

Report of the Virginia State Bar  
President's Special Committee  
on Lawyer Well-Being

# The Occupational Risks of the Practice of Law

May 2019



## INTRODUCTION

**O**n August 14, 2017, a landmark report on attorney well-being was published by the National Task Force on Lawyer Well-Being (National Task Force). The National Task Force was established by the ABA Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers. The report described in great detail the wellness deficiencies that exist within the legal profession.

The report was a clarion call to the profession for critical self-examination and evaluation. The National Task Force Report has been a motivating factor in numerous bar associations studying the wellness problem and recommending changes. As an example, the American Bar Association has published numerous articles, conducted timely and thorough educational programs, and prepared a wellness tool kit that can be used for large law firms in addressing the wellness crisis. At the state level, both mandatory and voluntary bar associations have sought to identify the signs of mental health problems, to identify resources for lawyers who need treatment, and to strengthen judicial and lawyer assistance programs. Local bar associations have also presented continuing legal education programs on the wellness initiative.

However, little has been done to “drill down” to the reason that lawyers experience wellness problems at a disproportionate rate when compared to the public as a whole. Unlike other occupations that educate and prepare participants for the specific occupational risks they face, thus far little, if any, attempt has been made to identify the occupational risks to an attorney’s well-being. This dearth of information and resources served as the impetus for this Committee and its report. Stated simply, before the wellness crisis can be properly addressed, the root causes of the wellness issues must be identified. Once identified, participants in the profession will hopefully become educated and informed of the risks, so that those risks can be avoided or at least the effects of those risks can be mitigated.

This Committee was established with the sole mission of producing this report, which identifies at least some of the occupational risks of the practice of law. This Committee was tasked with completing its report during the term of the 80<sup>th</sup> President of the Virginia State Bar.

## The Committee

The president of the Virginia State Bar selected twenty individuals, including himself, who exhibited a unique skill set applicable to the wellness initiative or stated an interest in the wellness initiative. These twenty members represent a broad spectrum within the legal community. The committee consists of former presidents of statewide bar associations, a law professor, a senior vice president of the Virginia State Bar's endorsed lawyer professional liability carrier (ALPS), staff from the Virginia State Bar, an employee of Lawyers Helping Lawyers, and lawyers representing a diverse cross-section of the legal profession. The members of the committee are as follows:

**Joseph Meek Bowen, Esq.**

*Bowen & Bowen, P.C.  
Tazewell, VA*

**Graham Keith Bryant, Esq.**

*Supreme Court of Virginia  
Richmond, VA*

**Timothy Carroll**

*Lawyers Helping Lawyers  
Richmond, VA*

**Larry O. Natt Gantt II, Esq.**

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Virginia Beach, VA*

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*Sparrow Miller, P.L.L.C.  
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*Virginia State Bar  
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**Brian Thornton Wesley, Esq.**

*Thornton Wesley, P.L.L.C.  
Richmond, VA*

**Robert Marshall Worster III, Esq.**

*Cooper Ginsberg Gray, P.L.L.C.  
Fairfax, VA*

In addition to the tasks assigned to each member, individual members agreed to serve as chairs of subcommittees. Those chairs are:

Larry O. Natt Gantt II, Esq.  
Kamala Hallgren Lanetti, Esq.  
Prescott Lee Prince, Esq.  
Robert Marshall Worster III, Esq.

Finally, two individuals agreed to serve with the president as editors of this report. Those co-editors are:

Graham Keith Bryant, Esq.  
James Harrison Powell II, Esq.

## Historical Background for the Wellness Initiative in Virginia

In Virginia, Lawyers Helping Lawyers<sup>1</sup> conducted two surveys on substance abuse and mental health. The first was conducted in 2008 and the second, which was co-sponsored with ALPS, was conducted in 2014. Both surveys substantiated the belief that lawyers in Virginia experience significant mental health and substance abuse issues. The 2008 and 2014 surveys were based upon responses from 1,993 Virginia lawyers and 2,721 Virginia lawyers, respectively. Those studies reflected the following:

	2008	2014
Has the use of any substances affected either your work as a lawyer or your personal life?	No – 87% Yes – 13%	No – 87% Yes – 13%
Have personal mental health problems affected either your work as a lawyer or your personal life?	No – 76% Yes – 24%	No – 80% Yes – 20%
Has the use of any substance or personal mental health problems affected either your work as a lawyer or your personal life?	No – 69% Yes – 31%	No – 68% Yes – 32%

On a national level, the results of two large studies analyzing the legal profession were published in 2016. The first report was published by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelton Betty Ford Foundation. That study covered 13,000 currently practicing lawyers and found that between 21% and 36% qualify as problem drinkers, and that approximately 28%, 19%, and 23% are struggling with some level of depression, anxiety, or stress, respectively.

The effects of these mental health problems included suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a diversity crisis, work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception. Significantly, the ABA study found that younger lawyers in the first ten years of practice and those working in private law firms experience the highest rates of problem drinking and depression.

The second study covered fifteen law schools and over 3,300 law students. It found that 17% of law students experienced some level of depression, 14% experienced severe anxiety, 23% had mild or moderate anxiety, and 6% reported serious suicidal thoughts in the past year. When it came to alcohol consumption, the results were even more dramatic. Forty-three percent reported binge drinking at least once in the prior two weeks and 22% reported binge drinking two or more times during that period. One quarter of the participants fell into the category of being at risk for alcoholism, for which further screening was recommended.

<sup>1</sup> Lawyers Helping Lawyers will be changing its name to the Virginia Judges and Lawyers Assistance Program in the near future. This report will continue to refer to the organization as “Lawyers Helping Lawyers” to avoid confusion because the transition to the new name has not occurred at the time of publication. Regardless of its name, the organization’s mission remains the same.

The results of these two national surveys demonstrated that lawyer well-being issues could no longer be ignored. Acting for the benefit of all lawyers, the National Task Force was established.

On August 14, 2017, the National Task Force on Lawyer Well-Being Report, entitled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” was published. That report can be found at <https://perma.cc/EY3P-5G9P>. In the cover letter that accompanied the report, the co-chairs of the National Task Force wrote as follows:

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.

“To be a good lawyer, one has to be a healthy lawyer.”

Significant to Virginia is the fact that one of the co-authors of the report is our own Chief Justice Donald W. Lemons. In addition, the Virginia State Bar’s Kathleen M. Uston served as a peer reviewer for the report. Finally, Chris L. Newbold, Executive Vice-President for ALPS Corporation and ALPS Property & Casualty Company served as a co-author. Mr. Newbold has a long-standing relationship with the Virginia State Bar because ALPS has served as the VSB’s endorsed lawyer professional liability insurance carrier. He has provided input and guidance to the VSB Lawyer Insurance Committee. Mr. Newbold and Ms. Uston serve as members of this committee.

“As we move forward this year, the ‘experts’ on lawyer well-being are the attorneys across this great commonwealth who, day in, day out, actually practice law. We are the ones who must participate in critical self-evaluation, not only for ourselves, but for our families, and for those attorneys yet to come.”

On June 15, 2018, Leonard C. Heath Jr. was sworn in as the 80<sup>th</sup> president of the Virginia State Bar. In his inaugural address at the Virginia State Bar annual meeting in Virginia Beach, he announced that the wellness initiative would be at the forefront of his activities in the coming year. President Heath concluded his acceptance speech with the following call to arms:

As we move forward this year, the “experts” on lawyer well-being are the attorneys across this great commonwealth who, day in, day out, actually practice law. We are the ones who must participate in critical self-evaluation, not only for ourselves, but for our families, and for those attorneys yet to come. But, most importantly, we are compelled to do this for our clients, for our system of justice, and for the public trust.<sup>2</sup>

<sup>2</sup> Leonard C. Heath Jr., *Why Lawyer Well-Being is Important to Society*, 31 REGENT U. L. REV. 1, 9 (2018).

With the support of both the Supreme Court of Virginia and the leadership of the Virginia State Bar, the wellness initiative has made major strides forward in Virginia. The Virginia State Bar has initiated a number of changes. The following are just a few examples of the changes made.

First, Rule 1.1 of Virginia's Rules of Professional Conduct has been amended, adding a new comment 7, which calls attention to the fact that maintaining well-being is an aspect of maintaining competence to represent clients. Second, rules governing Virginia's disciplinary system have been modified to facilitate retirement for a lawyer suffering from a permanent impairment, such as an irreversible cognitive decline, by allowing retirement with dignity instead of having the lawyer's license suspended on impairment grounds. Third, the disciplinary process has also been modified so that when information of possible mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulatory matters, confidentiality rules will now allow sharing of such information with lawyer assistance programs.

Referencing the National Task Force Report, Virginia's Mandatory Continuing Legal Education Board modified and expanded its Opinion 19 dealing with attorney well-being issues. While the opinion only reinforces past practices of the board, the opinion is now designed to make it abundantly clear that attorney well-being topics will be granted CLE credit, so long as other requirements of the MCLE process are satisfied.

Predating the National Task Force Report, in April 2017 the Virginia State Bar Young Lawyer's Conference established its Wellness Initiative, which focuses on raising awareness of lawyer well-being, providing related resources to its members, and working to eliminate the stigma associated with seeking treatment for mental health and substance abuse. The YLC was already working on wellness issues because previous literature noted that substance abuse and untreated mental health issues were more significant with lawyers in their first years of practice.

Finally, members of the Supreme Court of Virginia, the Virginia State Bar president, and numerous members of the Virginia State Bar counsel staff have spoken both locally and nationally on attorney well-being issues. Uniformly, the leadership of our legal community believes that education and understanding is a major component of addressing the wellness crisis.

Motivated by the National Task Force Report, Chief Justice Lemons appointed a group of judges, bar leaders, prominent attorneys, and law school deans to study attorney wellness issues in the Commonwealth of Virginia. Chaired by Justice William Mims, the committee published its own report entitled *A Profession at Risk: Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia*, which is available at <https://perma.cc/78W3-4JNF>.

At the heart of this report was a recommendation that Virginia's lawyer assistance program, Lawyers Helping Lawyers (LHL), have a permanent, reliable, and adequate funding source paid from bar dues of Virginia's lawyers. The report further recommended that LHL serve as the state's designated judge/lawyer assistance program (JLAP). Further, the report recommended that JLAP should serve not only the needs of Virginia's judges and lawyers, but also

Virginia's law students, particularly given the fact that recent studies revealed that wellness issues arise as early as the second year of law school.

In addition to all of these actions, VSB President Heath established this Committee on Lawyer Well-Being to research and identify specific risks to the occupation of the practice of law. In investigating these risks, the committee was mindful of the following three observations. First, the wellness crisis is not about big firm versus small firm cultures, or being in private practice versus being in government practice. However, the effect of a particular occupational risk may be dependent on these variables in the professional community. Second, when it comes to "wellness," one size does not fit all. What one attorney finds helpful to maintain a healthy lifestyle may not work for another lawyer. Each of us needs to find what works given our own particular personalities, practices, and lifestyles. Third, while the wellness initiative must address the specific needs of impaired lawyers, the vast majority of lawyers who will suffer some wellness issue will never suffer to the extent of becoming impaired. It is perhaps this group of lawyers that will benefit the most from this report.

## Assignment of the Committee

This committee was tasked with identifying specific aspects or characteristics of the practice of law that might serve as a risk to a lawyer's well-being. After attending numerous conferences nationwide, President Heath had compiled an initial list of risks in a matrix format that was attached as Appendix Exhibit 8 to the report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia. Much of this committee's work was devoted to refining this list of risks. This report contains a final matrix of twenty occupational risks.

At its initial meeting on September 17, 2018, the committee elected to identify each risk, describe the potential effects, list resources available to learn about each risk, and publish practice pointers for both individuals and legal organizations to help avoid or mitigate each risk. At its second meeting on November 13, 2018, the committee decided to expound on the description of each occupational risk. Each member of the committee was tasked with gathering information, documentation, and resources that identify and explain specific risks of the practice of law. The raw data and documents were then delivered to the editors of this report, Graham K. Bryant and J. Harrison Powell II, on November 30, 2018. The editors were assigned the substantial task of compiling the resources gathered by the committee members and distilling that information into a useable document. Thereafter, the committee reconvened for conferences on January 15, 2019, and March 7, 2019, and a telephone conference on March 28, 2019, to make final improvements and edits to the report.

The occupational risks discussed in this report are divided into four categories. "Physical Risks" are those that directly affect a lawyer's bodily health. "Mental and Emotional Risks" refer to conditions of law practice that harm psychological well-being. "Adaptation Risks" are related to the changing nature of law practice in the twenty-first century. Finally, "Self-Actualization Risks" borrow from the final tier of Maslow's hierarchy of needs and refer to situations that prevent lawyers from flourishing or reaching a state of contentment between their professional, social, and personal lives.

Following this introduction is the final matrix of occupational risks to lawyer well-being, which provides a concise overview of each identified risk, its potential effects, and steps individuals and organizations can take to mitigate the risk. Most of the practice pointers for "organizations" are submitted for law firms. But some of the recommendations are directed to law schools, bar associations, bar examiners, and the courts, because those organizations can have an effect on the identified risk to lawyer well-being. Following the matrix is the body of the report consisting of substantive discussions of each occupational risk, along with some concluding remarks. Finally, the report ends with a resources section that both functions as a bibliography for the discussion sections and contains recommended materials for further reading tailored to each occupational risk. The committee decided to enhance the report's readability by inserting footnotes in the text only when directly quoting or referencing another source. By functioning as a bibliography, the resources section guides the reader to other sources that the committee relied upon in drafting the report, but that were not directly cited or referenced in the text.

This report will be formally presented at the 81st Annual Meeting of the Virginia State Bar in Virginia Beach, Virginia on June 14, 2019.

## Goals of the Committee

This report is a product of the committee's discussions, research, and experience as practicing lawyers and legal professionals. The committee did not perform its own studies because previous studies have already documented the lawyer wellness crisis. Nor is this report intended to be academic in nature, and it accordingly dispenses with many conventions of legal academic writing to promote readability. This decision was made to further the committee's two goals in publishing this report. The first was to serve as an accessible resource for all those participating in the legal community, including lawyers, judges, law students, legal assistants, law office staff, and clerks of court and their staff.

In addition, this report is intended to help those who, despite lacking familiarity with the legal profession, may nonetheless be most keenly aware of lawyers' or judges' wellness issues: the spouse, significant other, and family members of an affected legal professional. This report is designed to serve as a resource to help identify particular risks, to provide knowledge about the risks, and to offer recommendations to both individuals and legal organizations on how to avoid, minimize, or mitigate the effects of such risks. While some risks may be avoidable, others are not. However, before an individual can take action to avoid, minimize, or mitigate the risks, the individual must be aware of and made knowledgeable about them.

This report is a compilation of research about specific risks, as well as a summary of the life experiences of the committee members. With this in mind, the second goal of the committee in publishing this report is to prompt discussion and further study. This report is designed to be a first step.

It is the committee's hope that others will build upon the report, identify new risks, perhaps consolidate other risks, and establish procedures and protocols to better address and understand each risk. The occupational risks to the practice of law *must* become part of professional responsibility courses in law schools. Whether this particular report is used, or others that follow, law students must be taught about the risks, how to recognize them, and how to handle them.

