICATE THAT WELL-BEING IS A PRIORITY.

The highest court in each state should set the tone for the importance of the well-being of judges. Judges are not immune from suffering from the same stressors as lawyers, and additional stressors are unique to work as a jurist.

⁷⁷A. Resnick, K. Myatt, & P. Marotta, *Surviving Bench Stress*, 49 FAM. CT. REV. 610, 610-11 (2011).

⁷⁸*Id.* at 611-12.

⁷⁹M. K. Miller, D. M. Flores, & A. N. Dolezilek, *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE 60, 61, 64 (2007); J. Chamberlain & M. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCHIATRY L. 214, 215 (2009).

⁸⁰Miller, Flores, & Dolezilek, *supra* note 79, at 60-61; *see also* T. FAUTSKO, S. BERSON, & S. SWENSEN, NAT’L CTR. FOR STATE CTS., STATUS OF COURT SECURITY IN STATE COURTS – A NATIONAL PERSPECTIVE (2013), available at http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/184#img_view_container.

⁸¹I. Zimmerman, *Helping Judges in Distress*, 90 JUDICATURE 10, 13 (2006).

⁸²*Id.*

⁸³C. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 JUDICATURE 244-45 (2004).

⁸⁴Resnick, Myatt, & Marotta, *supra* note 77, at 610.

⁸⁵*Id.* at 610-11; Zimmerman, *supra* note 81, at 11-12.

⁸⁶Resnick, Myatt, Marotta, *supra* note 77, at 610.

⁸⁷*Judges Are Feeling Less Respected*, NAT’L JUDICIAL C. (2017), available at <http://www.judges.org/judges-feeling-less-respected/>.

⁸⁸S. KRAUSS, N. STEK, W. DRESSEL, AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, HELPING JUDGES, MODULE 1 – OVERVIEW OF A JUDICIAL ASSISTANCE PROGRAM (2010); Zimmerman, *supra* note 81, at 13.

⁸⁹R. L. Childers, *Got Stress? Using CoLAP and Its New Judicial Assistance Project*, JUDGES JOURNAL (2006); Chamberlain & Miller, *supra* note 79, at 220.

15. DEVELOP POLICIES FOR IMPAIRED JUDGES.

It is essential that the highest court and its commission on judicial conduct implement policies and procedures for intervening with impaired members of the judiciary. For example, the highest court should consider adoption of policies such as a Diversion Rule for Judges in appropriate cases. Administrative and chief judges also should implement policies and procedures for intervening with members of the judiciary who are impaired in compliance with Model Rule of Judicial Conduct 2.14. They should feel comfortable referring members to judicial or lawyer assistance programs. Educating judicial leaders about the confidential nature of these programs will go a long way in this regard. Judicial associations and educators also should promote CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges.⁹⁰

16. REDUCE THE STIGMA OF MENTAL HEALTH AND SUBSTANCE USE DISORDERS.

As reflected in Recommendation 4, the stigma surrounding mental health and substance use disorders poses an obstacle to treatment. Judges are undisputed leaders in the legal profession. We recommend they work to reduce this stigma by creating opportunities for open dialogue. Simply talking about these issues helps combat the unease and discomfort that causes the issues to remain unresolved. In a similar vein, we encourage judges to participate in the activities of lawyer assistance programs, such as volunteering as speakers and serving as board members. This is a powerful way to convey to lawyers, law students, and other judges the importance of lawyer assistance programs and to encourage them to access the programs' resources.

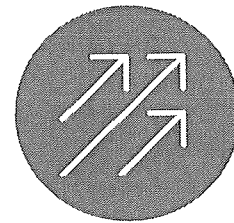
17. CONDUCT JUDICIAL WELL-BEING SURVEYS.

This report was triggered in part by the Study and the Survey of Law Student Well-Being. No comparable research has been conducted of the judiciary. We recommend that CoLAP and other concerned entities conduct a broad-based survey of the judiciary to

determine the state of well-being and the prevalence of issues directly related to judicial fitness such as burnout, compassion fatigue, mental health, substance use disorders and help-seeking behaviors.

18. PROVIDE WELL-BEING PROGRAMMING FOR JUDGES AND STAFF.

Judicial associations should invite lawyer assistance program directors and other well-being experts to judicial conferences who can provide programming on topics related to self-care as well as resources available to members of the judiciary experiencing mental health or



- ✓ Design well-being education specifically for judges.
- ✓ Connect judges for support and mentoring.
- ✓ Publish well-being resources tailored to judges.

substance use disorders. Topics could include burnout, secondary traumatic stress, compassion fatigue, strategies to maintain well-being, as well as identification of and intervention for mental health and substance use disorders.

Judicial educators also should make use of programming that allows judges to engage in mutual support and sharing of self-care strategies. One such example is roundtable discussions held as part of judicial conferences or establishing a facilitated mentoring

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.



program or mentoring circle for judicial members. We have identified isolation as a significant challenge for many members of the judiciary. Roundtable discussions and mentoring programs combat the detrimental effects of this isolation.⁹¹

Judicial associations and educators also should develop publications and resources related to well-being, such as guidebooks. For example, a judicial association could create wellness guides such as “A Wellness Guide for Judges of the California State Courts.” This sends the signal that thought leaders in the judiciary value well-being.

19. MONITOR FOR IMPAIRED LAWYERS AND PARTNER WITH LAWYER ASSISTANCE PROGRAMS

Judges often are among the first to detect lawyers suffering from an impairment. Judges know when a lawyer is late to court regularly, fails to appear, or appears in court under the influence of alcohol or drugs. They witness incomprehensible pleadings or cascading requests for extensions of time. We believe judges have a keen pulse on when a lawyer needs help. With the appropriate training, judges’ actions can reduce client harm and save a law practice or a life. We make the following recommendations tailored to helping judges help the lawyers appearing before them.

Consistent with Recommendation 5.1, judges should become familiar with lawyer assistance programs in their state. They should learn how best to make referrals to the program. They should understand the confidentiality protections surrounding these referrals. Judges also should invite lawyer assistance programs to conduct educational programming for lawyers in their jurisdiction using their courtroom or other courthouse space.

Judges, for example, can devote a bench-bar luncheon at the courthouse to well-being and invite representatives of the lawyers assistance program to the luncheon.

Judicial educators should include a section in bench book-style publications dedicated to lawyer assistance programs and their resources, as well as discussing how to identify and handle lawyers who appear to have mental health or substance use disorders. Further, judges and their staff should learn the signs of mental health and substance use disorders, as well as strategies for intervention, to assist lawyers in their courtrooms who may be struggling with these issues. Judges can also advance the well-being of lawyers who appear before them by maintaining courtroom decorum and de-escalating the hostilities that litigation often breeds.

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.

⁹¹For more information on judicial roundtables, see AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, JUDICIAL ROUNDTABLES, available at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_Judicial_Roundtable_Protocols.authcheckdam.pdf.





*"You can do what I cannot do. I can do what you cannot do.
Together we can do great things." — Mother Teresa*

Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible. We broadly define "regulators" to encompass all stakeholders who assist the highest court in each state in regulating the practice of law.⁹² This definition includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.

Courts and their regulators frequently witness the conditions that generate toxic professional environments, the impairments that may result, and the negative professional consequences for those who do not seek help. Regulators are well-positioned to improve and adjust the regulatory process to address the conditions that produce these effects. As a result, we propose that the highest court in each state set an agenda for action and send a clear message to all participants in the legal system that lawyer well-being is a high priority.

Transform the profession's perception of regulators from police to partner.

To carry out the agenda, regulators should develop their reputation as partners with practitioners. The legal profession often has a negative perception of regulators,

who typically appear only when something has gone awry. Regulators can transform this perception by building their identity as partners with the rest of the legal community rather than being viewed only as its "police."

Most regulators are already familiar with the 1992 Report of the Commission on Evaluation of Disciplinary Enforcement—better known as the "McKay Commission Report."⁹³ It recognized and encouraged precisely what we seek to do through this report: to make continual improvements to the lawyer regulation process to protect the public and assist lawyers in their professional roles. Accordingly, we offer the following recommendations to ensure that the regulatory process proactively fosters a healthy legal community and provides resources to rehabilitate impaired lawyers.

20. TAKE ACTIONS TO MEANINGFULLY COMMUNICATE THAT LAWYER WELL-BEING IS A PRIORITY.

20.1. Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.

In 2016, the Conference of Chief Justices adopted a resolution recommending that each state's highest court consider the ABA's proposed Model Regulatory Objectives.⁹⁴ Among other things, those objectives sought to encourage "appropriate preventive or wellness programs." By including a wellness provision, the ABA recognized the importance of the human element in the practice of law: To accomplish all other listed objectives, the profession must have healthy, competent lawyers. The Supreme Court of Colorado already has adopted

⁹²See AM. BAR ASS'N RESOL. 105 (February 2016).

⁹³AM BAR ASS'N COMM'N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, LAWYER REGULATION FOR A NEW CENTURY: REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT (1992), available at http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html.

⁹⁴RESOL. 105, *supra* note 92.

a version of the ABA's Regulatory Objectives. In doing so, it recommended proactive programs offered by the Colorado Lawyer Assistance Program and other organizations to assist lawyers throughout all stages of their careers to practice successfully and serve their clients.⁹⁵ The Supreme Court of Washington also recently enacted regulatory objectives.⁹⁶

We recommend that the highest court in each U.S. jurisdiction follow this lead. Each should review the ABA and Colorado regulatory objectives and create its own objectives that specifically promote effective lawyer assistance and other proactive programs relating to well-being. Such objectives will send a clear message that the court prioritizes lawyer well-being, which influences competent legal services. This, in turn, can boost public confidence in the administration of justice.

20.2. Modify the Rules of Professional Conduct to Endorse Well-Being As Part of a Lawyer's Duty of Competence.

ABA Model Rule of Professional Conduct 1.1 (Competence) states that lawyers owe a duty of competence to their clients. "Competent" representation is defined to require "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."⁹⁷ We recommend revising this Rule and/or its Comments to more clearly include lawyers' well-being in the definition of "competence."

One alternative is to include language similar to California's Rule of Professional Conduct 3-110, which defines "competence" to include the "mental, emotional, and physical ability reasonably necessary" for the representation.⁹⁸ A second option is to amend the Comments to Rule 1.1 to clarify that professional competence requires an ability to comply with all of the Court's essential eligibility requirements (see Recommendation 21.2 below).

Notably, we do not recommend discipline solely for a

lawyer's failure to satisfy the well-being requirement or the essential eligibility requirements. Enforcement should proceed only in the case of actionable misconduct in the client representation or in connection with disability proceedings under Rule 23 of the ABA Model Rules for Disciplinary Enforcement. The goal of the proposed amendment is not to threaten lawyers with discipline for poor health but to underscore the importance of well-being in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.

20.3. Expand Continuing Education Requirements to Include Well-Being Topics.

We recommend expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow credit for other well-being-related topics that affect lawyers' professional capabilities.

In 2017, the ABA proposed a new Model Continuing Legal Education (MCLE) Rule that recommends mandatory mental health programming. The Model Rule requires lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of "mental health and substance use disorders." We recommend that all states adopt this provision of the Model Rule. Alternatively, states could consider authorizing ethics credit (or other specialized credits) for CLE programs that address these topics. California and Illinois are examples of state bars that already have such requirements.⁹⁹

The ABA's new Model Rule also provisionally recommends that states grant CLE credit for "Lawyer Well-Being Programming." The provision encompasses a broader scope of topics than might fall under a narrow definition of mental health and substance use

⁹⁵Washington Courts, Suggested Amendments to General Rules (2017), http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=549.

⁹⁷MODEL RULES PROF. CONDUCT R. 1.1 (2017), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html.

⁹⁸CAL. RULES PROF'L CONDUCT R. 3-110, available at <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-3-110>.

⁹⁹See RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017); ILL. SUP. CT. R. 794(d)(1) (2017).



disorders. Tennessee is one example of a pioneering state that authorizes credit for a broad set of well-being topics. Its CLE Regulation 5H authorizes ethics and professionalism credit for programs that are designed, for example, to: enhance optimism, resilience, relationship skills, and energy and engagement in their practices; connect lawyers with their strengths and values; address stress; and to foster cultures that support outstanding professionalism.¹⁰⁰ We recommend that regulators follow Tennessee's lead by revising CLE rules to grant credit for similar topics.

20.4. Require Law Schools to Create Well-Being Education for Students as An Accreditation Requirement.

In this recommendation, the Task Force recognizes the ABA's unique role as accreditor for law schools through the Council of the Section of Legal Education and Admissions to the Bar of the ABA.¹⁰¹ The Task Force recommends that the Council revise the Standards and Rules of Procedure for Approval of Law Schools to require law schools to create well-being education as a criterion for ABA accreditation. The ABA should require law schools to publish their well-being-related resources on their websites. These disclosures can serve as resources for other law schools as they develop and improve their own programs. Examples of well-being education include a mandatory one credit-hour course on well-being topics or incorporating well-being topics in to the professional responsibility curriculum.

A requirement similar to this already has been implemented in the medical profession for hospitals that operate residency programs. Hospitals that operate Graduate Medical Education programs to train residents must comply with the Accreditation Council for Graduate Medical Education (ACGME) Program Requirements. The ACGME requires hospitals to "be committed to and

responsible for . . . resident well-being in a supportive educational environment."¹⁰² This provision requires that teaching hospitals have a documented strategy for promoting resident well-being and, typically, hospitals develop a wellness curriculum for residents.

21. ADJUST THE ADMISSIONS PROCESS TO SUPPORT LAW STUDENT WELL-BEING.

To promote law student well-being, regulations governing the admission to the practice of law should facilitate the treatment and rehabilitation of law students with impairments.

21.1. Re-Evaluate Bar Application Inquiries About Mental Health History.

Most bar admission agencies include inquiries about applicants' mental health as part of fitness evaluations for licensure. Some critics have contended that the deterrent effect of those inquiries discourages persons in need of help from seeking it. Not everyone agrees with that premise, and some argue that licensing of professionals necessarily requires evaluation of all risks that an applicant may pose to the public. Over the past several decades, questions have evolved to be more tightly focused and to elicit only information that is current and germane. There is continuing controversy over the appropriateness of asking questions about mental health at all. The U.S. Department of Justice has actively encouraged states to eliminate questions relating to mental health, and some states have modified or eliminated such questions.¹⁰³ In 2015, the ABA adopted a resolution that the focus should be directed "on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner."¹⁰⁴ We recommend that each state follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment history.

¹⁰⁰TENN. COMM'N ON CONTINUING LEGAL EDUC., REG. 5H (2008), available at <http://www.cletrn.com/images/Documents/Regulations2013.04.16.pdf>.

¹⁰¹See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, available at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf.

¹⁰²ACCREDITATION COUNSEL FOR GRADUATE MEDICAL EDUCATION, CGME COMMON PROGRAM REQUIREMENTS, § VI.A.2, available at https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/CPRs_07012016.pdf

¹⁰³D. Hudson, *Honesty Is the Best Policy for Character and Fitness Screenings*, A.B.A. J., June 1, 2016, available at http://www.abajournal.com/magazine/article/honesty_is_the_best_policy_for_character_and_fitness_screenings.

¹⁰⁴AM. BAR ASS'N RESOL. 102 (August 2015).



21.2. Adopt Essential Eligibility Admission Requirements.

Promoting lawyer well-being includes providing clear eligibility guidelines for lawyers with mental or physical impairments. Regulators in each state should adopt essential eligibility requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether or not an individual has the required abilities, with or without reasonable accommodations.

At least fourteen states have essential eligibility requirements for admission to practice law.¹⁰⁵ These requirements help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law. Essential eligibility requirements also aid participants in lawyer disability and reinstatement proceedings, when determinations must be made of lawyers' capacity to practice law.

21.3. Adopt a Rule for Conditional Admission to Practice Law With Specific Requirements and Conditions.

Overly-rigid admission requirements can deter lawyers and law students from seeking help for substance use and mental health disorders. To alleviate this problem, states should adopt conditional admission requirements, which govern applicants for admission to the practice of law who have successfully undergone rehabilitation for substance use or another mental disorder, but whose period of treatment and recovery may not yet be sufficient to ensure continuing success.¹⁰⁶ Conditional admission programs help dismantle the stigma of mental health and substance use disorders as "scarlet letters." Especially for law students, they send a meaningful message that even in the worst circumstances, there is

Rigid admission requirements can deter help-seeking.

hope: seeking help will not block entry into their chosen profession.

21.4. Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.

At present, no state publishes data showing the number of applications for admission to practice law that are actually denied or delayed due to conduct related to substance use and other mental health disorders. From informal discussions with regulators, we know that a low percentage of applications are denied. Publication of this data might help alleviate law students' and other applicants' fears that seeking help for such disorders will inevitably block them from practicing law. Accordingly, we recommend that boards of bar examiners collect and publish such data as another means of encouraging potential applicants to seek help immediately and not delay until after their admission.

22. ADJUST LAWYER REGULATIONS TO SUPPORT WELL-BEING.

22.1. Implement Proactive Management-Based Programs (PMBP) That Include Lawyer Well-Being Components.

PMBP programs encourage best business practices and provide a resource-based framework to improve lawyers' ability to manage their practice. Such programs

¹⁰⁵See, e.g., SUP. CT. OF OHIO, OFF. OF BAR ADMISSIONS, OHIO ESSENTIAL ELIGIBILITY REQUIREMENTS; available at http://www.supremecourt.ohio.gov/AttySvcs/admissions/pdf/ESSENTIAL_ELIGIBILITY_REQUIREMENTS.pdf; MINN. RULES FOR ADMISSION TO THE BAR, RULE 5, available at https://www.revisor.leg.state.mn.us/court_rules/rule.php?type=pr&subtype=adm&id=5; COLO. R. CIV. PROC. 208.1(5), available at http://www.coloradosupremecourt.com/Future%20Lawyers/FAQ_CharacterFitness.asp; WASH. ADMISSION AND PRACTICE RULES, RULE 20(e), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaaprj; IDAHO BAR COMM'N RULE 201. Other states to adopt essential eligibility requirements include Florida, Illinois, Kentucky, Massachusetts, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming.

¹⁰⁶About a quarter of all jurisdictions already have conditional admission rules for conduct resulting from substance use or other mental disorders. See 2016 NAT'L CONF. OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS, Chart 2: Character and Fitness Determinations (2016). Those states include Arizona, Connecticut, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming. Additionally, Guam allows conditional admission for conduct related to substance abuse.



are designed to alleviate practice stress, improve lawyer-client relationships, and enhance career satisfaction.¹⁰⁷ Further, PMBP programs allow regulators to engage with the profession in a service-oriented, positive manner, reducing the anxiety, fear, and distrust that often accompanies lawyers' interactions with regulators.¹⁰⁸ Transforming the perception of regulators so that they are viewed as partners and not only as police will help combat the culture of stress and fear that has allowed mental health and substance use disorders to proliferate.

22.2. Adopt A Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.

We recommend that regulators adopt centralized intake systems. These allow expedited methods for receipt and resolution of grievances and help reduce the stress associated with pending disciplinary matters. With specialized training for intake personnel, such systems also can result in faster identification of and possible intervention for lawyers struggling with substance use or mental health disorders.¹⁰⁹

22.3. Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information From Regulators to Lawyer Assistance Programs.

Regulators' information-sharing practices can contribute to the speed of help to lawyers in need. For example, admissions offices sometimes learn that applicants are suffering from a substance use or other mental health disorder. Other regulators may receive similar information during investigations or prosecutions of lawyer regulation

matters that they consider to be confidential information. To facilitate help for lawyers suffering from such disorders, each state should simplify its confidentiality rules to allow admissions offices and other regulators to share such information immediately with local lawyer assistance programs.

Allowing this one-way flow of information can accelerate help to lawyers who need it. To be clear, the recommended information sharing would be one-way. As always, the lawyer assistance programs would be precluded from sharing any information with any regulators or others.

22.4. Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven Successful in Promoting Well-Being.

Discipline does not make an ill lawyer well. We recommend that regulators adopt alternatives to formal disciplinary proceedings that rehabilitate lawyers with impairments. Diversion programs are one such alternative, and they have a direct and positive impact

Discipline does not make an ill lawyer well.

on lawyer well-being. Diversion programs address minor lawyer misconduct that often features an underlying mental health or substance use disorder.¹¹⁰ When lawyers enter a diversion program, they agree to follow

¹⁰⁷S. Fortney & T. Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L. J. 152 (2012).

¹⁰⁸L. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016).

¹⁰⁹The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement, Rule 1, defines a Central Intake Office as the office that "receive[s] information and complaints regarding the conduct of lawyers over whom the court has jurisdiction" and determines whether to dismiss the complaint or forward it to the appropriate disciplinary agency. The Model Rules for Lawyer Disciplinary Enforcement are available at http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement.html.

¹¹⁰Title 6 of Washington's Rules for Enforcement of Lawyer Conduct provides an excellent overview of when diversion is appropriate and procedures for diversion. It is available through the Washington State Courts website at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ELC. Some of the many jurisdictions to adopt such programs are Arizona, Colorado, the District of Columbia, Florida, Illinois, Iowa, Kansas, Louisiana, New Hampshire, New Jersey, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.



certain conditions to continue practicing law. Those conditions can include training, drug or alcohol testing, peer assistance, and treatment. Monitoring plays a central role in ensuring compliance with the diversion agreement and helps lawyers successfully transition back to an unconditional practice of law and do so healthy and sober. By conditioning continued practice on treatment for an underlying mental health disorder or substance use disorder, diversion agreements can change a lawyer's life.

In addition, probation programs also promote wellness. Lawyer misconduct that warrants a suspension of a lawyer's license may, under certain circumstances, qualify for probation. In most jurisdictions, the probation period stays the license suspension and lawyers may continue practicing under supervision and specified conditions that include training, testing, monitoring, and treatment. Once again, this places a lawyer facing a mental health or substance use crisis on the path to better client service and a lifetime of greater well-being and sobriety.

23. ADD WELL-BEING-RELATED QUESTIONS TO THE MULTISTATE PROFESSIONAL RESPONSIBILITY EXAM (MPRE).

A 2009 survey reflected that 22.9 percent of professional responsibility/legal ethics professors did not cover substance use and addiction at all in their course, and 69.8 percent addressed the topic in fewer than two hours.¹¹¹ Notwithstanding the pressure to address myriad topics in this course, increased attention must be

given to reduce these issues among our law students. The National Conference of Bar Examiners should consider adding several relevant questions to the MPRE, such as on the confidentiality of using lawyer assistance programs, the frequency of mental health and substance use disorders, and the tie-in to competence and other professional responsibility issues.¹¹² Taking this step underscores both the importance of the topic and the likelihood of students paying closer attention to that subject matter in their course. In addition, professional responsibility casebook authors are encouraged to include a section devoted to the topic, which will in turn compel instructors to teach in this area.

¹¹¹A. M. PERLMAN, M. RAYMOND & L. S. TERRY, A SURVEY OF PROFESSIONAL RESPONSIBILITY COURSES AT AMERICAN LAW SCHOOLS IN 2009, <http://www.legalethicsforum.com/files/pr-survey-results-final.pdf>.

¹¹²See Krill, Johnson, & Albert, *supra* note 1, for the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation Study; Organ, Jaffe, Bender, *supra* note 3, for *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*.





"Self-care is not selfish. You cannot serve from an empty vessel." — Eleanor Brown

Legal employers, meaning all entities that employ multiple practicing lawyers, can play a large role in contributing to lawyer well-being. While this is a broad and sizable group with considerable diversity, our recommendations apply fairly universally. A specific recommendation may need to be tailored to address the realities particular to each context, but the crux of each recommendation applies to all.

24. ESTABLISH ORGANIZATIONAL INFRASTRUCTURE TO PROMOTE WELL-BEING.

24.1. Form A Lawyer Well-Being Committee.

Without dedicated personnel, real progress on well-being strategies will be difficult to implement and sustain.¹¹³ Accordingly, legal employers should launch a well-being initiative by forming a Lawyer Well-Being Committee or appointing a Well-Being Advocate. The advocate or committee should be responsible for evaluating the work environment, identifying and addressing policies and procedures that create the greatest mental distress among employees, identifying how best to promote a positive state of well-being, and tracking progress of well-being strategies. They should prepare key milestones, communicate them, and create accountability strategies.¹¹⁴ They also should develop strategic partnerships with lawyer assistance programs and other well-being experts and stay abreast of developments in the profession and relevant literature.

24.2. Assess Lawyers' Well-Being.

Legal employers should consider continually assessing the state of well-being among lawyers and staff and

whether workplace cultures support well-being. An assessment strategy might include an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being, stressors in the firm that significantly affect well-being, and organizational support for improving well-being in the workplace. Attitudes are formed not only by an organization's explicit messages but also implicitly by how leaders and lawyers actually behave. Specifically related to the organizational climate for support for mental health or substance use disorders, legal employers should collect information to ascertain, for example, whether lawyers:

- Perceive that you, their employer, values and supports well-being.
- Perceive leaders as role modeling healthy behaviors and empathetic to lawyers who may be struggling.
- Can suggest improvements to better support well-being.
- Would feel comfortable seeking needed help, taking time off, or otherwise taking steps to improve their situation.
- Are aware of resources available to assist their well-being.
- Feel expected to drink alcohol at organizational events.
- Feel that substance use and mental health problems are stigmatized.
- Understand that the organization will reasonably accommodate health conditions, including recovery from mental health disorders and addiction.

¹¹³Companies with dedicated wellness personnel achieve, on average, a 10 percent higher rate of employee participation. See OPTUM HEALTHCARE, WELLNESS IN THE WORKPLACE 2012: AN OPTUM RESEARCH UPDATE (Resource Center for Health & Wellbeing White Paper 2012), available at <https://broker.uhc.com/assets/wellness-in-the-workplace-2012-WP.pdf>.

¹¹⁴For guidance on developing their own strategic plan, Well-Being Committees could look to the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession, see *supra* note 76. They might also consider creating an information hub to post all well-being related resources. Resources could include information about the growing number of mental health apps. See, e.g., R. E. Silverman, *Tackling Workers' Mental Health, One Text at a Time*, WALL ST. J., July 19, 2016, available at <https://www.wsj.com/articles/tackling-workers-mental-health-one-text-at-a-time-1468953055>; B. A. Clough & L. M. Casey, *The Smart Therapist: A Look to the Future of Smartphones and eHealth Technologies in Psychotherapy*, 46 PROF. PSYCHOL. RES. & PRAC. 147 (2015).

As part of the same survey or conducted separately, legal employers should consider assessing the overall state of lawyers' well-being. Surveys are available to measure concepts like depression, substance use, burnout, work engagement, and psychological well-being. The Maslach Burnout Inventory (MBI) is the most widely used burnout assessment. It has been used to measure burnout among lawyers and law students.¹¹⁵ Programs in the medical profession have recommended a bi-annual distribution of the MBI.¹¹⁶

Legal employers should carefully consider whether internal staff will be able to accurately conduct this type of assessment or whether hiring an outside consultant would be advisable. Internal staff may be more vulnerable to influence by bias, denial, and misinterpretation.

25. ESTABLISH POLICIES AND PRACTICES TO SUPPORT LAWYER WELL-BEING.

Legal employers should conduct an in-depth and honest evaluation of their current policies and practices that relate to well-being and make necessary adjustments. This evaluation should seek input from all lawyers and staff in a safe and confidential manner, which creates transparency that builds trust. **Appendix D** sets out example topics for an assessment.

Legal employers also should establish a confidential reporting procedure for lawyers and staff to convey concerns about their colleagues' mental health or substance use internally, and communicate how lawyers and staff can report concerns to the appropriate disciplinary authority and/or to the local lawyer assistance program. Legal employers additionally should establish a procedure for lawyers to seek confidential help for themselves without being

penalized or stigmatized. CoLAP and state lawyer assistance programs can refer legal employers to existing help lines and offer guidance for establishing an effective procedure that is staffed by properly-trained people.¹¹⁷ We note that the ABA and New York State Bar Association have proposed model law firm policies for handling lawyer impairment that can be used for guidance.¹¹⁸ The ABA has provided formal guidance on managing lawyer impairment.¹¹⁹

25.1. Monitor For Signs of Work Addiction and Poor Self-Care.

Research reflects that about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally.¹²⁰ Numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction. Therefore, we recommend that legal employers monitor for work addiction and avoid rewarding extreme behaviors that can ultimately harm their health. Legal employers should expressly encourage lawyers to make time to care for themselves and attend to other personal obligations. They may also want to consider promoting physical activity to aid health and cognitive functioning.

25.2. Actively Combat Social Isolation and Encourage Interconnectivity.

As job demands have increased and budgets have tightened, many legal employers have cut back on social activities. This could be a mistake. Social support from colleagues is an important factor for coping with stress and preventing negative consequences like burnout.¹²¹ Socializing helps individuals recover from work demands

¹¹⁵See, e.g., S. E. Jackson, J. A. Turner, & A. P. Brief, *Correlates of Burnout Among Public Service Lawyers*, 8 J. ORG. BEHAV. 339 (1987); see also R. Durr, *Creating 'Whole Lawyers': Wellness, Balance, and Performance Excellence At Northwestern University School of Law*, NW. SCH. OF L. (2015), available at http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2015/May/Conference/Materials/8_wellbeing_program_catalog_2014_2015%204%203%2015%20version.authcheckdam.pdf.

¹¹⁶J. Eckleberry-Hunt, A. Van Dyke, D. Lick, & J. Tucciarone, *Changing the Conversation from Burnout to Wellness: Physician Well-being in Residency Training Programs*, 1 J. GRADUATE MED. EDUC. 225 (2009). The MBI is available at <http://www.mindgarden.com/117-maslach-burnout-inventory>.

¹¹⁷CoLAP's website provides help-line information and a directory of state-based lawyer assistance programs: http://www.americanbar.org/groups/lawyer_assistance.html.

¹¹⁸AM. BAR ASS'N RESOL. 118, MODEL LAW FIRM/LEGAL DEPARTMENT IMPAIRMENT POLICY & GUIDELINES (Aug. 1990), available at <https://www.texasbar.com/AM/Template.cfm?Section=Employers1&Template=/CM/ContentDisplay.cfm&ContentID=15131>; NEW YORK STATE BAR ASSOCIATION LAWYER ASSISTANCE COMMITTEE MODEL POLICY, N. Y. STATE BAR ASS'N (2010), available at https://www.nassaubar.org/UserFiles/Model_Policy.pdf.

¹¹⁹AM. BAR ASS'N FORMAL OPINION 03-429 (2003), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03_429.authcheckdam.pdf.

¹²⁰Bratford, *supra* note 2.

¹²¹C. Maslach, W. B. Schaufeli, & M. P. Leiter, *Job Burnout*, 52 ANN. REV. OF PSYCHOL. 397, 415 (2001); T. Reuter & R. Schwarzer, *Manage Stress at Work Through Preventive and Proactive Coping*, in Locke, *supra* note 7.



and can help stave off emotional exhaustion.¹²² It inhibits lawyers feeling isolated and disconnected, which helps with firm branding, messaging, and may help reduce turnover. We recommend deemphasizing alcohol at such events.

26. PROVIDE TRAINING AND EDUCATION ON WELL-BEING, INCLUDING DURING NEW LAWYER ORIENTATION.

We recommend that legal employers provide education and training on well-being-related topics and recruit experts to help them do so. A number of law firms already offer well-being related programs, like meditation, yoga sessions, and resilience workshops.¹²³ We also recommend orientation programs for new lawyers that incorporate lawyer well-being education and training.¹²⁴ Introducing this topic during orientation will signal its importance to the organization and will start the process of developing skills that may help prevent well-being problems. Such programs could:

- Introduce new lawyers to the psychological challenges of the job.¹²⁵
- Reduce stigma surrounding mental health problems.
- Take a baseline measure of well-being to track changes over time.
- Provide resilience-related training.
- Incorporate activities focused on individual lawyers' interests and strengths, and not only on organizational expectations.¹²⁶

Further, law firms should ensure that all members and staff know about resources, including lawyer assistance

programs, that can assist lawyers who may experience mental health and substance use disorders. This includes making sure that members and staff understand confidentiality issues pertaining to those resources.

26.1. Emphasize a Service-Centered Mission.

At its core, law is a helping profession. This can get lost in the rush of practice and in the business aspects of law. Much research reflects that organizational cultures that focus chiefly on materialistic, external rewards can damage well-being and promote a self-only focus. In fact, research shows that intrinsic values like relationship-

Work cultures that constantly emphasize competitive, self-serving goals can harm lawyer well-being.

development and kindness are stifled in organizations that emphasize extrinsic values like competition, power, and monetary rewards.¹²⁷ Work cultures that constantly emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors from lawyers that harm organizations and individual well-being. This can be psychologically draining. Research of Australian lawyers found that 70 percent reported that the practice of law is bottom-line driven.¹²⁸ Lawyers who reported that the practice of law was primarily about generating profits were more likely to be depressed.¹²⁹ This affects the

¹²²M. J. Tews, J. W. Michel, & K. Stafford, *Does Fun Pay? The Impact of Workplace Fun on Employee Turnover and Performance*, 54 CORNELL HOSPITALITY QUARTERLY, 370 (2013).

¹²³E.g., C. Bushy, *Kirkland & Ellis to Offer Wellness Training to All U.S. Lawyers*, CRAIN'S CHICAGO BUS., May 2, 2016, available at <http://www.chicagobusiness.com/article/20160502/NEWS04/160509972/kirkland-ellis-to-offer-wellness-training-to-all-u-s-lawyers>; N. Rodriguez, *What the Army Can Teach BigLaw about Bouncing Back*, LAW360, Feb. 17, 2017, https://www.law360.com/in-depth/articles/891995?nl_pk=972d8116-f9f0-4582-a4c6-0ab3cf4a034c&utm_source=newsletter&utm_medium=email&utm_campaign=in-depth (identifying Goodwin Procter LLP, O'Melveny & Myers LLP, Morgan Lewis & Bockius LLP, Fish & Richardson PC, Drinker Biddle & Reath LLP, Quarles & Brady LLP, and Neal Gerber & Eisenberg LLP as having hosted resilience workshops).

¹²⁴See A. M. Saks, & J. A. Gruman, *Organizational Socialization and Positive Organizational Behaviour: Implications for Theory, Research, and Practice*, 28 CANADIAN J. ADMIN. SCI. 14 (2011).

¹²⁵See generally J. P. Wanous & A. E. Reichers, *New Employee Orientation Programs*, 10 HUMAN RESOURCE MGMT. REV. 435 (2000), available at <http://homepages.se.edu/cvonbergen/files/2013/01/New-Employee-Orientation-Programs.pdf>.

¹²⁶See D. M. Cable, F. Gino, & B. R. Staats, *Reinventing Employee Onboarding*, M.I.T. SLOAN MGMT. REV. (2013), available at <http://sloanreview.mit.edu/article/reinventing-employee-onboarding>.

¹²⁷T. Kasser, *Materialistic Values and Goals*, 67 ANN. REV. OF PSYCHOL. 489 (2015); T. Kasser, *Teaching about Values and Goals: Applications of the Circumplex Model to Motivation, Well-Being, and Prosocial Behavior*, 41 TEACHING PSYCHOL. 365 (2014).

¹²⁸A. J. Bergin & N. L. Jirmieson, *Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets*, 21 PSYCHIATRY, PSYCHOL. & L. 427 (2014).

¹²⁹A. D. Joudrey & J. E. Wallace, *Leisure as a Coping Resource: A Test of the Job Demand-Control-Support Model*, 62 HUMAN RELATIONS 195 (2009).

¹³⁰A. Hansen, Z. Byrne, & C. Kiersch, *How Interpersonal Leadership Relates to Employee Engagement*, 29 J. MANAGERIAL PSYCHOL. 953 (2014).



bottom line since poor mental health can cause disability and lost productivity.

Consequently, we recommend that legal employers evaluate what they prioritize and value, and how those values are communicated. When organizational values evoke a sense of belonging and pride, work is experienced as more meaningful.¹³⁰ Experiencing work as meaningful is the biggest contributor to work engagement—a form of work-related well-being.¹³¹

26.2. Create Standards, Align Incentives, and Give Feedback.

Contextual factors (i.e., the structure, habits, and dynamics of the work environment) play an enormous role in influencing behavior change. Training alone is almost never enough. To achieve change, legal employers will need to set standards, align incentives, and give feedback about progress on lawyer well-being topics.¹³²

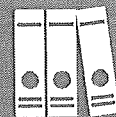
Currently, few legal employers have such structural supports for lawyer well-being. For example, many legal employers have limited or no formal leader development programs, no standards set for leadership skills and competencies, and no standards for evaluating leaders' overall performance or commitment to lawyer well-being. Additionally, incentive systems rarely encourage leaders to develop their own leadership skills or try to enhance the well-being of lawyers with whom they work. In law firms especially, most incentives are aligned almost entirely toward revenue growth, and any feedback is similarly narrow. To genuinely adopt lawyer well-being as a priority, these structural and cultural issues will need to be addressed.

¹³⁰A. Hansen, Z. Byrne, & C. Kiersch, *How Interpersonal Leadership Relates to Employee Engagement*, 29 J. MANAGERIAL PSYCHOL. 953 (2014).

¹³¹A. M. BRAFFORD, POSITIVE PROFESSIONALS: CREATING HIGH-PERFORMING, PROFITABLE FIRMS THROUGH THE SCIENCE OF ENGAGEMENT. (American Bar Association, forthcoming November 2017.); D. R. May, R. L. Gilson, & L. M. Harter, *The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work*, 77 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 11 (2004).

¹³²R. A. NOE, EMPLOYEE TRAINING AND DEVELOPMENT (McGraw-Hill 2013).





“Well-being is a combination of feeling good as well as actually having meaning, good relationships, and accomplishment.” — Martin Seligman

Law students start law school with high life satisfaction and strong mental health measures. But within the first year of law school, they experience a significant increase in anxiety and depression.¹³³ Research suggests that law students are among the most dissatisfied, demoralized, and depressed of any graduate student population.¹³⁴

The 2016 Survey of Law Student Well-Being found troublesome rates of alcohol use, anxiety, depression, and illegal drug use at law schools across the country.

42% of students needed help for poor mental health but only about half sought it out.

Equally worrisome is students' level of reluctance to seek help for those issues. A large majority of students (about 80 percent) said that they were somewhat or very likely to seek help from a health professional for alcohol, drug, or mental health issues, but few actually did.¹³⁵ For example, while 42 percent thought that they had needed help for mental health problems in the prior year, only about half of that group actually received counseling from a health professional.¹³⁶ Only four percent said they had ever received counseling for alcohol or drug issues—even though a quarter were at risk for problem drinking.¹³⁷

The top factors that students reported as discouraging them from seeking help were concerns that it would threaten their bar admission, job, or academic status; social stigma; privacy concerns; financial reasons; belief that they could handle problems on their own; and not having enough time. Students' general reluctance to seek help may be one factor explaining why law student wellness has not changed significantly since the last student survey in the 1990s.¹³⁸ It appears that recommendations stemming from the 1993 survey either were not implemented or were not successful.¹³⁹ The Survey of Law Student Well-Being did not seek to identify the individual or contextual factors that might be contributing to students' health problems. It is important to root out such causes to enable real change. For example, law school graduates cite heavy workload, competition, and grades as major law school stressors.¹⁴⁰ Others in the legal community have offered additional insights about common law school practices, which are discussed below. Law school well-being initiatives should not be limited to detecting disorders and enhancing student resilience. They also should include identifying organizational practices that may be contributing to the problems and assessing what changes can be made to support student well-being. If legal educators ignore the impact of law school stressors, learning is likely to be suppressed and illness may be intensified.¹⁴¹

The above reflects a need for both prevention strategies to address dysfunctional drinking and misuse of substances as well as promotion strategies that identify aspects of legal education that can be revised to support

¹³³L. S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113-15 (2002).

¹³⁴A. A. Patthoff, *This is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015).

¹³⁵Organ, Jaffe, & Bender, *supra* note 3, at 143.

¹³⁶*Id.* at 140.

¹³⁷*Id.*

¹³⁸ASS'N AM. L. SCH. SPECIAL COMM. ON PROBLEMS OF SUBSTANCE ABUSE IN THE L. SCHS. (1993).

¹³⁹*Id.* at vi-vii.

¹⁴⁰R. A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010).

¹⁴¹Patthoff, *supra* note 134, at 424.

well-being. The recommendations below offer some ideas for both.

27. CREATE BEST PRACTICES FOR DETECTING AND ASSISTING STUDENTS EXPERIENCING PSYCHOLOGICAL DISTRESS.

Ignoring law school stressors can suppress learning and intensify illness.

Law schools should develop best practices for creating a culture in which all associated with the school take responsibility for student well-being. Faculty and administrators play an important role in forming a school's culture and should be encouraged to share responsibility for student well-being.

27.1. Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.

Faculty have significant sway over students but generally students are reluctant to approach them with personal problems, especially relating to their mental health. Students' aversion to doing so may be exacerbated by a perception that faculty members must disclose information relating to students' competence to practice to the state bar. To help remove uncertainty and encourage students to ask for help, law schools should consider working with lawyer assistance programs on training faculty on how to detect students in trouble, how to have productive conversations with such students, what and when faculty need to report information relating to such students, as well as confidentiality surrounding these services.¹⁴² Students should be educated about

faculty's reporting requirements to add clarity and reduce student anxiety when interacting with faculty.

Additionally, faculty members should be encouraged to occasionally step out of their formal teaching role to convey their respect and concern for students, to acknowledge the stressors of law school, and to decrease stigma about seeking help for any health issues that arise. Faculty should consider sharing experiences in which students confronted similar issues and went on to become healthy and productive lawyers.

To support this recommendation, deans of law schools must be engaged. The well-being of future lawyers is too important to relegate to student affairs departments. For faculty to take these issues seriously, it must be clear to them that deans value the time that faculty spend learning about and addressing the needs of students outside the classroom. With the full backing of their deans, deans of students should provide training and/or information to all faculty that includes talking points that correspond to students' likely needs—e.g., exam scores, obtaining jobs, passing the bar, accumulating financial debt, etc. Talking points should be offered only as a guideline. Faculty should be encouraged to tailor conversations to their own style, voice, and relationship with the student.

Law schools should consider inviting law student and lawyer well-being experts to speak at faculty lunches, colloquia, and workshops to enhance their knowledge of this scholarship.¹⁴³ Such programming should include not just faculty but teaching assistants, legal writers, peer mentors, and others with leadership roles in whom law students may seek to confide. Many of these experts are members of the Association of American Law Schools section on Balance in Legal Education.¹⁴⁴ Their scholarship is organized in an online bibliography divided into two topics: Humanizing the Law School Experience and Humanizing the Practice of Law.¹⁴⁵

¹⁴²See Organ, Jaffe, & Bender, *supra* note 3, at 153. At American University Washington College of Law, as but one example likely among many, the dean of students invites faculty no less than every other year to meet with the University Counseling director and D.C. Bar Lawyer Assistance Program manager to discuss trends, highlight notable behaviors, discuss how to respond to or refer a student, and the importance of tracking attendance.

¹⁴³See J. Bibelhausen, K. M. Bender, R. Barrett, *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students*, 41 WM. MITCHELL L. REV. 918 (2015).

¹⁴⁴Balance in Legal Educ. Sec., Ass'n Am. L. Sch., https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=9fb324e8-e515-4fd3-b6db-a1723feeb799.

¹⁴⁵*Id.* at Bibliography.



27.2. Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.

While law students may occasionally miss class due to personal conflicts, their repeated absence often results from deteriorating mental health.¹⁴⁶ Creating a system to monitor for chronic absences can help identify students for proactive outreach. Consequently, law schools should adhere to a consistent attendance policy that includes a timely reporting requirement to the relevant law school official. Absent such a requirement, deans of students may be left with only a delayed, reactive approach.

If faculty members are reluctant to report student absences, a system can be created to ensure that a report cannot be traced to the faculty member. Several law schools have adopted “care” networks or random check-ins whereby someone can report a student as potentially needing assistance.¹⁴⁷ In these programs, the identity of the person who provided the report is kept confidential.

Certain models on this issue include the American University Washington College of Law, which implements random “check-in” outreach, emailing students to visit the Student Affairs office for brief conversations. This method allows for a student about whom a concern has been raised to be folded quietly into the outreach.¹⁴⁸ Georgetown Law School allows anyone concerned about a student to send an email containing only the student’s name, prompting relevant law school officials to check first with one another and then investigate to determine if a student meeting is warranted.¹⁴⁹ The University of Miami School of Law uses an online protocol for a student to self-report absences in advance, thus enabling the dean of students to follow up as appropriate if personal problems are indicated.¹⁵⁰

¹⁴⁶See Organ, Jaffe, & Bender, *supra* note 3, at 152.

¹⁴⁷*Id.*

¹⁴⁸*Id.*

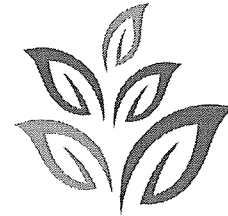
¹⁴⁹*Id.*

¹⁵⁰*Id.*

¹⁵¹One example of such a provision is: “Mental Health Resources: Law school is a context where mental health struggles can be exacerbated. If you ever find yourself struggling, please do not hesitate to ask for help. If you wish to seek out campus resources, here is some basic information: [Website]. [Law School Name] is committed to promoting psychological wellness for all students. Our mental health resources offer support for a range of psychological issues in a confidential and safe environment. [Phone; email; address; hotline number].”

27.3. Provide Mental Health and Substance Use Disorder Resources.

Law schools should identify and publicize resources so that students understand that there are resources available to help them confront stress and well-being crises. They should highlight the benefits of these resources and that students should not feel stigmatized for seeking help. One way to go about this is to have



Develop Student Resources

- ✓ Create and publicize well-being resources designed for students.
- ✓ Counter issues of stigma.
- ✓ Include mental health resources in every course syllabus.
- ✓ Organize wellness events.
- ✓ Develop a well-being curriculum.
- ✓ Establish peer mentoring.

every course syllabus identify the law school’s mental health resources. The syllabus language should reflect an understanding that stressors exist.¹⁵¹ Law schools also can hold special events, forums, and conversations that coincide with national awareness days, such as mental health day and suicide prevention day.

Developing a well-being curriculum is an additional way to convey that resources are available and that the law school considers well-being a top priority. Northwestern University's Pritzker School of Law has accomplished the latter with well-being workshops, mindfulness and resilience courses, and meditation sessions as part of a larger well-being curriculum.¹⁵²

Another noteworthy way to provide resources is to establish a program where law students can reach out to other law students who have been trained to intervene and help refer students in crisis. Touro Law School established a "Students Helping Students" program in 2010 where students volunteer to undergo training to recognize mental health problems and refer students confronting a mental health crisis.¹⁵³

28. ASSESS LAW SCHOOL PRACTICES AND OFFER FACULTY EDUCATION ON PROMOTING WELL-BEING IN THE CLASSROOM.

Law school faculty are essential partners in student well-being efforts. They often exercise powerful personal influence over students, and their classroom practices contribute enormously to the overall law school experience. Whether faculty members exercise their influence to promote student well-being depends, in part, on support of the law school culture and priorities. To support their involvement, faculty members should be invited into strategic planning to develop workable ideas. Framing strategies as helping students develop into healthy lawyers who possess grit and resilience may help foster faculty buy-in. Students' mental resilience can be viewed as a competitive advantage during their job searches and as support along their journeys as practicing lawyers toward sustainable professional and personal identities.

Educating law school faculty on how classroom practices can affect student well-being is one place to start the process of gaining faculty buy-in. For example, law professor Larry Krieger and social scientist Kennon

Sheldon identified potential culprits that undercut student well-being, including hierarchical markers of worth such as comparative grading, mandatory curves, status-seeking placement practices, lack of clear and timely feedback, and teaching practices that are isolating and intimidating.¹⁵⁴

Evaluate classroom practices for their impact on student well-being.

Because organizational practices so significantly influence student well-being, we recommend against focusing well-being efforts solely on detecting dysfunction and strengthening students' mental toughness. We recommend that law schools assess their classroom and organizational practices, make modifications where possible, and offer faculty programming on supporting student well-being while continuing to uphold high standards of excellence. Harmful practices should not be defended solely on the ground that law school has always been this way. Teaching practices should be evaluated to assess whether they are necessary to the educational experience and whether evidence supports their effectiveness.

29. EMPOWER STUDENTS TO HELP FELLOW STUDENTS IN NEED.

As noted above, students often are reluctant to seek mental health assistance from faculty members. Empowering students to assist each other can be a helpful alternative. One suggestion is to create a peer mentoring program that trains student mentors to provide support to fellow students in need. The ideal mentors would be students who are themselves in

¹⁵²Northwestern Law's well-being curriculum can be found at <http://www.law.northwestern.edu/law-school-life/student-services/wellness/curriculum/>.

¹⁵³TOURO L. SCH. STUDENTS HELPING STUDENTS (2017), available at <https://www.tourolaw.edu/uploads/Students%20Helping%20Students%20Spring17.pdf>.

¹⁵⁴See K. M. Sheldon & L. S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883 (2007); K. M. Sheldon & L. S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & THE LAW 261 (2004).



recovery. They should be certified by the local lawyer assistance program or another relevant organization and should be covered by the lawyer assistance program's confidentiality provisions. Peer mentors should not have a direct reporting obligation to their law school dean of students. This would help ensure confidentiality in the peer mentoring relationship and would foster trust in the law school community.¹⁵⁵

30. INCLUDE WELL-BEING TOPICS IN COURSES ON PROFESSIONAL RESPONSIBILITY.

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

31. COMMIT RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS.

Law schools should have, at a minimum, a part-time, onsite professional counselor. An onsite counselor provides easier access to students in need and sends a symbolic message to the law school community that seeking help is supported and should not be stigmatized. Although the value of such a resource to students should justify the necessary budget, law schools also could explore inexpensive or no-cost assistance from lawyer assistance programs. Other possible resources may be available from the university or private sector.

32. FACILITATE A CONFIDENTIAL RECOVERY NETWORK.

Law schools should consider facilitating a confidential network of practicing lawyers in recovery from substance

use to connect with law students in recovery. Law students are entering a new community and may assume that there are few practicing lawyers in recovery. Facilitating a confidential network will provide an additional support network to help students manage the challenges of law school and maintain health. Lawyers Concerned for Lawyers is an example of a legal peer assistance group that exists in many regions that may be a confidential network source.

33. PROVIDE EDUCATION OPPORTUNITIES ON WELL-BEING-RELATED TOPICS.

33.1. Provide Well-Being Programming During the 1L Year.

We agree with the Survey of Law Student Well-Being report's recommendation that law schools should incorporate well-being topics into student orientation.¹⁵⁶ We recommend that during 1L orientation, law schools should include information about student well-being and options for dealing with stress. Communications should convey that seeking help is the best way to optimize their studies and to ensure they graduate and move successfully into law practice. Other vulnerable times during which well-being-related programming would be particularly appropriate include the period before fall final exams, the period when students receive their first set of law school grades (usually at the start of spring semester), and the period before spring final exams. The Task Force commends Southwestern Law School's 1L "Peak Performance Program" and its goal of helping new law students de-stress, focus, and perform well in law school.¹⁵⁷ This voluntary program is the type of programming that can have a transformative effect on law student well-being.

33.2. Create A Well-Being Course and Lecture Series for Students.

To promote a culture of well-being, law schools should create a lecture series open to all students and a course designed to cover well-being topics in depth. Well-being

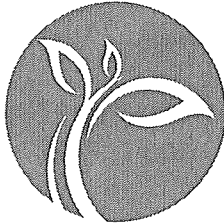
¹⁵⁵The University of Washington School of Law offers a "Peer Support Program" that includes peer counseling, that offers stress management resources, and support for multicultural engagement. More information on the program can be found at <https://www.law.uw.edu/wellness/resources/>.

¹⁵⁶Organ, Jaffe, & Bender, *supra* note 3, at 148.

¹⁵⁷Southwestern Law School, Mindfulness, Peak Performance, and Wellness Programs, <http://www.swlaw.edu/student-life/support-network/mindfulness-peak-performance-and-wellness-programs>.



has been linked to improved academic performance, and, conversely, research reflects that well-being deficits connect to impaired cognitive performance. Recent research also has found that teaching well-being skills enhances student performance on standardized tests, and improves study habits, homework submission,



Effects of Student Well-Being

- ✓ Better academic performance and cognitive functioning
- ✓ Enhanced test performance
- ✓ Improved study habits and homework quality
- ✓ Long-term academic success

grades, and long-term academic success, as well as adult education attainment, health, and wealth.¹⁵⁸ A well-being course can, for example, leverage research findings from positive psychology and neuroscience to explore the intersection of improved well-being, enhanced performance, and enriched professional identity development for law students and lawyers. Further knowledge of how to maintain well-being can enhance competence, diligence, and work

relationships—all of which are required by the ABA's Model Rules of Professional Conduct. The content of a well-being course could be guided by education reform recommendations. **Appendix E** provides content suggestions for such a course.

34. DISCOURAGE ALCOHOL-CENTERED SOCIAL EVENTS.

Although the overwhelming majority of law students are of legal drinking age, a law school sends a strong message when alcohol-related events are held or publicized with regularity. Students in recovery and those thinking about it may feel that the law school does not take the matter seriously and may be less likely to seek assistance or resources. A law school can minimize the alcohol provided; it can establish a policy whereby student organizations cannot use student funds for the purchase of alcohol.¹⁵⁹ Events at which alcohol is not the primary focus should be encouraged and supported. Further, law school faculty should refrain from drinking alcohol at law school social events.

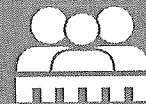
35. CONDUCT ANONYMOUS SURVEYS RELATING TO STUDENT WELL-BEING.

Recommendation 24 for legal employers suggests regular assessment of lawyer well-being. That same Recommendation applies in the law school context.

¹⁵⁸A. Adler & M. E. P. Seligman, *Using Wellbeing for Public Policy: Theory, Measurement, and Recommendations*, 6 INT'L J. WELLBEING, 1, 17 (2016); M. A. White & A. S. Murray, *Building a Positive Institution*, in EVIDENCE-BASED APPROACHES IN POSITIVE EDUC. IN SCHS.: IMPLEMENTING A STRATEGIC FRAMEWORK FOR WELL-BEING IN SCHS. 1, 8 (M. A. White & A. S. Murray eds., 2015).

¹⁵⁹At a minimum, permission should be sought from the dean of students to serve alcohol at school-sponsored, school-located events, so administration is aware. Off-campus events should be only on a cash basis by the establishment. Professional networking events, and on campus events should be focused on the program or speaker, and not on drink specials or offers of free alcohol. Publicity of these events should avoid mention of discounted drink specials that could detract from the professional networking environment. In all instances, providing alcohol should be limited to beer and wine. Open bars not regulated by drink tickets or some other manner of controlling consumption should not be permitted.





“When we look at what has the strongest statistical relationship to overall [life satisfaction], the first one is your career well-being, or the mission, purpose and meaning of what you’re doing when you wake up each day.” — Tom Rath

Bar associations are organized in a variety of ways, but all share common goals of promoting members’ professional growth, quality of life, and quality of the profession by encouraging continuing education, professionalism (which encompasses lawyer competence, ethical conduct, eliminating bias, and enhancing diversity), pro bono and public service. Bar members who are exhausted, impaired, disengaged, or overly self-interested will not live up to their full potential as lawyers or positive contributors to society. Below are recommendations for bar associations to foster positive change in the well-being of the legal community which, in turn, should benefit lawyers, bar associations, and the general public.

36. ENCOURAGE EDUCATION ON WELL-BEING TOPICS IN COORDINATION AND IN ASSOCIATION WITH LAWYER ASSISTANCE PROGRAMS.

36.1. Sponsor High-Quality CLE Programming on Well-Being-Related Topics.

In line with Recommendation 8, bar associations should develop and regularly offer educational programming on well-being-related topics. Bar leadership should recommend that all sections adopt a goal of providing at least one well-being related educational opportunity at all bar-sponsored events, including conferences, section retreats, and day-long continuing legal education events.

36.2. Create Educational Materials to Support Individual Well-Being and “Best Practices” for Legal Organizations.

We recommend that bar associations develop “best practice” model policies on well-being-related topics, for example practices for responding to lawyers in distress, succession planning, diversity and inclusion, mentoring practices, work-life balance policies, etc.

36.3 Train Staff to Be Aware of Lawyer Assistance Program Resources and Refer Members.

Educating bar association staff regarding lawyer assistance programs’ services, resources, and the confidentiality of referrals is another way to foster change in the legal community. Bar association staff can further promote these resources to their membership. A bar association staff member may be the person who coordinates a needed intervention for a lawyer facing a mental health or substance use crisis.

37. SPONSOR EMPIRICAL RESEARCH ON LAWYER WELL-BEING AS PART OF ANNUAL MEMBER SURVEYS.

Many bar associations conduct annual member surveys. These surveys offer an opportunity for additional research on lawyer well-being and awareness of resources. For example, questions in these surveys can gauge awareness of support networks either in law firms or through lawyer assistance programs. They can survey lawyers on well-being topics they would like to see addressed in bar journal articles, at bar association events, or potentially through continuing legal education courses. The data gathered can inform bar associations’ outreach and educational efforts.

38. LAUNCH A LAWYER WELL-BEING COMMITTEE.

We recommend that bar associations consider forming Lawyer Well-Being Committees. As noted in Recommendation 5.2, the ABA and a number of state bar associations already have done so. Their work supplements lawyer assistance programs with a more expansive approach to well-being. These committees typically focus not only on addressing disorders and ensuring competence to practice law but also on optimal functioning and full engagement in the profession. Such committees can provide a valuable service to members by, for example, dedicating attention to compiling resources, high-quality speakers, developing and compiling educational materials and programs, serving as a clearinghouse for lawyer well-being information, and partnering with the lawyer assistance program, and other state and national organizations to advocate for lawyer well-being initiatives.

The South Carolina Bar's Lawyer Wellness Committee, launched in 2014 and featuring a "Living Above the Bar" website, is a good model for well-being committees. In 2016, the ABA awarded this Committee the E. Smythe Gambrell Professionalism Award, which honors excellence and innovation in professionalism programs.¹⁶⁰

39. SERVE AS AN EXAMPLE OF BEST PRACTICES RELATING TO LAWYER WELL-BEING AT BAR ASSOCIATION EVENTS.

Bar associations should support members' well-being and role model best practices in connection with their own activities and meetings. This might include, for example, organizing functions to be family-friendly, scheduling programming during times that do not interfere with personal and family time, offering well-being-related activities at events (e.g., yoga, fun runs, meditation, providing coffee or juice bars, organizing Friends of Bill/support group meetings), providing well-being-related education and training to bar association leaders, and including related programming at conferences and other events. For instance, several bar associations around the country sponsor family-friendly fun runs, such as the Maricopa County Bar Association annual 5k Race Judicata.

¹⁶⁰The South Carolina Bar's lawyer well-being website is available at <http://discussions.scbare.org/public/wellness/index.html>.





"If any organism fails to fulfill its potentialities, it becomes sick." — William James

Lawyers' professional liability (LPL) carriers have a vested interest from a loss prevention perspective to encourage lawyer well-being. Happier, healthier lawyers generally equate to better risks. Better risks create stronger risk pools. Stronger risk pools enjoy lower frequency and often less severe claims. Fewer claims increases profitability. For lawyers, the

Happier, healthier lawyers equate to better risk, fewer claims, and greater profitability.

stronger the performance of the risk pool, the greater the likelihood of premium reduction. Stakeholders interested in lawyer well-being would be well-served to explore partnerships with lawyers' professional liability carriers, many of whom enjoy bar-related origins with their respective state bar and as members of the National Association of Bar-Related Insurance Carriers (or NABRICOs). Even commercial carriers active in the lawyers' malpractice market enjoy important economic incentives to support wellness initiatives, and actively assess risks which reflect on the likelihood of future claims.¹⁶¹ Below are several recommendations for LPL carriers to consider in their pursuit of improving lawyer well-being.

40. ACTIVELY SUPPORT LAWYER ASSISTANCE PROGRAMS.

In certain jurisdictions, lawyers' professional liability carriers are amongst the most important funders of lawyer assistance programs, appreciating that an ounce of prevention is worth a pound of cure. An impaired or troubled attorney who is aided before further downward spiral harms the lawyer's ability to engage in high-quality professional services can directly prevent claims. Thus, LPL carriers are well-served to understand lawyer assistance program needs, their impact, and how financial and marketing support of such programs can be a worthy investment. At the same time, where appropriate, lawyer assistance programs could prepare a case for support to LPL carriers on how their activities affect attorneys, much like a private foundation examines the impact effectiveness of grantees. If the case for support is effectively made, support may follow.

41. EMPHASIZE WELL-BEING IN LOSS PREVENTION PROGRAMS.

Most LPL carriers, as a means of delivering value beyond just the promise of attorney protection in the event of an error or omission, are active in developing risk management programs via CLE, law practice resources, checklists, and sample forms designed to reduce the susceptibility of an attorney to a claim. These resources often center on topics arising from recent claims trends, be it law practice management tips, technology traps, professionalism changes, or ethical infrastructure challenges. LPL carriers should consider paying additional attention to higher level attorney wellness issues, focusing on how such programs promote the emotional and physical foundations from which lawyers can thrive in legal service delivery. Bar associations are increasingly exploring well-being programs as a member benefit, and LPL carriers could be helpful in providing financial support or thought leadership in the development of such programs.

¹⁶¹Examples of LPL carriers serving the market from the commercial side include CNA, AON, Liberty Mutual, Hartford, among others.

42. INCENTIVIZE DESIRED BEHAVIOR IN UNDERWRITING LAW FIRM RISK.

The process of selecting, structuring, and pricing LPL risk is part art, part science. Underwriters, in addition to seeking core LPL information such as area of practice, claim frequency, claim severity, firm size, firm longevity and firm location, are also working to appreciate and understand the firm's complete risk profile. The more effectively a firm can illustrate its profile in a positive manner, the more desirable a firm will be to a carrier's risk pool. Most states permit carriers flexibility in applying schedule rating credits or debits to reflect the individual risk characteristics of the law firm. LPL carriers should more actively explore the application of lawyer well-being premium credits, much like they currently do for internal risk management systems, documented attorney back-up systems, and firm continuity.

43. COLLECT DATA WHEN LAWYER IMPAIRMENT IS A CONTRIBUTING FACTOR TO CLAIMS ACTIVITY.

LPL carriers traditionally track claims based on area of practice or the nature of the error. LPL carriers do

not ordinarily track when substance abuse, stress, depression, or mental health are suspected to be contributing factors to the underlying claim. This is primarily due to the fact that most LPL claims adjusters, usually attorneys by trade, lack sufficient (or usually any) clinical training to make such a determination. That being said, anecdotal evidence suggests the impact is substantial. Thus, LPL carriers should consider whether a "common sense" assessment of instances where attorney impairment is suspected to be a contributing factor to the underlying claim. Such information would be helpful to lawyer assistance programs and as an important data point for what bar counsel or disciplinary units similarly see when investigating bar grievances. LPL carriers are in a prime position to collect data, share such data when appropriate, and assess the manner in which lawyer impairment has a direct correlation to claims activity.





“It is under the greatest adversity that there exists the greatest potential for doing good, both for oneself and others.” — Dalai Lama

Because lawyer assistance programs are so well-positioned to play a pivotal role in lawyer well-being, they should be adequately funded and organized to ensure that they can fulfill their potential.

Lawyer assistance programs should be supported to fulfill their full potential.

This is not consistently the case. While a lawyer assistance program exists in every state, according to the 2014 Comprehensive Survey of Lawyer Assistance Programs their structures, services, and funding vary widely. Lawyer assistance programs are organized either as agencies within bar associations, as independent agencies, or as programs within the state’s court system.¹⁶² Many operate with annual budgets of less than \$500,000.¹⁶³ About one quarter operate without any funding and depend solely on volunteers.¹⁶⁴ The recommendations below are designed to equip lawyer assistance programs to best serve their important role in lawyer well-being.

44. LAWYERS ASSISTANCE PROGRAMS SHOULD BE APPROPRIATELY ORGANIZED AND FUNDED.

44.1 Pursue Stable, Adequate Funding.

Lawyer assistance programs should advocate for stable, adequate funding to provide outreach, screening, counseling, peer assistance, monitoring, and preventative education. Other stakeholders should ally themselves with lawyer assistance programs in pursuit of this funding.

44.2 Emphasize Confidentiality.

Lawyer assistance programs should highlight the confidentiality of the assistance they provide. The greatest concern voiced by lawyer assistance programs in the most recent CoLAP survey was under-utilization of their services stemming from the shame and fear of disclosure that are bound up with mental health and substance use disorders.¹⁶⁵ Additionally, lawyer assistance programs should advocate for a supreme court rule protecting the confidentiality of participants in the program, as well as immunity for those making good faith reports, volunteers, and staff.

44.3 Develop High-Quality Well-Being Programming.

Lawyer assistance programs should collaborate with other organizations to develop and deliver programs on the topics of lawyer well-being, identifying and treating substance use and mental health disorders, suicide prevention, cognitive impairment, and the like.¹⁶⁶ They should ensure that all training and other education efforts emphasize the availability of resources and the

¹⁶²2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS, *supra* note 25, at 3.

¹⁶³*Id.* at 5.

¹⁶⁴*Id.* at 27.

¹⁶⁵*Id.* at 49-50.

¹⁶⁶Accommodating adult learning should inform program development. The Illinois Supreme Court Commission on Professionalism offers a number of resources through its “Strategies for Teaching CLE” web page, <https://www.2civility.org/programs/cle/cle-resources/strategies-for-teaching-cle/>. See also K. TAYLOR & C. MARIENAU, FACILITATING LEARNING WITH THE ADULT BRAIN IN MIND: A CONCEPTUAL AND PRACTICAL GUIDE (2016); M. Silverthorn, *Adult Learning: How Do We Learn?*, ILL. SUP. CT. COMM’N ON PROFESSIONALISM, Dec. 4, 2014, <https://www.2civility.org/adult-learning/>.

confidentiality of the process.

Lawyer assistance programs should evaluate whether they have an interest in and funding to expand their programming beyond the traditional focus on treatment of alcohol use and mental health disorders. Some lawyer assistance programs already have done so. The 2014 Comprehensive Survey of Lawyer Assistance Programs reflects that some well-resourced lawyer assistance programs include services that, for example, address transition and succession planning, career counseling, anger management, grief, and family counseling.¹⁶⁷ Increasingly, lawyer assistance programs are expanding their services to affirmatively promote well-being (rather than seeking only to address dysfunction) as a means of preventing prevalent impairments.

This expansion is consistent with some scholars' recommendations for Employee Assistance Programs that encourage engagement in a broader set of prevention and health-promotion strategies. Doing so could expand the lawyer assistance programs' net to people who are in need but have not progressed to the level of a disorder. It also could reach people who may participate in a health-promotion program but would avoid a prevention program due to social stigma.¹⁶⁸ Health-promotion approaches could be incorporated into traditional treatment protocols. For example, "Positive Recovery" strategies strive not only for sobriety but also for human flourishing.¹⁶⁹ Resilience-boosting strategies have also been proposed for addiction treatment.¹⁷⁰

44.4 Lawyer Assistance Programs' Foundational Elements.

All lawyer assistance programs should include the following foundational elements to provide effective leadership and services to lawyers, judges, and law students:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals;
- A well-defined program mission and operating policies and procedures;
- Regular educational activities to increase awareness and understanding of mental health and substance use disorders;
- Volunteers trained in crisis intervention and assistance;
- Services to assist impaired members of the legal profession to begin and continue recovery;
- Participation in the creation and delivery of interventions;
- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities; and
- A helpline for individuals with concern about themselves or others.¹⁷¹

¹⁶⁷2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS, *supra* note 25, at 13.

¹⁶⁸R. F. Cook, A. S. Back, J. Trudeau, & T. McPherson, *Integrating Substance Abuse Prevention into Health Promotion Programs in the Workplace: A Social Cognitive Intervention Targeting the Mainstream User*, in PREVENTING WORKPLACE SUBSTANCE ABUSE: BEYOND DRUG TESTING TO WELLNESS 97-133 (J. B. Bennett, W. K. Lehman eds., 2003).

¹⁶⁹J. Z. POWERS, POSITIVE RECOVERY DAILY GUIDE: THRIVE IN RECOVERY (2015).

¹⁷⁰T. Allim, W. Lawson, A. Neumeister, et al., *Resilience to Meet the Challenge of Addiction: Psychobiology and Clinical Considerations*, 34 ALCOHOL RESEARCH: CURRENT REVIEWS 506 (2012).

¹⁷¹See AM. BAR ASS'N, MODEL LAWYER ASSISTANCE PROGRAM (Revised 2004), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/is_colap_model_lawyer_assistance_program.authcheckdam.pdf; AM. BAR ASS'N, GUIDING PRINCIPLES FOR A LAWYER ASSISTANCE PROGRAM (1991), available at http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/is_colap_guiding_principles_for_assistance.authcheckdam.pdf.



CONCLUSION

"It always seems impossible until it's done." — Nelson Mandela

This Report makes a compelling case that the legal profession is at a crossroads. Our current course, one involving widespread disregard for lawyer well-being and its effects, is not sustainable. Studies cited above show that our members suffer at alarming rates from conditions that impair our ability to function at levels compatible with high ethical standards and public expectations. Depression, anxiety, chronic stress, burnout, and substance use disorders exceed those of many other professions. We have ignored this state of affairs long enough. To preserve the public's trust and maintain our status as a self-regulating profession, we must truly become "our brothers' and sisters' keepers," through a strong commitment to caring for the well-being of one another, as well as ourselves.

The members of the National Task Force for Lawyer Well-Being urge all stakeholders identified in this report to take action. To start, please review the State Action Plan and Checklist that follows in **Appendix A**. If you are a leader in one of these sectors, please use your authority to call upon your cohorts to come together and develop

a plan of action. Regardless of your position in the legal profession, please consider ways in which you can make a difference in the essential task of bringing about a

***We have the capacity
to create a better
future for our lawyers.***

culture change in how we, as lawyers, regard our own well-being and that of one another.

As a profession, we have the capacity to face these challenges and create a better future for our lawyers that is sustainable. We can do so—not in spite of—but in pursuit of the highest professional standards, business practices, and ethical ideals.

¹P. 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).

²A. M. Brafford, *Building the Positive Law Firm: The Legal Profession At Its Best* (August 1, 2014) (Master's thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), available at http://repository.upenn.edu/mapp_capstone/62/.

³J. 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).

⁴See D. L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 1 (2013).

⁵J. M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225 (2011); 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).

National Task Force on Lawyer Well-Being State Action Plan & Checklist

Chief Justice (or Designee) "To Do List"

_____ Gather all stakeholders

(Identify leaders in the jurisdiction with an interest in and commitment to well-being issues. Bring these leaders together in a Commission on Lawyer Well-Being. The attached list of potential stakeholder representatives offers guidance.)

_____ Review the Task Force Report

Have Commission members familiarize themselves with the Task Force Report. It provides concrete recommendations for how to address lawyer well-being issues.

_____ Do an inventory of recommendations

(Next, assess which recommendations can be implemented in the jurisdiction. This includes an assessment of the leadership and resources required to implement these recommendations.)

_____ Create priorities

(Each jurisdiction will have its own priorities based on the inventory of recommendations. Which ones are the most urgent? Which ones will create the most change? Which ones are feasible?)

_____ Develop an action plan

(Having inventoried the recommendations and prioritized them, now is the time to act. What does that path forward look like? Who needs to be involved? How will progress be measured?)

National Task Force on Lawyer Well-Being State Action Plan & Checklist

Checklist for Gathering the Stakeholders

Item 1 of the Plan above recommends the gathering of stakeholders as a first step. The National Task Force suggests the Chief Justice of each state create a Commission on Lawyer Well-Being in that state and appoint representatives from each stakeholder group to the Commission. Below is a checklist of potential stakeholder representatives the Chief Justice may consider in making appointments.

JUDICIAL

- ☐ Supreme Court Chief Justice or designated representative
- ☐ Other judge representatives

LAWYER ASSISTANCE PROGRAM (LAP)

- ☐ LAP Director
- ☐ Clinical director
- ☐ Lawyer representative to the LAP

LAW SCHOOLS

- ☐ Dean representative
- ☐ Faculty representative
- ☐ Law student representative

REGULATORS

- ☐ Admissions (or Board of Law Examiners) representative
- ☐ Mandatory CLE program representative
- ☐ CLE provider representative
- ☐ Regulation/Bar/Disciplinary Counsel representative

BAR ASSOCIATIONS

- ☐ Bar president
- ☐ Bar president-elect
- ☐ Executive director
- ☐ Young lawyer division representative
- ☐ Specialty bar representative

LAW FIRMS

- ☐ Sole practitioner
- ☐ Small firm representative (2-5 lawyers)
- ☐ Medium firm representative (6-15 lawyers)
- ☐ Large firm representative (16+ lawyers)
- ☐ In-house counsel representative
- ☐ Non-traditional lawyer representative

ALLIES

- ☐ ASAM representative (addiction psychiatrist)
- ☐ Organizational/behavioral psychologist
- ☐ Members of the public

Appendix to Recommendation 8: Example Educational Topics About Lawyer Distress and Well-Being

Recommendation 8 advises stakeholders to provide high-quality education programs and materials on causes and consequences of lawyer distress and well-being. Below is a list of example educational topics for such programming with empirical support.

8.1 Work Engagement vs. Burnout

The work engagement-burnout model can serve as a general organizing framework for stakeholders' efforts to boost lawyer well-being and curb dysfunction. Work engagement is a kind of work-related well-being. It includes high levels of energy and mental resilience, dedication (which includes a sense of meaningfulness, significance, and challenge), and frequently feeling positively absorbed in work.¹⁷² Work engagement contributes to, for example, mental health, less stress and burnout, job satisfaction, helping behaviors, reduced turnover, performance, and profitability.¹⁷³

Burnout is essentially the opposite of engagement. It is a stress response syndrome that is highly correlated with depression and can have serious psychological and physiological effects. Workers experiencing burnout feel emotionally and physically exhausted, cynical about the value of their activities, and uncertain about their capacity to perform well.¹⁷⁴

The work engagement-burnout model proposes the idea of a balance between resources and demands: Engagement arises when a person's resources (i.e., positive individual, job, and organizational factors, like autonomy, good leadership, supportive colleagues, feedback, interesting work, optimism, resilience) outweigh demands (i.e., draining aspects of the job, like work overload and conflicting demands). But when excessive demands or a lack of recovery from demands tip the scale, workers are in danger of burnout. Disengagement, alienation, and turnover become likely. Resources contribute to engagement; demands feed burnout. Using this framework as a guide, stakeholders should develop lawyer well-being strategies that focus on increasing individual and organizational resources and decreasing demands when possible.¹⁷⁵

The incidence of burnout vs. work engagement in the legal profession is unknown but has been well-studied in the medical profession. Research has found that 30-40 percent of licensed physicians, 49 percent of medical students, and 60 percent of new residents meet the definition of burnout, which is associated with an increased risk of depression, substance use, and suicidal thinking.¹⁷⁶ Burnout also undermines professionalism and quality of patient care by eroding honesty, integrity, altruism, and self-regulation.¹⁷⁷

The medical profession's work on these issues can serve as a guide for the legal profession. It has conducted

¹⁷²W. B. Schaufeli, *What is Engagement?*, in *EMPLOYEE ENGAGEMENT IN THEORY AND PRACTICE* (C. Truss, K. Alfes, R. Delbridge, A. Shantz, & E. Soane eds., 2013).

¹⁷³C. Bailey, A. Madden, K. Alfes, & L. Fletcher, *The Meaning, Antecedents and Outcomes of Employee Engagement: A Narrative Synthesis*, 19 *INT'L J. MGMT. REV.* 19 (2017); BRAFFORD, *supra* note 131; GALLUP, INC., *ENGAGEMENT AT WORK: ITS EFFECT ON PERFORMANCE CONTINUES IN TOUGH ECONOMIC TIMES* (2013), available at <http://www.gallup.com/services/176657/engagement-work-effect-performance-continues-tough-economic-times.aspx>.

¹⁷⁴Maslach, Schaufeli, & Leiter, *supra* note 121.

¹⁷⁵A. B. Bakker & E. Demerouti, *Job Demands-Resources Theory: Taking Stock and Looking Forward*, *J. OCCUPATIONAL HEALTH PSYCHOL.* (2016), advance online publication available at <http://dx.doi.org/10.1037/ocp0000056>; A. B. Bakker, *Top-Down and Bottom-Up Interventions to Increase Work Engagement*, in *AM. PSYCHOL. ASS'N HANDBOOK OF CAREER INTERVENTION: VOL. 2. APPLICATIONS* 427-38 (P. J. Hartung, M. L. Savickas, & W. B. Walsh eds., 2015); BRAFFORD, *supra* note 131.

¹⁷⁶L. Dyrbye, T. Shanafelt, *Physician Burnout: A Potential Threat to Successful Health Care Reform*, 305 *J. AM. MED. ASS'N* 2009 (2009); L. Dyrbye & T. Shanafelt, *A Narrative Review of Burnout Experienced by Medical Students and Residents*, 50 *MED. EDUC.* 132 (2016); J. J. Hakanen & W. B. Schaufeli, *Do Burnout and Work Engagement Predict Depressive Symptoms and Life Satisfaction? A Three-Wave Seven-Year Prospective Study*, 141 *J. AFFECTIVE DISORDERS* 415 (2012).

¹⁷⁷Dyrbye & Shanafelt, *supra* note 176; T. L. Schwenk, *Resident Depression: The Tip of a Graduate Medical Education Iceberg*, 314 *J. AM. MED. ASS'N* 2357 (2015).

hundreds of studies, has identified many individual and organizational contributors to burnout, and has proposed wellness strategies and resilience programs.¹⁷⁸ Bi-annually, the American Medical Association (AMA) co-sponsors an International Conference on Physician Health. The September 2016 conference was held in Boston with the theme, “Increasing Joy in Medicine.” The conference included 70 presentations, workshops, and plenary speaker sessions on a wide variety of well-being topics over a three-day period (See AMA website).

8.2 Stress

Stress is inevitable in lawyers' lives and is not necessarily unhealthy.¹⁷⁹ Mild to moderate levels of stress that are within our capability can present positive challenges that result in a sense of mastery and accomplishment.¹⁸⁰ Much of our daily stress is governed by our beliefs about our coping abilities.¹⁸¹ When stress is perceived as a positive, manageable challenge, the stress response actually can enable peak performance.¹⁸² For example, in a study of a New Zealand law firm, researchers found that lawyers who frequently experience positive challenge reported the highest levels of work engagement. The researchers also found that, where lawyers felt overburdened by work, they were more likely to experience burnout.¹⁸³

This finding highlights the importance of positive challenge but also its paradoxical effect: Challenge contributes to work-related well-being, but it also can lead to negative

consequences like burnout when it becomes overwhelming. Stressors that pose the greatest risk of harm are those that are uncontrollable, ambiguous, unpredictable, and chronic that we perceive as exceeding our ability to cope.¹⁸⁴ Such stressors increase the rise of (or exacerbate) depression, anxiety, burnout, alcohol abuse, and physical conditions such as cardiovascular, inflammatory, and other illnesses that can affect lawyers' health and capacity to practice.¹⁸⁵ For example, in a 2004 study of North Carolina lawyers, more than half had elevated levels of perceived stress, and this was the highest predictor of depression of all factors in the study.¹⁸⁶

Stress also is associated with cognitive decline, including impaired attention, concentration, memory, and problem-solving.¹⁸⁷ Stress also can harm one's ability to establish strong relationships with clients and is associated with relational conflict, which can further undermine lawyers' ability to competently represent and interact with clients. Both personal and environmental factors in the workplace contribute to stress and whether it positively fuels performance or impairs mental health and functioning.¹⁸⁸ Research reflects that organizational factors more significantly contribute to dysfunctional stress responses than individual ones, and that the most effective prevention strategies target both.¹⁸⁹

8.3 Resilience & Optimism

The American Psychological Association defines resilience

¹⁷⁸E.g., J. Brennan & A. McGrady, *Designing and Implementing a Resiliency Program for Family Medicine Residents*, 50 INT'L J. PSYCHIATRY MED. 104 (2015); J. Eckleberry-Hunt, A. Van Dyke, D. Lick, & J. Tucciarone, *Changing the Conversation from Burnout to Wellness: Physician Well-Being in Residency Training Programs*, 1 J. GRADUATE MED. EDUC. 225 (2009); R. M. Epstein & M. S. Krasner, *Physician Resilience: What It Means, Why It Matters, and How to Promote It*, 88 ACAD. MED. 301 (2013); A. Nedrow, N. A. Steckler, & J. Hardman, *Physician Resilience and Burnout: Can You Make the Switch?* 20 FAMILY PRAC. MGMT. 25 (2013).

¹⁷⁹A. ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (2007).

¹⁸⁰K. M. Keyes, M. L. Hatzenbuehler, B. F. Grant, & D. S. Hasin, *Stress and Alcohol: Epidemiologic Evidence*, 34 ALCOHOL RES.: CURRENT REV. 391 (2012).

¹⁸¹J. B. Avey, F. Luthans, & S. M. Jensen, *Psychological Capital: A Positive Resource for Combating Employee Stress and Turnover*, 48 HUMAN RES. MGMT. 677 (2009).

¹⁸²BRAFFORD, *supra* note 131; Crum, Salovey, Achor, *supra* note 50; K. McGonigal, *THE UPSIDE OF STRESS: WHY STRESS IS GOOD FOR YOU, AND HOW TO GET GOOD AT IT* (2015).

¹⁸³V. Hopkins & D. Gardner, *The Mediating Role of Work Engagement and Burnout in the Relationships Between Job Characteristics and Psychological Distress Among Lawyers*, 41 N. Z. J. PSYCHOL. 59 (2012).

¹⁸⁴R. M. Anthenelli, *Overview: Stress and Alcohol Use Disorders Revisited*, 34 ALCOHOL RES.: CURRENT REV. 386 (2012).

¹⁸⁵E.g., S. M. Southwick, G. A. Bonanno, A. S. Masten, C. Panter-Brick, & R. Yehuda, *Resilience Definitions, Theory, and Challenges: Interdisciplinary Perspectives*, 5 EUR. J. PSYCHOTRAUMATOLOGY 1 (2014); M. R. Frone, *Work Stress and Alcohol Use*, 23 ALCOHOL RES. & HEALTH 284 (1999); C. Hammen, *Stress and Depression*, 1 ANN. REV. CLINICAL PSYCHOL. 293 (2005); Keyes, Hatzenbuehler, Grant, & Hasin, *supra* note 180; J. Wang, *Work Stress as a Risk Factor for Major Depressive Episode(s)*, 35 PSYCHOL. MED. 865 (2005); J-M Woo & T. T. Postolache, *The Impact of Work Environment on Mood Disorders and Suicide: Evidence and Implications*, 7 INT'L J. DISABILITY & HUMAN DEV. 185 (2008).

¹⁸⁶M. H. Howerton, *The Relationship Between Attributional Style, Work Addiction, Perceived Stress, and Alcohol Abuse on Depression in Lawyers in North Carolina* (2004) (doctoral dissertation, Univ. of N.C. at Charlotte) (available from ProQuest Dissertations and Theses database).

¹⁸⁷B. S. McEwen, & R. M. Sapolsky, *Stress and Cognitive Function*, 5 CURRENT OPINION IN NEUROBIOLOGY 205–216 (1995); L. Schwabe & O. T. Wolf, *Learning Under Stress Impairs Memory Formation*, 93 NEUROBIOLOGY OF LEARNING & MEMORY 183 (2010); S. Shapiro, J. Astin, S. Bishop, & M. Cordova, *Mindfulness-Based Stress Reduction and Health Care Professionals: Results from a Randomized Controlled Trial*, 12 INT'L J. STRESS MGMT. 164 (2005).

¹⁸⁸J. C. QUICK, T. A. WRIGHT, J. A. ADKINS, D. L. NELSON, & J. D. QUICK, *PREVENTIVE STRESS MANAGEMENT IN ORGANIZATIONS* (2013).

¹⁸⁹Maslach, Schaufeli, & Leiter, *supra* note 121.

as a process that enables us to bounce back from adversity in a healthy way. It also has been defined as a “process to harness resources to sustain well-being”¹⁹⁰—a definition that connects resilience to the resource-balancing framework of the work engagement-burnout model discussed above. Our capacity for resilience derives from a host of factors, including genetics and childhood experiences that influence the neurobiology of our stress response—specifically, whether the stress response is both activated and terminated efficiently.¹⁹¹

But resilience also derives from a collection of psychological, social, and contextual factors—many of which we can change and develop. These include, for example, optimism, confidence in our abilities and strengths (self-efficacy), effective problem-solving, a sense of meaning and purpose, flexible thinking, impulse control, empathy, close relationships and social support, and faith/spirituality.¹⁹² A model for developing many of these psychological and social competencies is provided by the U.S. Army’s Master Resilience Training program.¹⁹³ As noted above, the medical profession also has designed resilience programs for physicians and residents that can serve as guides, and researchers have offered additional strategies.¹⁹⁴

Among the most important of the personal competencies is optimistic explanatory style, which is a habit of thought that allows people to put adverse events in a rational context and not be overwhelmed by catastrophic thinking. The principal strategy for building optimistic explanatory style is by teaching cognitive reframing based on cognitive-behavioral therapy research.¹⁹⁵ The core of the technique is to teach people to monitor and dispute their automatic

negative self-talk. Neurobiology scholars recently have argued that this capacity is so important to our regulation of stress that it constitutes the cornerstone of resilience.¹⁹⁶

This skill can benefit not only practicing lawyers but also law students.¹⁹⁷ Stanford Law, for example, has offered a 3-hour course teaching cognitive framing that has been popular and successful.¹⁹⁸ Lawyer assistance programs also could benefit from learning this and other resilience strategies, which have been used in addiction treatment.¹⁹⁹

Aside from individual-level skills and strengths, developing “structural resilience” also is important, if not more important. This requires leaders to develop organizations and institutions that are resource-enhancing to help give people the wherewithal to realize their full potential.²⁰⁰ Individual resilience is highly dependent on the context in which people are embedded. This means that initiatives to foster lawyer well-being should take a systemic perspective.

8.4 Mindfulness Meditation

Mindfulness meditation is a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. A rapidly growing body of research on meditation has shown its potential for help in addressing a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role.²⁰¹ One type of meditative practice is mindfulness—a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings. Research has found that mindfulness can reduce rumination, stress, depression, and anxiety.²⁰² It

¹⁹⁰ Southwick, Bonanno, Masten, Panter-Brick, & Yehuda, *supra* note 185.

¹⁹¹ Alim, Lawson, & Neumeister, et al., *supra* note 170.

¹⁹² K. J. Reivich, M. E. P. Seligman, & S. McBride, *Master Resilience Training in the U.S. Army*, 66 AM. PSYCHOLOGIST 25 (2011); C. D. Schetter & C. Dolbier, *Resilience in the Context of Chronic Stress and Health in Adults*, 5 SOC. PERSONAL PSYCHOL. COMPASS 634 (2011).

¹⁹³ *Id.*; R. R. SINCLAIR, & T. A. BRITT, BUILDING PSYCHOLOGICAL RESILIENCE IN MILITARY PERSONNEL: THEORY AND PRACTICE (2013).

¹⁹⁴ C. COOPER, J. FLINT-TAYLOR, & M. PEARN, BUILDING RESILIENCE FOR SUCCESS: A RESOURCE GUIDE FOR MANAGERS AND ORGANIZATIONS (2013); I. T. Robertson, C. L. Cooper, M. Sarkar, & T. Curran, *Resilience Training in the Workplace from 2003 to 2014: A Systematic Review*, 88 J. OCCUPATIONAL & ORG. PSYCHOL. 533 (2015).

¹⁹⁵ *Id.*

¹⁹⁶ R. Kalisch, M. B. Muler, & O. Tüscher, *A Conceptual Framework for the Neurobiological Study of Resilience*, 27 BEHAV. & BRAIN SCI. 1 (2014).

¹⁹⁷ C. Rosen, *Creating the Optimistic Classroom: What Law Schools Learn from Attribution Style Effects*, 42 MCGEORGE L. REV. 319 (2011).

¹⁹⁸ Stanford Law Professor Joe Bankman’s use of cognitive behavioral therapy concepts are described on the school’s website: <http://news.stanford.edu/2015/04/07/bank-man-law-anxiety-040715>. He has posted relevant materials to educate other law schools how to teach this skill: <http://www.colorado.edu/law/sites/default/files/Bankman%20-%20Materials%20for%20Anxiety%20Psychoeducation%20Course.pdf>.

¹⁹⁹ Alim, Lawson, & Neumeister, *supra* note 170.

²⁰⁰ BRAFFORD, *supra* note 131; Southwick, Bonanno, Masten, Panter-Brick, & Yehuda, *supra* note 185.

²⁰¹ R. Walsh & S. L. Shapiro (2006), *The Meeting of Meditative Disciplines and Western Psychology*, 61 AM. PSYCHOL. 227 (2006).

²⁰² E.g., S. G. Hoffman, A. T. Sawyer, A. A. Witt, & D. Oh, *The Effect of Mindfulness-Based Therapy on Anxiety and Depression: A Meta-Analytic Review*, 78 J. CONSULTING & CLINICAL PSYCHOL. 169 (2010); R. Teper, Z. V. Segal, & M. Inzlicht, *Inside the Mindful Mind: How Mindfulness Enhances Emotion Regulation Through Improvements in Executive Control*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 449

also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making.²⁰³ Multiple articles have advocated for mindfulness as an important practice for lawyers and law students.²⁰⁴ Evidence also suggests that mindfulness can enhance the sense of work-life balance by reducing workers' preoccupation with work.²⁰⁵

8.5 Rejuvenation Periods to Recover From Stress

Lawyers must have downtime to recover from work-related stress. People who do not fully recover are at an increased risk over time for depressive symptoms, exhaustion, and burnout. By contrast, people who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands.²⁰⁶ Recovery can occur during breaks during the workday, evenings, weekends, vacations, and even microbreaks when transitioning between projects.²⁰⁷ And the quality of employees' recovery influences their mood, motivation, and job performance.

Researchers have identified four strategies that are most effective for recovering from work demands: (1) psychological detachment (mentally switching off from work), (2) mastery experiences (challenges and learning experiences), (3) control (spending time off as we choose), and (4) relaxation.²⁰⁸ Falling into the second category is physical activity (exercise and sports), which may be an

especially effective form of recovery for people performing mentally demanding work—like lawyers. This is so because low-effort activities (e.g., watching TV) may actually increase subjective feelings of fatigue.²⁰⁹

Quality sleep is critically important in the recovery process.²¹⁰ Sleep deprivation has been linked to a multitude of health problems that decay the mind and body, including depression, cognitive impairment, decreased concentration, and burnout. Cognitive impairment associated with sleep-deprivation can be profound. For example, a study of over 5,000 people showed that too little sleep was associated with a decline over a five year-period in cognitive functioning, including reasoning, vocabulary, and global cognitive status. Research on short-term effects of sleep deprivation shows that people who average four hours of sleep per night for four or five days develop the same cognitive impairment as if they had been awake for 24 hours—which is the equivalent of being legally drunk.²¹¹ Given lawyers' high risk for depression, it is worth noting evidence that sleep problems have the highest predictive value for who will develop clinical depression.²¹²

8.6 Physical Activity

Many lawyers' failure to prioritize physical activity is harmful to their mental health and cognitive functioning. Physical exercise is associated with reduced symptoms of anxiety and low energy. Aerobic exercise has been found to be as effective at improving symptoms of depression

- ²⁰³A. P. Jha, E. A. Stanley, W. L. Kiyonaga, & L. Gelfand, *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 *EMOTION* 56 (2010); D. Levy, J. Wobbrock, A. W. Kaszniak, & M. Ostergren, *The Effects of Mindfulness Meditation Training on Multitasking in a High-Stress Environment*, *Proceedings of Graphics Interface Conference* (2012), available at <http://faculty.washington.edu/wobbrock/pubs/gi-12.02.pdf>; M. D. Mrazek, M. S. Franklin, D. T. Phillips, B. Baird, & J. W. Schooler, *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 *PSYCHOL. SCI.* 776 (2013); N. E. Ruedy & M. E. Schweitzer, *In the Moment: The Effect of Mindfulness on Ethical Decision Making*, 95 *J. BUS. ETHICS* 73 (2010); F. Zeidan, S. K. Johnson, B. J. Diamond, Z. David, & P. Goolkasian, *Mindfulness Meditation Improves Cognition: Evidence of Brief Mental Training*, 19 *CONSCIOUSNESS & COGNITION* 597 (2010).
- ²⁰⁴E.g., W. S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 *HARV. NEGOT. L. REV.* 125 (2002); Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 *J. L. BUS. & ETHICS* 35 (2014).
- ²⁰⁵A. Michel, C. Bosch, & M. Rexroth, *Mindfulness as a Cognitive-Emotional Segmentation Strategy: An Intervention Promoting Work-Life Balance*, 87 *J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL.* 733 (2014).
- ²⁰⁶See, e.g., C. Fritz, A. M. Ellis, C. A. Demsky, B. C. Lin, & F. Guros, *Embracing Work Breaks: Recovery from Work Stress*, 42 *ORG. DYNAMICS* 274 (2013); N. P. Rothbard & S. V. Patil, *Being There: Work Engagement and Positive Organizational Scholarship*, in *THE OXFORD HANDBOOK OF POSITIVE ORGANIZATIONAL SCHOLARSHIP* 56-68 (K. S. Cameron & G. M. Spreitzer eds., Oxford University Press 2012).
- ²⁰⁷S. Sonnentag, C. Niessen, & A. Neff, *Recovery: Nonwork Experiences that Promote Positive States*, in Cameron & Spreitzer, *supra* note 206.
- ²⁰⁸BRAFFORD, *supra* note 131; V. C. Hahn, C. Binnewies, S. Sonnentag, & E. J. Mojza, *Learning How to Recover from Job Stress: Effects of a Recovery Training Program on Recovery, Recovery-Related Self-Efficacy, and Well-Being*, 16 *J. OCCUPATIONAL HEALTH PSYCHOL.* 202 (2011).
- ²⁰⁹J. W. Rook & F. R. H. Zijlstra, *The Contribution of Various Types of Activities to Recovery*, 15 *EUROPEAN J. WORK & ORGANIZATIONAL PSYCHOL.* 218 (2006).
- ²¹⁰M. Soderstrom, J. Jeding, M. Ekstedt, A. Perski, & T. Akerstedt, *Insufficient Sleep Predicts Clinical Burnout*, 17 *J. OCCUPATIONAL HEALTH PSYCHOL.* 175 (2012).
- ²¹¹J. E. Ferrie, M. J. Shipley, T. N. Akbaraly, M. G. Marmot, M. Kivimaki, & A. Singh-Manoux, *Change in Sleep Duration and Cognitive Function: Findings from the Whitehall II Study*, 34 *SLEEP* 565-73 (2011); B. Fryer, *Sleep Deficit: The Performance Killer*, *HARV. BUS. REV.*, Oct. 2006, available at <http://hbr.org/2006/10/sleep-deficit-the-performance-killer>; S. Maxon, *How Sleep Deprivation Decays the Mind and Body*, *THE ATLANTIC*, December 2013, available at <http://www.theatlantic.com/health/archive/2013/12/how-sleep-deprivation-decays-the-mind-and-body/282395>.
- ²¹²P. L. Franzen, & D. J. Buysse, *Sleep Disturbances and Depression: Risk Relationships for Subsequent Depression and Therapeutic Implications*, 10 *DIALOGUES IN CLINICAL NEUROSCIENCE* 473 (2008).

as antidepressant medication and psychotherapy.²¹³ In a review of strategies for preventing workplace depression, researchers found that interventions to increase physical activity were among the most effective.²¹⁴

Research also shows that physical exercise improves brain functioning and cognition. Physical activity, which stimulates new cell growth in the brain, can offset the negative effects of stress, which causes brain atrophy. Greater amounts of physical activity (particularly aerobic) have been associated with improvements in memory, attention, verbal learning, and speed of cognitive processing.²¹⁵ A growing body of evidence reflects that regular aerobic activity in middle age significantly reduces the risk of developing dementia and, in older age, can slow the progression of cognitive decline of those who already are diagnosed with Alzheimer's disease.²¹⁶

8.7 Leader Development and Training

Leader development and training is critically important for supporting lawyer well-being and optimal performance. Low-quality leadership is a major contributor to stress, depression, burnout, and other mental and physical health disorders.²¹⁷ Even seemingly low-level incivility by leaders can have a big impact on workers' health and motivation. Research found harmful effects from leaders, for example, playing favorites; criticizing unfairly; and failing to provide information, listen to problems, explain goals, praise good work, assist with professional development,

and show that they cared. On the other hand, positive leadership styles contribute to subordinates' mental health, work engagement, performance, and job satisfaction.²¹⁸ Many studies confirm that positive leader behaviors can be trained and developed.²¹⁹ Training is important for all levels of lawyers who supervise others. This is so because leaders with the most direct contact with subordinates have the most significant impact on their work experience.²²⁰ Subordinates' immediate leader drives almost 70 percent of their perceptions of the workplace.²²¹

8.8 Control and Autonomy

As noted in Recommendation 7, feeling a lack of control over work is a well-established contributor to poor mental health, including depression and burnout. A sense of autonomy is considered to be a basic psychological need that is foundational to well-being and optimal functioning.²²² Research confirms that leaders can be trained to be more autonomy-supportive.²²³ Other organizational practices that can enhance a sense of autonomy include, for example, structuring work to allow for more discretion and autonomy and encouraging lawyers to craft aspects of their jobs to the extent possible to best suit their strengths and interests.²²⁴

The benefits of autonomy-support are not limited to manager-subordinate relationships for legal employers. Research reflects that law students with autonomy-supportive professors and school cultures have higher well-being and performance.²²⁵ Lawyer-client relationships also

²¹³H. Chu, J. Buckworth, T. E. Kirby, & C. F. Emery, *Effect of Exercise Intensity on Depressive Symptoms in Women*, 2 MENTAL HEALTH AND PHYSICAL ACTIVITY 37 (2009); M. P. Herrington, M. L. Jacob, C. Suveg, & P. J. O'Connor, *Effects of Short-Term Exercise Training on Signs and Symptoms of Generalized Anxiety Disorder*, 4 MENTAL HEALTH & PHYSICAL ACTIVITY 71 (2011).

²¹⁴S. Joyce, M. Modini, H. Christensen, A. Mykletun, R. Bryant, P. B. Mitchell, & S. B. Harvey, *Workplace Interventions for Common Mental Disorders: A Systematic Meta-Review*, 46 PSYCHOL. MED. 683 (2016).

²¹⁵A. Kandola, J. Hendrikse, P. J. Lucassen, & M. Yücel, *Aerobic Exercise as A Tool to Improve Hippocampal Plasticity and Function in Humans: Practical Implications for Mental Health Treatment*, 10 FRONTIERS IN HUMAN NEUROSCIENCE 373 (2016).

²¹⁶*Id.*; J. E. Ahlskog, Y. E. Geda, N. R. Graff-Radford, & R. C. Petersen, *Physical Exercise as a Preventive or Disease-Modifying Treatment of Dementia and Brain Aging*, 86 MAYO CLINIC PROC. 876 (2011).

²¹⁷BRAFFORD, *supra* note 131; R. J. BURKE AND K. M. PAGE, RESEARCH HANDBOOK ON WORK AND WELL-BEING (2017); W. Lin, L. Wang, & S. Chen, *Abusive Supervision and Employee Well-Being: The Moderating Effect of Power Distance Orientation*, 62 APPLIED PSYCHOL.: AN INT'L REV. 308 (2013); E. K. Kelloway, N. Turner, J. Barling, & C. Loughlin, *Transformational Leadership and Employee Psychological Well-Being: The Mediating Role of Employee Trust in Leadership*, 26 WORK & STRESS 39 (2012).

²¹⁸E.g., A. Amankwaa & O. Anku-Tsede, *Linking Transformational Leadership to Employee Turnover: The Moderating Role of Alternative Job Opportunity*, 6 INT'L J. BUS. ADMIN. 19 (2015); J. Perko, U. Kinnunen, & T. Feldt, *Transformational Leadership and Depressive Symptoms Among Employees: Mediating Factors*, 35 LEADERSHIP & ORG. DEV. J. 286 (2014); M. Y. Ghadi, M. Fernando, & P. Caputi, *Transformational Leadership and Work Engagement*, 34 LEADERSHIP & ORG. DEV. J. 532 (2013).

²¹⁹E.g., B. J. Avolio & B. M. Bass, *You Can Drag a Horse to Water, But You Can't Make It Drink Except When It's Thirsty*, 5 J. LEADERSHIP STUDIES 1 (1998); K. E. Kelloway, J. Barling, & J. Helleur, *Enhancing Transformational Leadership: The Roles of Training and Feedback*, 21 LEADERSHIP & ORG. DEV. J. 145 (2000).

²²⁰D. J. Therkelsen & C. L. Fiebich, *The Supervisor: The Linchpin of Employee Relations*, 8 J. COMM. MGMT. 120 (2003).

²²¹R. Beck & J. Harter, *Managers Account for 70% of Variance in Employee Engagement*, GALLUP BUS. J., April 21, 2015, available at <http://www.gallup.com/businessjournal/182792/managers-account-variance-employee-engagement.aspx>.

²²²BRAFFORD, *supra* note 131; Y-L. Su & J. Reeve, *A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy*, 23 EDUC. PSYCHOL. REV. 159 (2011).

²²³*Id.*

²²⁴See G. R. Slemp & D. A. Vella-Brodrick, *Optimising Employee Mental Health: The Relationship Between Intrinsic Need Satisfaction, Job Crafting, and Employee Well-Being*, 15 J. HAPPINESS STUDIES 957 (2014); D. T. Ong & V. T. Ho, *A Self-Determination Perspective of Strengths Use at Work: Examining Its Determinant and Performance Implications*, 11 J. POSITIVE PSYCHOL. 15 (2016).

²²⁵E.g., Sheldon & Krieger, *supra* note 5; see also G. F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L.J. 367 (2008).

can be enhanced by autonomy-supportive behaviors by both parties. Lawyers respect client autonomy by, for example, taking full account of their perspectives, not interrupting, affording choice, offering information respectfully, providing a rationale for recommendations, sharing power in decision-making (when appropriate), and accepting clients' decisions.²²⁶ In the medical profession, this model of client-centered care has been found to result in better outcomes, patient satisfaction, and diminished risk of malpractice lawsuits.²²⁷

8.9 Conflict Management

Our legal system is adversarial—it's rooted in conflict. Even so, lawyers generally are not trained on how to constructively handle conflict and to adapt tactics based on context—from necessary work-related conflicts to inter-personal conflicts with clients, opposing counsel, colleagues, or loved ones.²²⁸ Conflict is inevitable and can be both positive and negative.²²⁹ But chronic, unmanaged conflict creates physical, psychological, and behavioral stress. Research suggests that conflict management training can reduce the negative stressful effects of conflict and possibly produce better, more productive lawyers.²³⁰

8.10 Work-Life Conflict

The stress of chronic work-life conflict can damage well-being and performance.²³¹ A study of a New Zealand law firm found that work-life conflict was the strongest predictor of lawyer burnout.²³² Similarly, a study of Australian lawyers found that preoccupation with work was the strongest predictor of depression.²³³ Research in the medical profession repeatedly has found that work-life

conflict contributes to burnout.²³⁴ A large scale study across a variety of occupations found that reports of work-life conflict increased the odds of poor physical health by 90 percent.²³⁵ On the other hand, work-life balance (WLB) benefits workers and organizations.²³⁶

WLB is a complex topic, but research provides guidance on how to develop a WLB-supportive climate. Adopting a formal policy that endorses flexibility is a threshold requirement. Such policies foster the perception of organizational support for flexibility, which is even more important to workers' experience of WLB than actual benefit use. Policies should not be restricted to work-family concerns and any training should emphasize support for the full range of work-life juggling issues. Narrow family-focused policies can create feelings of resentment by workers who have valued non-family commitment.

WLB initiatives cannot end with formal policies or people will doubt their authenticity and fear using them. For example, nearly all large firms report having a flexible schedule policy.²³⁷ But a recent survey of law firm lawyers found that use of flexibility benefits was highly stigmatizing.²³⁸ To benefit from WLB initiatives, organizations must develop a WLB-supportive climate. Research has identified multiple factors for doing so: (1) job autonomy, (2) lack of negative consequences for using WLB benefits, (3) level of perceived expectation that work should be prioritized over family, and (5) supervisor support for WLB. By far, the most important factor is the last. Supervisors communicate their support for WLB by, for example, creatively accommodating non-work-related needs, being empathetic with juggling efforts, and role modeling WLB behaviors.²³⁹

²²⁶G. C. Williams, R. M. Frankel, T. L. Campbell, & E. L. Deci, *Research on Relationship-Centered Care and Healthcare Outcomes from the Rochester Biopsychosocial Program: A Self-Determination Theory Integration*, 18 FAMILIES, SYS. & HEALTH 79 (2000).

²²⁷*Id.*; see also C. White, *The Impact of Motivation on Customer Satisfaction Formation: A Self-Determination Perspective*, 49 EUROPEAN J. MARKETING 1923 (2015).

²²⁸M. T. Colatrella, *A Lawyer for All Seasons: The Lawyer as Conflict Manager*, 49 SAN DIEGO L. REV. 93 (2012).

²²⁹A. Elwork & G. A. H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205 (1995).

²³⁰D. L. Haraway & W. M. Haraway, *Analysis of the Effect of Conflict-Management and Resolution Training on Employee Stress at a Healthcare Organization*, 83 HOSPITAL TOP-ICS 11 (2005); see also Colatrella, *supra* note 228.

²³¹BRAFFORD, *supra* note 131; D. A. MAJOR & R. BURKE, *HANDBOOK OF WORK-LIFE INTEGRATION AMONG PROFESSIONALS: CHALLENGES AND OPPORTUNITIES* (2013).

²³²Hopkins & Gardner, *supra* note 183.

²³³A. D. Joudrey & J. E. Wallace, *Leisure As A Coping Resource: A Test of the Job Demand-Control-Support Model*, 62 HUMAN RELATIONS 195 (2009).

²³⁴E.g., E. Amofo, N. Hanabali, A. Patel, & P. Singh, *What Are the Significant Factors Associated with Burnout in Doctors?*, 65 OCCUPATIONAL MED. 117 (2015).

²³⁵J. Goh, J. Pfefer, & S. A. Zenios, *Workplace Stressors & Health Outcomes: Health Policy for the Workplace*, 1 BEHAV. SCI. & POL'Y. 43 (2015).

²³⁶Major & Burke, *supra* note 231; S. L. Munn, *Unveiling the Work-Life System: The Influence of Work-Life Balance on Meaningful Work*

(FSSB), 35 J. MGMT. 837 (2009); L. B. Hammer, S. E. Van Dyck, & A. M. Ellis, *Organizational Policies Supportive of Work-Life Integration*, in Major & Burke, *supra* note 231;

²³⁷Press Release, *National Association for Law Placement, NALP Press Release on Part-Time Schedules* (Feb. 21, 2013), http://www.nalp.org/part-time_feb2013.

²³⁸K. M. Managan, E. Giglia, & L. Rowen, *Why Lawyers Leave Law Firms and What Firms Can Do About It*, L. PRAC. TODAY, April 14, 2016, <http://www.lawpracticetoday.org/article/why-lawyers-leave-law-firms-and-what-firms-can-do-about-it>.

²³⁹L. B. Hammer, E. E. Kossek, N. L. Yragui, T. E. Bodner, & G. C. Hanson, *Development and Validation of Multidimensional Measure of Family Supportive Supervisor Behaviors*

(FSSB), 35 J. MGMT. 837 (2009); L. B. Hammer, S. E. Van Dyck, & A. M. Ellis, *Organizational Policies Supportive of Work-Life Integration*, in Major & Burke, *supra* note 231;

E. E. Kossek, S. Pichler, T. Bodner, & L. B. Hammer, *Workplace Social Support and Work-Family Conflict: A Meta-Analysis Clarifying the Influence of General and Work-Family-Specific Supervisor and Organizational Support*, 64 PERSONNEL PSYCHOL. 289 (2011)

To support WLB, bar associations and regulators should work with legal employers to develop best practices and relevant training. Regulators and judges should consider whether any of their practices and policies can be modified to better support lawyer WLB.

8.11 Meaning and Purpose

Research has found that feeling that our lives are meaningful is important for physical and psychological wellness. It provides a buffer against stress.²⁴⁰ For example, meaning in life is associated with a reduced risk of anxiety, depression, substance use, suicidal ideation, heart attack, and stroke; slower cognitive decline in Alzheimer's patients; and lower overall mortality for older adults.²⁴¹

For many lawyers, an important part of building a meaningful life is through meaningful work. Experiencing our work as meaningful means that we believe that our work matters and is valuable. A large body of research shows that meaningfulness plays an important role in workplace well-being and performance.²⁴² Evidence suggests that the perception of meaningfulness is the strongest predictor of work engagement.²⁴³

Meaningfulness develops when people feel that their work corresponds to their values. Organizations can enhance the experience of fit and meaningfulness by, for example, fostering a sense of belonging; designing and framing

work to highlight its meaningful aspects; and articulating compelling goals, values, and beliefs.²⁴⁴

These same principles apply in law school. Studies in the college context have found that the majority of students want their educational experiences to be meaningful and to contribute to a life purpose.²⁴⁵ One study measured “psychological sense of community,” which was proposed as a foundation for students to find greater meaning in their educational experience. It was the strongest predictor of academic thriving in the study.²⁴⁶ Deterioration of law students’ sense of meaning may contribute to their elevated rate of psychological distress. Research reflects that, over the course of law school, many students disconnect from their values and become emotionally numb.²⁴⁷

8.12. Substance Use and Mental Health Disorders

Recommended content for training on substance use and mental disorders is outlined above in Recommendation 8 in the body of this report.

8.13. Additional Topics

Many topics are possible for programming aimed at boosting work engagement and overall well-being (through resource-development) and curbing stress and burnout (by limiting demands) or otherwise promoting lawyer well-being. Additional topics to consider include: psychological

²⁴⁰BRAFFORD, *supra* note 131; P. Halama, *Meaning in Life and Coping: Sense of Meaning as a Buffer Against Stress*, in MEANING IN POSITIVE AND EXISTENTIAL PSYCHOLOGY 239-50 (A. Batthyany and P. Russo-Netzer eds., 2014).

²⁴¹E. S. Kim, J. K. Sun, N. Park, C. Peterson, *Purpose in Life and Reduced Incidence of Stroke in Older Adults: The Health and Retirement Study*, 74 J. PSYCHOSOMATIC RES. 427 (2013); M. F. Steger, A. R. Fitch-Martin, J. Donnelly, & K. M. Rickard, *Meaning in Life and Health: Proactive Health Orientation Links Meaning in Life to Health Variables Among American Undergraduates*, 16 J. HAPPINESS STUDIES 583 (2015); M. F. Steger, P. Frazier, S. Oishi, M. Kaler, *The Meaning in Life Questionnaire: Assessing the Presence of and Search for Meaning in Life*, 53 J. COUNSELING PSYCHOL. 80 (2006).

²⁴²E.g., S. Albrecht, *Meaningful Work: Some Key Questions for Research and Practice*, in FLOURISHING IN LIFE, WORK AND CAREERS: INDIVIDUAL WELLBEING AND CAREER EXPERIENCES (R. J. Burke, K. M. Page, & C. Cooper eds., 2015); B. D. Rosso, K. H. Dekas, & A. Wrzesniewski, *On the Meaning of Work: A Theoretical Integration and Review*, 30 RES. IN ORGANIZATIONAL BEHAV. 91 (2010).

²⁴³D. R. May, R. L. Gilson, & L. M. Harter, *The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work*, 77 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 11 (2004); P. Fairlie, *Meaningful Work, Employee Engagement, and Other Key Employee Outcomes: Implications for Human Resource Development*, 13 ADVANCED IN DEVELOPING HUMAN RESOURCES 508 (2011).

²⁴⁴BRAFFORD, *supra* note 131; M. G. Pratt & B. E. Ashforth, *Fostering Meaningfulness*, in Cameron, Dutton, & Quinn, *supra* note 32; D. J. Cleavenger & T. P. Munyon, *It's How You Frame It: Transformational Leadership and the Meaning of Work*, 56 BUS. HORIZONS 351 (2013); W. Kahn & S. Fellows, *Employee Engagement and Meaningful Work*, in PURPOSE AND MEANING IN THE WORKPLACE 105-26 (B. J. Dik, Z. S. Byrne, & M. F. Steger eds., 2013).

²⁴⁵S. J. DeWitz, M. L. Woolsey, W. B. Walsh, *College Student Retention: An Exploration of the Relationship Between Self-Efficacy Beliefs, and Purpose in Life among College Students*, 50 J. C. STUDENT DEV. 19 (2009); HIGHER EDUC. RES. INST., *THE SPIRITUAL LIFE OF COLLEGE STUDENTS* (2005), available at http://spirituality.ucla.edu/docs/reports/Spiritual_Life_College_Students_Full_Report.pdf; see also J. K. Coffey, L. Wray-Lake, D. Mashek, & B. Branand, *A Longitudinal Examination of a Multidimensional Well-Being Model in College and Community Samples*, 17 J. HAPPINESS STUDIES 187 (2016).

²⁴⁶Eric James McIntosh, *Thriving in College: The Role of Spirituality and Psychological Sense of Community in Students of Color* (2012) (unpublished Ph.D. dissertation, Azusa Pacific University).

²⁴⁷Sheldon & Krieger, *supra* note 154.

capital (composed of optimism, self-efficacy, hope, and resilience),²⁴⁸ psychological hardiness (composed of commitment, control, and challenge),²⁴⁹ stress mindset,²⁵⁰ growth mindset,²⁵¹ grit,²⁵² effort-reward balance,²⁵³ transformational leadership,²⁵⁴ self-determination theory,²⁵⁵ strengths-based management,²⁵⁶ emotional intelligence and regulation,²⁵⁷ organizational fairness,²⁵⁸ nutrition,²⁵⁹ interpersonal skills,²⁶⁰ and political skills.²⁶¹

²⁴⁸E.g., Avey, Luthans, & Jensen, *supra* note 181.

²⁴⁹S. R. Maddi, S. Kahn, & K. L. Maddi, *The Effectiveness of Hardiness Training*, 50 CONSULTING PSYCHOL. J.: PRAC. & RES. 78 (1998).

²⁵⁰Crum, Salovey, Achor, *supra* note 50; McGonigal, *supra* note 182.

²⁵¹C. S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2008).

²⁵²A. DUCKWORTH, GRIT: THE POWER OF PASSION AND Perseverance (2016).

²⁵³A. Allisey, J. Rodwell, & A. Noblet, *Personality and the Effort-Reward Imbalance Model of Stress: Individual Differences in Reward Sensitivity*, 26 WORK & STRESS 230 (2012).

²⁵⁴M. Y. Ghadi, M. Fernando, & P. Caputi, *Transformational Leadership and Work Engagement*, 34 LEADERSHIP & ORG. DEV. J. 532 (2013).

²⁵⁵Krieger & Sheldon, *supra* note 5.

²⁵⁶D. O. Clifton & J. K. Harter, *Investing in Strengths*, in Cameron, Dutton, & Quinn, *supra* note 32.

²⁵⁷C. Miao, R. H., Humphrey, & S. Qian, *Leader Emotional Intelligence and Subordinate Job Satisfaction: A Meta-Analysis of Main, Mediator, and Moderator Effects*, 102 PERSONALITY AND INDIVIDUAL DIFFERENCES 13 (2016); K. Thory, *Teaching Managers to Regulate Their Emotions Better: Insights from Emotional Intelligence Training and Work-Based Application*, 16 HUMAN RESOURCE DEV. INT'L 4 (2013); R. E. Riggio, *Emotional Intelligence and Interpersonal Competencies*, in SELF-MANAGEMENT AND LEADERSHIP DEVELOPMENT 160-82 (M. G. Rothstein, R. J. Burke eds., 2010).

²⁵⁸J. Greenberg, *Positive Organizational Justice: From Fair to Fairer—and Beyond*, in EXPLORING POSITIVE RELATIONSHIPS AT WORK: BUILDING A THEORETICAL AND RESEARCH FOUNDATION 159-78 (J. E. Dutton & B. R. Ragins eds., 2007).

²⁵⁹T. RATH, EAT, MOVE, SLEEP (2013).

²⁶⁰J. Mencl, A. J. Wefald, & K. W. van Ittersum, *Transformational Leader Attributes: Interpersonal Skills, Engagement, and Well-Being*, 37 LEADERSHIP & ORG. DEV. J. 635 (2016).

²⁶¹*Id.*; C. C. Rosen & D. C. Ganster, *Workplace Politics and Well-Being: An Allostatic Load Perspective*, in IMPROVING EMPLOYEE HEALTH AND WELL-BEING 3-23 (A. M. Rossi, J. A. Meurs, P. L. Perrewa eds., 2014); Ferris, Daniels, & Sexton, *supra* note 40.

Appendix to Recommendation 9: Guide and Support The Transition of Older Lawyers.

Recommendation 9 advised stakeholders to create programs for detecting and addressing cognitive decline in lawyers, develop succession plans for aging lawyers, and develop reorientation programs to support lawyers facing retirement. Such initiatives and programs may include the following:

- Gathering demographic information about the lawyer population, including years in practice, the nature of the practice, the size of the firm in which the lawyer's practice is conducted, and whether the lawyer has engaged in any formal transition or succession planning for the lawyer's practice;
- Working with medical professionals to develop educational programs, checklists, and other tools to identify lawyers who may be experiencing incapacity issues;
- Developing and implementing educational programs to inform lawyers and their staff members about incapacity issues, steps to take when concerns about a lawyer's incapacity are evident, and the importance of planning for unexpected practice interruptions or the cessation of practice;
- Developing succession or transition planning manuals and checklists, or planning ahead guidelines for lawyers to use to prepare for an unexpected interruption or cessation of practice;²⁶²
- Enacting rules requiring lawyers to engage in succession planning;
- Providing a place on each lawyer's annual license renewal statement for the lawyer to identify whether the lawyer has engaged in succession and transition planning and, if so, identifying the person, persons or firm designated to serve as a successor;
- Enacting rules that allow senior lawyers to continue to practice in a reduced or limited license or emeritus capacity, including in pro bono and other public service representation;
- Enacting disability inactive status and permanent retirement rules for lawyers whose incapacity does not warrant discipline, but who, nevertheless, should not be allowed to practice law;
- Developing a formal, working plan to partner with Judges and Lawyer Assistance Programs to identify, intervene, and assist lawyers demonstrating age-related or other incapacity or impairment.²⁶³
- Developing "re-orientation" programs to proactively engage lawyers in transition planning with topics to include:
 - financial planning;
 - pursuing "bridge" or second careers;
 - identity transformation;
 - developing purpose in life;
 - cognitive flexibility;
 - goal-setting;
 - interpersonal connection;
 - physical health;
 - self-efficacy;
 - perceived control, mastery, and optimism.²⁶⁴

²⁶²See, e.g., N. M. SUP. CT. LAW. SUCCESSION & TRANSITION COMM. SUCCESSION PLANNING HANDBOOK FOR N. M. LAW. (2014), available at <http://www.nmbar.org/NmbarDocs/forMembers/Succession/SuccessionHandbook.pdf>; W. VA. STATE BAR, SUCCESSION PLANS, available at <http://wvbar.org/wp-content/uploads/2012/04/succession.pdf>; WASH. STATE BAR ASS'N, SUCCESSION PLANNING, available at <http://www.wsba.org/Resources-and-Services/Ethics/Succession-Planning>.

²⁶³See generally W. Slease, et al., *supra* note 60.

²⁶⁴See, e.g., S. D. Asebedo & M. C. Seay, *Positive Psychological Attributes and Retirement Satisfaction*, 25 J. FIN. COUNSELING & PLANNING 161 (2014); Dingemans & Henkens, *supra* note 64; Houliort, Fernet, Vallerand, Laframboise, Guay, & Koestner, *supra* note 62; Muratore & Earl, *supra* note 64.

Appendix to Recommendation 25: Topics for Legal Employers' Audit of Well-Being Related Policies and Practices

Legal employers should consider topics like the following as part of their audits of current policies and practices to evaluate whether the organization adequately supports lawyer well-being.

MENTAL HEALTH & SUBSTANCE USE DISORDERS

- Is there a policy regarding substance use, mental health, and impairment? If so, does it need updating?
- Does the policy explain lawyers' ethical obligations relating to their own or colleagues' impairment?
- Is there a leave policy that would realistically support time off for treatment?
- Are there meaningful communications about the importance of well-being?
- Do health plans offered to employees include coverage for mental health and substance use disorder treatment?

LAW PRACTICE MANAGEMENT PRACTICES AFFECTING LAWYER WELL-BEING

- **Assessment of Well-Being:** Is there a regular practice established to assess work engagement, burnout, job satisfaction, turnover intentions, psychological well-being, or other indicators of well-being and to take action on the results?
- **Orientation Practices:** Are orientation practices established to set new lawyers up for success, engagement, and well-being?
- **Work-Life Balance-Related Policies & Practices:** Is there a policy that allows flexibility and an organizational climate that supports it? Is it a practice to recognize lawyers and staff who demonstrate a high standard of well-being?
- **Diversity/Inclusion-Related Policies & Practices:** Diversity and inclusion practices impact lawyer well-being. Are policies and practices in place with a specific mission that is adequately funded?²⁶⁵
- **24/7 Availability Expectations:** Do practices allow lawyers time for sufficient rejuvenation? Are response-time expectations clearly articulated and reasonable? Is there an effort to protect time for lawyers to recover from work demands by regulating work-related calls and emails during evenings, weekends, and vacations?²⁶⁶

²⁶⁵For example, a 2015 report found that most larger firms have some type of diversity training (80 percent) and all participating firms reported having a women's affinity group. But the report also found that affinity groups were "woefully underfunded" and lacking clear goals and missions. See L. S. RIKLEEN, REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS, NAT'L ASSOC. OF WOMEN LAWYERS FOUND. (2015), available at <http://www.nawl.org/2015nawlsurvey>.

²⁶⁶For example, McDonald's and Volkswagen—along with one in four U.S. companies—have agreed to stop sending emails to employees after hours. See Fritz, Ellis, Demsky, Lin, & Guros, *supra* note 206. In in the highly-demanding world of law, firms should consider the possibility of establishing new norms for lawyers that limit after-hours emails and calls to actual emergencies—especially to associates who have less work-related autonomy and, thus, are at a higher risk for fatigue and burnout.

- **Billing Policies & Practices:** Do billing practices encourage excessive work and unethical behavior?²⁶⁷
- **Compensation Practices:** Are compensation practices fair? And are they perceived as fair? Do they follow standards of distributive (fair outcome), procedural (fair process), interpersonal (treating people with dignity and respect), and informational (transparency) fairness? Perceived unfairness in important practices can devastate well-being and motivation. For example, a large-scale study found that people were 50 percent more likely to have a diagnosed health condition if they perceived unfairness at work.²⁶⁸ Further, high levels of interpersonal and informational fairness should not be ignored—they can reduce the negative effect of less fair procedures and outcomes.²⁶⁹
- **Performance Appraisal Practices:** Are performance appraisal practices fair and perceived as fair? Are observations about performance regularly noted to use in the review? Do multiple raters contribute? Are they trained on the process and to reduce common biases?²⁷⁰ Is feedback given in a two-way communication? Is specific, timely feedback given regularly, not just annually? Is feedback empathetic and focused on behavior not the person's worth? Is good performance and progress toward goals

regularly recognized? Is goal-setting incorporated?²⁷¹ Is performance feedback balanced and injected with positive regard and respect to improve likelihood of acceptance?²⁷² Are lawyers asked to describe when they feel at their best and the circumstances that contribute to that experience?²⁷³ Carefully managing this process is essential given evidence that bungled performance feedback harms well-being and performance.

- **Vacation Policies & Practices:** Is there a clear vacation policy? Does the organizational culture encourage usage and support detachment from work? In their study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days taken was the strongest predictor of well-being among all activities measured in the study. It was a stronger predictor of well-being even than income level.²⁷⁴ This suggests that legal employers should encourage taking of vacation—or at least not discourage or unreasonably interfere with it.

²⁶⁷ABA COMM'N ON BILLABLE HOURS, AM. BAR ASS'N, THE CORROSIVE IMPACT OF EMPHASIS ON BILLABLE HOURS (2001-2002), available at http://ita.personifycloud.com/webfiles/productfiles/914311/FMPG4_ABABillableHours2002.pdf.

²⁶⁸J. Goh, J. Pfefer, & S. A. Zenios, *Workplace Stressors & Health Outcomes: Health Policy for the Workplace*, 1 BEHAV. SCI. & POL'Y. 43 (2015); see also R. M. Herr, A. Loerbrooks, J. A. Bosch, M. Seegel, M. Schneider, & B. Schmidt, *Associations of Organizational Justice with Tinnitus and the Mediating Role of Depressive Symptoms and Burn-out—Findings from a Cross-Sectional Study*, 23 INT'L J. BEHAV. MED. 190 (2016).

²⁶⁹J. Greenberg, *Promote Procedural and Interactional Justice to Enhance Individual and Organizational Outcomes*, in Locke, *supra* note 7, 255-71; T. R. Tyler & E. A. Lind, *A Relational Model of Authority in Groups*, in *Advances in Experimental Social Psychology* 115-91 (M. P. Zanna ed., 1st ed., 1992).

²⁷⁰F. Luthans & A. Stajkovic, *Provide Recognition for Performance Improvement*, in Locke, *supra* note 7, 239-53.

²⁷¹A. N. Kluger, & N. DeNisi, *The Effects of Feedback Interventions on Performance: A Historical Review, a Meta-Analysis, and a Preliminary Feedback Intervention Theory*, 119 PSYCHOL. BULL. 254 (1996).

²⁷²O. Bouskila-Yam & A. N. Kluger, *Strengths-Based Performance Appraisal and Goal Setting*, 21 HUMAN RES. MGMT. REV. 137 (2011).

²⁷³A. N. Kluger & D. Nir, *The Feedforward Interview*, 20 HUMAN RESOURCES MGMT. REV. 235 (2010).

²⁷⁴Krieger & Sheldon, *supra* note 5.

Appendix to Recommendation 33.2: Creating a Well-Being Course and Lecture Series for Law Students

Recommendation 33.2 suggests that law schools design a lecture series dedicated to well-being topics. In 2007, the Carnegie Foundation for the Advancement of Teaching issued a report titled *Educating Lawyers: Preparation for the Profession of Law* (referred to as the “Carnegie Report”). The Carnegie Report describes three “apprenticeships” in legal education: (1) the intellectual apprenticeship, where students acquire a knowledge base; (2) the practice apprenticeship, where students learn practical legal skills; and (3) the professional identity apprenticeship, where students cultivate the attitudes and values of the legal profession.²⁷⁵ The 2016 *Foundations for Practice Report* by the Institute for the Advancement of the American Legal System recommends that law schools teach character attributes including courtesy, humility, respect, tact, diplomacy, sensitivity, tolerance, and compassion; and self-care and self-regulation skills such as positivity and managing stress; exhibiting flexibility, adaptability, and resilience during challenging circumstances; and decision-making under pressure. A well-being course can address the *Foundations for Practice Report* recommendations while helping law students develop a professional identity that encompasses

a commitment to physical and mental well-being.

Appendix B includes topics that could be incorporated into a well-being course for law students. The list below includes additional topics and provides suggested student readings in the footnotes:

- Basic Wellbeing and Stress Reduction;²⁷⁷
- Cognitive Well-being and Good Nutrition;²⁷⁸
- Restorative Practices, such as Mindfulness, Meditation, Yoga, and Gratitude;²⁷⁹
- The Impact of Substances such as Caffeine, Alcohol, Nicotine, Marijuana, Adderall, Ritalin, Cocaine, and Opiates on Cognitive Function;²⁸⁰
- “Active bystander” training that educates students about how to detect when their fellow students may be in trouble with respect to mental health disorders, suicidal thinking, or substance use and what action to take;
- Cultivating a Growth Mindset;²⁸¹
- Improving Pathway (strategies for identifying goals and plans for reaching them) and Agency (sustaining motivation to achieve objectives) Thinking;²⁸²

²⁷⁵SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING (2007).

²⁷⁶A. Gerkman & L. Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. 30, 33 (2016), available at <http://aals.diu.edu/foundations/reports/whole-lawyer-and-character-quotient>.

²⁷⁷See L. S. KRIEGER, THE HIDDEN SOURCES OF LAW SCHOOL STRESS: AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS (2014); D. S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 828-37 (2013); M. Silver, *Work & Well-Being*, in LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL LEGAL EDUCATION (L. Wortham, A. Scheer, N. Maurer, & S. L. Brooks eds., 2016).

²⁷⁸D. S. Austin, *Food for Thought: The Neuroscience of Nutrition to Fuel Cognitive Performance*, OR. L. REV. (forthcoming 2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808100.

²⁷⁹Austin, *supra* note 277, at 837-847; see S. L. Rogers, *Mindfulness and the Importance of Practice*, 90 FLA. B. J. (April 2016); see S. L. Rogers, *Mindfulness in Law*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS (A. Le, C. Ngoumen & E. Langer eds., 2014); see T. K. Brostoff, *Meditation for Law Students: Mindfulness Practice as Experiential Learning*, 41 L. & PSYCHOL. REV. (forthcoming 2017), online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2836923; see J. CHO & K. GIFFORD, THE ANXIOUS LAWYER: AN 8-WEEK GUIDE TO A JOYFUL AND SATISFYING LAW PRACTICE THROUGH MINDFULNESS AND MEDITATION (2016); see G. MUMFORD, THE MINDFUL ATHLETE: SECRETS TO PURE PERFORMANCE (2015); M. Silver, *supra* note 277.

²⁸⁰See D. S. Austin, *Drink Like a Lawyer: The Neuroscience of Substance Use and Its Impact on Cognitive Wellness*, 15 NEV. L.J. 826 (2015).

²⁸¹D. S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. at 22-25 (forthcoming 2018), abstract available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2928329; see C. S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2008).

²⁸²Austin, *supra* note 280, at 826-27.

- Enhancing Emotion Regulation;²⁸³
- Fostering Optimism and Resilience;²⁸⁴
- Preparing for a Satisfying Legal Career;²⁸⁵
- Developing Strong Lawyering Values, such as Courage, Willpower, and Integrity;²⁸⁶
- Work Life Balance in the Law;²⁸⁷ and
- Lawyers as Leaders.²⁸⁸

Many resources for teaching well-being skills are available to legal educators in the online AALS Balance in Legal Education Bibliography.²⁸⁹ Expert guest speakers can be found in the AALS Balance in Legal Education section,²⁹⁰ and at local lawyer assistance programs and lawyer well-being committees.

²⁸³See S. Daicoff, *Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 79 (M. A. Silver ed., 2007); see D. S. Austin & R. Durr, *Emotion Regulation for Lawyers: A Mind is a Challenging Thing to Tame*, 16 WYO. L. REV. 826 (2015); M. A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147 (2009).

²⁸⁴See S. KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (10th ed., 2011); see S. ACHOR, THE HAPPINESS ADVANTAGE: THE SEVEN PRINCIPLES OF POSITIVE PSYCHOLOGY THAT FUEL SUCCESS AND PERFORMANCE AT WORK (2010); see S. ACHOR, BEFORE HAPPINESS: THE 5 HIDDEN KEYS TO ACHIEVING SUCCESS, SPREADING HAPPINESS, AND SUSTAINING POSITIVE CHANGE (2013); see A. DUCKWORTH, GRIT: THE POWER OF PASSION AND PERSEVERANCE (2016).

²⁸⁵See L. S. KRIEGER, A DEEPER UNDERSTANDING OF YOUR CAREER CHOICES: SCIENTIFIC GUIDANCE FOR A FULFILLING LIFE AND CAREER (2007); see N. LEVIT & D. O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW (2010); see P. H. Huang & R. Swedloff, *Authentic Happiness and Meaning at Law Firms*, 58 SYRACUSE L. REV. 335 (2008); M. Silver, *supra* note 260.

²⁸⁶See D. O. LINDER & N. LEVIT, THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW (2014); see G. Duhaime, *Practicing on Purpose: Promoting Personal Wellness and Professional Values in Legal Education*, 28 TOURO L. REV. 1207 (2012).

²⁸⁷L. L. Cooney, *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 47 SAN DIEGO L. REV. 421 (2010).

²⁸⁸See P. H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUSTON L. REV. (forthcoming 2017), abstract available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2907513; Austin, *supra* note 281, at 44-49.

²⁸⁹See AALS, *supra* note 145.

²⁹⁰See AALS, *supra* note 144.

BIOGRAPHIES OF TASK FORCE MEMBERS AND TASK FORCE REPORT AUTHORS AND EDITORS

The Report of the National Task Force on Lawyer Well-Being was primarily authored and edited by the Task Force members, whose biographies are below. The Task Force members were assisted in the creation of the Report by a team that included liaisons, contributing authors, peer reviewers, and individuals who contributed in a variety of other important capacities. Their biographies also are provided below.

BREE BUCHANAN (CO-CHAIR, EDITOR, AUTHOR)

Bree Buchanan, J.D., is Director of the Texas Lawyers Assistance Program of the State Bar of Texas. She serves as co-chair of the National Task Force on Lawyer Wellbeing and is an advisory member of the ABA Commission on Lawyers Assistance Programs (CoLAP). Ms. Buchanan is also the appointed chair of CoLAP for 2017-2018.

Ms. Buchanan, upon graduation from the University of Texas School of Law, practiced in the public and private sector with a focus on representing both adult and child victims of family violence. She worked on public policy initiatives and systems change at both the state and federal level as the Public Policy Director for the Texas Council on Family Violence and the National Domestic Violence Hotline. After this position, Ms. Buchanan was appointed Clinical Professor and Co-Director of the Children's Rights Clinic at the University of Texas School of Law.

Ms. Buchanan is a frequent speaker at CLE programs for national organizations, as well as for state and local bar entities. She is a graduate student at the Seminary of the Southwest where she is pursuing a Masters in Spiritual Direction, and is the proud parent of a senior at New York University. Ms. Buchanan tends to her own well-being by

engaging in a regular meditation practice, rowing, staying connected to 12-Step recovery, and being willing to ask for help when she needs it.

JAMES C. COYLE (CO-CHAIR, EDITOR, AUTHOR)

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court. Mr. Coyle oversees attorney admissions, attorney registration, mandatory continuing legal and judicial education, attorney discipline and diversion, regulation of the unauthorized practice of law, and inventory counsel matters. Mr. Coyle has been a trial attorney with the Office of Disciplinary Counsel or successor Office of Attorney Regulation Counsel since 1990. Prior to that, he was in private practice. He served on the National Organization of Bar Counsel (NOBC) board of directors from 2014 – 2016. Mr. Coyle was on the Advisory Committee to the ABA Commission on Lawyer Assistance Programs and is now a member of the Commission for the 2017 – 2018 term.

Mr. Coyle is active in promoting proactive regulatory programs that focus on helping lawyers throughout the stages of their careers successfully navigate the practice of law and thus better serve their clients. This includes working on and co-hosting the first ABA Center for Professional Responsibility (CPR)/NOBC/Canadian Regulators Workshops on proactive, risk-based regulatory programs, in Denver in May 2015, in Philadelphia in June 2016, and St. Louis in June 2017; participating in the NOBC Program Committee and International Committee, including as Chair of the Entity Regulation Subcommittee, now known as the Proactive Management-Based Programs Committee; and prior service on the NOBC Aging Lawyers and Permanent Retirement subcommittees. Mr. Coyle tends to his own well-being through gardening, exercise, and dreaming about retirement.

ANNE BRAFFORD (EDITOR-IN-CHIEF, AUTHOR)

Anne Brafford served as the Editor-in-Chief for the Task Force Report on Lawyer Well-Being. Anne is the Chairperson of the American Bar Association Law Practice Division's Attorney Well-Being Committee. She is a founding member of Aspire, an educational and consulting firm for the legal profession (www.aspire.legal). In 2014, Anne left her job as an equity partner at Morgan, Lewis & Bockius LLP after 18 years of practice to focus on thriving in the legal profession. Anne has earned a Master's degree in Applied Positive Psychology (MAPP) from the University of Pennsylvania and now is a PhD student in positive organizational psychology at Claremont Graduate University (CGU). Anne's research focuses on lawyer thriving and includes topics like positive leadership, resilience, work engagement, meaningful work, motivation, and retention of women lawyers. She also is an Assistant Instructor in the MAPP program for Dr. Martin Seligman and, for two years, was a Teaching Assistant at CGU for Dr. Mihaly Csikszentmihalyi, the co-founders of positive psychology. Look for her upcoming book to be published this fall by the American Bar Association's Law Practice Division called *Positive Professionals: Creating High-Performing, Profitable Firms Through The Science of Engagement*. It provides practical, science-backed advice on boosting work engagement for lawyers. Anne can be reached at abracford@aspire.legal, www.aspire.legal.

JOSH CAMSON (EDITOR, AUTHOR)

Josh Camson is a criminal defense attorney with Camson Law, LLC in Collegeville, Pennsylvania. He is a member of the Pennsylvania Bar Association Ethics Committee and the ABA Standing Committee on Professionalism. He is a former long-time staff writer for Lawyerist.com, a law practice management blog and the former editor of BitterLawyer.com, a comedy site for lawyers and law students.

CHARLES GRUBER (AUTHOR)

Charles A. Gruber is a solo practitioner in Sandy, Utah. He is a graduate of the University of Texas Law School. He is licensed to practice law in Utah and California. His areas of practice are personal injury, medical malpractice, and legal malpractice.

A former attorney with the Utah State Bar Office of Professional Conduct, Mr. Gruber represents and advises attorneys on ethics issues. A former member of the NOBC,

he currently is a member of APRL. He serves on the Board of Utah Lawyers Helping Lawyers. Utah Lawyers Helping Lawyers is committed to rendering confidential assistance to any member of the Utah State Bar whose professional performance is or may be impaired because of mental illness, emotional distress, substance abuse or any other disabling condition or circumstance.

Mr. Gruber tends to his own well being by trying to remember and follow the suggestions of the 11th step of the 12 Steps.

As we go through the day we pause, when agitated or doubtful, and ask for the right thought or action. We constantly remind ourselves we are no longer running the show, humbly saying to ourselves many times each day "They will be done". We are then in much less danger of excitement, fear, anger, worry, self-pity, or foolish decisions. We become much more efficient. We do not tire so easily, for we are not burning up energy foolishly as we did when we were trying to arrange life to suit ourselves. Big Book pg. 87-88.

TERRY HARRELL (AUTHOR)

Terry Harrell completed her undergraduate degree in psychology at DePauw University in 1986 and completed her law degree at Maurer School of Law in 1989. Following law school she practiced law with Ice Miller and then clerked for Judge William I. Garrard on the Indiana Court of Appeals.

In 1993 she completed her Master of Social Work Degree (MSW) at Indiana University. Terry is a Licensed Clinical Social Worker (LCSW), a Licensed Clinical Addictions Counselor (LCAC) in Indiana, and has a Master Addictions Counselor certification from NAADAC. In 1992 Terry began working for Midtown Community Mental Health Center. While there she worked in a variety of areas including inpatient treatment, crisis services, adult outpatient treatment, wrap around services for severely emotionally disturbed adolescents, and management. In 2000 Terry began working as the Clinical Director for JLAP and in 2002 became the Executive Director.

From 2007 through 2010 Terry served on the Advisory Committee to the American Bar Association's Commission on Lawyer Assistance Programs (CoLAP).

She served from 2010 through 2013 as a commissioner on CoLAP. She is past Chair of the Senior Lawyer Assistance Subcommittee for CoLAP and an active member of the CoLAP National Conference Planning Committee. In August 2014 Terry became the first ever LAP Director to be appointed Chair of the ABA Commission on Lawyer Assistance Programs. Locally, Terry is a member of the Indiana State Bar Association and is active with the Professional Legal Education Admission and Development Section, the Planning Committee for the Solo Small Firm Conference, and the Wellness Committee.

DAVID B. JAFFE (AUTHOR)

David Jaffe is Associate Dean for Student Affairs at American University Washington College of Law. In his work on wellness issues among law students over the last decade, he has served on the D.C. Bar Lawyer Assistance Program including as its chair, and continues to serve on the ABA Commission on Lawyer Assistance Programs (CoLAP) as co-chair of the Law School Assistance Committee. Jaffe co-authored "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", reporting the results of a survey he co-piloted in 2014. He also produced the "Getting Health, Staying Healthy" video that is used as a resource in many Professional Responsibility classes around the country, and is responsible for modernizing the "Substance Abuse & Mental Health Toolkit for Law Students and Those Who Care About Them".

Jaffe has presented frequently on law student wellness, including to the National Conference of Bar Examiners, the ABA Academic Deans, the ABA Young Lawyers Division, CoLAP, AALS, the D.C. Bar, and NALSAP. He received the 2015 CoLAP Meritorious Service Award in recognition of his commitment to improving the lives of law students, and the 2009 Peter N. Kutulakis Award from the AALS Student Services Section for outstanding contributions to the professional development of law students. Jaffe states that he seeks self-care each day by being in the moment with each of his two daughters.

TRACY L. KEPLER (AUTHOR)

Tracy L. Kepler is the Director of the American Bar

Association's Center for Professional Responsibility (CPR), providing national leadership in developing and interpreting standards and scholarly resources in legal and judicial ethics, professional regulation, professionalism and client protection. In that role, she manages and coordinates the efforts of 18 staff members and 13 entities including five ABA Standing Committees (Ethics, Professionalism, Professional Regulation, Client Protection, and Specialization), the ABA/BNA Lawyers' Manual on Professional Conduct, the Center's Coordinating Council and other Center working committees.

From 2014-2016, Ms. Kepler served as an Associate Solicitor in the Office of General Counsel for the U.S. Patent & Trademark Office (USPTO), where she concentrated her practice in the investigation, prosecution and appeal of patent/trademark practitioner disciplinary matters before the Agency, U.S. District Courts and Federal Circuit, provided policy advice on ethics and discipline related matters to senior management, and drafted and revised Agency regulations. From 2000-2014, she served as Senior Litigation Counsel for the Illinois Attorney Registration and Disciplinary Commission (ARDC), where she investigated and prosecuted cases of attorney misconduct.

From 2009-2016, Ms. Kepler served in various capacities, including as President, on the Board of the National Organization of Bar Counsel (NOBC), a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States and abroad. Ms. Kepler also taught legal ethics as an Adjunct Professor at American University's Washington College of Law. Committed to the promotion and encouragement of professional responsibility throughout her career, Ms. Kepler has served as the Chair of the CPR's CLE Committee and its National Conference Planning Committee, and is a frequent presenter of ethics related topics to various national, state and local organizations. She has also served as the NOBC Liaison to the ABA CPR Standing Committees, and to the ABA Commission on Lawyer Assistance Programs (CoLAP), where she was a Commission member, a member of its Advisory Committee, the Chair of its Education and Senior Lawyer Committees, and also a member of its National Conference Planning Committee. Ms. Kepler also participates as a

faculty member for the National Institute of Trial Advocacy (NITA) trial and deposition skills programs, and served as the Administrator of the NOBC-NITA Advanced Advocates Training Program from 2011-2015. She is a graduate of Northwestern University in Evanston, Illinois, and received her law degree from New England School of Law in Boston, Massachusetts.

PATRICK KRILL (AUTHOR)

A leading authority on the addiction and mental health problems of lawyers, Patrick is the founder of Krill Strategies, a behavioral health consulting firm exclusively for the legal profession. Patrick is an attorney, licensed and board certified alcohol and drug counselor, author, and advocate. His groundbreaking work in the field of attorney behavioral health includes initiating and serving as lead author of the first and only national study on the prevalence of attorney substance use and mental health problems, a joint undertaking of the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation that was published in *The Journal of Addiction Medicine*.

Patrick is the former director of the Hazelden Betty Ford Foundation's Legal Professionals Program, where he counseled many hundreds of legal professionals from around the country who sought to better understand and overcome the unique challenges faced on a lawyer's road to recovery. He has authored more than fifty articles related to addiction and mental health, and has been quoted in dozens of national and regional news outlets, including the *New York Times*, *Wall Street Journal*, *Washington Post*, *Chicago Tribune*, and countless legal industry trade publications and blogs. As a frequent speaker about addiction and its intersection with the law, Patrick has taught multiple graduate-level courses in addiction counseling, and has spoken, lectured, or conducted seminars for over one hundred organizations throughout the United States, including professional and bar associations, law firms, law schools, and corporations.

Patrick maintains his own wellbeing by prioritizing his personal relationships and exercising daily. Whether it be hiking, yoga, or weight lifting, his secret to managing stress is a dedication to physical activity. Patrick can be reached at patrick@prkrill.com, www.prkrill.com.

CHIEF JUSTICE DONALD W. LEMONS, SUPREME COURT OF VIRGINIA (AUTHOR)

Chief Justice Donald W. Lemons received his B.A. from the University of Virginia in 1970. Before entering law school, he served as a Probation Officer in Juvenile and Domestic Relations Court. In 1976, he earned his J.D. from the University of Virginia School of Law. From 1976 until 1978, he served as Assistant Dean and Assistant Professor of Law at the University of Virginia School of Law. Thereafter, he entered the private practice of the law in Richmond, Virginia. Chief Justice Lemons has served at every level of the court system in Virginia. He served as a substitute judge in General District Court and in Juvenile and Domestic Relations Court. In 1995, he was elected by the General Assembly to be a Judge in the Circuit Court of the City of Richmond. While serving in that capacity, Chief Justice Lemons started one of the first Drug Court dockets in Virginia. He was then elected by the General Assembly to serve as a Judge on the Court of Appeals of Virginia. In 2000, he was elected by the General Assembly as a Justice of the Supreme Court of Virginia. In 2014, the Justices of the Supreme Court of Virginia elected Justice Lemons to serve as the next Chief Justice, following the retirement of Chief Justice Cynthia D. Kinser on December 31, 2014. Chief Justice Lemons is also the Distinguished Professor of Judicial Studies at the Washington and Lee University School of Law, serves on the Board of Directors for the Conference of Chief Justices, is the former President of the American Inns of Court (2010 – 2014), and an Honorary Bencher of Middle Temple in London. He is married to Carol Lemons, and they have three children and six grandchildren. He and Carol reside in beautiful Nelson County, Virginia, in the foothills of the Blue Ridge Mountains.

SARAH MYERS (AUTHOR)

Sarah Myers is the Clinical Director of the Colorado Lawyer Assistance Program. She received her B.A. from the University of Richmond in Virginia, her M.A. from Naropa University in Boulder, Colorado, and her J.D. at the University of Denver in Colorado. She is a Colorado licensed attorney, licensed marriage and family therapist, and licensed addiction counselor. Ms. Myers is also a licensed post-graduate level secondary teacher, certified trauma and abuse psychotherapist, and certified LGBTQ

therapist. She has over 18 years of experience as a professor and teacher, psychotherapist, clinical supervisor, and program director.

Ms. Myers specializes in stress management, psychoneuroimmunology, and psychoeducation, topics that she presents to thousands of judges, lawyers, and law students each year. In addition, she has authored hundreds of articles on wellness concepts such as compassion fatigue, professional burnout, mental health support, and life-enhancing techniques for the legal community. Ms. Myers strives to “practice what she preaches” for self-care, which includes: simple meditation throughout the day to relax her nervous system, using humor and laughter to cope with difficult situations or personalities, cultivating positive relationships with friends and family, and engaging in hobbies such as gardening, caring for numerous pets (including a koi pond), yoga, learning new things, and reading science fiction and fantasy novels.

CHRIS L. NEWBOLD (AUTHOR)

Chris Newbold is Executive Vice President of ALPS Corporation and ALPS Property & Casualty Company. In his role as Executive Vice President, Mr. Newbold oversees bar association relations, strategic and operational planning, risk management activities amongst policyholders, human resources, and non-risk related subsidiary units. Internally at ALPS, Mr. Newbold has developed leading conceptual models for strategic planning which have driven proven results, ensured board and staff accountability, focused organizational energies, embraced change, integrated budgeting and human resource functions into the process and enabled a common vision for principal stakeholders. Externally, Mr. Newbold is a nationally-recognized strategic planning facilitator in the bar association and bar foundations worlds, conducts risk management seminars on best practices in law practice management and is well-versed in captive insurance associations and other insurance-related operations.

Mr. Newbold received his law degree from the University of Montana School of Law in 2001, and holds a bachelor's degree from the University of Wisconsin-Madison. Following his graduation from law school, he served one year as a law clerk for the Honorable Terry N. Trieweller of the Montana Supreme Court. He began his career at ALPS

as President and Principal Consultant of ALPS Foundation Services, a non-profit fundraising and philanthropic management consulting firm. Mr. Newbold is currently a member of the State Bar of Montana, the American Bar Association, and is involved in a variety of charitable activities. Mr. Newbold resides in Missoula, Montana, with his wife, Jennifer, and their three children, Cameron (11), Mallory (9) and Lauren (5).

JAYNE REARDON (EDITOR, AUTHOR)

Jayne Reardon is the Executive Director of the Illinois Supreme Court Commission on Professionalism. A tireless advocate for professionalism, Jayne oversees programs and initiatives to increase the civility and professionalism of attorneys and judges, create inclusiveness in the profession, and promote increased service to the public. Jayne developed the Commission's successful statewide Lawyer-to-Lawyer Mentoring Program which focuses on activities designed to explore ethics, professionalism, civility, diversity, and wellness in practice settings. She spearheaded development of an interactive digital and social media platform that connects constituencies through blogs, social networking sites and discussion groups. A frequent writer and speaker on topics involving the changing practice of law, Jayne asserts that embracing inclusiveness and innovation will ensure that the profession remains relevant and impactful in the future. Jayne's prior experience includes many successful years of practice as a trial lawyer, committee work on diversity and recruiting issues, and handling attorney discipline cases as counsel to the Illinois Attorney Registration and Disciplinary Commission Review Board.

Jayne graduated from the University of Notre Dame and the University of Michigan Law School. She is active in numerous bar and civic organizations. She serves as Chair of the American Bar Association's Standing Committee on Professionalism and is a Steering Committee member of the National Lawyer Mentoring Consortium. Jayne also is active in the ABA Consortium of Professionalism Initiatives, Phi Alpha Delta Legal Fraternity, Illinois State Bar Association, Women's Bar Association of Illinois, and the Chicago Bar Association. Jayne lives in Park Ridge, Illinois, with her husband and those of her four children who are not otherwise living in college towns and beyond.

HON. DAVID SHAHEED (AUTHOR)

David Shaheed became the judge in Civil Court 1, Marion County, Indiana, in August, 2007. Prior to this assignment, Judge Shaheed presided over Criminal Court 14, the Drug Treatment Diversion Court and Reentry Court. The Indiana Correctional Association chose Shaheed as 2007 Judge of the Year for his work with ex-offenders and defendants trying to recover from substance abuse.

Judge Shaheed has worked as a judicial officer in the Marion County Superior Court since 1994 starting as a master commissioner and being appointed judge by Governor Frank O'Bannon in September 1999. As a lawyer, Judge Shaheed was Chief Administrative Law Judge for the Indiana Unemployment Appeals Division; Legal Counsel to the Indiana Department of Workforce Development and served as Counsel to the Democratic Caucus of the Indiana House of Representatives in 1995. He was also co-counsel for the Estate of Michael Taylor, and won a 3.5 million dollar verdict for the mother of a sixteen year-old youth who was found shot in the head in the back seat of a police car. Judge Shaheed is an associate professor for the School of Public and Environmental Affairs (SPEA) at Indiana University in Indianapolis. He is also a member of the ABA Commission on Lawyers Assistance Programs (CoLAP). Judge Shaheed was on the board of directors for Seeds of Hope, (a shelter for women in recovery), and former officer for the Indiana Juvenile Justice Task Force and the Interfaith Alliance of Indianapolis.

LYNDA C. SHELLEY (EDITOR, AUTHOR)

Lynda C. Shely, of The Shely Firm, PC, Scottsdale, Arizona, provides ethics advice to over 1400 law firms in Arizona and the District of Columbia on a variety of topics including conflicts of interest, fees and billing, trust account procedures, lawyer transitions, multi-jurisdictional practice, ancillary businesses, and ethics requirements for law firm advertising/marketing. She also assists lawyers in responding to initial Bar charges, performs law office risk management reviews, and trains law firm staff in ethics requirements. Lynda serves as an expert witness and frequently presents continuing legal education programs around the country. Prior to opening her own firm, she was the Director of Lawyer Ethics for the State Bar of Arizona. Prior to moving to Arizona, Lynda was an intellectual property associate with Morgan, Lewis & Bockius in Washington, DC.

Lynda received her BA from Franklin & Marshall College in Lancaster, PA and her JD from Catholic University in Washington, DC. Lynda was the 2015-2016 President of the Association of Professional Responsibility Lawyers. She serves on several State Bar of Arizona Committees, and as a liaison to the ABA Standing Committee on Ethics and Professional Responsibility. She is an Arizona Delegate in the ABA House of Delegates. Lynda has received several awards for her contributions to the legal profession, including the 2007 State Bar of Arizona Member of the Year award, the Scottsdale Bar Association's 2010 Award of Excellence, and the 2015 AWLA, Maricopa Chapter, Ruth V. McGregor award. She is a prior chair of the ABA Standing Committee on Client Protection and a past member of the ABA's Professionalism Committee and Center for Professional Responsibility Conference Planning Committee. Lynda was the 2008-2009 President of the Scottsdale Bar Association. She has been an adjunct professor at all three Arizona law schools, teaching professional responsibility.

WILLIAM D. SLEASE (AUTHOR)

William D. Sease is Chief Disciplinary Counsel for the New Mexico Supreme Court Disciplinary Board. In addition to his duties as Chief Disciplinary Counsel, he serves as an adjunct professor at the University of New Mexico School of Law where he has taught employment law, ethics and trial practice skills. He currently chairs the Supreme Court of the State of New Mexico's Lawyer's Succession and Transition Committee which has developed a comprehensive set of materials for lawyers to use in identifying and responding to incapacities that affect lawyers' abilities to practice law. He is a member and the 2016-17 President of the National Organization of Bar Counsel and previously served as the Chair of the NOBC-APRL-CoLAP Second Joint Committee on Aging Lawyers charged with studying and making recommendations for addressing the so-called "senior tsunami" of age-impaired lawyers. Bill takes care of his own wellness by spending time with his family, and by fishing for trout in the beautiful lakes and streams of New Mexico.

TASK FORCE LIAISONS

LINDA ALBERT

Linda Albert is a Licensed Clinical Social Worker and a Certified Alcohol and Drug Counselor. She received her Master's Degree from UW-Madison in Science and Social Work. Linda has worked over the past 34 years as an administrator, consultant, trainer, program developer and psychotherapist in a variety of settings including providing services to impaired professionals.

Linda served on the ABA Commission on Lawyer Assistance Programs heading up the Research section. She co-facilitated a research project on compassion fatigue and legal professionals resulting in two peer reviewed publications and multiple articles. She is co-author of the ABA, Hazelden Betty Ford collaborative national research study on the current rates of substance use, depression and anxiety within the legal community. Linda has done multiple presentations for conferences at the local, state and national level. She loves her work and is driven by the opportunity to make a positive contribution to the lives of the individuals and the fields of practice she serves. Currently Linda is employed by The Psychology Center in Madison, Wisconsin, where she works as a professional trainer, consultant, and psychotherapist.

DONALD CAMPBELL

Donald D. Campbell is a shareholder at Collins Einhorn Farrell in suburban Detroit, Michigan. Don's practice focuses on attorney grievance defense, judicial grievance matters, and legal malpractice defense. He has extensive experience in counseling and advising lawyers and judges regarding professional ethics. He is an adjunct professor of law at the University of Detroit School of Law, where he has taught professional responsibility and a seminar in business law and ethics. Prior to joining the Collins Einhorn firm, Don served as associate counsel with the Michigan Attorney Grievance Commission, the Michigan Supreme Court's arm for the investigation and prosecution of lawyer misconduct. He also previously served as an assistant prosecuting attorney in Oakland County, Michigan. He currently serves as the President of the Association of Professional Responsibility Lawyers (see APRL.net). Don tends to his well-being by cheering for the Detroit Lions (and he has been about as successful).

ERICA MOESER

Erica Moeser has been the president of the National Conference of Bar Examiners since 1994. She is a former chairperson of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, and has served as a law school site evaluator, as a member of the Section's Accreditation and Standards Review Committees, and as the co-chairperson of the Section's Bar Admissions Committee. She served as the director of the Board of Bar Examiners of the Supreme Court of Wisconsin from 1978 until joining the Conference. Ms. Moeser holds the following degrees: B.A., Tulane University, 1967; M.S., the University of Wisconsin, 1970; and J.D., the University of Wisconsin, 1974. She was admitted to practice law in Wisconsin in January 1975. Ms. Moeser holds honorary degrees from three law schools. Ms. Moeser has taught Professional Responsibility as an adjunct at the University of Wisconsin Law School. She was elected to membership in the American Law Institute in 1992.