## Dedication

Lastly, this report is dedicated to the memory of our friend and colleague, David P. Bobzien, the 66th president of the Virginia State Bar, and his unwavering commitment to advancing wellness in our profession.

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## Matrix of Occupational Risks to Lawyer Well-Being

PHYSICAL RISKS			
Risk Description	Potential Effects	Practice Pointers for Individuals	Practice Pointers for Organizations
Sedentary Nature of Work	Lawyers spend most working hours (and off-hours) in the seated position. Mounting evidence suggests that prolonged sitting can be as serious an issue as obesity and smoking, and can pose serious health risks, including an elevated risk of mortality. Computer slump can cause hunched shoulders and neck problems leading to long-term postural problems.	<ul style="list-style-type: none"> <li>• Understand the risks associated with physical inactivity.</li> <li>• Make efforts to add more movement to daily routines, even in activities as mundane as taking a walk at lunch or using the stairs rather than the elevator.</li> <li>• Set periodic reminders to stand up and stretch during the day.</li> <li>• Use ergonomic equipment, standing desks, walking desks, and balance boards for standing.</li> <li>• Have a regular exercise routine.</li> <li>• Stay current on medical appointments.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize the sedentary nature of legal work and encourage employees to stay active.</li> <li>• Consider subsidizing gym memberships and purchasing ergonomic office equipment as part of an overall benefits package for employees.</li> <li>• Adopt policies permitting employees to take stretch breaks and to otherwise get up and move throughout the day.</li> <li>• Educate employees on posture risks, including computer slump, and best practices for avoiding it.</li> <li>• Provide healthy food and non-alcoholic beverage options at firm events.</li> </ul>
Managing Long and Unusual Hours	The competing demands of clients, employers, and the judiciary take a toll on a lawyer's time and energy. The result is a profession characterized by long and unusual working hours that can lead to stress, exhaustion and, ultimately, burnout.	<ul style="list-style-type: none"> <li>• Recognize there are only 24 hours in a day and adopt better habits that make the most of the time allotted.</li> <li>• Plan out each day, prioritizing tasks based on their importance and urgency, and avoid interruptions until the task is completed.</li> <li>• Stop procrastinating by breaking up large and unwieldy tasks into smaller, more manageable pieces.</li> <li>• Establish reasonable expectations regarding clients' access to lawyers.</li> <li>• Take regular vacations.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider offering time management clinics and training to employees.</li> <li>• Recognize and prioritize the importance of time off to rest and recharge.</li> <li>• Lead from the front: practice what should be duplicated by leaving at a reasonable time each evening and taking appropriate vacations.</li> <li>• Promote flexible work scheduling options.</li> <li>• Provide incentives, like subsidized gym memberships, that encourage taking time to exercise.</li> </ul>

<b>PHYSICAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Sleep Deprivation	The nature and stressors associated with a lawyer’s work upset sleep, making legal professionals among the most sleep-deprived in the work force. Too little sleep poses dire health consequences, the effects of which can lead to increased risk of illness and physical injury. Sleep deprivation can also lead to a lapse in judgment, affecting a lawyer’s representation of clients and increasing malpractice risk.	<ul style="list-style-type: none"> <li>• Evaluate the quality and quantity of sleep, recognizing that it is recommended for adults to get 7 to 9 hours of sleep each night.</li> <li>• Avoid screen time (computer, television, phone, or otherwise) at least one hour before bed, and—to the extent possible—do not sleep in the same room as your phone.</li> <li>• Establish a reasonable bedtime and stick to it.</li> <li>• Consider keeping a sleep diary to rid distracting thoughts from your mind.</li> <li>• Exercise regularly (but not immediately before bedtime).</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize the health risks posed to employees who are not getting enough sleep, as well as the high likelihood of a suffering work product.</li> <li>• Encourage employees to leave work at a reasonable time consistently, and lead by example.</li> <li>• Understand the connection between lack of sleep and traditional methods of measuring lawyer performance through the billable hour construct and seek workable solutions that enable healthy sleep habits and profitable firm performance.</li> </ul>
Working Indoors	A lawyer’s indoor working environment disrupts the circadian rhythm, leads to vitamin deficiencies, and may contribute to Seasonal Affective Disorder (SAD).	<ul style="list-style-type: none"> <li>• Develop awareness of time spent inside.</li> <li>• Strive to add outdoor time when feasible.</li> <li>• Consider vitamin deficiency or SAD testing.</li> <li>• Exercise regularly.</li> <li>• Consider using a full spectrum light box.</li> <li>• Traveling to a tropical destination can be therapeutic in many ways. Warmth and increased sunlight exposure can improve mood.</li> <li>• Maintain a regular sleep schedule.</li> <li>• Eat a balanced diet.</li> </ul>	<ul style="list-style-type: none"> <li>• Understand that SAD is a real condition.</li> <li>• Adopt policies promoting time outdoors, such as walking meetings and outdoor lunches.</li> <li>• Provide training on SAD.</li> <li>• Ensure adequate lighting and indoor air quality.</li> <li>• Be aware of and allow SAD accommodations.</li> <li>• Maximize natural lighting where possible.</li> <li>• Test indoor air quality.</li> </ul>

<b>PHYSICAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Aging of Lawyers	As lawyers age, our mental and physical capacities decline, creating risks to ourselves, our firms, and our clients. At the same time, other lawyers and legal employers should recognize that aging affects each individual differently, and age is not a litmus test for legal capacity.	<ul style="list-style-type: none"> <li>• Be honest with yourself about this risk and be watchful for any warning signs.</li> <li>• Be receptive of feedback from others.</li> <li>• Proactively seek annual medical examinations to identify any cognitive deficit.</li> <li>• Solo and small-firm practitioners especially should develop a succession plan to protect clients and colleagues.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize the risk, be mindful of warning signs, and provide assistance for age-related impairments.</li> <li>• Develop policies and procedures for succession planning and encourage proactive succession planning for senior attorneys.</li> <li>• Encourage firm leaders to have an awareness of, or at least access to, fellow partners' deadlines and calendars to allow for seamless coverage in case of incapacity.</li> <li>• Consider implementing a "fitness for duty" evaluation for all lawyers to uncover and address any cognitive deficits.</li> <li>• Encourage annual medical examinations.</li> </ul>

<b>MENTAL AND EMOTIONAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Adversarial Nature of Work	The adversarial nature of the legal profession promotes feelings of anger, guilt, and fear that can lead to depression and chronic stress.	<ul style="list-style-type: none"> <li>• Be proactive about taking civility-focused CLE courses.</li> <li>• Be involved with local and statewide bar associations to develop and maintain congenial relationships with other practitioners.</li> <li>• Treat every communication with opposing counsel as though it were made in court.</li> <li>• Participate in the adversarial system without being combative.</li> <li>• Treat others the way you would like to be treated.</li> <li>• Always maintain a professional perspective and never let the client’s problem become your problem.</li> <li>• Seek advice from mentors.</li> <li>• Regularly review the Principles of Professionalism for Virginia Lawyers.</li> <li>• Join an Inn of Court.</li> <li>• Understand the importance of “Emotional Intelligence” in practicing law.</li> <li>• Be aware of “Emotional Contagion.”</li> <li>• Employ mindfulness techniques.</li> </ul>	<ul style="list-style-type: none"> <li>• Foster an open-door policy and mentorship programs to help create a comradeship that can combat the loneliness and frustration that can be the byproduct of a contentious profession.</li> <li>• Make allowances for and encourage participation in bar events and organizations to foster collegiality within the legal community.</li> <li>• Recognize the differing skill sets in individual attorneys and try to assign work that matches best with the individual.</li> <li>• Establish formal mentor-mentee programs.</li> </ul>
Individual Work	The individual nature of a lawyer’s profession can lead to feelings of isolation. In fact, legal work in general has been considered the loneliest kind of work. Lonely lawyers face a host of health-related risks and impairments, perform poorly, change jobs frequently, and experience greater job dissatisfaction.	<ul style="list-style-type: none"> <li>• Perform an honest self-assessment to determine whether you are experiencing the effects of loneliness.</li> <li>• Actively participate in bar functions and organizations and develop relationships with legal colleagues.</li> <li>• Promote and maintain an active life outside of practice with family and friends.</li> <li>• Seek counseling if needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize that it is often colleagues and supervisors who are best positioned to recognize a lonely lawyer. Have policies and procedures in place to assist such individuals.</li> <li>• Promote a positive and collaborative working environment through an open-door policy and mentorship program.</li> <li>• Organize frequent formal (or informal) lunch and social gatherings to boost morale and encourage involvement.</li> </ul>

<b>MENTAL AND EMOTIONAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Professional Demands	The practice of law is a demanding one, and the pressure lawyers face from clients, employers, and the judiciary contribute to virtually every risk outlined in this matrix, along with their incident effects and symptoms.	<ul style="list-style-type: none"> <li>• Develop and continually perfect effective communication and time management skills.</li> <li>• Proactively address issues or potential issues with clients, supervisors, or the judiciary.</li> <li>• Take care to combat potential health risks. Eat healthy, exercise daily, and get enough sleep each night.</li> <li>• Attend risk-management programs and employ appropriate risk management practices.</li> <li>• Become familiar with, and use when appropriate, the VSB Ethics Hotline (804-775-0564) and, if available, your lawyer professional liability carrier's risk management consultant.</li> </ul>	<ul style="list-style-type: none"> <li>• Law firms and organizations should seek to ensure cases are adequately staffed given the client and difficulty involved.</li> <li>• Expectations concerning requirements for billable hours and community involvement should be periodically reviewed and clearly communicated.</li> <li>• Employ and monitor appropriate risk management practices.</li> <li>• Discuss the demands and time pressures of the prospective practice area during the hiring process, including interns and summer associates.</li> <li>• Judges should seek to participate more frequently in local bar events to develop relationships with local practitioners.</li> <li>• Courts should review 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.</li> <li>• Courts should review practices that promote refusal to permit trial lawyers to extend trial and other deadline dates to accommodate vacation plans or scheduling trials shortly after end of vacation so that lawyers must work during that time.</li> </ul>

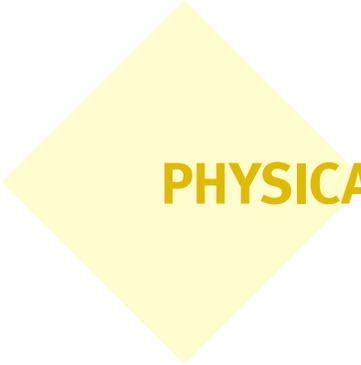
<b>MENTAL AND EMOTIONAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Vicarious Trauma and Managing Others' Problems	Prolonged exposure to our clients' legal problems and dilemmas can be mentally and physically stressful, exhausting and debilitating.	<ul style="list-style-type: none"> <li>• Recognize the risk of vicarious trauma that is inherent in the representation and championing of others' struggles.</li> <li>• Seek counseling if needed, and consider contacting Lawyers Helping Lawyers on its 24-Hour Help Line at 1-877-545-4682.</li> <li>• Intentionally set time aside to separate from the client and case in order to recharge. This can be done through conversation with trusted colleagues or the pursuit of activities and hobbies outside of law.</li> <li>• Create and maintain an end-of-day routine to help leave work at work and to transition from the office to home.</li> </ul>	<ul style="list-style-type: none"> <li>• Discuss the issue of vicarious trauma openly to encourage those suffering to seek assistance.</li> <li>• Implement an employee assistance program to provide a confidential outlet for attorneys suffering from vicarious trauma to discuss their struggles and provide access to mental health professionals where needed.</li> <li>• Be proactive in seeking out suffering attorneys who may not recognize the risk in themselves and be willing to offer aid.</li> <li>• Provide reasonable vacation and encourage its use so as to promote time away from the office.</li> </ul>
The Duty of Confidentiality	Ethical adherence to the duty of confidentiality can cause lawyers to feel isolated, delay necessary case-related tasks, and exacerbate the existing disincentives to seek help.	<ul style="list-style-type: none"> <li>• Develop strong working relationships with other attorneys inside the firm who share the client's confidences.</li> <li>• Pursue positive relationships inside and outside of the legal setting.</li> <li>• Become familiar with, and use when appropriate, the VSB Ethics Hotline (804-775-0564) and, if available, your lawyer professional liability carrier's risk management consultant.</li> </ul>	<ul style="list-style-type: none"> <li>• Promote positive, supportive, and collaborative workplace environments.</li> <li>• Foster mentorship relationships among employee attorneys.</li> <li>• Encourage an open-door policy among all attorneys and staff.</li> <li>• Train lawyers and staff on protecting client information, including the benefits and risks of using technology.</li> </ul>

<b>MENTAL AND EMOTIONAL RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Educational Debt	Law school debt is debilitating. Most law students take out significant debt with the unrealistic and unlikely expectation that they will land a high-paying job. As a result, many will be saddled with crushing monthly payments for the foreseeable future, contributing significantly to overall feelings of stress, anxiety, and disenfranchisement with the profession.	<ul style="list-style-type: none"> <li>• Prospective law students should study the profession and gain a working knowledge of the financial realities before applying to law school. They may want to consider options like public service or military enlistment as means to offset student debt.</li> <li>• Lawyers should prioritize debt repayment and live below their means during this time.</li> <li>• Consider hiring a financial planner to understand the nature of student loans and what repayment or forgiveness plans may exist.</li> </ul>	<ul style="list-style-type: none"> <li>• Law schools should consider a financial responsibility and planning course as part of a legal curriculum.</li> <li>• Law schools should counsel prospective and current students regarding options for mitigating debt, such as public service loan forgiveness or the GI Bill.</li> <li>• Law schools must proactively address the current tuition and law school debt crisis.</li> <li>• Firms and organizations can also offer financial planning services, or access to the same, to their lawyers.</li> <li>• Bar associations should consider dues models that reduce or eliminate fees for newer attorneys.</li> <li>• Law firms should consider paying directly, or providing stipends to pay for, young lawyers' bar dues and otherwise promote young lawyer involvement in bar activities.</li> </ul>
Business Management of the Practice of Law	Managing the business component of the practice of law is stressful. New lawyers largely enter practice without any formal financial education, contributing to financial stress.	<ul style="list-style-type: none"> <li>• Proactively secure business and financial literacy training through law school classes, CLE, and similar programming.</li> <li>• Retain the services of an accountant, insurance agent, and other professionals for advice regarding your business and personal financial affairs.</li> </ul>	<ul style="list-style-type: none"> <li>• Law schools should include law practice management, financial literacy, entrepreneurship, marketing, and related courses as part of legal skills curricula.</li> <li>• Encourage all law students to take at least one business management course.</li> <li>• Offer financial planning services to employees.</li> <li>• Explore, choose, and implement software solutions for timekeeping, billing, and trust accounting.</li> </ul>