In 2013 Ms. Moeser received the Kutak Award, honoring "an individual who has made significant contributions to the collaboration of the academy, the bench, and the bar," from the ABA Section of Legal Education and Admissions to the Bar.

ACKNOWLEDGEMENTS

PAUL BURGOYNE, TERRY HARRELL, AND LYNDA SHELLEY

The Task Force gratefully acknowledges the contributions of Paul Burgoyne, immediate past president of the National Organization of Bar Counsel and Deputy Chief Disciplinary Counsel, The Disciplinary Board of the Supreme Court of Pennsylvania, as well as Terry Harrell, President of the ABA Commission on Lawyer Assistance Programs (ABA CoLAP), and Lynda Shely, past president of the Association of Professional Responsibility Lawyers (APRL), for their formal endorsement of the Task Force's formation in the spring of 2016 on behalf of their respective organizations.

JONATHAN WHITE (AUTHOR, EDITOR)

Jonathan White is the Task Force Staff Attorney and also served as a contributing author and editor to the Report. Mr. White is a staff attorney at the Colorado Supreme Court

Office of Attorney Regulation Counsel. He is the day-to-day project manager for the Colorado Supreme Court Advisory Committee's Proactive Management-Based Program (PMBP) Subcommittee. The subcommittee is developing a program to help Colorado lawyers better serve their clients through proactive practice self-assessments. The self-assessments also promote compliance with the Colorado Rules of Professional Conduct. Mr. White rejoined the Office of Attorney Regulation Counsel in November 2016 after previously working for the office as a law clerk in 2009 and 2010.

Mr. White practiced civil defense litigation for several years before rejoining the Office of Attorney Regulation Counsel. Mr. White also served as a judicial law clerk to the Honorable Christopher Cross and the Honorable Vincent White of the Douglas County District Court in Castle Rock, Colorado. He is a 2010 graduate of the University of Colorado Law School. While in law school, he was an articles editor for the Colorado Journal of International Environmental Law & Policy. The Journal published his note, "Drilling in Ecologically and Environmentally Troubled Waters: Law and Policy Concerns Surrounding Development of Oil Resources in the Florida Straits," in 2010. In 2009, fellow law students selected him to receive the annual Family Law Clinic Award in recognition of his work in the law school's clinical program.

Mr. White received his B.A. from Middlebury College in 2003. He recently volunteered as a reading tutor to elementary school students in the Denver Public Schools during the 2015-2016 academic year.

ED BRAFFORD, GRAPHIC DESIGNER

Edward Brafford donated his skills and talents to design the layout for the Task Force Report. Mr. Brafford designs for The Firefly Creative LLC (www.thefireflycreative.com) and can be reached at Ed@tffccreative.com.

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DEBRA AUSTIN, PH.D.

Dr. Austin is a law professor and lawyer wellbeing advocate. She writes and speaks about how neuroscience and positive psychology research can help law students, lawyers, and judges improve their wellbeing and

performance. Her seminal work, *Killing Them Softly*, shines a bright light on lawyer depression, substance abuse, and suicide, and its application of neuroscience to the chronic stresses of law school and law practice depicts how law students and lawyers suffer cognitive damage that impairs them from doing precisely what their studies and practices require. *Drink Like a Lawyer* uses neuroscience research to demonstrate how self-medication with substances like alcohol, marijuana, and study drugs impairs law student and lawyer thinking. *Food for Thought* examines neuroscience research that explores the relationship between diet and increased risk of cognitive damage, such as dementia and Alzheimer's disease, and describes optimal nutrition habits that build and maintain a healthy lawyer brain. *Positive Legal Education* proposes a new field of inquiry and a new method of training lawyer leaders that will enhance lawyer effectiveness and wellbeing. Dr. Austin's presentations connect lawyer wellbeing to performance and ethical obligations, and they are accredited for general and ethics CLE in multiple states.

Dr. Austin teaches at the University of Denver Sturm College of Law. She received her Bachelor of Music Education from University of Colorado; her J.D. from University of San Francisco; and her Ph.D. in Education from University of Denver. She received the William T. Driscoll Master Educator Award in 2001. To maintain her wellbeing, Dr. Austin meditates, practices yoga, and cycles on the beautiful trails around Colorado.

HON. ROBERT L. CHILDERS

Judge Childers was the presiding judge of Division 9 of the Circuit Court of Tennessee for the 30th Judicial District from 1984 to 2017. He is a past president of the Tennessee Judicial Conference and the Tennessee Trial Judges Association. He has also served as a Special Judge of the Tennessee Supreme Court Workers' Compensation Panel and the Tennessee Court of Appeals. He served on the ABA Commission on Lawyer Assistance Programs (CoLAP) from 1999 to 2011, including serving as Chair of the Commission from 2007-2011. He is a founding member, past president and Master of the Bench of the Leo Bearman Sr. Inn of Court. The Memphis Bar Association recognized Judge Childers in 1986, 1999, and 2006 as Outstanding Judge of the Year, and he was recognized by the MBA Family Law Section in 2006. He was recognized as Outstanding

Judge of the Year by the Shelby County (TN) Deputy Sheriffs Association in 1990. He received the Judge Wheatcraft Award from the Tennessee Coalition Against Domestic and Sexual Violence for outstanding service in combating domestic violence in 2001. He has received the Distinguished Alumnus Award from the University of Memphis (2002), the Justice Frank F. Drowota III Outstanding Judicial Service Award from the Tennessee Bar Association (2012), and the Excellence in Legal Community Leadership Award from the Hazelden Foundation (2012). In 2017 he received the William M. Leech Jr. Public Service Award from the Fellows of the Tennessee Bar Association Young Lawyers Division.

Judge Childers is currently serving as president of the University of Memphis Alumni Association. He has been a faculty member at the National Judicial College at the University of Nevada-Reno, the Tennessee Judicial Conference Judicial Academy, and a lecturer at the Cecil C. Humphreys School of Law at the University of Memphis. He has also been a frequent lecturer and speaker at CLE seminars and before numerous schools, civic, church and business groups in Tennessee and throughout the nation.

COURTNEY WYLIE

Courtney recently joined the professional development team at Drinker Biddle & Reath LLP. In this position, she designs and implements programs for the firm's attorneys on leadership, professionalism, and lawyer well-being topics. Prior to joining DBR, Courtney Wylie worked at the University of Chicago Law School as the Associate Director of Student Affairs & Programs. In this position, she was primarily responsible for the Keystone Leadership and Professional Program and the Kapnick Leadership Development Initiative. Before that Courtney worked in both the private and public sector as an attorney.

Courtney is the current appointed ABA Young Lawyer's Division Liaison to the Commission on Lawyer Assistance Programs (COLAP) and an appointed Advisory Committee Member of (COLAP). Though an initial skeptic regarding meditation and exercise, she now makes an effort to make it part of her daily practice to remain healthy, positive, focused, and centered. She similarly regularly lectures on the importance of self-care for attorneys and law students.

PEER REVIEWERS

Carol M. Adinamis, Adinamis & Saunders, Past President
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Joseph (Buddy) E. Stockwell III, Executive Director, Louisiana Judges and Lawyers Assistance Program, Inc., Mandeville, LA











Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, Richmond, VA

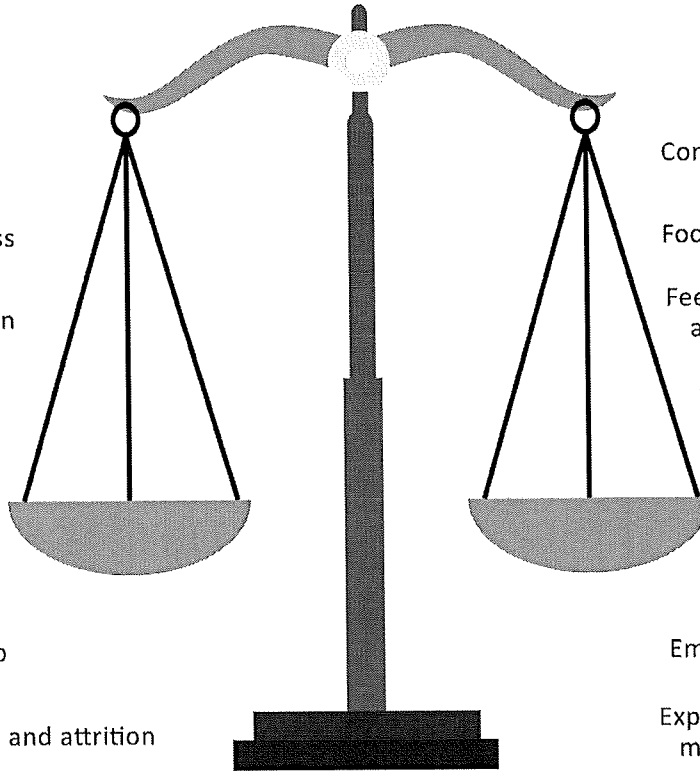
Tish Vincent, MSW, JD, Program Administrator, Lawyers and Judges Assistance Program, Michigan Bar, Lansing, MI

Carol P. Waldhauser, EAP, SAP, Executive Director, Delaware Lawyers Assistance Program, Wilmington, DE











Elizabeth Winiarski, Associate, Jones Day, Chicago, IL

OUR CHALLENGES

-  21-36% problem drinkers
-  28% depression
-  19% anxiety
-  23% elevated stress
-  25% work addiction
-  High suicide rate
-  Sleep deprivation
-  Work-life conflict
-  Avoid seeking help
-  Job dissatisfaction and attrition



OUR POTENTIAL

- Physically healthy 
- Mentally thriving 
- Contributing to society 
- Focusing on client care 
- Feeling connected and a sense of belonging 
- Willing to seek help 
- Engaged at work 
- Continually seeking intellectual growth 
- Emotionally intelligent 
- Experiencing a sense of meaning and purpose 

THE PATH TO LAWYER WELL-BEING: Practical Recommendations For Positive Change

APPENDIX B

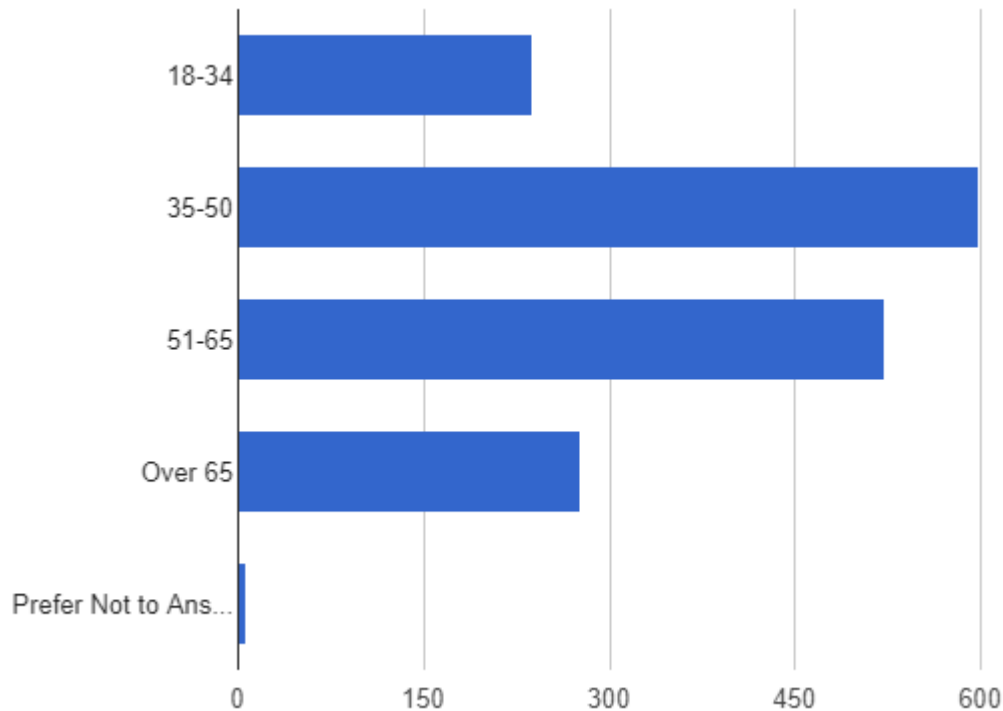
Summary of New Jersey Lawyer Health and Well-Being Survey results

Number of results returned: **2010 (as of November 23, 2022)**

1. Age: *(age)*

Total Count (N)	Missing*	Unique
1,643	367 (18.3%)	5

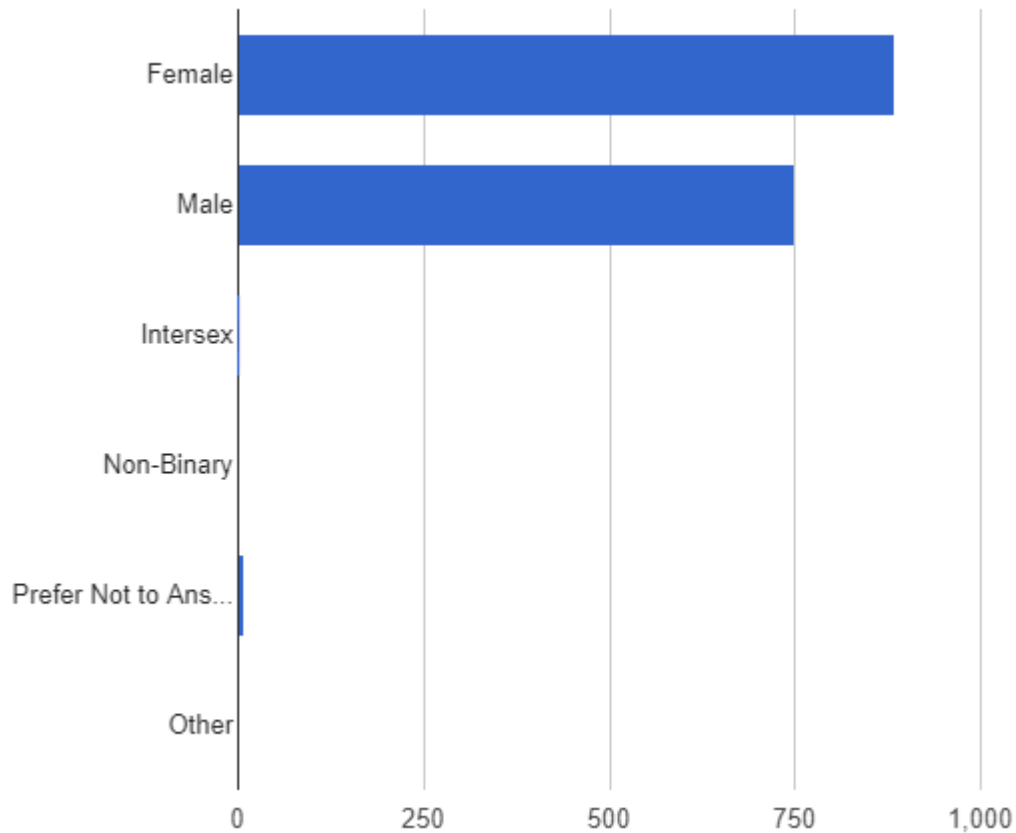
Counts/frequency: **18-34** (238, 14.5%), **35-50** (599, 36.5%), **51-65** (522, 31.8%), **Over 65** (277, 16.9%), **Prefer Not to Answer** (7, 0.4%)



2. Gender: *(gender)*

Total Count (N)	Missing*	Unique
1,642	368 (18.3%)	4

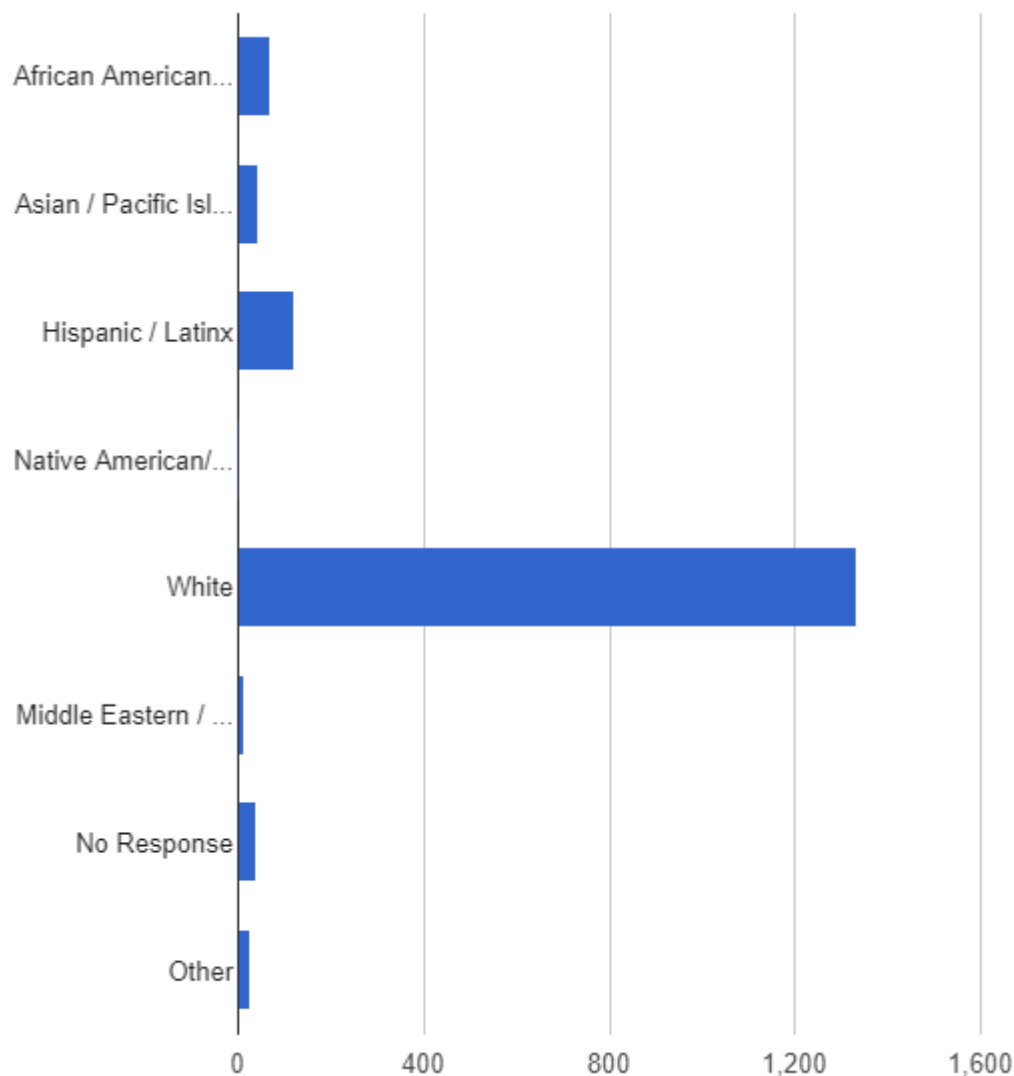
Counts/frequency: **Female** (883, 53.8%), **Male** (748, 45.6%), **Intersex** (3, 0.2%), **Non-Binary** (0, 0.0%), **Prefer Not to Answer** (8, 0.5%), **Other** (0, 0.0%)



3. Race / Ethnicity (Select Multiple options if you identify as Multiracial): *(race_ethnicity)*

Total Count (N)	Missing*	Unique
1,642	368 (18.3%)	8

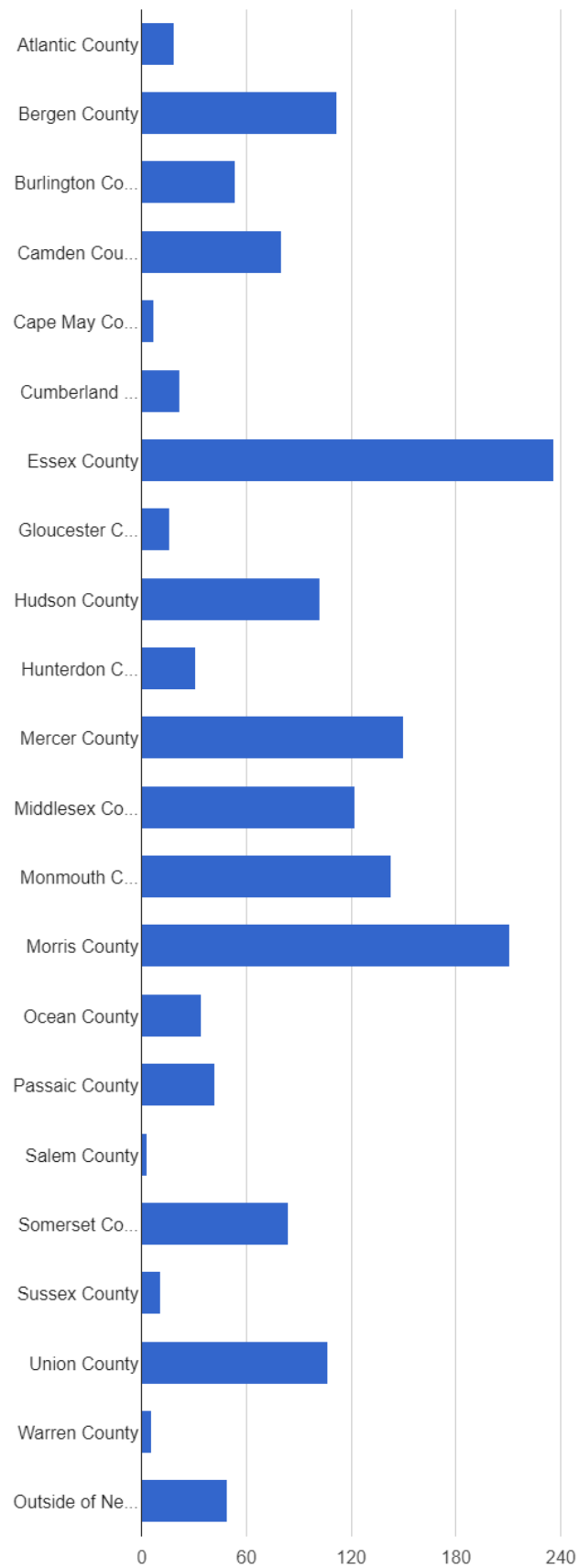
Counts/frequency: African American / Black (68, 4.1%), Asian / Pacific Islander (43, 2.6%), Hispanic / Latinx (121, 7.4%), Native American/ Alaskan Native (1, 0.1%), White (1332, 81.1%), Middle Eastern / North Africa (13, 0.8%), No Response (37, 2.3%), Other (27, 1.6%)



4. In what county is your primary office located: *(primary_office)*

Total Count (N)	Missing*	Unique
1,641	369 (18.4%)	22

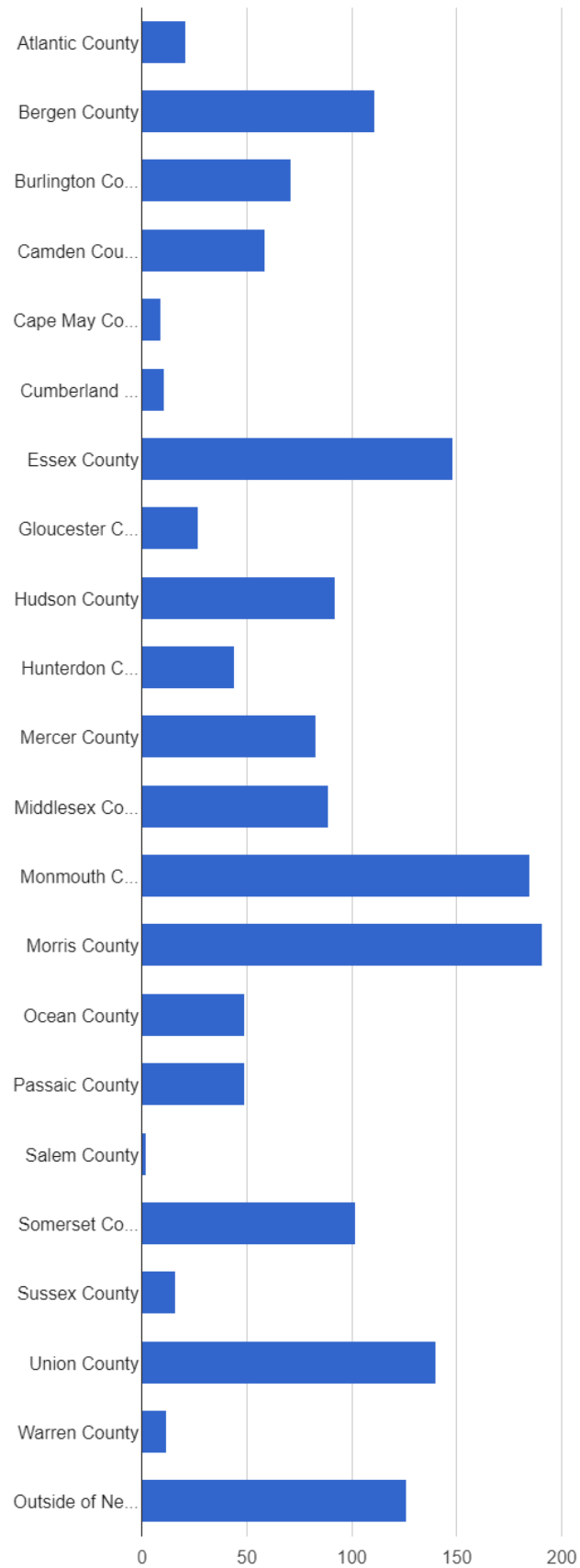
Counts/frequency: Atlantic County (19, 1.2%), Bergen County (112, 6.8%), Burlington County (54, 3.3%), Camden County (80, 4.9%), Cape May County (7, 0.4%), Cumberland County (22, 1.3%), Essex County (236, 14.4%), Gloucester County (16, 1.0%), Hudson County (102, 6.2%), Hunterdon County (31, 1.9%), Mercer County (150, 9.1%), Middlesex County (122, 7.4%), Monmouth County (143, 8.7%), Morris County (211, 12.9%), Ocean County (34, 2.1%), Passaic County (42, 2.6%), Salem County (3, 0.2%), Somerset County (84, 5.1%), Sussex County (11, 0.7%), Union County (107, 6.5%), Warren County (6, 0.4%), Outside of New Jersey (49, 3.0%)



5. County of Residence: *(county_residence)*

Total Count (N)	Missing*	Unique
1,637	373 (18.6%)	22

Counts/frequency: Atlantic County (21, 1.3%), Bergen County (111, 6.8%), Burlington County (71, 4.3%), Camden County (59, 3.6%), Cape May County (9, 0.5%), Cumberland County (11, 0.7%), Essex County (148, 9.0%), Gloucester County (27, 1.6%), Hudson County (92, 5.6%), Hunterdon County (44, 2.7%), Mercer County (83, 5.1%), Middlesex County (89, 5.4%), Monmouth County (185, 11.3%), Morris County (191, 11.7%), Ocean County (49, 3.0%), Passaic County (49, 3.0%), Salem County (2, 0.1%), Somerset County (102, 6.2%), Sussex County (16, 1.0%), Union County (140, 8.6%), Warren County (12, 0.7%), Outside of New Jersey (126, 7.7%)

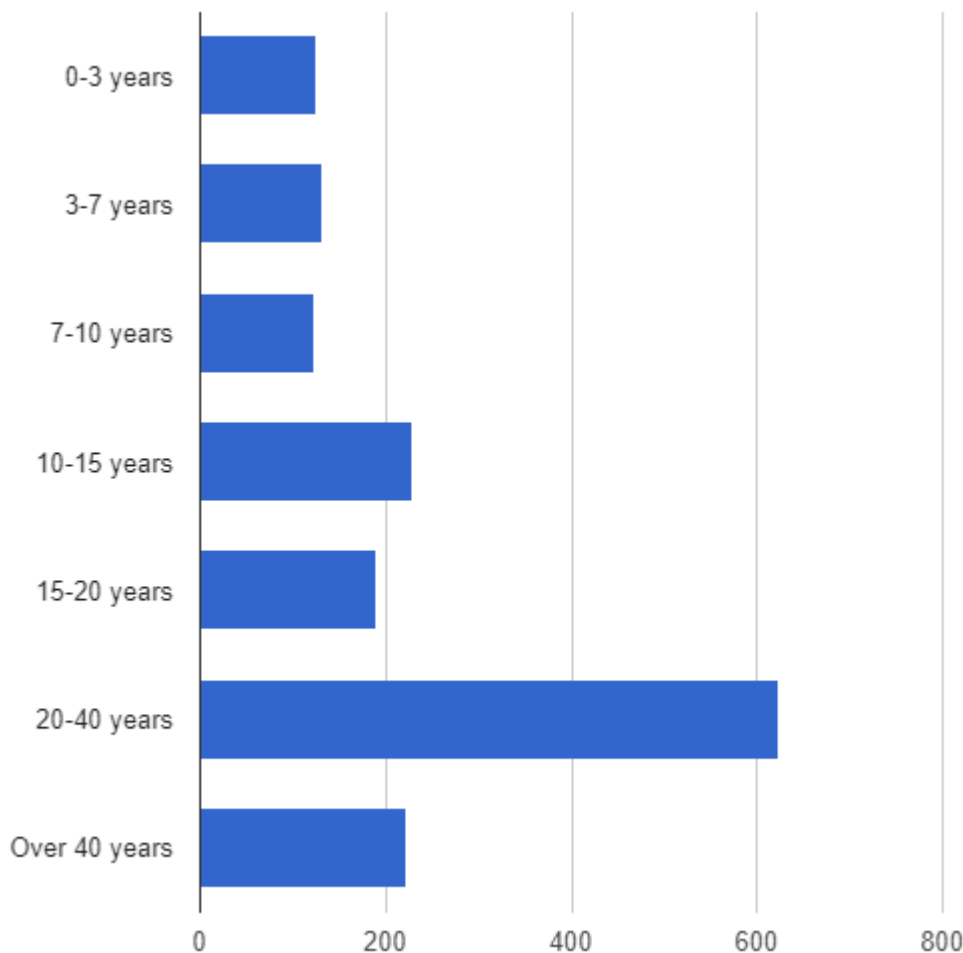


6. How many years have you been practicing law? _____

years (years_practicing_law)

Total Count (N)	Missing*	Unique
1,642	368 (18.3%)	7

Counts/frequency: 0-3 years (124, 7.6%), 3-7 years (132, 8.0%), 7-10 years (123, 7.5%), 10-15 years (229, 13.9%), 15-20 years (189, 11.5%), 20-40 years (623, 37.9%), Over 40 years (222, 13.5%)



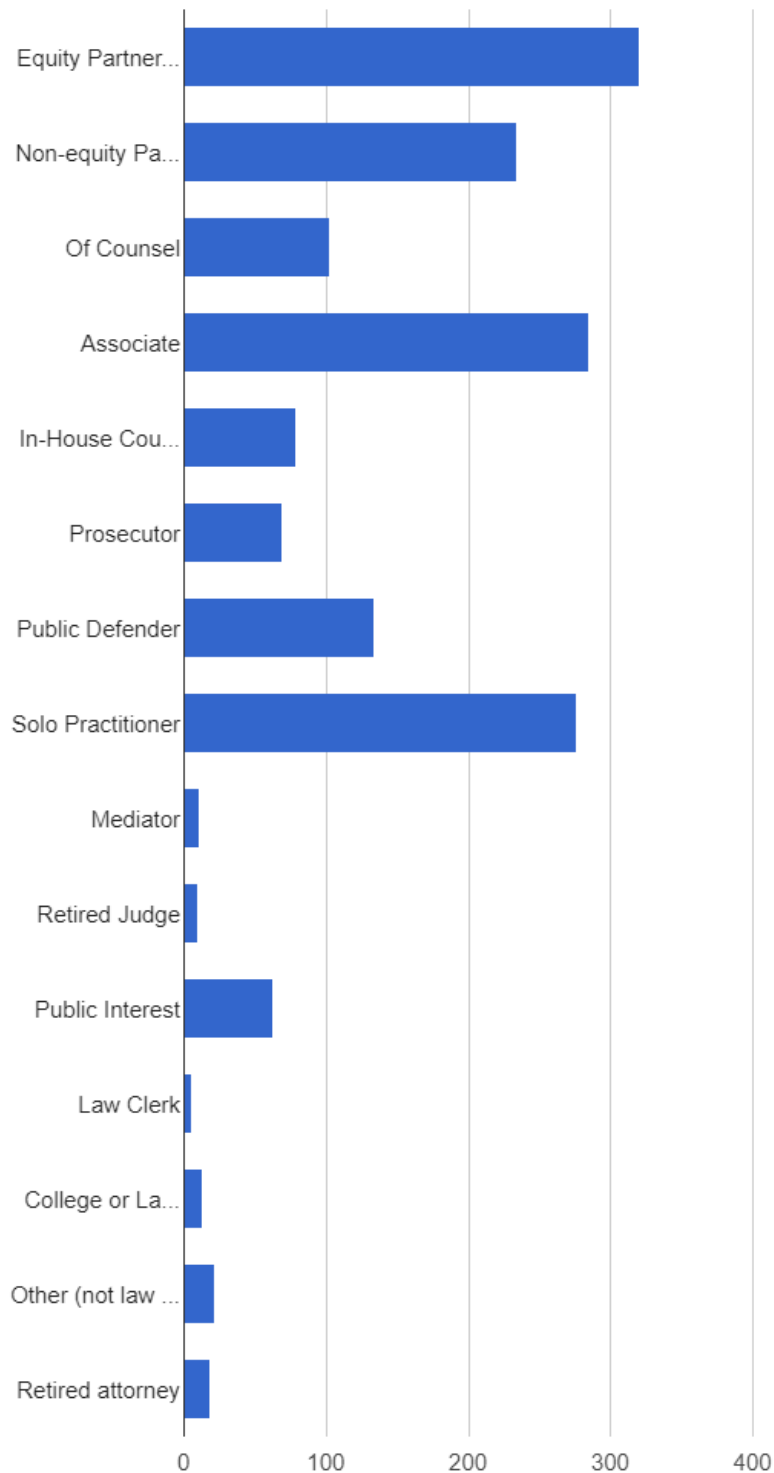
7. Which title best describes how you spend your current

work: (best_work_description)

Total Count (N)	Missing*	Unique
1,640	370 (18.4%)	15

Counts/frequency: Equity Partner/Shareholder (320, 19.5%), Non-equity Partner (234, 14.3%), Of Counsel (102, 6.2%), Associate (285, 17.4%), In-House Counsel (79, 4.8%), Prosecutor (69, 4.2%), Public Defender (134,

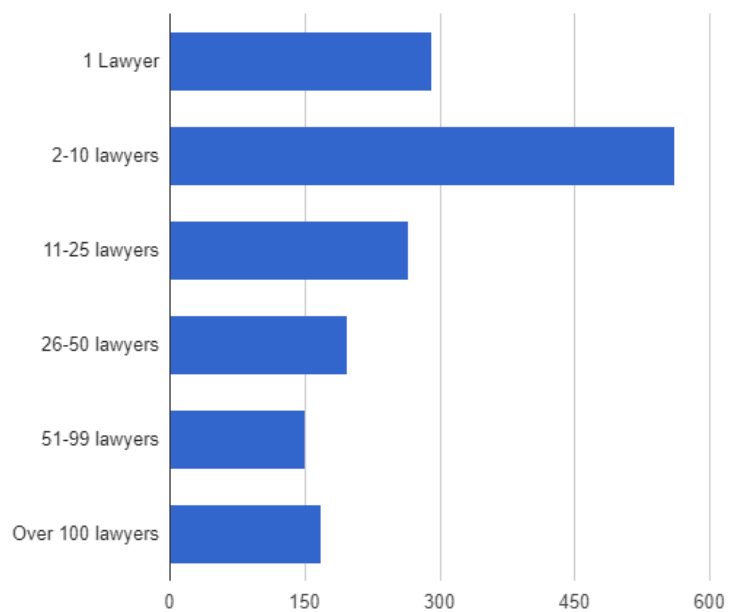
8.2%), **Solo Practitioner** (276, 16.8%), **Mediator** (11, 0.7%), **Retired Judge** (10, 0.6%), **Public Interest** (62, 3.8%), **Law Clerk** (5, 0.3%), **College or Law Professor** (13, 0.8%), **Other (not law practice)** (22, 1.3%), **Retired attorney** (18, 1.1%)



8. How many lawyers work in your office? (*num_lawyers*)

Total Count (N)	Missing*	Unique
1,635	375 (18.7%)	6

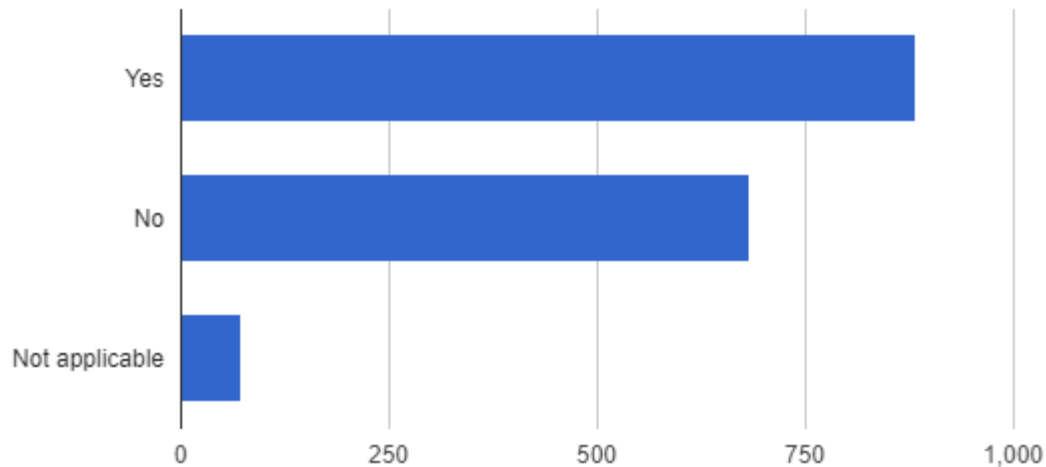
Counts/frequency: 1 Lawyer (291, 17.8%), 2-10 lawyers (561, 34.3%), 11-25 lawyers (266, 16.3%), 26-50 lawyers (197, 12.0%), 51-99 lawyers (151, 9.2%), Over 100 lawyers (169, 10.3%)



9. Do you feel like you have sufficient support staff? *(sufficient_staff)*

Total Count (N)	Missing*	Unique
1,638	372 (18.5%)	3

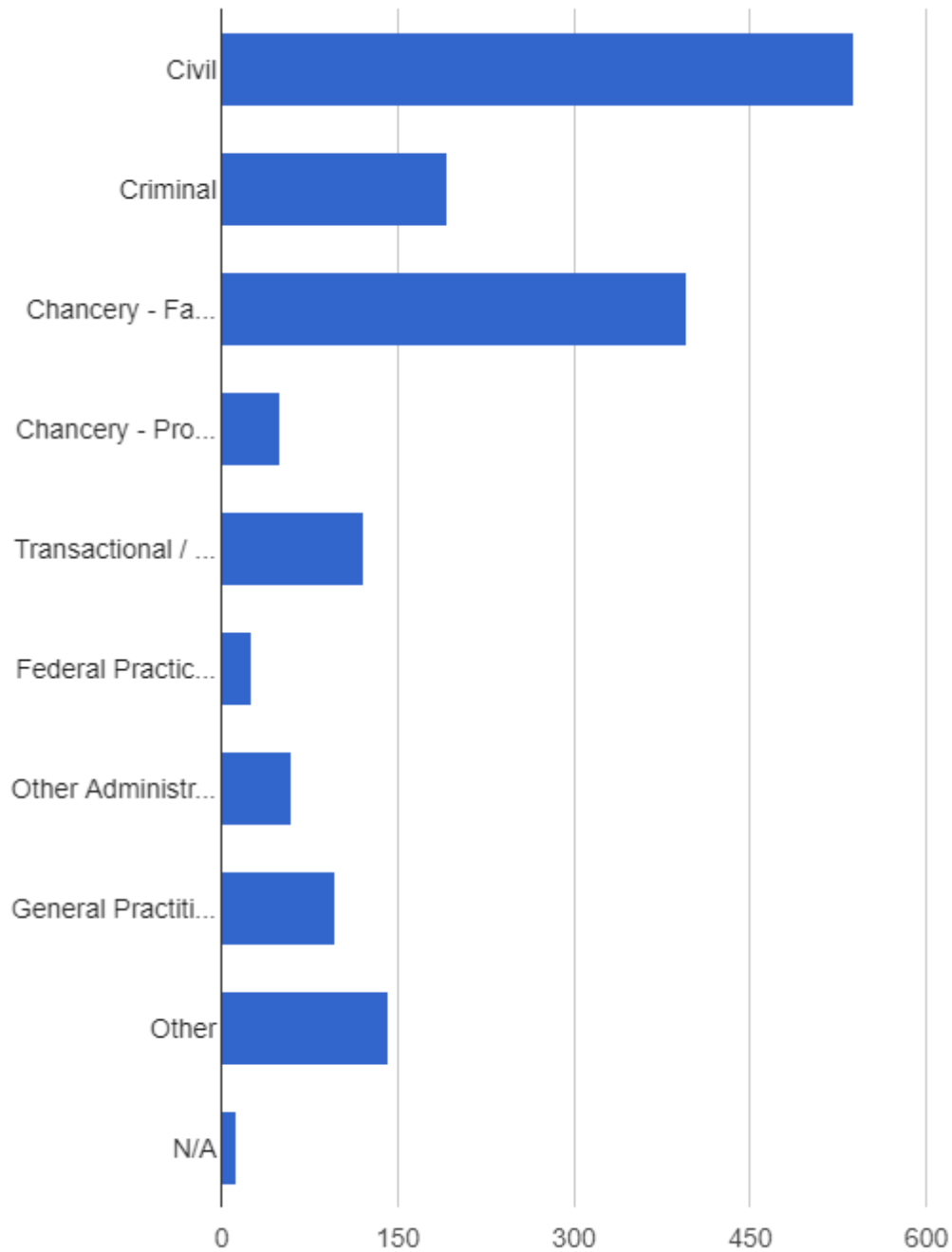
Counts/frequency: Yes (883, 53.9%), No (682, 41.6%), Not applicable (73, 4.5%)



10. Which of the following best describes your primary practice? *(best_primary_practice)*

Total Count (N)	Missing*	Unique
1,638	372 (18.5%)	10

Counts/frequency: Civil (538, 32.8%), Criminal (193, 11.8%), Chancery - Family (397, 24.2%), Chancery - Probate (50, 3.1%), Transactional / Corporate (121, 7.4%), Federal Practice and Procedure (26, 1.6%), Other Administrative / Regulatory (60, 3.7%), General Practitioner (97, 5.9%), Other (143, 8.7%), N/A (13, 0.8%)

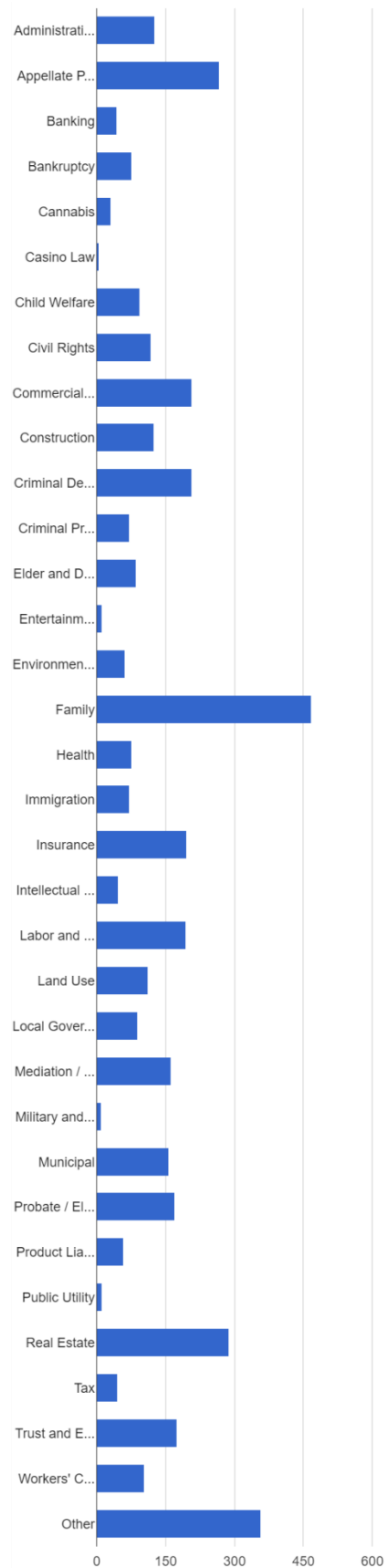


11. Select all subcategories that apply: (*practice_subcategories*)

Total Count (N)	Missing*	Unique
1,633	377 (18.8%)	34

Counts/frequency: Administrative Law (126, 7.7%), Appellate Practice (267, 16.4%), Banking (43, 2.6%), Bankruptcy (76, 4.7%), Cannabis (31, 1.9%), Casino Law (5, 0.3%), Child Welfare (93, 5.7%), Civil Rights (118, 7.2%), Commercial Litigation (207, 12.7%), Construction (125, 7.7%), Criminal Defense (207, 12.7%), Criminal

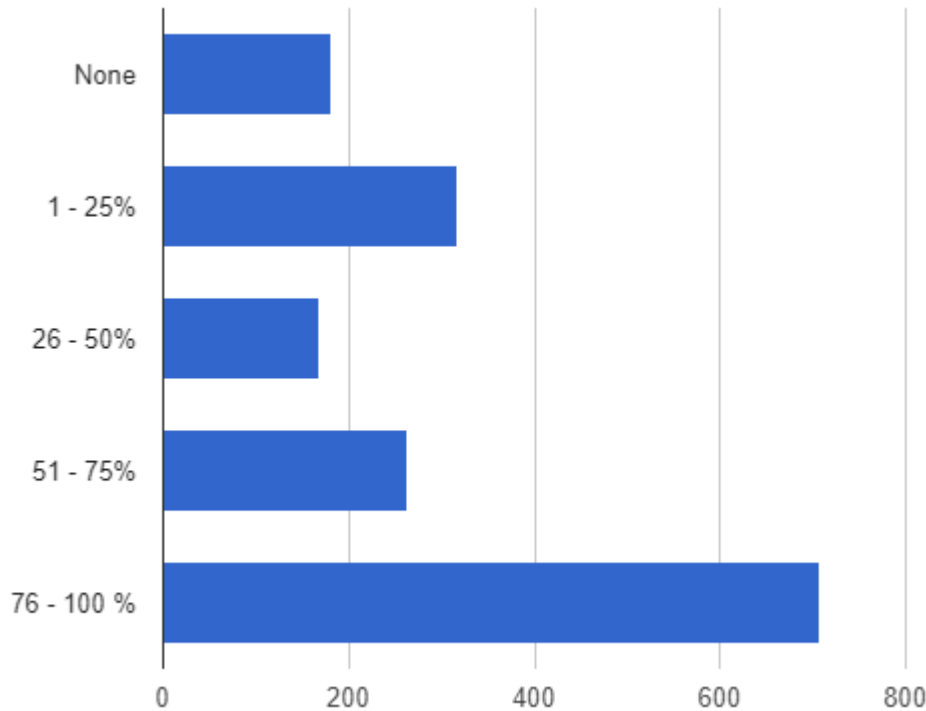
Prosecution (71, 4.3%), Elder and Disability (85, 5.2%), Entertainment/Arts/Sports (11, 0.7%), Environmental (62, 3.8%), Family (467, 28.6%), Health (76, 4.7%), Immigration (71, 4.3%), Insurance (196, 12.0%), Intellectual Property (47, 2.9%), Labor and Employment (194, 11.9%), Land Use (111, 6.8%), Local Government/School (89, 5.5%), Mediation / ADR (161, 9.9%), Military and Veterans' Affairs (9, 0.6%), Municipal (157, 9.6%), Probate / Elder Law (170, 10.4%), Product Liability/Mass Tort (58, 3.6%), Public Utility (11, 0.7%), Real Estate (288, 17.6%), Tax (45, 2.8%), Trust and Estates (175, 10.7%), Workers' Compensation (104, 6.4%), Other (357, 21.9%)



12. How much litigation is involved in your practice? (*litigation_practice*)

Total Count (N)	Missing*	Unique
1,637	373 (18.6%)	5

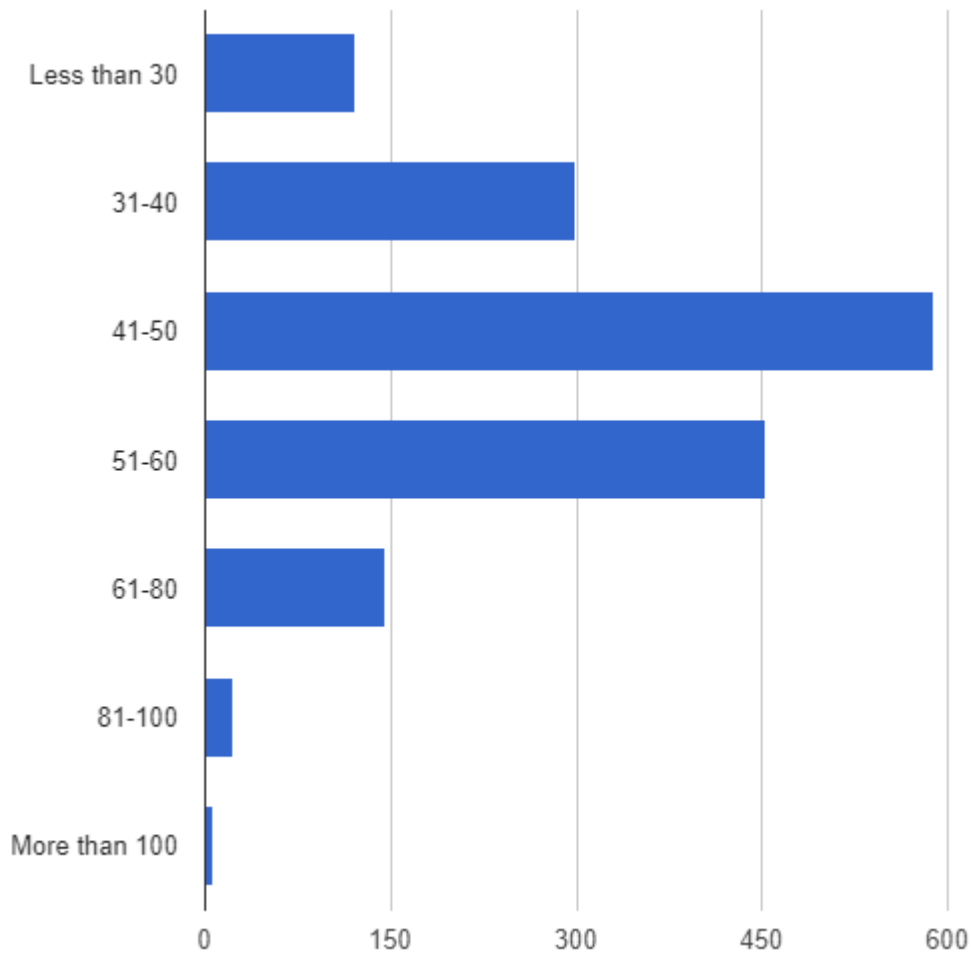
Counts/frequency: **None** (181, 11.1%), **1 - 25%** (317, 19.4%), **26 - 50%** (168, 10.3%), **51 - 75%** (264, 16.1%), **76 - 100 %** (707, 43.2%)



13. In the past month, how many hours do you work in an average week? (*hours_work_week*)

Total Count (N)	Missing*	Unique
1,637	373 (18.6%)	7

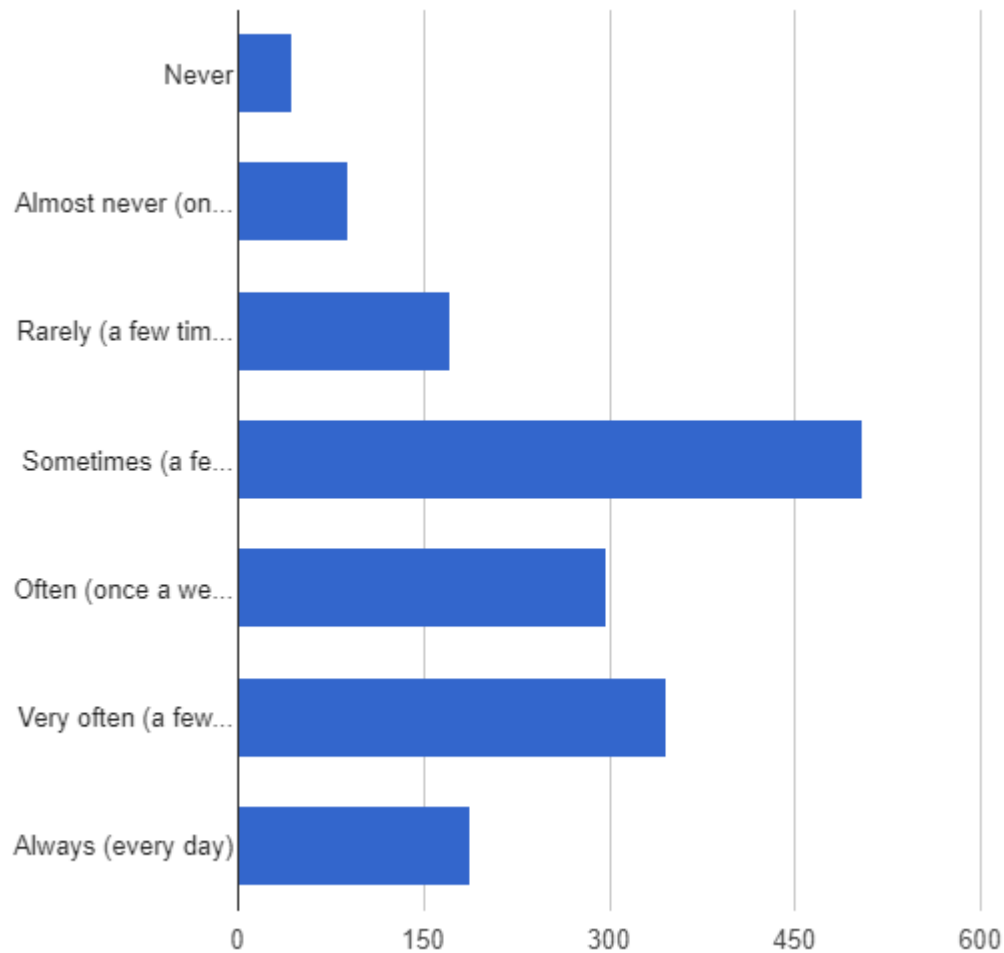
Counts/frequency: **Less than 30** (122, 7.5%), **31-40** (299, 18.3%), **41-50** (589, 36.0%), **51-60** (453, 27.7%), **61-80** (146, 8.9%), **81-100** (22, 1.3%), **More than 100** (6, 0.4%)



14. I am enthusiastic about being a lawyer. (*enthusiasm_lawyer*)

Total Count (N)	Missing*	Unique
1,639	371 (18.5%)	7

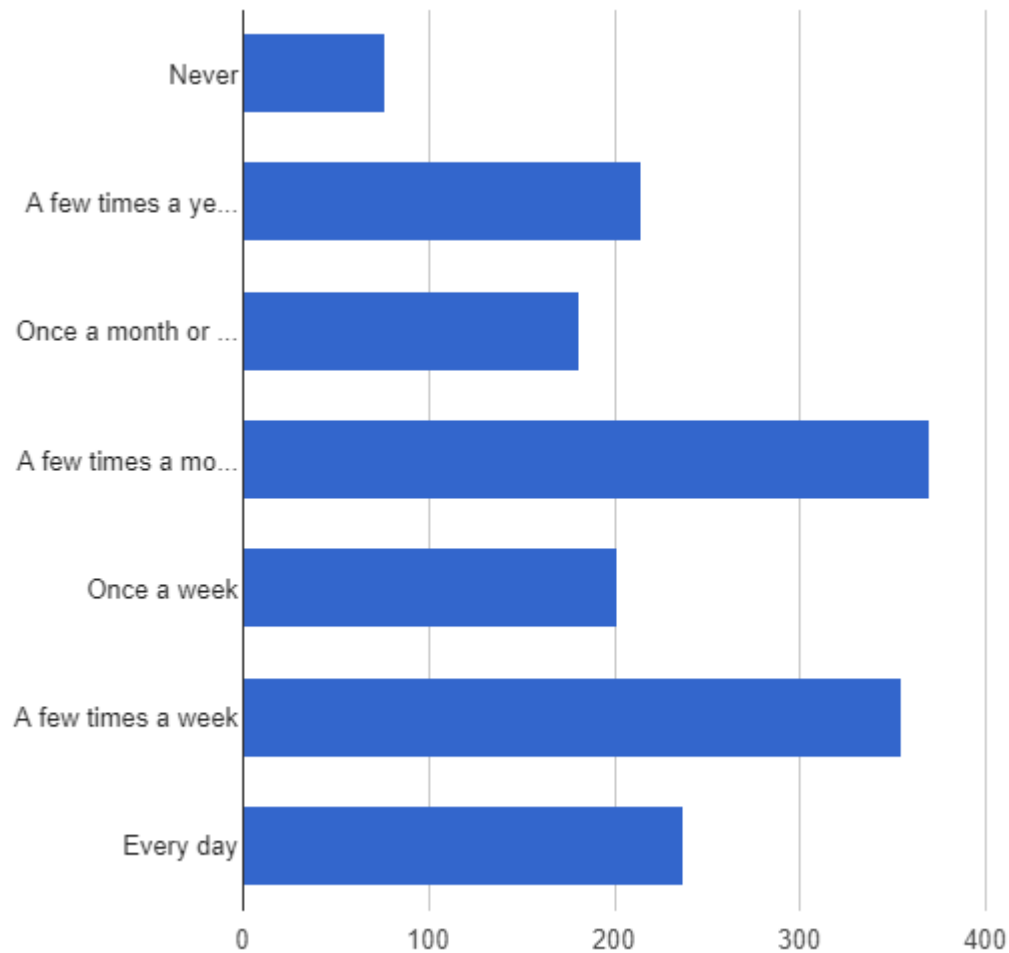
Counts/frequency: **Never** (43, 2.6%), **Almost never (once a month or less)** (89, 5.4%), **Rarely (a few times a month)** (171, 10.4%), **Sometimes (a few times a month)** (504, 30.8%), **Often (once a week)** (298, 18.2%), **Very often (a few times a week)** (346, 21.1%), **Always (every day)** (188, 11.5%)



15. I feel burned out from my work. (*burnout_work*)

Total Count (N)	Missing*	Unique
1,637	373 (18.6%)	7

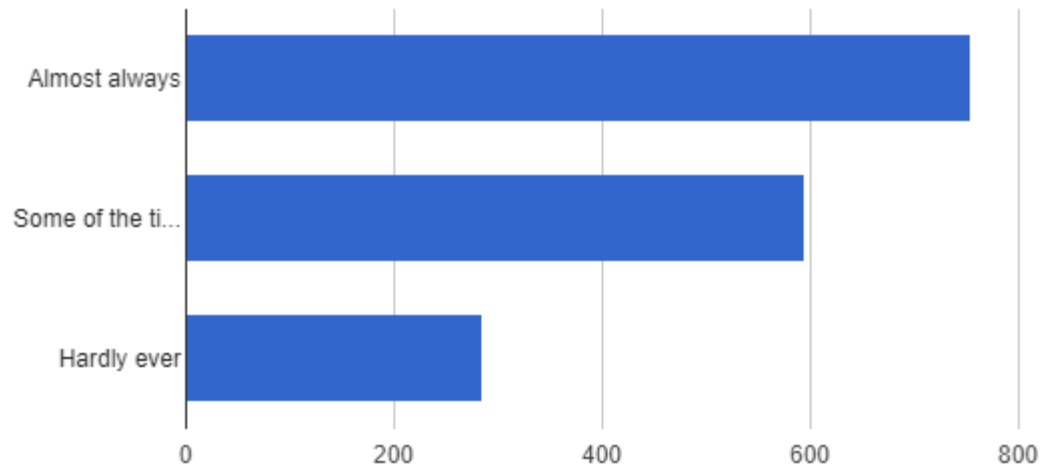
Counts/frequency: Never (77, 4.7%), A few times a year or less (215, 13.1%), Once a month or less (181, 11.1%), A few times a month (370, 22.6%), Once a week (202, 12.3%), A few times a week (355, 21.7%), Every day (237, 14.5%)



16. I am satisfied that I can turn to a fellow worker for help when something is troubling me. (*work_troubling*)

Total Count (N)	Missing*	Unique
1,632	378 (18.8%)	3

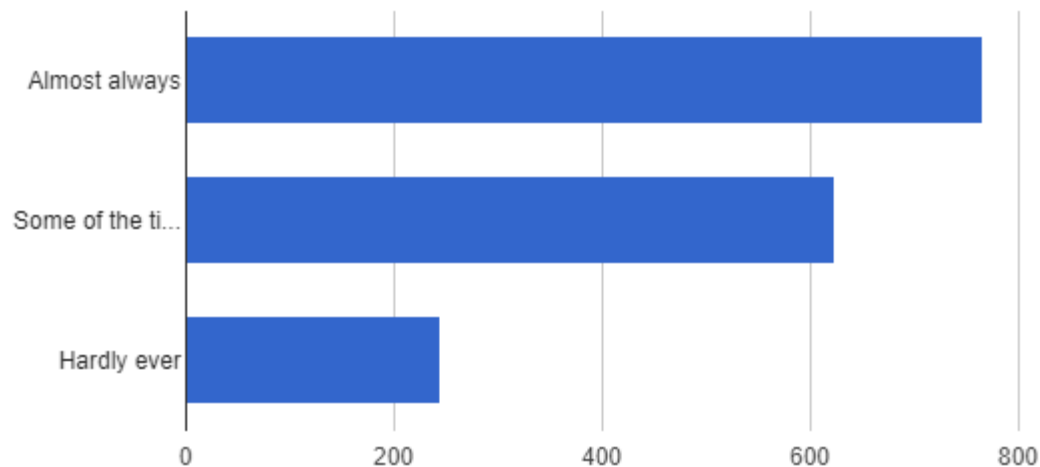
Counts/frequency: **Almost always** (754, 46.2%), **Some of the time** (594, 36.4%), **Hardly ever** (284, 17.4%)



17. I am satisfied with the way my fellow workers talk things over with me and share problems with me. (*work_share*)

Total Count (N)	Missing*	Unique
1,632	378 (18.8%)	3

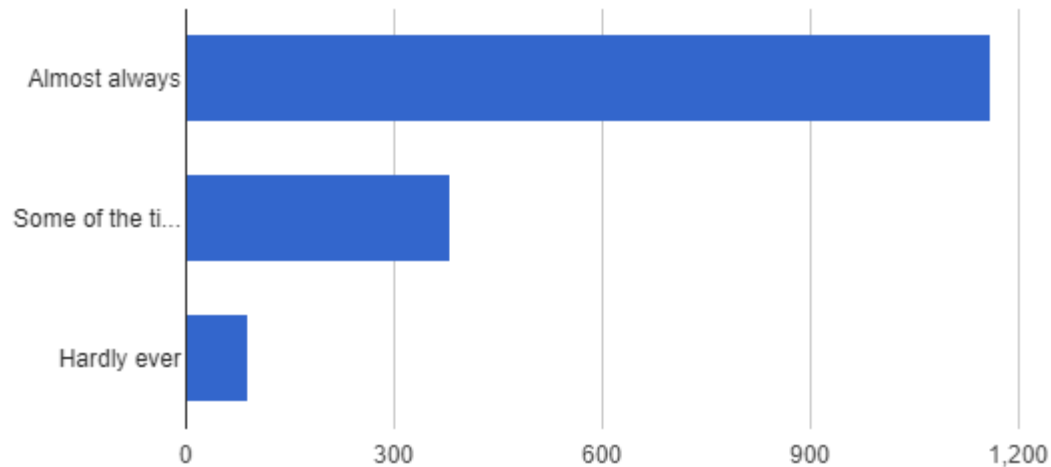
Counts/frequency: **Almost always** (765, 46.9%), **Some of the time** (623, 38.2%), **Hardly ever** (244, 15.0%)



18. I feel accepted by my fellow workers (*work_acceptance*)

Total Count (N)	Missing*	Unique
1,631	379 (18.9%)	3

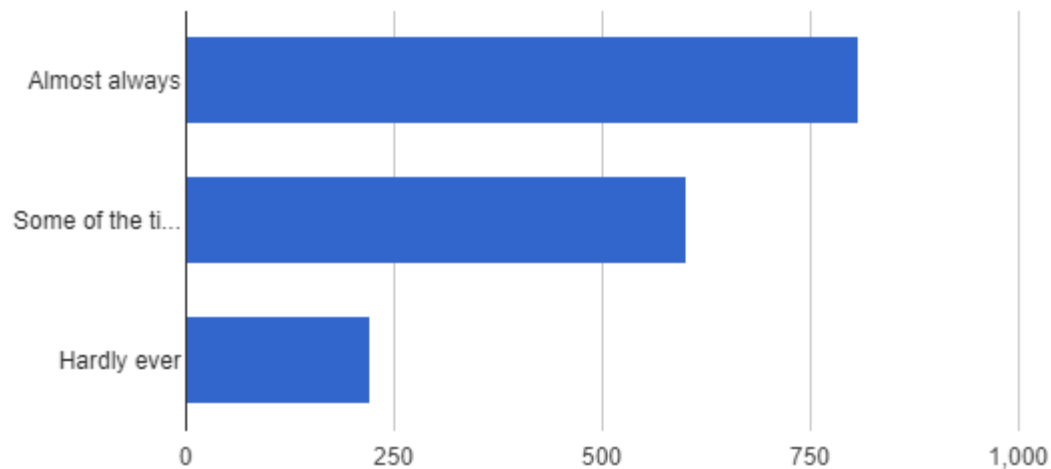
Counts/frequency: **Almost always** (1159, 71.1%), **Some of the time** (382, 23.4%), **Hardly ever** (90, 5.5%)



19. I am satisfied with the way my fellow workers respond to my emotions, such as anger, sadness and frustration. (*work_emotions*)

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	3

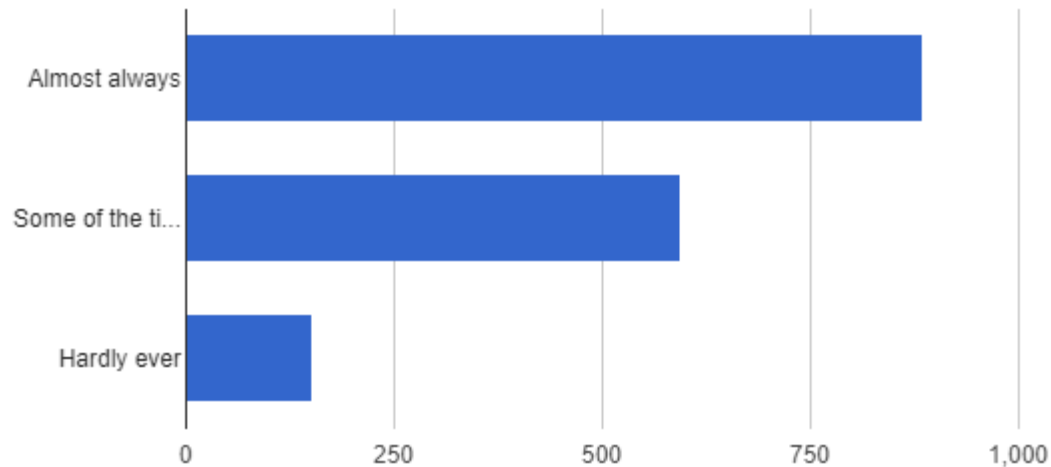
Counts/frequency: **Almost always** (807, 49.5%), **Some of the time** (602, 37.0%), **Hardly ever** (220, 13.5%)



20. I feel supported by my fellow workers (*work_support*)

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	3

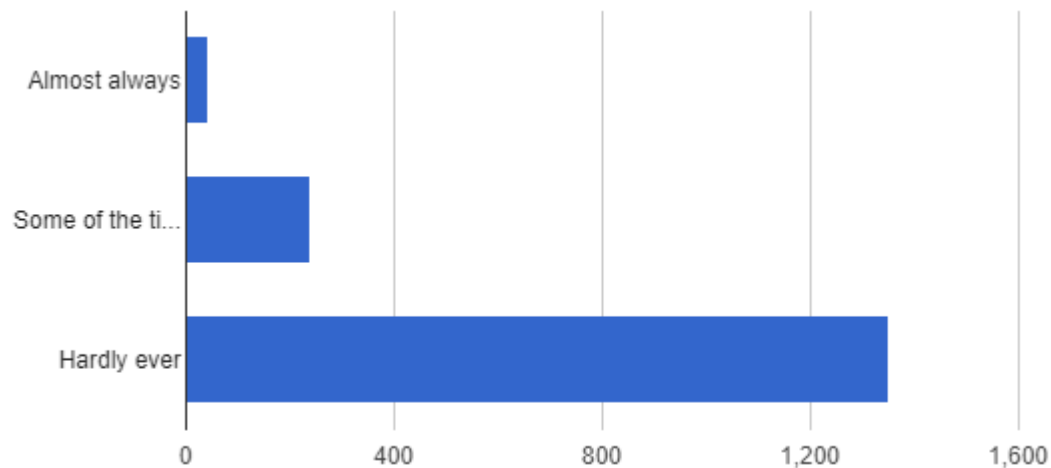
Counts/frequency: **Almost always** (884, 54.3%), **Some of the time** (593, 36.4%), **Hardly ever** (152, 9.3%)



21. I feel discriminated against (*work_discrimination*)

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	3

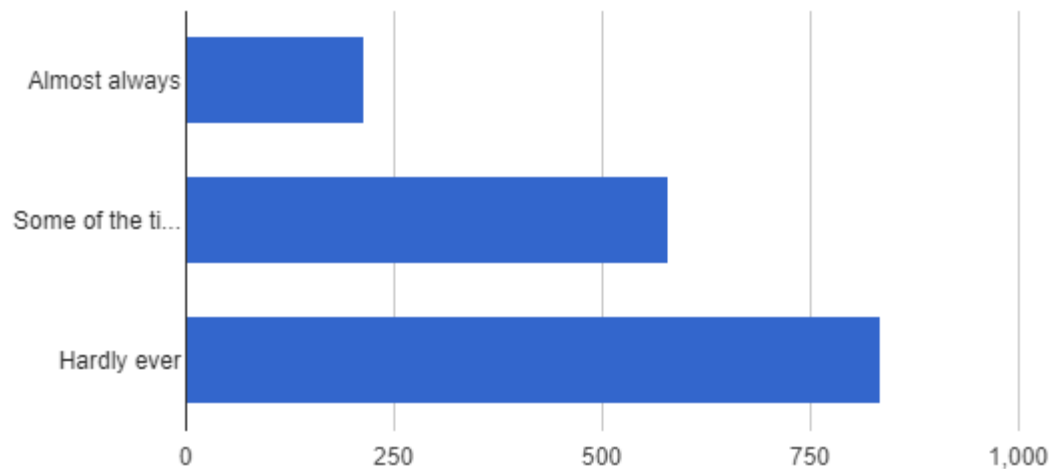
Counts/frequency: **Almost always** (43, 2.6%), **Some of the time** (237, 14.5%), **Hardly ever** (1349, 82.8%)



22. I feel isolated at work (*work_isolation*)

Total Count (N)	Missing*	Unique
1,627	383 (19.1%)	3

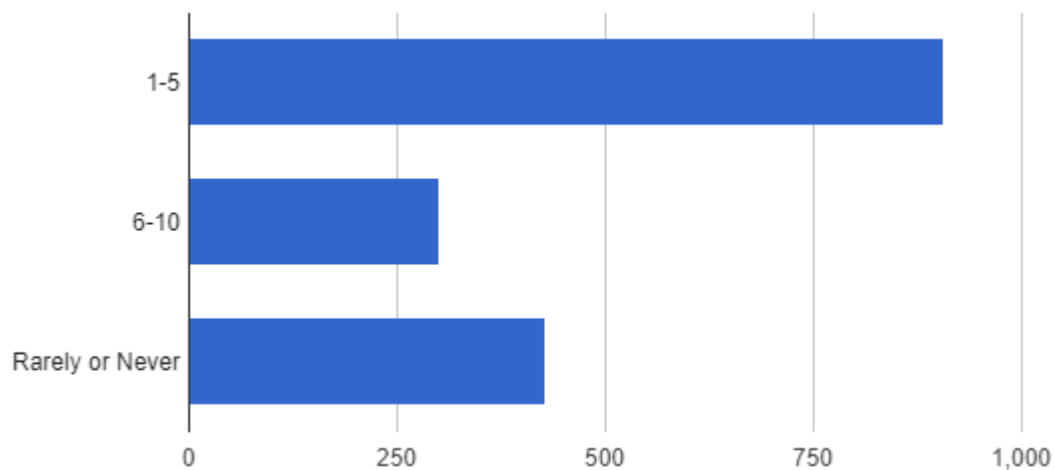
Counts/frequency: **Almost always** (215, 13.2%), **Some of the time** (579, 35.6%), **Hardly ever** (833, 51.2%)



23. How many hours do you work on a weekend? (*hours_weekend*)

Total Count (N)	Missing*	Unique
1,633	377 (18.8%)	3

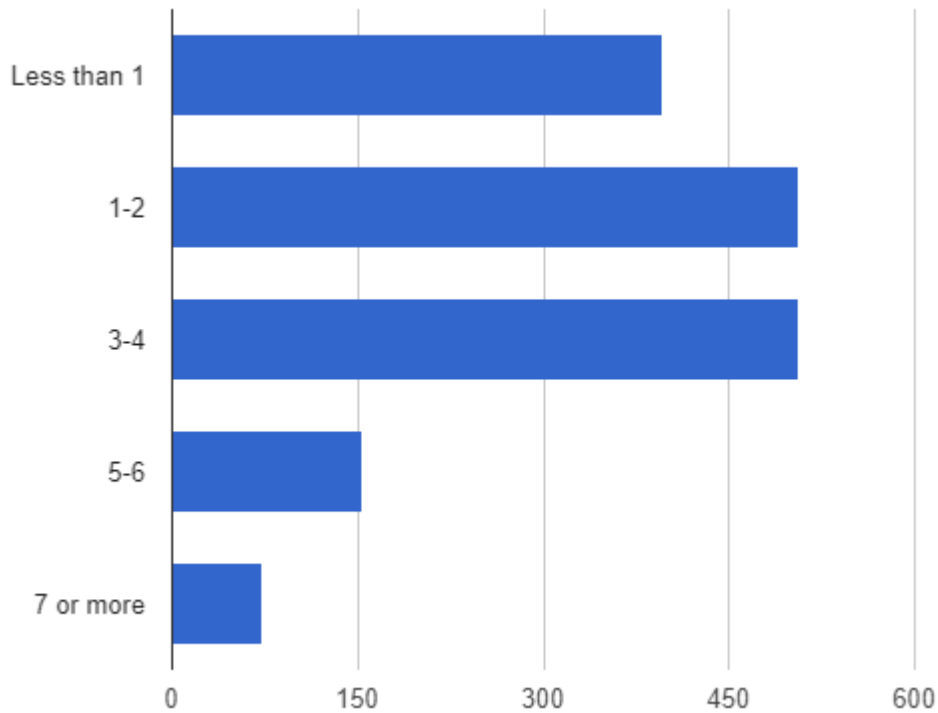
Counts/frequency: 1-5 (906, 55.5%), 6-10 (300, 18.4%), Rarely or Never (427, 26.1%)



24. How many days per month do you work on weekends? (*days_weekend*)

Total Count (N)	Missing*	Unique
1,636	374 (18.6%)	5

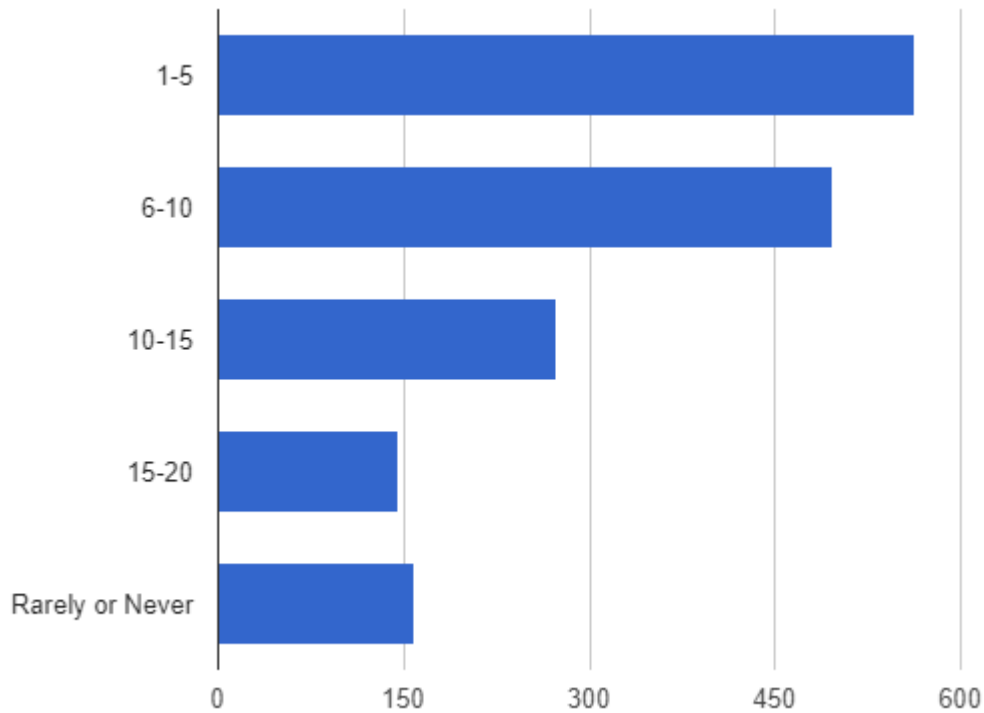
Counts/frequency: Less than 1 (396, 24.2%), 1-2 (507, 31.0%), 3-4 (507, 31.0%), 5-6 (154, 9.4%), 7 or more (72, 4.4%)



25. How many additional hours on average do you work during the week outside of your normal business hours (e.g., 8-5 Monday through Friday, or other if your regular business hours vary from this?) *(additional_hours)*