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

<b>ADAPTATION RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Technology Addiction	Ever-connected lawyers who feel obligated to be available at all hours experience reduced attention span and productivity, harm to personal relationships, and risk revealing confidential information through sloppy data use.	<ul style="list-style-type: none"> <li>• Review resources on digitally detoxing, then adopt strategies.</li> <li>• Identify incremental steps to reduce technology reliance, like designating certain times and spaces as tech-free zones.</li> <li>• Strive to “unplug” from work when not in the office.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize that expecting complete availability of employee attorneys is counterproductive.</li> <li>• Provide technology addiction training during regular IT training programs.</li> <li>• Cultivate a workplace culture promoting work-life balance with time to disconnect.</li> <li>• Be aware of the increasing right-to-disconnect movement, which has resulted in some countries restricting work-related communications after business hours.</li> </ul>
Lack of Diversity in the Legal Profession	Diverse and inclusive working environments foster lawyer wellness. A lack of diversity, however, can lead to isolation, a sense of exclusion, and ultimately poor performance and a lack of autonomy.	<ul style="list-style-type: none"> <li>• Actively seek mentors within your organization and practice area.</li> <li>• Participate in diversity and inclusion sections of bar organizations.</li> <li>• Develop an awareness of implicit biases.</li> <li>• Seek out relationships with colleagues who have a different background.</li> </ul>	<ul style="list-style-type: none"> <li>• Prioritize and set accountability goals for diversity and inclusion in recruitment, practice, promotion, retention, and partnership.</li> <li>• Recognize implicit cultural biases.</li> <li>• Develop and enhance mentoring programs for a diverse workforce.</li> <li>• Train management to understand the benefits of a genuinely diverse workplace.</li> <li>• Provide adequate employee benefits, including family leave and flexible work hours.</li> <li>• Promote a team mentality among all members of the organization favoring open dialogue about diversity and other issues.</li> <li>• Emphasize respect and appreciation for all members of the team, recognizing the diversity of their contributions.</li> </ul>

<b>ADAPTATION RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
External Pressures on Lawyer Independence	Economic pressures and changing market dynamics, such as the rise of alternative legal business structures, are incentivizing attorneys to compromise their independence, risking professional sanction and harm to the rule of law.	<ul style="list-style-type: none"> <li>• Study new LEOs, reports about the state of the profession, and law practice development news.</li> <li>• Participate in the bar’s self-regulatory activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Strive to educate lawyers, students, and the public about lawyers’ role in society and how an independent bar contributes to a thriving democracy.</li> <li>• Incentivize participation in bar organizations, including the regulatory bar.</li> <li>• Provide adequate compensation.</li> </ul>
<b>SELF-ACTUALIZATION RISKS</b>			
<b>Risk Description</b>	<b>Potential Effects</b>	<b>Practice Pointers for Individuals</b>	<b>Practice Pointers for Organizations</b>
Losing Control of Professional Destiny	Becoming trapped in a particular area of law or type of legal employment the lawyer does not enjoy is at best unfulfilling and at worst actively detrimental to a lawyer’s health and well-being.	<ul style="list-style-type: none"> <li>• Proactively plan to develop the desired type of practice, including creating a plan to make the most of challenging or undesirable career phases.</li> <li>• Participate in bar associations and cultivate a strong professional network.</li> </ul>	<ul style="list-style-type: none"> <li>• Foster mentorship relationships among attorneys in the organization across practice groups.</li> <li>• Facilitate participation in bar associations and similar organizations.</li> <li>• Preemptively seek to understand a new hire’s career goals at the recruitment phase.</li> </ul>
Values Conflict with Client or Practice Setting	Lawyers carrying out instructions or practicing in a subject area contrary to their personal beliefs experience cognitive dissonance that can harm not only their practices, but also their sense of personal integrity.	<ul style="list-style-type: none"> <li>• Compare values espoused by potential employers and practice areas to personal values before committing.</li> <li>• Develop a plan for dealing with values conflicts.</li> <li>• Maintain accountability relationships with friends, family, clergy, fellow attorneys, and others you respect.</li> </ul>	<ul style="list-style-type: none"> <li>• Exercise transparency with the organization’s values at hiring and throughout the employment relationship.</li> <li>• Permit attorneys to assert personal or moral conflicts of interest and decline tasks without retribution.</li> <li>• Promote internal working and mentorship relationships.</li> </ul>
The Expectations-Reality Gap in Law Practice	Many people enter law school with certain expectations about life as an attorney, only to have those expectations disappointed by practical realities, resulting in career regret and a sense of feeling trapped.	<ul style="list-style-type: none"> <li>• Strive to develop accurate expectations about law practice realities.</li> <li>• Consider a broader definition of a legal career, including JD-preferred and other nontraditional careers using a law degree.</li> </ul>	<ul style="list-style-type: none"> <li>• Set clear expectations of practice realities during talent acquisition.</li> <li>• Promote a culture of empathy and understanding to ease the transition into practice for new attorneys.</li> <li>• Allow attorneys to change practice areas and facilitate such changes.</li> <li>• Consider adopting innovative new billing and service-delivery practices to increase client and lawyer happiness.</li> </ul>



## PHYSICAL RISKS

### Sedentary Nature of Work



#### The Risk

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One of the most dangerous aspects of the legal profession is perhaps one of the least obvious. And while some lawyers may appreciate the apparent ease of a deskbound, relatively inactive office position, the sedentary nature of legal work presents a host of health-related risks bearing directly on attorney well-being.

Sitting too much and for too long on a daily basis can lead to an early death. According to the Mayo Clinic, “[a]n analysis of 13 studies of sitting time and activity levels found that those who sat for more than eight hours a day with no physical activity had a risk of dying similar to the risks of dying posed by obesity and smoking.”<sup>3</sup> Another study suggests that “greater daily time spent sitting in major activities is associated with elevated risks of mortality from *all* causes and from cardiovascular disease.”<sup>4</sup>

According to *U.S. News & World Report*, approximately 86% of American workers sit all day at work.<sup>5</sup> Lawyers are no different. Even litigators, who may be in and out of court most days, still spend an inordinate amount of time sitting in the courtroom waiting for their case to be called, sitting at their desk preparing briefs or correspondence, or sitting at a conference table across from a client, witness, or colleague. This risk extends even beyond working hours. Consider, for example, the time spent sitting in the car on a daily commute and the time spent sitting at home at the dinner table or on the couch in front of the television unwinding, ironically, from a full day of sitting.

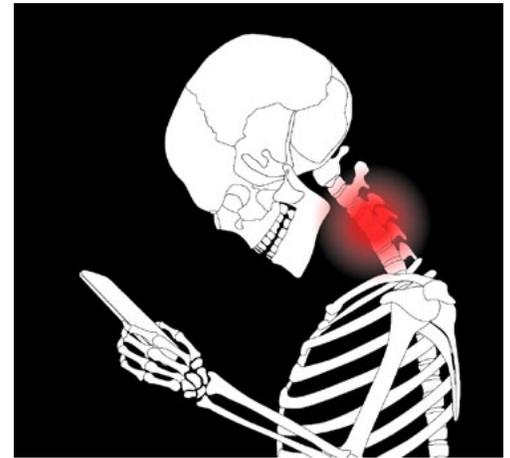
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<sup>3</sup> Edward R. Laskowski, *What Are the Risks of Sitting Too Much?*, MAYO CLINIC (May 8, 2018), <https://perma.cc/JQ8L-8KFR>.

<sup>4</sup> Peter T. Katzmarzyk et al., *Sitting Time and Mortality from All Causes, Cardiovascular Disease, and Cancer*, 41 MED. & SCI. IN SPORTS & EXERCISE 998–1005 (2009), <https://perma.cc/G32F-U3MC> (emphasis added).

<sup>5</sup> Lindsey Olson, *The ‘Sitting Disease’ Is Killing The American Workforce*, U.S. NEWS & WORLD REP. (Aug. 22, 2013), <https://perma.cc/Q2ZL-LE56>.

All that time spent sitting harms our bodies. Physical inactivity is considered the fourth leading risk factor for global mortality, with approximately 3.2 million deaths per year being attributed to physical inactivity alone. Not surprisingly, this so-called “sitting disease” has been labeled “one of the most unanticipated health threats of our modern time.”<sup>6</sup> Related conditions, like “computer slump” and “text neck,” affect most users of computers and mobile devices. Lawyers, whose daily tasks require extensive use of these technologies, are especially prone to developing long-term postural issues from hours of typing and swiping each day.



### Practice Pointers

Recognition of this risk, like others, is critical because recognition can lead to action. Fortunately, individuals and organizations need only take simple steps to offset its danger.

Medical research suggests that if people make the relatively benign choice to stand up, sit less, and move more, significant benefits in physical and mental health follow. Low-intensity, non-exercise activities, surprisingly, may be an effective alternative to engaging in the doctor-recommended amounts of moderate to vigorous activity each week. This is because even the most prolific exerciser can have their efforts countered by the effects of prolonged sitting that occurs throughout the day.

**“Physical fitness is not only one of the most important keys to a healthy body, it is the basis of dynamic and creative intellectual activity.”**

*-John F. Kennedy*

Non-exercise activity thermogenesis — also known as NEAT — encompasses those calories that we burn every day simply by living life. An example from the National Academy of Sports Medicine explains this concept succinctly:

[A] 145 lb. person burns approximately 102 calories an hour while performing their office job in a seated position (1.7 kcal / minute), but burns 174 calories an hour if performing those same office duties while standing. This may not seem like much, but it translates to 18,000 calories or a little over 5 lbs. over a 50-week work year (250 work days). By comparison, that same person would need to squeeze in 60, 30-minute runs at 5 mph to achieve that same caloric burn.<sup>7</sup>

Every little movement, therefore, can accumulate over time into a sustainable weight-loss solution, which in turn can influence overall health and well-being. This means that individuals can make small choices each day to improve their health and counteract the deadly impacts of prolonged sitting. For example, simple things — like parking at a distance from a building, using stairs instead of elevators, setting reminders on a phone or watch to stand up and move,

<sup>6</sup> *The Facts, JUST STAND*, <https://perma.cc/D6TP-W8CS> (listing statistics and resources).

<sup>7</sup> Fabio Comana, *A Neat Approach to Weight Loss*, NAT'L ACAD. SPORTS MED. (Dec. 19, 2018), <https://perma.cc/88CU-95TQ>.

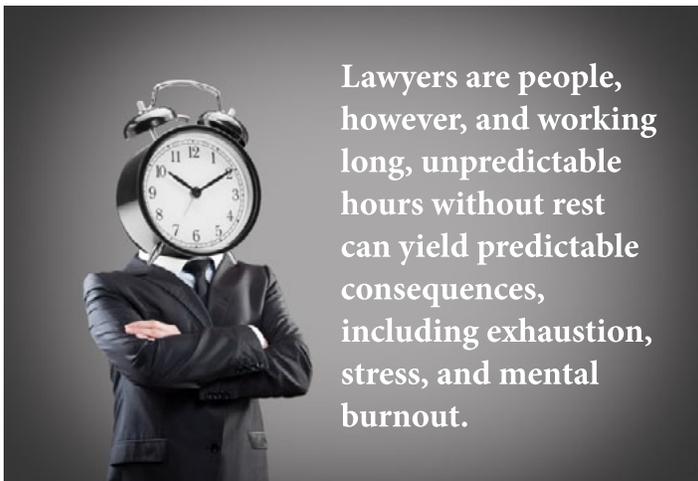
working at a standing desk, taking multiple stretch breaks, and walking at lunch — all make a positive difference. Additionally, stay current on all medical appointments to catch medical issues related to a sedentary working environment, many of which can go unnoticed until it is too late.

At the organizational level, measures should be taken to permit and encourage freedom of movement. Organizations can also consider subsidizing membership at a gym, many of which offer corporate discounts. Employers can also purchase and train employees in the use of ergonomic equipment, standing desks, and balance boards for standing at desks. Finally, firms should try to offer healthy food and beverage alternatives at events. Organizations that champion the health of their employees in this regard may see a happier workforce, less turnover, and a better work product.

## Managing Long and Unusual Hours

### ↓ The Risk

For most lawyers, working long and unusual hours is a fact of life, especially for associates. It is expected and, given the prevalence of the billable hour throughout the legal landscape, often necessary for the overall profitability of law firms and attorney advancement. Lawyers are people, however, and working long, unpredictable hours without rest can yield predictable consequences, including exhaustion, stress, and mental burnout.



While the workaholism that characterizes the legal workforce is not a new phenomenon, modern advances in technology and communication have made it even harder to disconnect. Where correspondence with one's co-workers, clients and opposing counsel was once limited to regular mail and working hours, the advent of email, laptops, and mobile phones has blurred the lines between work and time off. **See Technology Addiction.** Clients frequently do not recognize how long lawyers spend on their cases or that their lawyer may be handling other cases. Because clients often do not realize that their lawyer, too, is only human, they may demand immediate attention.

Court demands and deadlines also govern much of an attorney's time. Cases develop and morph over time, and it is challenging to anticipate or plan how long a trial or hearing, and the necessary preparation, may take. Consequently, lawyers must constantly react to the changing landscape of a case in order to competently represent the client. Doing so often requires late nights and early mornings, particularly in the days and weeks leading up to a significant court appearance.

Compounding these concerns is the billable hour — that is, what percentage of a lawyer’s time actually counts in the eyes of the firm. Put bluntly, what can feel like a full day’s worth of work can be drastically diminished once the actual billable hours are tallied, particularly in smaller firms where individual lawyers must assist in many of the day-to-day aspects of keeping a small business running — time that adds up significantly but that cannot be billed to a client. The end-result? The lawyer must work more hours wherever they can be found, including nights, weekends, and holidays, to meet his or her goals or requirements.

## Practice Pointers

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Dealing with this occupational risk requires acceptance of the fact that there simply are not enough hours in the day. Given this undeniable truth, lawyers should employ time-management techniques to better organize both their practice and their life away from law.

Time itself, however, cannot be managed. Instead, the events that make up time must be organized effectively. A helpful article on the subject published by the University of Georgia Cooperative Extension identifies ten strategies to aid in individual time management:

1. Know how you spend your time: keep a log of daily activities.
2. Set priorities: know the difference between important and urgent.
3. Use a planning tool: write down tasks and review them daily.
4. Get organized: reduce clutter.
5. Schedule time appropriately: block out time for important tasks and avoid interruptions.
6. Delegate: request help from others.
7. Stop procrastinating: break up overwhelming tasks into manageable parts.
8. Manage external time consumers: phone, email, unexpected visitors, meetings, and family.
9. Avoid multi-tasking: switching from one task to another costs time and reduces productivity.
10. Stay healthy: schedule time to relax and recharge physically and mentally.<sup>8</sup>

Taking vacations is imperative to well-being and family life. A good sign that a vacation is in order is when life feels too busy to take one. Simply stated, no one is that important. Every lawyer must find what works, whether that means a one, two, or three-week vacation, a series of “long weekends,” or a well-earned sabbatical. Time away from the office is vital in the marathon known as the practice of law.

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<sup>8</sup> Sue W. Chapman & Michael Rupured, *10 Strategies for Better Time Management*, TIME MGMT., May 2008, <https://perma.cc/K5KG-WDGG>.

At the organizational level, employers should consider offering time management clinics to assist their employees in developing the skills necessary to thrive in a demanding practice. Fostering an atmosphere of congeniality and emphasizing the importance of time off from work is a necessity. Firm leadership should lead by example in this arena to encourage associates and support staff to take time off to recharge and, where possible, provide the occasional option to work from home. Simple things like a partner delaying the delivery of an email to an associate from 7:30 p.m. to 8:00 a.m. the next day (yes, this can be done) may have a substantial and positive impact on the associate's ability to seek work-life balance.

Too often, lawyers who otherwise have vacation time to take may feel pressure to be in the office simply to "show face." While this may be important in some respects, firm leadership should recognize the dangers associated with long and unusual hours away from home and take steps to minimize the risks by encouraging — not discouraging — their employees to take care of themselves. And one of the best ways to do that is for firm leadership to lead from the front and begin by first taking care of themselves.

## Sleep Deprivation

### The Risk

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Lawyers are among the most sleep-deprived professionals in the work force, second only to home health aides according to one survey.<sup>9</sup> Though widely acknowledged throughout the legal field, sleep deprivation is often ignored as a by-product of a successful law practice. Sleep deprivation, however, is a major health issue that requires attention and, if necessary, medical intervention.

The lack of sleep — whether due to a sleep disorder, working late hours, work-induced stress, or the insomnia caused by the other risks addressed in this report — can drastically affect mental and physical health. According to an article published by Johns Hopkins, sleep researcher Patrick Finan has identified the following somewhat surprising repercussions associated with the lack of sleep:

- 6,000 fatal car accidents are caused each year by tired drivers;
- 1 in 25 adults have fallen asleep at the wheel in the past month;
- Increased cravings for sweet, salty and starchy food;
- 50% increased risk for obesity if sleeping less than 5 hours a night;
- 36% increased likelihood for colorectal cancer;
- 3 times the risk for type 2 diabetes;
- 48% increase in developing high blood pressure;

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<sup>9</sup> Debra Cassens Weiss, *Law Is Second-Most Sleep-Deprived Profession, Federal Survey Finds*, A.B.A. J. (Feb. 27, 2012), <https://perma.cc/V4AH-WLSZ>.

- 3 times more likely to catch a common cold;
- 33% increase in dementia risk;
- Greater risk for depression, irritability, anxiety, forgetfulness, fuzzy thinking; and
- The brain can age 3–5 years due to lack of sleep.<sup>10</sup>

Not surprisingly given some of the above effects of sleep deprivation, studies have also shown that moderate sleep deprivation produces impairments equivalent to those associated with alcohol intoxication. After seventeen to nineteen hours awake, human performance is equivalent to that of a blood alcohol concentration (BAC) level of .05. After longer periods of sleep deprivation, the performance level reaches levels equivalent to a BAC of 0.1 percent, beyond the legal intoxication level in most states. In short, continuing to work without enough sleep is like trying to work while drunk.

Considering all of this, tired lawyers should also be aware of their sleep deprivation's effect on clients' cases. The evidence is strong that an individual's mental capacity — and therefore, the quality of his or her work — is drastically diminished without adequate sleep. Hence, the risks associated with sleep deprivation are not limited just to the health of the legal practitioner: his or her license could also be on the line if a vital mistake is made while representing a client.



As dangerous as the lack of sleep is, the profession has nevertheless consistently ignored the problem. As one commentator notes, if you tell a lawyer he or she is not getting enough sleep, one of three responses is common: resigned ambivalence (i.e., sleeplessness is a fact of life that they are used to), the macho response (i.e., bragging about getting no sleep while chasing unsustainable billable hours), or plain denial.<sup>11</sup> To break through these common responses to the problem, the effects of the lack of sleep must be understood and addressed at both the individual and organizational levels.

## Practice Pointers

At the individual level, lawyers need to take affirmative steps to regain control of their sleep. According to the Mayo Clinic, adults should get seven to nine hours of sleep each night.<sup>12</sup> How this is accomplished will be unique to each individual, though some ideas include: keeping a sleep diary to put thoughts on paper and out of the mind, avoiding external stimuli (including screens of any sort) before going to bed, exercising regularly (though not immediately

<sup>10</sup> Patrick Finan, *Sleep Deprivation Effects*, JOHNS HOPKINS MED., <https://perma.cc/YHL8-ZYAF>.

<sup>11</sup> Zach Wolfe, *I'll Sleep When I'm Dead: The Ignored Epidemic in the Legal Profession*, FIVE MINUTE L. (July 31, 2017), <https://perma.cc/XM52-7H9K>.

<sup>12</sup> Eric J. Olson, *How Many Hours of Sleep Are Enough for Good Health?*, MAYO CLINIC, <https://perma.cc/D93R-LXJ8>.

before bed), and establishing a consistent bedtime and bedtime routine. If feeling stressed about work or a looming deadline, remember that spending an extra few hours on something at the cost of a good night's rest can sometimes cause more harm than good.

Law firms and organizations, in turn, should recognize that getting more sleep has a far greater likelihood of improving job performance than can be accomplished through marathon workdays. Leadership can lead by example, recognizing the importance of adequate rest by leaving on time each day and thereby sending the implicit message that it is okay for associates and support staff to do the same. Some larger firms have also instituted “nap pods” in their breakrooms to provide a creative solution to this epidemic. Clever though this approach is, a more fundamental shift in organizational mindset is needed for long-term improvement.

Comparing lawyers with professional athletes, one legal commentator has emphasized the importance of “game day” over the days and hours leading up to it. Professional athletes, by and large, recognize this reality and do what they can to ensure their bodies stay in peak condition by getting enough sleep, particularly in-season. Contrast this with the legal profession, which tends to measure performance by the number of hours worked. “When sleep-deprived lawyers bill hundreds of caffeine-fueled hours doing mediocre work, it’s not the clients who benefit. Generally, clients would be better served by razor-sharp mental focus and efficiency.”<sup>13</sup> Rather than emphasize the number of hours worked, lawyers should be focused on winning each “game,” which can be defined as any court appearance or client-deliverable.

Admittedly, this kind of institutional shift cannot occur overnight. But law firms and organizations need to be cognizant of the real risk that sleep deprivation can have on both their employees *and* their clients. Once this risk is better understood, steps should be taken to minimize it, whether that be through the installation of nap pods, or ultimately, a more fundamental shift in the attitude towards billable work and its accounting.

## Working Indoors

### The Risk

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The legal profession is undoubtedly an indoor one. Attorneys’ offices seem like cushy workspaces, but even the most pristine of indoor work environments presents several risks to lawyer well-being.

Foremost among these is limited exposure to sunlight and the attendant disruptions of circadian rhythm. Artificial light is no substitute for natural sunlight: artificial light disrupts the body’s natural clock, contributing to difficulty concentrating and even medical issues like high blood pressure and respiratory problems. Insufficient exposure to sunlight contributes to vitamin D deficiencies, which can cause feelings of fatigue and moodiness. Exposure to artificial light can also make it harder to fall asleep. In fact, one study found that employees

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<sup>13</sup> Wolfe, *supra* note 11.

not exposed to natural light sleep an average of 46 minutes less per night than those with a healthy amount of natural light exposure.<sup>14</sup>

Detachment from natural light can contribute to another condition known as Seasonal Affective Disorder (SAD). SAD is a type of depression related to seasonal changes — it generally begins in the fall, continues through the winter months, and drops off as the days grow longer in the spring. Common symptoms include a lack of energy, moodiness, hypersomnia, social withdrawal, fatigue, irritability, feelings of loneliness and sensitivity to social rejection, and a loss of interest in previously enjoyed activities. Although the exact mechanism behind SAD is not fully understood by science, various studies indicate that 15–30% of the global population experiences some degree of SAD and link that condition to insufficient exposure to sunlight. The annual winter doldrums are likely exacerbated — and extended — by attorneys’ long, indoor working hours.



A few other, less obvious risks from the indoor working environment bear mentioning. The quality of indoor air can be substantially worse than that of the air outside, with dampness, mold, dust, and cleaning materials contributing to eye, nose, throat irritation, and even fatigue. Many attorneys are familiar with the persistent, dull headache that comes toward the end of the day: the potential causes are legion, but at least one study suggests poor air quality as a cause. Finally, recent studies of myopia — nearsightedness — among urban populations have drawn a tentative connection between insufficient exposure to outdoor light and development of the condition.<sup>15</sup> This possible link is a departure from the standard thinking just a few years ago, which assumed myopia was primarily hereditary.

## Practice Pointers

The most important thing both individual attorneys and organizations that employ them can do to mitigate this risk is to develop an awareness of just how much time lawyers spend inside daily. A study surveying 16,000 people across North America and Europe found that most respondents thought they spent two-thirds of their time inside.<sup>16</sup> In actuality, approximately 90% of all people spend close to *22 hours inside* each day. In an average workday, the typical desk-job employee spends as little as 15 minutes outside in daylight. That is just half the time most people need to calibrate their circadian rhythm.

Scientists recommend exposure to two hours of daylight per day. Organizations employing lawyers should therefore adopt policies promoting time outdoors, such as permitting “walking meetings” where feasible and encouraging employees to take lunch away from their desks. Individuals should also strive to spend at least some time outside during their personal time.

<sup>14</sup> *The Indoor Generation: Facts and Figures*, VELUX (2018), <https://perma.cc/BH6Z-XTUQ>.

<sup>15</sup> Nathan Seppa, *Urban Eyes: Too Much Time Spent Indoors May be Behind a Surge in Nearsightedness*, 183 SCI. NEWS, no. 3, at 22 (2013), <https://perma.cc/TL33-XVZ4>.

<sup>16</sup> *The Indoor Generation*, *supra* note 14.

Ultimately, spending significant time indoors is an undeniable facet of a lawyer's life. However, certain strategies can help mitigate the effects of working indoors. Simple things such as exercising regularly, eating a balanced diet, maintaining a regular sleep schedule, and taking a vitamin-D supplement can help alleviate the symptoms of SAD. Phototherapy, which may include the use of a full spectrum lightbox or taking a trip to a tropical destination to be exposed to increased sunlight, is commonly employed to minimize the effects of SAD. Having an office on the southern side of the building, which increases exposure to sunlight during January and February, can also have a positive effect. For those suffering more significant effects of SAD, talking to a doctor is highly recommended.

Organizations must understand that SAD is a real condition and they should accommodate, if possible, requests to deal with SAD. Organizations should seek to maximize natural lighting in offices and, if needed, employ full spectrum lighting. Finally, organizations should take steps to ensure that indoor lighting is high-quality and adequate for lawyers' reading-intensive tasks. They should also review their facility's HVAC system, and consider professional testing if there is any doubt as to indoor air quality.

## Aging of Lawyers

### The Risk

Time passes inexorably, and everyone, lawyers and laypeople alike, are getting older with each passing day. With advancements in medical technology, the average lifespan continues to increase, yielding (one hopes) a longer and more fulfilling life. Because people are living longer, people are also working longer. Whether due to the financial constraints discussed elsewhere in this report or other reasons, lawyers are opting to practice longer than ever before. Although this commitment to the profession should be lauded, and seasoned attorneys offer much in terms of their experience and ability to mentor new lawyers, aging lawyers also carry an increased risk for declining mental and physical capacity. As such, aging lawyers — and the firms or organizations for which they work — must recognize the realities incident to aging, and the potential dangers they may pose to the individual lawyer and his or her clients.

**“Nearly 65% of law firm equity partners will retire at some point during the next decade.”**

First, consider the facts. In 2016, Virginia had 18,194 “senior” — that is, over age 55 — lawyers, which constituted 35% of the overall 51,096 lawyers licensed by the Virginia State Bar.<sup>17</sup> The American Bar Association's National Task Force Report on Lawyer Well-Being shared two surprising statistics: first, the oldest Baby Boomer turned 62 in 2008 and the youngest Boomer will turn 62 in 2026, and second, nearly 65% of law firm equity partners will retire at some point during the next decade.

<sup>17</sup> RENU M. BRENNAN ET AL., THE AGING LAWYER AND IMPAIRMENT: PROBLEMS AND SOLUTIONS (2016), <https://perma.cc/LDX7-J8BJ>.

As the lawyer population ages, current practitioners must be aware of the potential for mental or physical impairment in their older colleagues to protect those individuals, their clients, and themselves.

To be sure, the effects of an aging body and mind may manifest differently for different individuals. Some common signs include short-term memory loss, lack of mental flexibility, language-related problems, disorientation, attention or concentration deficits, and decreased emotional stability. Age-related degenerative diseases (e.g., cerebrovascular disease, small and/or large strokes, microvascular ischemic changes) or neurodegenerative diseases (e.g., Alzheimer’s disease, Parkinson’s disease, dementia) are often — though not always — the cause, as this report makes plain. Nevertheless, older attorneys are more prone to these symptoms than younger ones.

The practice of law is an analytical, skilled profession requiring mental acuity. Although not a universal rule, those abilities generally decline as we age. A diminished ability to assess and pursue a client’s needs in the professionally competent manner required of an attorney poses a serious risk to the client and their case. This diminished ability can lead to drastic repercussions for the lawyer and his or her employer, including bar complaints and sanctions resulting from a case gone wrong or a practice improperly wound up.

Unfortunately, according to an article published by the ABA, it is much harder to spot such impairments in high-functioning individuals, like lawyers, than it is in the remainder of the population. Often, a lawyer may not show any sign of a cognitive decline until it is too late. The article summarized it this way:

The more developed a person’s brain, the more capable she is of hiding any impairment. [Jonathan Canick, Ph.D.,] reported that a professional’s highly developed routines, practices and conversational and social skills, which are rehearsed and reinforced over a career, can function almost reflexively and automatically, obscuring detection of underlying problems that may be more readily apparent in individuals with lesser ability.<sup>18</sup>

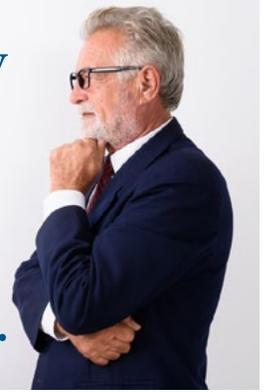
In other words, because lawyers are, by their education and the nature of their practice, highly intelligent and capable people, their cognitive decline can go largely unnoticed.

Thus, aging lawyers who suffer cognitive decline not only place the client and their practice at risk, but also themselves if the help needed does not come because their overall decline is not noticed. Sadly, it seems “[t]he highly valued skills and abilities a lawyer develops over many years of practice that once contributed to great success are the same qualities that may ultimately contribute to an unfortunate downfall.”<sup>19</sup>

<sup>18</sup> Kendra L Basner, *Aging Population of Lawyers Means Colleagues Need to Keep Watchful Eye*, 30 LAW. MAN. PROF. CONDUCT 637 (Sept. 24, 2014), <https://perma.cc/R4CY-T9KC>.

<sup>19</sup> *Id.*

**The oldest Baby Boomer turned 62 in 2008 and the youngest Boomer will turn 62 in 2026.**



 **Practice Pointers**

Given the prevalence of more seasoned lawyers among the profession, the challenges that come with an aging legal profession must be considered and understood. Unlike some of the risks discussed by this report, aging is one that literally cannot be avoided.

At the individual level, lawyers must be introspective and receptive of feedback from others. If you notice that tasks are taking you much longer to complete than is ordinarily the case, or if you begin recognizing in yourself some of the symptoms listed above, take note. Lawyers, and even Lawyer Assistance Program (LAP) professionals, simply do not have the experience to diagnose and treat cognitive disorders and their associated impairments. Instead, all lawyers should have regular, if not annual, examinations by their primary care physicians. Potentially impaired lawyers may need — and should agree to — formal evaluation by specialists in psychology, psychiatry, neurology, gerontology, or such other fields as deemed necessary by healthcare providers. As we age, periodic evaluations by such professionals, while inconvenient and perhaps somewhat discomforting, are far more preferable to the consequences of undetected impairment for our clients, colleagues, families, and ourselves. Finally, senior lawyers should proactively develop succession plans to minimize negative effects for their clients and colleagues in the event they face an unexpected decline in their mental capacity.