Total Count (N)	Missing*	Unique
1,635	375 (18.7%)	5

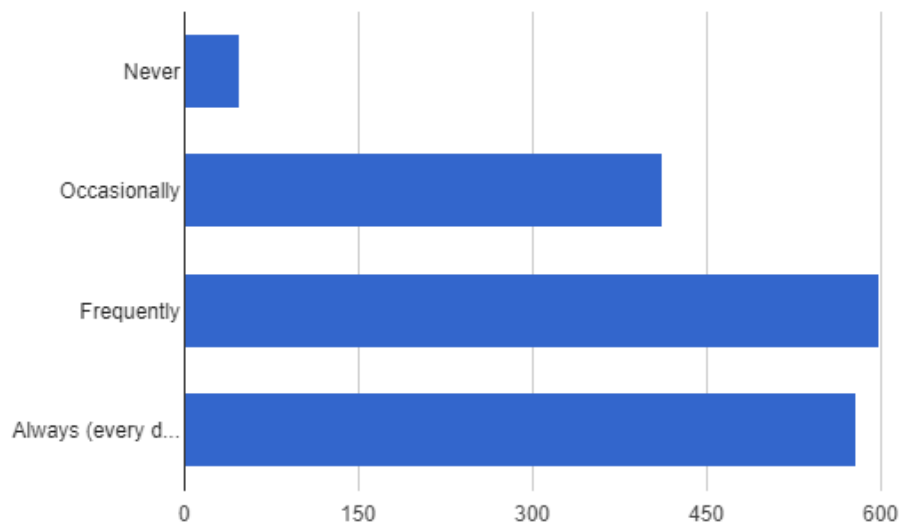
Counts/frequency: 1-5 (562, 34.4%), 6-10 (496, 30.3%), 10-15 (273, 16.7%), 15-20 (146, 8.9%), Rarely or Never (158, 9.7%)



26. How often do you answer emails after your normal business hours during the week? (*email_frequency*)

Total Count (N)	Missing*	Unique
1,636	374 (18.6%)	4

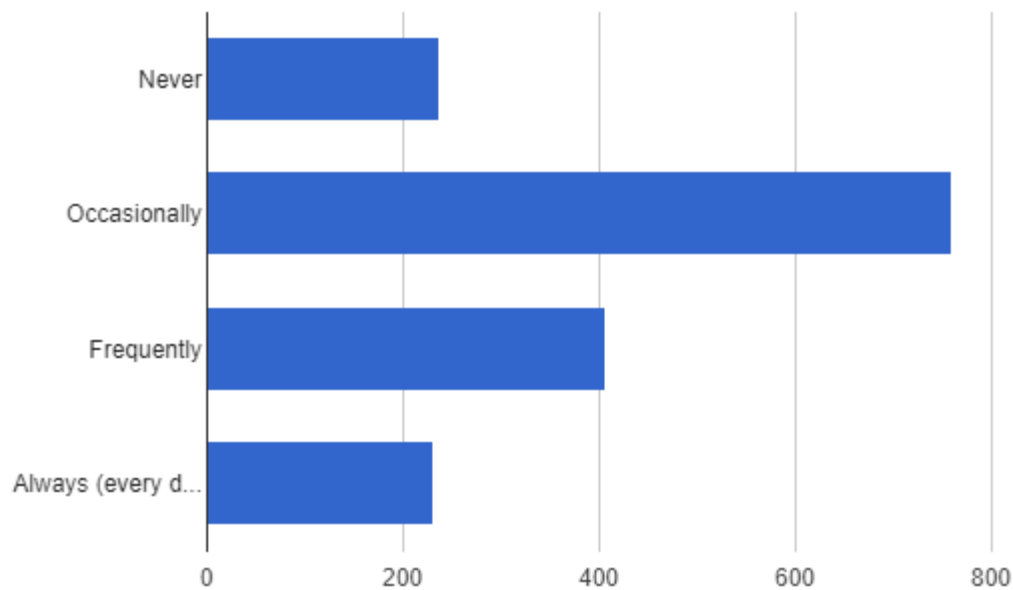
Counts/frequency: **Never** (48, 2.9%), **Occasionally** (411, 25.1%), **Frequently** (599, 36.6%), **Always (every day)** (578, 35.3%)



27. How often do you take calls from clients after your normal business hours during the week? *(calls_after_hours)*

Total Count (N)	Missing*	Unique
1,634	376 (18.7%)	4

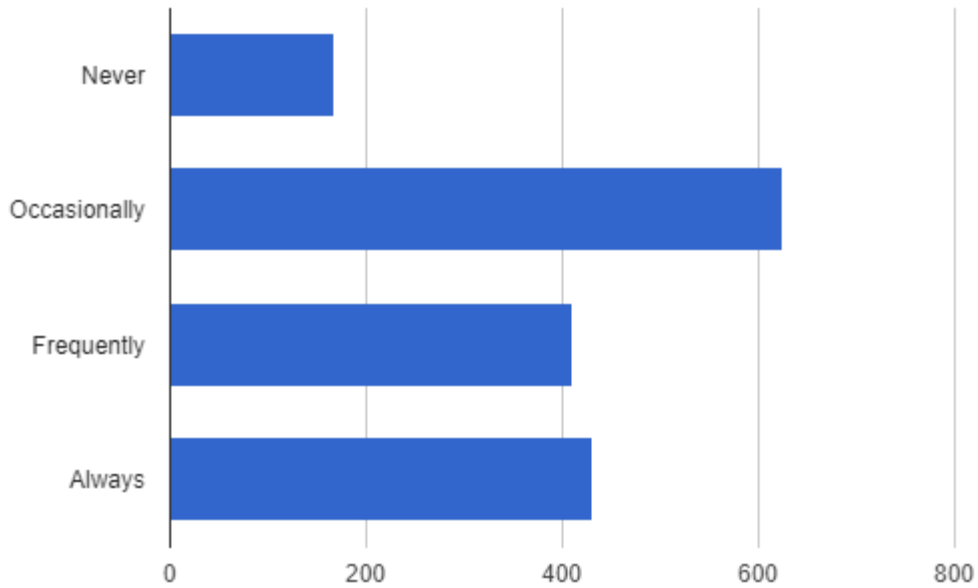
Counts/frequency: **Never** (237, 14.5%), **Occasionally** (760, 46.5%), **Frequently** (407, 24.9%), **Always (every day)** (230, 14.1%)



28. Do you or your employer believe you are expected to be available outside of regular business hours? *(employer_after_hours)*

Total Count (N)	Missing*	Unique
1,632	378 (18.8%)	4

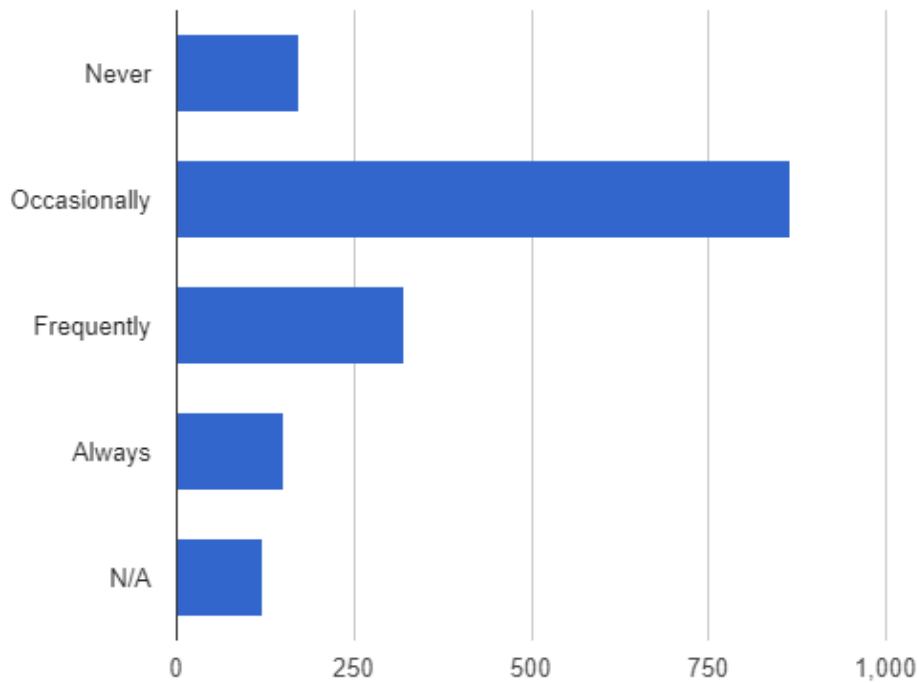
Counts/frequency: **Never** (168, 10.3%), **Occasionally** (624, 38.2%), **Frequently** (410, 25.1%), **Always** (430, 26.3%)



29. If yes, does this interfere with your personal life? *(employer_after_yes)*

Total Count (N)	Missing*	Unique
1,630	380 (18.9%)	5

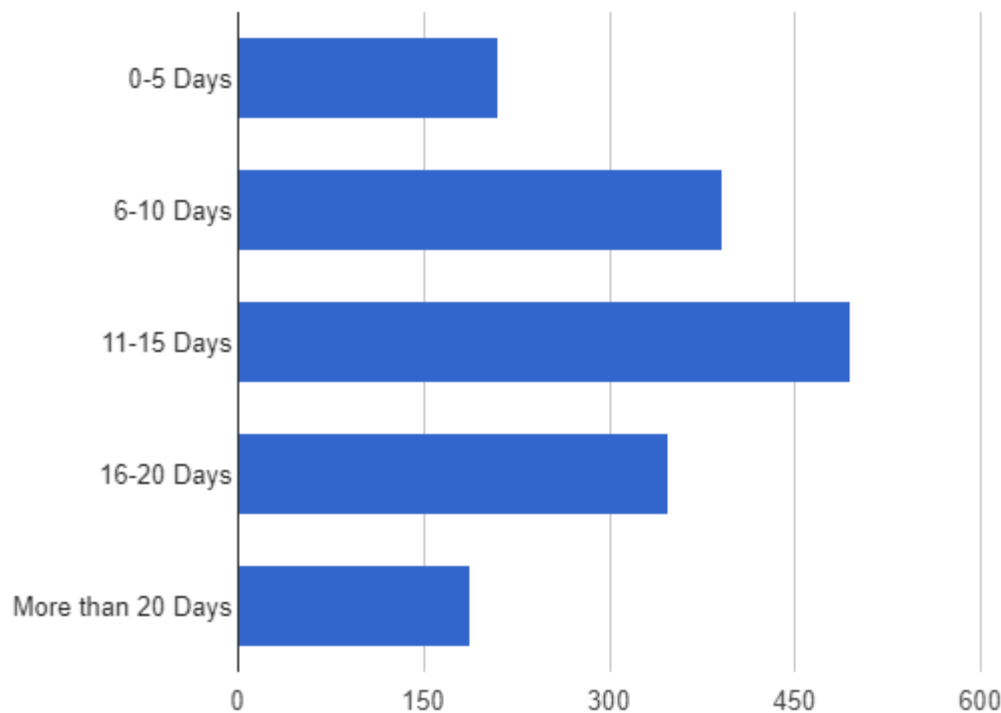
Counts/frequency: **Never** (173, 10.6%), **Occasionally** (864, 53.0%), **Frequently** (322, 19.8%), **Always** (151, 9.3%), **N/A** (120, 7.4%)



30. How much vacation time (excluding holidays and sick days) do you take every year? (*vacation_yearly*)

Total Count (N)	Missing*	Unique
1,632	378 (18.8%)	5

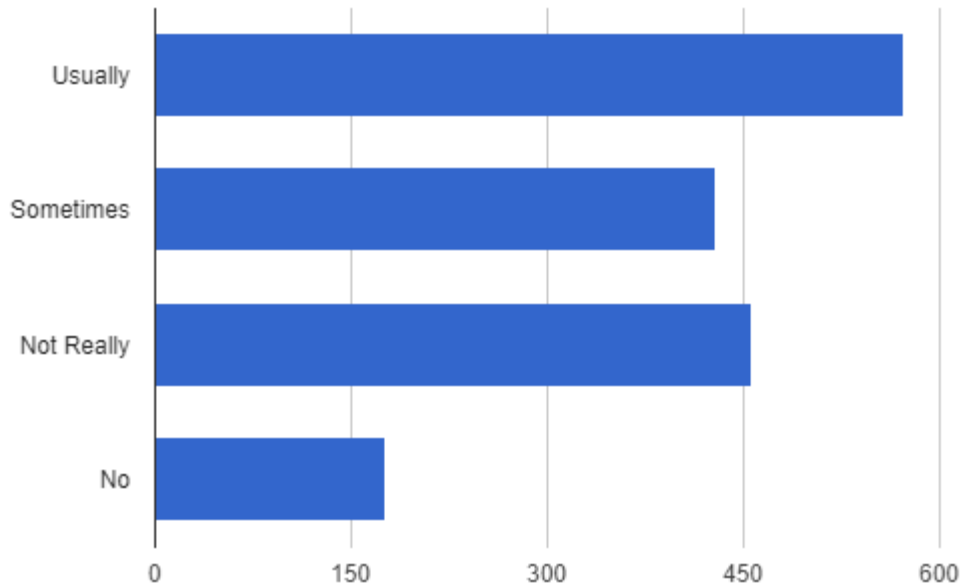
Counts/frequency: 0-5 Days (210, 12.9%), 6-10 Days (391, 24.0%), 11-15 Days (495, 30.3%), 16-20 Days (348, 21.3%), More than 20 Days (188, 11.5%)



31. Do you feel comfortable taking time off to address your wellbeing? (*comfortable_wellbeing*)

Total Count (N)	Missing*	Unique
1,633	377 (18.8%)	4

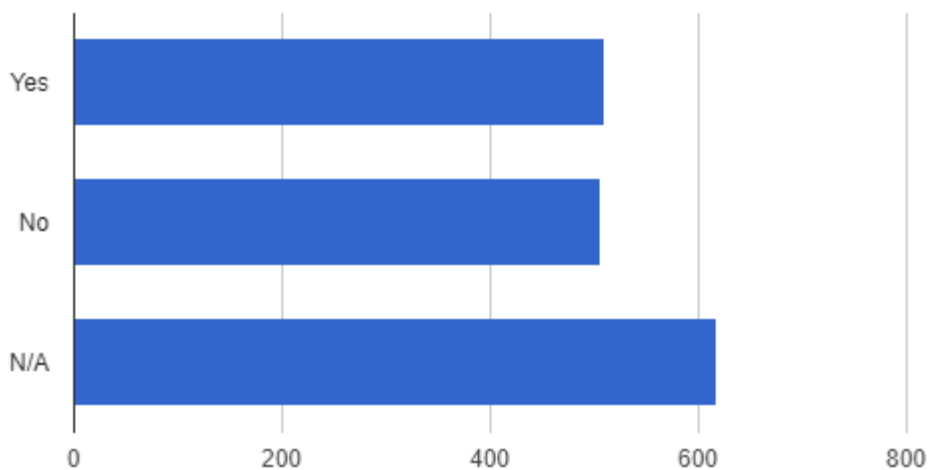
Counts/frequency: Usually (572, 35.0%), Sometimes (429, 26.3%), Not Really (456, 27.9%), No (176, 10.8%)



32. Does your employer have a minimum billable hour expectation? *(maximum_billable)*

Total Count (N)	Missing*	Unique
1,631	379 (18.9%)	3

Counts/frequency: **Yes** (509, 31.2%), **No** (505, 31.0%), **N/A** (617, 37.8%)

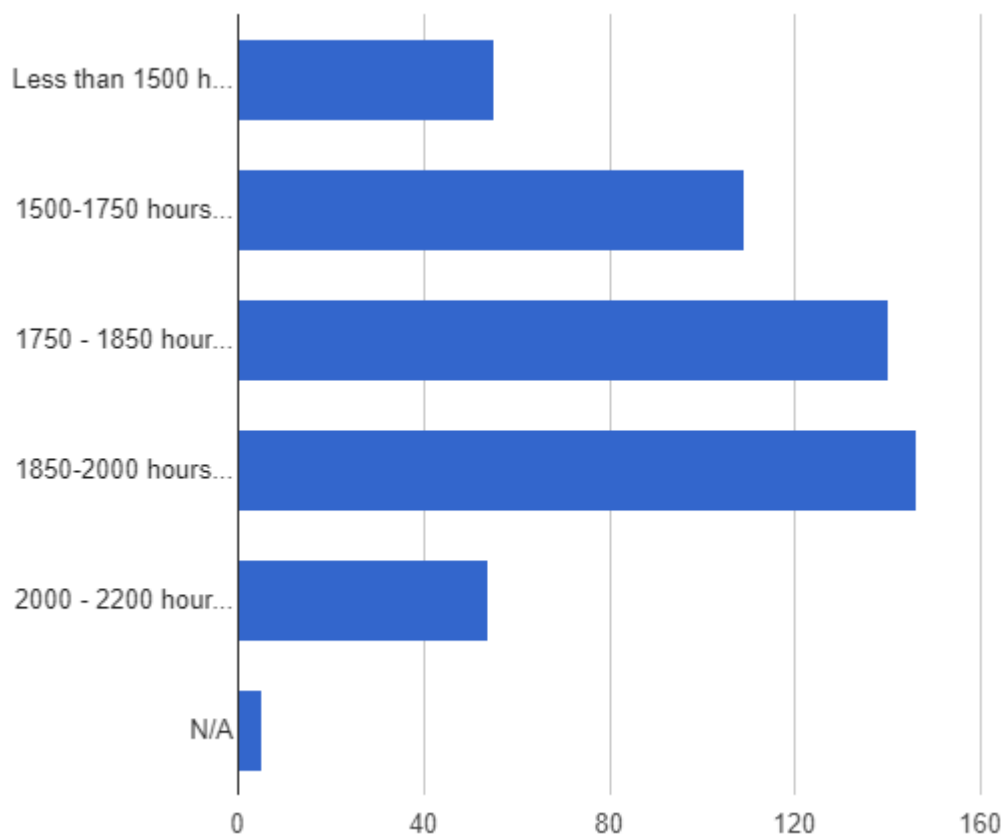


33. What is your employer's minimum billable hour expectation? *(maximum_billable_yes)*

Total Count (N)	Missing*	Unique

509	1501 (74.7%)	6
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Counts/frequency: Less than 1500 hours per year (55, 10.8%), 1500-1750 hours per year (109, 21.4%), 1750 - 1850 hours per year (140, 27.5%), 1850-2000 hours per year (146, 28.7%), 2000 - 2200 hours per year (54, 10.6%), N/A (5, 1.0%)

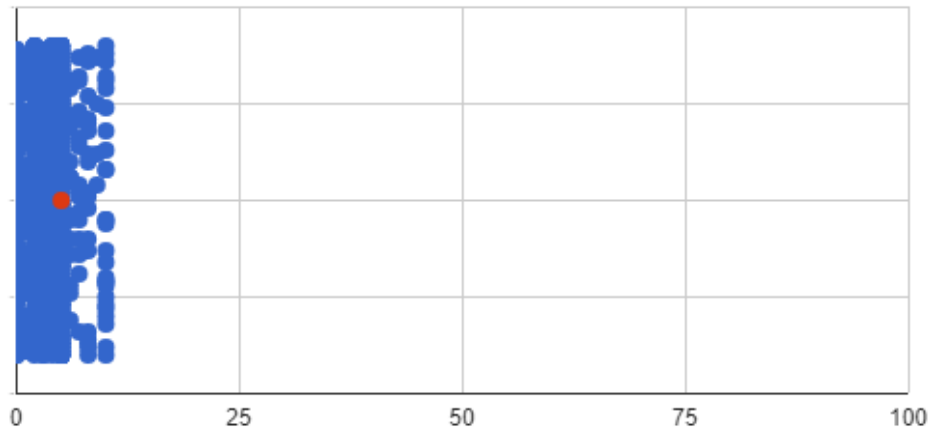


34. On a scale of 0 - 10, with 10 being most positive and 0 being most negative, how much do billable hour requirements from your firm/employer influence your mental well-being? (*billable_hours_wellbeing*)

Total Count (N)	Missing*	Unique	Min	Max	Mean	StDev	Sum	Percentile						
								0.05	0.10	0.25	0.50 Median	0.75	0.90	0.95
1,611	399 (19.9%)	11	0	10	4.24	1.75	6,830	1	2	3	5	5	5	5.50

Lowest values: 0, 0, 0, 0, 0

Highest values: 10, 10, 10, 10, 10

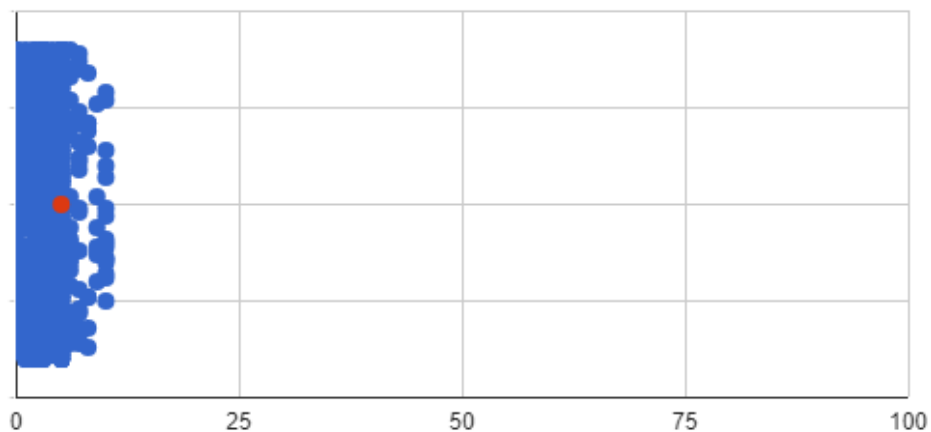


35. How much does tracking time in required increments influence your mental well-being? (*tracking_wellbeing*)

Total Count (N)	Missing*	Unique	Min	Max	Mean	StDev	Sum	Percentile						
								0.05	0.10	0.25	0.50 Median	0.75	0.90	0.95
1,612	398 (19.8%)	11	0	10	3.94	1.78	6,352	0	1	3	5	5	5	5

Lowest values: 0, 0, 0, 0, 0

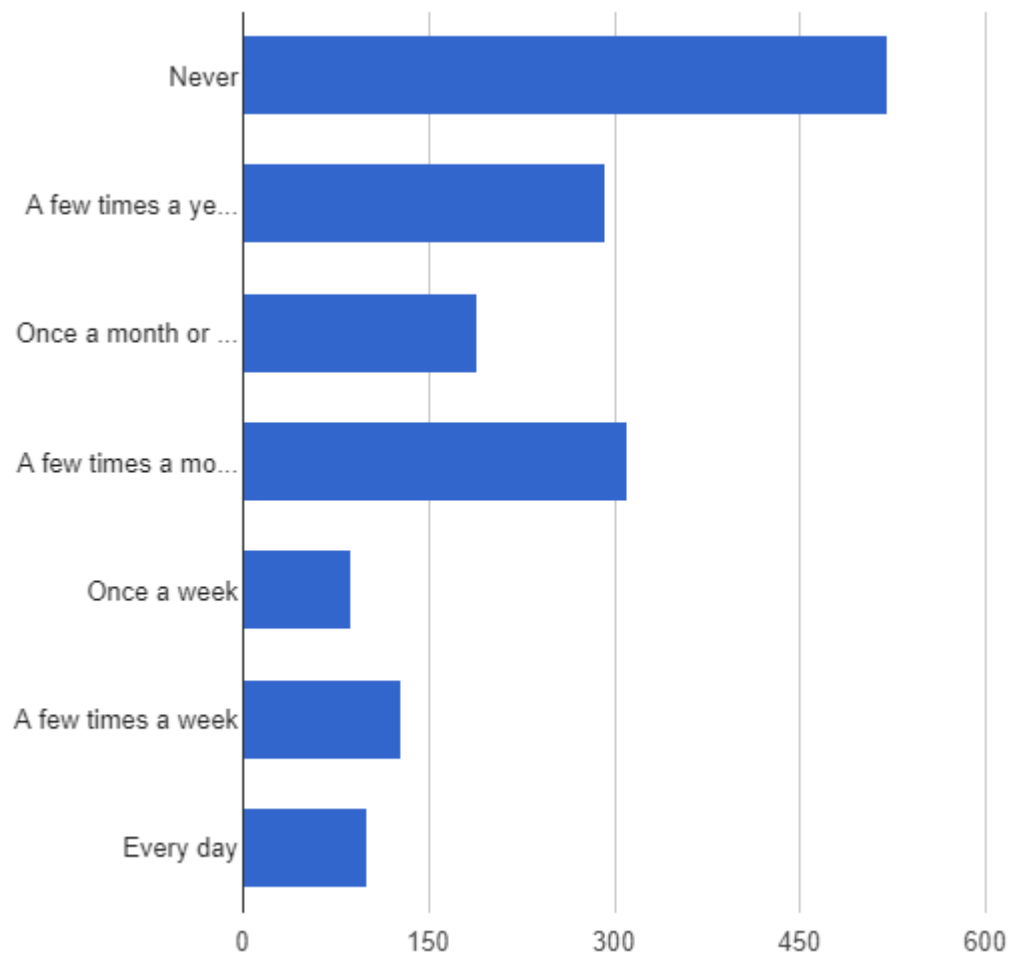
Highest values: 10, 10, 10, 10, 10



36. How often does collection of fees/debts cause you to feel stress or unease? (*collection_stress*)

Total Count (N)	Missing*	Unique
1,630	380 (18.9%)	7

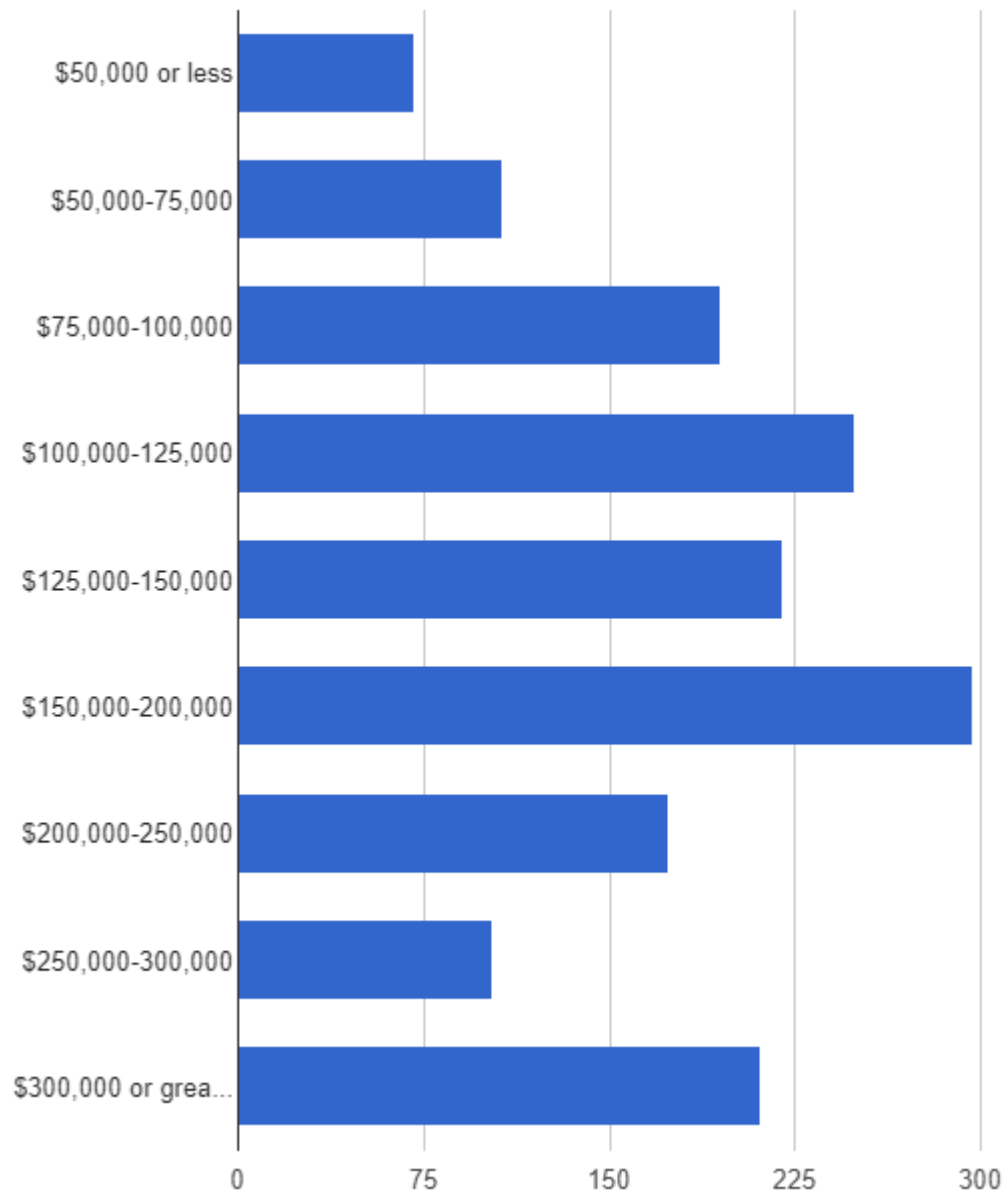
Counts/frequency: Never (521, 32.0%), A few times a year or less (293, 18.0%), Once a month or less (190, 11.7%), A few times a month (311, 19.1%), Once a week (88, 5.4%), A few times a week (127, 7.8%), Every day (100, 6.1%)



37 Which bracket best approximates your annual income including bonuses from your primary employer in your practice of law: *(annual_income)*

Total Count (N)	Missing*	Unique
1,627	383 (19.1%)	9

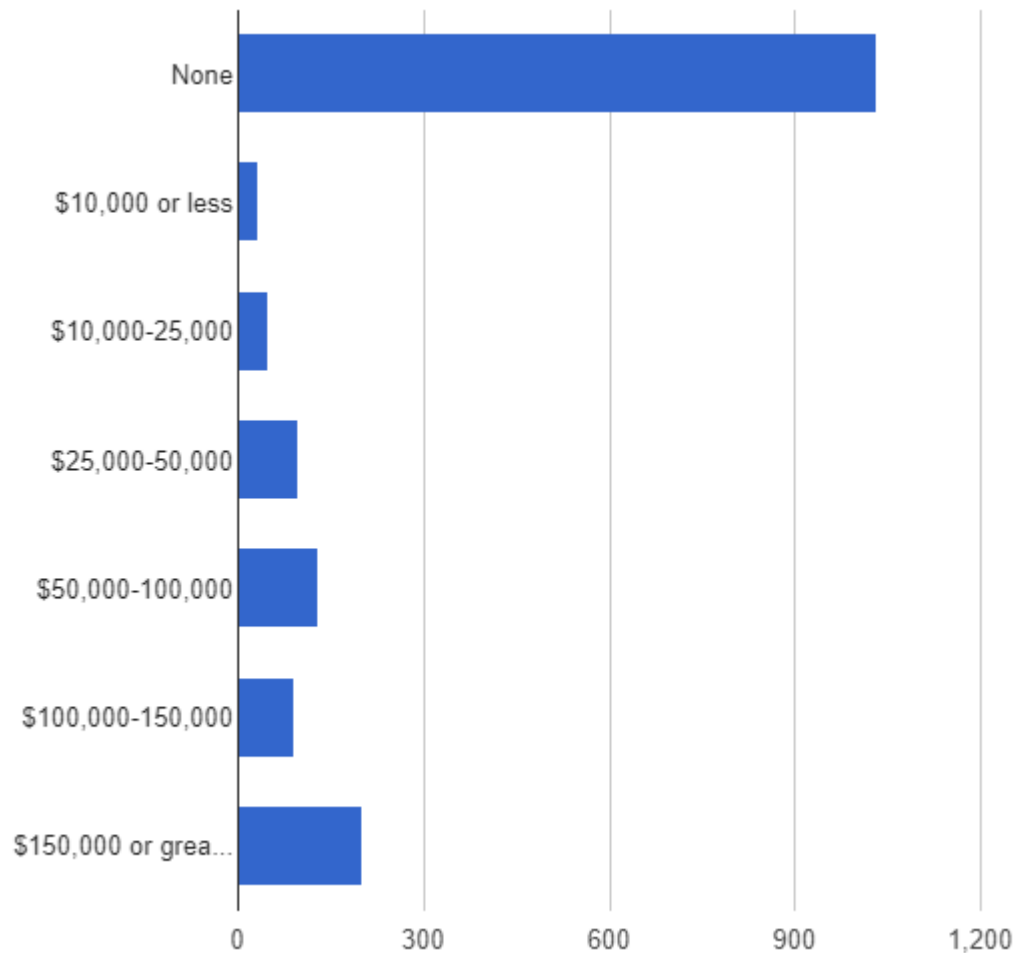
Counts/frequency: \$50,000 or less (71, 4.4%), \$50,000-75,000 (107, 6.6%), \$75,000-100,000 (195, 12.0%), \$100,000-125,000 (249, 15.3%), \$125,000-150,000 (220, 13.5%), \$150,000-200,000 (297, 18.3%), \$200,000-250,000 (174, 10.7%), \$250,000-300,000 (103, 6.3%), \$300,000 or greater (211, 13.0%)



38. Which bracket best approximates your current student loan debt: *(student_loan_debt)*

Total Count (N)	Missing*	Unique
1,630	380 (18.9%)	7

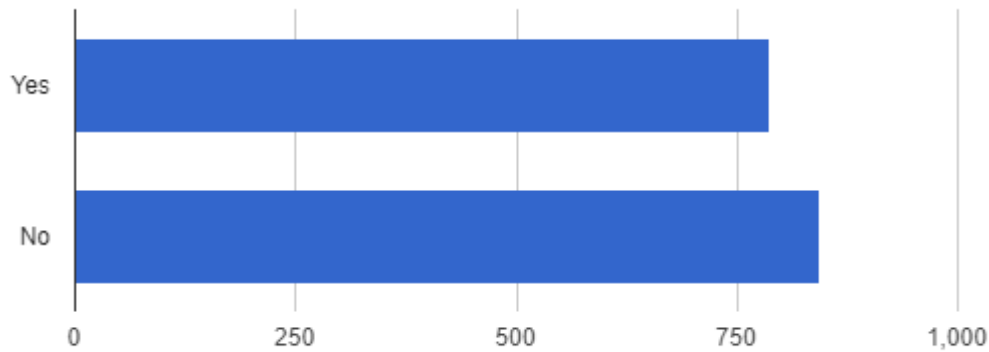
Counts/frequency: None (1033, 63.4%), \$10,000 or less (31, 1.9%), \$10,000-25,000 (47, 2.9%), \$25,000-50,000 (98, 6.0%), \$50,000-100,000 (129, 7.9%), \$100,000-150,000 (90, 5.5%), \$150,000 or greater (202, 12.4%)



39. Do you believe your net take home pay, after debts and monthly expenses, allows you to save for your future and long-term goals, such as retirement, buying a home, or family planning (this list is non-exhaustive)? *(finances_future)*

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	2

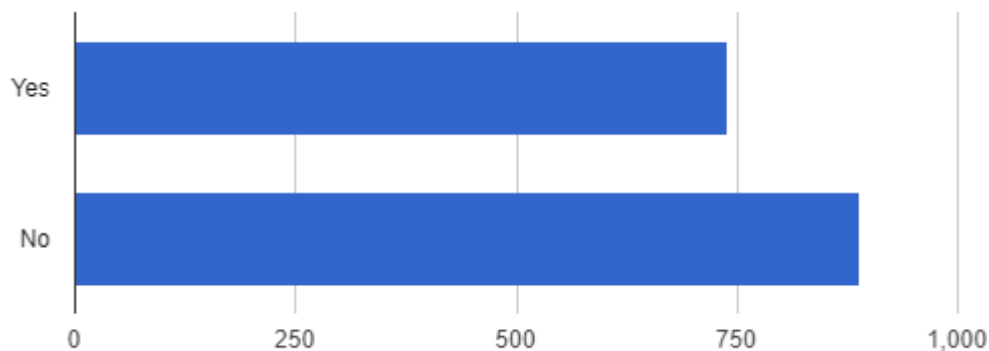
Counts/frequency: **Yes** (786, 48.3%), **No** (843, 51.7%)



40. Do you believe your net take home pay, after debts and monthly expenses, prevents you from pursuing activities that could improve your (and your family's) quality of life, including vacations, weekend trips, gym memberships, social events, etc.? *(finances_improve_qol)*

Total Count (N)	Missing*	Unique
1,628	382 (19.0%)	2

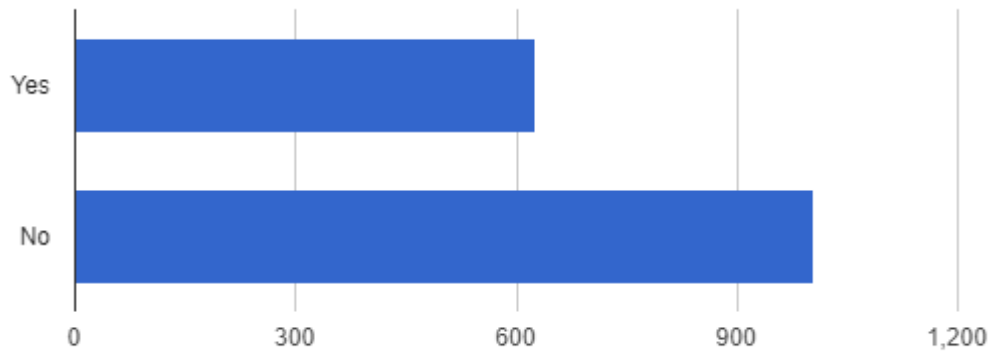
Counts/frequency: **Yes** (739, 45.4%), **No** (889, 54.6%)



41. Do you believe that your salary and/or debt and expenses are keeping you in a job or position that you would otherwise have chosen to leave? *(finances_prevent_leave)*

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	2

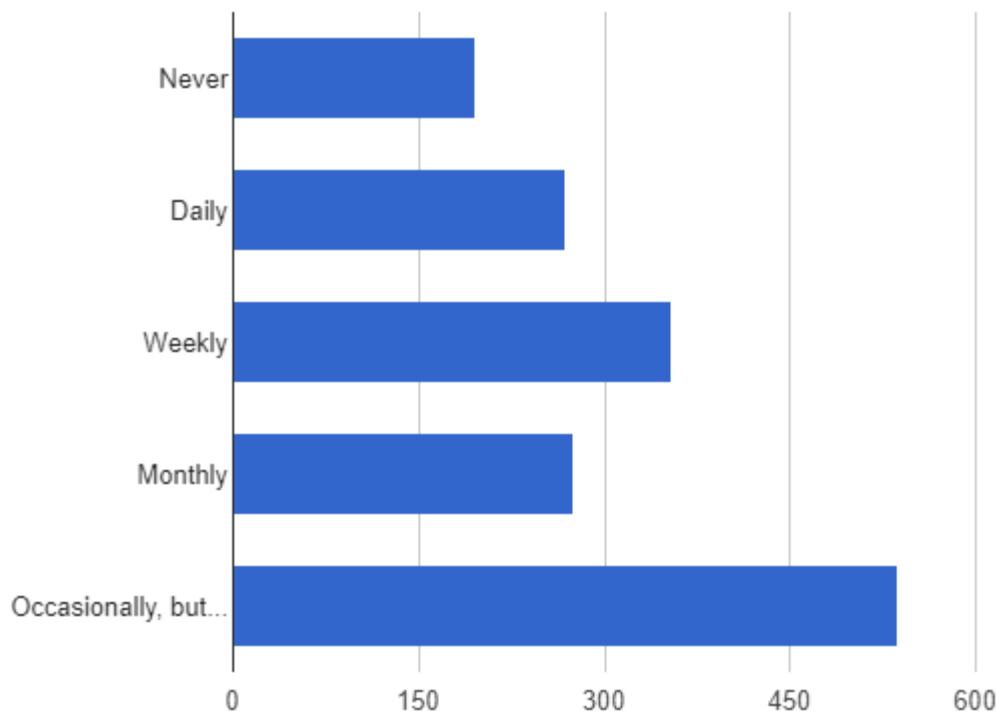
Counts/frequency: **Yes** (625, 38.4%), **No** (1004, 61.6%)



42. How often does your current financial situation cause you stress, anxiety, or other negative feelings? (*finances_stress_freq*)

Total Count (N)	Missing*	Unique
1,630	380 (18.9%)	5

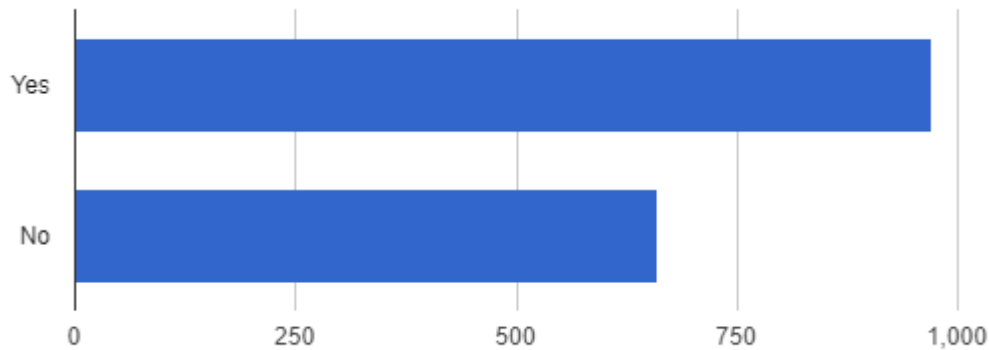
Counts/frequency: **Never** (195, 12.0%), **Daily** (269, 16.5%), **Weekly** (354, 21.7%), **Monthly** (275, 16.9%), **Occasionally, but less frequently than monthly.** (537, 32.9%)



43. Have you consulted an accountant, financial planner/consultant, or other finance professional for assistance in your financial matters? (*finances_consult*)

Total Count (N)	Missing*	Unique
1,630	380 (18.9%)	2

Counts/frequency: **Yes** (970, 59.5%), **No** (660, 40.5%)



44. Does your employer offer programs to promote diversity and inclusion? (*employer_diversity*)

Total Count (N)	Missing*
0	2010 (100.0%)

No data recorded

45. Do you take part in these programs? (*participate_diversity*)

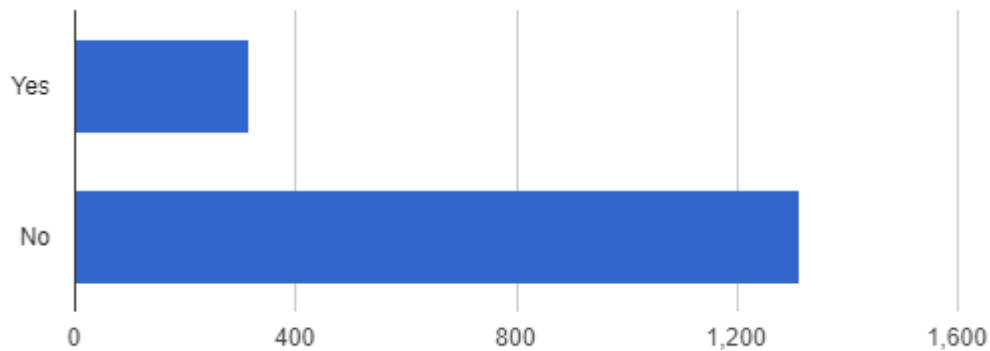
Total Count (N)	Missing*
0	2010 (100.0%)

No data recorded

46. Have your credentials as an attorney ever been questioned by another attorney, a judge, court personnel, or a lay person in a professional setting? (*credentials_questioned*)

Total Count (N)	Missing*	Unique
1,627	383 (19.1%)	2

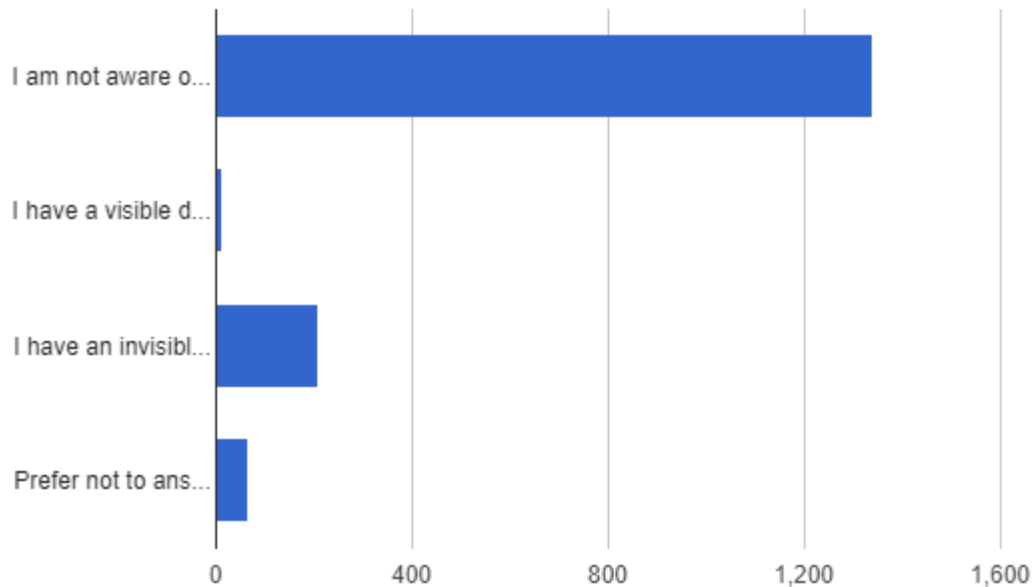
Counts/frequency: **Yes** (315, 19.4%), **No** (1312, 80.6%)



47. Disability: *(disability)*

Total Count (N)	Missing*	Unique
1,629	381 (19.0%)	4

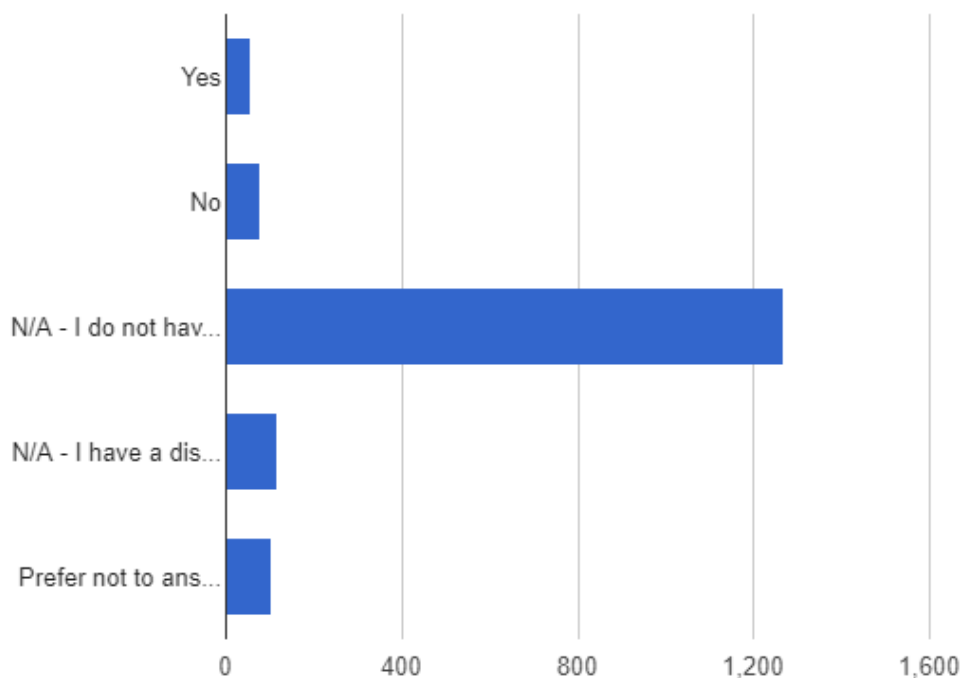
Counts/frequency: I am not aware of having any disability/ different ability (1339, 82.2%), I have a visible disability/ different ability (13, 0.8%), I have an invisible disability/ different ability (210, 12.9%), Prefer not to answer (67, 4.1%)



48. If you have a disability/ different ability, does your employer provide any accommodations to you in connection with your disability? *(disability_accomodations)*

Total Count (N)	Missing*	Unique
1,620	390 (19.4%)	5

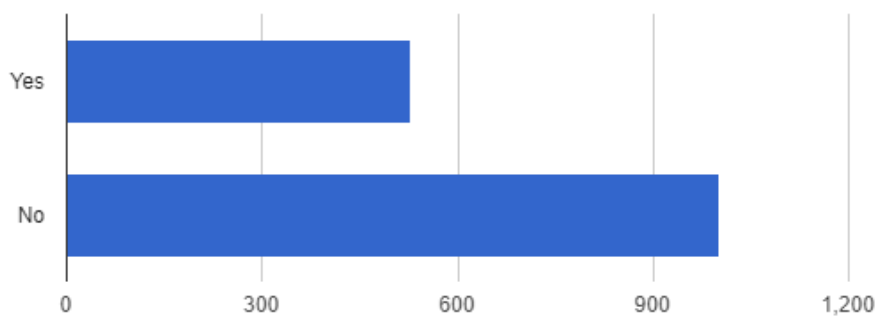
Counts/frequency: Yes (57, 3.5%), No (76, 4.7%), N/A - I do not have a disability/different ability (1267, 78.2%), N/A - I have a disability/different ability but do not need accommodations (118, 7.3%), Prefer not to answer (102, 6.3%)



a. Obesity: (*health_obesity*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	2

Counts/frequency: Yes (528, 34.5%), No (1002, 65.5%)

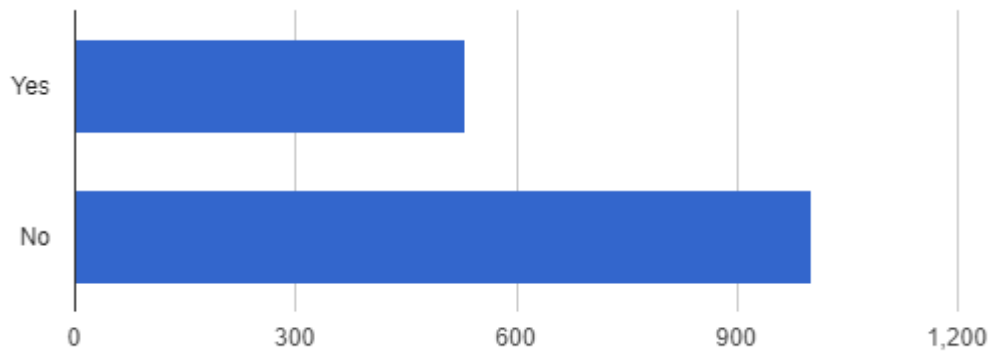


b. High Blood Pressure: (*health_blood_pressure*)

Total Count (N)	Missing*	Unique

1,531	479 (23.8%)	2
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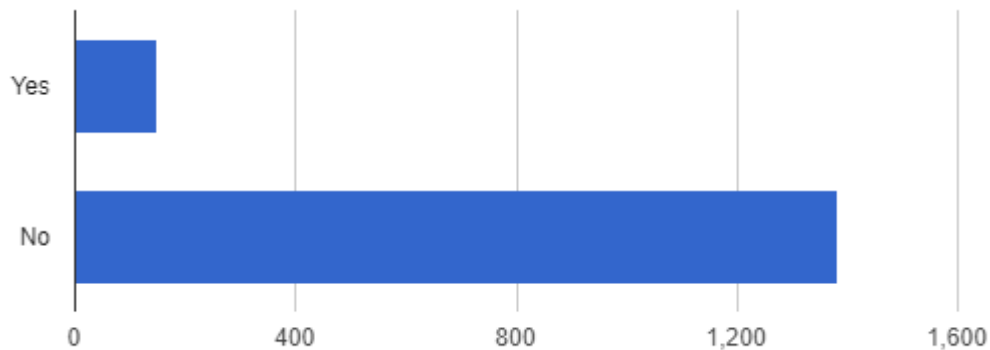
Counts/frequency: **Yes** (530, 34.6%), **No** (1001, 65.4%)



c. Heart Disease: (*health_heart_disease*)

Total Count (N)	Missing*	Unique
1,531	479 (23.8%)	2

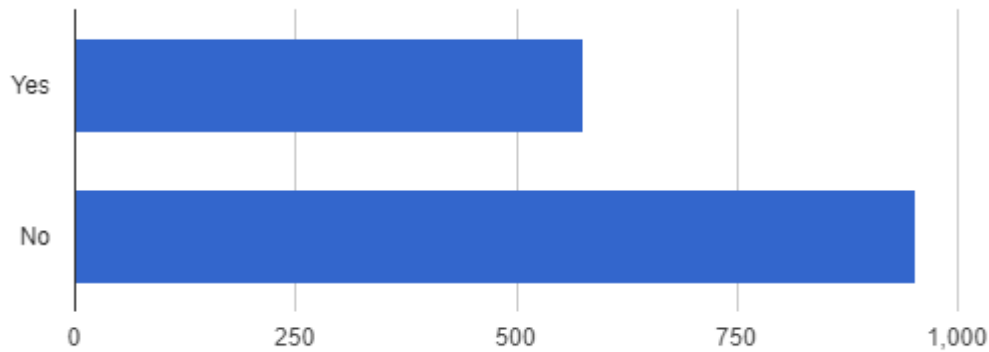
Counts/frequency: **Yes** (149, 9.7%), **No** (1382, 90.3%)



d. Mental Health Condition (e.g., Depression, Anxiety, Alcohol or Substance Use Disorder, etc.) (*health_mental_health*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	2

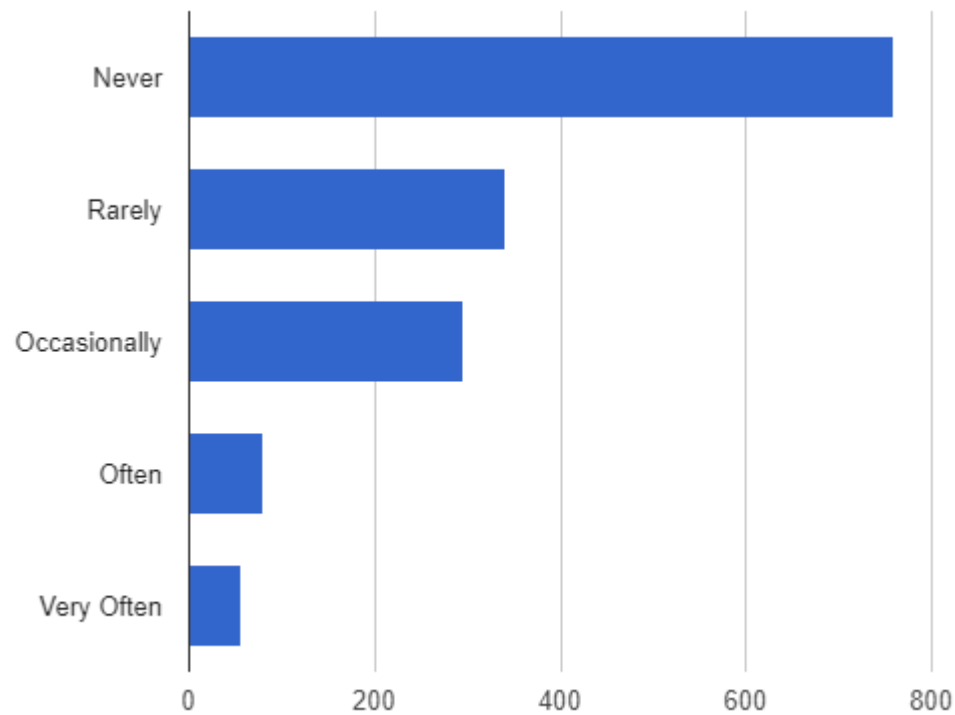
Counts/frequency: **Yes** (577, 37.7%), **No** (953, 62.3%)



50. In the past 30 days how often have you had any thoughts that you think may be from secondary trauma (e.g., stories, pictures or details that you were exposed to in a professional setting that you found disturbing)? Secondary trauma, also called "vicarious trauma" or "compassion fatigue" is defined as emotional duress/stress that results when an individual hears about the firsthand trauma experiences of another - in this instance, it would be your clients. *(secondary_trauma_freq)*

Total Count (N)	Missing*	Unique
1,531	479 (23.8%)	5

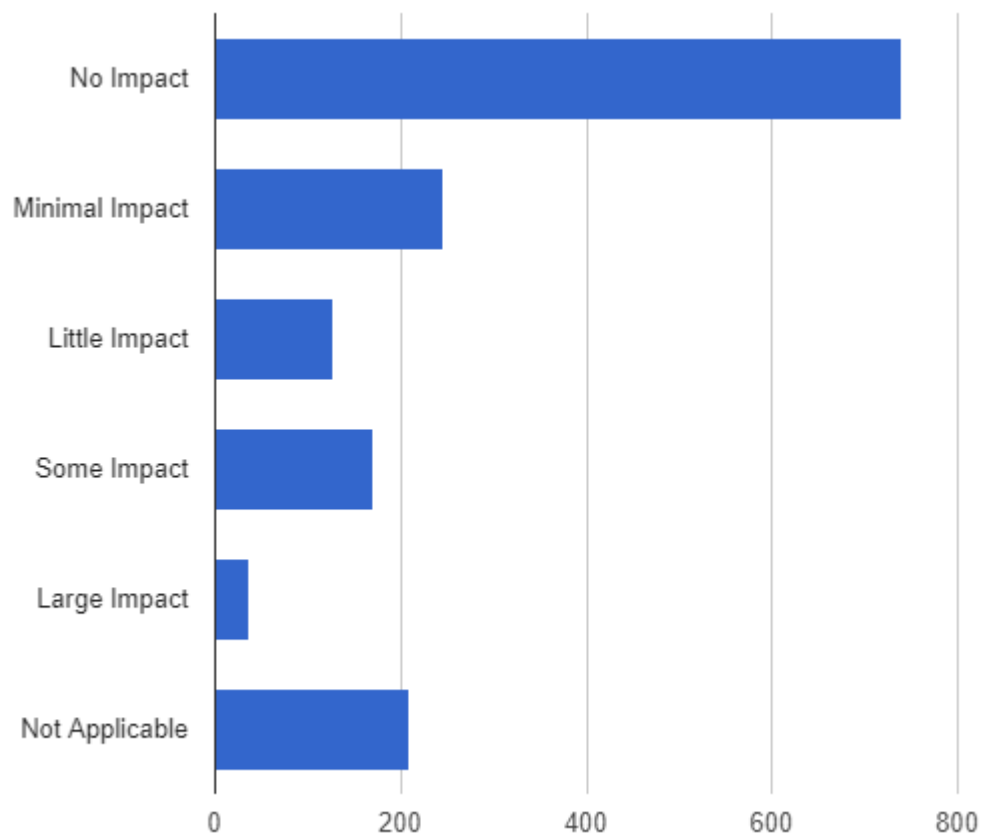
Counts/frequency: **Never** (758, 49.5%), **Rarely** (341, 22.3%), **Occasionally** (295, 19.3%), **Often** (80, 5.2%), **Very Often** (57, 3.7%)



51. In the past 30 days, how much of an impact has secondary trauma had on your ability to do your job? *(secondary_trauma_impact)*

Total Count (N)	Missing*	Unique
1,531	479 (23.8%)	6

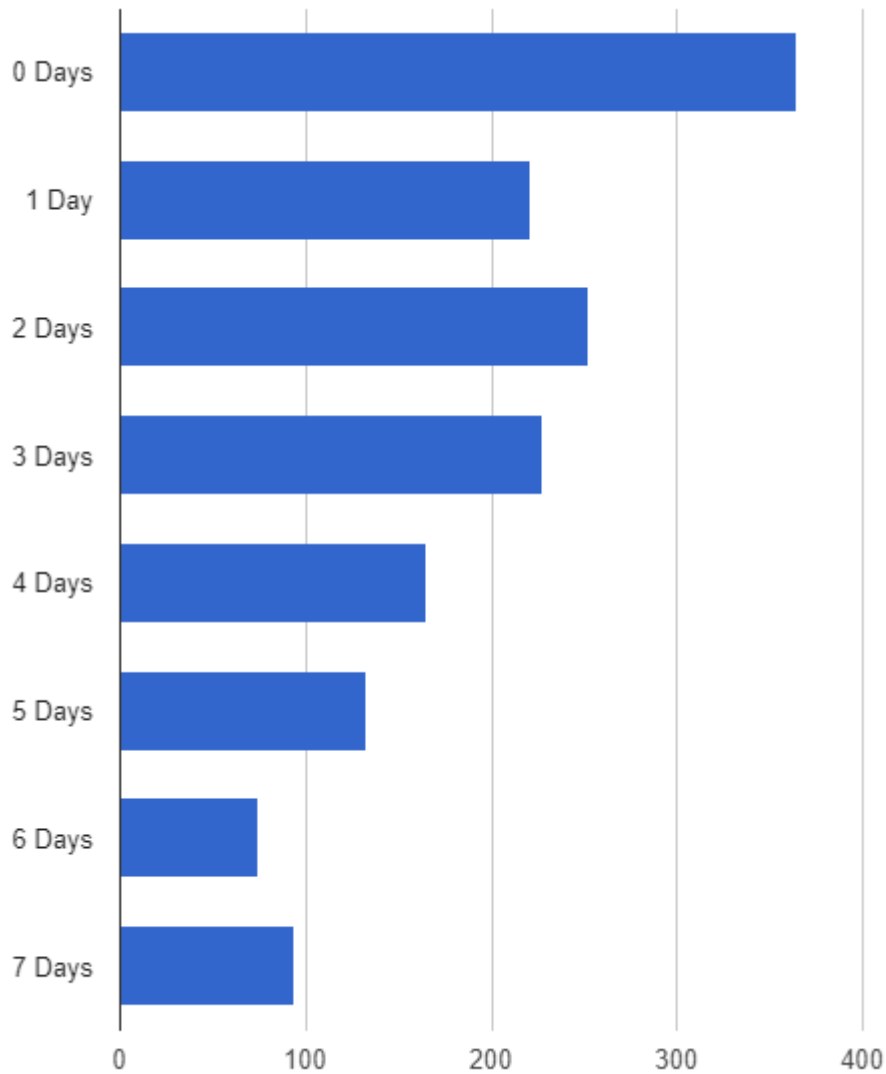
Counts/frequency: No Impact (740, 48.3%), Minimal Impact (245, 16.0%), Little Impact (128, 8.4%), Some Impact (171, 11.2%), Large Impact (37, 2.4%), Not Applicable (210, 13.7%)



52. During the last 7 days, on how many days did you do moderate to vigorous physical activities/exercise for 20 minutes or more? (*exercise_days*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	8

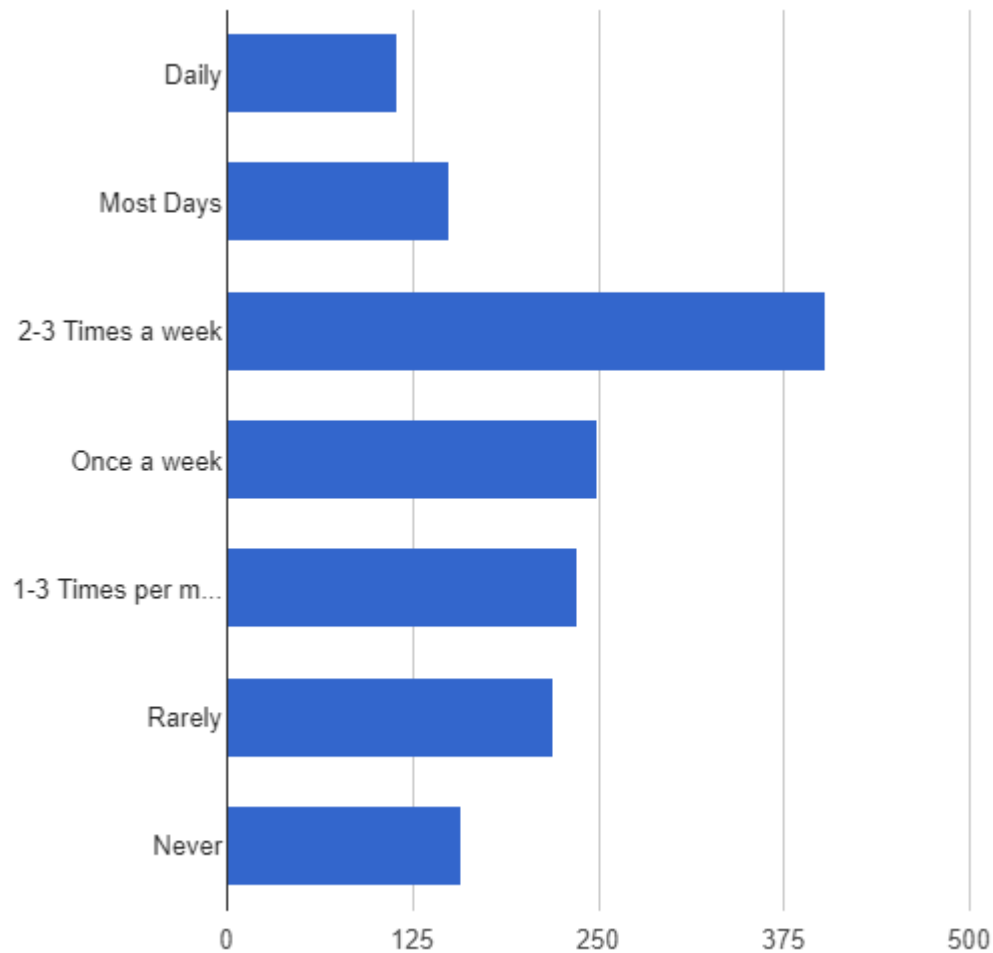
Counts/frequency: 0 Days (364, 23.8%), 1 Day (221, 14.4%), 2 Days (252, 16.5%), 3 Days (227, 14.8%), 4 Days (165, 10.8%), 5 Days (133, 8.7%), 6 Days (74, 4.8%), 7 Days (94, 6.1%)



53. How frequently do you consume at least one alcoholic beverage? (*alcohol_freq*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	7

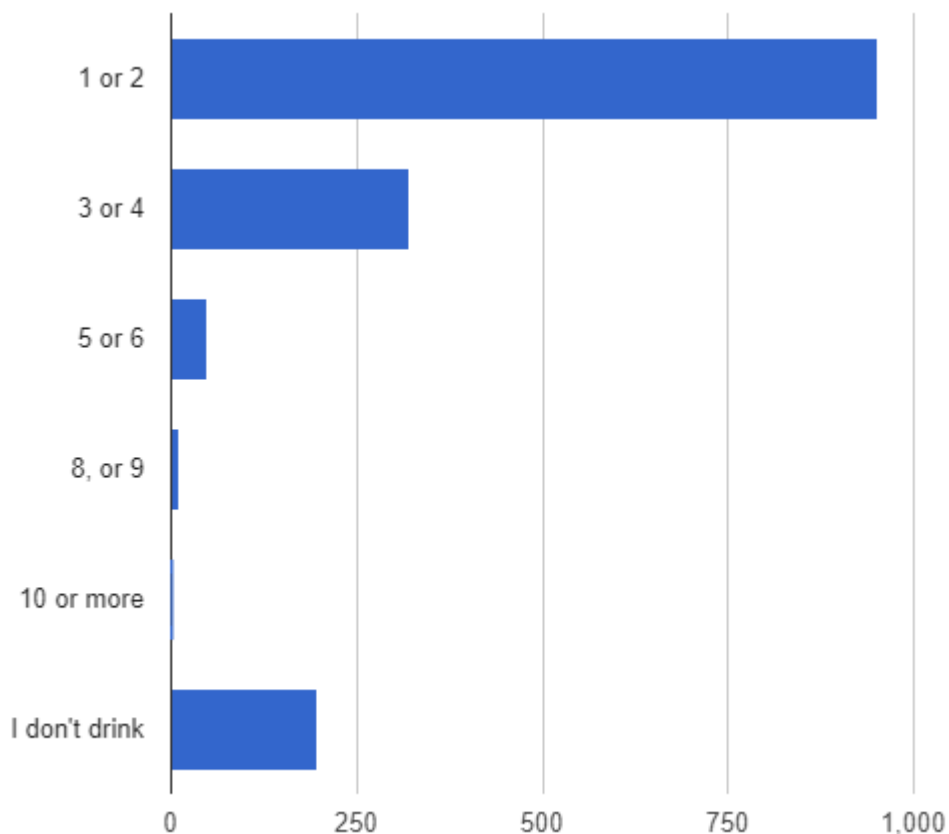
Counts/frequency: Daily (114, 7.5%), Most Days (150, 9.8%), 2-3 Times a week (403, 26.3%), Once a week (249, 16.3%), 1-3 Times per month (236, 15.4%), Rarely (220, 14.4%), Never (158, 10.3%)



54. How many drinks containing alcohol do you have on a typical day when you are drinking? (*alcohol_typical_day*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	6

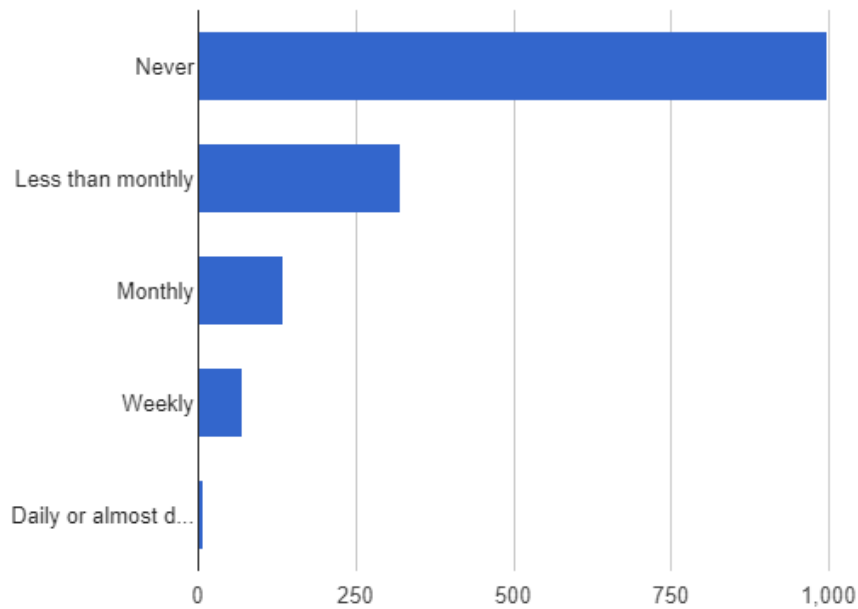
Counts/frequency: 1 or 2 (951, 62.2%), 3 or 4 (320, 20.9%), 5 or 6 (48, 3.1%), 8, or 9 (10, 0.7%), 10 or more (4, 0.3%), I don't drink (197, 12.9%)



55. How often do you have six or more drinks on one occasion? *(alcohol_four_or_more)*

Total Count (N)	Missing*	Unique
1,529	481 (23.9%)	5

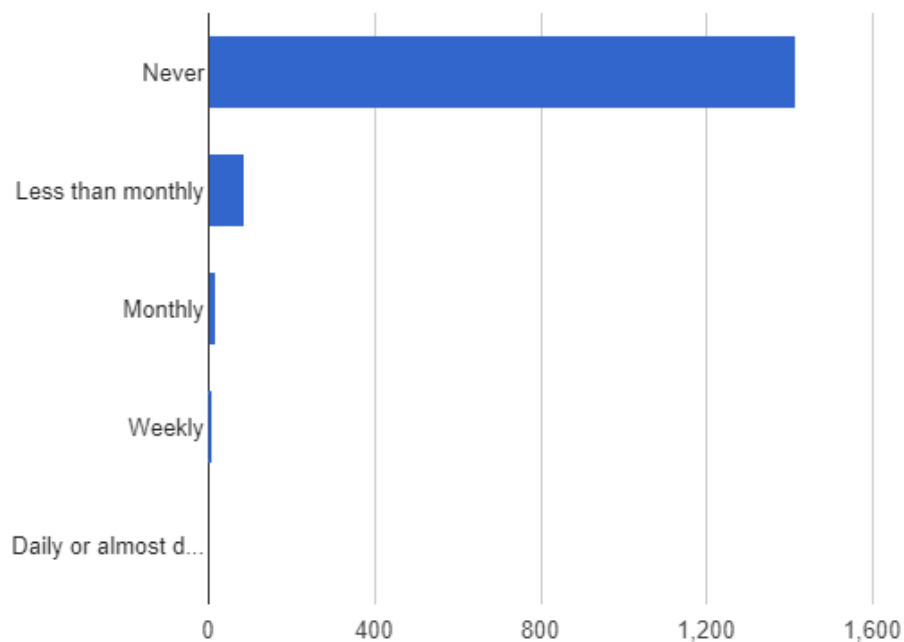
Counts/frequency: **Never** (996, 65.1%), **Less than monthly** (321, 21.0%), **Monthly** (135, 8.8%), **Weekly** (69, 4.5%), **Daily or almost daily** (8, 0.5%)



56. How often during the last year have you failed to do what was normally expected from you because of drinking? (*alcohol_year_fail*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	4

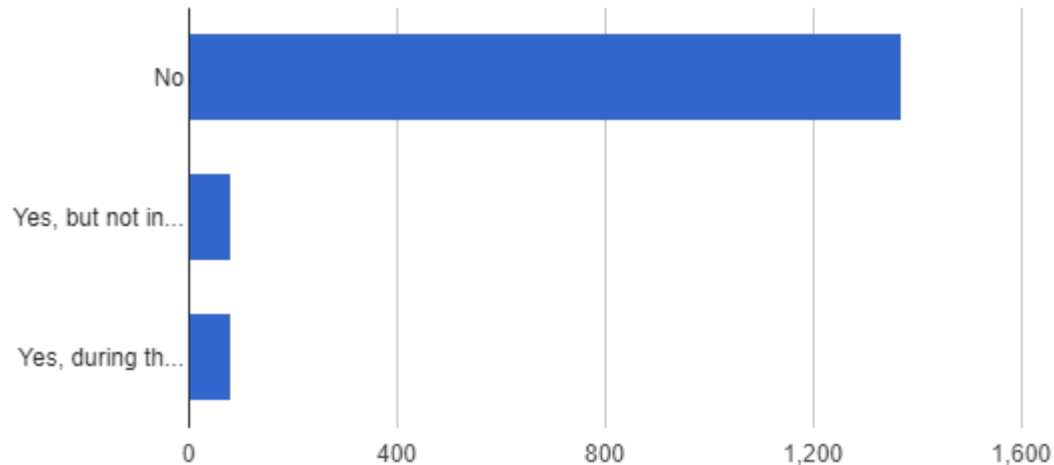
Counts/frequency: **Never** (1414, 92.4%), **Less than monthly** (88, 5.8%), **Monthly** (19, 1.2%), **Weekly** (9, 0.6%), **Daily or almost daily** (0, 0.0%)



57. Has a relative, friend, doctor, or other health professional expressed concern about your drinking or suggest you cut down? (*alcohol_concern*)

Total Count (N)	Missing*	Unique
1,530	480 (23.9%)	3

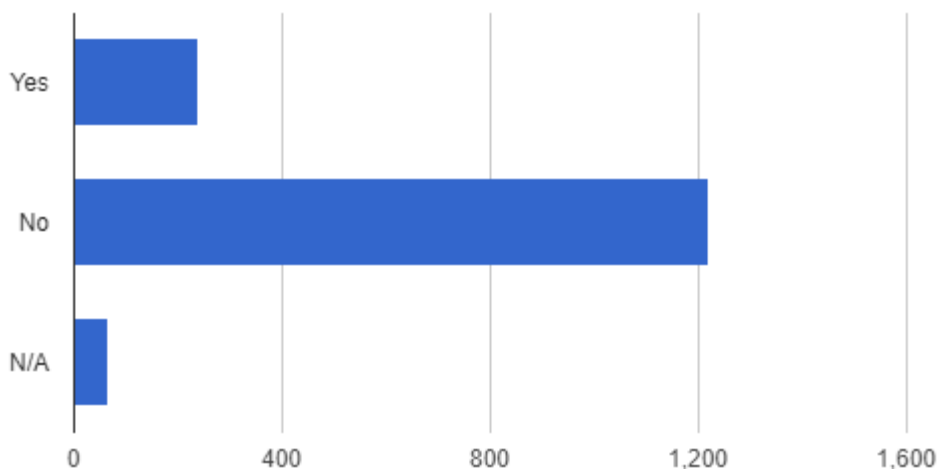
Counts/frequency: No (1369, 89.5%), Yes, but not in the last year (79, 5.2%), Yes, during the last year (82, 5.4%)



58. Have you used drugs other than those required for medical reasons? (*drugs_other*)

Total Count (N)	Missing*	Unique
1,522	488 (24.3%)	3

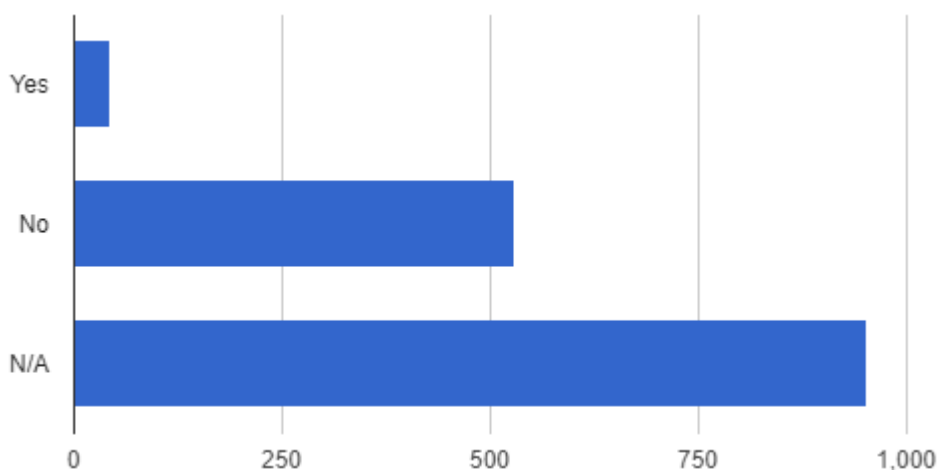
Counts/frequency: Yes (239, 15.7%), No (1219, 80.1%), N/A (64, 4.2%)