**“The highly valued skills and abilities a lawyer develops over many years of practice that once contributed to great success are the same qualities that may ultimately contribute to an unfortunate downfall.”**

At the organizational level, it bears emphasis that colleagues and coworkers are the first line of defense to this risk. Lawyers must watch out for each other. Firms, LAP professionals, and individual lawyers should learn about this risk and the red flags that suggest a colleague’s cognitive abilities have dropped below the level that is required for effective law practice. Firms and organizations may also consider flexible work schedules, team approaches (older lawyers working with other lawyers), or lightened caseloads for aging lawyers, as well as implementing a “fitness for duty” evaluation for all lawyers to ensure a constantly effective workforce. Although age affects every attorney differently and is not a litmus test for legal ability, all lawyers should be mindful of its warning signs and provide assistance for age-related impairments. All practices (especially those of sole practitioners) should also have a policy for succession planning in the event of a lawyer’s retirement or sudden incapacity to ensure that clients are adequately protected.

# MENTAL AND EMOTIONAL RISKS

## Adversarial Nature of Work

### ↓ The Risk

The adversarial nature of law practice distinguishes it from other professions. “In its simplest terms, an adversary system resolves disputes by presenting conflicting views of fact and law to an impartial and relatively passive arbiter, who decides which side wins what.”<sup>20</sup> The method by which this is accomplished, however, is necessarily conflict-ridden, and conflict breeds stress.

The “nature of civil litigation,” as one commentator has observed, “involves two lawyers (often Type A personalities) squaring off against one another under circumstances where there will be a winner and a loser, and part of each lawyer’s job will be to capitalize on any possible error in judgment that the other side makes.”<sup>21</sup> Summarized another way: “[n]early every stage of litigation is a battle of persuasion, from convincing opposing counsel that the offer you made is favorable and reassuring your client that you have made a fair assessment of the case that justifies your billable hours, to persuading a judge or jury to view the facts of a case as you do.”<sup>22</sup> In short, conflict is an unfortunate reality for many lawyers.

The emotions created by incessant conflict — anger, guilt, and fear — cause stress that can have physical ramifications. Stress, in and of itself, is not a bad thing. Chronic stress, however, can inhibit the body’s essential functions, including disease prevention, and, as at least one study has



<sup>20</sup> Monroe H. Freedman, *Our Constitutionalized Adversary System*, 1 CHAP. L. REV. 57, 57 (1998).

<sup>21</sup> Dan Lukasik, *A Lawyer’s Heart*, LAWS. WITH DEPRESSION (June 11, 2009), <https://perma.cc/HR7J-LN94>.

<sup>22</sup> Jade P. Gary, *Respect Your Adversaries: How to Overcome the Adversarial Nature of Litigation*, A.B.A. (Oct. 31, 2017), <https://perma.cc/L6GY-JJ55>.

shown, accelerate the body’s aging at a cellular level.<sup>23</sup> Chronic stress can also lead to anxiety disorders (including panic attacks), lack of sleep, digestive issues, and heart disease.

The contentious nature of the legal profession and its associated stress can also negatively affect a lawyer’s mental health. Lawyers are prone to a “simmering variety of anger” that can express itself in a multitude of ways, including a cynical attitude, impatience, irritability, depression, disconnection from others, and fatigue.<sup>24</sup> Elevated levels of hostility, in turn, have been shown to correspond with premature deaths related to cardiovascular disease.

Lawyers need to be taught and to understand that the practice of law does not involve only logic and analytical skills, but also an understanding of their own emotions and the emotions of those around them. Concepts like “Emotional Intelligence” and “Emotional Contagion” are important for lawyers to better comprehend their clients and their clients’ needs. But a better understanding of these concepts is also vital to lawyer well-being.

“[E]motional intelligence is the ability for each of us to recognize, understand and manage our own emotions as well as the ability to recognize, understand, manage and influence the emotions of others.”<sup>25</sup> It is not enough to understand one’s own emotions or the emotions of others without also understanding that emotions can spread between individuals, “similar to a disease process known as ‘emotional contagion.’”<sup>26</sup> Add to this the immutable fact that “[l]awyers are constantly dealing with people who are under stress or strain of one sort or another.”<sup>27</sup> As a result, an attorney’s emotional state can be seriously affected by the emotions of a client, an adversary, or a judge. Significantly, these concepts are not adequately taught in law schools or CLE programs. And like most topics affecting lawyer well-being, acknowledgment of the risk and education about it is critical.

“Lawyers are constantly dealing with people who are under stress or strain of one sort or another.”

## Practice Pointers

While most lawyers cannot escape the adversarial nature of their work, steps can be taken to minimize its potentially destructive effects. At the individual level, for example, lawyers should take civility-centered CLEs and consider participating in organizations devoted to professionalism and civility, such as the American Inns of Court. Lawyers can also maintain an active involvement with state and local bar associations and professional organizations to build and maintain relationships with other practitioners in their areas. Developing cordiality and comradeship with other lawyers who practice in similar fields outside of a lawsuit can

<sup>23</sup> Jennifer Pirtle, *Stressing Yourself Sick*, A.B.A. J. (Sept. 2006), <https://perma.cc/MWB7-DB5L>.

<sup>24</sup> Lukasik, *supra* note 21.

<sup>25</sup> Gina Alexandris, *Emotional Intelligence and Lawyers — an Old New Frontier*, L. PRAC. TODAY (Oct. 12, 2018), <https://perma.cc/9HAH-GDGY>.

<sup>26</sup> Peter Reilly, *Mindfulness, Emotions, and Mental Models: Theory that Leads to More Effective Dispute Resolution*, 10 NEV. L.J. 433, 446 (2010).

<sup>27</sup> *Id.* at 449 n.108 (quoting Erwin N. Griswold, *Law Schools and Human Relations*, 37 CHI. B. REC. 199, 203 (1956)).

“Chronic incivility is corrosive.”

—Report of the  
National Task Force  
on Lawyer Well-Being

go a long way in tempering any feeling of animosity towards that individual when on opposite sides of a case.

Once litigation has been initiated, the temptation to engage in “battle” may present itself. However, lawyers should strive to follow the Golden Rule and treat opposing counsel as they would like to be treated, as long as the client’s interests are otherwise protected. For example, lawyers should be willing to extend a discovery deadline or postpone a hearing if opposing counsel makes a reasonable request. Lawyers should also refrain from name-calling or posturing. And perhaps most helpful, lawyers should treat every piece of communication with opposing counsel —

whether it be written or verbal — as though it were in front of a judge. While the lawyer can only control his or her own actions and reactions, if enough lawyers make the choice to be more cordial toward their colleagues, the otherwise adversarial nature of the profession can be managed.

Lawyers, judges, and law students must gain an understanding of concepts like “Emotional Intelligence” and “Emotional Contagion” and be taught how to deal with the emotional impact of the practice of law. While everyone must find what works for them, mindfulness training is particularly effective for most.

At the organizational level, firms can pursue several initiatives to deal with the adversarial nature of the legal practice and its ramifications. For example, senior leadership can foster an open-door policy among lawyers and staff to help create comradeship and combat the feeling of isolation engendered by the chronic aggression of law practice. Firms and organizations can also encourage participation in civility programming and organizations, as well as attending social gatherings with local bar organizations to foster cordiality within the legal community. Organizational leaders should recognize that new lawyers bring a unique set of strengths and traits to the firm or organization. They should therefore attempt to identify those traits and encourage their development. Doing so will help the new lawyer thrive and feel more connected and accepted by the organization.

The practice of law is not a one-size-fits-all profession. Where one lawyer may thrive in the heat of a courtroom battle or the overall competitive nature of practice, another may be conflict-averse and better suited to research and writing. Firms and organizations should remember, however, that introverted lawyers are no less effective than extroverted lawyers. Therefore, organizational leadership should identify the strengths and weaknesses of their workforce and assign work accordingly, providing the necessary training and support where needed.

## Individual Work

### The Risk

The practice of law can be lonely. In fact, it is the loneliest kind of work, according to a report published by the Harvard Business Review, with 61% of lawyers ranking “above average” on a loneliness scale.<sup>28</sup> The inherently intellectual nature of practicing law requires lawyers to spend a considerable amount of time writing, researching, and studying. Long hours and heavy client loads, coupled with the profession’s often-competitive culture, contribute to feelings of isolation. Left unchecked, this risk can yield several surprising health risks.

For example, studies examining the effects of loneliness have identified a multitude of physiological and mental effects, including:

- Diminished physical activity;
- Diminished motor function;
- Symptoms of depression;
- Disrupted sleep and daytime dysfunction;
- Impaired mental and cognitive function;
- Increased systolic blood pressure;
- Increased sympathetic tone and vascular resistance;
- Increased hypothalamic pituitary adrenocortical activity;
- Altered gene expression related to anti-inflammatory responses; and
- Altered immunity.<sup>29</sup>

Other research suggests that loneliness has the same effect as smoking fifteen cigarettes a day on our overall health and our health-related expenses.<sup>30</sup> Perhaps more troubling than any of the above, though, is evidence suggesting that loneliness can significantly contribute to premature death, exclusive of other factors.<sup>31</sup>

Not surprisingly, lonely workers lose social skills, tend to perform more poorly, quit more often, and experience greater job dissatisfaction, all at significant cost to their employers. Put

“Loneliness and the feeling of being unwanted is the most terrible poverty.”

– Mother Teresa

<sup>28</sup> Shawn Achor et al., *America’s Loneliest Workers, According to Research*, HARV. BUS. REV. (Mar. 19, 2018), <https://perma.cc/46KZ-7U47>.

<sup>29</sup> JoAnn Grif Alspach, *Loneliness and Social Isolation: Risk Factors Long Overdue for Surveillance*, 33 CRITICAL CARE NURSE, Dec. 2013, at 8–13, <https://perma.cc/H83U-TSKD> (citing studies).

<sup>30</sup> Achor et al., *supra* note 28.

<sup>31</sup> Alspach, *supra* note 29.

succinctly, loneliness begets burnout. And lawyers, although perhaps the loneliest of professionals, are not alone in their feeling of isolation. Almost 40% of Americans have reported being lonely, and the United Kingdom has even appointed a “Minister of Loneliness” to address the epidemic in that nation, which saw more than nine million people reporting a “frequent” feeling of loneliness in 2017.<sup>32</sup>

Finally, the nature of individual work may also expose an attorney to a higher risk of malpractice claims. Practitioners working alone may be at greater risk of making mistakes if they are not consulting other attorneys when novel or difficult issues arise.

## Practice Pointers

Loneliness is often subjective. Some lawyers, after all, work better alone and prefer solitude. Given the hazards of loneliness described above, however, all lawyers should be aware of the effects of prolonged isolation, both on their health and on the profitability of their position.

Due to the subjective nature of this risk, any remedy would ideally begin with the individual lawyer. An honest self-assessment will be required, and the lawyer should be proactive in seeking social outlets, both inside and outside of their employer. If the employer offers a mentorship program, lawyers should participate wholeheartedly to develop strong relationships with firm colleagues. Lawyers should also intentionally interact with their colleagues on a daily or weekly basis to help prevent a feeling of lonely drudgery. Outside of work, research has shown that those who have more people around them in their private lives are less likely to experience the ill effects of loneliness. A concerted effort, therefore, must be made to keep and maintain healthy relationships with family and friends. Competing on sports teams, participating in religious organizations and attending worship services, volunteering in the community, and working with charities are all examples of activities that are vital in minimizing the risk of loneliness.

Solo practitioners must make special effort to have regularly scheduled social and familial opportunities outside of client work. Where practical, it would be a good rule of thumb to say “yes” to as many social gatherings as the solo practitioner’s schedule will allow. Many solo practitioners find that even when they do not feel like socializing, it is just this experience that reinvigorates them.

At the organizational level, colleagues and supervising partners are best positioned to identify lawyers who may be suffering from loneliness or isolation. As with many of the risks considered by this report, the signs may be subtle, which is why an awareness of the risk and its symptoms is paramount. Positive social support in the workplace can help stave off feelings of loneliness from occurring in the first place. Leadership should be quick to praise when praise is warranted and otherwise work to create a supportive and collaborative atmosphere. Lunch



<sup>32</sup> Ceylan Yeginsu, *U.K. Appoints a Minister for Loneliness*, N.Y. TIMES (Jan. 17, 2018), <https://perma.cc/R27X-ESVG>.

outings and after-work social gatherings should also be encouraged in order to increase organizational cohesion and create lasting bonds. If one does not exist, firm leadership can also implement a mentorship program to forge beneficial relationships between senior and junior lawyers while investing in their newest hires.

In addition to the above ideas, and according to the Harvard Business Review, the “single most impactful leadership behavior” an organization can implement to counteract loneliness is to create “shared meaning” with colleagues. In other words, “[u]nderstand what makes their work meaningful to them, and then connect that to what makes it meaningful for you.”<sup>33</sup> Some practical steps to accomplish this may be for the organization to take the time to learn more about its individual employees through periodic evaluations and questionnaires. Perhaps more effective, leadership should seek out opportunities for candid conversations with their employees to learn what motivates them about the practice. Organizations can also celebrate collective wins with the entire team to help create a sense of unity of purpose. Creating a shared meaning among organizational leadership and their colleagues may take time, but the effects on diminished loneliness undoubtedly make such an approach worthwhile.

Finally, to prevent individual work from exposing one to an increased risk of malpractice, attorneys should maintain relationships with, and seek out the counsel of, at least one experienced mentor in each area of his or her practice that can serve as a sounding board and provide guidance and advice as needed. For their part, attorneys who are approached to become mentors should be willing to offer reasonable assistance out of a courtesy to their fellow practitioner, and also out of concern for the profession as a whole. Just as important, they should serve as a mentor for their own well-being. If the mentor-mentee relationship is successful, the mentor will get just as much out of the relationship as the mentee.

## Professional Demands

### The Risk

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Law is a demanding profession. Between clients, colleagues, and the courts, a lawyer can feel as though he or she is being pulled in too many directions to manage, let alone function effectively. The result of the constant professional demands of the legal profession, left unchecked, can lead to a multitude of the risks addressed by this report. In truth, it is the unyielding demands of the profession that, in many respects, are the cause of a lawyer’s individual struggle with his or her well-being. This topic, therefore, should be viewed considering this report as a whole, but focuses here on three areas: client demands, organizational demands, and court demands.

Client representation forms the basis for any legal job, whether in the private or public sector. Clients seek representation and guidance from lawyers when they have important life and business decisions that they cannot handle on their own. In some cases, the client may be

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<sup>33</sup> Achor et al., *supra* note 28.

facing incarceration, divorce, the removal of a child or other family member from the home, loss of employment, severe personal injury, or the loss of business opportunities. In most cases, a lawyer's client is experiencing emotional, personal, social, and financial stress and is in a period of unprecedented upheaval. As a result, some clients will demand the lawyer's complete attention to what they perceive as being one of the most significant and trying events in their lives. Clients can become disgruntled if they perceive the lawyer's attention is inadequate. This can expose the lawyer to bar complaints, unfavorable online reviews, and malpractice claims, adding to the lawyer's overall stress. In addition, more and more lawyers are reporting "compassion fatigue" or "vicarious trauma," wherein they have trouble separating themselves and their reality from the client's case and personal situation. **See Vicarious Trauma and Managing Others' Problems.**



Firm and organizational demands can further irritate the stressors of a profession built on client representation. These include requirements for billable hours, compensation programs that encourage excessive work hours, client recruitment and retention expectations, partner demands, expectations for professional development, and internal deadlines. Add to this the after-hours expectations many firms have for their lawyers to participate in social events with coworkers and other colleagues in the legal community and to volunteer on various community and leadership boards. In addition, solo practitioners and members of smaller firms have the added

burden of managing employees and overall business operations. And this is all before we consider the challenge of the actual legal work that is being done at the office, which is itself a significant burden on an individual lawyer.

Lastly, demands placed on lawyers by a tribunal, combined with the everyday concerns discussed above, can sometimes be enough to upset the delicately balanced block tower of a lawyer's existence. Harsh and unyielding deadlines — such as those in federal court — necessarily take priority over other concerns and can completely disrupt a lawyer's other projects, not to mention social or community involvement. Court appearances are often high-pressure affairs, contributing to late nights and long hours, particularly in the days and weeks leading up to a trial or hearing. Many (but not all) judges and clerks also expect lawyers to be poised and articulate at every appearance and in all written motions and briefs, no matter the circumstances. Any request for leniency or a continuance may be viewed as a sign of weakness or ineptness. Thus, many lawyers opt to power through minor illness and even family emergencies as opposed to seeking permission from opposing counsel and the court to continue a case or extend a deadline. **See The Need to Display Confidence and Conceal Vulnerability.**

Taken together, the inherent demands of a legal practice, whether from clients, employers, or the court system, pose a serious risk to overall lawyer well-being. They contribute to many of the risks identified in this report, including long and unusual hours at the expense of family and personal time (many of which cannot be counted towards a billable goal), loneliness, decreased sleep, instances of vicarious trauma, increased stress, and general burnout. A lawyer's

quality of work can also diminish if the lawyer is distracted in trying to satisfy the myriad other expectations heaped upon him or her without any effective time management skills.

## Practice Pointers

Lawyers should seek to establish reasonable and realistic client expectations at the outset of the client's case so there are no (or at least minimal) surprises later. This would include expectations concerning timing and frequency of communication, billing, and trial strategy. Often, client difficulties can be resolved through consistent efforts at communication. Lawyers can also strive to defuse tension by determining the client's deadline and then seeking to complete the project ahead of time. Lawyers should also seek assistance and advice from colleagues and remember to exercise their judgment in deciding whether to take on and/or continue to handle a particular client's case or cases. Lawyers must always be mindful not to make the client's problem their problem. Objectivity and at least a certain amount of detachment are two vital components of effective legal service.

Lawyers should also strive to ensure complete and clear communication with their employer regarding the requirements expected of them. Open dialog is key to preventing uncomfortable conversations later. A lawyer can seek out a trusted mentor or colleague to ask advice as to how to meet billable goals while growing their practice through social and community involvement. Perhaps most importantly, a lawyer should seek to develop effective time management skills to make the most of the hours in each day. In addition, a lawyer should be purposeful in daily planning and focus on preserving his or her overall health (through healthy diet, exercise, and sleep) to maintain an edge during the workday. **See *Managing Long and Unusual Hours*.**

“Open dialog is key to preventing uncomfortable conversations later.”

The same advice can be followed with respect to court demands. Individual lawyers, for better or for worse, are at the mercy of the court. Knowing this, those deadlines should be prioritized and accomplished early to prevent stress later. If extenuating circumstances nonetheless occur, making a court appearance or deadline unlikely or impossible, lawyers should proactively reach out to opposing counsel and the court to explain the situation. Lawyers should also maintain a professional demeanor throughout and, if on the receiving end of such a request, remember that what goes around comes around or, put another way, that kindness and civility often beget the same in return.

At the organizational level, firms and other employers are in a better position to mitigate some of the negative impacts of this risk. They can ensure that cases — particularly those that are overly complex, involve difficult clients, or present issues that can adversely weigh on an individual lawyer — are adequately and appropriately staffed to mitigate any such issues. Policies and procedures should be in place to assist lawyers who are struggling with time management skills to enable them to reach their full capacity while avoiding mental and physical burnout. Expectations concerning billable hours, community involvement, and social outings should also be periodically revisited and clearly conveyed to ensure they are reasonable and understood. If an attorney is struggling in any of these areas, organizational leadership, in

recognition of this risk and its potential consequences, should discern the reason and seek to assist where possible.

Finally, courts and other tribunals are also able to mitigate this risk. Although the pressures associated with court dates and deadlines will never completely vanish, the judiciary can take measures to ease these pressures through its daily interactions with practitioners. For example, where possible, court dates and deadlines should be continued for good cause, and steps should be taken to ensure the legal community understands that such requests can, in good faith, be made without fear of repercussion. The following two suggestions for courts come directly from the August 2017 National Task Force report:

- Courts should review 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.
- Courts should review practices that promote refusal to permit trial lawyers to extend trial and other deadline dates to accommodate vacation plans or scheduling trials shortly after end of vacation so that lawyers must work during that time.

Just as importantly, judges should also participate in local bar activities and Inns of Court to develop and maintain relationships with attorneys, especially attorneys who may be just starting their professional careers or who are new to the area.

## Vicarious Trauma and Managing Others' Problems

### The Risk

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The foundation of the legal profession is client service. Although representing others and their interests, particularly in times of need, is the great privilege of being a lawyer, that privilege is also a significant occupational risk. This risk most frequently takes the form of what has been termed “vicarious trauma,” although it can also manifest as the lawyer performs routine management functions with respect to other attorneys, staff, clients, and others.

The first, and perhaps the most dangerous, of the risks associated with representing the interests of others is also the noblest aspect of the legal profession: the attorney’s role as champion for his or her client. Lawyers necessarily shoulder the legal burdens of others, assuming the responsibility (and related stressors) of each case. The danger lies in the risk of the lawyer overly associating his or her own personal worth with the success or failure of the client’s case. Not surprisingly, the added pressure associated with this facet of legal practice, if left unchecked, can lead to increased stress, depression, anxiety, sleep disturbance, PTSD, and an overall decline in work satisfaction and enjoyment.

At the extreme end of the spectrum of this occupational risk is “vicarious trauma.” Vicarious trauma refers to the negative effects resulting from prolonged exposure to other people’s trauma. Stated another way, the concept refers to the cumulative transformative effect on

the “helper” who works with survivors of traumatic life events. Other terms often used to describe the syndrome are “secondary trauma,” “emotional fatigue,” and “compassion fatigue.” Regardless of the term used, the concept describes the stress experienced as the result of long-term involvement in emotionally demanding situations, such as helping a traumatized person. This “vicarious trauma” can negatively affect the attorney and support staff’s physical, psychological, emotional, and spiritual health. As summarized by one illuminating article, “[f]or many lawyers and judges (as well as jurors, courtroom personnel, and others), the violent, disturbing reality they witness inside and outside the courtroom as part of their profession can become debilitating. It can become vicarious trauma.”<sup>34</sup>

The effects of vicarious trauma may manifest in any number of ways. Some tell-tale signs have been identified as follows: “avoiding certain types of matters or clients, engaging in risk-taking behavior, insomnia, feeling helpless about work tasks and withdrawing from colleagues, friends and family.”<sup>35</sup>

Vicarious trauma mirrors the effects of short-term post-traumatic stress disorder in that it can “lead to nightmares and intrusive imagery, fear for one’s safety or the safety of others (family members in particular), resistance to hearing accounts of traumatic events, irritability and emotional numbness.”<sup>36</sup> Not surprisingly, these effects contribute to a number of physiological conditions including increased heart rate, high blood pressure, muscular tension, sleep disruption, an impaired immune system, appetite changes, and other physical reactions. As one commentator notes, “[m]ore troubling and profound long-term effects include changes to the core beliefs of the secondarily exposed person and his or her view of self, others and the world.”<sup>37</sup> A lawyer suffering from vicarious trauma may therefore face a severe decline in his or her physical and mental health. Such a lawyer is also susceptible to behavioral changes and negative coping mechanisms that can lead to drug or alcohol abuse, depression, withdrawal from work and family, decreased productivity, and an overall sense of dissatisfaction and detachment.

Another consideration associated with the risk of representing the interests of others, though perhaps not quite as apparent as vicarious trauma, concerns the stresses attendant with managing other people — both clients and colleagues. Studies show that lack of management skills is a significant cause of stress in that one may voluntarily take on tasks (and the associated stress) that are more appropriately the responsibility of others, simply because the individual has not developed the leadership skills necessary to properly manage others. Along the same lines, the lack of management skills also appears in a decreased ability to control a client and manage his or her expectations. The practice of law is a people-based profession, but these skills are seldom emphasized in legal academia. Consequently, while new and seasoned

“Every man has his secret sorrows which the world knows not; and often times we call a man cold when he is only sad.”

– Henry Wadsworth Longfellow

<sup>34</sup> Donalee Moulton, *Vicarious Trauma: The Cumulative Effects of Caring*, CANADIAN LAW, Feb. 2, 2015, <https://perma.cc/RK29-FTHQ>.

<sup>35</sup> Kylie Nomchong, *Vicarious Trauma in the Legal Profession*, J. NSW B. ASS’N, Summer 2017, <https://perma.cc/889E-8ZM7>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

lawyers alike may be well-versed in the law and possess strong skills in the courtroom and the law library, relatively few will have formal training in the art and skill of leading, managing, or supervising others. The end-result often leads to a breakdown in communication with clients and coworkers, increased stress, and heightened anxiety.

## Practice Pointers

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Given the implicit risk associated with a career devoted to representing others in their times of need, individual lawyers should take steps to become educated about the risk, address the risk, and pursue activities outside of the practice of law to disengage and refresh from the risk. Clients' problems can become all-consuming if left unchecked, and lawyers must take time to periodically extricate themselves from the situation in order to maintain their effectiveness as an attorney.

One way to accomplish this is to purposefully schedule interruptions during the work day. While such interruptions would vary according to a lawyer's personal inclinations, examples include a workout, lunch with a friend or even a massage or quick trip to the mall. The best activities are those that will occupy the mind and provide a break from worrying about a client's situation. Lawyers who are otherwise performing should not feel guilty about taking breaks during the work day. Managers and partners in firms should provide such flexibility to lawyers, recognizing the overall benefit to the firm.

Intentionality here, as with many of the risks discussed in this report, is paramount. The lawyer must be intentional about setting time aside to step back from the client or situation. Considering the realities of vicarious trauma, lawyers must take steps to monitor their exposure to traumatic events or material, particularly if their caseload involves contentious family or criminal law matters.

The individual attorney must also remember that attorneys are not the only ones exposed to this kind of work and therefore take steps to reach out to other members of the legal community, including colleagues or other members of the bar, support staff, and court personnel, to act as a source of mutual support. Lawyers should also create an end-of-the-day routine to help transition from the office and leave work at work. Again, lawyers should emphasize the activities they enjoy in order to disconnect. This can be as simple as spending fifteen minutes reading a book or magazine, but may also include family time, exercise, sports, religious activities, contact with nature, meditation, yoga, periodic vacations, and so on. Moreover, all attorneys should prioritize health, including proper nutrition and sleep habits, to keep their body functioning optimally.

The individual lawyer can also self-educate on leadership and management techniques in order to address any perceived short-coming in this area. Improved management skills may lead to increased self-confidence, which can in turn help offset work demands and (hopefully) mentally counteract the effects of vicarious trauma as a byproduct. Bookstore shelves are replete with titles focused on these topics, some of which are cited in the resources section of this report. Although not legal treatises or hornbooks, such self-help publications can go a long way in preparing a lawyer for the realities of practice and managing the problems of others.

At the organizational level, the profession needs to recognize the risks associated with client representation and take steps to minimize their impact on practitioners. All members of the profession should adopt the ethic that their job is not only to serve the client and make money for the firm, but that they also have an ongoing responsibility to protect and develop the human resources of themselves, their respective law firms and the profession as a whole. Vicarious trauma needs to be openly discussed, and programs should be developed to provide a confidential outlet to discuss personal trauma history that could affect the risk for vicarious traumatization, as well as incidents of trauma experienced over the course of a specific case.

Individual attorneys can effect positive change. Colleagues may be in the best position to recognize the warning signs of emotional fatigue and vicarious trauma in their peers, but managing partners need to be especially cognizant of these issues. All members of the profession should therefore take steps to develop a working knowledge of the risk and its symptoms. Practices and procedures should be in place to address this risk and provide the support needed when it presents itself. Organizations should provide reasonable vacation and encourage their employee lawyers to periodically take time to themselves in order to rest and recharge. Respite from those cases that can inflict vicarious trauma is critical to the lawyer's well-being.

“Individual attorneys can effect positive change.”

Programs can also be designed to foster development in leadership and management techniques for all employees, not just those individuals who have been subjectively identified as leaders or rising stars. Better managers are better leaders who exhibit stronger feelings of self-worth and self-confidence. Organizations would therefore be well-served in nurturing management skills. They should encourage an open dialog on all matters relating to the firm, including a lawyer's struggle in managing the problems of others. Along the same lines, senior leadership should also take steps to ensure that all employees, particularly the newest lawyers, feel comfortable discussing their concerns openly.

## The Duty of Confidentiality

### The Risk

An attorney's duty to maintain and protect client confidences under Rule 1.6 of the Rules of Professional Conduct may cause attorneys to feel isolated, unable to discuss their concerns about a particular case, and alone when trying to develop a strategy for moving a difficult case forward. Attorneys often encounter cases presenting a particularly challenging or novel legal issue or requiring an approach with which the attorney has no experience. Other cases raise issues that attorneys cannot unravel, leaving them unable to develop a strategy for a viable way forward. Probably more problematic are those cases in which the lawyer, through a protected attorney-client communication, learns disturbing facts that must be held confidential.



These problems are exacerbated if the attorney is a solo practitioner and unable to consult with or seek counsel from another attorney in the firm. In addition, dealing with clients who are demanding, rude, or unwilling to accept an attorney's advice can present its own set of headaches. Each of these factors can lead the attorney to take the one step that a lawyer should never take: avoiding a case that has already been accepted. One thing is certain — putting that difficult case or problem client off until tomorrow is not a sustainable solution.

Every attorney has a duty to represent clients *competently* under Rule 1.1, and *diligently* under Rule 1.3. Comment 3 to Rule 1.3 specifically warns about procrastination, noting that clients' interests are frequently harmed by the passage of time: "[I]n extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness."

A related and perhaps more intractable issue is the understandable apprehension an attorney may feel when faced with divulging that he or she may be having trouble moving a case forward, whether due to the reasons discussed above or because of a problem with substance or alcohol dependency, anxiety disorders, or mental health issues.