59. Do you ever feel bad or guilty about your drug use? (*drugs_guilt*)

Total Count (N)	Missing*	Unique
1,522	488 (24.3%)	3

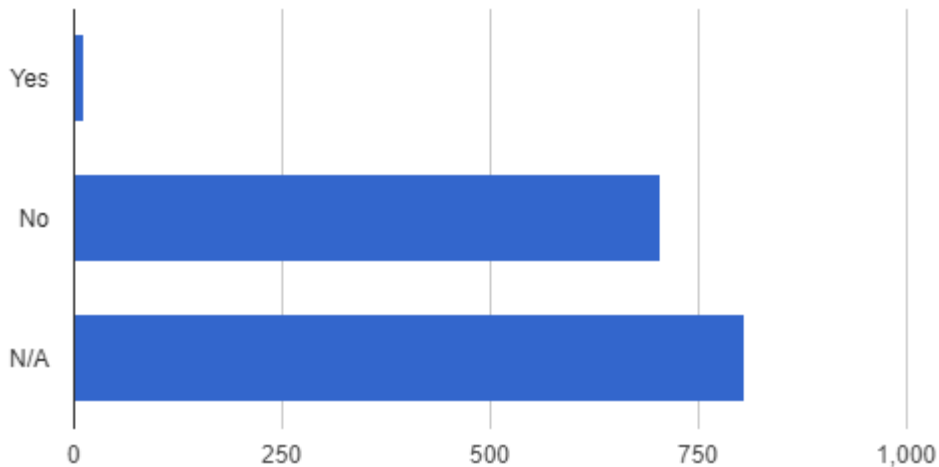
Counts/frequency: **Yes** (43, 2.8%), **No** (528, 34.7%), **N/A** (951, 62.5%)



60. Does someone close to you ever complain about your involvement with drugs? (*drugs_complain*)

Total Count (N)	Missing*	Unique
1,522	488 (24.3%)	3

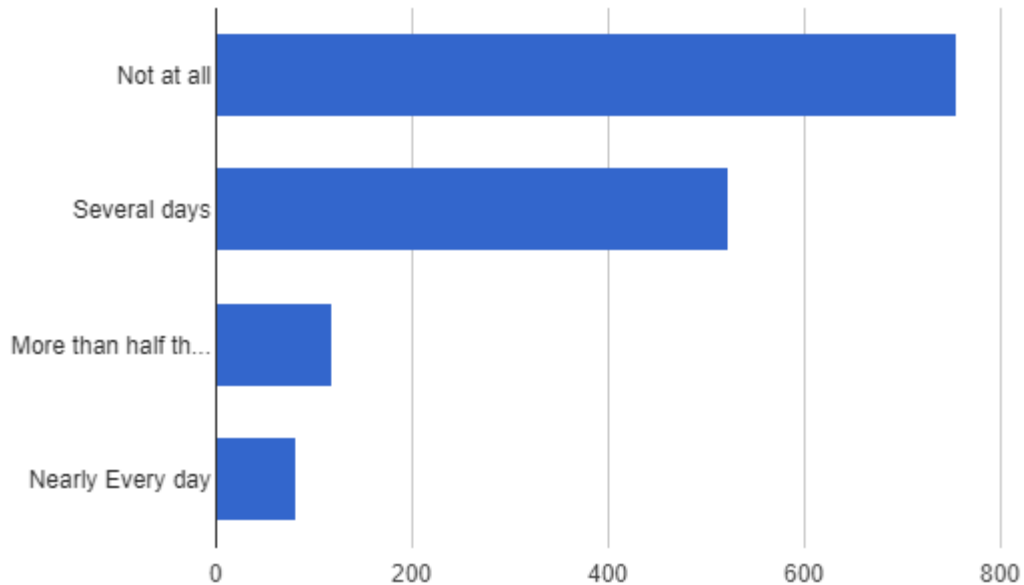
Counts/frequency: **Yes** (11, 0.7%), **No** (705, 46.3%), **N/A** (806, 53.0%)



61. Little interest or pleasure in doing things (*phq_1*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

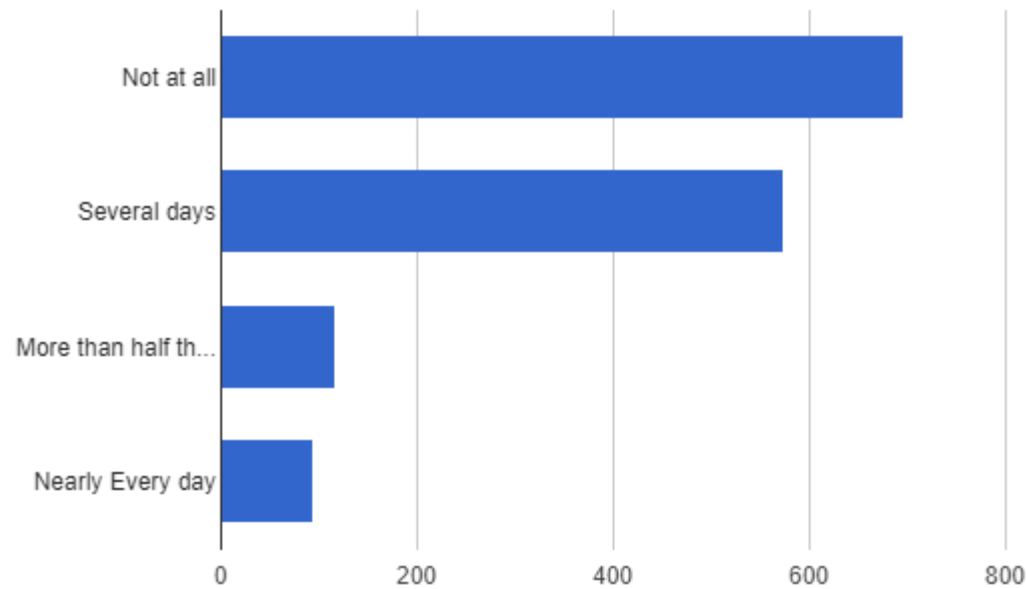
Counts/frequency: Not at all (756, 51.1%), Several days (522, 35.3%), More than half the days (119, 8.0%), Nearly Every day (82, 5.5%)



62. Feeling down, depressed, or hopeless (*phq_2*)

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	4

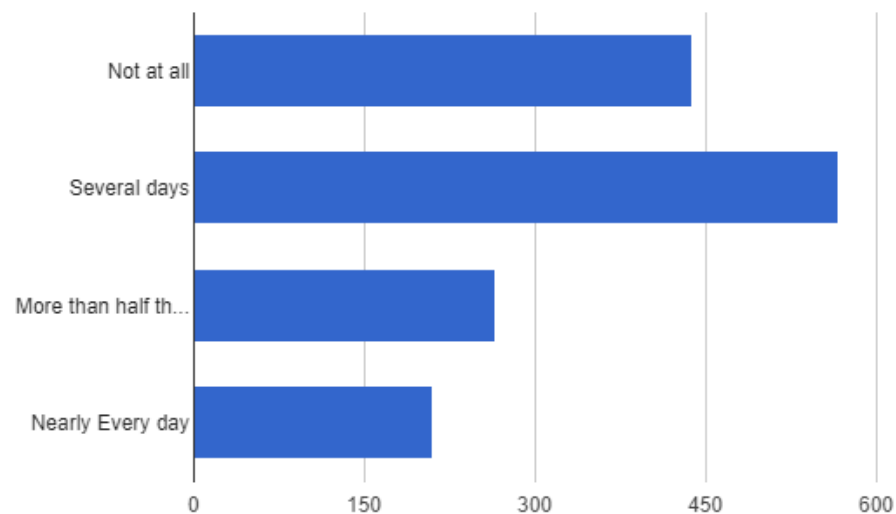
Counts/frequency: Not at all (696, 47.1%), Several days (573, 38.8%), More than half the days (116, 7.8%), Nearly Every day (93, 6.3%)



63. Trouble falling or staying asleep, or sleeping too much (*phq_3*)

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	4

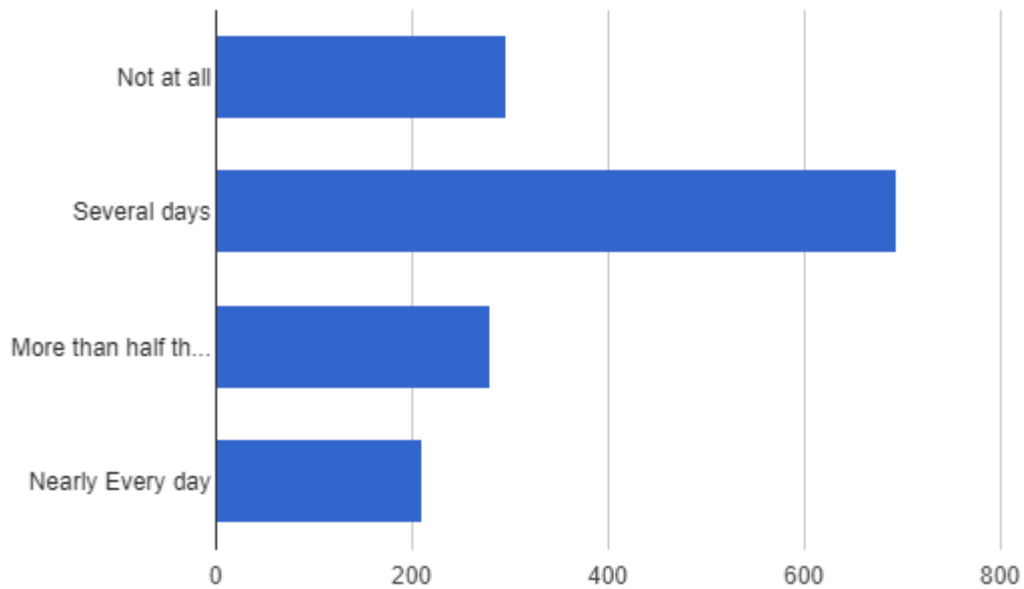
Counts/frequency: Not at all (437, 29.6%), Several days (567, 38.4%), More than half the days (265, 17.9%), Nearly Every day (209, 14.1%)



64. Feeling tired or having little energy (*phq_4*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

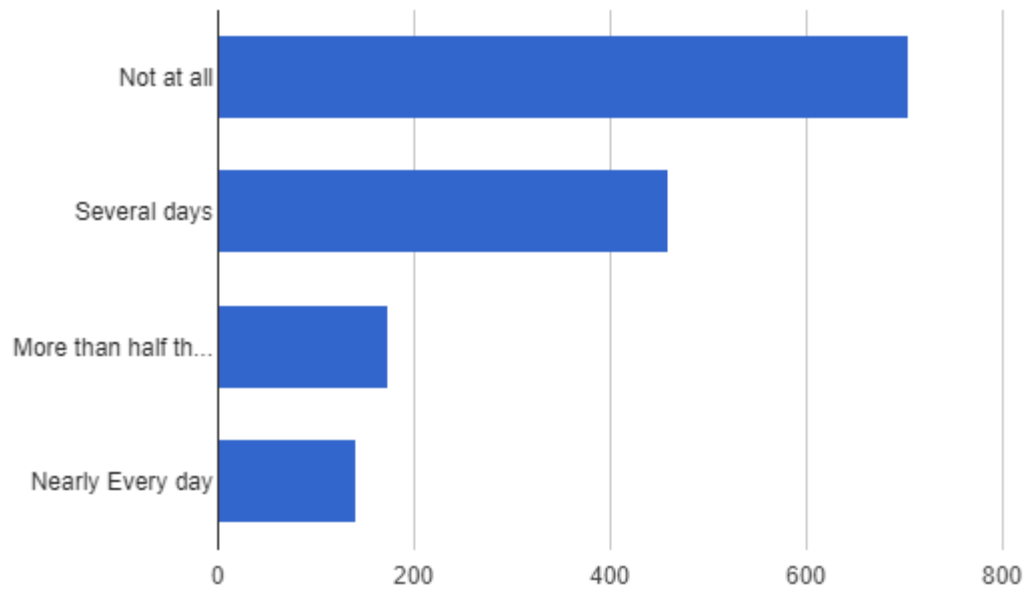
Counts/frequency: Not at all (295, 19.9%), Several days (693, 46.9%), More than half the days (280, 18.9%), Nearly Every day (211, 14.3%)



65. Poor appetite or overeating (phq_5)

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	4

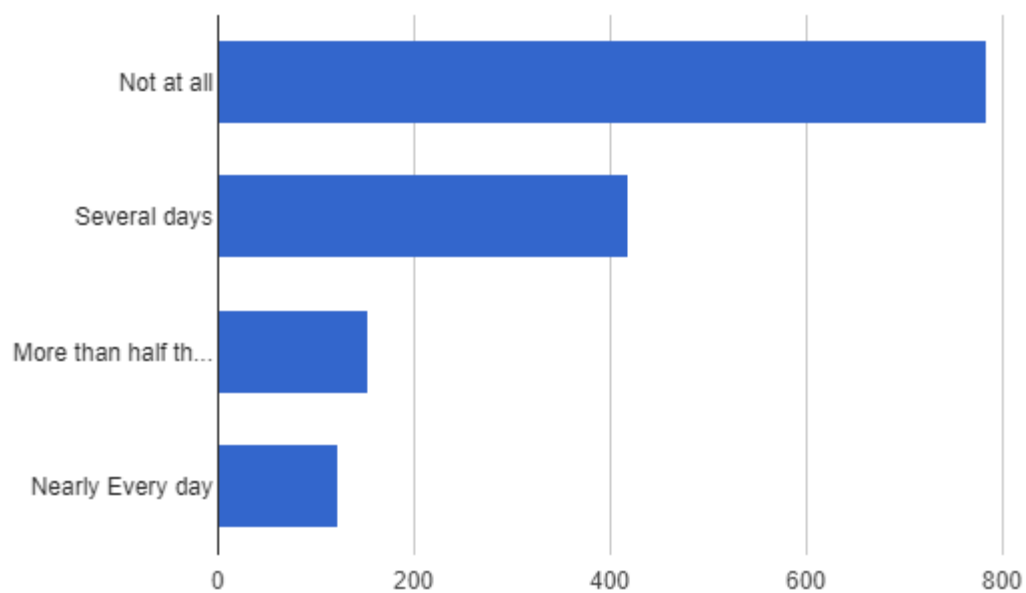
Counts/frequency: Not at all (705, 47.7%), Several days (460, 31.1%), More than half the days (173, 11.7%), Nearly Every day (140, 9.5%)



66. Feeling bad about yourself - or that you are a failure or have let yourself or your family down (*phq_6*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

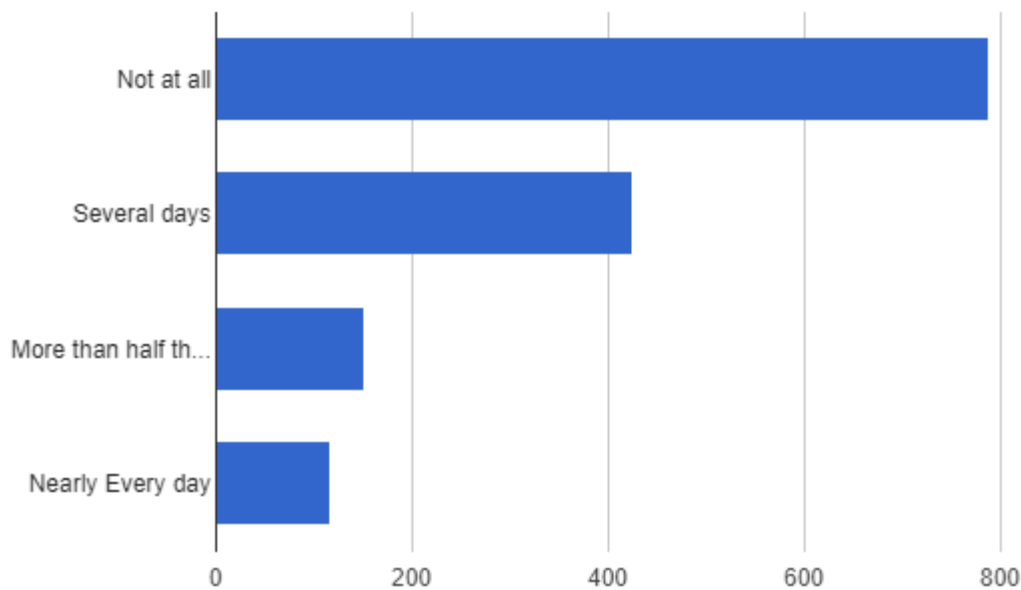
Counts/frequency: Not at all (783, 52.9%), Several days (419, 28.3%), More than half the days (154, 10.4%), Nearly Every day (123, 8.3%)



67. Trouble concentrating on things, such as reading the newspaper or watching television *(phq_7)*

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

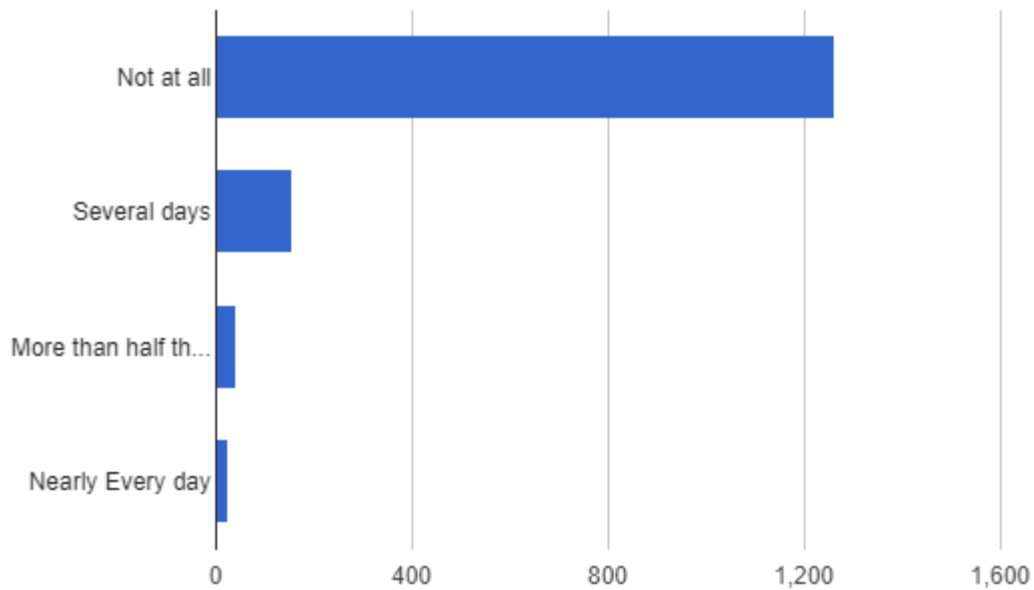
Counts/frequency: **Not at all** (787, 53.2%), **Several days** (424, 28.7%), **More than half the days** (152, 10.3%), **Nearly Every day** (116, 7.8%)



68. Moving or speaking so slowly that other people could have noticed? Or the opposite - being so fidgety or restless that you have been moving around a lot more than usual *(phq_8)*

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	4

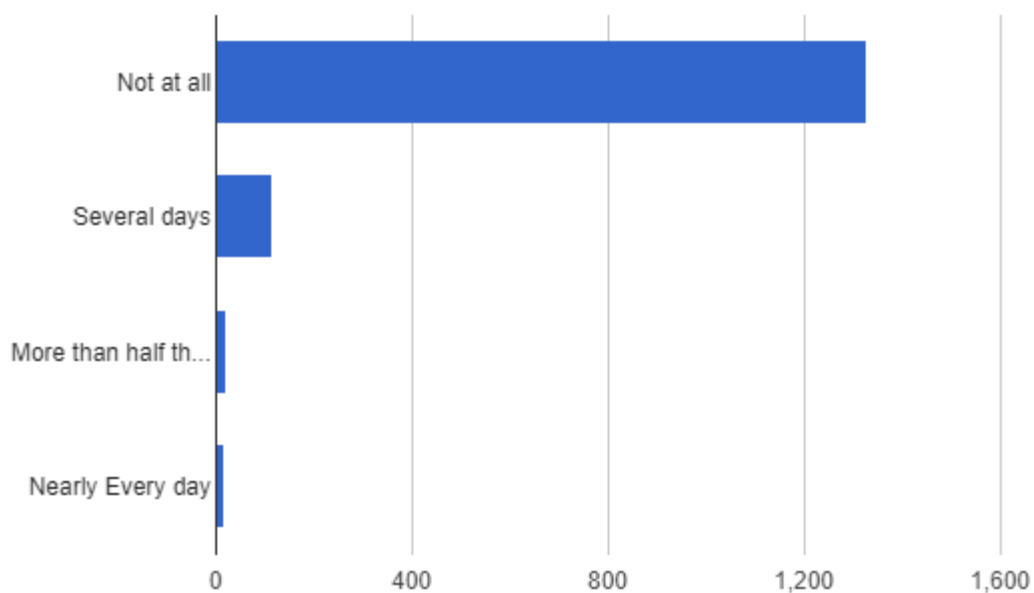
Counts/frequency: **Not at all** (1260, 85.3%), **Several days** (154, 10.4%), **More than half the days** (39, 2.6%), **Nearly Every day** (25, 1.7%)



69. Thoughts that you would be better off dead or of hurting yourself in some way (*phq_9*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

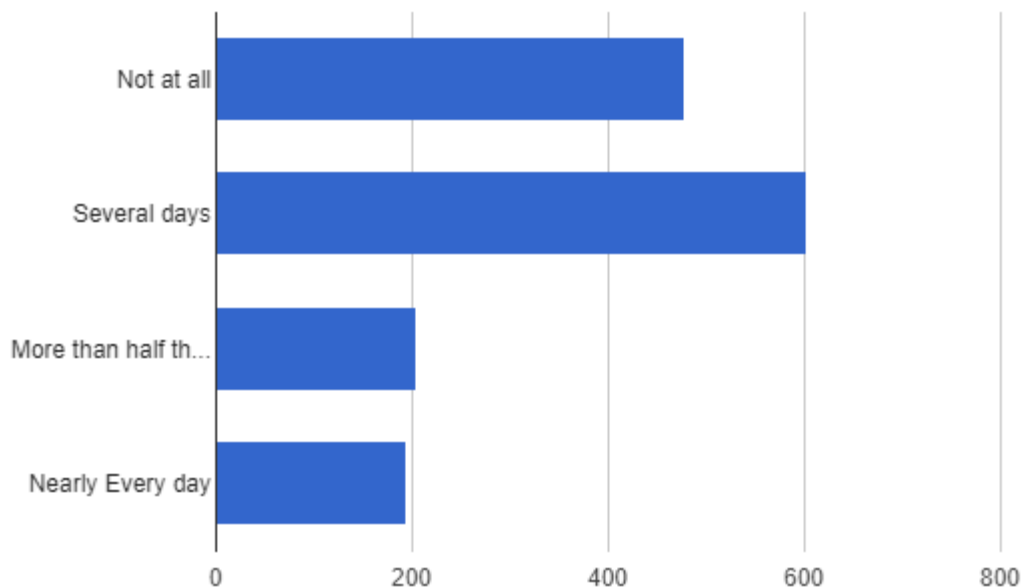
Counts/frequency: Not at all (1328, 89.8%), Several days (115, 7.8%), More than half the days (20, 1.4%), Nearly Every day (16, 1.1%)



70. Feeling Nervous, Anxious, or on edge (*phq_10*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

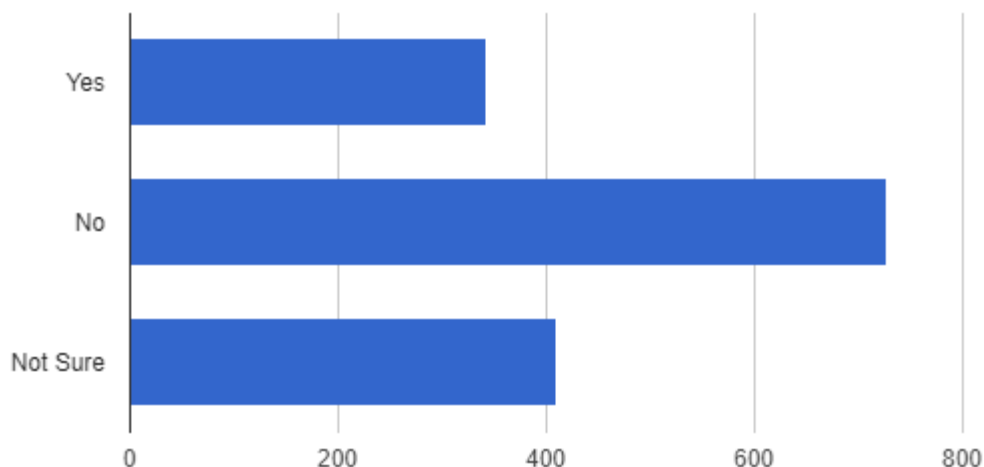
Counts/frequency: **Not at all** (478, 32.3%), **Several days** (603, 40.8%), **More than half the days** (205, 13.9%), **Nearly Every day** (193, 13.0%)



71. Does your employer offer any programs or have policies to assist employees in addressing attorney wellness issues? (*employer_wellness_policy*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	3

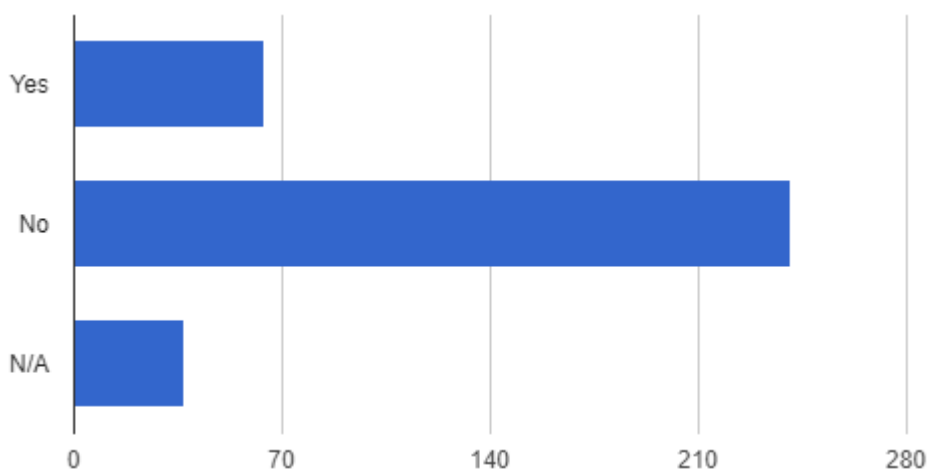
Counts/frequency: **Yes** (343, 23.2%), **No** (726, 49.1%), **Not Sure** (410, 27.7%)



72. Have you taken advantage of these programs or policies? (*employer_wellness_yes*)

Total Count (N)	Missing*	Unique
342	1668 (83.0%)	3

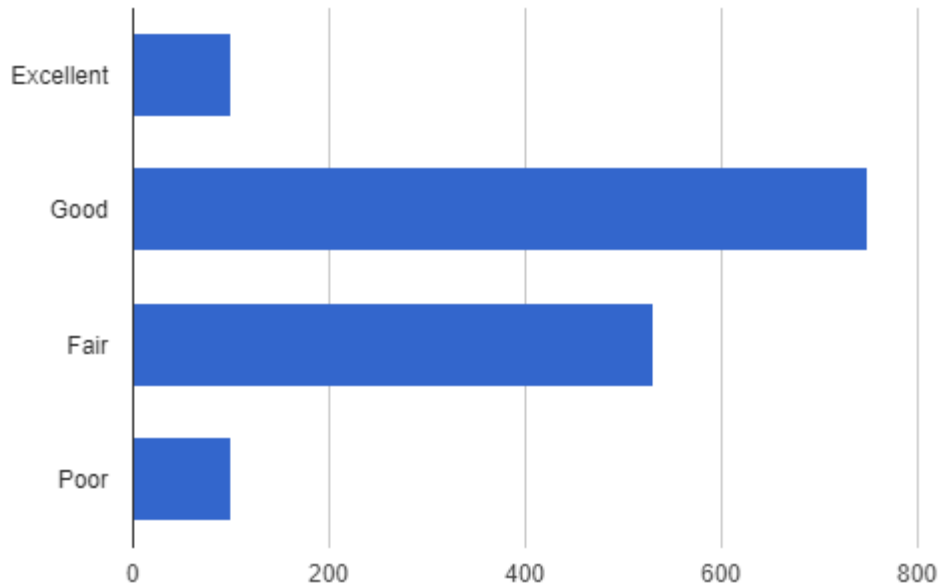
Counts/frequency: **Yes** (64, 18.7%), **No** (241, 70.5%), **N/A** (37, 10.8%)



73. How would you generally describe the well-being of your attorney colleagues? (*colleagues_description*)

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	4

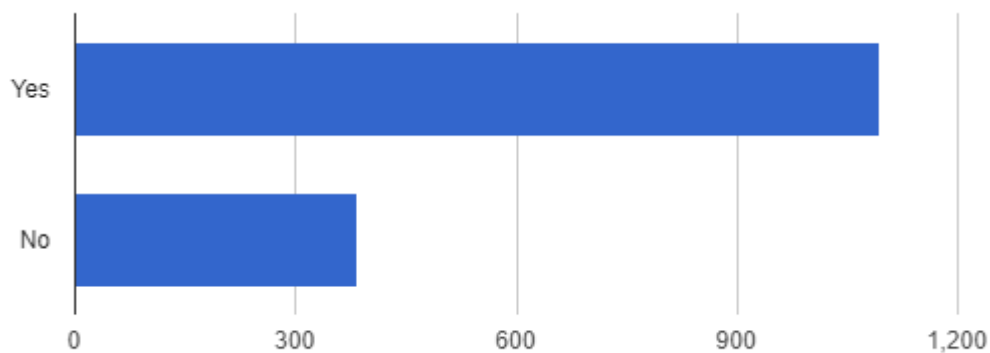
Counts/frequency: **Excellent** (99, 6.7%), **Good** (749, 50.7%), **Fair** (531, 35.9%), **Poor** (99, 6.7%)



74. Are you aware of the New Jersey Lawyers Assistance Program (NJLAP)? (*njlap_aware*)

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	2

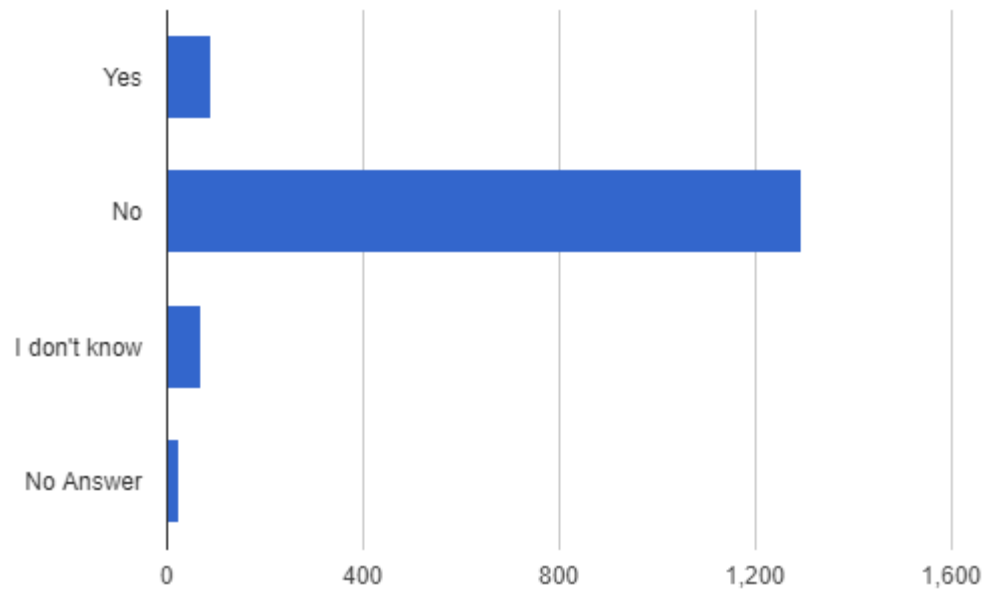
Counts/frequency: **Yes** (1095, 74.1%), **No** (383, 25.9%)



75. Do you believe consulting a mental health provider as a sign of weakness? (*mental_health_weakness*)

Total Count (N)	Missing*	Unique
1,479	531 (26.4%)	4

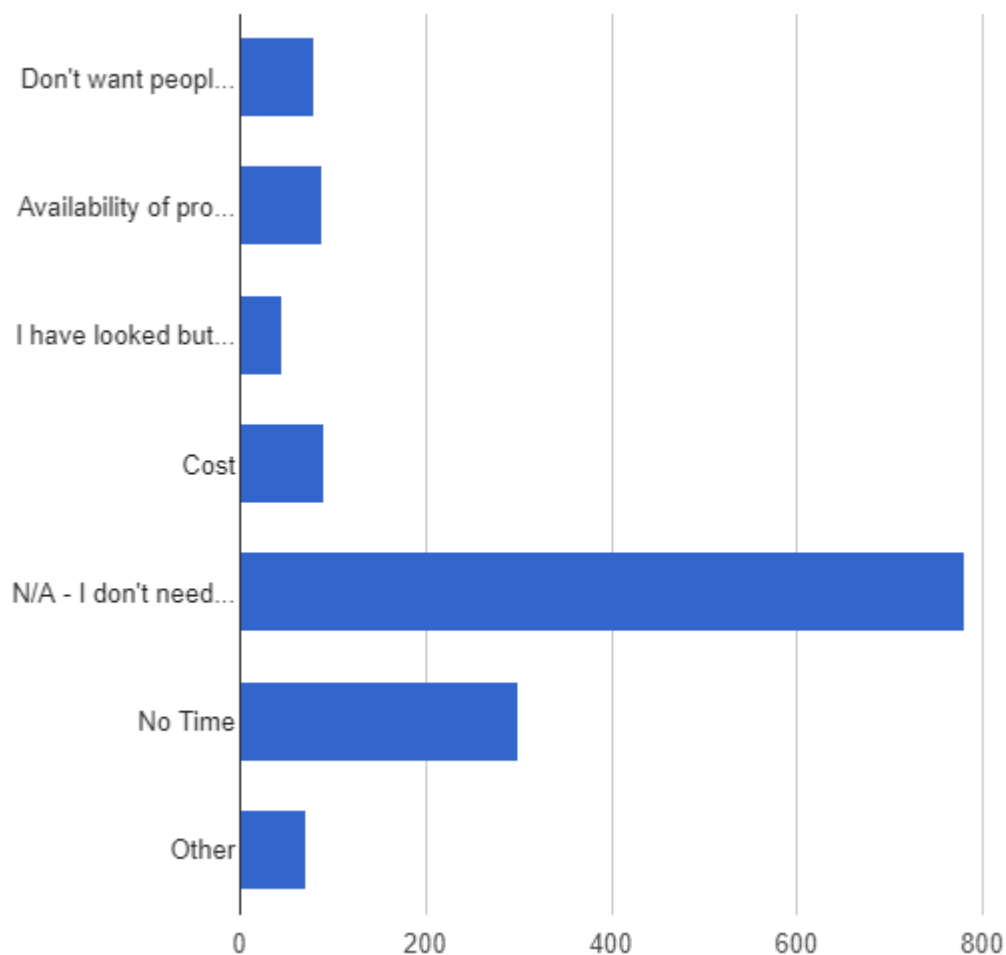
Counts/frequency: **Yes** (90, 6.1%), **No** (1293, 87.4%), **I don't know** (71, 4.8%), **No Answer** (25, 1.7%)



76. If you want to seek assistance but have not obtained it what prevents you from seeking it: *(mental_health_prevent)*

Total Count (N)	Missing*	Unique
1,454	556 (27.7%)	7

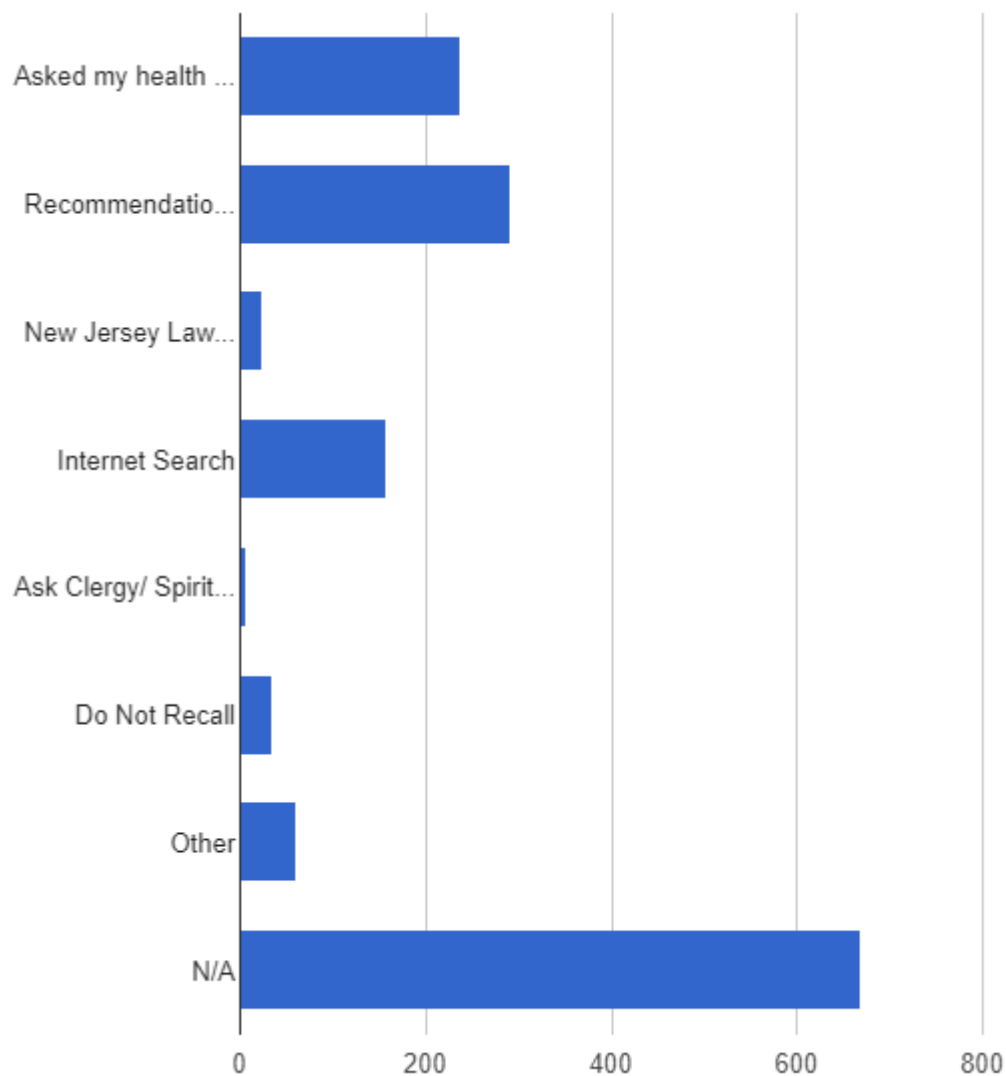
Counts/frequency: Don't want people to see I'm vulnerable (80, 5.5%), Availability of providers that take my insurance (88, 6.1%), I have looked but can't find available resources (45, 3.1%), Cost (91, 6.3%), N/A - I don't need assistance (780, 53.6%), No Time (299, 20.6%), Other (71, 4.9%)



77. If you have sought support/assistance in the past, how did you go about finding it? *(mental_health_sources)*

Total Count (N)	Missing*	Unique
1,478	532 (26.5%)	8

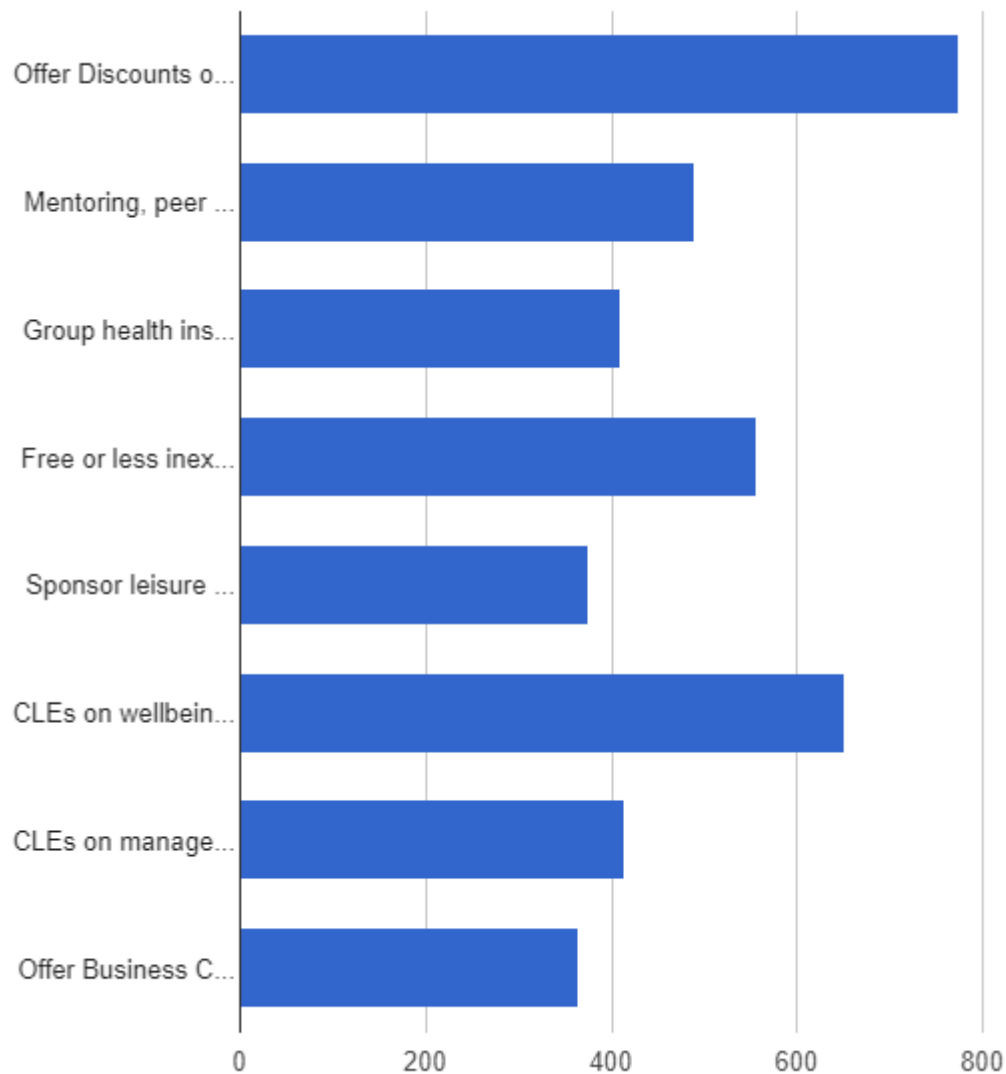
Counts/frequency: Asked my health care provider / Health Insurance (237, 16.0%), Recommendation from friend/family/colleague (291, 19.7%), New Jersey Lawyers Assistance Program (NJLAP) (23, 1.6%), Internet Search (157, 10.6%), Ask Clergy/ Spiritual Advisor (7, 0.5%), Do Not Recall (34, 2.3%), Other (60, 4.1%), N/A (669, 45.3%)



78. What could NJSBA provide to help you improve your physical/mental health fitness? (Click all that apply) *(njsba_improve_fitness)*

Total Count (N)	Missing*	Unique
1,476	534 (26.6%)	8

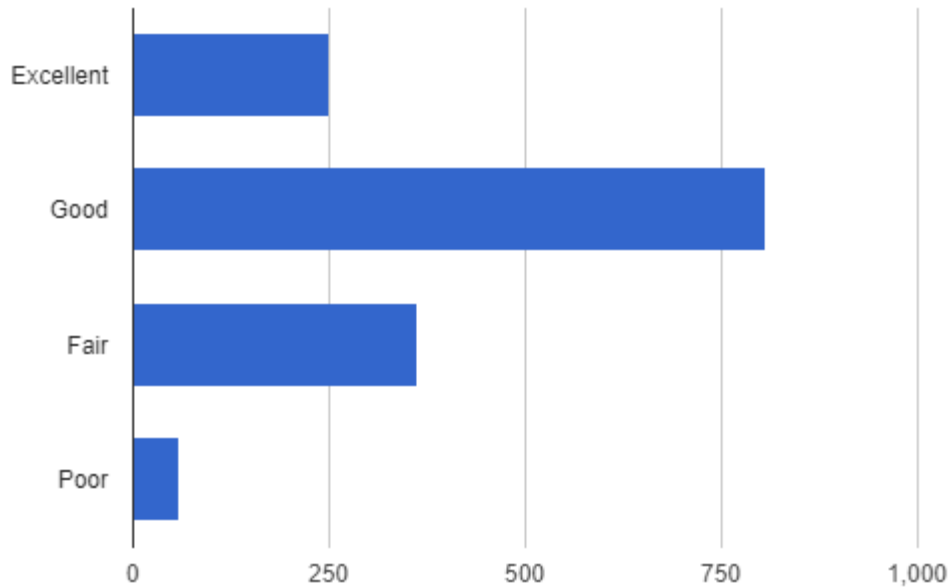
Counts/frequency: Offer Discounts on online or in-person fitness programs / gyms (774, 52.4%), Mentoring, peer counseling or support groups (490, 33.2%), Group health insurance (410, 27.8%), Free or less inexpensive CLE (557, 37.7%), Sponsor leisure activities (375, 25.4%), CLEs on wellbeing, mental health, avoiding burnout (652, 44.2%), CLEs on manage money, handling debts (413, 28.0%), Offer Business Coaching (364, 24.7%)



79. How would you generally describe your overall well-being? *(wellbeing_rate)*

Total Count (N)	Missing*	Unique
1,476	534 (26.6%)	4

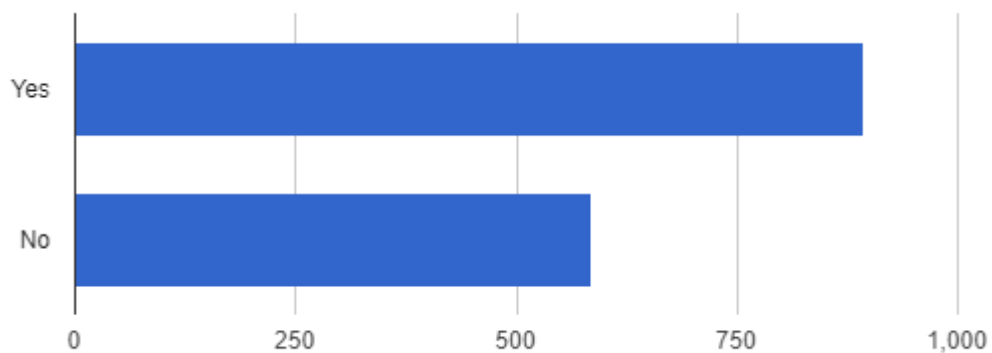
Counts/frequency: **Excellent** (251, 17.0%), **Good** (805, 54.5%), **Fair** (362, 24.5%), **Poor** (58, 3.9%)



80. Are you currently engaging in any activities to improve your mental health and well-being? (*wellbeing_activities*)

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	2

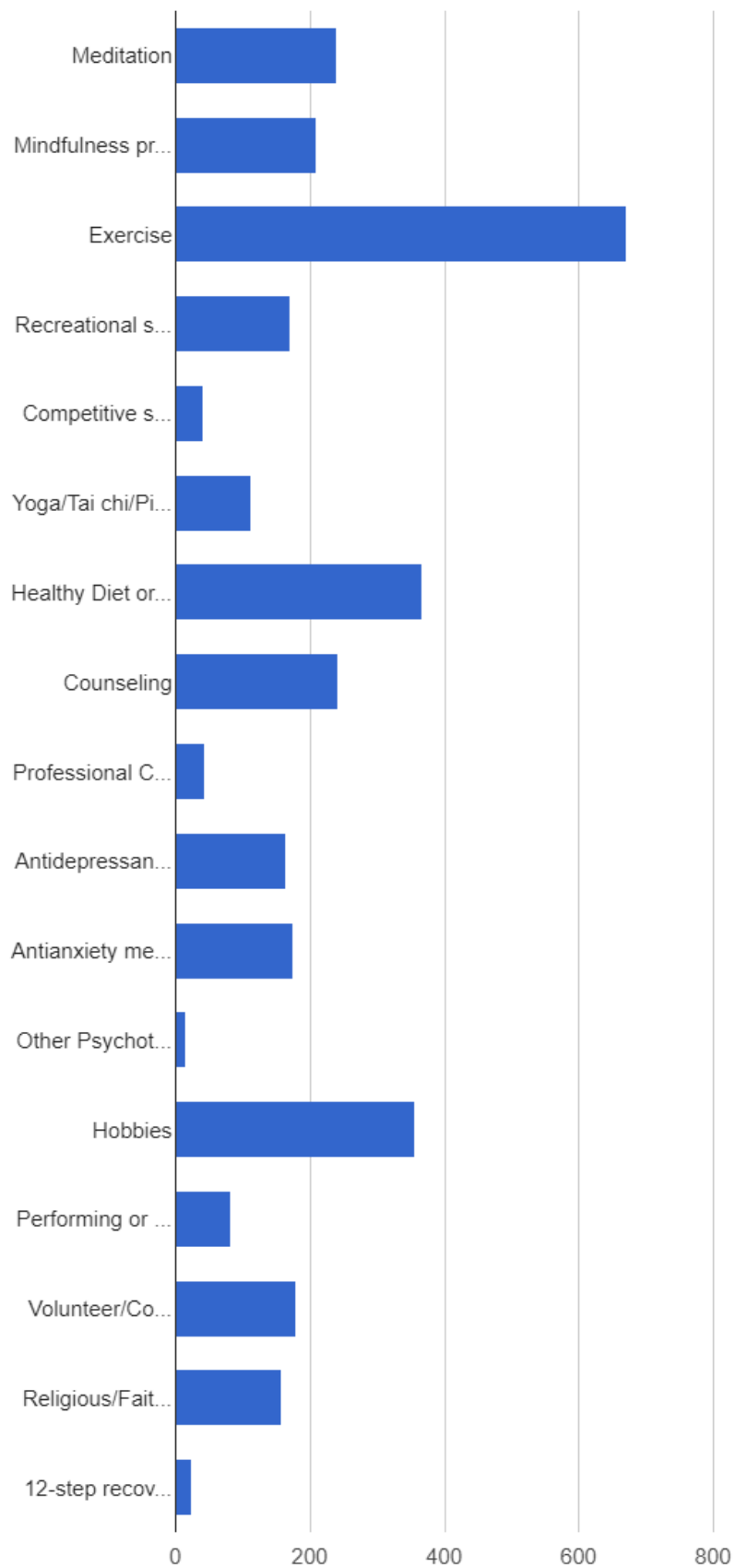
Counts/frequency: **Yes** (893, 60.5%), **No** (584, 39.5%)



81. What specific activities are you doing to improve your mental health and well-being? (click all that apply) (*wellbeing_activities_yes*)

Total Count (N)	Missing*	Unique
893	1117 (55.6%)	17

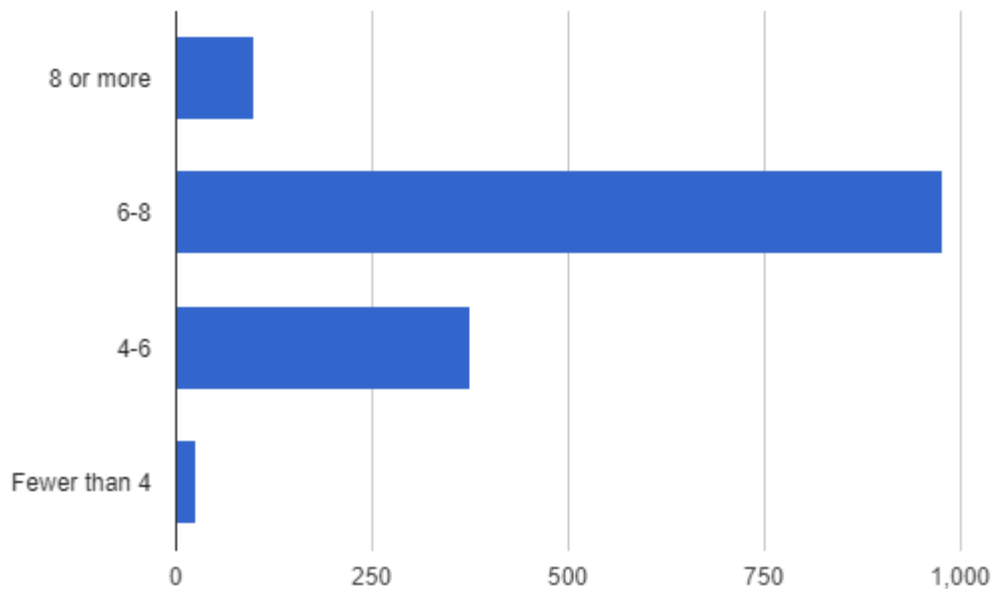
Counts/frequency: Meditation (239, 26.8%), Mindfulness practices (journaling, gratitude practice) (209, 23.4%), Exercise (670, 75.0%), Recreational sports (171, 19.1%), Competitive sports (42, 4.7%), Yoga/Tai chi/Pilates (113, 12.7%), Healthy Diet or Proper Nutrition (367, 41.1%), Counseling (241, 27.0%), Professional Coach (43, 4.8%), Antidepressant prescription medication (163, 18.3%), Antianxiety medication (175, 19.6%), Other Psychotropic medication (i.e. anti-psychotic) (16, 1.8%), Hobbies (356, 39.9%), Performing or Visual Arts (83, 9.3%), Volunteer/Community Service (180, 20.2%), Religious/Faith-Based Activities (158, 17.7%), 12-step recovery/other support group (23, 2.6%)



82. On average, how many hours of sleep do you get per night? *(sleep_daily)*

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	4

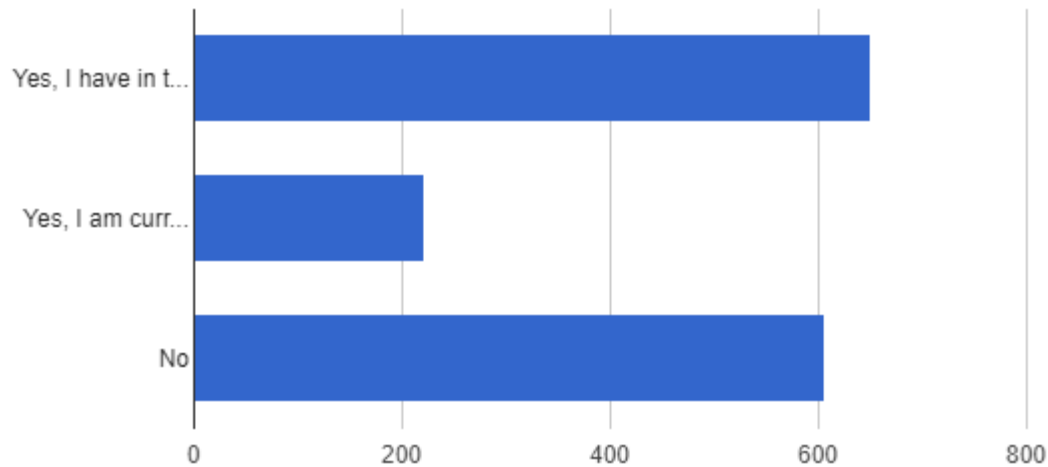
Counts/frequency: **8 or more** (99, 6.7%), **6-8** (978, 66.2%), **4-6** (375, 25.4%), **Fewer than 4** (25, 1.7%)



83. Have you ever used professional mental health counseling services? *(counseling_use)*

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	3

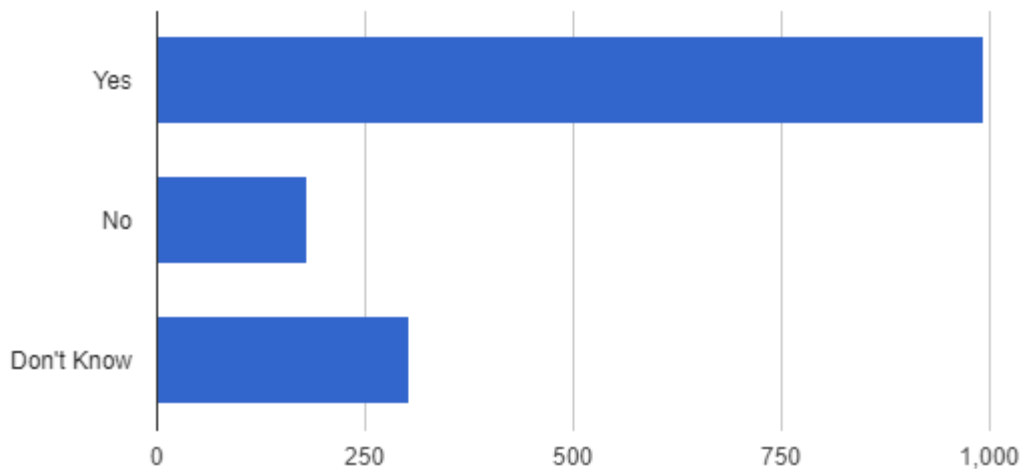
Counts/frequency: **Yes, I have in the past** (650, 44.0%), **Yes, I am currently seeing a professional counselor** (222, 15.0%), **No** (605, 41.0%)



84. Do you believe CLE programs on mental health and /or substance abuse in the legal profession are important? (*cle_mental_substance*)

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	3

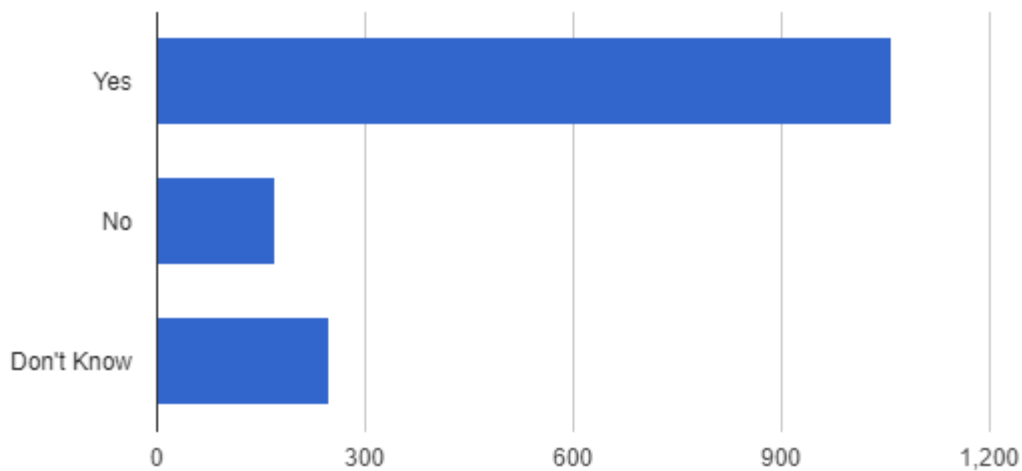
Counts/frequency: **Yes** (993, 67.2%), **No** (181, 12.3%), **Don't Know** (303, 20.5%)



85. Do you believe that CLE programs on attorney well-being are important? (*cle_wellbeing*)

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	3

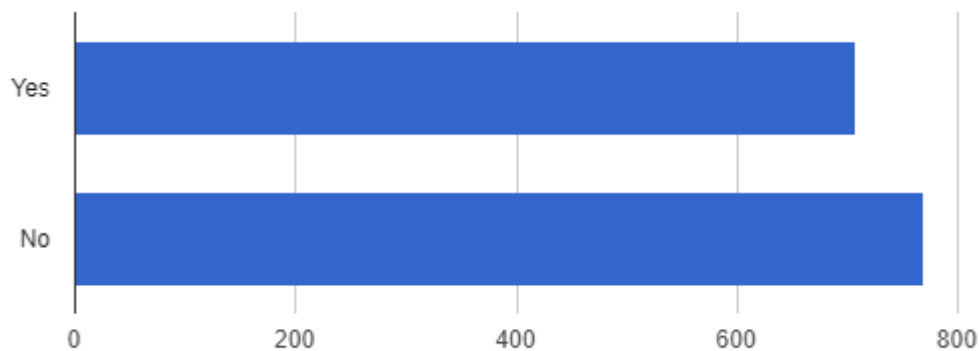
Counts/frequency: **Yes** (1059, 71.7%), **No** (170, 11.5%), **Don't Know** (248, 16.8%)



86. Should CLE on attorney well-being be required as part of the mandatory CLE reporting cycle? (*cle_mandatory*)

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	2

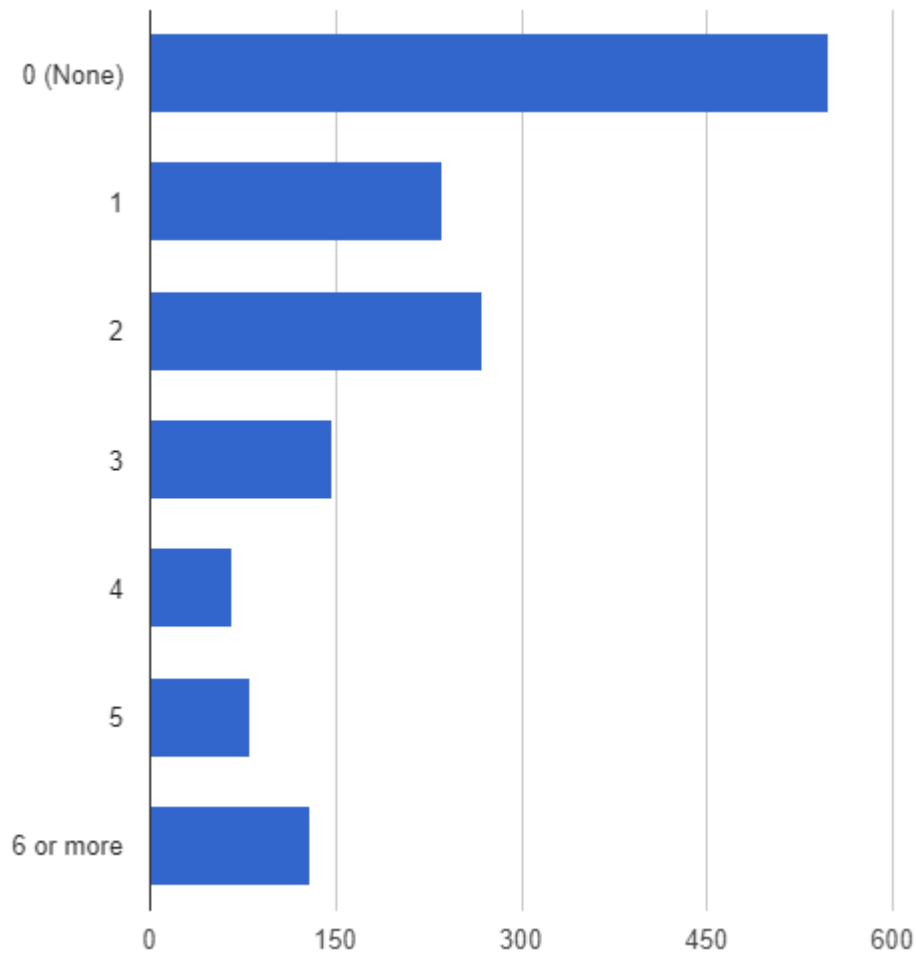
Counts/frequency: **Yes** (707, 47.9%), **No** (770, 52.1%)



87. On average how many days are you working from home per week? (*work_home*)

Total Count (N)	Missing*	Unique
1,477	533 (26.5%)	7

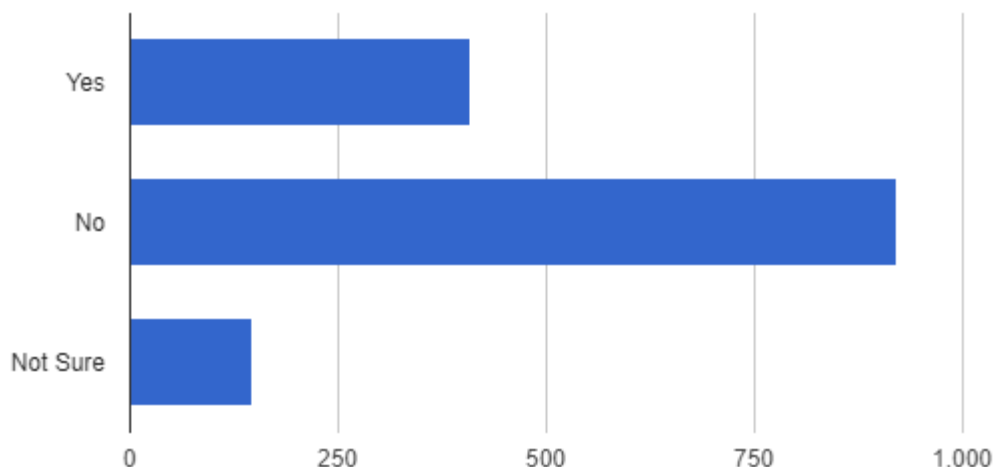
Counts/frequency: **0 (None)** (548, 37.1%), **1** (236, 16.0%), **2** (269, 18.2%), **3** (147, 10.0%), **4** (67, 4.5%), **5** (81, 5.5%), **6 or more** (129, 8.7%)



88. Are you considering leaving, or have you left the legal profession due to mental health problems, burnout, or stress? *(leave_work_mental)*

Total Count (N)	Missing*	Unique
1,476	534 (26.6%)	3

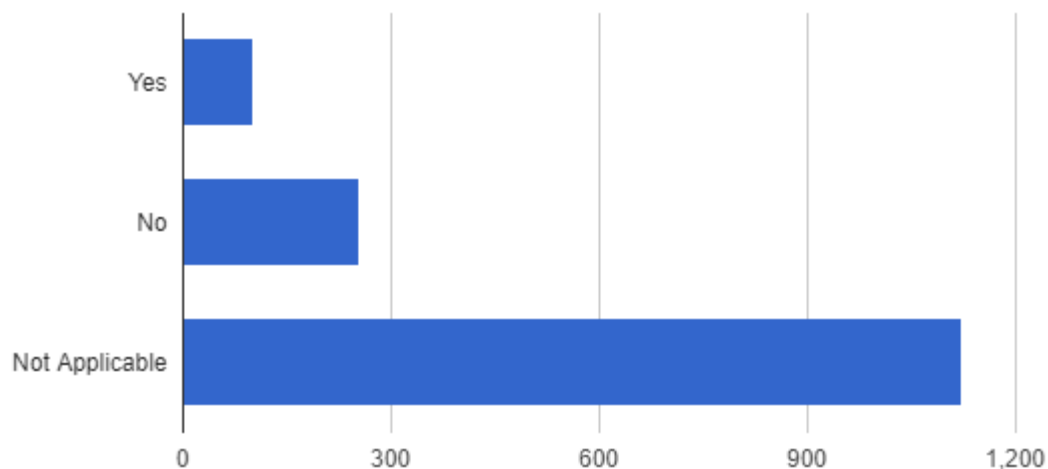
Counts/frequency: Yes (409, 27.7%), No (920, 62.3%), Not Sure (147, 10.0%)



89. If you are a solo practitioner, do you have a succession plan in the event you become unable to practice law? *(leave_solo_plans)*

Total Count (N)	Missing*	Unique
1,476	534 (26.6%)	3

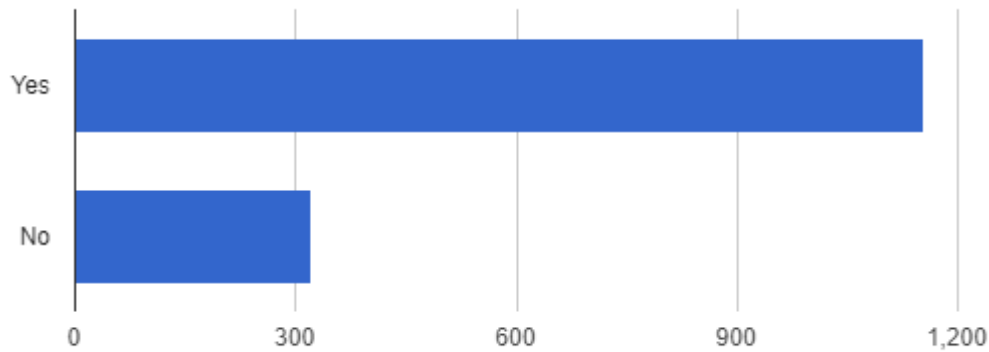
Counts/frequency: **Yes** (102, 6.9%), **No** (253, 17.1%), **Not Applicable** (1121, 75.9%)



90. Do you believe the judiciary has a role to play in promoting attorney well-being and mental health? *(judiciary_mental_role)*

Total Count (N)	Missing*	Unique
1,476	534 (26.6%)	2

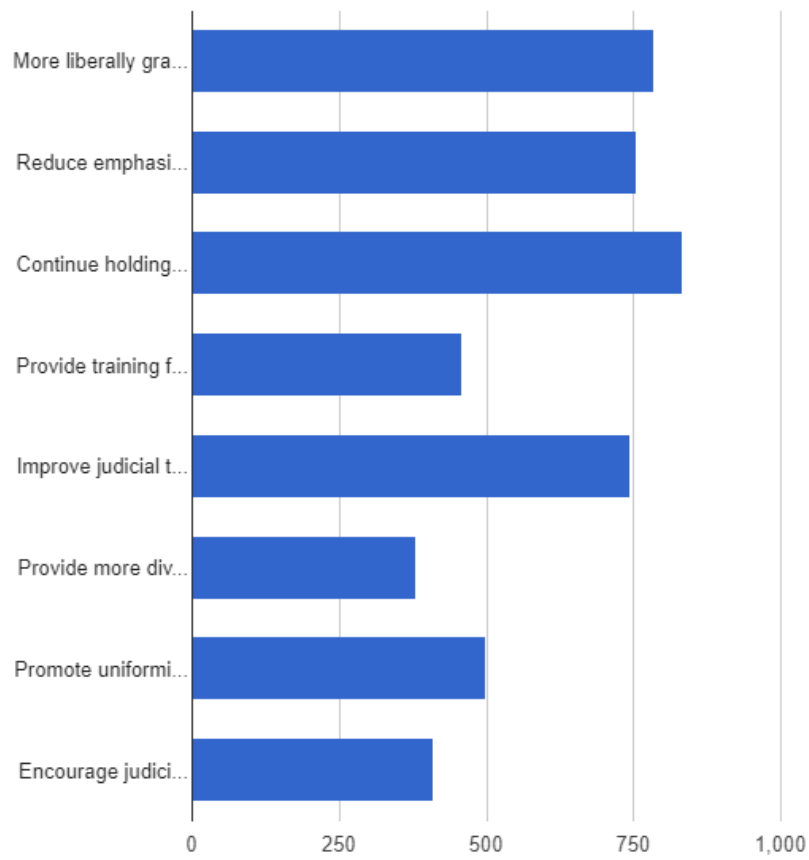
Counts/frequency: **Yes** (1155, 78.3%), **No** (321, 21.7%)



91. What roles do you believe the judiciary should play in promoting attorney well-being and mental health? *(judiciary_role_yes)*

Total Count (N)	Missing*	Unique
1,155	855 (42.5%)	8

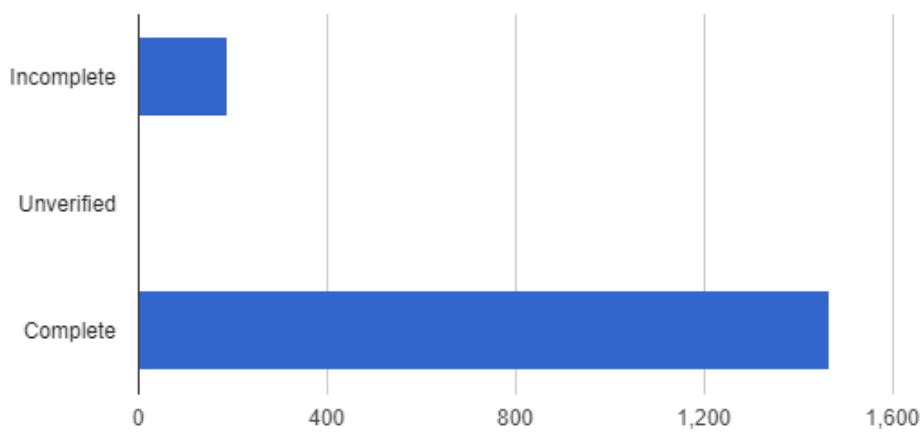
Counts/frequency: More liberally grant timely adjournment requests (785, 68.0%), Reduce emphasis on administrative goals (e.g., statistics, fiscal year goals for resolving cases) (756, 65.5%), Continue holding virtual conferences/allowing virtual appearances post-COVID (832, 72.0%), Provide training for judges to spot stress issues among attorneys (458, 39.7%), Improve judicial temperament (744, 64.4%), Provide more diversity/implicit bias training for judges (379, 32.8%), Promote uniformity among judges (499, 43.2%), Encourage judicial participation in local bar association events (409, 35.4%)



Complete? *(questionnaire_complete)*

Total Count (N)	Missing*	Unique
1,653	357 (17.8%)	2

Counts/frequency: **Incomplete** (187, 11.3%), **Unverified** (0, 0.0%), **Complete** (1466, 88.7%)



APPENDIX C

New Jersey Lawyer Mental Health and Well-Being Survey
Questionnaire (90 questions)

Subject ID number _____

Date ____/____/____

1. Age:

- ☐ 18-34
- ☐ 35-50
- ☐ 51-65
- ☐ Over 65
- ☐ Prefer Not to Answer

2. Gender:

- ☐ Female
- ☐ Male
- ☐ Intersex
- ☐ Non-Binary
- ☐ Prefer Not to Answer
- ☐ Other

3. Race / Ethnicity (Select Multiple options if you identify as Multi Racial)

- ☐ African American / Black
- ☐ Asian / Pacific Islander
- ☐ Hispanic / Latinx
- ☐ Native American/ Alaskan Native
- ☐ White
- ☐ Middle Eastern / North Africa
- ☐ No Response
- ☐ Other

4. In what county is your primary office located:

- ☐ Atlantic County
- ☐ Bergen County
- ☐ Burlington County
- ☐ Camden County
- ☐ Cape May County
- ☐ Cumberland County
- ☐ Essex County
- ☐ Gloucester County
- ☐ Hudson County
- ☐ Hunterdon County
- ☐ Mercer County
- ☐ Middlesex County
- ☐ Monmouth County
- ☐ Morris County
- ☐ Ocean County
- ☐ Passaic County
- ☐ Salem County
- ☐ Somerset County

- ☐ Sussex County
- ☐ Union County
- ☐ Warren County
- ☐ Outside of New Jersey

5. County of Residence:

- ☐ Atlantic County
- ☐ Bergen County
- ☐ Burlington County
- ☐ Camden County
- ☐ Cape May County
- ☐ Cumberland County
- ☐ Essex County
- ☐ Gloucester County
- ☐ Hudson County
- ☐ Hunterdon County
- ☐ Mercer County
- ☐ Middlesex County
- ☐ Monmouth County
- ☐ Morris County
- ☐ Ocean County
- ☐ Passaic County
- ☐ Salem County
- ☐ Somerset County
- ☐ Sussex County
- ☐ Union County
- ☐ Warren County
- ☐ Outside of New Jersey

6. How many years have you been practicing law? _____ years

- ☐ 0-3 years
- ☐ 3-7 years
- ☐ 7-10 years
- ☐ 10-15 years
- ☐ 15-20 years
- ☐ 20-40 years
- ☐ Over 40 years

7. Which title best describes how you spend your current work:

- ☐ Equity Partner/Shareholder
- ☐ Non-equity Partner
- ☐ Of Counsel
- ☐ Associate
- ☐ In-House Counsel
- ☐ Prosecutor

- ☐ Public Defender
- ☐ Solo Practitioner
- ☐ Mediator
- ☐ Retired Judge
- ☐ Public Interest
- ☐ Law Clerk
- ☐ College or Law Professor
- ☐ Other (not law practice)

8. How many lawyers work in your office?

- ☐ 1 Lawyer
- ☐ 2-10 lawyers
- ☐ 11-25 lawyers
- ☐ 26-50 lawyers
- ☐ 51-99 lawyers
- ☐ Over 100 lawyers

9. Do you feel like you have sufficient support staff?

- ☐ Yes
- ☐ No
- ☐ Not applicable

10. Which of the following best describes your primary practice?

- ☐ Civil
- ☐ Criminal
- ☐ Chancery - Family
- ☐ Chancery - Probate
- ☐ Transactional / Corporate
- ☐ Federal Practice and Procedure
- ☐ Other Administrative / Regulatory
- ☐ General Practitioner
- ☐ Other
- ☐ N/A

11. Select all subcategories that apply:

- ☐ Administrative Law
- ☐ Banking
- ☐ Bankruptcy
- ☐ Casino Law
- ☐ Cannabis
- ☐ Child Welfare
- ☐ Construction
- ☐ Elder and Disability
- ☐ Entertainment/Arts/Sports
- ☐ Environmental
- ☐ Family

- ☐ Health
- ☐ Immigration
- ☐ Civil Rights
- ☐ Immigration
- ☐ Insurance
- ☐ Labor and Employment
- ☐ Land Use
- ☐ Military and Veterans' Affairs
- ☐ Product Liability/Mass Tort
- ☐ Public Utility
- ☐ Real Estate
- ☐ Trust and Estates
- ☐ Tax
- ☐ Workers' Compensation
- ☐ Probate / Elder Law
- ☐ Appellate Practice
- ☐ Municipal
- ☐ Intellectual Property
- ☐ Local Government/School
- ☐ Mediation / ADR
- ☐ Other

12. How much litigation is involved in your practice?

- ☐ None
- ☐ 1 - 25%
- ☐ 26 - 50%
- ☐ 51 - 75%
- ☐ 76 – 100 %

13. In the past month, how many hours do you work in an average week?

- ☐ Less than 30
- ☐ 31-40
- ☐ 41-50
- ☐ 51-60
- ☐ 61-80
- ☐ 81-100
- ☐ More than 100

14. I am enthusiastic about being a lawyer.

- ☐ Never
- ☐ Almost never (once a month or less)
- ☐ Rarely (a few times a month)
- ☐ Sometimes (a few times a month)
- ☐ Often (once a week)
- ☐ Very often (a few times a week)
- ☐ Always (every day)

15. I feel burned out from my work.

- ☐ Never
- ☐ A few times a year or less
- ☐ Once a month or less
- ☐ A few times a month
- ☐ Once a week
- ☐ A few times a week
- ☐ Every day

	Almost always	Some of the time	Hardly ever
16. I am satisfied that I can turn to a fellow worker for help when something is troubling me.			
17. I am satisfied with the way my fellow workers talk things over with me and share problems with me.			
18. I feel accepted by my fellow workers			
19. I am satisfied with the way my fellow workers respond to my emotions, such as anger, sadness and frustration.			
20. I feel supported by my fellow workers			
21. I feel discriminated against			
22. I feel isolated at work			

23. How many hours do you work on a weekend?

- ☐ 1-5
- ☐ 6-10
- ☐ Rarely or Never

24. How many days per month do you work on weekends?

- ☐ Less than 1
- ☐ 1-2
- ☐ 3-4
- ☐ 5-6
- ☐ 7 or more

24. How many additional hours on average do you work during the week outside of your normal business hours (e.g., 8-5 Monday through Friday, or other if your regular business hours vary from this?)