Put another way, people may feel a natural disinclination to seek help, and attorneys are particularly vulnerable for several reasons. First, people come to attorneys for help solving *their* problems. Attorneys invested huge amounts of time and money in obtaining licenses to practice. Admitting that *attorneys* are the ones who need help runs counter to what the population at large perceives a law license to represent. Second, no one wants to admit that they might have a problem, lawyers least of all. Third, the perceived stigma and indicia of weakness that are attached to those who seek mental health or substance abuse counseling can be overpowering drivers of action, or inaction as the case may be.

This latter issue is also one of concern to both members of the judiciary and to law students and will often prevent them from seeking the help they need for the same reasons. **See The Need to Display Confidence and Conceal Vulnerability.** Finally, attorneys may fear seeking help due to the incorrect but persistent notion that doing so could have deleterious consequences from an ethical standpoint. Recent rule revisions in Virginia have attempted to help address this concern. Specifically, the rules concerning an impairment finding have been amended so that a finding of impairment is no longer considered "misconduct" and will therefore not appear as such on an attorney's disciplinary record.

### Practice Pointers

The lawyer's duty of confidentiality is a pillar of the legal profession, guaranteeing that a client's sensitive issues will remain with his or her chosen advocate. This is an essential part of the profession's ethical framework, and at the most practical level, a major reason why people

in need come to lawyers. Individual lawyers and their employers must therefore invest in practices to mitigate harm when the helpers themselves need help.

Because the duty of confidentiality limits those with whom a lawyer can discuss client confidences to those who share their obligation to a client, lawyers should strive to develop strong working relationships with the other attorneys in their firm or organization. Likewise, managing partners and equivalent supervisors should take steps to promote positive workplace environments. By creating a collaborative environment in which attorneys are encouraged to work together and see one another as companions rather than rivals, lawyers who would otherwise feel frustrated and confined by their confidentiality obligation will find they have a safe outlet for their concerns.

Moreover, research indicates that positivity enhances group performance, so as collaborative environments are fostered, overall productivity improves for the organization. Similarly, positive emotional climates in the workplace can contribute to employee loyalty and a sense of responsibility toward the organization. One study of several thousand lawyers from four states found that traditional measures of success — prestige, income, and other benefits — do not correlate with lawyer happiness. Instead, satisfied lawyers are those who regularly experience close relationships, interest, and meaning in their work. This finding suggests that the legal academy and employers should recast the perception of legal success from a focus on competition, status, and tangible benefits to professional satisfaction through support, collaboration, interest, and a sense of purpose.

By fostering the collaborative, supportive environments that mitigate the stifling effects of the lawyer's duty of confidentiality rather than the traditional competitive, self-interested orientation of law practice, legal employers may reap significant economic and social gains.

Solo practitioners must be made aware of, and utilize, services available to discuss hard cases. For ethics questions, the Virginia State Bar has an Ethics Hotline at (804) 775-0564. Additionally, most lawyer professional liability insurance companies have their own risk management resources. Actively establishing a mentor-mentee relationship with a senior lawyer or law school professor is strongly encouraged, especially for less experienced attorneys. Finally, participating in specialty bar associations that focus on your particular field of practice can be an immense benefit.

“By fostering the collaborative, supportive environments that mitigate the stifling effects of the lawyer's duty of confidentiality rather than the traditional competitive, self-interested orientation of law practice, legal employers may reap significant economic and social gains.”

## Educational Debt

### The Risk

In the history of the legal profession, this risk is relatively new. In spite of its recent origins, however, this particular risk is potentially soul-crushing for new lawyers. The main contributing factor to this risk is the unchecked, and potentially unsustainable, rise in law school tuition. In 1985, the average annual tuition in private law schools and public law schools was \$7,526 and \$2,006 (both in 1985 dollars), respectively. Applying the inflation rate to these figures, annual tuition for private and public law school should have been \$17,520 and \$4,670 in 2018.

Needless to say, tuition increases have vastly exceeded the normal rate of inflation. The actual average annual tuition for a private law school in 2018 was \$47,754, while the average annual tuition for public law school was \$27,160. This means that in 2018 private law school was 2.73 times as expensive as in 1985 and public law school was 5.82 times as expensive.<sup>38</sup> Naturally, these tuition increases have translated to higher student loan debt upon graduation.

“Mortgage.” The word, which finds its roots in Old French and Latin, literally means “death pledge” and bears more on the student debt crisis than one might imagine.<sup>39</sup> Just as a home buyer would be well-advised to develop a clear financial strategy prior to making a thirty-year commitment with a bank, student borrowers should do the same when considering educational loans. This is particularly true considering that the average law school graduate debt between 2010 and 2017, not counting whatever debt was incurred in college, has exceeded \$100,000 — and according to at least one study, \$140,000 — an amount that certainly qualifies as “death pledges” for a new age.

Perhaps surprisingly, many law students make the life-altering decision to take out large amounts of student loans with little to no thought as to the repercussions. Law schools and loan officers do not generally provide the financial counseling that would offer guidance in making sound financial decisions. Consequently, these decisions are primarily made by young students, generally recent college graduates with little professional experience and a significant lack of financial acumen. They are also based largely on unfounded expectations that the degree or degrees will ultimately yield a salary that will more than compensate for the risk involved in taking out such a crushing debt load. It is not until after graduation and passing the bar exam that the new lawyer must face the consequences of those earlier financial decisions and the effects they will have on both their career choices and their personal lives.

For instance, a 2018 article from *U.S. News & World Report* analyzing data provided in 2016 from graduates from 180 ranked law schools reveals the disconcerting reality. It reports that the median private sector salary was \$68,375 (with salaries ranging from \$45,000 to

<sup>38</sup> Law School Costs, L. SCH. TRANSPARENCY DATA DASHBOARD, <https://perma.cc/Z2RY-3N6C>.

<sup>39</sup> Libby Kane, *The Origins of The Word ‘Mortgage’ Will Make You Think Twice About Buying a House*, BUS. INSIDER (Mar. 16, 2016), <https://perma.cc/H4W8-FYDJ>.

\$180,000). Of the reporting schools, only 19.4% reported a median private sector salary that exceeded \$100,000. Moreover, those graduates who entered the public sector reported median salaries that were significantly lower than their private sector counterparts, \$53,500, with reported salaries ranging from \$34,250 to \$71,200.<sup>40</sup> Other findings from the National Association for Law Placement show an overall median legal starting salary in 2017 of \$70,000, with a law firm median starting salary of \$117,000.<sup>41</sup>

According to a 2014 *Forbes* article, by 2013 only 84.5% of law school graduates could find a job after graduation. Of those, only 51% were employed in law firm jobs, effectively pushing many graduates into lower-paying public sector jobs or, more disconcertingly, into non-legal career fields.<sup>42</sup> More recent statistics from the National Association for Law Placement show that for 2017 graduates, the overall employment rate has increased to 88.6% of graduates, though the number of jobs available to graduates *decreased* by more than 1,200 compared with 2016. The total number of law school graduates has also declined for the fourth year in a row. Thus, “the employment rate increased even as the number of jobs declined.”<sup>43</sup>

While the practice of law certainly can be a lucrative one, the evidence suggests that most new law school graduates are entering the workforce at salaries far below what they expected, and even in fields completely foreign to their J.D. degree. They are also entering the profession with little to no working knowledge of the realities and risks associated with the practice of law — one of the reasons for this report. And as one commentator put it, “[t]he trouble with taking out over \$100,000 in loans to chase a degree is that you don’t know if you’ll love what you do.”<sup>44</sup> If you do not love what you do, or if you get burnt out from the stress associated with the practice, you will either be left with an unfulfilling existence chasing a paycheck simply to pay off your loans, or leaving the field altogether for a new job in a new career with unknown salary prospects, all with the chains of debt following you. **See The Expectations-Reality Gap in Law Practice.**

Faced with these realities, many new lawyers find themselves shackled with massive monthly payments towards their loans that can extend for many years, equivalent to a mortgage with no accompanying house. This can lead to a decreased standard of living, a deliberate delay in starting families or purchasing a home or automobile, a feeling of lack of control and disenfranchisement with legal practice, burnout, decreased work-product, financial stress, family struggles, and general health challenges. These results have adverse societal impacts that ex-

“If you do not love what you do, or if you get burnt out from the stress associated with the practice, you will either be left with an unfulfilling existence chasing a paycheck simply to pay off your loans, or leaving the field altogether for a new job in a new career with unknown salary prospects, all with the chains of debt following you.”

<sup>40</sup> Ilana Kowarski, *See the Price, Payoff of Law School Before Enrolling*, U.S. NEWS & WORLD REPORT (Mar. 12, 2019), <https://perma.cc/9V6W-LW7Z>.

<sup>41</sup> Judith N. Collins, *Overall Employment Rate Up Modestly Employment in Legal Jobs Up More*, NALP, (2018), <https://perma.cc/37G5-557A>.

<sup>42</sup> Robert Farrington, *Law School and Student Loan Debt: Be Careful*, FORBES (Dec. 18, 2014), <https://perma.cc/KZ3A-65YA>.

<sup>43</sup> Collins, *supra* note 41.

<sup>44</sup> Farrington, *supra* note 42.

tend far beyond the scope of this report. Many young lawyers are also turning to second jobs in order to make ends meet. And coupled with the already long and stressful hours expected of an attorney, such an existence is rarely sustainable for long.

Excessive student debt placed upon young lawyers also has far-ranging impacts on the profession. When saddled with debt, young lawyers are far less likely:

- To practice in rural areas, because the salaries offered cannot support loan repayment obligations;
- To choose to practice in legal aid;
- To have funds to join, or time to participate in, voluntary bar associations;
- To have the ability to commit to pro bono obligations;
- To run for public office or provide public service typical of a citizen-lawyer; or
- To achieve a healthy work-life balance or overall satisfaction with their profession.

These young lawyers must examine life and make professional decisions based upon a debtor's perspective. They are largely unable to take the entrepreneurial risks traditionally taken by previous generations of lawyers.



### Practice Pointers

Gone are the days when a law degree automatically created wealth and financial success. Prospective law students must now recognize the increased cost of legal education and the reasonable employment and salary expectations following graduation. Without understanding this risk, the decision to go to law school truly can be life-altering — but for the wrong reasons.

Prospective law students should first seek counsel from financial professionals and existing lawyers as to the true costs of a legal education. They should not rely on law schools or loan officers and institutions for this information as their interests will be different than those of the prospective law student. Loan repayment and tax consequences should also be studied. Tuition, textbooks, rent/mortgage, transportation,

utilities, living expenses, and family obligations all must be taken into consideration. Starting a legal career often coincides with major life events such as marriage, home and car purchases, and beginning a family. The financial constraints accompanied by student loan repayment obligations can have a substantial impact on these events, and should be understood and evaluated.

Prospective law students may also consider working a few years to save money to use toward their legal education to limit or offset their exposure to the debt they will otherwise incur. More time preparing for the financial costs of law school can ease the financial burdens that a legal education requires. If possible, prospective students would also be well-served by

**“Gone are the days when a law degree automatically created wealth and financial success.”**

seeking out legal internships in college to explore whether the everyday practice of law is as attractive a prospect as they may think. They may also consider reaching out to practicing lawyers for their advice and thoughts.

If the prospective student decides to enroll in law school, they should carefully research their school of choice to understand the job prospects available to its graduates, as well as the expected amount of student loan debt upon graduation. Fairly or not, law school pedigree matters to many larger firms that offer high salaries. Prospective students should be aware of this reality. Many schools offer academic scholarships, so students can increase their odds at securing at least partial financial support by studying hard in college and scoring high on the LSAT exam. They should also research the school to determine whether any other scholarships may be available and apply to as many as is feasible.

Once in school, students should take advantage of the resources offered by their loan provider to truly understand the nature of their loan. Many career service offices offer counseling in this area, and students should take the time to understand the available career options and potential repayment strategies for their situation. For example, working in the public sector may provide a lawyer with complete loan forgiveness as long as Congress maintains the program. Law schools themselves may also offer stipends or partial loan assistance for certain students depending on their career trajectory. The earlier a strategy is developed, the more a student can be in control of their financial future.

Lawyers entering or already in practice must develop and maintain financial acuity and live within their means. Make loan repayment a priority and avoid taking out more debt than is necessary. Understand and study the tax consequences related to student loans and consider the impact of your loan obligation when making major life decisions. Working with a financial professional is encouraged as that individual may provide further insight as to how to get rid of the debt sooner, such as loan consolidation or another method. Simply by developing a plan and sticking to it, a lawyer can retake control and begin making progress on what otherwise may appear to be an insurmountable barrier.

Because, as stated throughout this report, joining voluntary bar associations is important to lawyer well-being, these organizations should consider dues models that reduce or eliminate fees for newer attorneys. Law firms should also consider paying directly, or providing stipends to pay for, young lawyers' dues and otherwise promote young lawyer involvement in bar activities.

At the organizational level, the debt epidemic must eventually be addressed by the legal academy. Rising tuition and student debt is simply not sustainable by lawyers, our profession, or society as a whole. Although there is little individual lawyers can do to address this problem, simply beginning — and continuing — this conversation is a good start. Law school applications and enrollment continues to decline, at least in part due to an increased awareness of the educational debt problem. Faced with this reality, the legal academy and the profession must act. Schools that have been proactive by cutting tuition rates, for example, have seen an increase in applicants.

Additionally, law schools and bar organizations should consider forming task forces to investigate this issue further and craft viable solutions or proposals to address its effects on the

profession. Left unmitigated, some law schools may be forced to shut their doors for lack of applicants and the profession may suffer a reduction of quality new attorneys, particularly as a large generation of lawyers enter the twilight years of their careers.

## Business Management of the Practice of Law

### The Risk

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The practice of law necessarily includes the business of law firm management. Like all businesses, income must exceed expenses for a law practice to survive. And as in every business, employees must be paid before the owners. The stress of running the business of a law firm is therefore an occupational risk that must be understood.

The level of this type of stress on individual attorneys is generally inversely proportional to the size of a law firm: the larger the firm, the less business management stress is felt (with the exception of managing partners and practice managers in larger firms). For solo practitioners, business management decisions are made daily, which translate into a potential daily cause of stress and anxiety. In addition, the social and professional expectations for lawyers can lead to excessive spending, simply to look the part and live in a manner commensurate with that of other professionals.

Surprisingly, few law schools offer business management, accounting, marketing, finance, and technology classes, let alone courses in personal financial planning. Instead most lawyers are confronted with their lack of training in these areas after they pass the bar. Many new lawyers are forced to start their own practices to make ends meet. Indeed, a 2013 American Bar Association report found that the vast majority of private practice attorneys are in solo practice or small firms.<sup>45</sup> Lack of business training during the legal educational process certainly contributes to stress and anxiety. Even experienced lawyers face the grind of generating clients, selecting contractors and service providers, securing insurance of all types, handling personnel matters, paying bills, and doing all things necessary to keep the lights on.

Although this particular risk is not necessarily unique to the practice of law, it is no less important to acknowledge and understand.

### Practice Pointers

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The legal academy is perhaps in the best position to mitigate this risk by devoting educational resources to preparing law students for the business side of being a lawyer. Traditionally, legal education has been primarily theoretical, with practical instruction limited to essential lawyering skills such as legal writing, research, and oral advocacy. Law schools should recognize that the school-to-firm model that has worked for decades does not reflect the reality many of their graduates will face. Including law practice management, financial literacy, marketing,

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<sup>45</sup> *Lawyer Demographics*, A.B.A. (2013), <https://perma.cc/YMA9-8TEV>.

entrepreneurship, and related courses in legal skills programs will do much to equip new attorneys with the tools they need to handle the financial stresses of modern law practice.