- ☐ 1-5
- ☐ 6-10
- ☐ 10-15
- ☐ 15-20
- ☐ Rarely or Never

25. How often do you answer emails after your normal business hours during the week?

- ☐ Never
- ☐ Occasionally
- ☐ Frequently
- ☐ Always (every day)

26. How often do you take calls from clients after your normal business hours during the week?

- ☐ Never
- ☐ Occasionally
- ☐ Frequently
- ☐ Always (every day)

27. Do you or your employer believe you are expected to be available outside of regular business hours?

- ☐ Never
- ☐ Occasionally
- ☐ Frequently
- ☐ Always

28. If yes, does this interfere with your personal life?

- ☐ Never
- ☐ Occasionally
- ☐ Frequently
- ☐ Always
- ☐ N/A

29. How much vacation time (excluding holidays and sick days) do you take every year?

- ☐ 0-5 Days
- ☐ 6-10 Days
- ☐ 11-15 Days
- ☐ 16-20 Days
- ☐ More than 20 Days

30. Do you feel comfortable taking time off to address your wellbeing?

- ☐ Usually
- ☐ Sometimes
- ☐ Not Really
- ☐ No

31. Does your employer have a minimum billable hour expectation?

- ☐ Yes
- ☐ No
- ☐ N/A

32. If your answer to the previous question is yes, what is the annual expectation?

- ☐ Less than 1500 hours per year
- ☐ 1500-1750 hours per year

- ☐ 1750 – 1850 hours per year
- ☐ 1850-2000 hours per year
- ☐ 2000 – 2200 hours per year
- ☐ N/A

33. On a scale of 0 – 10, with 0 being positive and 10 being most negative, how much do billable hour requirements from your firm/employer influence your mental well-being?

- ☐ 10 (Very negatively, makes my mental well-being much worse)
- ☐ 9
- ☐ 8
- ☐ 7
- ☐ 6
- ☐ 5 (no impact)
- ☐ 4
- ☐ 3
- ☐ 2
- ☐ 1
- ☐ 0 (positive – motivates me to work hard)
- ☐ Not Applicable

34. How much does tracking time in required increments influence your mental well-being?

- ☐ 10 (Very negatively, makes my mental well-being much worse)
- ☐ 9
- ☐ 8
- ☐ 7
- ☐ 6
- ☐ 5 (no impact)
- ☐ 4
- ☐ 3
- ☐ 2
- ☐ 1 (positive – motivates me, keeps me organized)
- ☐ Not applicable

35. How often does collection of fees/debts cause you to feel stress or unease?

- ☐ Never
- ☐ A few times a year or less
- ☐ Once a month or less
- ☐ A few times a month
- ☐ Once a week
- ☐ A few times a week
- ☐ Every day

36. Which bracket best approximates your annual income including bonuses from your primary employer in your practice of law:

- ☐ \$50,000 or less
- ☐ \$50,000-75,000

- ☐ \$75,000-100,000
- ☐ \$100,000-125,000
- ☐ \$125,000-150,000
- ☐ \$150,000-200,000
- ☐ \$200,000-250,000
- ☐ \$250,000-300,000
- ☐ \$300,000 or greater

37. Which bracket best approximates your current student loan debt:

- ☐ None
- ☐ \$10,000 or less
- ☐ \$10,000-25,000
- ☐ \$25,000-50,000
- ☐ \$50,000-100,000
- ☐ \$100,000-150,000
- ☐ \$150,000 or greater

38. Do you believe your net take home pay, after debts and monthly expenses, allows you to save for your future and long-term goals, such as retirement, buying a home, or family planning (this list is non-exhaustive)?

- ☐ Yes
- ☐ No

39. Do you believe your net take home pay, after debts and monthly expenses, prevents you from pursuing activities that could improve your (and your family's) quality of life, including vacations, weekend trips, gym memberships, social events, etc.

- ☐ Yes
- ☐ No

40. Do you believe that your salary and/or debt and expenses are keeping you in a job or position that you would otherwise have chosen to leave.

- ☐ Yes
- ☐ No

41. How often does your current financial situation cause you stress, anxiety, or other negative feelings?

- ☐ Never
- ☐ Daily
- ☐ Weekly
- ☐ Monthly
- ☐ Occasionally, but less frequently than monthly.

42. Have you consulted an accountant, financial planner/consultant, or other finance professional for assistance in your financial matters?

- ☐ Yes
- ☐ No

43. Does your employer offer programs to promote diversity and inclusion?

- ☐ Yes, they offer programs
- ☐ No, they do not offer programs
- ☐ I am not aware if we offer programs

44. Do you take part in these programs?

- ☐ Never
- ☐ Occasionally
- ☐ Frequently
- ☐ Always
- ☐ N/A

45. Have your credentials as an attorney ever been questioned by another attorney, a judge, court personnel, or a lay person in a professional setting?

- ☐ Yes
- ☐ No

46. Disability:

- ☐ I am not aware of having any disability/ different ability
- ☐ I have a visible disability/ different ability
- ☐ I have an invisible disability/ different ability
- ☐ Prefer not to answer

47. If you have a disability/ different ability, does your employer provide any accommodations to you in connection with your disability?

- ☐ Yes
- ☐ No
- ☐ N/A – I do not have a disability/different ability
- ☐ N/A – I have a disability/different ability but do not need accommodations
- ☐ Prefer not to answer

48. Have you ever been told by a health care professional (medical doctor/chiropractor) that you have any of the following:

- a. Obesity ___ Yes ___ No
- b. High Blood Pressure: ___ Yes ___ No
- c. Heart Disease: ___ Yes ___ No
- d. Mental Health Condition (e.g., Depression, Anxiety, Alcohol or Substance Use Disorder, etc.) ___ Yes ___ No

49. In the past 30 days how often have you had any thoughts that you think may be from secondary trauma (e.g., stories, pictures or details that you were exposed to in a professional setting that you found disturbing)? [Secondary trauma, also called “vicarious trauma” or “compassion fatigue” is

defined as emotional duress/stress that results when an individual hears about the firsthand trauma experiences of another – in this instance, it would be your clients)

- ☐ Never
- ☐ Rarely
- ☐ Occasionally
- ☐ Often
- ☐ Very Often

50. In the past 30 days, how much of an impact has secondary trauma had on your ability to do your job?

- ☐ No Impact
- ☐ Minimal Impact
- ☐ Little Impact
- ☐ Some Impact
- ☐ Large Impact
- ☐ Not Applicable

51. During the last 7 days, on how many days did you do moderate to vigorous physical activities/exercise for 20 minutes or more?

- ☐ 0 Days
- ☐ 1 Day
- ☐ 2 Days
- ☐ 3 Days
- ☐ 4 Days
- ☐ 5 Days
- ☐ 6 Days
- ☐ 7 Days

52. How frequently do you consume at least one alcoholic beverage?

- ☐ Daily
- ☐ Most Days
- ☐ 2-3 Times a week
- ☐ Once a week
- ☐ 1-3 Times per month
- ☐ Rarely
- ☐ Never

53. How many drinks containing alcohol do you have on a typical day when you are drinking?

- ☐ 1 or 2
- ☐ 3 or 4
- ☐ 5 or 6
- ☐ 7, 8, or 9
- ☐ 10 or more

- ☐ I don't drink

54. How often do you have four or more drinks on one occasion?

- ☐ Never
☐ Less than monthly
☐ Monthly
☐ Weekly
☐ Daily or almost daily

55. How often during the last year have you failed to do what was normally expected from you because of drinking?

- ☐ Never
☐ Less than monthly
☐ Monthly
☐ Weekly
☐ Daily or almost daily

56. Has a relative, friend, doctor, or other health professional expressed concern about your drinking or suggest you cut down?

- ☐ No
☐ Yes, but not in the last year
☐ Yes, during the last year

In the past 12 months...				
57.	Have you used drugs other than those required for medical reasons?	Yes	No	
58.	Do you ever feel bad or guilty about your drug use?	Yes	No	N/A
59.	Does someone close to you ever complain about your involvement with drugs?	Yes	No	N/A

Over the last 2 weeks, how often have you experienced any of the following problems?

	Not at all	Several days	More than half the days	Nearly Every day
60. Little interest or pleasure in doing things				
61. Feeling down, depressed, or hopeless				
62. Trouble falling or staying asleep, or sleeping too much				
63. Feeling tired or having little energy				
64. Poor appetite or overeating				
65. Feeling bad about yourself — or that you are a failure or have let yourself or your family down				
66. Trouble concentrating on things, such as reading the newspaper or watching television				
67. Moving or speaking so slowly that other people could have noticed? Or the opposite —				

being so fidgety or restless that you have been moving around a lot more than usual				
68. Thoughts that you would be better off dead or of hurting yourself in some way				
69. Feeling Nervous, Anxious, or on edge				

70. Does your employer offer any programs or have policies to assist employees in addressing attorney wellness issues?

- ☐ Yes
- ☐ No
- ☐ Not Sure

71. If you answered “yes” to the previous question, have you taken advantage of them?

- ☐ Yes
- ☐ No
- ☐ N/A

72. How would you generally describe the well-being of your attorney colleagues?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor

73. Are you aware of the New Jersey Lawyers Assistance Program (NJLAP)?

- ☐ Yes
- ☐ No

74. Do you believe consulting a mental health provider as a sign of weakness?

- ☐ Yes
- ☐ No
- ☐ I don't know
- ☐ No Answer

75. If you want to seek assistance but have not obtained it what prevents you from seeking it:

- ☐ Don't want people to see I'm vulnerable
- ☐ Availability of providers that take my insurance
- ☐ I have looked but can't find available resources
- ☐ Cost
- ☐ N/A - I don't need assistance
- ☐ No Time

76. If you have sought support/assistance in the past, how did you go about finding it?

- ☐ Asked my health care provider / Health Insurance

- ☐ Recommendation from friend/family/colleague
- ☐ New Jersey Lawyers Assistance Program (NJLAP)
- ☐ Internet Search
- ☐ Ask Clergy/ Spiritual Advisor
- ☐ Do Not Recall
- ☐ Other
- ☐ N/A

77. What could NJSBA provide to help you improve your physical/mental health fitness? (Click all that apply)

- ☐ Offer Discounts on online or in-person fitness programs / gyms
- ☐ Mentoring, peer counseling or support groups
- ☐ Group health insurance
- ☐ Free or less inexpensive CLE
- ☐ Sponsor leisure activities
- ☐ CLEs on wellbeing, mental health, avoiding burnout
- ☐ CLEs on manage money, handling debts
- ☐ Offer Business Coaching

78. How would you generally describe your overall well-being?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor

79. Are you currently engaging in any of the following activities to improve your mental health and well-being?

- ☐ Yes
- ☐ No

80. If yes, what are you doing (click all that apply)

- ☐ Meditation
- ☐ Mindfulness practices (journaling, gratitude practice)
- ☐ Exercise
- ☐ Recreational sports
- ☐ Competitive sports
- ☐ Yoga/Tai chi/Pilates
- ☐ Diet
- ☐ Counseling
- ☐ Professional Coach
- ☐ Antidepressant prescription medication
- ☐ Antianxiety medication

- ☐ Other Psychotropic medication (i.e. anti-psychotic)
- ☐ Hobbies
- ☐ Performing or Visual Arts
- ☐ Volunteer/Community Service
- ☐ Religious/Faith-Based Activities

81. On average, how many hours of sleep do you get per night?

- ☐ 8 or more
- ☐ 6-8
- ☐ 4-6
- ☐ Fewer than 4

82. Have you ever used professional mental health counseling services?

- ☐ Yes, I have in the past
- ☐ Yes, I am currently seeing a professional counselor
- ☐ No

83. Do you believe CLE programs on mental health and /or substance abuse in the legal profession are important?

- ☐ Yes
- ☐ No
- ☐ Don't Know

84. Do you believe that CLE programs on attorney well-being are important?

- ☐ Yes
- ☐ No
- ☐ Don't Know

85. Should CLE on attorney well-being be required as part of the mandatory CLE reporting cycle?

- ☐ Yes
- ☐ No

86. On average how many days are you working from home per week?

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5

87. Are you considering leaving, or have you left the legal profession due to mental health problems, burnout, or stress?

- ☐ Yes
- ☐ No
- ☐ Not Sure

88. If you are a solo practitioner, do you have a succession plan in the event you become unable to practice law?

- ☐ yes
- ☐ no

89. Do you believe the judiciary has a role to play in promoting attorney well-being and mental health?

- ☐ yes
- ☐ no

90. If yes, check all that apply:

- ☐ More liberally grant timely adjournment requests
- ☐ Reduce emphasis on administrative goals (e.g., statistics, fiscal year goals for resolving cases)
- ☐ Continue holding virtual conferences/allowing virtual appearances post -Covid
- ☐ Provide training for judges to spot stress issues among attorneys
- ☐ Improve judicial temperament
- ☐ Provide more diversity/implicit bias training for judges
- ☐ Promote uniformity among judges
- ☐ Encourage judicial participation in local bar association events

APPENDIX D

Character & Fitness Questionnaire for the New Jersey Board of Bar Examiners

Character & Fitness Questionnaire

SECTION 1 - IDENTIFICATION

A - General Information

This Questionnaire must be submitted on-line, according to the fee schedule and deadlines. Do NOT send a paper copy to the Board of Bar Examiners.

All supporting documentation required by each section of the Character and Fitness Questionnaire must be uploaded to your User Home Page. **Note: Prior to uploading all supplemental document(s), YOU must redact your Social Security number from the document(s). It is YOUR responsibility to ensure this information is not included.** Pay attention to the time limits in each section, as the time periods may vary for certain kinds of records. Older documents may be required based on the nature and severity of the underlying matter in the discretion of the Committee. If no time limit is specified, all documents must be provided. The upload feature will become available AFTER this questionnaire is submitted and will be located on the lower right hand side of your User Home Page. Detailed upload instructions are listed below. If you are not in possession of any documentation required by the Character and Fitness Questionnaire, you must make a diligent effort to obtain these documents by submitting written requests to the relevant agencies, and uploading these requests through your User Home Page. If the required documents are unavailable, you must obtain and upload written correspondence from the agency, on agency letterhead, indicating that the records are unavailable or do not exist.

To avoid delays in the Character and Fitness Questionnaire review process, supplemental documents must be uploaded by January 15 for a February exam, June 15 for a July exam, or within 30 days for In-House Counsel applicants, or within 60 days for UBE or Motion applicants.

You should continue to upload documents as you receive them, and timely amend your Questionnaire as changes occur.

Certification Requirements

If additional space is required to answer any of the questions in the Questionnaire, upload a separate document clearly identifying the Section Number and the question for which additional information is being provided. One document may contain additional information for multiple sections/questions. Please make sure to date the document, and include certification language before your signature: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment [R. 1:4-4(b)]."

To upload supplemental documentation or narratives

1. YOU ARE NOT ABLE TO UPLOAD ANY ITEMS UNTIL YOU HAVE COMPLETED AND SUBMITTED THE CHARACTER AND FITNESS QUESTIONNAIRE (THIS DOCUMENT).
2. Once you have completed and submitted the Character and Fitness Questionnaire, an "upload" feature will activate on your User Home Page. **Note: Prior to uploading all supplemental document(s), YOU must redact your Social Security number from the document(s). It is YOUR responsibility to ensure this information is not included.**

3. Prepare any documentation that you plan to upload. Only PDF documents will be accepted for uploads, all other file types will be discarded. Be sure that the files have been scanned without any encryption or password protection.
4. To access the upload feature, log into your user account on our website, www.njbarexams.org.
5. Click the red "Upload New Document" button on the right side of your User Home Page, under the "Uploaded Documents" header.
6. Enter the Title and Description of your document.
7. Click "Choose File" and navigate to document and select "Open" and then "Upload Document".
8. You will receive an on screen confirmation that your document has successfully uploaded to the server.
9. After upload, all documents that you have submitted are viewable from your User Home Page. To access, click the red "user home" link. Scroll to the "Uploaded Documents" section. Click the file name that you entered while uploading the document. The date to the right of the file name is the date the document was uploaded.
10. Retain the original documents in your records. You must be able to supply them upon request.

To amend/correct your Character and Fitness Questionnaire

1. Visit your User Home Page by logging into your account on our website, www.njbarexams.org.
2. At the top of the Current Application column, click the red "amend application" button, then confirm that you wish to amend.
3. Scroll down to Forms and Progress, and click "Amend" next to Character and Fitness Questionnaire.
4. Navigate to the appropriate sections, and complete/correct your response.
5. Be sure to return to your User Home Page and click the green "submit amendments" button. Your amendment will **NOT** be viewable to office staff and is **NOT** considered submitted until you click this button to submit.

B - Personal Information

Please enter your personal information.

All processing will be done on the basis of your full legal name; therefore, all records will be maintained and certification(s) issued in your full legal name. Please include your middle name if you have one.

Full LEGAL name [First, Middle, Last, Suffix (Jr, III)] John Smith

By what name are you usually called?

Date of birth January 10, 1961

Birth City

Birth State

Birth Country

Have you **EVER** been known by another name other than a nickname (e.g. maiden name)?

List each name used, or by which you have at any time been known, and the dates that name was used.

Note: If your name was changed by court order, give the name and location of the court issuing the order and the date of the order. You must upload a copy of the court order to your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section

1A of this Questionnaire.

Other Name Used

From Mo/Yr

To Mo/Yr

Reason name was used

C - Citizenship

Are you a citizen of the United States?

Please state the country of which you are a citizen

If you are not a citizen of the United States, have you applied for naturalization? Upload a copy of your US Citizenship and Immigration Services (USCIS) issued documents as well as your current passport through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

When do you expect to become a naturalized citizen?

Describe your immigration status

Do you have an alien registration number?

Provide your alien registration number

Upload a copy of your resident alien card through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions to upload documents are available in Section 1A of this Questionnaire.

Upload a copy of your U.S. Citizenship and Immigration Services (USCIS) issued documents through your User Home Page, after you have submitted this Character and Fitness Questionnaire online. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

SECTION 2 - ADDRESSES

A - Current Addresses

Address 1	3855 Lake Clearwater Place
Address 2	Apt. 222
City	California
State	Florida
Zip	90210
County	Marion
Province	

Country

United States of America

NOTE: If you have a New Jersey State address and the County field is blank, click on Edit Personal Info in the upper right hand corner of your User Home Page. Be sure to hit the "Update" button on the bottom of the page when making any changes to your User Home Page.

B - Address History

List each address at which you have resided in the past 10 years in chronological order, **beginning with your current address**. List all addresses, including college, law school, summer, and any other temporary residence. If you resided in school dormitory housing, you do not have to designate the specific dormitory, but need to provide the other required information.

Address 1

Address 2

City

State

Zip

Country

From

To

SECTION 3 - EDUCATION**A - High School / Secondary School**

Include all education starting with high school, including study abroad and non-degree education, but not CLE.

School Name

City

State

Zip

From

To

B - College or University

School Name

City

State

Zip

From

To

Degree (e.g.. BS, BA, etc.)

Date Awarded

School or Program of Study

C - Law School

Did you (or do you expect to) receive a Juris Doctor from an ABA approved law school before the examination for which you are applying? This requirement must be met if you wish to sit for the New Jersey bar examination. If you do not meet this requirement and still apply for the examination, you will not receive a refund. Bar examination applicants are required to submit a Law School Certificate from EVERY law school ever attended.

Name of Law School

Non-ABA Law School

City

State

Zip

From

To

Attended

Degree

Date Awarded

Have you attended any other law schools from which you did not receive a Juris Doctor?

Name of Law School

City

State

Zip

From

To

Attended

Degree

Date Awarded

D - Probation, Discipline or Leaves of Absence (after high school graduation)

After high school graduation, have you been placed on academic probation, suspended, expelled, taken a leave of absence or had an interruption in your education for academic or personal reasons, been asked to leave school, or asked to resign or permitted to withdraw?

If you answered "yes" to this question, you are required to request that your school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. You must ALSO upload any and all documentation regarding the incident. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. If the school no longer has any documentation, obtain a letter from the school stating such.

Details of incident

Which school does this pertain to?

Name of School

Date of incident or leave

After high school graduation, have you been disciplined, reprimanded, suspended, placed on probation, expelled, asked to resign, or permitted to withdraw from any educational institution for other than academic reasons including but not limited to housing violations, warnings, any step in progressive discipline, student code of conduct or honor code violations?

If you answered "yes" to this question, you are required to request that your school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. You must ALSO upload any and all documentation regarding the incident. Detailed instructions to upload documents are available in Section 1A of this Questionnaire. If the school no longer has any documentation, obtain a letter from the school stating such.

Provide details of each incident. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire.

Which school does this pertain to?

Name of School

Date of Incident

Since high school graduation, have you been the subject of a formal or informal disciplinary procedure, honor code charge, and/or student conduct code charge that was not disclosed above, regardless of the disposition of the charges? **NOTE:** The acceptance of a lower grade or F to resolve the matter, the imposition of community service or other requirements or sanctions **IS** considered **Informal Discipline**. Accepting resolution in lieu of a hearing **IS** considered **Informal Discipline**.

If you answered "yes" to this question, you are required to request that your school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. You must ALSO upload any and all documentation regarding the incident. Detailed instructions to upload documents are available in Section 1A of this Questionnaire. If the school no longer has any documentation, obtain a letter from the school stating such.

Provide details of each incident. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire.

Which school does this pertain to?

Name of school

Date of incident

Since entering college, have you ever been approached or confronted, in person or in writing, including e-mail, by a professor, instructor, teacher, dean, or other member of the academic community concerning excessive absences, fluctuations in grades, or failure to complete assignments or any behavior or misconduct not disclosed above?

If you answered "yes" to this question, you are required to request that your school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. You must ALSO upload any and all documentation regarding the incident. Detailed instructions to upload documents are available in Section 1A of this Questionnaire. If the school no longer has any documentation, obtain a letter from the school stating such.

Provide details of each incident. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire.

What school does this pertain to?

Name of School

Date of Incident

If you answered "yes" to any of the questions above, you are required to request that your school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. You must ALSO upload any and all documentation through your User Home Page after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

SECTION 4 - EMPLOYMENT AND BUSINESS VENTURES

A - Employment History

Please list your employment status for the past ten years (or since your 18th birthday if you are under 28 years of age) in chronological order, beginning with your most recent employment or unemployment status. If you were unemployed, including during periods of schooling, enter "Unemployed" as the employer and enter the reason you were unemployed (for example - attending law school) under "Reason Employment Ended". **You must address all gaps in employment. You must timely update the questionnaire when current employment ends.**

NOTE: YOU MUST INCLUDE ALL TEMPORARY AND/OR PART-TIME WORK, INCLUDING CLINICS, INTERNSHIPS or EXTERNSHIPS WHETHER PAID OR UNPAID.

Indicate and describe any self-employment in detail.

If you are unable to recall or obtain a supervisor's name or a company address after having made reasonable effort

to do so, write "Unable to recall." You may be contacted for additional information and to take further action.

Please remember, it is your continuing duty to update this questionnaire as your employment status changes in any way after submission.

Company or Firm

Address 1

Address 2

City

State

Zip

Phone Number

Position Held

Supervisor's Name

Supervisor's Prefix

Supervisor's Job Title

Supervisor/Employer E-mail (enter N/A if unavailable)

Full time, part time or N/A

Employment Start Date

Are you still employed with this employer?
(If **CURRENTLY** employed, please select Yes for this answer)

Employment End Date

Reason Employment Ended

B - Discharge / Charges

Have you **EVER** been discharged from any employment or requested or permitted to resign in lieu of disciplinary action or in lieu of criminal charges being filed against you?

For each instance, provide details and a full factual narrative describing the date and the entire circumstances in the space provided. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire. If the employer was not an individual, state the name and title of your supervisor. In addition, you are required to upload all documentation regarding the discharge.

Date of discharge or resignation

Provide an explanation of circumstances of discharge or resignation

Name of Employer

Name and Title of Supervisor

Supervisor/Employer E-mail

Address 1

Address 2

City

State

ZIP Code

In connection with your employment, have you **EVER** been subject to any formal or informal charges of improper behavior that had any part in your quitting, being permitted to resign, being discharged or resulting in a suspension, demotion or loss of pay?

For each instance, provide details and a full factual narrative describing the incident, including the date and circumstances, in the space provided. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire. In addition, you are also required to upload all documentation regarding the charges.

Date of charge

Circumstances of charge

Name of Employer

Name and Title of Supervisor

Supervisor/Employer E-mail

Address 1

Address 2

City

State

ZIP Code

Have you **EVER** been approached or confronted by an employer, supervisor, or colleague concerning excessive absences or lateness, lack of diligence, failure to maintain confidential material, or employment-related misconduct or deficiency?

For each instance, provide details and a full factual narrative describing the incident, including the date and circumstances, in the space provided. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire. In addition, you are required to upload all documentation regarding the issues.

Date of misconduct or deficiency

Circumstances of misconduct or deficiency

Name of Employer

Name and Title of Supervisor

Supervisor/Employer E-mail

Address 1

Address 2

City

State

ZIP Code

Have you **EVER** applied for a position that required proof of good character and had that application denied for reasons involving your background or character, or in which you withdrew that application after questions about your character arose?

For each instance, provide details and a full factual narrative describing the incident, including the date and circumstances, in the space provided. If additional space is required, upload a certification to supplement your response. Detailed instructions are available in Section 1A of this Questionnaire. You are also required to upload all documentation regarding the denial or withdrawal.

Date of denial or withdrawal

Circumstances of denial or withdrawal

Name of Employer

Employer Contact Person

Address 1

Address 2

City

State

ZIP Code

Have you **EVER** applied for a position that required a pre-employment drug test and had that application denied because you failed the test?

For each instance, provide details as well as a full factual narrative describing the incident, including the date and circumstances, in the space provided. You are also required to upload all documentation regarding the test.

Date of application denial

Circumstances of application denial

Name of Employer

Employer Contact Person

Supervisor/Employer E-mail

Address 1

Address 2

City

State

ZIP Code

C - BUSINESS VENTURES

Have you **EVER** been involved in a business venture, including but not limited to corporations, partnerships, limited liability companies, general associations or trusts, in which you have been an officer, director, manager, trustee, or had any financial interest in the business venture?

If you answered "yes" to the question name each business entity and your exact involvement with the entity and the current status of the business entity.

In the space provided, you are required to provide details, and a description of your interest in the business. In addition, you are required to upload documentation regarding the formation of this business venture and proof that the business is in good standing with its requirements. If the venture is no longer active, you are required to upload a copy of the dissolution paperwork. These documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Name of Business Venture

Business E-mail

Phone

Address 1

Address 2

City

State

ZIP Code

Country

Your position/involvement

Start date of your involvement

Are you still involved with the business venture?

Date involvement ended

Reason involvement ended

SECTION 5 - ARMED FORCES SERVICES

A - Armed Forces

Have you **EVER** served in any of the armed forces of the United States?

If you answered "yes" to this question, you are required to state the branch of service, dates of each period of active service, rank, serial number and your last commanding officer.

Branch of Service

Start Date

End Date

Highest Rank Achieved

Serial Number or EDIPI (Electronic Data Interchange Personal Identifier)

Your Last Commanding Officer

Are separated from the Service?

If you answered "yes" to this question, you are required to upload a copy of discharge or separation papers (DD form 214) through your User Home Page after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Nature of Separation

Type of Discharge

Were any courts martial, Article 15 proceedings, or administrative discharge proceedings lodged against you during your period of service?

If you answered "yes" to this question, you are required to provide details of the charge, nature of proceedings and disposition. Upload all relevant documents, including the disposition, and any explanations that do not fit in the space provided, through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. In addition, you must request that a copy of your entire military and disciplinary file be sent DIRECTLY to the New Jersey Board of Bar Examiners.

Charge

Nature of Proceedings

Disposition

SECTION 6 - LICENSES

A - Other Professional / Occupational Licenses

Have you **EVER** held, or do you currently hold, any professional, occupational, or business license in any jurisdiction, other than as an attorney at law? Sample licenses which require a "yes" answer to this question include, but are not limited to: Teaching, Nursing, Insurance and Banking and FINRA licenses, Notary Public, US Patent Agent, Realtor and EMS.

If you answered "yes" to this question, you are required to upload proof of the current status of your license, and if you still hold the license, provide a Certificate of Good Standing through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

If you have additional information to supply for this question, upload the explanation and/or documents through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date of Application

License Applied For:

Name of Authority

Authority Information

Address 1

Address 2

City

State

Zip

License Number

Did you take the exam?

Date of Examination, If Any

Exam Result

Have you ever voluntarily surrendered or been asked to surrender such a license?

Reason for surrender

Have you allowed the license to lapse?

Explain when and why

B - Discipline

Have you **EVER** been disciplined as a member of any licensed profession or occupation (except law), including, but not limited to, being suspended from practice, reprimanded, censured, disqualified, revoked, permitted to resign, admonished, sanctioned or removed, or have any complaints or charges, formal or informal, ever been made or filed or proceedings instituted against you in such capacity?

If you answered "yes" to this question, you are required to provide all details, including a factual narrative with a detailed explanation of the circumstances surrounding the discipline and request that a copy of your entire disciplinary file be sent DIRECTLY to the New Jersey Board of Bar Examiners. You must ALSO upload any and all documentation regarding the discipline. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

NOTE: This section does not pertain to conduct in the legal profession - see Section 15.

Date of incident

Explanation

Exact Charges

Disposition of the matter

Name and complete address of the authority in possession of the records thereof

Name of authority

Address 1

Address 2

City

State

Zip

Have you **EVER** held a professional or occupational license (except law), that was administratively suspended or revoked (e.g., for failure to pay required fees or failure to complete required courses)?

If you answered "yes" to this question, you are required to provide all details, including a factual narrative with a detailed explanation of the circumstances surrounding the suspension or revocation and upload documentation, including petitions for relief and reinstatement, if applicable. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

This section does not pertain to conduct in the legal profession - see Section 15.

Date of incident

Explanation

Disposition of the matter

Name and complete address of the authority in possession of the records thereof

Name of authority

Address 1

Address 2

City

State

Zip

Have you **EVER** filed an application for a professional, occupational, or business license or certificate that was denied, that was withdrawn by you after questions about your character or qualifications arose, or that otherwise was unfavorably acted on by the licensing authority?

If you answered "yes" to this question, you are required to provide all details, including a factual narrative with a detailed explanation of the circumstances and upload all documentation regarding this denial, withdrawal or otherwise unfavorable decision. Documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Nature of Application

Date denied, withdrawn, or otherwise unfavorably acted on

Name and complete address of the relevant authority

Name of authority

Address 1

Address 2

City

State

Zip

SECTION 7 - OFFICIAL POSITIONS AND PUBLIC OFFICES

A - Official Positions

Have you **EVER** been appointed or elected to a federal, state, county, or municipal office or position?

Law clerk positions should be listed under Section 4 - Employment and applicants holding a notary license should list this under Section 6 - Licenses.

State the following for each office or position held.

Position or office

Dates From

Date to

Name of authority

Address 1

Address 2

City

State

Zip

B - Discipline

Have you **EVER** been dismissed, discharged, reprimanded, censured, requested or permitted to resign in lieu of disciplinary action or potential disciplinary action, removed from office or otherwise disciplined as a holder of an official position or public office?

If you answered "yes" to this question, you're required to provide the details of the discipline, including the dates, the facts, the exact charges, the disposition of the matter and the name and address of the party in possession of the record and to upload any additional information or documentation through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date of filing

Explanation

Charges

Disposition of the matter

Provide the name and address of the party in possession of the record.

Name

Address 1

Address 2

City

State

Zip

SECTION 8 - LEGAL PROCEEDINGS

Instructions

You are required to disclose ALL proceedings in which you have **EVER** been a party and provide full details of the nature of the proceeding on a separate attachment, including narrative of facts, dates, charges, case numbers, name and location of court, if any, references to court records, facts and disposition.

For each civil or administrative proceeding resolved within the last ten (10) years, provide a copy of the complaint, petition, answer, and settlement document or final judgment, decision or Order.

For each criminal proceeding resolved within the last ten (10) years, provide narrative police reports, charging documents, judgment of conviction or certificate of disposition, and a pre-sentence report, if any.

It is YOUR responsibility to obtain and submit the appropriate records. If the appropriate records are not available or are no longer in existence (after having made a reasonable effort to obtain them), provide a letter on the agency's letterhead, stating that the records are not available or are no longer in existence.

All documents must be provided for each incident/proceeding resolved within the last ten (10) years, even if the incident occurred/proceeding began more than 10 years ago. You must submit a full and detailed narrative in addition to the records provided. Submission of documents is NOT a substitute for providing a full, factual and chronological narrative explanation. Failure to provide a full narrative will be considered as failure to provide all required information.

Note that you may be required to disclose something in this section, even though you will not be required to provide documentation with your submission, as many questions ask "have you ever..."

A - Civil, Administrative, Governmental, Arbitration or Disciplinary Proceedings

Have you **EVER** been a named party (e.g., plaintiff/defendant) in any civil proceeding, regardless of the age of the matter or whether the final disposition was a dismissal or a settlement? This includes, but is not limited to, malpractice, negligence actions, intentional torts, landlord/tenant matters, contract matters, or domestic relations matters, including divorce, custody, visitation, support, petitions for protection from abuse, restraining orders and/or peace orders and expungement proceedings. Have you ever been a party, complainant or participant in or to an administrative, governmental, investigative, judicial, arbitration or disciplinary proceeding, including but not limited to workers' compensation, unemployment, pension, disability, licensing boards, welfare, child protection, Title IX proceedings, conservatorship, fee arbitration or attorney disciplinary/grievance proceedings? NOTE: Simple receipt of benefits does NOT trigger an affirmative response if no proceedings were held.

If you were the child in question in a custody proceeding, you were not considered a named party.

If you answered "yes" to this question, you are required to provide full details and a chronological explanation of the legal proceeding and provide information concerning the parties, when filed, where the proceeding was venued, docket or case number and status of the proceeding. For each proceeding resolved within the last ten (10) years, you must also provide the documents listed below.

Date of incident

Provide a detailed description of the matter that includes the outcome. Explain if you had any monetary obligations pursuant to the final judgment or resolution and, if so, whether you have met or are meeting your obligations.

If the proceedings were resolved within the last ten (10) years, you must upload a copy of the complaint, petition, answer and settlement documentation or final judgment, decision or Order from your User Home Page after submitting the Character Questionnaire on-line. If the records are not available or are no longer in existence, you are required to provide a letter from the agency on their letterhead stating that the documents are not available and you must document your diligent efforts to obtain the documentation. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

B - Violation of Law

Have you **EVER** been cited for, charged with, taken into custody for, arrested for, indicted, tried for, pled guilty to, or convicted of, the violation of any law (other than a minor traffic violation) or been the subject of a juvenile delinquent or youthful offender proceeding or received a conditional discharge, adjournment in contemplation of dismissal, or pretrial diversionary program? (NOTE: driving while intoxicated or impaired, driving without insurance, reckless driving, leaving the scene of an accident, and driving while suspended are not considered minor traffic offenses for the purposes of this section).

The entry of an expungement or sealing order does not relieve you of the duty to disclose the matter on this statement. You must upload a copy of the expungement petition and Order to your account AND disclose the proceeding in Section 8A. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation. If the violation of the law also led to an Order of Protection or restraining order, please disclose as well.

Date of incident

Location of incident (city/state)

Name, complete mailing address, and telephone number of law enforcement agency involved:

Law Enforcement Agency

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Charge(s) at time of arrest / citation. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Citation Number

Detailed description of incident

Upload additional information (documents, explanations that do not fit in the space provided, etc.) through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

If the proceedings were resolved within the last ten (10) years, you are required to upload a copy of the arresting agency's file (including a copy of the complaint/summons/ticket/investigative report) and the Court disposition records obtained from the Court that decided the matter (in person or by mail). Do you have all of the records in your possession to upload, as required?

Explain your diligent efforts to obtain a copy of the police or arresting agency's report, including specifically to whom your requests have been directed and when made. Provide proof of these written requests as well as any responses you received from the police or arresting agency through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Please provide the names and addresses of any attorneys appearing on this matter for you. You must attempt to obtain records otherwise unattainable from your attorney and document your efforts and diligent inquiry to obtain documents.

Was this matter decided in court or through plea by mail or electronically? (Provide details)

Provide the mailing address, and telephone number of court involved:

Court

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Caption of case (e.g., State v. Smith)

Case or court file number

All Charges prior to final disposition

Date of final disposition

Final disposition

C - Legal Charges

Have you **EVER** been charged with fraud, larceny, embezzlement, misappropriation of funds,

misrepresentation, perjury, false swearing, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, or in bankruptcy, regardless of the age or the disposition of the charges?

The entry of an expungement or sealing order does not relieve you of the duty to disclose the matter on this confidential statement. You may indicate the existence of such an order in your explanation. You must upload a copy of the expungement petition and Order, and disclose this proceeding in Section 8A as well.

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation.

Date of incident

Location of incident (city/state)

Name, complete mailing address, and telephone number of law enforcement agency involved:

Law Enforcement Agency/Police Department

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Charge(s) at time of arrest / citation. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Citation Number

Detailed description of incident

Upload additional information (documents, explanations that do not fit in the space provided, etc.) from your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

If the proceedings were resolved within the last ten (10) years, you are required to upload a copy of the police or arresting agency's file (including a copy of the complaint/summons/ticket/ investigative report) and the Court disposition records obtained from the Court that decided the matter (in person or by mail). Do you have all of the records in your possession to upload as required?

Explain your diligent efforts to obtain a copy of the police or arresting agency's report, including specifically to whom your requests have been directed and when made. Provide proof of these written requests, as well as any responses you received from the police or arresting agency, through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Provide the names and addresses of any attorneys appearing on this matter for you. You must attempt to obtain the records otherwise unattainable from your attorney and document

your efforts and diligent inquiry to obtain documents.

Did you, or an attorney on your behalf, appear in court in connection with this charge or arrest or was the ticket paid by mail or electronically?

Provide the mailing address, and telephone number of court involved:

Court

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Caption of case

Case or court file number

Charges at time of final disposition. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Date of final disposition

Final disposition

D - Deportation/Removal/Exclusion

Have you **EVER** been a party to Deportation, Removal or Exclusion Proceedings, or otherwise denied entry to or removed from any country?

You must submit a full and detailed narrative of this incident and must supply the applicable records. The narrative must recount the facts of the actual event in addition to a procedural recitation.

If yes, please supply a detailed explanation and upload all documentation related to the proceedings through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

E - Restricted Access, Denied Access or Ban

Have you **EVER** been denied access, had your access restricted for any period of time or been banned from any of the following, whether or not criminal charges were ever filed:

(a) from this country or any other country;

Detailed explanation

(b) from any educational, religious or charitable institution or governmental or judicial facility;

Detailed explanation

(c) from a casino or gambling establishment;

Detailed explanation

(d) from a bar, restaurant or any public facility;

Detailed explanation

(e) from any form of transportation including, but not limited to, public transportation, including buses, trains, subways, airplanes, taxicabs, or private transportation including travel for fee (e.g. Uber or Lyft, etc.)?

Detailed explanation

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation.

If yes, please supply a detailed explanation and upload all documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

F - Immunity/Investigation

Are you currently under investigation or **have you EVER** been offered or granted immunity to testify in any grand jury proceeding, criminal action or criminal proceeding?

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation.

State the place, the date, the name of each defendant, the nature of the action or the proceeding, the Prosecutor's Office, the Court and the circumstances. If necessary, upload additional information (documents, explanations that do not fit in the space provided, etc.) after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Place

Date

Name of each defendant

Nature of the action or the proceeding

Name of court

Circumstances

Upload additional information (documents, explanations that do not fit in the space provided, etc.) from your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

G.1 - Business Practices

Has any business in which you had a financial interest, managed or in which you actively participated in the control or management of **EVER** been charged with fraud, larceny, embezzlement, misappropriation of funds, misrepresentation, conspiracy to conceal, or a similar offense in any legal proceeding, civil or criminal, or in bankruptcy?

You must submit a full and detailed narrative of the incident in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation. Documents must be supplied no matter the age of the proceeding. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date of incident

Location of incident (city/state)

Name, complete mailing address, and telephone number of law enforcement agency involved:

Law Enforcement Agency

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Charge(s) at time of arrest / citation. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Citation Number

Detailed description of incident.

Upload additional information (documents, explanations that do not fit in the space provided, etc.) from your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

You are required to upload a copy of the police or arresting agency's file (including a copy of the complaint/summons/ticket/ investigative report) and the Court disposition records obtained from the Court that decided the matter (in person or by mail). Do you have all of the records in your possession to upload as required?

Explain your diligent efforts to obtain a copy of the police or arresting agency's report, including specifically to whom your requests have been directed and when made. Provide proof of these written requests as well as any responses you received from the police or arresting agency, through your User Home Page after you have submitted the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Please provide the names and addresses of any attorneys appearing on this matter for you. You must attempt to obtain records otherwise unattainable from your attorney and document your efforts and diligent inquiry to obtain documents.

Did you, or an attorney on your behalf, appear in court in connection with this charge or arrest?

Provide the mailing address, and telephone number of court involved:

Court

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Caption of case

Case or court file number

Charges at time of final disposition. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Date of final disposition

Final disposition

G.2 - Business Practices

To your knowledge, have you or any business that you had a financial interest in, managed, or actively participated in the control of **EVER** been the subject of any investigation or inquiry by any Federal, State, Local, or administrative agency relating to the alleged violation of law, rule, regulation, or other legal standard?

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation.

Date of incident

Location of incident (city/state)

Name, complete mailing address, and telephone number of law enforcement agency involved:

Law Enforcement Agency

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Charge(s) at time of arrest / citation. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Citation Number

Detailed description of incident. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

Upload additional information (documents, explanations that do not fit in the space provided, etc.) through your User Home Page after you have submitted the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

You are required to upload a copy of the arresting agency's file (including a copy of the complaint/summons/ticket/ investigative report) and the Court disposition records obtained from the Court that decided the matter (in person or by mail). Do you have all of the records in your possession to upload as required?

Explain your diligent efforts to obtain a copy of the police or arresting agency's report, including specifically to whom your requests have been directed and when made. Provide proof of these written requests as well as any responses you received from the police/arresting agency, through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Please provide the names and addresses of any attorneys appearing on this matter for you. You must attempt to obtain records otherwise unattainable from your attorney and document your efforts and diligent inquiry to obtain documents.

Did you, or an attorney on your behalf, appear in court in connection with this charge or arrest?

Provide the mailing address, and telephone number of court involved:

Court

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Caption of case

Case or court file number

Charges at time of final disposition. Include the names(s) of the charges as well as the corresponding statute/regulation/code/violation. Example: Harassment, NJSA 2C:33-4.

Date of final disposition

Final disposition

H - Probation or parole

Are you presently on probation or parole?

You must submit a full and detailed narrative in addition to the records provided. The narrative must recount the facts of the actual event in addition to a procedural recitation. If you need additional space, you may upload a certification to supplement your answers. See Section 1A of this Questionnaire for additional instructions.

Name of the court

Name of probation or parole offices

Address of probation or parole officer

Address 1

Address 2

City

State

Zip

Terms of sentence

SECTION 9 - FINANCIAL

A - Debts Overdue

In the past twelve (12) months, have you had any debts more than ninety (90) days overdue?

Provide details of the debt, and an explanation for the debt. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire. Upload a

statement from the holder of the debt showing the present balance and documentation concerning any payment plan entered into, with proof of payment attached. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Holders of the debt

Amounts overdue

Loan or Credit numbers

Provide an explanation for this debt and detail the action taken to remedy the situation. Upload proof of final payment or copy of payment plan and proof of compliance with the plan. If a payment plan is not approved in writing, upload proof of your last six (6) payments, as well as documentation evidencing the amount of the debt and outlining your obligation. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

B - Child Support or Alimony

Are you now, or have you **EVER** been, the subject of any court-ordered obligation to provide child support or alimony? Upload a copy of the court order through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Are you in arrears in child support in an amount equal to or exceeding the amount of child support payable for six (6) months?

Have you failed to comply with the health insurance provisions relating to an order for child support?

Are you the subject of a child-support related warrant?

NOTE: If you are in violation of child-support obligations, as set forth in RG 202:6 of the Regulations of the Committee on Character, you are ineligible to receive a license to practice law in this State.

Court Order

Case number

Date of arrearages

Amount of arrearages

Current Status

Upload a certified narrative outlining the actions you have taken to remedy the arrearages. Upload proof of the present balance of child support from your User Home Page after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. A child support probation account transcript is acceptable, if dated within the last month.

C - Other Obligations

Are you now, or have you **EVER** been, in arrears on any court-ordered obligation including child-support or alimony not covered by Section B, supra? If you answer "yes," you are required to upload a copy of the court order through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Court Order

Case number

Date of arrearages

Amount of arrearages

Current status

Upload a narrative outlining the actions you have taken to remedy the arrearages. Upload proof of the present balance through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

D - Judgment

Has a judgment **EVER** been entered against you?

Provide the names and addresses of the holders and the details of the judgment. Upload certified copies of such judgments through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. **Please make sure that you have disclosed the original lawsuit under Section 8A.**

Name of holder

Address 1

Address 2

City

State

Zip

Details of the judgment

Has this judgment been satisfied?

If you answered "yes" to this question, you are required to upload a copy of the warrant of satisfaction, and the pleadings in this matter. All documents must be uploaded through your User Home Page, after you have submitted

this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Please explain the action taken to remedy the situation.

If a payment plan has been established, upload proof of **the amount of the obligation and** the terms of the plan, through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. If the plan was not approved in writing, provide proof of your last six (6) payments and your explanation of the payment plan.

E - Lien

Have any liens **EVER** been placed against your property? Do not include real estate mortgage liens, but include any tax liens.

Provide a detailed explanation.

You are required to upload all documentation regarding the initial lien and a statement from the lien holder showing the current balance through your User Home Page after you have submitted the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Was this lien satisfied?

You are required to upload a copy of the lien satisfaction through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

You are required to upload all documentation regarding the initial lien and a statement from the lien holder showing the current balance through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

F - Personal Bankruptcy

Have you **EVER** filed a petition in bankruptcy or for establishment of a wage earner plan, or has one been involuntarily filed against you?

For each filing, list the final dispositions of the matters, the court in which the dispositions were filed, the dates of the filings, and an explanation of the reasons for the bankruptcy. Upload a copy of the petition, all schedules, and the final order of the court or discharge or dismissal through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Final disposition

Name of court

Date of filing of initial petition

Date of final disposition, dismissal or discharge

Provide a detailed explanation of the reason(s) for the bankruptcy or circumstances leading to bankruptcy. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

G - Business Bankruptcy

Has any business in which you had a financial interest **EVER** filed for bankruptcy?

For each filing list the final disposition of the matter, the court in which such disposition was filed, the date(s) of filing(s) and an explanation of the reason(s) for the bankruptcy. Upload a copy of the petition, all schedules, and the final order of the court of discharge or dismissal through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Final disposition

Name of court

Date of filing of initial petition

Provide a detailed explanation of the reason(s) for the bankruptcy or the circumstances leading up to the bankruptcy. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

H - Student Loans

Do you currently have any student loans?

Have you **EVER** been in arrears or defaulted on any student loan?

If you answered "yes," provide factual details and give name and address of creditor, the loan account number, the amount owed and what steps have been taken to bring the account up to date.

Details

Name of creditor

Address 1

Address 2

City

State

Zip

Loan account number

Amount owed

Is the account now current?

Provide proof that the account is now current.

If a payment plan has been established, upload proof of the terms of the plan, through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. If the plan was not approved in writing, provide proof of your last six (6) payments and your explanation of the payment plan. If the loan has now been placed in deferment, explain the terms of the deferment.

Provide a detailed explanation of any action taken to remedy the situation.

I - Custodians, Guardians, Conservators, Trustees, Receivers and Special Fiscal Agents

Subsequent to your 18th birthday, have you or your property **EVER** been placed under the control of a guardian, conservator, trustee, receiver, special fiscal agent or any other custodian?

Provide details and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

J - Money Laundering Control

To your knowledge, has a Currency Transaction Report (CTR) or Suspicious Activity Report (SAR) **EVER** been filed for your activities?

Provide details and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

SECTION 10 - TAX RETURN INFORMATION

A - Personal Tax Return/Filing and Payment

NOTE: A filing pursuant to a proper extension is considered timely for this purpose. A payment plan is NOT considered timely payment.

Have you **EVER** failed to file a federal, state, or local income tax return when due and without a lawful extension or have you **EVER** failed to pay federal, state, or local income taxes when due?

If you answered "yes," you are required to provide a narrative explaining the reason for your failure to file or pay, when the matter occurred, and when you resolved the issue. Explain the steps that have been taken to remedy the defect. Upload proof that the tax return was subsequently filed, proof of payment, and current status of any owed taxes, fines or penalties and upload an account transcript (available from the IRS or other tax authority. IRS transcripts are free. Additional information can be found at <http://www.irs.gov/Individuals/Get-Transcript>). All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this

Questionnaire.

B - Corporate Tax Return/Filing and Payment

Have you or any business, corporation or other entity in which you held an equity interest **EVER** failed to pay employer's withholding taxes or ever failed to remit sales, excise, or other taxes to the appropriate taxing authority?

If you answered "yes" to this question, you are required to provide a detailed narrative explaining the reason for your failure to file or pay, when the matter occurred, and when the issue was resolved. A payment plan for past due obligations must be detailed in your response. In addition, you are required to upload all documentation regarding such occurrences and provide proof that the situation(s) has been remedied. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

C - Judgment Against You

Has the Internal Revenue Service or any other taxing authority ever obtained a judgment or made a levy against you for unpaid taxes, assessments or penalties?

Provide a narrative explanation of the circumstances surrounding the judgment or levy and provide information about your attempts to resolve the judgment or lien.

Has the judgment/levy been satisfied?

Upload a copy of the judgment/levy and a copy of the warrant of satisfaction through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Provide a narrative explanation of the action(s) taken to remedy this situation. If additional space is required, upload a certification supplementing your response. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

If a payment plan has been established, upload proof of the terms of the plan through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. If the plan was not approved in writing, provide proof of your last six (6) payments.

SECTION 11 - DRIVER'S INFORMATION

A - Driver's Licenses

List **each** state or foreign jurisdiction in which you have **EVER** been issued a driver's license, including operator permits. You must also provide an abstract for any license that has been active in the past seven (7) years*.

Review your driver's history to answer this section.

Three (3) year (abbreviated) abstracts are not accepted. Abstracts obtained on-line are permitted

provided that they are obtained from the motor vehicle agency of the respective state or jurisdiction (no third party abstracts will be accepted).

Have you applied for or been issued a driver's license or operator's permit in any state or jurisdiction (including foreign countries)?

Jurisdiction

Country

Month/Year Issued
(original date – do NOT include renewal dates)

License or permit number

Is this license currently active?

You are required to upload a driver's abstract for this license through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Please read instructions below regarding ordering driver's abstracts.

Has this license been active during the last seven (7) years?

You are required to upload a driver's abstract for this license through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Please read instructions below regarding ordering driver's abstracts.

An abstract is not required for this license.

Date license surrendered (month/year)

Reason license surrendered

***Driver's Abstract Instructions**

Driver's Abstracts must be obtained for each license or permit that has been active during the prior seven (7) years. Driver's abstracts are available from the Division of Motor Vehicles in the state or jurisdiction (including foreign jurisdictions) that issued the license or permit. No third party abstracts will be accepted. Three year (abbreviated) abstracts are **NOT** accepted. Once received from the appropriate Motor Vehicle agency, upload the abstract through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. Keep the original in your files. **Review your abstract before completing this section.** If you are not supplying your abstract at this time, you may need to update this section once you obtain the document.

B - Suspended License

Has your driver's license **EVER** been suspended or revoked in any state or jurisdiction, including foreign jurisdictions (including for excessive or unpaid parking tickets)?

Name of Agency

Address 1

Address 2

City

State

Other State or Jurisdiction

ZIP Code

Country

Date of Suspension

Length of Suspension

Reason for Suspension

Provide a detailed explanation.

C - Denied License

Have you **EVER** been refused a driver's license by any state or jurisdiction, including foreign jurisdictions?

State or jurisdiction

Date denied

Provide a detailed explanation. Upload documentation regarding this denied license through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

D - Late/failure to answer ticket, citation or summons

Have you **EVER** been late to timely answer or failed to answer a ticket or summons for any legal proceeding (including parking tickets)?

If you answered "yes," you must provide a narrative detailing the facts of each failure to timely answer a ticket or summons. regardless of how long ago, to the best of your ability. Upload documentation regarding the initial ticket(s) or summons(es) and indicate if a warrant was issued at any time for these tickets/summonses through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Upload documentation regarding the initial ticket(s) or summons(es) through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line, and indicate if a warrant was issued at any time for these tickets/summonses. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date

Nature of Violation

Court Designation

Address 1

Address 2

City

State

ZIP Code

Disposition

E - DUI (Please be sure to include this incident under Section 8B Legal Proceedings as well)

Have you **EVER** been charged with driving under the influence of drugs or alcohol or refusing to provide a breath sample?

Date you were charged

The Blood Alcohol Content (B.A.C.) reading(s) (enter "Refused" if you refused the test):

Charging Agency (Police Department)

Address 1

Address 2

City

State

ZIP Code

Were you convicted of this offense?

If you answered "yes" to any part of this section, you are required to upload copies of all court documents and arresting agency/police documents through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Were you convicted of a lesser charge?

If you were charged with DUI but convicted of a lesser offense, state the offense for which you were convicted, the name and address of the convicting court and the sentence imposed.

Offense for which you were convicted

Date Convicted

Name of Court in which you were convicted

Address 1

Address 2

City

State

ZIP Code

What was the sentence imposed? (including conditions precedent to dismissal. e.g., community service, alcohol education, etc.)

Disposition

If your sentence provided for probation or suspension, indicate whether supervised or unsupervised.

Date Convicted

Name of Court in which you were convicted

Address 1

Address 2

City

State

ZIP Code

What sentence was imposed?

Disposition

If your sentence provided for probation or suspension, indicate whether supervised or unsupervised.

Upload documentation of your sentence (through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line; instructions are provided in Section 1A of this Questionnaire) including the arresting officer's report, any citations **and** court documents for each charge. (These documents are obtained from two different places).

Provide a narrative describing the facts and circumstances surrounding each offense, including reason for refusing a breathalyzer test if applicable, including any requirements for drug or alcohol evaluations or community service.

Have you completed all the requirements of the sentence? If you have answered "yes," upload proof that you have completed the requirements. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

If you have not, explain what you have not completed and why.

Explain what you have not completed and why.

SECTION 12 - HEALTH

Preamble

Section 12 addresses recent mental health, chemical, alcohol, and/or psychological dependency matters. The Committee on Character ("Committee") asks these questions because of its responsibility to protect the public by determining the current fitness of an applicant to practice law, and the purpose of these questions is to determine the current fitness of an applicant to practice law. Each applicant is considered on an individual basis. The mere fact of treatment for mental health problems or chemical, alcohol, or psychological dependency is not, in and of itself, a basis on which an applicant is ordinarily denied admission to the New Jersey bar. The Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical, alcohol, or psychological dependency issues. The Committee encourages applicants who may benefit from treatment to seek it and the Committee views such treatment as a positive factor in evaluating an application. As indicated in the Regulations Governing the Committee, all information is treated confidentially by the Committee and the Committee's Offices and all proceedings are confidential.

On occasion, a license may be denied when an applicant's ability to function is impaired in a manner that indicates that the applicant is currently unfit to practice law at the time the licensing decision is made, or when an applicant demonstrates lack of candor and/or credibility by his or her responses. Each applicant is responsible for demonstrating that he or she possesses the qualifications necessary to practice law. Your responses may include information as to why, in your opinion or that of your treatment provider, your condition will not affect your ability to practice law in a competent and professional manner.

The Committee does not, by its questions, seek information that is characterized as situational counseling, such as stress counseling, domestic counseling, and grief counseling. Generally, the Committee does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

A - Addiction to Alcohol or Drugs

Have you, **within the last five (5) years**, exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical and professional manner?

If you answered "yes" to this question, furnish a thorough explanation in the space provided, and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

B - Other Disorders

Do you **CURRENTLY** 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 your ability to practice law in a competent, ethical and professional manner and in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable case law?

If yes, please describe any ongoing treatment programs you receive to reduce or ameliorate the condition or

impairment.

SECTION 13 - BAR APPLICATIONS

A - Bar Examination or License to Practice Law

Other than the application you are currently completing for admission to the New Jersey Bar, have you **EVER** sat for a bar examination in any jurisdiction (excluding foreign jurisdictions) or are you **CURRENTLY** applying to sit for a bar examination in any jurisdiction (excluding foreign jurisdictions); have you **EVER** applied for bar admission or a law license in any jurisdiction (excluding foreign jurisdictions) or are you **CURRENTLY** applying for bar admission or a law license in any jurisdiction (excluding foreign jurisdictions). This includes but is not limited to:

- Applications for jurisdictions where you were granted or denied admission;
- Applications for previous administrations of the New Jersey Exam;
- Applications to another jurisdiction for this administration (even if you have not yet begun the application process) or previous administrations of an exam;
- Applications for admission to jurisdictions in which there was no exam involved (In-House Counsel/reciprocity/admission on motion, UBE Score Transfer, etc.);
- Exams that you applied for but did not sit or withdrew;
- Exams that you sat for but did not pass.

NOTE: If you are CURRENTLY a UBE Score Transfer applicant, an Admission on Motion applicant or an In-house Counsel applicant in New Jersey, or if you have EVER passed, failed or withdrawn from a bar examination in ANY jurisdiction (including New Jersey), including any prior UBE attempts in any jurisdiction, you MUST answer "Yes" to this Section

Date of Application

Jurisdiction

Name of Authority

Date of Examination or motion filed

Date of Admission (answer this only if actually admitted, not pending)

Status (Pass / Fail / Waiting for Results / Withdrew)

You are required to update your bar status in each jurisdiction if changes occur after submitting the Character and Fitness Questionnaire (e.g., passing the bar exam, interview, hearing, decision, etc.).

B - Interview/Hearing

Did any other jurisdiction in which you **EVER** applied request an interview or hearing or conduct an investigation to evaluate your character or fitness or regarding improprieties on a bar examination? (This includes "routine" interviews for admission.)

Jurisdiction

Date of Interview/Hearing

You are required to upload a copy of the transcript of any character proceeding through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. In addition, you must request that a copy of your entire file be sent directly to the New Jersey Board of Bar Examiners.

Provide details in the space provided. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

C - Denied Application

Has your application to sit for a bar examination or to be admitted to practice by examination, UBE score transfer or motion **EVER** been denied or withheld? Upload a copy of the transcript of any proceeding through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. You must request that a copy of your entire file be sent **DIRECTLY** to the New Jersey Board of Bar Examiners.

Name of jurisdiction

Date of decision

Reason for denial or withholding certification

You must request that a copy of your entire file be sent DIRECTLY to the New Jersey Board of Bar Examiners.

D - Bar Exam Improprieties

Have you ever been accused of OR ever been the subject of an inquiry for any alleged improprieties on the bar examination? Upload a copy of the transcript of any proceeding through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. You must request that a copy of your entire file be sent **DIRECTLY** to the New Jersey Board of Bar Examiners.

Name of jurisdiction

Date of Exam

Detailed Explanation

You must request that a copy of your entire file be sent DIRECTLY to the New Jersey Board of Bar Examiners.

E - Evaluation

Has any other jurisdiction in which you applied **EVER** requested that you submit to an alcohol, drug, mental health or other evaluation in connection with your application?

You are required to upload a copy of the evaluation for each instance through your User Home Page, after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Name of jurisdiction

Explanation

F - Other Certifications

In the **State of New Jersey**, have you **EVER** applied for any of the following certifications, limited licenses, registrations and/or admissions: In-House Counsel, or Foreign In-House Counsel, Foreign Legal Consultant, *Pro Hac Vice*, or Multi-Jurisdictional Practitioner?

Type of certification

Date of application

Provide the case name and briefly describe the nature of the case.

Was the application for certification denied or withheld?

You are required to provide a narrative giving the reason for denial or being withheld. In addition, you are required to upload all documentation regarding this denial or withholding through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date certification was granted

SECTION 14 - PROFESSIONAL QUALIFICATIONS

A - Late Disclosures to Law Schools and Bar Jurisdictions, Alterations or Falsifications

Have you **EVER** made a late disclosure, been accused of or been the subject of an inquiry for alteration, falsification, omission and/or misrepresentation of any document or copy thereof referring to your professional qualification to be a lawyer before or after law school, including but not limited to, online or late disclosures on your law school applications or applications to other bar jurisdictions, bar examination results letter, recommendation letter, report, etc. Have you ever been accused of OR been the subject of an inquiry for any alleged improprieties on a standardized test, including, but not limited to, SAT, LSAT, MPRE, MCAT, GRE, etc. Have you ever been accused of OR ever been the subject of an inquiry for any alleged improprieties on the bar examination? If yes, provide the following for EACH incident.

Date of late disclosure/accusation

Agency/Organization/School

Provide an explanation and disposition of the matter. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

If you answered "yes" to this question, you are required to upload all documentation from the

agency/organization/school through your User Home Page, after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. In addition, you must request that your law school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners. If another bar jurisdiction is involved, you must sign a release for their entire file to be forwarded DIRECTLY to the New Jersey Board of Bar Examiners.

B - Other Testing Improprieties

Have you ever been accused of OR been the subject of an inquiry for any alleged improprieties on a standardized test, including, but not limited to, SAT, LSAT, MPRE, MCAT, GRE, etc?

If yes, provide the following for EACH incident.

Date of accusation/inquiry

Agency/Organization/School

Provide an explanation and disposition of the matter. If additional space is required, upload a certification supplementing your response. Additional instructions are provided in Section 1A of this Questionnaire.

If you answered "yes" to this question, you are required to upload all documentation from the agency/organization/school through your User Home Page, after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. In addition, you must request that your law school send your academic and disciplinary records and an official transcript DIRECTLY to the Board of Bar Examiners.

C - Unauthorized Practice of Law

Have you **EVER** been accused of engaging in the Unauthorized Practice of Law in any jurisdiction?

Date

Jurisdiction

Explanation

Upload all documentation through your User Home Page after you have submitted your Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

SECTION 15 - BAR ADMISSIONS IN OTHER JURISDICTIONS

A - Admission in Other Jurisdictions

Have you **EVER** been admitted to the practice of law in any United States jurisdiction or territory? (This includes any court including but not limited to state, federal, military, etc. Please note, the application for

any admission listed in Section 15 should also appear in Section 13.)

You are required to upload the following for any jurisdiction in which you have **EVER** been admitted. If your license is no longer active in that jurisdiction, including retirement and resignation, you must provide a letter from the jurisdiction explaining your status.

1. Certificate of Good Standing; **and**
2. Certificate of Ethical Conduct (disciplinary history).

Please note that these may not be the same documents and typically come from different agencies. A list of disciplinary offices is available on our web site (www.njbarexams.org) under the "General Application Information" tab. Online printouts from the jurisdiction's website are not accepted.

NOTE: These jurisdictions must also be listed in Section 13A, Bar Applications.

Please disclose the following information for each jurisdiction to which you have ever been admitted.

Have you resigned or retired this license? If no, provide a Certificate of Good Standing and a Disciplinary History for each license. If yes, provide a verification of status and a Disciplinary History.

Date of resignation or retirement

Name of jurisdiction

Country Name

Court or agency

Date of admission

Have you **EVER** been disciplined as a member of the bar of this jurisdiction, including, but not limited to, being disbarred, suspended, disqualified, reprimanded, censured, permitted to resign, admonished, sanctioned or removed, or have any complaints, charges or grievances, formal or informal, ever been made or filed or proceedings instituted against you in such capacity?

Provide a detailed explanation of the circumstances of each event and upload all relevant documents. State the dates, facts, exact charges, disposition of the matter and the name and complete address of the authority in possession of the records thereof. All documents must be uploaded through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

Date

Facts and exact charges

Disposition of the matter. (You must request that a copy of your entire disciplinary file and your initial bar application be sent **DIRECTLY** to the New Jersey Board of Bar Examiners.)

Name of authority

Address 1

Address 2

City

State

Zip

Have you **EVER** held a law license in any jurisdiction that was administratively suspended or revoked (e.g., for failure to pay required fees or failure to complete required courses)?

You are required to upload a detailed narrative, which provides all details, and upload all relevant documents through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire. State the dates, facts, exact charges, disposition of the matter and the name and complete address of the authority in possession of the records thereof.

Date

Facts and exact charges

Disposition of the matter. You must request that a copy of your entire disciplinary file and your initial character application be sent DIRECTLY to the New Jersey Board of Bar Examiners.

Name of authority

Address 1

Address 2

City

State

Zip

Provide the names, addresses and phone numbers of **two (2)** attorneys from each jurisdiction who are familiar with your professional conduct. Do not list close relatives, anyone used as a personal reference in Section 16, or yourself.

Pursuant to RG 201:2, the responses of any named references are confidential and will not be released to you.

Professional Reference 1

Name

Email address

Phone number

Address 1

Address 2

City

State

Zip

Professional Reference 2

Name

Email address

Phone number

Address 1

Address 2

City

State

Zip

SECTION 16 - REFERENCES

A - Personal References

List the names, addresses and phone numbers of **five (5)** individuals who know you well enough to attest to your integrity and fitness to practice law. You may not use close relatives, law school classmates (if you are a recent graduate), significant others, or more than one member of the same law firm, business entity, or family unit. You may use employers. The Committee may, in its discretion, contact any or all of your named references.

Pursuant to RG 201:2, the responses of any named references are confidential and will not be released to you.

Name

Email address

Phone number

Address 1

Address 2

City

State

Zip

SECTION 17 - MISCELLANEOUS

Other Information

Is there any information (event, incident, occurrence, etc.) that was not specifically addressed and/or

asked of you in this application and/or in the instructions that could be considered a character issue?

Provide a full and detailed explanation.

Within the past five years, have you engaged in any conduct that: (1) resulted in an arrest, discipline, sanction or warning not already disclosed in Sections 1 through 16; (2) resulted in termination or suspension from school or employment not already disclosed in Sections 1 through 16; (3) resulted in loss or suspension or other discipline for any license not already disclosed in Sections 1 through 16; (4) resulted in any inquiry, investigation, administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority, or in connection with an employment disciplinary or termination procedure not already disclosed in Sections 1 through 16; or (5) endangered the safety of others, breached fiduciary obligations or violated workplace or academic conduct rules not already disclosed in Sections 1 through 16? If so, explain below and include any asserted defense or claim in mitigation or as an explanation of your conduct and upload all related documentation.

If you answered "yes" to this question, you are required to provide a full and detailed explanation. In addition, you must upload all related documentation through your User Home Page, after you have submitted this Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.

CERTIFICATION

Attestation

I understand that the full and correct completion of this Certified Statement of Candidate is a prerequisite for the Committee on Character's consideration of me as an applicant for admission to the practice of law. Candor and truthfulness are significant elements of fitness. I must provide the Committee with all available information, however unfavorable, even if I doubt its relevance.

If I am unable to provide all of the required documentation at the time I submit this Certified Statement of Candidate, I will timely supplement my application. I understand that until all of the required documentation is provided, my file will be deemed incomplete for review by the Committee. **I must answer all questions and upload all documentation to my account within a timely period.**

I understand further that I have a **continuing duty to disclose** all required information to the Committee, and that this duty continues until the date of my admission to the Bar of New Jersey.

I understand that I have a **continuing duty to amend this Certified Statement of Candidate within thirty (30) days of any occurrence that would change or render incomplete any answer.**

I will submit all additional information requested by the Committee in the form of an affidavit or certification, together with such supplemental documentation as the Committee deems necessary for its review.

I understand that I must respond to requests by the Committee within the time prescribed by the Regulations Governing the Committee on Character or face the abandonment of my application.

I will retain a copy of the completed Certified Statement of Candidate, with attachments, to facilitate submission of

supplemental information.

I hereby certify that I have read the Regulations Governing the Committee on Character and all of the questions and my answers in this Certified Statement of Candidate. I further certify that all my answers are true and complete. I am aware that if any answers are willfully omitted or false, I may prejudice my admission to the Bar of the State of New Jersey, my subsequent good standing as a member of the Bar, and that I may be subject to such penalties as are provided by law.

I further certify that I have read the foregoing Statement of Candidate and the facts stated therein are true and complete to the best of my knowledge and belief.

You MUST submit your Character and Fitness Questionnaire on-line after you certify (by clicking on "agree") or your application packet will not be considered complete.

I agree

Date

Full LEGAL name [First, Middle, Last, Suffix (Jr, III)]

John Smith

APPENDIX E

Memo dated December 6, 2022, from the Institute of Well-Being
in Law to the National Conference of Bar Examiners regarding
“Recommendations for Elimination of Mental Health & Substance
Use Questions on NCBE Sample Bar Application

MEMO

To: National Conference of Bar Examiners

From: Institute for Well-Being in Law

Date: December 6, 2022

Re: Recommendations for Elimination of Mental Health & Substance Use Questions on NCBE Sample Bar Application

Introduction

The Institute for Well-Being in Law (IWIL) is a 501(c)(3) organization formed in December of 2020. Its mission statement is as follows:

The Institute for Well-Being in Law (IWIL) is dedicated to the betterment of the legal profession by focusing on a holistic approach to well-being. Through advocacy, research, education, technical and resource support, and stakeholders' partnerships, we are driven to lead a culture shift in law to establish health and well-being as core centerpieces of professional success.

IWIL grew out of the National Task Force on Lawyer Well-Being, a grassroots collaborative of many organizations and thought leaders, which drafted *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (Task Force Report).¹ The Task Force Report, published in 2017, had support from both the ABA and Conference of Chief Justices which passed Resolutions urging all states to review and consider the Report's 44 recommendations. This early work relied largely on dedicated professionals who volunteered their time and effort. For effective, ongoing change, the work of the National Task Force needed to evolve into a permanent model, now IWIL. IWIL is comprised of an Executive Director, 9 volunteer Directors, 22 volunteer Advisors including past American Bar Association and national Affinity Bar presidents, Lawyer Assistance Program Directors, Chief Justices, Law School Deans, well-being directors, researchers, as well as hundreds of volunteers participating in one of the following committees: Policy, Communications, Research and Scholarship, Programming, Governance, or Diversity, Equity, and Inclusion.

¹ The National Task Force, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017), <https://lawyerwellbeing.net/the-report/>.

In addition to nationwide efforts, IWIL supports more than 30 states that have convened a State Task Force or Commission to address well-being and the recommendations in the Task Force Report. These Task Forces or Commissions bring together multiple stakeholders, such as court leaders, lawyer assistance programs, bar regulators, law schools, bar associations, firms, public agencies, and others to identify challenges in the profession and determine how to alleviate them in both collective and individual ways.

The continued expansion of well-being efforts comes at a time when the data on the well-being of our profession demonstrates a great deal of suffering, dissatisfaction, and burnout. In just the past year, the legal profession lost numerous lawyers and law students to suicide. Studies on the legal profession cite high rates of suicide contemplation, including a 2021 Mental Health Survey by Law.com and ALM Intelligence² where 19% of all respondents and 31% of Black lawyers indicated they contemplated suicide at some point in their professional careers, and a 2021 Survey of Law Student Well-Being reporting that 11% of law student respondents had suicidal thoughts during the past year (up from 6% in 2014). Stigma continues to be one of the most pervasive obstacles to seeking and getting help.³

Mental health is a serious crisis, particularly among young adults with rates of depression, suicidal behaviors, and substances use rising steadily over recent decades. In law school, we've found the same is true. In the recent 2021 Survey of Law Student Well-Being,⁴ 68.7% of respondents reported needing help for emotional or mental health problems over the past twelve months. However, only a bit over half actually received help from a mental health professional.

"For law students, the barrier to help seeking related to self-stigma is compounded by fear of professional consequences. This is strongest with respect to the character and fitness questions on state bar applications and the ensuing investigation if the applicant reveals that he or she has sought help."⁵

² ALM Intelligence, *Mental Health and Substance Use Survey* (May 2021) <https://www.alm.com/intelligence/solutions-we-provide/surveys-rankings-and-reports/surveys-rankings-and-reports-list/mental-health-substance-abuse/>.

³ Bibelhausen, Bender & Barrett, *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students*, 41 WM. MITCHELL L. REV. 3 (2015), <https://www.mnlcl.org/wp-content/uploads/2020/05/Reducing-the-Stigma-The-Deadly-Effect-of-Untreated-Mental-Illnes.pdf>.

⁴ Jaffe, Bender & Organ, *'It is Okay to Not Be Okay': The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 441 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4127297.

⁵ See Bibelhausen et al.

We believe the time has come to eliminate mental health and substance use-related⁶ questions on the NCBE Sample Bar Application. While states make their own determinations of questions on their bar applications, many look to the NCBE for guidance. NCBE has a great opportunity to demonstrate leadership and commitment to improving student well-being and consequently better preparing law students to become lawyers by alleviating student concerns over seeking help, reducing perception of stigma related to mental health conditions and disabilities, and contributing to a more equitable admissions process. We submit this comment to NCBE urging the complete elimination of questions 30 and 31 related to mental health and substance use.

30. Do you currently 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 your ability to practice law in a competent, ethical, and professional manner?

Are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

31. Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

Why Questions 30 and 31 on the NCBE Bar Application Should Be Eliminated

In February 2019, the Conference of Chief Justices passed Resolution 5, urging jurisdictions 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 behaviors that impairs an applicant’s current ability to practice law in a competent, ethical, and professional manner . . .” and that “reasonable inquiries concerning an applicant’s mental health history are only appropriate if the applicant has engaged in conduct or behavior and a mental health

⁶ The term “substance use” is considered non-stigmatizing whereas “substance abuse” has been found to have a high association with negative judgements and punishment. Substance use disorder is a “chronic, treatable disease from which patients can recover and continue to lead healthy lives.” National Institute on Drug Abuse, *Words Matter – Terms to Use and Avoid When Talking About Addiction*, <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction>.

condition has been offered or shown to be an explanation of such conduct or behavior.”⁷

Similarly, in 2019, the ABA House of Delegates adopted Resolution 12, which urged licensing entities to remove questions about mental health history, diagnoses, and treatment, and to focus instead on conduct and behavior.⁸

Many states do not currently ask questions related to mental health or substance use or ask only about impairments or conditions as a defense, in mitigation, or explanation for conduct or in relation to criminal charges.⁹

There are three primary reasons for the complete elimination of questions 30 and 31 from the NCBE Sample Application.

Reason #1. The chilling effect on bar applicants that prevents them from seeking help for mental health and substance use in law school because of questions pertaining to mental health and substance use history, diagnosis, and treatment on bar applications far outweighs the benefits of the use of those questions to determine fitness to practice law.¹⁰

We acknowledge that the character and fitness process serves a necessary purpose to determine whether bar applicants can perform the essential elements and duties of a lawyer with competence and diligence. Questions are appropriate when they identify conduct, not diagnoses, that could adversely affect the applicant’s ability to practice law. Based on our discussions with admissions directors and investigators in states where mental health and substance use questions were removed, the general sentiment is that the questions did little to assist in character and fitness determinations and much greater harm to students. As far as we are aware, those jurisdictions have not cited any significant spike in disciplinary violations that could be attributed to removal

⁷ Conference of Chief Justices, Resolution 5: In Regard to the Determination of Fitness to Practice Law (Feb. 2019), https://www.ncsc.org/_data/assets/pdf_file/0021/23484/02132019-determination-of-fitness-to-practice-law.pdf.

⁸American Bar Association, ABA House of Delegates Resolution 105 (2019), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2018_hod_midyear_105.pdf.

⁹ The Institute for Well-Being in Law tracks ongoing changes in bar admissions. Other resources including the ABA Commission on Disability Rights also tracks this data, see

<https://www.americanbar.org/groups/diversity/disabilityrights/resources/character-and-fitness-mh/>. States having recently eliminated mental health and substance use diagnosis and treatment questions include Connecticut, Indiana, Iowa, Maine, Maryland, Michigan, Ohio, New Hampshire, New York, Texas, and Wisconsin.

¹⁰ Substance use disorder is considered a mental health disorder and commonly co-occurs with another mental disorders. See National Institute of Mental Health, <https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health>.

of those questions. Further, we have significant and ongoing data to support the chilling effect of these questions on bar applicants.

In a 2014 ABA-sponsored survey of law students at fifteen schools, 45% of the law students who reported that they chose not to seek mental health treatment when needed cited fear of having to disclose this information on bar applications as the reason for not seeking treatment.¹¹ Unfortunately, not much has changed; a follow-up on that survey in 2021 which included 39 law schools (nearly 20% of the law students in the country) found that approximately half of respondents cited concern that seeking help for substance use or mental health issues would affect bar admission or job or academic status.¹² 49.7% of respondents in the study believed that if they had a drug or alcohol problem, their chances of getting admitted to the bar were better if the problem was hidden.¹³ The continued use of these questions in jurisdictions around the country and the historical ubiquity of the questions impact even jurisdictions such as Massachusetts, where mental health and substance use questions never existed on the bar application. A forthcoming study on well-being in the legal community of Massachusetts reveals continued concerns among the Massachusetts legal community about mental health and substance use questions impacting bar admissions, particularly for those bar applicants planning to seek admission in other states.¹⁴ In its Steering Committee on Lawyer Well-Being Report, the Massachusetts Supreme Judicial Court indicated that it would work to encourage other state bar application administrators to remove questions that inquire into bar applicants' history of mental health, alcohol, or substance use.¹⁵

We recognize that the legal profession is largely a self-governing institution. This issue however is not about an applicant "governing" himself or herself; our law students desperately want to get help when a mental health or substance use issue arises.¹⁶ What they don't want to have occur is a denial of bar admission as a result of them getting the help they need. Unfortunately, jurisdictions that retain these questions provide no assurances that applicants will not face significant consequences for getting this help. Beyond answering questions, they must disclose personal information including names of physicians, counselors, hospitals, and institutions, and potentially medical records with no way of knowing how this will be used by bar examiners. This

¹¹ Jerome M. Organ et al., *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, 142 (2016), https://digitalcommons.wcl.american.edu/facsch_lawrev/376/

¹² See 2021 Law Student Study.

¹³ Id.

¹⁴ Report on the State of Well-Being of Massachusetts Lawyers (forthcoming).

¹⁵ Massachusetts Supreme Judicial Court Steering Committee on Lawyer Well-Being, *Report to the Justices* (July 15, 2019) <https://www.mass.gov/doc/supreme-judicial-court-steering-committee-on-lawyer-well-being-report-to-the-justices/download>.

¹⁶ See 2021 Law Student Study.

“vicious loop”, as a result, is best (if not only) broken by eliminating these questions, thereby allowing law school administrators and faculty to double down on educating and encouraging students to seek the help they need and consequently preparing a new cadre of lawyers with better tools to deal with the stress of practice and ultimately contributing to a profession with better well-being and mental health outcomes.

Reason #2. Questions regarding mental health and substance use continue to stigmatize mental health conditions and disabilities, whereas many lawyers with mental health conditions and disabilities thrive in the practice of law.

- 1 in 5 U.S. adults experience mental illness each year.¹⁷
- 1 in 25 U.S. adults live with serious mental illness, such as schizophrenia, bipolar disorder, or major depression.¹⁸
- 15% of adults had substance use disorder in the past year and 93.5% did not receive treatment.¹⁹
- Depression is the leading cause of disability worldwide.²⁰

Lawyers are not immune. In fact, mental health conditions and unhealthy or hazardous substance use continue to run high in the legal profession, oftentimes exacerbated by the profession.²¹ The same is true for law students. In fact, data provides that “[l]aw students who begin law school with no major pre-existing mental health conditions frequently acquire mental health impairments as a result of their experience”; and “[f]or law students who begin law school with pre-existing mental health issues . . . , and those in recovery, the stressors of law school may intensify the conditions.”²²

¹⁷ Centers for Disease Control and Prevention, *About Mental Health*, <https://www.cdc.gov/mentalhealth/learn/index.htm>.

¹⁸ *Id.*

¹⁹ Mental Health America, *The State of Mental Health in America* (2023), <https://mhanational.org/issues/state-mental-health-america>.

²⁰ World Health Organization, *Depression* (Sept. 2021), <https://www.who.int/news-room/fact-sheets/detail/depression>.

²¹ Patrick J. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016), https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx; see also The Canadian Bar Association, *The National Study on the Psychological Health Determinants of Legal Professionals in Canada* (Oct. 27, 2022), https://flsc.ca/wp-content/uploads/2022/10/EN_Preliminary-report_Cadieux-et-al_Universite-de-Sherbrooke_FINAL.pdf; IBA Young Lawyers’ Report 2022, <https://www.ibanet.org/document?id=IBA-Young-Lawyers-Report-2022>; Anker & Krill, *Stress, Drink, Leave*, PLoS ONE 16(5) (May 12, 2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563>; see ALM Mental Health and Substance Abuse Survey (2021).

²² ABA Law Student Division, ABA Commission on Lawyer Assistance Programs, & Dave Nee Foundation, *Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them* (2015), at 5,

In recent years, and heightened due to the pandemic, numerous public campaigns have worked to reduce stigma against mental health conditions.²³ The ABA Commission on Lawyer Assistance Programs produced a video entitled “Fear Not: Speaking Out to End Stigma”, featuring a diverse group of lawyers, judges, and law students talking openly about challenges with behavior health issues, including depression, anxiety, alcoholism and drug addiction.²⁴ Partners at big law firms have opened up about their journeys through clinical depression and other bar leaders discuss other challenges such as substance use, dyslexia, and anxiety.²⁵ Organizations such as the Lawyers Depression Project exist, in part, to help break the stigma around discussing mental health by providing peer support to one another.²⁶

When bar applications ask questions about mental health and substance use to evaluate character and fitness to practice law, the message is that if you live with mental health conditions or disabilities and/or live with ongoing recovery from substance use, you are somehow less fit to practice law or inadequate. This continues to stigmatize those living with mental health conditions and disabilities and who live with addiction and substance use disorders, and encourages those to stay silent for fear of professional ramifications, embarrassment, and failure.

With nearly 80% of law students reporting needing help for emotional or mental health problems over the past twelve months,²⁷ we need to do everything we can to break this stigma and encourage help-seeking behavior early rather than sending the message to students they may be inadequate if they do suffer from mental health conditions or have struggled with substance use, especially when it begins in law school or is exacerbated by it.

Reason #3. These questions may have a disproportionate and disparate impact on certain communities.

https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_mental_health_toolkit_new.authcheckdam.pdf.

²³ See e.g., NAMI, *Stigma Free*, <https://www.nami.org/get-involved/pledge-to-be-stigmafree>; Cleveland Clinic, *Athletes and Mental Health: Breaking the Stigma* (Aug 2021), <https://health.clevelandclinic.org/mental-health-in-athletes/>.

²⁴ American Bar Association, *Speaking Out to End Stigma*, https://www.americanbar.org/groups/lawyer_assistance/profession_wide_anti_stigma_campaign/.

²⁵ Halkett, *A BigLaw partner's journey through clinical depression*, *Above the Law*, Apr. 2021, <https://www.abajournal.com/voice/article/a-big-law-partners-journey-through-clinical-depression>; Rubino, *Former Sidley Partner Opens Up About Depression and Washing Out of BigLaw*, *Above the Law*, Jan. 2021, <https://abovethelaw.com/2021/01/former-sidley-partner-opens-up-about-depression-and-washing-out-of-biglaw/>.

²⁶ Lawyers Depression Project, <https://www.lawyersdepressionproject.org>.

²⁷ See 2021 Law School Study.

There exist disparities in mental health among diverse communities. LGBTQ+ identified individuals are 2.5 more likely to experience depression, anxiety, and substance misuse as compared to heterosexual individuals.²⁸ Individuals from non-White races and ethnic groups are less likely to receive mental health care and often bear a disproportionately high burden of disability resulting from a mental disorder. People who identify as being two or more races are most likely to report a mental illness. American Indians/Alaskan Natives report higher rates of posttraumatic stress disorder and alcohol dependence than any other ethnic/racial group.²⁹

Specifically in the legal profession, recent studies indicate high rates of mental health issues, stress, and burnout in women and high rates of suicide contemplation among Black lawyers.³⁰ Other past studies found law students who identify as women, as LGBTQ, Students of Color, and students considered “low income” were more likely to experience mental health issues during law school than their counterparts; and Students of Color were less likely to seek mental health treatment than white students, and students from lower incomes were significantly less likely to seek services than high income students.³¹

In a profession that desperately needs to improve its diversity, reducing barriers to entry for diverse candidates is essential.³² It is time to remove structural barriers, including mental health and substance use questions that disproportionately impact diverse individuals by scrutinizing applications of individuals from certain communities.

CONCLUSION

One by one, states have sought to remove inquiries into mental health and substance use as part of their bar application process. Numerous advocacy pieces and articles over the years make a strong case for removal, citing among them the aforementioned arguments.³³ Some of the strongest advocates are legal educators and administrators

²⁸ American Psychiatric Association, *Diversity & Health Equity Education: Lesbian, Gay, Bisexual, Transgender and Queer/Questioning*, <https://psychiatry.org/psychiatrists/diversity/education/lgbtq-patients>.

²⁹ American Psychiatric Association, *Mental Health Disparities: Diverse Populations* (2017), <https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-Diverse-Populations.pdf>.

³⁰ See ALM Mental Health and Substance Abuse Survey (2021); Krill 2021.

³¹ Yale Law School Mental Health Alliance, *Falling Through the Cracks: A Report on Mental Health at Yale Law School* (Dec. 2014), at 6, https://law.yale.edu/system/files/falling_through_the_cracks_120614.pdf.

³² Albeit not the focus of this memo, we encourage NCBE to consider any question that may have a disparate impact on diverse and underrepresented populations in the legal profession, including questions related to “financial responsibility” and “legal proceedings”.

³³ See Appendix.

who witness firsthand students failing to receive help they need for fear that their future will be jeopardized because of inquiries about their mental health or substance use history, diagnoses, or treatment on the bar application.³⁴ Deans of students address these issues with students on a routine basis. For law deans in states where these questions have been removed, they continue to struggle with the complexity of students sitting for multiple bars that may have to disclose for one and not another. And, while additional education from bar administrators around character and fitness inquiries is helpful, it still doesn't address the stigma created by the mere existence of these questions. Anything we can do to address the serious mental health, substance use, and other challenges rampant in our profession, we must. Law students overwhelmingly support removal of these questions; it's time we listened to them, the future of our legal profession. We encourage NCBE to be a leader in this well-being movement and consider the elimination of any mental health or substance use inquiry as part of the bar application process.

³⁴ Jaffe & Stearns, *Conduct Yourselves Accordingly: Amending Bar Character and Fitness Questions To Promote Lawyer Well-Being*, 26 ABA Prof. Lawyer 2 (2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/26/2/conduct-yourselves-accordingly-amending-bar-character-and-fitness-questions-promote-lawyer-wellbeing/.

APPENDIX – Additional Resources Not Referenced Above

Law students, law schools lead efforts to remove mental health questions from Character & Fitness equation (Oct. 9, 2019), ABA Student Lawyer

<https://abaforlawstudents.com/2019/10/09/law-students-law-schools-mental-health-character-and-fitness/>

Margaret Hannon, *Why the character and fitness requirement shouldn't prevent law students from seeking mental health treatment*, A.B.A. (Jul. 29, 2018),

<https://abaforlawstudents.com/2018/07/09/character-fitness-requirement-and-seeking-mental-health-treatment/>

Brian Cuban, *When Bar Examiners Become Mental Health Experts*, Above the Law (Jan. 10, 2018), <https://abovethelaw.com/2018/01/when-bar-examiners-become-mental-health-experts/>

Christine Charnosky, *Are Questions About Mental Health on Bar Applications Harming Law Students?* (July 12, 2022), Law.com

Christine Charnosky, *Ahead of the Curve: Examining Character & Fitness Mental Health Questions* (July 18, 2022), Law.com

Alyssa Dragnich, *Have You Ever...? How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*, 80 Brooklyn L. Rev. 3 (2015)

<https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1071&context=blr>

Kristen Clow, *Mental Health and the Character and Fitness Examination: The Tide is Shifting*, 95 N. Dakota L. Rev. 327 (2020),

<https://law.und.edu/files/docs/ndlr/pdf/issues/95/2/95ndlr327.pdf>

Law students say they don't get mental health treatment for fear it will keep them from becoming lawyers. Some states are trying to change that (Feb. 29, 2020),

<https://www.cnn.com/2020/02/23/health/law-school-bar-exam-mental-health-questions/index.html>

The Impact, Legality, Use and Utility of Mental Disability Questions on the New York State Bar Application (Aug. 13, 2019), <https://lawyerwellbeing.net/wp-content/uploads/2019/09/NYSBA-Working-Group-Report-FINAL-8.15.19.pdf>

ABA Law Student Division, ABA Commission on Lawyer Assistance Programs, & Dave Nee Foundation, *Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them* (2015), at 5,

https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_mental_health_toolkit_new.authcheckdam.pdf

Kaplan, *Kaplan Bar Review Survey: Only 29 Percent of Law Student Graduates Think Their Alma Mater Does Enough to Help their Students in the Area of Mental Health* (May 1, 2019), <https://www.kaptest.com/blog/press/2019/05/01/kaplan-bar-review-survey-only-29-percent-of-law-school-graduates-think-their-alma-mater-does-enough-to-help-their-students-in-the-area-of-mental-health/>

Hudson & Gemignani, *The Other Bar Hurdle: An Examination of the Character and Fitness Requirement for Bar Admission*, 48 WM. MITCHELL L. REV. 500 (2022) <https://open.mitchellhamline.edu/mhlr/vol48/iss2/3/>.

Change is Coming: The Institute for Well-Being in Law Sets Out to Transform the Legal Profession, The Bar Examiner (Summer/Fall 2021), <https://thebarexaminer.ncbex.org/article/summer-fall-2021/change-is-coming/>

Colin M. Black, *The Rise and Fall of the Mental Health Inquiry for Bar Admission*, 50 Capital Univ. L. Rev. 537 (2022), <https://www.capitallawreview.org/article/55615-the-rise-and-fall-of-the-mental-health-inquiry-for-bar-admission>

Jaffe & Stearns, *Conduct Yourselves Accordingly: Amending Bar Character and Fitness Questions To Promote Lawyer Well-Being*, 26 ABA Prof. Lawyer 2 (2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/26/2/conduct-yourselves-accordingly-amending-bar-character-and-fitness-questions-promote-lawyer-wellbeing/

APPENDIX F

Letter dated January 4, 2023 from Rutgers Law School
Co-Deans and Associate Deans for Student Affairs
in Support of Removing Question 12B on Mental Health
from the Character and Fitness Application



January 4, 2023

Jeralyn L. Lawrence
President, NJSBA
One Constitution Square
New Brunswick, NJ 08901

We, the Co-Deans and Associate Deans for Student Affairs at Rutgers Law School, write to lend our support for the removal of question 12B of the Health Section of the New Jersey State Bar's Character and Fitness Application ("the Mental Health Question").

Over the last several years, we have seen a marked increase in students coming to our Law School staff reporting a range of mental health concerns. In speaking with colleagues, we have learned that our experience in this regard is not unique and mirrors what other law school administrators, faculty, and staff are seeing at their institutions. We regularly refer students to our campus Counseling Centers for the care that they need and, far too often, upon making such a referral, students seek treatment. They ask questions like "Won't I have to report that to the bar?" or "If I speak with a therapist, will it hold up my Character and Fitness application?" We want to answer no to these questions because we do not want students to avoid needed mental health care but we feel obligated to provide a qualified response -- that they must report but that they should still seek treatment. Research has shown that our students are not alone in feeling deterred from seeking mental health or substance use treatment because of a Mental Health Question on a bar application.¹

From day one at first year orientation, we impart to our law students the importance of honest and candid disclosure to the bar. It is a theme we continue to highlight and revisit with frequency during their time with us. Our students take this responsibility seriously. For some it is a source of great anxiety, made much worse by the existence of the Mental Health Question. Students understand their duty to be forthright and honest, and some believe it easier to not seek needed treatment than to have to disclose such treatment to the bar examiners.

We have to do better, and many states have already made the much-needed change. According to the American Bar Association, at least eleven states do not ask candidates about their mental health.² More and more states are recognizing the unfairness of mental health questions on bar applications and are changing their applications accordingly. Most recently, the Supreme Court

¹ Jerome M. Organ, David B. Jaffe & Katherine M. 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, 154 (2016).

² AMERICAN BAR ASSOCIATION, MENTAL HEALTH CHARACTER & FITNESS QUESTIONS FOR BAR ADMISSION (2022), available at <https://www.americanbar.org/groups/diversity/disabilityrights/resources/character-and-fitness-mh/#:~:text=Thirty%2Dfour%20states%20and%20Washington,health%20status%20of%20an%20applicant.>

of Ohio decided to remove its mental health treatment and diagnosis question from their state bar application effective January 2023.³

There are other more effective and less intrusive ways to screen candidates for personal characteristics that affect their fitness to practice. This inquiry should be based on *conduct* and not health records. Conduct on an applicant's record such as patterns of substance use, criminal offenses, financial irresponsibility, even unexplained gaps in work or education history might bring to light issues around mental health that impact an applicant's fitness to practice. At best, a question about mental health, standing alone and without connection to conduct, is invasive and unnecessary. At worst, as we have seen anecdotally from our Rutgers Law students and more concretely through the studies referenced in this letter, question 12B deters students from seeking needed mental health treatment and, lamentably, sends a message that further stigmatizes mental health issues and related treatment. Let us put New Jersey on the right side of this issue by following the example of the many states that have already removed mental health questions from their applications, and, in doing so, support the future members of our profession. This change, we believe, will have a directly positive effect on our students and on the entire legal community. Law students who receive the mental health care that they need become healthier law graduates and contribute to a healthier community of lawyers practicing in the State of New Jersey.

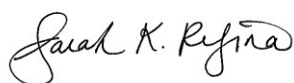
Sincerely yours,



Rose Cuison-Villazor
*Interim Dean, Professor of Law and
Chancellor's Social Justice Scholar*



Kimberly Mutcherson
Co-Dean and Professor of Law



Sarah K. Regina
Associate Dean for Student Affairs (Newark)



Louis Thompson
Associate Dean for Student Affairs (Camden)

³ See Csaba Sukosd, *Bar Application Updates Include Changes to Mental Health Disclosure*, available at https://www.courtnewsOhio.gov/happening/2022/CharacterRuleChange_120622.asp#.Y5Ck2OzMJqw

APPENDIX G

Letter sent January 27, 2023 from Seton Hall Law Interim Dean,
Associate Dean for Academics and Assistant Dean for Student
Services in Support of Removing Question 12B on Mental Health
from the Character and Fitness Application



Seton Hall University

One Newark Center, Newark, New Jersey 07102-5210

Tel: (973) 642-8498

Fax: (973) 642-8031

Email: kip.cornwell@shu.edu

John Kip Cornwell

INTERIM DEAN

Jeralyn L. Lawrence
President, NJSBA
One Constitution Square
New Brunswick, NJ 08901

On behalf of the Seton Hall Law School, the undersigned support removal of the mental health question at item 12B of the Character and Fitness Questionnaire portion of the New Jersey Bar Exam Application ("Question 12B"). Our position is premised on our collective experience as professors and administrators providing an array of academic guidance and support to New Jersey law students. Our experience finds support in research on the negative impact of mental health questions as part of bar admission processes. Finally, experience and research combine with our unwavering commitment of service to the New Jersey bar which requires continual advancement toward a healthy and thriving legal community.

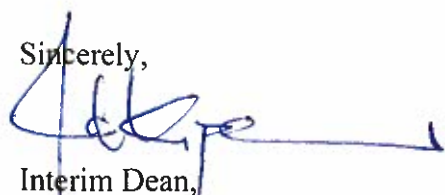
From acceptance into law school through entry into the profession, our work with law students is consistent with research findings that mental health diagnosis and treatment questions are unrelated to the competent practice of law.ⁱ Inquiries like Question 12B are widely reported to deter students from seeking mental health services by causing fear that diagnoses or treatment might delay, or even prevent, entry into the profession. Data gathered in the 2014 ABA Survey of Law Student Well-Beingⁱⁱ provided early confirmation that, due to mental health questions on bar applications, 45% of law students would not seek mental health intervention, believing it might threaten their ability to be admitted to the bar.ⁱⁱⁱ Similarly, 44% believed that they would increase their likelihood of being admitted to the bar if a mental health problem were hidden.^{iv} These data clearly elucidate the detrimental impact of mental health questions like Question 12B.

Since dissemination of the initial 2014 ABA Survey, the profession has progressed in addressing mental health issues prevalent in the legal community. In 2018, the ABA Organized a Working Group to Advance Well-Being in the Legal Profession. In 2019, the ABA undertook further study on law student well-being, publicizing findings about alcohol use, substance abuse, mental health issues and help-seeking behaviors of lawyers.^v Together, this work demonstrates the continuing need to address mental health concerns as a normal aspect of professional well-being. Making the deterrent effect Question 12B has on seeking support particularly grave.

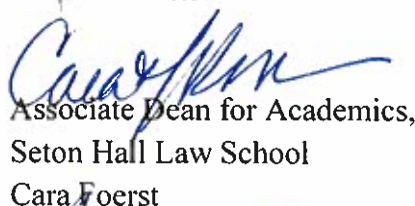
Because the stakes are multifaceted and far reaching, students, law schools, and members of the bench and bar have advocated for removal of mental health questions from bar admission processes and many jurisdictions have responded.^{vi} The ABA's work in this area supports what we know from working directly with New Jersey law students: the profession requires greater resources for mental health services and expansion of attorney-specific prevention and treatment interventions – not deterrents to seeking needed services.

As Deans of the Seton Hall Law School, we join the multitude of professional, educational, and advocacy organizations that have adopted public positions calling for the removal of questions on bar applications inquiring into mental health diagnoses and treatment. We respectfully urge our Supreme Court to join in this movement by removing Question 12B from the Character and Fitness Questionnaire of the New Jersey Bar Examination Application.

Sincerely,



Interim Dean,
Seton Hall Law School
John Cornwell



Associate Dean for Academics,
Seton Hall Law School
Cara Foerst



Assistant Dean for Student Services
Seton Hall Law School
Andrea Cascarano

ⁱ Hudson, David L. Jr. and Gemignani, Andrea (2022), *The Other Bar Hurdle: An Examination of the Character and Fitness Requirement for Bar Admission*, 48 Mitchell Hamline Law Review Iss. 2, Article 3 (2022).

ⁱⁱ Published as J.M. Organ, D.B. Jaffe & K.M. 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 Education, No. 1 (2016).

ⁱⁱⁱ D. Jaffe and J. Stearns, *Conduct Yourselves Accordingly: Amending Bar and Character and Fitness Questions to Promote Lawyer Well-Being*, The Professional Lawyer, Vol. 26, No.2, January 2020.

^{iv} Id.

^v Krill, Patrick R. JD, LL.M.; Johnson, Ryan MA; Albert, Linda MSSW. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*. 10(1) J. of Addiction Medicine, Jan/Feb 2016, at 46-52.

^{vi} Thirteen states no longer ask any questions about mental health status: Arizona, California (except a question about substance abuse), Connecticut, Illinois, Indiana, Massachusetts, Mississippi, New Hampshire, New York, Pennsylvania (except a question about substance abuse), Virginia, Washington and Wisconsin. Christine Charnosky, *Ahead of the Curve: Examining Character & Fitness Mental Health Questions*, The American Lawyer (July 18, 2022), <https://www.law.com/2022/07/18/ahead-of-the-curve-examining-character-fitness-mental-health-questions/>.

APPENDIX H

Survey Questions on the Ethics and Fee Arbitration Systems
provided to NJSBA Membership

From: Campaign <campaign@njsba.com>
Sent: Wednesday, November 9, 2022 1:40 PM
To: Ask The NJSBA <askthenjsba@njsba.com>
Subject: Putting Lawyers First Task Force jldxh

Have you had interactions with the ethics or fee arbitration systems?

Please identify the system

Please tell us, have you been the subject of a matter, represented a client, a volunteer or some other role?

Please set forth any positive aspects of your interaction with the Ethics system

Please set forth any positive aspects of your interaction with the Fee Arbitration system

Please set forth any areas of the Ethics system that needs improvement.

Please set forth any areas of the Fee Arbitration system that needs improvement.

Please set forth any proposed solutions to addressing any problems you have perceived as part of your interaction with the Ethics system.

Please set forth any proposed solutions to addressing any problems you have perceived as part of your interaction with the Fee Arbitration system.

In what year were you admitted to practice in New Jersey?

Do you primarily practice in New Jersey?

Please identify the county in which your practice is located

Please indicate the firm setting in which you practice:

We would like to gather additional information on the experiences attorneys
have had, may we contact you?

APPENDIX I

Interview Questions for Ethics Secretaries and Fee Arbitration Secretaries

For the interviewers-the following are questions which we hope will elicit information we would like to acquire for a comprehensive, non-biased assessment of the ethics and fee arbitration systems.

It is imperative that every interviewer asks the exact same questions which will assure the responses are reliable and that our conclusions and recommendations have validity.

Of course, there is no doubt that someone may want to share an example or two which would deviate from the question asked and if that were to occur, please encourage them to share that information with you at the end of the interview and include it in your summary.

The secretaries may be skeptical of answering questions. We must assure them that their names will not be used unless they agree. They will be anonymous.

QUESTIONS FOR ETHICS SECRETARIES:

PREAMBLE

The State Bar's impetus in asking you to participate in this interview is to review what the ethics and fee arbitrations systems and its participants are doing right and if there are aspects of the systems which could be improved. We are sure that you have ideas for improvement which could make the system perform more efficiently for the benefit of all involved. We hope you will share them with us. The State Bar hopes to present a report which will encompass data from all facets of the ethics system, including fee arbitration.

We also want to reiterate that the goal of the system is to protect the public, but we also want to assure lawyers that if they, per chance, become involved in the ethics and fee arbitration systems, that they will be treated fairly and with respect during the process.

QUESTIONS:

GENERAL:

Do you wish to have your name associated with your comments or do you wish to remain anonymous?

How long have you been a district secretary?

What role do you play in the ethics process?

What roles do the chair and vice chair play in your committee?

Are members required to sign a confidentiality agreement?

What does that entail?

Do you have a copy of the agreement you would share with me?

When did this requirement come into being?

Do you know why you have to sign a confidentiality agreement?

Who keeps a copy of this agreement?

INTAKE

What is the process?

Does a grievant ask you to send them the form or do you get a form from the grievant as a result of the grievant using an on-line form?

Does the grievant return the grievance form to you? Or, does the grievant return the form to someone else?

What is the primary way you receive a grievance? From the grievant themselves or from OAE?

If they return the forms to you, what is your next step?

Who reviews the grievance to determine whether or not to docket the grievance?

Is a lay person involved? Or, is a lay person involved only if the secretary recommends dismissal?

If the form is returned to OAE, does OAE just forward the form to you, ask you to review it with a lay person and docket it or decline it?

Or does the OAE send the grievance to you and tell you to docket the grievance with x, y, and z RPCs being involved?

Do you have any autonomy over what RPCs will be noted on the docketing of the grievance? Or is that in the hands of the OAE?

Do you know if the OAE reviews the grievance with a lay person to decide to docket or not docket the matter?

Do you know if any grievance sent to the OAE has ever been declined by the OAE for docketing? And if so, if a lay person has signed off on the declination?

Do you have a form dismissal letter? Would you please share it with us?

If you dismiss the grievance with the approval of a lay person, does the OAE become involved in any way or is your dismissal decision final?

When you docket a grievance, who assigns an investigator? Is the OAE involved in this decision?

Who sends the grievance to the attorney?

Is the attorney advised in that letter which send the grievance to them that they have the right to an attorney at the investigative stage even though they are required by Rule to cooperate with the disciplinary authorities?

Who monitors if the attorney investigator is meeting their time completion goals?

If the time goals are not being met, what happens?

Is there any intervention by the OAE if an investigator is falling behind? If so, what does it entail? Are there extensions of time to complete an investigation given to the volunteer investigator?

Once an investigation report is written, who is it submitted to?

Does anyone at the local level review the report and recommendation for application of the RPCs and to the final conclusions?

Does the OAE become involved in evaluating or approving the report? If so, what does that entail?

If the investigator recommends dismissal, what happens?

Do you send a letter dismissing the grievance or does the OAE become involved in approving the dismissal?

Have there been times where a dismissal recommendation is countermanded by the OAE? If so, how did that occur? Has this been a frequent occurrence?

COMPLAINT AND HEARING

If a complaint is recommended by the investigator, is it reviewed by anyone? If so, who?

Does the OAE have to approve the complaint?

Does the OAE advise how the complaint should be revised?

Does the OAE monitor respondent's time to answer?

Has the OAE ever asked that proposed charges be eliminated from the complaint?

Who serves the complaint? You or the OAE?

How do you know when the complaint has been served if the OAE serves it?

Does the OAE then take over the process from the committee if there is no answer from respondent i.e. write letters to the respondent about being in default etc.?

Who chooses the panel chair for a hearing?

Who monitors the time goals for the completion of a hearing once it is scheduled?

After the hearing is completed, who monitors time goals for completion of the written or oral decision?

Does the written decision have to be approved by the OAE before it is sent to the respondent?

What happens if the panel recommends dismissal of the grievance?

Does the OAE intervene in this instance? If so, what has that involvement entailed?

OTHER ISSUES

Does the local investigator have control over entering into an agreement in lieu of discipline with a respondent or does this agreement have to be approved by the OAE before it is offered?

Have there been hearings being held for matters which would have resulted in only minor discipline (admonition), a diversion or agreement in lieu would have sufficed? IF so, how did those hearings come about?

How often has that happened?

How are your meetings conducted? Do you discuss cases so that investigators can get input from other members of the committee?

Are your meetings monitored in any way?

Are respondents referred to by names, docket numbers or initials?

Are members of the committee aware of matters before the committee and the status of the matters pending? If not, why not?

Do your members sign up for a second four-year term? If not, are you aware of any systemic problem which causes them not to volunteer for another term?

Does the OAE communicate with you what matters are pending in a monthly status report? If so, what information is included in

that monthly report? How are respondents referred to in those reports?

What are the strengths and positive aspects of the current system?

What are the areas of the system which could be improved? Do you have any suggestions for improving the system or correcting problem you perceive exist?

Is there anything you wish to share about how the system functions which I have not covered?

For the interviewers-the following are questions which we hope will elicit information we would like to acquire for a comprehensive, non-biased assessment of the ethics and fee arbitration systems.

It is imperative that every interviewer asks the exact same questions which will assure the responses are reliable and that our conclusions and recommendations have validity.

Of course, there is no doubt that someone may want to share an example or two which would deviate from the question asked and if that were to occur, please encourage them to share that information with you at the end of the interview and include it in your summary.

The secretaries may be skeptical of answering questions. We must assure them that their names will not be used unless they agree. They will be anonymous.

QUESTIONS FOR FEE ARBITRATION SECRETARIES:

PREAMBLE

The State Bar's impetus in asking you to participate in this interview is to review what the ethics and fee arbitrations systems and its participants are doing right and are there aspects of the system which could be improved. We are sure that you have ideas for improvement which could make the system perform more efficiently for the benefit of all involved. We hope you will share them with us. The State Bar hopes to present a report which will encompass data from all facets of the ethics system, including fee arbitration.

We also want to reiterate that the goal of the system is to protect the public but we also want to assure lawyers that if

they, per chance, become involved in the ethics and fee arbitration systems that they will be treated fairly and with respect during the process.

GENERAL

Do you wish to have you name associate with your comment or do you wish to remain anonymous?

How long have you been a district fee arbitration secretary?

What role/function do you play in the fee arbitration process?

What roles/functions do the chair and vice chair play?

Do members of your committee have to sign a confidentiality agreement? If so, what does it entail? Could you please share with me a copy of this agreement?

Are your members required to undergo training?

Is it a webinar which can be listened to at any time? Or is it presented in person even if via zoom?

Can members sit on a panel without that training? For example, if a new member is appointed for a term to begin September 1, 2022, but training is not available until December, are they able to participate in a hearing in the interim?

Are they required to undergo training every year to continue to be members of the fee arbitration committee?

INTAKE

What is the process?

Does a party ask you to send them the fee request form or do you get a form from the party as a result of the party using an on-line form?

Does the party return the fee arbitration request form to you?

Or, does the party return the form to someone else? If so, who?

If it is returned to someone other than you, how do you get the form and know a matter is being presented to your district for consideration by a panel?

If they return the forms to you, what is your next step?

Who reviews the request form to determine whether or not to docket the matter?

When you receive the request form, how much leeway do you have to relax rules for dates of submission by either party to the fee arb process?

If the form is returned to OAE, does OAE just forward the form to you, ask you to review it and docket it or decline it?

When you docket a fee arb matter, who assigns the panel members?

Who sets up the hearing dates?

Who monitors if the panel is meeting its time completion goals in rendering a decision i.e. 30 days?

If the time goals are not being met, what happens?

Is there any intervention by the OAE if a panel is falling behind in rendering a decision? If so, what does it entail?

Once a panel report is rendered, who is it submitted to?

Does anyone at the local level review the decision before it leaves the local level?

Does the OAE become involved in evaluating the decision?

Who sends the decision to the parties?

Do you use a form transmittal letter for the decision to all parties?

Are there other form letters for you to use?

Are you permitted to deviate in any way in those letters?

Are your members permitted to sign up for a second four-year term?

If so, do your members sign up for a second four-year term? If not, are you aware of any systemic problem which causes them not to volunteer for another term?

How does the OAE monitor your committee's work efforts?

What types of communication do you have with the OAE?

Do you panel members have any communication directly with the OAE without going through you or the chair, for example? If so, under what circumstances does type of communication occur?

Does the OAE communicate with you what matters are pending in a monthly status report? If so, what information is included in that monthly report? How are parties referred to in those reports?

Do you have a budget for your committee's expenses?

If so, how much is it?

Do you have to account to anyone as to how you use those monies?

If so, to whom do you have to account and how often do you have to account?

Is there anything you wish to share about how the system functions which I have not covered?

What are the strengths and positive aspects of the current system?

What are the areas of the system which could be improved? Do you have any suggestions for improving the system or correcting problem you perceive exist?

APPENDIX J

Letter dated October 5, 2022 from Jeralyn L. Lawrence, Esq., President NJSBA to Isabel K. McGinty, Esq., Assistant Ethics Counsel; and Letter dated October 13, 2022 from Johanna Barba Jones, Esq., Director, Office of Attorney Ethics to Jeralyn L. Lawrence, Esq., President NJSBA in response



NEW JERSEY STATE BAR ASSOCIATION

JERALYN L. LAWRENCE, PRESIDENT
Lawrence Law LLC
776 Mountain Boulevard, Suite 202
Watchung, NJ 07069
908-645-1000 • FAX: 908-645-1001
jlawrence@lawlawfirm.com

Via Email, Fax, and US Mail

October 5, 2022

Isabel K. McGinty, Esq.
Assistant Ethics Counsel
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625-0963

Dear Ms. McGinty:

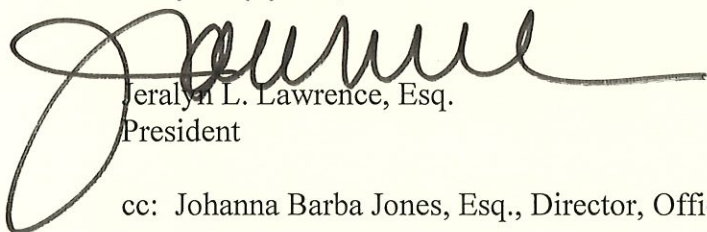
I am writing in relation to the work of our Putting Lawyers First Task Force, which is charged with the goal of providing attorneys the tools they need to survive and thrive in the ever-changing legal landscape. Some issues the committee is addressing involve helping attorneys navigate the world of working ethically.

As part of its mission, the members of the Task Force are collecting information to better understand how the state's ethics system works so that we can effectively provide useful guidance to lawyers faced with an ethics complaint. It has come to our attention that you have directed that the Secretaries of our District Ethics Committees should not speak to members of our Task Force and address the questions they have about the process.

In the interest of transparency, I am requesting that you allow the Secretaries to cooperate with the Task Force in our efforts to make recommendations that are intended to improve our ethics system and to provide the most sound guidance to attorneys who have an ethics matter under investigation.

I would appreciate it if you could confirm with us that you will do so or kindly advise as to any concerns that you may have so that we have the opportunity to address them.

Very truly yours,



Jeralyn L. Lawrence, Esq.
President

cc: Johanna Barba Jones, Esq., Director, Office of Attorney Ethics

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY



JOHANNA BARBA JONES
DIRECTOR

PHONE: (609) 403-7800
FAX: (609) 403-7802

P.O. Box 963
TRENTON, NEW JERSEY 08625

October 13, 2022

Jeralyn L. Lawrence, Esq., President
New Jersey State Bar Association
One Constitution Square
New Brunswick, NJ 08901

RE: Putting Lawyers First Task Force

Dear Ms. Lawrence:

Thank you for your October 5, 2022 letter concerning the Putting Lawyers First Task Force. I share your goal of ensuring the Bar's understanding of New Jersey's attorney regulatory and disciplinary systems.

I today sent an e-mail to the officers of the District Fee Arbitration and District Ethics Committees clarifying that their option to participate in this private-sector survey should proceed mindful of the confidentiality requirements of R. 1:20-9; R. 1:20A-5; R. 1:38-3; and R. 1:38-5. In the shared spirit of maintaining professionalism within the attorney regulatory system, I also encouraged the volunteers to share with me any feedback on the District Fee Arbitration Committees or District Ethics Committees. I understand that my predecessor previously offered to investigate specific matters or topics of concern to the State Bar and to discuss them with your leadership. I renew that offer and I look forward to our future conversations on the topic.

Finally, OAE leadership routinely presents seminars free of charge to the Bar both virtually and at the New Jersey Law Center. If you or the Task Force identifies a way for the Office of Attorney Ethics to amplify the value of those no-cost presentations during my tenure, I invite you to share that directly with me. Personally, I would be happy to update the Attorney Regulatory System presentation that I recently made in a private committee meeting and present it to the Task Force on a mutually convenient date.

Very truly yours,

A handwritten signature in cursive script that reads "Johanna Barba Jones".

Johanna Barba Jones
Director, Office of Attorney Ethics

JBj/bc

c: HeatherJoy Baker, Supreme Court Clerk

<http://www.njcourts.gov/attorneys/oe.html>
Mountain View Office Park, 840 Bear Tavern Road, Suite 1, Ewing, NJ 08628

APPENDIX K

Email dated October 13, 2022 from Isabel McGinty, Esq., on behalf of the Director, of the Office of Attorney Ethics to Officers and Members of the District Ethics Committees and District Fee Arbitration Committees

To Opt-Out of any further emails from our firm, please click [here](#).

From: Isabel McGinty <isabel.mcginity@njcourts.gov>

Sent: Thursday, October 13, 2022 1:28 PM

To: Isabel McGinty <isabel.mcginity@njcourts.gov>

Subject: Message from the OAE Director

Importance: High

CAUTION: This email originated from outside of Hill Wallack. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Director Johanna Barba Jones has asked that the following message be distributed to each member of the District Ethics Committees and District Fee Arbitration Committees:

Good afternoon, Officers and Members of the District Ethics Committees (DECs) and District Fee Arbitration Committees (DFACs).

The Office of Attorney Ethics has become aware that the New Jersey State Bar Association's Putting Lawyers First Task Force has requested that the secretaries and members of the DECs and DFACs participate in a 35-question interview "to gather data to present to the Supreme Court." In the event you elect to participate in this private-sector survey, I ask that you do so mindful of the confidentiality requirements of R. 1:20-9, R. 1:20A-5, R. 1:38-3, and R. 1:38-5.

Separate and apart from the NJSBA survey, I welcome you to share constructive feedback on the DECs and the DFACs. I would instead encourage you to send your feedback to me in the first instance, with copy to the Statewide Coordinator of your program.

We look forward to seeing you at the Virtual Training Conference tomorrow.

Very truly yours,

Isabel McGinty
Assistant Ethics Counsel and Statewide Ethics Coordinator
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
609 403-7800, ext. 34142

IMPORTANT NOTICE: This message and any attachments contain confidential or privileged information and/or legal advice which is intended only for the use of the intended recipients of this message.

If you are not the intended recipient of this message, please notify the sender by return email, and delete this and all copies of this message and any attachments from your system. Any unauthorized disclosure, use, distribution or reproduction of this message or any attachments is prohibited and may be unlawful. We have taken precautions to minimize the risk of transmitting software viruses, but we advise you to carry out your own virus checks on any attachment to this message. We cannot accept liability for any loss or damage caused by software viruses.

APPENDIX L

Interview Questions for Attorneys who Represented Respondents
in Ethics Proceedings including Random Audits

**QUESTIONS FOR ATTORNEYS WHO HAVE REPRESENTED RESPONDENTS IN
ETHICS PROCEEDINGS (INVESTIGATIONS, HEARING OR AT ORAL ARGUMENT
AT THE DRB OR SUPREME COURT) INCLUDING RANDOM AUDITS**

For the interviewers-the following are questions which we hope will elicit information we would like to acquire for a comprehensive, non-biased assessment of the ethics and fee arbitration systems.

It is imperative that every interviewer asks the exact same questions which will assure the responses are reliable and that our conclusions and recommendations have validity. Please return these questionnaires to me when you are done.

Of course, there is no doubt that someone may want to share an example or two which would deviate from the question asked and if that were to occur, please encourage them to share that information with you at the end of the interview and include it in your summary.

We must assure the attorneys we interview that we will not be asking about any allegations of misconduct, any names or anything otherwise confidential, only about their experiences in the ethics system process as they have encountered it.

We also want to assure them the responses will be kept anonymous unless they want their name associated with the comments. Please put on each questionnaire the person you interviewed but be reassured their names will not be entered in the report unless they agree to have their name used.

Please read all of the questions in each section as the attorneys may have represented respondents in all of the phases

or just one phase, for example. Make sure you ask all sets which apply to that attorney especially some attorneys who concentrate in representing lawyers in ethics proceedings.

PREAMBLE

The State Bar's impetus in asking you to participate in this interview is to review what the ethics and fee arbitrations systems and its participants are doing right and if there are aspects of the system which could be improved. We are sure that you have ideas for improvement which could make the system perform more efficiently for the benefit of all involved. We hope you will share them with us. The State Bar hopes to present a report which will encompass data from all facets of the ethics system, including fee arbitration.

We also want to reiterate that the goal of the system is to protect the public, but we also want to assure lawyers that if they, per chance, as advocates or respondents, become involved in the ethics and fee arbitration systems, that they will be treated fairly and with respect during the process.

QUESTIONS OF ATTORNEYS WHO HAVE REPRESENTED RESPONDENTS IN THE LAST 4-5 YEARS

Do you wish to have your name associated with your comments or do you wish to remain anonymous?

How many respondents have you represented in any ethics matter in the last 4-5 years?

Did you represent the respondent(s) at the investigation level and or the DRB/supreme Court level or all of the levels?
(attorneys can be retained to represent a lawyer at any phase of the process and it is important to distinguish at which level

they represented respondents as contact with the ethics personnel diminishes as one goes up the ladder of discipline. Of course, the investigative stage is the most important, then next in importance is the hearing stage in terms of contact with ethics personnel from the OAE or a local investigator)

How many respondents did you represent at each level if you can recall?

Were you ever retained to represent a respondent in a random audit? If so, how many did you represent?

QUESTIONS FOR ATTORNEYS WHO REPRESENTED RESPONDENTS AT THE INVESTIGATIVE STAGE

When you were contacted by a lawyer to represent them, was your subsequent contact with a local ethics committee member or a member of the OAE staff?

Did you ever represent an attorney who asked you to review a diversion agreement or a stipulation in lieu of discipline?

If so, did you ever have any contact with a local committee investigator or a presenter from the OAE?

If so, were you treated with respect during the investigation/random audit?

Was your client treated with respect?

Were you asked to comply with time lines? If so, what did the time lines apply to? (This is an important question as in random audits there are usually time lines within which an attorney has to produce bank account statements and checks etc. if the auditor has concerns about an attorney's bookkeeping or the trust account).

If you ever had to ask for an extension of any time frames, was that courtesy granted to you?

Were you extended cooperation from the local investigator or from the OAE for extensions of time to produce documents for example or to reply in some fashion to the investigator?

Were demands for documents to be produced or demands for interviews reasonable under circumstances of the case? If not, why not?

Were discovery demands oppressive? If you objected, how was your objection handled by the investigator? Please advise whether the investigator was from a local committee or the OAE.

At any point in time during the investigation, did the inquiry into respondent's conduct go beyond the four corners of the grievance?

If so, in your professional opinion was that inquiry by the investigator was appropriate under the circumstances of the facts of the matter as you knew them from respondent? If not, why not?

Did the investigator ask the respondent directly if they felt any remorse for their alleged unethical behavior?

Did you run into any difficulties during the investigation which you believe might happen again in other matters and should be changed? If so, what suggestion would you make?

Did the investigator respond to you within a reasonable time?

Did the investigator ever advise you before writing a report, what their findings would be?

If so, was the report consistent with what the investigator told you would be their oral representation to you?

Is there any other information you wish to share about how the system functions and how you and your client were treated in the system which I have not covered?

**QUESTIONS FOR ATTORNEYS WHO REPRESENTED LAWYERS AT HEARINGS
AFTER THE COMPLAINT HAS BEEN FILED.**

Did you represent a respondent at a disciplinary hearing or at the DRB level or both?

If so, describe the level of representation -ethics hearing or DRB oral argument.

Was the hearing before a local ethics panel or a special master?

Were you and respondent treated with respect during this process? If not, please describe why not.

Did you have to file motions before the hearing?

If so, how were they addressed? Were they solely on the papers or was there oral argument?

Did you get a ruling on your motion in a timely fashion?

Was the decision after the hearing rendered promptly? Was it in writing or oral?

Was there ever a time when you had to ask for an adjournment but were denied?

Did you run into any difficulty of any kind at the hearing level, if so, would you please share it with me?

Was anyone listening in on the hearing (if the hearing was held by zoom) or was anyone attending the hearing who was not the special master, ethics panelist or a witness in the case? If so, who was it and did that person in any way intervene in the hearing? If so, what did that person say or do?

At any phase in the process (investigative, hearing, or argument before the DRB) do you recall if the respondent had ever been told that he had the right to have an attorney represent him during the investigation?

Did any letter from the local ethics committee or OAE advise the respondent that they had the right to an attorney during the investigation?

What are the strengths and positive aspects of the current system as you experienced them?

What are the areas of the system as you experienced it which could be improved? Do you have any suggestions for improving the system or correcting problems you perceive exist?

Is there anything you wish to share about how the system functions and how you and your client were treated in the system which I have not covered?

**QUESTIONS FOR ATTORNEYS WHO HAVE REPRESENTED RESPONDENTS IN
CONSENT ORDERS FOR DISCIPLINE, FOR CONSENT TO DISBARMENT OR FOR
REMOVAL TO DISABILITY STATUS.**

Did you ever represent a respondent to negotiate a consent or stipulation of discipline? Or for a consent order for disbarment or for removal to disability status?

If so, how many times have you represented respondents for these types of matters?

Describe which matter(s) you were involved in.

Who did you deal with when the negotiation for stipulation for discipline or consent to disbar arose or for removal to disability status?

Were you treated with courtesy and respect?

Was your client treated with courtesy and respect?

Was it difficult to negotiate this agreement? If so, in what way?

Did you ever represent an attorney who had been suspended? If so, was your client ever advised by the OAE or the Supreme Court that they client had to comply with an affidavit pursuant to Rule 1:20-20(b)(15) or else they would be disciplined for not filing that affidavit and would not be readmitted to practice until 6 months after filing the affidavit of compliance?

Is there anything you wish to share about how you experienced the system functioning and how you and your client were treated in the system which I have not covered?

Do you have any suggestions as to how the system as you experienced it, could be improved?

1928887

APPENDIX M

Email dated January 4, 2023 from Bonnie Frost, Esq. to Isabel K. McGinty, Esq., Assistant Ethics Counsel, and email in response dated January 12, 2023 from Johanna Barba Jones, Esq., Director, Office of Attorney Ethics

Subject: FW: [External]Putting Lawyers First Survey

From: Johanna Jones <johanna.jones@njcourts.gov>
Sent: Thursday, January 12, 2023 5:23 PM
To: Bonnie Frost <bfrost@einhornlawyers.com>
Cc: Peter McAleer <peter.mcaleer@njcourts.gov>
Subject: RE: [External]Putting Lawyers First Survey

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon, Ms. Frost. Happy new year!

Isabel McGinty of my staff shared the below communication with me. On a personal note, I was very glad to read that you found the Office of Attorney Ethics annual training for new District Ethics Committee and Fee Arbitration Committee members to be helpful. Those programs were repeated in December, and the practice of training new members will be continued. I hope that you were also able to enjoy the annual OAE Training Conference, held on October 14, 2022, where similar educational content was offered to both new and experienced volunteer members.

Yesterday, I had the opportunity to speak with NJSBA President Jerralyn Lawrence. Our conversation briefly touched on your below request for input. In the spirit of helpfulness, I have copied the New Jersey Judiciary's Director of Communications, Mr. Peter McAleer. I am hopeful that we can coordinate through Peter to meet your needs.

Yours truly,
Johanna

Johanna Barba Jones (she/her/hers)
Director

Office of Attorney Ethics

(609) 403-7800, 34117 (supported by Barbara Cristofaro)

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From: Bonnie Frost <bfrost@einhornlawyers.com>
Sent: Wednesday, January 4, 2023 1:52 PM
To: Isabel McGinty <isabel.mcginity@njcourts.gov>
Subject: [External]Putting Lawyers First Survey

CAUTION: This email originated from outside the Judiciary organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon, Isabel,

As you are aware, the State Bar hopes to compile and formulate a report about the functioning of the ethics and fee systems.

Since you are the State-wide Coordinator, would you be willing to set aside a few minutes to talk to me about what you and your office believe is working well in the system and if there are any areas of improvement which might be suggested. For example, the webinar training which I participated in for new ethics and fee arb members was excellent as was the New Attorneys' Day seminar last March. These seminars should be repeated.

I am sure we can both agree, that periodically it is important to assess the process and pride oneself in what is working well and note areas which might need improvement.

I will make myself available when you are able to give me a few minutes.

I look forward to hearing from you.

Bonnie

Bonnie C. Frost, Esq.

Partner

Certified by the Supreme Court of New Jersey as a Matrimonial Law Attorney

Fellow of the American Academy of Matrimonial Lawyers

Trained by the American Academy of Matrimonial Lawyers as an Arbitrator

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every step of the way

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*To the extent any of this information contained in this e-mail is deemed an advertisement, "No aspect of this advertisement has been approved by the Supreme Court of New Jersey."

APPENDIX N

Email dated January 19, 2023 from Peter McAleer, Director,
Office of Communications and Community Relations, NJ
Administrative Office of the Courts to Bonnie Frost, Esq. and
Johanna Barba Jones, Esq., Director, Office of Attorney Ethics; and
Email dated January 23, 2023 from Bonnie Frost, Esq. to Peter
McAleer, Director, Office of Communications and Community
Relations, NJ Administrative Office of the Courts

From: Peter McAleer <peter.mcaleer@njcourts.gov>
Sent: Wednesday, January 18, 2023 10:46 AM
To: Johanna Jones <johanna.jones@njcourts.gov>; Bonnie Frost <bfrost@einhornlawyers.com>
Subject: RE: [External]Putting Lawyers First Survey

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Frost,

We appreciate the opportunity to provide input for the Bar Association's forthcoming report regarding attorney ethics.

Please e-mail us your questions so that we can provide a response as quickly as possible.

Thanks,

Pete

Pete McAleer
Director
Office of Communications and Community Relations
NJ Administrative Office of the Courts
(609) 815-2910

From: Bonnie Frost <bfrost@einhornlawyers.com>
Sent: Monday, January 23, 2023 9:47 AM
To: peter.mcaleer@njcourts.gov
Subject: Putting Lawyers First
Attachments: 01232023_Please set forth any proposed solutions to addressing .pdf

Good Morning Mr. McAleer,

Thank you for agreeing to respond to a few questions the State Bar has asked lawyers in New Jersey to respond to about the Ethics and Fee Systems.

I have attached to this email the questions the State Bar asked its membership. As you can see, the Bar's concerns and questions focus on the pluses and minuses of the process. The Bar asked lawyers who have been part of the process for suggestions for areas of improvement. We also asked lawyers what is working well or is positive in the system. They noted the extraordinary commitment of volunteers- both lawyers and lay members- in the local committees.

I would ask that Ms. Barba Jones answer the questions in the attached email to the extent they apply to the OAE.

In addition, I ask that the following questions also be answered.

1. What you do you think is working well in the system-both in ethics and fee? Please enumerate. For example, the educational programs the OAE provides for volunteers are well done, in my opinion.
2. Do you have any suggestions which might make the system more efficient for the OAE, the local committees and respondents? If so, what are they?
3. Do you have any suggestions which might improve the overall functioning of the system? For example, lawyers have noted how long it takes for an investigation or a matter when it goes to complaint, to be resolved.
4. Do you have any suggestions as to what the Bar can do to help better the system for the public and respondents? For example, the Bar now provides an educational program twice per year for attorneys who have been granted diversion in an effort to help attorneys learn from their mistakes.

I thank you and Ms. Barba-Jones for agreeing to participate in this process and look forward to your responses.

Bonnie Frost

Bonnie C. Frost, Esq.

Partner

Certified by the Supreme Court of New Jersey as a Matrimonial Law Attorney

Fellow of the American Academy of Matrimonial Lawyers

Trained by the American Academy of Matrimonial Lawyers as an Arbitrator

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From: Campaign <campaign@njsba.com>
Sent: Wednesday, November 9, 2022 1:40 PM
To: Ask The NJSBA <askthenjsba@njsba.com>
Subject: Putting Lawyers First Task Force Jldxh

Have you had interactions with the ethics or fee arbitration systems?

Please identify the system

Please tell us, have you been the subject of a matter, represented a client, a volunteer or some other role?

Please set forth any positive aspects of your interaction with the Ethics system

Please set forth any positive aspects of your interaction with the Fee Arbitration system

Please set forth any areas of the Ethics system that needs improvement.

Please set forth any areas of the Fee Arbitration system that needs improvement.

Please set forth any proposed solutions to addressing any problems you have perceived as part of your interaction with the Ethics system.

Please set forth any proposed solutions to addressing any problems you have perceived as part of your interaction with the Fee Arbitration system.

In what year were you admitted to practice in New Jersey?

Do you primarily practice in New Jersey?

Please identify the county in which your practice is located

Please indicate the firm setting in which you practice:

We would like to gather additional information on the experiences attorneys have had, may we contact you?

APPENDIX O

Letter dated February 10, 2023 from
NJSBA President Jeralyn L. Lawrence to Johanna Barba Jones,
Esq., Director, Office of Attorney Ethics



NEW JERSEY STATE BAR ASSOCIATION

JERALYN L. LAWRENCE, PRESIDENT
Lawrence Law LLC
776 Mountain Boulevard, Suite 202
Watchung, NJ 07069
908-645-1000 • FAX: 908-645-1001
jlawrence@lawlawfirm.com

February 10, 2023

Johanna Barba Jones, Esq., Director
Office of Attorney Ethics
Richard J. Hughes Justice Complex
P.O. Box 963
Trenton, New Jersey 08625-0963

Dear Ms. Jones:

On behalf of the New Jersey State Bar Association (NJSBA), I write today to request information about the collection, storage and use of certain grievance data by the Office of Attorney Ethics (OAE).

It is generally understood in the legal community that if a grievance is filed that is determined to allege facts that, if true, would constitute unethical conduct, the grievance will be docketed, assigned for investigation, and a record kept of the proceedings. If, however, a grievance is declined because the facts, if true, would not constitute unethical conduct, it is generally believed that ends the grievance procedure, with no consequences and no lasting record.

A recent memo sent to District Ethics and Fee Arbitration Committees says otherwise and is what prompts this communication. That memo appears to direct District Ethics and Fee Arbitration Committee Secretaries to maintain declination data and documents in the OAE e-filing InfoShare system.

The memo does not address several issues that the NJSBA believes should be made transparent: There is no indication in the memo about how the declination information will be stored and for how long, how it will be used or who will have access to it. There is a reference to a need to protect attorneys from defending successive baseless grievances and fee arbitration cases, but there is no explanation about how the data will be accessed and used to accomplish that goal.

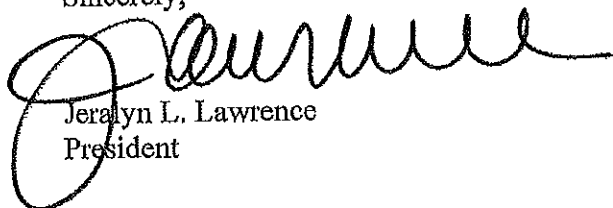
The NJSBA believes attorneys should be advised of this when they are told a grievance is declined. The filing of a grievance against an attorney has the potential to greatly impact their professional standing and reputation. Further, a filing often causes angst and anxiety for the attorney, even if the grievance is baseless and without merit. Just as attorneys are advised of what happens once a grievance is filed, the NJSBA believes they should also be provided with a full understanding of what happens once it is declined.

For that reason, the NJSBA requests information about the protocols surrounding the collection, storage and use of declination data and documents. What information is required to be conveyed by the District Ethics and Fee Arbitration Committee Secretaries? Where is it stored? How long will it be stored? Who can access it and for what purpose? What procedures and review processes are used to access the information? How is it protected? Under what circumstances if any, will it be referenced in the future or made public?

If records are being kept, even for grievances that are determined to be without merit, attorneys have the right to know the details of that recordkeeping, especially in an age where hackers have been known to infiltrate data storage of government agencies and businesses and make information public

Thank you for your anticipated response to this request. I look forward to any insight and information you can provide.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lawrence", written over the printed name and title.

Jeralyn L. Lawrence
President

cc: Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

APPENDIX P

Email dated January 6, 2023 from HoeChin Kim, Esq. Deputy Ethics Counsel, Office of Attorney Ethics to Diane Appel Rotmil, Esq., NJSBA Director of Product Development in response to her request to speak at the upcoming Legal Malpractice Seminar

Subject:

FW: Email from Deputy Ethics Counsel OAE

From: HoeChin Kim <hoechin.kim@njcourts.gov>

Sent: Monday, January 9, 2023 7:27 AM

To: Diane Appel Rotmil, Esq. <drotmil@njsba.com>

Subject: RE: [External] Invitation to speak at the 2023 Legal Malpractice Update

Note: This email was sent from an external server. Please use caution opening attachments and/or clicking on links.

Diane:

Given the political tenor of your president's statements/remarks about the attorney disciplinary system, I am bowing out of the presentation as I do not wish to run afoul of the Code of Conduct for Judiciary employees.

I am so advising the Director, so please communicate with Johanna Barba Jones for the availability of another ethics counsel who may be more comfortable speaking at the legal malpractice seminar.

Best regards,

HoeChin Kim, Deputy Ethics Counsel
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
Tel: 609-403-7800 x34138
Fax: 609-403-7802
Email: hoechin.kim@njcourts.gov
Pronouns: she/her/hers

APPENDIX Q

NJSBA Lawyers Helping Lawyers Task Force Report, March 2019



LAWYERS HELPING LAWYERS

NJSBA LAWYERS HELPING LAWYERS TASK FORCE REPORT MARCH 2019

MEMBERS

NJSBA President John E. Keefe Jr.

Hon. Marianne Espinosa (ret.)

Hon. Evelyn Marose (ret.)

Hon. Alberto Rivas A.J.S.C.

Nancy Bangiola

Thomas Barlow

Catherine Finnerty

Amy Vasquez

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BACKGROUND AND METHODOLOGY	

The NJSBA Lawyers Helping Lawyers Task Force was established by 2018-2019 President John E. Keefe Jr.

Keefe formed the Task Force after a harrowing personal experience that began in May 2017.

He was a successful and experienced civil trial lawyer, his family was thriving and he was next in line to become president of the NJSBA, the state's largest organization of lawyers, judges and other legal professionals.

But then came a cancer diagnosis that leveled him. He underwent months of grueling treatments that kept him mostly out of the office. His partners and close friends kept his caseload moving, ensuring he had a relatively easy reentry when he was strong enough to return to work and be sworn in as president of the NJSBA.

Though Keefe knew he was lucky to have that level of support, he also knew that many New Jersey attorneys don't, especially in a state where over two-thirds of attorneys in private practice are in solo or small firms.

With a desire to pay forward for all of the kindness and generosity that he had received during his illness, Keefe created the Task Force. Its mission was to ensure members of the profession -- especially lawyers in solo and small firms who don't have partners or associates to rely on if they get sick -- could find assistance and resources to guide them through a difficult medical crisis.

The Task Force is comprised of attorneys and judges who have suffered health challenges or helped colleagues navigate those waters.

The members of the Task Force spent a year examining the ways the legal community can provide assistance to attorneys facing acute medical crises that require them to temporarily step back from the practice of law.

That work has included examining the issues that affect litigators, transactional attorneys, the courts and bar associations. It conducted extensive nationwide research to learn how bar associations and court systems around the country address the issues. It has reviewed publications and created documents practitioners can use to keep track of critical information that would serve as a guide if an attorney has to stop practicing suddenly. And it has discussed and debated proposals to update the Rules of court to address critical issues.

This report outlines not just the steps the Task Force recommends the legal community undertake to address the needs of its colleagues who confront a serious medical illness, but also provides insights and observations from people who have lived through this challenge, either first hand or as someone who has served as the emergency support structure for a fellow attorney, as a way to emphasize the very real need for action and protection.

EXECUTIVE SUMMARY

The single most important action item to help an attorney facing a medical crisis, in the estimation of the Task Force is simple: Think ahead.

That is the central sentiment the Task Force's discussion and research consistently found and serves as the underpinning theme of all of the recommendations contained in this report. Indeed, it is clear that attorneys have a further ethical duty to their clients to have a plan in place that will ensure client matters are not neglected.

All lawyers, especially those in solo and small firms, would be wise to think ahead, organize a few documents, like maintain lists of active clients, important deadlines and a list of passwords, and identify a colleague who can be counted on to step in and help.

That preparedness involves:

- Updating the Rules of Court to ask attorneys each year when they complete the annual attorney registration to name someone who can serve as an emergency back-up in their practice;
- Having the legal community and/or judiciary give further consideration and study to the idea of creating a temporary disability mechanism that attorneys can access in the time of a medical crisis;
- Recommend all attorneys create an emergency preparedness plan that is well defined;
- The creation of a portal on the New Jersey State Bar Association's website that would provide resources, information, sample documents and a means to reach out in times of medical crisis; and
- Urging county and affinity bar associations to establish procedures or create a roster of attorneys in various specialties who may be willing to provide temporary assistance to a colleague since these are the entities that most attorneys and local courts will turn to first in times of crisis.

HON. EVELYN MAROSE

On Aug. 23, 2004, my business partner, Walter Lucas, Esq. passed away after suffering complications from a surgery performed on Dec. 1, 2003. While Walter was released just days

after the surgery, he was readmitted on Jan. 2, 2004 and with the exception of a 24-hour period at Kessler Rehabilitation Institute, he remained hospitalized from Jan. 2, 2004 to Aug. 23, 2004.

Walter had one son in college, one daughter in high school, one son in grammar school and a professional working spouse. During the months of his hospitalization, Walter and his family needed substantial love, care and assistance. I either began or ended every day with a visit to the hospital to see Walter and spend the rest of the day caring for our business. There was much to do to survive. Members of the legal community, in particular the Essex County Bar Association and its individual members, offered their unconditional support.

I would like to see a mechanism in place to assist colleagues who might not have partner(s), or whose partner(s) might need assistance to keep their firm healthy, while the incapacitated attorney is able to devote his energies to recovery. Thanks to the vision of NJSBA President Keefe and the work of the Lawyers Helping Lawyers Task Force, a proposed means of assistance is formulating that will include, among other things, a proposed rule change, an emergency plan checklist and a designation of an attorney or firm willing to help a colleague, especially a sole practitioner, in need.

RULES of COURT

The Task Force considered what initiatives might be effective to address two types of circumstances that impact an attorney's ability to fulfill professional responsibilities: (1) serious health issue or death that requires a plan of succession for the attorney's clients and (2) serious health issue that renders the attorney temporarily unable to fulfill any or all of the attorney's professional responsibilities.

I. Proposed Rule Amendments

A. Succession

The American Bar Association has recommended that all sole practitioners have a succession plan in place to ensure ethical obligations to clients are met in the event of death. As set forth elsewhere in this report, NJSBA will make available a checklist, complete with sample documents, to assist an attorney to prepare for an emergent interruption in law firm services. There are only three states that have made having a succession plan mandatory - namely, Florida, Maine, and South Carolina. At least two states, Florida and Delaware, ask attorneys to provide the name of a colleague or law firm that can serve as an emergency back-up to service clients in the event of a medical crisis.

Because the designation of an attorney or law firm to step in when the emergency arises is a pivotal factor in addressing this situation, the Task Force recommends an amendment to R. 1:20-1(c), the annual registration statement requirement, that allows attorneys to designate an attorney who will protect clients' interests in the event of an attorney's death, incapacity or temporary disability. Although Florida, Maine and South Carolina require the designation of a succession plan, it was the consensus of the Task Force that the designation should, at least initially, be introduced as a voluntary measure, and suggest the example offered in Delaware's annual attorney registration that asks attorneys to voluntarily provide the name of a colleague is a good model to follow.

The proposed rule amendment references a designated attorney who will act "in the event of the attorney's death, incapacity or temporary disability." It provides notice to the court that an arrangement has been made by an attorney and his/her designee regarding the handling of the attorney's matters. The attorney retains control of the circumstances under which a designee will assume responsibility for the practice and the conditions under which the designee will conduct the practice, such as any agreement regarding compensation.

The proposed rule amendment does not grant the court authority appoint any attorney, including the designee, to conduct the attorney's practice. It is therefore materially different from R. 1:2012, which authorizes the court to appoint an attorney to represent the clients of an attorney who "has been judicially declared mentally incapacitated or involuntarily committed to a mental hospital," and does not address physical health issues. The proposed amendment to R. 1:20-1(c) reads:

. . . As part of the annual registration process, each attorney shall certify compliance with Rule 1:28A and may identify an attorney or law firm authorized to practice law in this State who is capable and has agreed to conduct the attorney's legal practice to protect the interests of the attorney's clients in the event of the attorney's death, incapacity or temporary disability. All registration statements shall be filed by the Fund with the Office of Attorney Ethics, which may destroy the registration statements after one year. Each lawyer shall file with the Fund a supplemental statement of any change in the attorney's billing address and shall file with the Office of Attorney Ethics a supplemental statement of any change in the home address and the address of the primary law office as required by Rule 1:21-1(a), as well as the main law office telephone number previously submitted and the financial institution or the account numbers for the primary trust and business accounts, either prior to such change or within thirty days thereafter. All persons first becoming subject to this rule shall file the statement required by this rule prior to or within thirty days of the date of admission.

The information provided on the registration statement shall be confidential except as otherwise directed by the Supreme Court.

B. Temporary Disability

RPC 1.16(a) provides in pertinent part: “[W]here representation has commenced, [a lawyer] shall withdraw from the representation of a client if . . . (2) the lawyer’s physical or mental condition **materially impairs** the lawyer’s ability to represent the client” Depending on the nature of the representation, a serious health condition may or may not “materially impair” representation. The Task Force considered what procedures might be adopted to address situations in which an attorney’s serious health issue has a **temporary** impact on the ability to fulfill professional responsibilities. It was further recognized that the serious health issue may (1) render the attorney unable to fulfill any professional responsibilities or (2) limit the attorney’s ability to fulfill some professional responsibilities.

The Task Force considered whether additional recommendations might be proposed to alleviate some of the stressors an attorney diagnosed with a serious health condition must deal with. Those stressors include the demands of meeting deadlines imposed by court rule or order; the fact that insurance coverage may be compromised if the attorney continues to work while receiving treatment, the concern that transferring a file to another attorney temporarily may result in the loss of that client. In reviewing these issues, the Task Force considered an additional amendment to the Rules and whether county bar associations might establish a roster of attorneys willing to volunteer to provide assistance for attorneys in need. The Task Force concluded that further study is necessary regarding resources at the county level and, for the reasons that follow, an additional amendment to the Rules is not recommended at this time.

As noted, Rule 1:20-12 does not address physical health issues. In addition, because the rule is triggered by a finding that the attorney cannot ethically or competently practice, it includes a blanket prohibition against the practice of law and strips the attorney of any autonomy regarding the resumption of practice. The Task Force found these factors inconsistent with the goal of providing help to attorneys to the degree and for the duration they need, allowing them to transition back to the full-time practice of law at their own pace.

The Task Force also considered proposing a new rule creating a “temporary disability status” that would “constitute good cause for the relaxation of the Rules of Court generally and a substantial factor in a determination whether exceptional circumstances exist for relief under the Rules.” To deter possible abuse, the rule would necessarily require proof of the temporary disability and judicial oversight. A proposed rule was drafted, largely tracking Rule 1:20-12 and employing the term “serious health condition” and its definition used for the definition for application of temporary disability benefits in N.J.S.A. 34:11B-3. Upon further review, the Task Force concluded

that the draft rule should not be recommended at this time because (1) the anticipated requirements imposed a heavy, if not onerous, burden on an ailing attorney and (2) the relief afforded is limited in nature, primarily benefiting litigators, and might well be available under the Rules at present.

For the sake of completeness, the draft rule reads as follows:

R. 1:28C-1 Temporary Disability Status

The court may grant “temporary disability status” to an attorney who is (1) temporarily unable to fulfill any or all of the attorney’s professional responsibilities (2) due to the attorney’s serious health condition. “Serious health condition” means an illness, injury, impairment, or physical or mental condition which requires: (1) inpatient care in a hospital, hospice, or residential medical care facility; or (2) continuing medical treatment or continuing supervision by a health care provider.

R. 1:28C-2 Application for Temporary Disability Status

(a) Any attorney who meets the conditions set forth in R. 1:28C-1 or a representative authorized to act on behalf of the attorney by prior designation in the annual registration statement required by R. 1:20-1(c) or other means, may apply for temporary disability status by submitting a certification to the Director of the Administrative Office of the Courts that sets forth the following:

- (1) the facts that satisfy the conditions set forth in R. 1:28C-1;
- (2) the identity of physicians and health care providers involved in the treatment of the attorney for the condition that is the subject of the claimed disability;
- (3) medical records that identify the serious health condition and the planned course of treatment;
- (4) the anticipated length of disability;
- (5) the professional responsibilities the attorney is unable to fulfill due to the disability;
- (6) the identity and contact information of the attorney or law firm that is capable and has agreed to conduct the attorney’s legal practice to protect the interests of the attorney’s clients

(b) The filing of an application by an attorney or authorized representative for temporary disability status shall be deemed to constitute a waiver of any doctor-patient privilege. Upon request, the attorney shall be required to provide additional medical records as needed to evaluate the application or to determine whether the period of temporary disability has ended.

The attorney shall furnish to the Director written consent to the release of such information and records as requested.

(c) Upon finding that grounds exist for a determination that the attorney qualifies for temporary disability status, the Director shall submit the application for consideration by the Supreme Court, which, if satisfied that such grounds exist, shall enter an order granting the attorney temporary disability status, effective retroactively to the date of application. The temporary disability status shall continue until the attorney provides notice to the Court that he or she is able to resume the practice of law or until further order of the Court.

(d) Applications and all materials considered in the determination of an application for temporary disability status are confidential. All orders granting temporary disability status are public.

(e) The entry of an order granting an attorney temporary disability shall constitute good cause for the relaxation of the Rules of Court generally and a substantial factor in a determination whether exceptional circumstances exist for relief under the Rules. The entry of such an order shall not toll the statute of limitations applicable to any cause of action.

(f) An attorney granted temporary disability status or the attorney's authorized representative shall promptly notify all clients of (i) that status, (ii) the limitations on the attorney's ability to provide representation, (iii) the anticipated length of time such status shall continue and (iv) the identity of the attorney or law firm designated to conduct the attorney's legal practice during the period of temporary disability.

(g) Upon entry of an order granting temporary disability status, the attorney or authorized representative shall promptly provide notice of such order and the identity of the attorney or law firm designated to conduct the attorney's legal practice during the period of temporary disability period to adversaries and the courts in any pending matter.

CATHERINE FINNERTY

In June 2018, I suffered an unexpected major heart attack. My heart completely stopped beating. I made it just inside the hospital doors and they were able to use the defibrillator to restart my heart. While I was up in the Cardiac ICU a few hours later, I was on the phone scrambling to call colleagues. I am very thankful to the colleagues who stepped in for me the next morning and who took over my bankruptcy and real estate matters. But I cannot even begin to tell you how stressful it was to have a heart attack as a solo practitioner and then be forced to find coverage at the last minute. In many ways, I felt so unprepared and that I had let my clients down -- a horrible feeling to have on top of all the things I was going through physically and emotionally.

While I was in the ICU, I asked my family to bring me some law journals and magazines and, in a twist of fate, it was the issue where President Keefe wrote about his experience battling his illness. It was great to find out I was not alone in the struggle of coping with health issues. I am looking forward to a comprehensive approach from the NJSBA and believe it will help many other attorneys out there.

EMERGENCY PREPAREDNESS PLANNING

It is not just a good idea to be prepared for emergencies. It is fundamentally necessary to conclude that a sole practitioner has the ethical obligation to put a succession plan in place in the event that he or she is unable to meet client needs.

The March 2006 “Eye on Ethics” column from the ABA e-newsletter *YourABA* notes that Formal Opinion 92-369 (1992) notes that lawyers have been disciplined for the neglect of client matters owing to ill health or personal problems. It further suggests that lawyers who have failed to protect their clients’ interests should be sanctioned, “both in the hope of encouraging other lawyers to make such preparations, and to restore confidence in the bar, though the sanctions would obviously have no deterrent effect on deceased lawyers.”

A discussion of diligence also shines light on the issue. Comment 5, Rule 1.3 of the ABA Model Rules of Professional Conduct (RPC) states: “To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.”

And New Jersey’s Opinion 692 offers follow up on that idea. The opinion, (“Retention of Closed Client Files”) of the New Jersey Advisory Committee on Professional Ethics quotes RPC 1.3, which requires a lawyer to act with “reasonable diligence and promptness when representing a client,” and concludes with the following: “‘Reasonable diligence’ requires a sole practitioner to make arrangements for disposition of client files in the event of death or retirement. This is an obligation which all law firms and sole practitioners must prepare for now.”

Noting these ethical recommendations, the logical extension is that practitioners, especially those in a solo practice, should have an emergency plan.

When it comes to emergency planning, the goal is to form a plan that is sufficiently well defined that it can be executed without the sole practitioner yet plastic enough that it can mold to any number of possible situations - and at the same time be something that can be formulated by a single busy practitioner

In the 2008 book, *Being Prepared: A Lawyer’s Guide for Dealing with Disability or Unexpected Events* by Lloyd Cohen and Debra Hart Cohen, offers five principles to follow. They are:

Define the identity of all of your potential helpers (both lawyers and nonlawyers) and define the various roles that they may fulfill as part of your personal support network;

Enable your support network by collecting and organizing an emergency casualty manual that contains your firm's institutional memory; that is, the working knowledge of the things and procedures needed to run your enterprise and serve your clients. The manual should familiarize the assisting attorney with the office and also explain, among other things, how to produce a client list including addresses;

Empower your helpers with documents that will give authority, understanding, and direction. Then add those documents to your emergency casualty manual;

Keep your emergency casualty manual safe but at the same time also make sure that it will be available to your helpers if a time of need arrives; and

Inform the members of your network and others close to you, such as clients, that you have formulated an emergency plan and composed an emergency casualty manual.

CHECKLISTS

Attorneys are busy addressing client needs and generating business. That can sometimes mean that it feels impossible to perform extra tasks, especially those that can seem theoretical, such as preparing for a medical crisis that may never happen. The Task Force recommends that all attorneys devote some time and energy toward planning, which will pay dividends should an emergency ever strike. The Task Force urges attorneys to create their own plan that includes information itemized below. Creating an emergency preparedness plan does not necessarily have to be a difficult task.

Here is a checklist itemizing the key information necessary to share in the case of an emergent health matter:

CHECKLIST: PREPARATION FOR EMERGENT INTERRUPTION IN LAW FIRM SERVICES

Identify assisting/succession attorney/designated emergency attorney

Assisting/Succession attorney agreement form

Ensure assisting/succession attorney is listed in professional liability insurance contract

Add assisting/succession attorney clause to retainer agreements

Form letter for client notification

Form letter for court notification

Form letter for attorney notification

Form letter for vendor notification

Password storage for assisting/succession attorney

Open files list

Closed files list

Provide for assisting/succession attorney's IOLTA access/signatory ability

Assisting attorney's access to calendar system

P.O. Box information

Electronic mail/filing access information

Designated county bar contact for general inquiries (if the county or affinity bar association has provided such a person)

The NJSBA online portal for general assistance

SAMPLE LETTERS

RETAINER AGREEMENT CLAUSE:

It is advisable to make clients aware of emergency plans, even before an emergency arises. Once an arrangement has been reached with a fellow assisting attorney, a paragraph should be inserted into retainer agreements, including information about the plan.

Suggested retainer language:

In order to ensure continued legal services in the event of (affected attorney)'s unexpected death, disability, impairment, or incapacity, (affected attorney) has arranged with another attorney to assist with handling your case. In such event, (affected attorney)'s office or the assisting attorney will contact you and provide you with information about your options in continuing representation in your case.

NOTICE TO LAWYERS/COURTS/CLIENTS IN THE EVENT OF AN EMERGENCY:

When an emergency has occurred, it is important to provide necessary notification to adversaries, the courts, if applicable, and clients. This will ensure there is no disruption in the ethical or fiduciary obligations an attorney has to their clients while also ensuring the courts and adversaries have notification in case deadlines or scheduling need to be adjusted.

Sample notice:

I, (affected attorney), have authorized the following attorney/s to temporarily assist with (management of my law practice/case files/representation of clients) due to emergent circumstances causing my inability to render full legal services at this time.

Name of Authorized Assisting Attorney:

Contact:

Signature:

CC: Insurance co.

Court

Attorneys

Vendors

Clients

AMY VASQUEZ

I would like to thank President Keefe for devoting his attention to this issue and creating this Task Force. In so doing, he has recognized an area of greatly needed assistance to lawyers in our state. When thinking about the potential impact of the Task Force's recommendations, I am

brought back to a traumatic time. In 2011, my husband, Peter N. Fiorentino Jr., Esq., who was a sole practitioner, went into cardiac arrest in a county courthouse. Four days later he died.

Handling his practice was just one of the challenges I suddenly faced. While there was support in many ways, two vital things that helped me in a practical way to move his client's interests forward at that troubling time were: 1) he had created a binder of passcodes and contacts and advised me of its existence and location; and 2) the county bar president offered services to assist me in handling his clients' immediate needs and in closing his practice. The Task Force is recommending these two safeguards become commonplace and offering additional supports to attorneys that encounter a similar tragic situation.

In addition, from a completely different perspective, I view the Task Force's work as imperative to me as a sole practitioner who is also a mother. Plans are likely to be made in advance of maternity leave, but providing checklists and other practical materials through an online portal will become a valuable tool for any attorney preparing for their temporary absence from the practice of law.

NJSBA PORTAL

When a medical crisis hits, people turn naturally to their computers and the Internet to learn more about the treatments and what to expect.

Just as answers about medical issues are available online, so too should be answers about what attorneys should know to attend to their law practice in such fraught times.

The New Jersey State Bar Association is the professional home to over 18,000 attorneys, judges and other members of the legal community. Its website, njsba.com, attracts roughly 315,000 visitors for over 2.2 million page views a year and it has established askthenjsba@njsba.com as a way for members, other attorneys and the public to make inquiries.

The NJSBA is prepared to leverage the resources and information in this report to provide helpful information to attorneys who are in medical crisis.

The association will launch a branded portal, accessible to anyone at any time, that has the forms, checklists, guidance contained in this report, as well as supplemental information about insurance issues and other key considerations for attorneys, links to the Judiciary, other bar associations, and relevant articles.

COUNTY AND AFFINITY BAR ASSOCIATIONS

Many attorneys have a close connection with the county bar association where they live or work or the affinity bar association that speaks to their personal background or practice area specialty. Those organizations may be the one that an attorney turns to in the time of a medical crisis for help.

It would be useful to the legal community, courts and individual attorneys for county bar associations and affinity bar associations to perform emergency planning of their own. That will help create a more comprehensive framework within the legal community to ensure clients and attorneys don't fall through the cracks at a time of crisis.

Some suggestions of the Task Force for those entities are:

Consider cultivating a list of those attorneys, by practice area, willing to volunteer their time (with reasonable compensation as added incentive) to help oversee an attorney's practice. The bar association can then contact attorneys who have expressed interest on a rotating basis whenever it receives a request for assistance. While this practice may already be performed on an informal basis by many associations, making it a part of an organization's institutional goals provides the strongest safeguards; and

Review if it is useful to create a separate committee to oversee this process or simply add these duties to one of the current bar association committees (such as the Pro Bono Committee)

THOMAS BARLOW

President Keefe's Task Force hit home for me because of my personal experience with two close friends who were attorneys who became quite ill and, ultimately, passed away at a too young of an age. I saw the potential devastating effects that a sudden unexpected illness can have on the individual attorney, his or her family and friends and their practice. Thankfully, in both cases their firms were able to support them personally and professionally. However, it made me think what would happen to an attorney without such a built-in support system.

The Task Force is an excellent step in formally addressing the issues attorneys are facing every day and to lessen the impact on the individual attorney, to his or her practice and the legal community at large.

RECOMMENDATIONS and CONCLUSION

While no one wants to consider being stricken by an illness that leaves them unable to work, being proactive and practical can make a critical difference in whether a practice can survive. The cliché about an ounce of prevention being worth a pound of cure is rooted in truth.

When facing a medical crisis, an attorney should be able to focus on their treatment and a return to normal life, rather than be additionally stressed with the daily effort of running a practice. The Task Force makes the following recommendations as guidance to ensure that can be the case.

The NJSBA Lawyers Helping Lawyers Task Force recommends the following actions be taken to help attorneys and protect clients:

- Urge the New Jersey Supreme Court to adopt a proposed amendment to R. 1:20-1(c);
- Create a portal on the New Jersey State Bar Associations website that will aid attorneys in creating an emergency preparedness plan. The portal should provide information, sample documents and other resources;
- Invite county and affinity bar associations to maintain a list of those attorneys, by practice area, willing to volunteer their time to help oversee an attorney's practice; and
- Give further study and consideration to the creation of a temporary disability status as contemplated in the draft new Rule 1:28C-1, contained in this report.

APPENDIX R

Ethics Opinion EO-19-0010 and letter of approval dated December 7, 2022 from the Supreme Court of Arizona, Attorney Ethics Advisory Committee



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN
Clerk of the Court

December 7, 2022

RE: In the Matter of: EO-19-0010
Arizona Supreme Court No. EO-19-0010

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on December 6, 2022, in regard to the above-referenced cause:

ORDERED: Request for Review of Proposed Ethics Opinion = EO-19-0010 is APPROVED under Rule 42.1(i), Arizona Rules of the Supreme Court.

Tracie K. Lindeman, Clerk

TO:

Christopher P Staring
Kimberly H Ortiz
Michael Aaron
Ann Ching
Kimberly A Demarchi
Jason Easterday
Maria F Hubbard
Hon John David Napper
Ashley M Mahoney
Regina L Nassen
Amy K Rehm
Anne Schrock

Christine Whalin
Angela Woolridge
Aaron Nash
Christine Davis
Scott Weible
David Scott Gingras
Paige A Martin
Denise M Quinterri
Jason Halper
Shawn B Hamp
Nancy A Greenlee
Patricia A Sallen
Terrance C Mead
Frankie Adamo
lg

**SUPREME COURT OF ARIZONA
ATTORNEY ETHICS ADVISORY COMMITTEE
Ethics Opinion File No. EO-19-0010**

The Attorney Ethics Advisory Committee was created in accordance with Rule 42.1 and Administrative Order Nos. 2018-110 and 2019-168.

ISSUE PRESENTED

When may a lawyer ethically divulge a former client's confidential information in responding to negative comments posted by that former client on a publicly accessible online forum -- for example on a public social media page -- regarding the lawyer's skills, integrity, or handling of a matter in which the lawyer represented them?

APPLICABLE ARIZONA RULES OF PROFESSIONAL CONDUCT

ER 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c) and (d) or ER 3.3(a)(3).

(d) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Comment

[12] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been

defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (d)(4) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

* * *

[19] Paragraph (d) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

ER 1.9 Duties to Former Clients

(c) A lawyer who has formerly represented a client in a matter shall not thereafter:

- (1) use information relating the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

OPINION

The rise of blogs and social media platforms on the internet enable a disgruntled client to spread information – and misinformation – about their former lawyer to a wider and more diverse audience than ever before, especially if readers choose to further disseminate the information. Most online reviews are also more or less permanent; even if they become less prominent over time, they may continue to show up in response to targeted searches for information about the lawyer. A lawyer who becomes aware that a former client has posted unflattering comments or reviews about the lawyer will therefore – understandably – want to respond.¹

¹ This opinion addresses only the question of responding to online comments by a former client. While the ER 1.6 analysis would logically apply to a comment by a current client as well, issues of conflict-of-interest would likely

As an initial matter, lawyers are free to respond to online comments in any manner that does not reveal any confidential information or violate any other ethical or legal obligation of the lawyer. For example, a lawyer may respond to a specific criticism with general comments that express disagreement, affirm a commitment to quality representation, and redirect those reading to other information about their relevant office policies, representation practices, or comments by other clients expressing different views.

The question presented here, however, is whether there are any circumstances in which a lawyer may go beyond general responses to address the former client's criticism specifically, when doing so would reveal confidential information about the former client as part of the lawyer's response.

Information relating to a lawyer's representation of a client must be kept strictly confidential under ER 1.6(a), unless the disclosure is impliedly authorized to carry out the representation, the client consents after consultation, or an exception set forth in ER 1.6(b), (c), (d), or ER 3.3(a)(3) applies. The duty to keep such information confidential is extended to former clients by ER 1.9(c). In the context of an unfavorable online comment or review by a former client, informed consent is exceedingly unlikely, which means that disclosure of confidential information will be improper unless permitted by one of the exceptions.

The only exceptions potentially applicable to the question presented here are found in ER 1.6(d)(4), which contains what are commonly referred to as the "self-defense" exceptions. This subsection allows a lawyer to disclose confidential information "to the extent the lawyer reasonably believes necessary" to do any of the following:

- "establish a claim or defense on behalf of the lawyer in a controversy between the lawyer or client"
- "establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved"
- "respond to allegations in any proceeding concerning the lawyer's representation of the client"

Because an online critique is not a formal "criminal charge or civil claim" or the initiation of a disciplinary proceeding, ethics opinions addressing the issue generally focus on whether negative online comments establish a "controversy" under the first self-defense exception and, if so, whether disclosure of confidential information can ever be considered reasonably necessary to establish a defense. Virtually all the ethics opinions that have addressed the issue, including ABA Formal Opinion 496, which was issued in 2021, answer "no" to one or both of those questions,

predominate if the comments are made by a current client. In addition, to the extent a lawyer wishes to terminate the lawyer-client relationship as a result of online comments by the client, analysis of the requirements of ER 1.16 is necessary. Those issues are beyond the scope of this Opinion.

typically because of the “informal” nature of an online critique.² Colorado may be the only state in which an official ethics opinion has been issued that concludes otherwise.³

This focus on the “informality” of the online comments is, however, questionable for two reasons. First, “controversy” has no specific defined meaning in the ethics rules. According to dictionary.com, “controversy” means “a prolonged public dispute, debate or contention; disputation concerning a matter of opinion” and “contention, strife, or argument.” That clearly encompasses – indeed, aptly describes – a disagreement between a lawyer and the lawyer’s former client about things like the lawyer’s competence, ethics, diligence, responsiveness, performance, or billing practices, particularly when the client’s negative opinions on such matters are expressed in a public forum.

Second, the language of the self-defense exceptions does not indicate that *any* of them applies only after some sort of “formal” legal or administrative proceeding has been commenced,⁴ so the informality of online remarks should not be considered dispositive. The comment to the rule also makes this clear. It states that a lawyer may reveal confidential information about a former client as part of a response to a third party who has alleged that the lawyer has been guilty of misconduct, “for example, a person claiming to have been defrauded by the lawyer and client acting together.” ER 1.6, cmt. ¶ 12. The comment notes that the self-defense exceptions do not “require the lawyer to await the commencement of an action or proceeding that charges such complicity” but instead that “the defense may be established by responding directly to [the] third party who has made [the] assertion,” the right to respond having arisen “when [the] assertion of [misconduct] has been made.” This could include a response not only to the alleged fraud victim in the example given, but also a lawyer for a former client alleging that the former lawyer committed malpractice, or bar counsel calling the lawyer to discuss a bar charge filed by a current or former client.

What is problematic, therefore, about responding publicly to online allegations made by a former client is less the informality of the allegations or some imagined lack of a “controversy,” but what

² See ABA Formal Opinion 496, (January 13, 2021) (answering no to both questions based on the “informality” of online critiques); New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion 738 (2020) (“an informal ‘controversy’ between a lawyer and a prospective or former client, arising from the posting of a negative online review, does not fall within the safe harbor” of the controversy exception); State Bar of Texas Opinion No. 662 (2016) (“It is the opinion of the Committee that each of the exceptions stated above applies only in connection with formal actions, proceedings or charges.”); New York State Bar Association Ethics Opinion 1032 (2014) (“Unflattering but less formal comments on the skills of lawyers” do not justify disclosure of confidential information); Pennsylvania State Bar Association Formal Opinion 2014-200 (“We conclude that a lawyer cannot reveal client confidential information in a response to a client’s negative online review absent the client’s informed consent.”).

³ Colorado Bar Association Ethics Committee Opinion 136, *A Lawyer’s Response to a Client’s Online Public Commentary Concerning the Lawyer* (April 15, 2019). There is also a disciplinary case, discussed in the Colorado opinion, in which the Supreme Court of Wisconsin held that a criminal defense lawyer accused by a former client’s appellate counsel of ineffective assistance did not violate the ethics rules by writing a letter to the post-conviction-proceeding judge that provided information defending his representation of the former client. *In re Disciplinary Proc. Against Thompson*, 847 N.W.2d 793 (2014). The Court noted that the better course would have been to wait to be subpoenaed and testify during a hearing in the post-conviction proceeding, but declined read into ER 1.6 a requirement that disclosures in the ineffective assistance context must be limited to a “court-supervised setting.” *Id.*, at 800, ¶ 37. Given the nature of the disclosure in that case and the fact that the letter was sent in a formal-proceeding-adjacent context, it is not relevant to the question addressed in this opinion.

⁴ The phrase “criminal charges” does not necessarily mean the commencement of a formal prosecution and “civil claim” appears clearly intended to encompass more than a lawsuit that has already been filed.

it means to “establish a defense” in this context. The lawyer, by posting an online response to the former client’s online comments is responding not only to the person making the allegations but to the members of the public before whom the accusations have been made. Unlike the alleged fraud victim, bar counsel, and malpractice lawyer in the above examples, these third parties – in the context of the internet, an unidentifiable and virtually limitless audience – are mere bystanders. Can a public response containing confidential information ever be “reasonably necessary” to “establish a defense” in such a situation?

We conclude that it may. A lawyer’s duty of confidentiality is for the protection of the lawyer’s client and the client can forfeit that protection. The self-defense exceptions make it clear that a client may not use confidentiality as both a sword and a shield in a formal legal or disciplinary proceeding. Similarly, the client should not be able to make public accusations of serious misconduct against their former lawyer and then invoke – or have a disciplinary authority invoke on the client’s behalf – the lawyer’s duty of confidentiality to prevent the lawyer from making an effective response or to punish the lawyer for having done so. An individual who elects to try their former lawyer in the court of public opinion rather than before a tribunal and makes serious accusations that put confidential information at issue assumes the risk that such information will be disclosed in the lawyer’s response.

In addition, although the ABA Opinion correctly notes that online postings “may even contribute to the body of knowledge available about lawyers for prospective clients seeking legal advice,” the internet – as recent history has taught us, at some cost – is also a very effective tool for spreading *disinformation*; disinformation that causes genuine harm to both public and private interests. Untrue accusations of misconduct should be countered.

For these reasons, we conclude that a lawyer may reveal confidential client information to the extent reasonably necessary to respond to a former client’s online remarks about the lawyer that constitute an accusation of serious misconduct or incompetency. This approach is consistent with the Restatement’s analysis of the issue. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 64, cmt. e (2000) (“When a client has made a public charge of wrongdoing, a lawyer is warranted in making a proportionate and restrained public response.”).

It is also consistent with State Bar of Ariz. Formal Op. 93-02 (1993). The lawyer who submitted the ethics inquiry addressed in that opinion had previously represented a criminal defendant in a prosecution for first degree murder that resulted in the defendant’s conviction. Another individual who had been involved in the case later began writing a book about the case and, as part of that effort, interviewed the defendant. The defendant asserted that his lawyer had “acted incompetently, refused to follow instructions, failed to call certain witnesses, and engaged in a conspiracy with the prosecution to ensure his conviction.” The author then contacted the lawyer to get the lawyer’s response to the allegations and the lawyer asked the State Bar of Arizona whether that response could include confidential information about the former client.

Though not entirely clear, the opinion’s characterization of the former client’s allegations as “public” implies an underlying assumption that those allegations, and the lawyer’s response, would – or at least might – be publicly disseminated in the published book. The opinion nevertheless concludes that the lawyer could ethically disclose confidential information in this situation, which might fairly be characterized as an “analog” version of an online exchange. The opinion rejects

the notion that disclosure is only permitted in the context of formal proceedings and concludes instead that “an attorney may disclose confidential information pursuant to ER 1.6(d) when the client’s allegations against him or her are of such a nature that they constitute a genuine controversy between the attorney and the client which could reasonably be expected to give rise to legal or disciplinary proceedings.”

A lawyer contemplating the disclosure of confidential information in response to a former client’s online accusations of serious misconduct must, however, carefully consider whether the circumstances truly justify such disclosure.

Confirmation that the Former Client Posted the Comment

Disclosure of a former client’s confidential information is only justified when that former client is responsible for the public posting of the negative comment. A lawyer may not reveal protected information in response to critical comments made by others, such as an opposing counsel or party or even the family member or friend of the client, without client consent. Nor can a client be held responsible for a third party’s posting of comments made by the client to that third party without any intent that they be further shared. Because online comments may be anonymous, and even those that have attribution may not themselves establish with certainty that the former client is actually the source of the comments, the first task for a lawyer who is considering responding in a manner that reveals any confidential information is to conduct appropriate due diligence to confirm that the client actually posted the comments in question or is otherwise responsible for the posting.

Nature of the Allegations

Comments posted online by an individual regarding the individual’s former lawyer can cover a broad spectrum ranging from complaints about the outcome or cost of the representation, or the client’s subjective opinion of the lawyer’s skills, to serious charges of malpractice or unethical conduct. Any of these could establish a “controversy” between the lawyer and client, but a general expression of the former client’s opinion of the lawyer – for example, “this lawyer is a real dummy and charges too much” or “this lawyer is an unethical jerk” – will not justify the disclosure of confidential information in response. Nor will expressions of displeasure at an outcome, such as “I can’t believe this lawyer lost my case,” justify such disclosure.

If, however, the online comments make specific allegations that appear credible on their face and, if true, would justify the filing of criminal or disciplinary charges or a malpractice claim against the lawyer – for example, “after this lawyer lost my case at trial, I found out that the other side had made a settlement offer that my lawyer never told me about,” or “this lawyer tanked my case because they filed it after the statute of limitations had run” – they create a genuine threat that such charges could be forthcoming, and justify disclosure to the extent necessary to counter that threat.⁵ Disclosure should be limited to these circumstances.

⁵ It should be noted that bar counsel can initiate a disciplinary investigation based on information from any source; it need not be in response to the filing of a bar charge by a third party. Law enforcement agencies likewise can initiate an investigation based on any information they have.

Because lawyers have a duty to be truthful in all their dealings, a lawyer must, before posting an online response that contains confidential information, also have an objectively reasonable belief that the client's comments are in fact inaccurate.

Necessity and Extent of Disclosure

Before disclosing confidential information, a lawyer must "reasonably believe that options short of use or disclosure have been exhausted or will be unavailing or that invoking them would substantially prejudice the lawyer's position in the controversy." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 64, cmt. e (2000). The lawyer should, for example, consider first asking the curator of the website to remove the comments, or asking the client to retract or correct the comments.

In addition, any confidential information that is disclosed must be carefully limited to what is truly necessary for a meaningful defense to the charges made, and of course the lawyer's assertions must be accurate. The lawyer must also scrupulously refrain from making comments or revealing extraneous information that, to a reasonable reader, would appear designed to intimidate or embarrass the client. And, if the matter being discussed is on-going, the lawyer must refrain from making any statements that have a reasonable likelihood of compromising the client's position in the matter.

Using the examples given above, a lawyer might, in response to an allegation that the lawyer failed to inform the client about a settlement offer, state – if true – that "In fact, I did inform the client of the offer a day after it was made, and we discussed it on several occasions." In response to an accusation that the lawyer missed a statute-of-limitations deadline, the lawyer can provide an explanation of why that is not accurate or, if accurate, why it was not the lawyer's fault. For example, if true, the lawyer might explain that "I calculated the limitations deadline based on information provided to me by the client and filed the lawsuit before that date. It was only later, during the course of discovery, that additional facts came to light showing that the information provided by the client was inaccurate and the limitations period had in fact ended earlier."

Best Practices

No lawyer, however stoic, can read negative online comments posted by a former client without having an emotional reaction and, if the comments are particularly outrageous or derisive, a desire to not just set the record straight but to respond in kind. That is understandable. But the ability to recognize and rise above one's emotional impulses and determine what is objectively justified is a necessary skill for a professional and ethical lawyer. A lawyer who is considering responding to online client comments in a manner that will reveal confidential information would be wise to seek the counsel of another lawyer or the State Bar of Arizona's Ethics Hotline to obtain a more dispassionate assessment of both the posted comments and the lawyer's proposed response.⁶

A lawyer in this situation should also seriously consider not responding at all. The ABA Opinion correctly observes that

⁶ ER 1.6 permits a lawyer to reveal confidential information for the purpose of obtaining ethics advice from another lawyer.

Any response frequently will engender further responses from the original poster. Frequently, the more activity any individual post receives, the higher the post appears in search results online. As a practical matter, no response may cause the post to move down in search result rankings and eventually disappear into the ether. Further exchanges between the lawyer and the original poster could have the opposite effect.

Conclusion

We recognize that this opinion does not enunciate a bright-line rule and that it reaches a conclusion contrary to most other opinions addressing the same question. But we decline to interpret ER 1.6(d)(4) in way that rigidly prohibits a lawyer from responding to online remarks by a former client no matter how inaccurate and inflammatory. Such an interpretation is required neither by the language of the rule itself nor considerations of public policy.

APPENDIX S

Attorney Guide to Request Removal of Unfair On-line Reviews

Attorney Guide to Request Removal of Unfair Reviews

Generally, websites that permit people to leave reviews for a business or attorney have a process that allows for some type of review of the comment/review.

See below for a more in-depth instructions on how to report negative reviews. It is important to remember that each website has their own standard for reviewing and/or removing reviews. Reporting a negative review does not guarantee that the review will be removed; in fact, it is nearly impossible to have a negative review removed.

Google

A Google review can be reported¹ when it violates Googles policies² which includes: (1) misinformation: false, inaccurate, or deceptive information; (2) misrepresentation: misleading accounts of the service; and (3) impersonation: the person was not your client.

How request review from Google Maps or Google Search:

1. Find your Business Profile on Google Maps or Google Search;
2. Locate the review at issue; and
3. Click on the three dots and select “report review”; and
4. Select the violation.

Report a review from your Google Business Profile account:

1. Login to your Google Business Profile account;
2. Select “reviews” from the menu bar;
3. Locate the review at issue; and
4. Select the three dots and flag the review as inappropriate.

Complete the Inappropriate Review Form:

1. You can use the following link to fill out to fill out the inappropriate review form.
https://support.google.com/business/contact/business_inappropriate_reviews

Yelp

A Yelp review can be reported and placed under review³ if it violates Yelp’s Content Guidelines,⁴ which includes reviews not based on the customer’s own experience, fake reviews, and harassing posts.

How to place a comment/review under review on Yelp:

1. Go to the review that you would like to report;
2. Select the more option button (three dots);
3. Select “Report Review”; and

¹ [How to remove reviews from your Business Profile on Google - Computer - Google Business Profile Help](#)

² [Prohibited and restricted content - Maps User Contributed Content Policy Help \(google.com\)](#)

³ [How do I report a review? | Support Center | Yelp \(yelp-support.com\)](#)

⁴ [Content Guidelines — Yelp](#)

4. You can check the status of the review by hovering your cursor over the flag icon that appears next to the review.

Avvo

Avvo reviews are reviewed by Avvo before the review is published to determine if it meets Avvo's Community Guidelines⁵. However, a review can be submitted to the dispute process if the review is not from an actual or potential client.

How to submit review to the dispute process on Avvo:

1. Login to your Avvo profile;
2. Go to Avvo support;
3. Select "contact us here"⁶; and
4. Enter your email address and information regarding the review you would like to dispute and why, and submit your review.

Facebook

Reviews on your Facebook business page can be reported for violating the Community Standards⁷ which includes misinformation, spam and harassment.

How to report reviews on Facebook:

1. Log in to your Facebook business account;
2. Go to your "Reviews" tab and locate the review you want to report;
3. Select the three dots in the top corner;
4. Select "Report Post"; and
5. Follows the instructions to report the review.

Lawyerratingz.com

Lawyerratingz.com indicates it does not generally remove ratings⁸.

How to ask for review on Lawyerratingz.com:

1. Got to the review;
2. Locate the ref flag on the review; and
3. Select the red flag.

Justia

Attorneys can contest a review if the person did not actually receive legal services from the attorney. Attorneys can respond to a review in the link provided in the notification of review email. Attorneys can also opt-out of receiving reviews on Justia⁹.

⁵ [Community Guidelines - Avvo](#)

⁶ [Submit a request – Avvo support center](#)

⁷ [Facebook Community Standards | Transparency Center \(fb.com\)](#)

⁸ [LawyerRatingz.com FAQ](#)

⁹ <https://lawyers.justia.com/about-the-justia-lawyer-client-reviews>

If requesting removal of an unfair review is not successful, the safest response to post is the one suggested by the Pennsylvania Bar Association:

A lawyer's duty to keep client confidences has few exceptions, and in an abundance of caution, I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.

PBA Legal Ethics and Professional Responsibility Committee Formal Opinion 2014-200¹⁰.

¹⁰ <http://www.pabar.org/site/Portals/0/Ethics%20Opinions/Formal/F2014-200.pdf?ver=2017-01-20-142148-177>

APPENDIX T

“On-line Reviews and Reputational Damage: The Fine Line
Between Opinion and Defamation,” NJLJ, December 1, 2022



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Online Reviews and Reputational Damage: The Fine Line Between Opinion and Defamation

When do online reviews cross the line? In assessing these types of cases, New Jersey courts will carefully weigh and balance the protection of free speech and one's reputation. But overall, depending upon the language and interpretation of your negative review, you could potentially find yourself on the right side of the "v" in a defamation lawsuit.

December 01, 2022 at 11:00 AM

By Nicholas A. Duston and Annamaria Del Buono | December 01, 2022 at 11:00 AM

We have all read online reviews for a restaurant to try, a hotel to stay in, a new place to visit. Whether it be Yelp, Trip Advisor, Google or even Facebook, these reviews can be the "make it or break it" in deciding whether to try something new. Nowadays, these reviews are a major factor—potentially the sole factor—in determining which restaurant to go to on the weekend or which hotel to stay at during a vacation or what new experience to try with family and friends. Some of these reviews can be long and passionate. Some even highlight the top "best" reviews and the top "worst" reviews. Some may include photographs, videos or even specific names of employees the customer interacted with. For instance, looking at a restaurant review online could potentially dictate exactly what an individual will order for dinner from a critic's picture and description. Not only can these reviews heavily influence someone's decision in trying something new (or not), but they can adversely affect the business of a restaurant, hotel, or other business entity with no opportunity for recourse. Negative online reviews, in particular, can cause people to avoid a certain restaurant or business entirely and even permanently tarnish a business entity's reputation. One must wonder—when does an online review cross the line into a legally actionable defamation claim on part of the reviewed business?

To successfully prove a defamation claim in New Jersey, the following elements must be met: (1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher. The last element of fault can be established by showing that the speaker knew the statement to be false and that it defamed the plaintiff, or that the speaker acted with reckless disregard as to its truth or falsity. It must be established that the speaker made a defamatory statement of *fact* concerning the plaintiff, which fact was false, and which was communicated to a person or persons other than plaintiff.

But what is considered a "defamatory statement?" A plaintiff looking to sue an individual for defamation must show that the individual made an untrue statement of fact—that the statement was negative and harmful to plaintiff's reputation or caused monetary damages. A defamatory statement could also be considered as being made to deter third persons from associating or dealing with plaintiff, particularly if he or she is also associated with the business.

One issue which may arise particularly in relation to online reviews is the requirement that a complaint alleging defamation must plead facts sufficient enough to identify the speaker and circumstances of the publication of the allegedly defamatory statement. A plaintiff may have difficulty suing an anonymous speaker or critic on a review page, for example. One strategy may be to name fictitious plaintiffs—like "owner of account @JohnSmith"—followed by an immediate, pre-service subpoena on the internet service for the identity of the human being who owns that account. If taking this route, a plaintiff and their counsel should take care to follow all rules concerning interstate subpoenas as well as federal protections of internet content providers. Similarly, it is also important for a defamation complaint to include circumstances showing that the defamatory statements are "of and concerning" the plaintiff. It must appear that the third person(s) to which the statement was made to understand the statement to be related to the plaintiff. See *Printing Mart-Morristown*, 116 N.J. at 768. While this may be obvious for certain types of online reviews—like Yelp reviews of a restaurant—it may raise standing problems when an employee or owner try to sue instead of the business itself.

What about someone voicing their genuine opinion in good faith? What does it mean for someone to post their *opinion* online—which may be unfavorable to a business owner—without potentially facing a defamation lawsuit for making defamatory false statements of *fact*? Statements of opinion, unlike unverifiable statements of fact, generally cannot be proven true or false. *Lynch v. New Jersey Educ. Ass’n*, 162 N.J. 152 (1999). Opinion statements reflect a state of mind. The court in *Lynch v. New Jersey Educ. Ass’n* distinguishes different kinds of opinions in determining whether a statement is defamatory: one being a “pure opinion”—based upon stated facts, facts known to the parties or assumed by them to exist—and one being a “mixed opinion”—one not based upon facts that are stated or assumed by the parties to exist. 161 N.J. 152 (1999). The only time opinions can trigger liability are when they imply false, underlying objective facts. *Id.* at 167. Therefore, the higher the “fact content” of a statement, the more likely that the statement will be actionable. *Id.* at 168; see *Ward v. Zilikovsky*, 136 N.J. 516 (1994). It is also considered actionable when the statement implies reasonably specific assertions of underlying objective false that are false. *NuWave Inv. v. Hyman Beck & Co.*, 75 A.3d 1241 (App. Div. 2013).

So what happens when you find yourself named as a defendant in a defamation lawsuit after writing about a terrible experience you had at a restaurant or with the owner of a business? Truth may be asserted as a defense in a defamation claim. *Feggans v. Billington*, 677 A.2d 771, 291 N.J. Super. 382 (App. Div. 1996). In fact, truth is considered an absolute defense against defamation. See *Ward v. Zelikovsky*, 136 N.J. at 530 (1994). New Jersey does not require for the speaker’s statement to be perfectly accurate in order to be considered true. See *id.* Instead, the court will overlook minor inaccuracies and focus on the substantial truth of the statement.

In assessing whether a statement is true as a defense to defamation, a court will consider the statement as a whole to determine its impression on a reader. Specifically, the overall substance or “gist” of a statement will be determined by the courts. Therefore, it is essential for a speaker who ends up a named defendant in a defamation case to be able to substantiate their published statement.

Consider the case of *Sylvan Dental, P.A. v. Chen* where the defendant posted a Yelp review stating plaintiff’s dental practice as “the worst dental experience ... ever encountered” and accused plaintiff of “insurance fraud” for billing patients treatment which was never performed. No. A-4544-18, 2021 WL 3671164 (App. Div. Aug. 19, 2021). The Defendant further stated in his Yelp review that the dental treatment was a “painful and horrific experience,” reporting that plaintiff has a bad reputation among Korean communities. *Id.* Ultimately, the appellate court determined the trial court properly ruled that these statements were defamatory on their face without the need to resort to extrinsic facts. The court specifically pointed out that these statements were made in the context of and pertaining to plaintiff’s trade, profession or business—plaintiff’s dental practice—and therefore is deemed actionable since the statements were made with reference to “a matter of significant and importance” relating to the manner in plaintiff carries out his dental practice.

Conclusion

From a public policy standpoint, an argument can be made whether it should be allowed to post negative reviews and opinions online. An unhappy critic or reviewer of a restaurant, for instance, could do significant damage by ruining the reputation of the restaurant especially when the statements are exaggerated or even false. If reviewers are constantly sued, they will be deterred from posting such reviews. On the other hand, reviewers expressing their opinions of a business in good faith should not be punished or sued for doing so.

So when do online reviews cross the line? In assessing these types of cases, New Jersey courts will carefully weigh and balance the protection of free speech and one’s reputation. But overall, depending upon the language and interpretation of your negative review, you could potentially find yourself on the right side of the “v” in a defamation lawsuit.

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APPENDIX U

Other States' Laws on Attorneys Being Relieved as Counsel

California

1. Court Rule

Rule 3.1362. Motion to be relieved as counsel.

A notice of motion and motion to be relieved as counsel must be filed accompanied by a declaration that states in general terms and without compromising the confidentiality of the attorney-client relationship.

2. RPCs

RPC 1.16 Declining or Terminating Representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the lawyer knows or reasonably should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;
- (2) the lawyer knows or reasonably should know that the representation will result in violation of these rules or of the State Bar Act;
- (3) the lawyer's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the lawyer.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
- (2) the client either seeks to pursue a criminal or fraudulent course of conduct or has used the lawyer's services to advance a course of conduct that the lawyer reasonably believes was a crime or fraud;
- (3) the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent;
- (4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively;

- (5) the client breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client a reasonable warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation;
- (6) the client knowingly and freely assents to termination of the representation;
- (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
- (8) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;
- (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act; or
- (10) the lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

(c) If permission for termination of a representation is required by the rules of a tribunal, a lawyer shall not terminate a representation before that tribunal without its permission.

(d) A lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e).

(e) Upon the termination of a representation for any reason:

- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings, exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably* necessary to the client's representation, whether the client has paid for them or not; and
- (2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not

applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

Connecticut

1. Court Rules

Motion to Withdraw Appearance Sec. 3-10 Superior Court -General Provisions

- (a) No motion for withdrawal of appearance shall be granted unless good cause is shown and until the judicial authority is satisfied that reasonable notice has been given. All motions to withdraw appearance shall be set down for argument.
- (b) IN FAMILY CASES, a motion to withdraw shall include the last known address of any party as to whom the attorney seeks to withdraw his or her appearance and shall have attached the following advising that:
 - 1. The attorney is filing a motion which seeks the court's permission to no longer represent the party in the case
 - 2. The date and time motion will be heard
 - 3. The party may appear in court on that date
 - 4. If the motion to withdraw is granted, the party should either obtain another attorney or file an appearance on his or her own behalf
 - 5. If the party does neither, the party will not receive notice of court proceedings in the case

*Each motion to withdraw appearance shall state whether the case has been assigned for pre-trial or trial and if so, the date assigned.

2. RPC

RPC 1.16 Declining or Terminating Representation

- (a) Except as stated in subsection (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) The representation will result in violation of the Rules of Professional Conduct or other law;
 - (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in subsection (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of the fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.

1. Court Rules

Florida Rules of Judicial Administration, Rule 2.505 – Attorneys

(f) Termination of Appearance of Attorney.

An appearance of an attorney for a party in an action or proceeding shall terminate only upon:

- (1) Withdrawal of Attorney. A written order of the court after hearing upon a motion setting forth reasons for withdrawal and the client's last known address, telephone number, and e-mail address.
- (2) Substitution of Attorney. Substitution of counsel pursuant to subdivision (e)(3) or (e)(4).
- (3) Termination of Proceeding. Termination of an action or proceeding and expiration of any applicable time for appeal when no appeal is taken, without any further action of the court unless otherwise required by another rule of court.

Florida Family Law Rule Of Procedure, Rule 12.040 - ATTORNEYS

(b) Withdrawal or Limiting Appearance.

- (1) Prior to the completion of a family law matter or prior to the completion of a limited appearance, an attorney of record, with approval of the court, may withdraw or partially withdraw, thereby limiting the scope of the attorney's original appearance to a particular proceeding or matter. A motion setting forth the reasons must be filed with the court and served upon the client and interested persons.
- (2) The attorney shall remain attorney of record until such time as the court enters an order, except as set forth in subdivision (c) below.

2. RPCs

RULE 4-1.16 DECLINING OR TERMINATING REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation.

Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

- (3) the lawyer is discharged;
- (4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or
- (5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

(b) When Withdrawal Is Allowed.

Except as stated in subdivision (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement;
- (3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (5) other good cause for withdrawal exists.

(c) Compliance With Order of Tribunal.

A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Protection of Client's Interest.

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

Illinois

1. Court Rules

Illinois Supreme Court Rule 13 Appearances – Time to Plead – Withdrawal

(c)(2) Notice of Withdrawal.

An attorney may not withdraw his or her appearance for a party without leave of court and notice to all parties of record. Unless another attorney is substituted, the attorney must give reasonable notice of the time and place of the presentation of the motion for leave to withdraw, by personal service, certified mail, or a third-party carrier, directed to the party represented at the party's last known business or residence address. Alternatively, the attorney may give such notice electronically, if receipt is acknowledged by the party. Such notice shall advise said party that to insure notice of any action in said cause, the party should retain other counsel therein or file with the clerk of the court, within 21 days after entry of the order of withdrawal, a supplementary appearance stating therein an address to which service of notices or other documents may be made.

(c)(3) Motion to Withdraw.

The motion for leave to withdraw shall be in writing and, unless another attorney is substituted, shall state the last known address(es) of the party represented. The motion may be denied by the court if granting the motion would delay the trial of the case, or would otherwise be inequitable.

(c)(4) Copy to be Served on Party.

If the party does not appear at the time the motion for withdrawal is granted, either in person or by substitute counsel, then, within three days of the entry of the order of withdrawal, the withdrawing attorney shall serve the order upon the party in the manner provided in paragraph (c)(2) of this rule and file proof of service of the order.

2. RPCs

1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Maryland

1. Court Rules

Rule 2-132: Striking of Attorney's Appearance

(a) By Notice. An attorney may withdraw an appearance by filing a notice of withdrawal when

- (1) The client has another attorney of record or
- (2) The attorney entered a limited appearance and the particular

proceeding or matter for which the appearance was entered has concluded

- (b) By Motion. When an attorney is not permitted to withdraw an appearance by notice under section (a), the attorney wishing to withdraw shall file a motion. Except when the motion is made in open court, the motion shall be accompanied by the clients' written consent to the withdrawal or the moving attorney's certificate that notice has been mailed at least five days prior to filing of the motion, informing the client of the intent to withdraw and advising the client to have another attorney enter an appearance. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice or injustice.

2. RPCs

MD Rules Attorneys, Rule 19-301.16 Declining or Termination Representation

- (a) Except as stated in section (c) of this Rule, an attorney shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the Maryland Attorneys' Rules of Professional Conduct or other law;
 - (2) the attorney's physical or mental condition materially impairs the attorney's ability to represent the client; or
 - (3) the attorney is discharged.
- (b) Except as stated in section (c) of this Rule, an attorney may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent;
 - (3) the client has used the attorney's services to perpetrate a crime or fraud;
 - (4) the client insists upon action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the attorney regarding the attorney's services and has been given reasonable warning that the attorney will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.

- (c) An attorney must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, an attorney shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another attorney, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The attorney may retain papers relating to the client to the extent permitted by other law.

Massachusetts

1. Court Rules

Rule 11: Appearances and Pleadings

- (c) An attorney may, without leave of court, withdraw from a case by filing written notice of withdrawal, together with proof of service on his client and all other parties, provided that:
 - 1) Such notice is accompanied by the appearance of successor counsel
 - 2) No motions are pending before the court; and
 - 3) No trial date has been set.

Under all other circumstances, leave of court, on motion and notice, must be obtained.

2. RPCs

1.16 Declining or terminating representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

New York

1. Court Rules

CPLR 321 Attorneys

(b) Change or withdrawal of attorney.

1. Unless the party is a person specified in section 1201, an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such

change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.

2. An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.

2. RPCs

1.16 Declining or terminating representation

(a) A lawyer shall not accept employment on behalf of a person if the lawyer knows or reasonably should know that such person wishes to:

- (1) bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken for such person, merely for the purpose of harassing or maliciously injuring any person; or
- (2) present a claim or defense in a matter that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law.

(b) Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when:

- (1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;
- (3) the lawyer is discharged; or (4) the lawyer knows or reasonably should know that the client is bringing the legal action, conducting the defense, or asserting a position in the matter, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.

(c) Except as stated in paragraph (d), a lawyer may withdraw from representing a client when:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action with which the lawyer has a

fundamental disagreement;
(5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;
(6) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively;
(8) the lawyer's inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal;
(9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;
(10) the client knowingly and freely assents to termination of the employment;
(11) withdrawal is permitted under Rule 1.13(c) or other law;
(12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal; or
(13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

(d) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a matter before that tribunal without its permission. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(e) Even when withdrawal is otherwise permitted or required, upon termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.

Rhode Island

1. Court Rule

Rule 1.5. Withdrawal and Excuse of Attorneys

(a) Withdrawal of Attorney.

No attorney appearing in any case will be allowed to withdraw without the consent of the court. Except where another attorney enters an appearance

at the time of such withdrawal, all withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of his or her the attorney's client, or the client files his or her address, and in either situation the address which is filed shall be the official address to which notices may be sent.

(b) Excuse From Attendance.

An attorney's request to be excused from attendance from the Superior Court shall be submitted to the presiding justice and made by motion. The motion shall be served upon the attorney of record of the adverse party for all matters the moving attorney is scheduled to attend including every trial, hearing, motion, calendar call, status conference, and other proceeding preliminary to trial on the merits. An original and two (2) copies of the submission motion, together with a stamped, self addressed envelope, shall be filed with the office of the Presiding Justice. The submission motion shall contain the following information:

- (1) The period of time for which the excuse is requested;
- (2) The reason upon which the request is based. Where the submission motion is based upon a matter which is personal or confidential in nature, the movant may arrange to meet with the Presiding Justice privately prior to the filing of the motion;
- (3) The file number and caption of every cause assigned during the period for which the excuse is sought and the name of the attorney of record for each of the adverse parties to that cause;
- (4) Where the cause assigned is a trial on the merits, the movant shall obtain approval to be excused for the period requested from the justice in charge of the trial calendar;
- (5) Where the cause assigned is a proceeding preliminary to a trial on the merits, the movant shall state whether substitute counsel will attend at that proceeding or whether the proceeding will be continued with the agreement of the attorney of record for the adverse party and, where the justice so requires, with the agreement of the justice before whom the proceeding is scheduled;
- (6) Where the movant has no cause assigned during the period for which the excuse is sought, a representation of that fact shall be made; and
- (7) A certification that the movant has served a copy of the submission

motion on each attorney of record for each of the adverse parties whose cause is assigned during the period for which the excuse is sought.

An attorney of record for an adverse party who objects to the motion shall file an objection with the Presiding Justice immediately upon receipt of the submission motion. The Presiding Justice may will conduct a hearing on the objection.

(c) **Illness or Absence of Attorney.**

In case of sudden illness of an attorney, or the attorney's absence from court from some other imperative and unforeseen cause, the court shall take such action, without notice, as shall appear reasonable in the circumstances.

2. RPCs

1.16 Declining or terminating representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

APPENDIX V

Proposed Changes to Court Rules
(for Attorneys Being Relieved as Counsel)

RULE 4:5B-2 – Case Management Conferences

In cases assigned to Tracks I, II, and III, the designated pretrial judge may sua sponte or on a party's request conduct a case management conference if it appears that such a conference will assist discovery, narrow or define the issues to be tried, address issues relating to discovery of electronically stored information, [addressing any counsel fee or litigation fund requested by the parties](#), or otherwise promote the orderly and expeditious progress of the case. A case management conference shall not, however, ordinarily be conducted after the case is ready for trial. In Track IV cases, except for actions in lieu of prerogative writs and probate and general equity actions, an initial case management conference shall be conducted as soon as practicable after joinder and, absent exceptional circumstances, within 60 days thereafter. In actions in lieu of prerogative writs, case management conferences shall be held pursuant to R. 4:69-4. In probate actions, case management conferences may be scheduled at the discretion of the judge. In all actions in general equity, except summary actions pursuant to R. 4:67 and foreclosure actions, an initial case management conference shall be held within 30 days following the filing of the answers of all defendants initially joined, and the court may hold such additional case management conferences as it deems appropriate. All decisions and directives issued at a case management conference shall be memorialized by order as required by R. 1:2-6. The order may include provisions for disclosure of discovery of electronically stored information and any agreements the parties reach for asserting claims of privilege or protection as trial preparation material after production.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; amended July 27, 2006 to be effective September 1, 2006.

RULE 5:5-7 – Case Management Conferences In Civil Family Actions

(a) **Dissolution Priority and Complex Actions.** In civil family actions assigned to the priority or complex track, an initial case management conference, which may be by telephone, shall be held within 30 days after the expiration of the time for the last permissible responsive pleading or as soon thereafter as is practicable considering, among other factors, the number of parties, if any, added or impleaded. Following the conference, the court shall enter an initial case management order fixing a schedule for initial discovery; requiring other parties to be joined, if necessary;

narrowing the issues in dispute, if possible; [ordering a litigation fund, if requested](#), and scheduling a second case management conference to be held after the close of the initial discovery period. The second case management order shall, among its other determinations, fix a firm trial date.

(b) **Dissolution Standard and Expedited Cases.** In civil family actions assigned to the standard or expedited track, a case management conference, which may be by telephone, shall be held within 30 days after the expiration of the time for the last permissible responsive pleading. The attorneys actually responsible for the prosecution and defense of the case shall participate in the case management conference and the parties shall be available in person or by telephone. Following the conference, the court shall enter a case management order fixing a discovery schedule, [ordering a litigation fund, if requested](#), and a firm trial date. Additional case management conferences may be held in the court's discretion and for good cause shown on its motion or a party's request.

(c) **Non-Dissolution Actions.** While non-dissolution actions are presumed to be summary and non-complex, at the first hearing following the filing of a non-dissolution application, the court, on oral application by a party or an attorney for a party, shall determine whether the case should be placed on a complex track. The court, in its discretion, also may make such a determination without an application from the parties. The complex track shall be reserved for only exceptional cases that cannot be heard in a summary matter. The court may assign the case to the complex track based only on a specific finding that discovery, expert evaluations, extended trial time or another material complexity requires such an assignment. Applications for a complex track assignment made after the initial hearing may be considered upon presentation of exceptional circumstances. If the court deems a non-dissolution case to be appropriate for the complex track at the first hearing, an initial case management conference shall be held at that time, and a case management order shall be issued detailing the reasons that the case is deemed complex. The court shall enter an order fixing a schedule for discovery, narrowing the issues in dispute, appointing experts, ordering necessary reports from probation or third parties, scheduling mediation (where appropriate), [ordering a litigation fund, if requested](#), fixing a trial date, scheduling a second case management conference to fix a trial date, or addressing any other relief the court may deem appropriate. At the first case management conference, the court shall address any pendente lite relief requested, identify and schedule any anticipated applications and/or schedule

another hearing to address any requested relief. At the second case management conference, the court shall fix a trial date, address any stipulations between the parties, address anticipated applications, address the completion of discovery or expert or third party reports, narrow the issues, schedule mediation and fix the time for the filing of briefs and pre-marked documents.

Note: Adopted as R. 5:5-6 November 5, 1986 to be effective January 1, 1987; full text deleted and new paragraphs (a) and (b) adopted January 21, 1999 to be effective April 5, 1999; redesignated as R. 5:5-7 July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (b) captions amended, and new paragraph (c) caption and text adopted July 27, 2015 to be effective September 1, 2015.

BACK

ADDENDUM:

PUTTING LAWYERS FIRST TASK FORCE REPORT DATED FEBRUARY 17, 2023

TO: Jeralyn Lawrence, Esq., President of the NJSBA
FROM: Robin C. Bogan, Esq., and Matheu D. Nunn, Esq.,
Co-Chairs of the PLF Task Force
DATE: March 3, 2023

Due to recent developments that have occurred subsequent to the submission of our report to you on February 17, 2023, on behalf of the Putting Lawyers First Task Force and specifically its **Attorney Health & Well-Being Working Group** we are submitting this Addendum for 2 reasons:

- 1) To provide the most updated information that pertains to the Section -- **Part II -- Whether the Question on Mental Health Conditions or Impairments on the New Jersey Character and Fitness Application Should Remain or be Removed** which starts on page 36 regarding other states; and
- 2) To provide updates to the Recommendation Section to **Part I – Survey Results are a Call to Action** to add another recommendation to those starting on page 31 to include our support for Making Daylight Savings Permanent on both a national level and state level.

1. **QUESTION 12B: ADDITIONAL INFORMATION FROM
OTHER STATES**

After submission of our Mental Health Subcommittee report, we received additional information in connection with the portion of the Putting Lawyers First Report that addresses question 12B on the New Jersey State Bar Character and Fitness Application. Specifically, footnote 55 on page 37 identifies 13 states that do not take into consideration a candidate's mental health status. This information should be updated. Most recently, Minnesota removed its question on mental health status in favor of behavior/conduct. *Thus, there are now 26 states that have either eliminated, substantially modified, or never used mental health status on their bar applications.* These states are: Alaska, Arizona, Arkansas, California, Connecticut, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming. In another eight states, the issue is under discussion: Alabama, Florida, Nebraska, New Jersey, Oregon, Utah, Vermont, West Virginia.

We also received the attached memorandum, dated February 20, 2023, from the presidents of the Rutgers Student Bar Associations for both Camden and Newark, with a resolution passed by both Student Bar Associations in support of removing question 12B or replacing it with a question based on behavior/conduct, rather than status. (See Appendix A attached hereto).

2. MAKING DAYLIGHT SAVINGS PERMANENT: SUPPORTING NATIONAL AND NEW JERSEY LEGISLATION

On March 1, 2023, (after our PLF Task Force report was submitted), a bipartisan group of 12 lawmakers of the 118th Congress reintroduced legislation that would end turning back the clocks one hour every November (U.S. Senate bill S.582).¹ This bill which was previously adopted in the Senate and passed unanimously, died in the House last year. By way of background, the U.S. started daylight savings time in 1918 and it was created primarily to save oil and electricity during World War I.

Proponents of this new legislation argue that extra daylight in the evening will result in improving our health and welfare.² Specifically, the changing of the clocks wreaks havoc with people's sleep cycles. "Heart attacks increase 24 percent in the week after the U.S. 'springs forward' in March. There's even an uptick during the week when clocks 'fall back.'"

So how does this relate to New Jersey attorneys? After reading the *Attorney Health & Well-Being Working Group* Section of the PLF Task Force report (Part I) regarding the survey results, we quickly learn that attorneys' health is more at risk than other working groups. On page 16 of the report, we learned:

While 51% of New Jersey lawyers feel enthusiastic about being a lawyer often, very often or always, 68% reported feeling anxious in the past two weeks; 56% reported a high prevalence of alcohol misuse; 49% of lawyers reported moderate to high levels of burnout; 49% reported feelings of isolation; 23% reported a high prevalence of depressive symptoms; 28% of attorneys considered leaving the profession as a result of mental health, burnout or stress; and 10% reported thoughts of suicidal ideation.

As a result, this call to action must include the NJSBA supporting initiatives that are designed to improve health and welfare of our community. Additionally, other benefits of permanent daylight savings time include promoting safety (reduction in fatal vehicle-pedestrian crashes and car accidents), decreases in crime, saving energy and increasing opportunities for commerce and

¹ <https://www.nytimes.com/2023/03/02/us/politics/daylight-savings-bill-marco-rubio.html>;
<https://www.bloomberg.com/news/articles/2023-03-02/what-year-round-daylight-saving-time-would-mean-quicktake>

² <https://www.inverse.com/mind-body/daylight-saving-time-permanent-benefits-health>

recreation, as people prefer to shop and exercise during daylight hours. Further, the additional hour of sunlight is expected to reduce the amount of oil and gas required to heat homes and businesses. The American Council for an Energy-Efficient Economy estimates that the U.S. would have reaped an energy savings of more than \$4 billion dollars and reduced carbon emissions by 10.8 million metric tons if we had enacted permanent daylight savings a decade ago.

Similar to the steps the NJSBA took to support Daniel's Law,³ we recommend that the NJSBA write letters to every State Bar President in the country to create awareness that we are in support of this initiative as one step toward improving attorney health and welfare. We want to urge every State Bar association to support this bi-partisan Senate bill and any companion bill introduced by the House of Representative and to encourage President Joseph Biden to sign it into law.

It is also important to consider that as of 2022, 19 states have introduced legislation seeking to establish permanent daylight savings time.⁴ There is currently a New Jersey Senate bill No. 946 that was introduced by Shirley K Turner and Troy Singleton to establish permanent daylight savings time in New Jersey. (See **Appendix B**). The PLF Task Force also submitted an LPF which is attached hereto as **Appendix B**. We also ask that the NJSBA Officers and Board of Trustees take action to support this bill as well.

³ On December 16, 2022, Congress passed the Daniel Aderl Judicial Security and Privacy Act which protects protect judges' personally identifiable information from resale by data brokers, and permits federal judges to redact personal information displayed on federal government internet sites and prevent publication of personal information by other businesses and individuals where there is no legitimate news media or other public interest.

⁴ <https://www.csg.org/2022/11/07/daylight-savings-time-state-approaches-history-and-impact/#:~:text=As%20of%202022%2C%2019%20states,region%20also%20make%20the%20change.>

Nicholas J. Gangemi, Rutgers Law School Class of 2023
President, Rutgers Law School Wellness Society
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P: (856) 651-8241

February 17, 2023

Caitlin Pennell
President, Student Bar Association - Camden
Rutgers, The State University of New Jersey
215 N. Fifth Street,
Camden, N.J. 08102-1203

Dalila Haden
President, Student Bar Association – Newark
Rutgers, The State University of New Jersey
200 University Avenue,
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RE: Resolution 1; Urging the removal and replacement of Question 12B of the Health Section of the New Jersey State Bar’s Character and Fitness Application (“the Mental Health Question”) and requesting that any replacement question with a *Conduct* based inquiry.

Honorable Presidents & Members of the Student Bar Association (“SBA”),

Please accept the below resolution, which urges the removal Question 12B from the Health Section of the New Jersey State Bar’s Character and Fitness Application (“the Mental Health Question”), and requesting that any replacement question with a *Conduct* based inquiry. I appreciate your time and attention to this important matter in advance.

As you know, Rutgers clinics offer a range of treatment options for students, including medical, psychiatric, and counseling services. Over the past two years, The Wellness Society of Rutgers Law School Camden, under the leadership of *president emeritus* Summer Cordasco ¹, alongside a group of dedicated faculty and administrators, has sought to increase law student access to mental health services on campus.

In 2022, faculty, administrators, and student representatives from both Rutgers Law School campuses formed the Health and Safety Committee (“Committee”) with two

¹ Summer Cordasco, *Raising the Bar: Why New Jersey Should Reconsider Its Mental Health Inquiry on the Bar Exam*, 19 RUTGERS J. L. & PUB. POL’Y 81, 82 (2021); the Whereas clauses, and much of the research incorporated herein, is drawn from an excellent article written by Rutgers Law School Graduate Summer Cordasco. We are indebted to her for this roadmap to progress.

specific charges, only one of which is relevant here. The first charge, which was to be completed in the fall semester of 2022, was to “review the law school’s compliance with the ABA Law School Accreditation Standard 508,² requiring that Rutgers provide “information on law student well-being resources” and, if necessary, make recommendations for any changes needed to bring the law school into compliance. Standard 508 has been interpreted to mean that counseling and other health services must be made available to students. After reviewing Standard 508, in a letter to the Rutgers Law School Faculty, the Committee concluded in relevant part that,

[while] Rutgers Law School is in technical compliance with Standard [508]..., the Committee, and in particular, the student representatives, strongly feel that Standard 508 is a very low bar and that the law school can and should be doing more and doing better. Students and the deans of students point to the commonplace 6-8 week delay in students having access to anything other than hotline counseling as evidence of compelling need to address the deficiencies in the university system. To that end, we are studying issues around expanding the availability of mental health resources at the law school.

See November 14, 2022, Health and Safety Committee Report to Rutgers Law School Faculty.

While the Committee works to resolve the unacceptably long delays experienced by those seeking mental health support on campus, the Co-Deans and Associate Deans for Student Affairs at Rutgers Law School sought to address a critical tangential issue many graduating law students face; Question 12B of the Health Section of the New Jersey State Bar’s Character and Fitness Application (“the Mental Health Question”).

On January 4, 2023, the Co-Deans and Associate Deans wrote a letter to lend support for the removal and replacement of the Mental Health Question with one based on applicants *conduct*, rather than their medical records.³ The letter, addressed to Jeralyn L. Lawrence, President of the New Jersey State Bar Association, describes “a marked

² ABA Law School Accreditation Standard 508. STUDENT SUPPORT SERVICES “A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including maintenance of accurate student records, academic advising and counseling, financial aid and debt counseling, and career counseling to assist students in making sound career choices and obtaining employment. If a law school does not provide these student services directly, it shall demonstrate that its students have reasonable access to such services from the university of which it is a part or from other sources.”

³ Many thanks to Co-Deans Kimberly Mutcherson and Rose Vuison-Villzor, along with Associate Deans for Student Affairs Sarah K. Regina and Louis Thompson, for their support and leadership on this issue.

increase” over the past several years of students approaching Law Schools staff and reporting “a range of mental health concerns.” The Dean’s letter continues:

In speaking with colleagues, we have learned that our experience in this regard is not unique and mirrors what other law school administrators, faculty, and staff are seeing at their institutions. We regularly refer students to our campus Counseling Centers for the care that they need and, far too often, upon making such a referral, students seek treatment. They ask questions like “Won’t I have to report that to the bar?” or “If I speak with a therapist, will it hold up my Character and Fitness application?” We want to answer no to these questions because we do not want students to avoid needed mental health care but we feel obligated to provide a qualified response -- that they must report but that they should still seek treatment. Research has shown that our students are not alone in feeling deterred from seeking mental health or substance use treatment because of a Mental Health Question on a bar application. . . .

We have to do better, and many states have already made the much-needed change. According to the American Bar Association, at least eleven states do not ask candidates about their mental health. More and more states are recognizing the unfairness of mental health questions on bar applications and are changing their applications accordingly.⁴ Most recently, the Supreme Court of Ohio decided to remove its mental health treatment and diagnosis question from their state bar application effective January 2023.⁵

There are other more effective and less intrusive ways to screen candidates for personal characteristics that affect their fitness to practice. This inquiry should be based on conduct and not health records. Conduct on an applicant’s record such as patterns of substance use, criminal offenses, financial irresponsibility, even unexplained gaps in work or education history might bring to light issues around mental health that impact an applicant’s fitness to practice. At best, a question about mental health, standing alone and without connection to conduct, is invasive and

⁴ AMERICAN BAR ASSOCIATION, MENTAL HEALTH CHARACTER & FITNESS QUESTIONS FOR BAR ADMISSION (2022), available at <https://www.americanbar.org/groups/diversity/disabilityrights/resources/character-and-fitness-mh/#:~:text=Thirty%2Dfour%20states%20and%20Washington,health%20status%20of%20an%20applicant>

⁵ See Csaba Sukosd, Bar Application Updates Include Changes to Mental Health Disclosure, available at https://www.courtnewsoriohio.gov/happening/2022/CharacterRuleChange_120622.asp#.Y5Ck2OzMJqw

unnecessary. At worst, as we have seen anecdotally from our Rutgers Law students and more concretely through the studies referenced in this letter, question 12B deters students from seeking needed mental health treatment and, lamentably, sends a message that further stigmatizes mental health issues and related treatment. Let us put New Jersey on the right side of this issue by following the example of the many states that have already removed mental health questions from their applications, and, in doing so, support the future members of our profession. This change, we believe, will have a directly positive effect on our students and on the entire legal community. Law students who receive the mental health care that they need become healthier law graduates and contribute to a healthier community of lawyers practicing in the State of New Jersey.

See January 4, 2023, Letter to New Jersey State Bar Association

From this letter, the SBA should take away that it is in the interest of all law students, as well as the profession at large, to work to destigmatize the use of mental health services. Yet the problems with question 12B do not end there. Not only does question 12B have a chilling effect on students in need of mental health services, but it serves to *disincentivize* regional Law Schools from increasing students access to those services.

For better or worse, the “first-time bar passage rate” remains an assessment tool in evaluating the “efficacy” and, ultimately, the “rank” of law schools.⁶ Currently, question 12B makes a student’s mental health diagnosis a potentially determinative factor in bar passage, regardless of any underlying ‘*problematic*’ conduct. Trained in logic, Law schools may reason that increasing access to mental health services for students would necessarily increase diagnoses and treatment of previously undetected or untreated mental health conditions among their student populations. As a direct result of increased diagnoses and treatment, more students would be required to disclose their medical records to the bar, thereby increasing the possibility of students being disqualified based on question 12B alone. By increasing the possibility of disqualification, question 12B operates to place Law Schools rankings at odds with improving the health of their students. This cannot stand.

As stated so eloquently by our Deans, question 12B serves to deter students from seeking mental health treatment and more broadly stigmatizes mental health issues. On behalf of Wellness Society of Rutgers Camden, I respectfully request your consideration and affirmative vote on the following resolution.

⁶ Morse et. al, Methodology: R2023 Best Law Schools Ranking, U.S. News & World Report (March 28, 2022), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>

Thank you again for your time and consideration of this important matter,
Should you have any questions or would like to discuss this matter further, please do
not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, reading "Nicholas J. Gangemi '23". The signature is written in a cursive style with a large, stylized "N" and "G".

Nicholas J. Gangemi
President, Rutgers Wellness Society
3L Student, Rutgers Law School Camden
E: njg105@scarlemail.rutgers.edu
P: (856) 651-8241



Rutgers Law School Student Bar Association

Session 2022 - 2023

Resolution 1

SYNOPSIS

This resolution urges the removal of question 12B from the Health Section of the New Jersey State Bar's Character and Fitness Application, and requests that any replacement question utilize a *conduct* based inquiry.

WHEREAS, A 2016 study of nearly 13,000 lawyers funded by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs found that 20.6% of the attorney participants screened at a level consistent with problem drinking, 28% were experiencing signs of depression, 19% were experiencing signs of anxiety, and 23% were experiencing signs of stress; and ⁱ

WHEREAS, a study completed by Yale Law School shows that 70% of the 296 student participants reported experiencing mental health challenges during law school; and ⁱⁱ

WHEREAS, a 2014 study indicates that law students from fifteen different law schools around the United States feel discouraged from seeking help regarding substance abuse or mental health for a multitude of reasons including the potential threat to Bar admission, social stigma, and concerns about privacy. The study found that “with

respect to mental health, the percentage of third-year respondents concerned that seeking help would be a potential threat to a job or academic status or a threat to Bar admissions was higher than the percentage of first-year respondents for whom these factors were of concern.” The percentage of third-year students with concerns relating to the potential threat to Bar admission with respect to alcohol and drug use was also higher than the percentage of first-year students. The data shows that 63% of respondents were discouraged from seeking help regarding substance abuse and 45% of respondents were discouraged from seeking help regarding mental health due to the potential threat to Bar admissions, and; ⁱⁱⁱ

WHEREAS, These statistics illustrate that there is a problem; law students are not seeking the mental health and substance abuse treatments that they need. From the first day of law school, law students are taught the importance of professional integrity and disclosure. Yet, when it comes to being asked about their mental health or history with substance abuse, many law students worry that being honest may cost them their career. For many of these students, the fear of being rejected from the Bar may be enough to keep them from seeking necessary treatment; and ^{iv}

WHEREAS, the National Conference of Bar examiners noted that the mere fact that a Bar candidate has sought treatment is not a basis for denying admission in February of 2020; and ^v

WHEREAS, Arizona, California, Connecticut, Illinois, Massachusetts, Mississippi, New York, Virginia, and Washington are among the states that have modified or removed the stigmatizing language that New Jersey’s character and fitness exam maintains; and ^{vi}

WHEREAS, New Jersey is among the states that still “ask[s] about the existence of a mental health condition or impairment.” Not only does New Jersey ask about the existence of a condition or impairment, but if an applicant answers “yes” to the existence of one, the questionnaire also requires that the applicant describe treatments that are being used to reduce the condition or impairment. The required disclosure of this personal information could be found as a violation of an applicants’ privacy. This privacy may be awarded to Bar applicants through the Americans with Disabilities Act (ADA), which “prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.”; and ^{vii}

BE IT RESOLVED *by the Student Bar Associations of Rutgers Law School Camden & Newark*

1. The Student Bar Associations urges the immediate removal of question 12B from the Health Section of the New Jersey State Bar's Character and Fitness Application, and requests that any replacement question be focused on *conduct* rather than mental health records, and
2. The Student Bar Associations urge the Faculty and Administrators of Rutgers Law School to pass a resolution supporting the same.

STATEMENT

This resolution urges the immediate removal of Question 12 The Student Bar Association urges the immediate removal of Question 12B from the Health Section of the New Jersey State Bar's Character and Fitness Application; and requests that any replacement question be focused on *conduct* rather than mental health records; and urges the Faculty and Administrators of Rutgers Law School to pass a resolution supporting the same.

ⁱ Summer Cordasco, *Raising the Bar: Why New Jersey Should Reconsider Its Mental Health Inquiry on the Bar Exam*, 19 RUTGERS J. L. & PUB. POL'Y 81, 82 (2021) (internal citation omitted).

ⁱⁱ *Id.* (internal citations omitted).

ⁱⁱⁱ *Id.* (internal citation omitted).

^{iv} *Id.* (internal citations omitted).

^v *Id.* at 110. (

^{vi} *Id.* (Internal citations omitted).

^{vii} *Id.* (internal citations omitted).



NEW JERSEY STATE BAR ASSOCIATION

CONFIDENTIAL LEGISLATIVE POSITION FORM

BILL #: S946 SECTION/COMMITTEE NAME: Putting Lawyers First Task Force

DATE OF MEETING: 2/10/23 TOTAL VOTE COUNT: 34

SECTION/COMMITTEE CONTACT PERSON RE LPF: Robin C. Bogan/Matheu D. Nunn

Does this bill fall within the purview of the New Jersey State Bar Association's "Criteria for Reviewing Legislation?" YES ☒ NO ☐ Please check which measure, if any, the bill falls under:

- ☒ The bill directly affects lawyers as a profession.
- ☐ The bill affects public access to the judicial system, fairness in the administration of justice or the independence and integrity of the judicial branch.
- ☐ The bill affects a constitutional right.
- ☐ The bill has the potential of making substantial changes to the practice of law in a substantive practice area.
- ☐ The bill was drafted by an NJSBA Section/Committee/Division.

If the bill does not fit any of the above criteria, please do not fill out the remainder of the Legislative Position Form.

Does the bill fall within the scope of the section/committee? YES ☒ NO ☐

If you answered "yes" please detail how the bill affects the section/committee:

The task force is made up of more than 30 attorneys from a wide array of practice areas, including criminal, civil, family, as well as attorneys who practice at large, mid-size and solo firms around the state. This past summer they rolled up their sleeves to start looking for real, concrete, and meaningful ways to make the practice better for all of us. The task force spent several months examining issues that are impacting lawyers, leading to stress, anxiety, and depression.

Section/Committee Voting Position: SUPPORT ☒ OPPOSE ☐ NO POSITION ☐

Does the Section/Committee believe the bill warrants any of the following:

- ☐ **Testimony before Committees:** A contact person designated by the section/committee to give testimony before the Senate/Assembly Committees. CONTACT PERSON: _____
- ☐ **Meetings with the Bill Sponsor & other Legislators:** A contact person(s) designated by the section/committee to attend meetings with the bill sponsor and other legislators and in an effort to convey NJSBA position.
- ☐ **CONTACT PERSON:** Robin c. Bogan/Matheu D. Nunn
- ☐ **Further Lobbying Activity** _____

Please explain in detail the section/committee position:

Support of S946, an act relating to observing daylight saving time year-round in the State of New Jersey. Studies show that the transition in and out of Daylight Savings Time can cause mood disturbances and sleep disruption, especially for individuals susceptible to feeling anxious or depressed. The PLF Task Force has recognized that attorneys' mental health is an issue generally (and widely) impacting the profession. The PLF Task Force believes that S946 will have a benefit to attorneys well-being and, in turn, the public.

NEW JERSEY STATE BAR ASSOCIATION

If you chose to oppose the bill, would the section/committee consider supporting the bill with amendments? ☐ YES ☐ NO

If checked "yes", please detail proposed amendments:

If there was a minority position, please detail below:

Yes, two individuals opposed and one person cited:

<https://www.colorado.edu/today/2022/03/28/why-permanent-daylight-saving-time-bad-idea>

Please list any other sections/committee this bill should be referred to:

Additional Comments:

1 person was "neutral"; 2 individuals abstained/did not vote.

NJSBA LEGISLATIVE INFORMATION:

Upon receipt of a generated LPF, the Government Affairs Department will circulate the position to any other relevant section/committee the bill may impact for their review and comment. The bill then goes before the Legislative Committee which reviews the various LPF's received and makes a recommendation to the Board. The Legislative Committee may vote to table and refer the bill to another section/committee, vote to take no position or adopt the position of a section/committee. The Board reviews the recommendations received from the Legislative Committee and like the Legislative Committee, can vote to adopt the position, take a different position or vote to take no position. The Board may also choose to refer the bill to another section/committee. Please note, once the Board takes action on a bill, it represents the official NJSBA position that will be advanced. The section/committee will be notified of the outcome of the Board of Trustee's vote. **Please note, no section/committee shall advance their section/committee's position on behalf of the NJSBA except in conjunction with the NJSBA, through outreach by the Government Affairs Department.**

Please submit your Legislative Position Form to aconrad@njsba.com or via facsimile to (732) 249-2815. If you have any questions, please contact (732) 214-8501.

SENATE, No. 946

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 31, 2022

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Establishes permanent daylight saving time in NJ.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2022)

1 AN ACT relating to observing daylight saving time year-round in
2 the State of New Jersey, and supplementing chapter 1 of Title 1
3 of the Revised Statutes and amending various parts of the
4 statutory law.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. (New section) The Legislature finds and declares that:

10 a. The federal "Standard Time Act of 1918," Public Law 65-
11 106, 40 Stat. 450, established standard time zones for the United
12 States bounded by the designated meridian lines, including the zone
13 designated as "United States Standard Eastern Time" in which this
14 State was placed, and provided for the advancement of time for
15 each zone by one hour from the last Sunday in March to the last
16 Sunday in October each year, a practice commonly referred to as
17 "daylight saving time."

18 b. The federal "Uniform Time Act of 1966," (15 U.S.C.
19 s.260a,) was enacted by Congress to promote the adoption and
20 observance of uniform time within the standard time zones of the
21 United States. The "Uniform Time Act of 1966" did the following:

22 (1) expanded and renamed the standard time zones, renaming
23 the time zone, into which this State was placed as "Eastern Standard
24 Time";

25 (2) re-established daylight saving time as beginning on the last
26 Sunday in April and ending on the last Sunday in October each
27 year; and

28 (3) authorized a state entirely situated with one time zone, as
29 this State is, to exempt itself from the change to daylight saving
30 time, as long as it does so uniformly as an entire state.

31 c. In 1986, Congress moved the beginning of daylight saving
32 time to the first Sunday in April. Through the "Energy Policy Act
33 of 2005," Public Law 109-58, Congress established the second
34 Sunday of March as the beginning of daylight saving time and the
35 first Sunday in November as the end of daylight saving time.

36 d. (1) Under federal law as it exists, states are not permitted to
37 observe daylight saving time year-round; and

38 (2) it is the intention of the Legislature of the State of New
39 Jersey to observe daylight saving time year-round, should the
40 federal government authorize states to observe daylight saving time
41 year-round.

42 e. Over the intervening 101 years since the creation of daylight
43 saving time, the residents and businesses of this State have become
44 more accustomed to the eight months of daylight saving time each
45 year than to the four months of standard time each year.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 f. The biannual change of time between Eastern Standard Time
2 and Eastern Daylight Time is disruptive to commerce and to the
3 daily schedules, safety, and health of the residents of this State.

4 g. Remaining permanently on daylight saving time permits this
5 State to avoid negative impacts of the shifts, such as the following:

6 (1) a 2013 study published in The American Journal of
7 Cardiology found that daylight saving time shifts have a substantial
8 negative influence on the risk of heart attack; and

9 (2) a 2016 study published in the American Economic Journal:
10 Applied Economics found that the transition into daylight saving
11 time caused over 30 deaths in fatal automobile crashes between
12 2002 and 2011 due to sleep deprivation.

13 h. Remaining permanently on daylight saving time permits this
14 State to gain benefits, such as the following:

15 (1) a 2004 study by Rutgers University into the effects of
16 daylight saving time on pedestrian fatalities showed that full-year
17 daylight saving time would reduce pedestrian fatalities by 171 per
18 year and motor vehicle occupant fatalities by 195 per year; and

19 (2) a 2010 study on the effects of daylight saving time on motor
20 vehicle crashes showed that daylight saving time reduced crashes at
21 dusk by providing better visibility for drivers.

22

23 2. (New section) When the federal government authorizes
24 states to observe daylight saving time year-round, the Legislature
25 shall require that the State of New Jersey observe daylight saving
26 time year-round, pursuant to R.S.1:1-2.3.

27

28 3. R.S.1:1-2.3 is amended to read as follows:

29 1:1-2.3. The standard time of this State shall be [the time of
30 the seventy-fifth meridian west from Greenwich] Coordinated
31 Universal Time minus four hours, and shall be considered Eastern
32 Daylight Time, and wherever time is named within this State, in any
33 manner whatsoever, it shall be deemed and taken to be such
34 standard time[, except that the standard time of this State shall be 1
35 hour in advance of such prescribed time from 2:00 A.M. on the last
36 Sunday in April until 2:00 A.M. on the last Sunday in October in
37 each year, and except where otherwise expressed].

38 (cf: P.L.1955, c.47, s.1)

39

40 4. Section 18 of P.L.1940, c.17 (C.5:5-38) is amended to read
41 as follows:

42 18. Each person, partnership, association or corporation desiring
43 to hold or conduct a horse race meeting within the State of New
44 Jersey, during any calendar year, shall file with the commission an
45 application for a permit to hold or conduct such horse race meeting.
46 A separate application shall be filed for each horse race meeting
47 which such applicant proposes to hold or conduct. Any such
48 application, if made by an individual, shall be signed and verified

1 under oath by such individual, and if made by two or more
2 individuals or a partnership, shall be signed and verified under oath
3 by at least two of such individuals, or members of such partnership,
4 as the case may be. If made by an association or corporation, it
5 shall be signed by the president or vice-president thereof, and
6 attested by the secretary or assistant secretary under the seal of such
7 association or corporation, if it has a seal, and shall also be verified
8 under oath by one of the officers signing the same. Such
9 application shall specify the name of the person, association or
10 corporation making such application, and the post-office address of
11 the applicant; and if applicant is a corporation or an association, the
12 names and addresses of the directors thereof, and the name and
13 address of each owner or holder, directly or indirectly, of any share
14 of stock or certificate or other evidence of ownership of any interest
15 in such corporation or association and if a partnership, the names
16 and addresses of all partners, general or limited. If the applicant is
17 a corporation, the name of the State of its incorporation shall be
18 specified. Such application shall further specify the dates on which
19 it is intended to conduct or hold such horse race meeting, the hours
20 of each racing day between which it is intended to hold or conduct
21 horse racing at such meeting, which shall be between the hours of
22 12 o'clock noon and **【6】** six o'clock P.M., **【Eastern Standard Time】**
23 standard time (exclusive of Sundays, on which day no race meeting
24 may be conducted), and the location of the place, track or enclosure
25 where it is proposed to hold or conduct such horse race meeting.
26 Such application shall be in such form and supply such data
27 including a blueprint of track and specifications of surface of same
28 and blueprint and specifications of buildings and grandstand
29 applicant, as the commission shall prescribe, which said blueprints
30 and specifications shall be subject to the approval of the
31 commission. The commission shall furnish forms to be used in
32 making such applications, and all applications shall be made on
33 such forms.

34 (cf: P.L.1954, c.239, s.1)

35
36 5. Section 8 of P.L.1985, c.405 (C.49:3-61.2) is amended to
37 read as follows:

38 8. The following securities may be registered by notification,
39 whether or not they are also eligible for registration by coordination
40 under section 7 of P.L.1985, c.405 (C.49:3-61.1) or by qualification
41 under section 14 of P.L.1967, c.93 (C. 49:3-61):

42 a. Any security whose issuer, and any predecessors, have been
43 in continuous operation for at least five years, if:

44 (1) There has been no default during the current fiscal year or
45 within the three preceding fiscal years in the payment of principal,
46 interest, or dividends on any security of the issuer, or of any
47 predecessor thereof, with a fixed maturity or a fixed interest or
48 dividend provision; and

1 (2) The issuer, and any predecessors, during the past three fiscal
2 years, have had an average net earnings, determined in accordance
3 with generally accepted accounting practices:

4 (i) Which are applicable to all securities without a fixed
5 maturity or a fixed interest or dividend provision, which securities
6 are outstanding at the date the registration statement is filed, and
7 which average net earnings equal at least **[5%]** five percent of the
8 amount of those outstanding securities, as measured by the
9 maximum offering price or the market price on a day, selected by
10 the registrant, within 30 days before the date of filing the
11 registration statement, whichever is higher, or by the book value on
12 a day, selected by the registrant, within 90 days of the date of filing
13 the registration statement, to the extent that there is neither a readily
14 determinable market price nor a cash offering price; or

15 (ii) Which average net earnings, if the issuer, and any
16 predecessors, have not had any security of the type specified in
17 subparagraph (i) of this paragraph outstanding for three full fiscal
18 years, equal to at least **[5%]** five percent of the amount, as
19 established in subparagraph (i) of this paragraph, of all securities
20 which will be outstanding if all of the securities being offered or
21 proposed to be offered, whether or not they are proposed to be
22 registered or offered in this State, are issued;

23 b. A registration statement under this section shall contain the
24 following information and shall be accompanied by the following
25 documents, in addition to the information specified in section 15 of
26 P.L.1967, c.93 (C.49:3-62) and the consent to service of process
27 required by section 26 of P.L.1967, c.93 (C.49:3-73):

28 (1) A statement demonstrating eligibility for registration by
29 notification;

30 (2) With respect to the issuer and any significant subsidiary: its
31 name, address, and form of organization, the state or foreign
32 jurisdiction and the date of its organization, and the general
33 character and location of its business;

34 (3) With respect to any person on whose behalf any part of the
35 offering is to be made in a nonissuer distribution: his name and
36 address, the amount of securities of the issuer held by him as of the
37 date of the filing of the registration statement, and a statement of his
38 reasons for making the offering;

39 (4) A description of the security being registered;

40 (5) The information and documents specified in paragraphs (10),
41 (12), and (14) of subsection (b) of section 14 of P.L.1967, c.93
42 (C.49:3-61); and

43 (6) In the case of any registration under paragraph (2) of
44 subsection a. of this section which does not satisfy the conditions of
45 paragraph (1) of subsection a. of this section, a balance sheet of the
46 issuer as of a date within four months prior to the filing of the
47 registration statement, and a summary of earnings for each of the
48 two fiscal years preceding the date of the balance sheet and for any

1 period between the close of the last fiscal year and the date of the
2 balance sheet, or for the period of the issuer's and any predecessors'
3 existence, if less than two years.

4 c. If no stop order is in effect and no proceeding is pending
5 against any person directly or indirectly involved in the offering
6 under subsection (c) of section 3, section 17 or section 23 of
7 P.L.1967, c.93 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this
8 act (C.49:3-70.1), a registration statement under this section
9 automatically becomes effective at three o'clock ~~Eastern Standard~~
10 ~~Time~~ , standard time, in the afternoon of the second full business
11 day after the filing of the registration statement or the last
12 amendment, or at such earlier time as the bureau chief determines.
13 (cf: P.L.1997, c.276, s.17)

14
15 6. Sections 1 and 2 of this act shall take effect immediately and
16 sections 3, 4, and 5 of this act shall take effect on the first Sunday
17 in November following the effective date of federal authorization to
18 observe daylight saving time year-round.

21 STATEMENT

22
23 This bill provides for the State of New Jersey to permanently
24 observe daylight saving time by remaining on Eastern Daylight
25 Time (EDT) year-round.

26 For four months, the standard time of New Jersey is Eastern
27 Standard Time (EST), or five hours offset from Coordinated
28 Universal Time. From 2:00 A.M. on the second Sunday in March
29 until 2:00 A.M. on the first Sunday in November, the State
30 participates in the one-hour advancement of time, commonly
31 referred to as "daylight saving time." The people of New Jersey
32 have become more accustomed to the eight months of daylight
33 saving time each year than the four months of standard time.
34 Several studies have shown the biannual change between EST and
35 EDT is disruptive to commerce and to the daily schedules, safety,
36 and health of the citizens of the country, and therefore, the residents
37 of this State.

38 Under the federal "Uniform Time Act of 1966," states are not
39 permitted to observe daylight saving time year-round. If the federal
40 government amends federal law to authorize states to observe
41 daylight saving time year-round, the Legislature shall require that
42 the State of New Jersey observe daylight saving time year-round.

43 Sections 1 and 2 of this bill would take effect immediately.
44 Sections 3, 4, and 5 of this bill would take effect on the first Sunday
45 in November following the effective date of federal authorization to
46 observe daylight saving time year-round.