Practicing lawyers should consider taking business classes through local colleges. In addition, every solo practitioner and law firm must retain services of competent professionals, such as accountants, insurance agents, and technology specialists to properly run their firms, provide quality services to clients, and protect confidential information. Bar associations should provide business training programs to their members, even if the business training does not qualify for CLE credit (these organizations should keep in mind that just because training does not qualify for CLE credit does not mean that the training is not important).

New lawyers should seek advice and guidance from experienced lawyers on how to manage firms, and experienced lawyers should agree to serve as mentors as part of their responsibility to our profession. An equally effective way of maintaining business competence is for attorneys in solo and small firm practices to get together informally to share business and technology ideas with each other. In addition to providing mental health resources and promoting a positive, collaborative working environment, legal employers should consider offering their employees financial planning services. This valuable benefit will not only assist in attracting legal talent, but also will help retain and nurture that talent by proactively preventing personal financial difficulties that inhibit a lawyer's ability to practice effectively.

## The Need to Display Confidence and Conceal Vulnerability

### The Risk

This occupational risk reflects the fact that the legal profession can be, at times, ruthlessly competitive, even for practitioners outside of large, elite law firms. From a prospective lawyer's first exposure to the profession in law school, one study observes, "students are socialized into a competitive environment in which showing any vulnerability is discouraged. Seeking help is an acknowledgment of vulnerability. The competitive nature of law school reinforces a message that students are better off not seeking help and instead trying to handle problems on their own."<sup>46</sup>

“The inherently competitive nature of law school, where curved grading scales pit students against one another without regard to their individual merit, mirrors the practice of law, where lawyers in firms of all sizes and even government offices are judged by their perceived success rates.”

The inherently competitive nature of law school, where curved grading scales pit students against one another without regard to their individual merit, mirrors the practice of law, where lawyers in firms of all sizes and even government offices are judged by their perceived success rates. One law review article articulating this concern states:

<sup>46</sup> Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, B. EXAMINER 8, 13–14 (Dec. 2015), <https://perma.cc/JMJ7-KVBD>.

From the potential for humiliation with the Socratic method when students are not prepared (or even if they are) to missed deadlines and important details resulting in professional discipline, lawyers learn that they must not fail. ... Any possible failure becomes an opportunity for intense self-scrutiny and every move lawyers make can become defined by winning or losing.<sup>47</sup>

But lawyers are subject to more than just these internal pressures. Many times, the legal process results in winners and losers. This process lends itself to participants, such as lawyers, not showing vulnerability or weakness. The public perception of attorneys as elite figures who are comfortable in the courtroom and boardroom alike also incentivizes lawyers to exude confidence.

These influences combine to stigmatize any help-seeking behavior. In a survey asking attorneys what factors would discourage them from seeking professional help for alcohol, drug, or mental health issues, “social stigma” and “potential threat to job or academic status” were consistently in the top three results.<sup>48</sup> The same was true when asked about encouraging others to seek help or informing an appropriate party about concerns for other lawyers. Unfortunately, the incentives driving lawyers to put on a confident façade and conceal vulnerability are deeply embedded in the legal profession’s competitive culture.

These occupational influences, when combined with perfectionism, a trait found in many attorneys, can also lead to “imposter’s syndrome,” a psychological pattern in which a person doubts their capabilities and accomplishments and experiences a persistent fear of being exposed as a fraud. Imposter’s syndrome has been associated with anxiety, stress, and depression and may further inhibit lawyers suffering from this condition from seeking help.

## Practice Pointers

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The reality of the legal profession is that it is inherently competitive. Nevertheless, there are some steps organizational stakeholders could take to reduce the stigma against help-seeking behaviors.

Perhaps the most widely studied manifestation of this occupational risk is law students’ general reluctance to seek help for fear that doing so will negatively affect their bar admission applications. Boards of bar examiners should adopt the recommendations of the Lawyer Well-Being Committee of the Virginia Supreme Court by revisiting bar application questions regarding mental health history and publishing data reflecting the low rate of admission denials due to mental health disorders and substance use. The Virginia Board of Bar Examiners has already taken an important step by removing the mental health inquiries of the character and fitness questionnaire and replacing them with the following single question: “Within the past five years have you exhibited any conduct or behavior that could call into question your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?”

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<sup>47</sup> Joan Bibelhausen, Katherine M. Bender & Rachael 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, 933 (2015).

<sup>48</sup> See Organ et al., *supra* note 46, at 10–11.

Employers should also take affirmative, visible steps to change organizational culture to indicate acceptance, and even encouragement, of help-seeking behaviors. These can include approaches like developing wellness committees and providing counseling services on site, as well as promoting more social interactions and team building among employed attorneys. While these steps may increase expenses or reduce attorney productivity at times, research suggests that encouraging help-seeking behaviors will actually *increase* law firm profitability in the long-run.

Because this occupational risk is rooted in legal culture, individual lawyers' options to counteract it are somewhat limited. Law students can seek to verify the realities of the character and fitness process, which, as discussed below, is a leading source of the stigma against seeking help among law students. By attending programs conducted by board of bar examiner representatives, among other information-gathering efforts, law students can learn that "[s]tate disciplinary authorities, boards of law examiners, and law schools all want lawyers and law students who need help ... to get the help they need to address and manage these problems so that they can be successful legal professionals and work responsibly on behalf of their clients."<sup>49</sup> Additionally, individual lawyers and law students can develop their support networks outside of the legal community. Healthy social, familial, and spiritual communities all provide a vital emotional support system in which a lawyer can be genuine and vulnerable without fear of professional stigma.

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<sup>49</sup> A.M. Brafford, BUILDING THE POSITIVE LAW FIRM: THE LEGAL PROFESSION AT ITS BEST (Aug. 1, 2014) (unpublished master's thesis, University of Pennsylvania), <https://perma.cc/MK2L-7JCT>.



## ADAPTATION RISKS

### Changing Legal Paradigms



#### The Risk

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The American legal landscape is in a period of unprecedented upheaval, continuing a process of disruptive change that began with the digital revolution. Other than the fundamental constants of our common law system, everything about law practice seems to be changing. New technologies, particularly recent developments in artificial intelligence, stand to augment if not replace some attorney jobs in large firms, and adoption by smaller practices looms large on the horizon.

Meanwhile, many of law firms' traditional corporate clients are increasingly turning to alternative business structures, non-traditional legal services providers, technological start-ups, and in-house counsel to reduce ballooning legal costs. Law firms continue to regain their footing following the Great Recession, but significant damage has already been done: steps taken to cope with the recession, such as staff cuts, thinning equity partner ranks, and steadily increasing hourly rates have left law firms with reduced capacity to respond to the next economic downturn. Adding to the stress are statistics indicating that demand for legal services has remained essentially flat since 2010.

Although these concerns reflect an industry-wide perspective, individual lawyers also must cope with these changing legal paradigms. Stress relating to job security affects many attorneys in this shrinking market threatened by alternative legal services providers, automation, and increased client resistance. Frustration with new technologies — and accompanying job dissatisfaction, anxiety, and inefficiencies — is also a common symptom as especially more experienced attorneys are forced to use new approaches to their familiar work. For instance, online legal research databases, e-filing, e-discovery, and digital calendaring and billing systems are the industry norm despite becoming commonplace only a decade or so ago.

Older attorneys may be tempted to cruise to retirement without adapting to new technologies, but recent changes to the ethics rules prohibit this approach. In 2016, the Supreme Court

of Virginia amended Rules of Professional Conduct 1.1 and 1.6, requiring lawyers to maintain competence in their practice areas, including awareness of the benefits and risks of relevant technologies. Similarly, lawyers are charged with protecting client confidences through appropriate cybersecurity measures. No longer is locking the file cabinet enough — lawyers must keep up with all technologies relevant to their practices, both in terms of substantive work (e.g., e-filing and e-discovery systems, appropriate research tools) and practice management (e.g., billing and calendaring systems, cybersecurity best practices to protect client data). Failing to keep up can lead to professional sanctions.

## Practice Pointers

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With the current pace of change in the legal profession, lawyers who fall behind get left behind. Organizations should therefore proactively position themselves to stay ahead of the curve. A landscape survey of the 2018 legal market indicated a marked difference between “dynamic firms” that proactively addressed client needs through innovation, and “static firms” that clung to traditional models for delivering legal service.<sup>50</sup> The dynamic firms far outperformed the static firms. Dynamic firms are distinguished by recognizing clients’ demands for greater efficiency, predictability, and cost-effectiveness, then restructuring their business model to deliver just that. Strategies employed included implementing alternative staffing tactics, creating flexible pricing models through up-front communication with clients, changing the internal firm work process, adopting innovative technologies to promote efficiency, and doubling-down on marketing and business development practices.

Individual attorneys also have a variety of resources at their disposal to stay on top of the changing legal environment. The Virginia State Bar, for instance, recognizes the need to keep Virginia attorneys educated on the rapid pace of legal developments, and to that end, has charged a study committee with evaluating current developments, assessing how these changes will impact the practice of law, and informing the organized bar of what to expect. Its first report, released in 2016, was designed as an accessible primer for attorneys addressing technology and the practice of law, alternative legal business structures, and access to justice.<sup>51</sup> A later committee issued an updated report addressing the most recent developments on March 13, 2019.<sup>52</sup> Reviewing the work of this and other committees addressing the future of law practice, as well as following up with further educational programming, is a great way to stay ahead of a changing practice environment.

To that end, lawyers should attend future-focused CLE programming, such as a tech show developed to help lawyers keep pace with developments in technology, legal practice, and accompanying ethical implications

Finally, individual attorneys who regularly participate in state and local bar associations, attend networking and social events, and develop mentorship relationships with more experienced

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<sup>50</sup> GEORGETOWN LAW CTR. FOR THE STUDY OF THE LEGAL PROFESSION & LEGAL EXEC. INST., 2018 REPORT ON THE STATE OF THE LEGAL MARKET 16–18, <https://perma.cc/UZ7W-J367>.

<sup>51</sup> VA. STATE BAR STUDY COMM. ON THE FUTURE OF LAW PRACTICE, 2016 REPORT, <https://perma.cc/2T8X-3CGF>.

<sup>52</sup> VA. STATE BAR SPECIAL COMM. ON THE FUTURE OF LAW PRACTICE, 2019 REPORT, <https://perma.cc/MD5M-QGV6>.

attorneys, will find themselves better positioned to stay informed about subtle changes in the legal field and their practice areas than their peers who stay in the office. And, in a volatile legal market, developing relationships with fellow practitioners can help ease job transitions.

## Technology Addiction

### ↓ The Risk

With technology ever-present in our professional and personal lives, knowing when to unplug and refresh is vital. A few statistics reveal the breadth of the problem:

- 60% of people keep their phones next to them at night;
- The average person checks their phone 47 times per day;
- Half of the population checks emails at night;
- Nearly two-thirds of us look at our phones within 15 minutes of waking up each day; and
- 80% of vacationers connect to the internet for some or all of their vacation, and two-thirds of them check their business emails. Over half of vacationers spend at least one hour a day on their connected devices.<sup>53</sup>

60% of people keep their phones next to them at night



As noted in the resources section to this report, the *ABA Journal*, *New York Times*, *Washington Post*, *Forbes* and many other publications have carried articles describing the effects of being addicted to our digital devices. These effects can include sleep disruption, anxiety, depression, stress, inability to focus on anything other than our devices, and even an inability to interact normally with people. Lawyers can become addicted to work and lose their focus on work-life balance. They can also be distracted from work by their devices, causing them to be unable

to focus on important tasks like writing a brief, preparing legal documents, and conducting legal research. Instead, the lure of online games, shopping, news feeds, and social media can prove irresistible, interrupting workflow and reducing productivity. Thanks to the ubiquitous pocket computers (otherwise known as smartphones) we all carry around, the national attention span is noticeably shrinking.

<sup>53</sup> McAfee, REPORT: DIGITAL DETOX—UNWIND, RELAX AND UNPLUG (2017), <https://perma.cc/7NVC-BU5R>.

The risks of technology addiction are particularly insidious for attorneys, who experience pressure — either from their employers or self-imposed — to stay connected to clients and the office, even in off hours. The new world of mobile phones and other connected devices makes it nearly impossible to truly leave the office. Lawyers who feel obligated to respond to emails in the middle of the night or after a much-deserved evening out might find their judgment less sharp than during the work day. Accidentally revealing client confidences through sloppy reliance on auto-complete or autocorrect functions, or simply sending an incoherent message, can not only harm an attorney’s reputation — it can also lead to bar complaints and ethics violations.

**The average person checks their phone 47 times per day**



### Practice Pointers

Attorneys need realistic strategies for digital detoxing that will help them serve their clients better, increase productivity, and enhance their vitality and well-being.

Individual lawyers who recognize their own tendencies in the risk description above should seek out the myriad resources on detaching themselves from their devices. Some starting points are suggested in the resources section of this report. As with any addiction, the cold-turkey approach rarely works, and in the case of connected lawyers, that approach would not necessarily be prudent. Some digital connections are necessary.

That said, lawyers should adopt incremental steps to digitally detox themselves and improve their quality of life. For instance, lawyers should designate certain times and locations as “device-free.” Mealtimes and the bedroom are good starting points. To the extent feasible, lawyers should also try to set expectations with employers and clients — for instance, emails received after a certain time will not receive a response until the next business day.

Organizations that employ lawyers should recognize that setting an expectation that employees always be available is ultimately counterproductive. Attorneys who try to respond competently at all hours of the day and night simply will be less effective and less productive than those who keep set hours of connectivity. Employers should perceive that the risk of mistakes — and their fallout — from over-connected attorneys outweighs any productivity benefits.

Lawyers who are addicted to digital devices have a substantially lower quality of life than those who are not — meaning that such lawyers are incentivized to shop around for a work environment that will provide a better quality of life. To prevent these ills, employers should, as much as possible, limit nonemergency correspondence to the workweek and consider providing training and support for those who cannot disengage. They should cultivate a workplace culture stressing the negative consequences of digital addiction and recognizing that lawyer well-being requires a fair balance between work and life.



Employers should take note that a “right-to-disconnect” movement is taking place abroad, with signs that it is catching on in America. There is already a law granting this right in France. German companies, including Volkswagen and BMW, have long had policies against contacting employees after hours. German lawmakers are currently considering making those policies law by following France’s lead and enacting so-called “right-to-disconnect” rules. The disconnect trend also has reportedly spread to Italy and the Philippines.

Canada has been considering similar measures since 2018, when the movement also reached the U.S. The New York City Council considered a proposal in 2018 that would give private employees the right to ignore electronic work communications after hours and fine employers \$250 every time they violated that right. Workplace communication software, including industry leader Slack, have begun offering “Do Not Disturb” features for employers and employees.

In the practice of law, it will be difficult to strike a balance between the need to work after traditional hours and the employee’s right to have work-life balance. But this is a challenge that law firms need to meet.

## Lack of Diversity in the Legal Profession

### ↓ The Risk

The lack of diversity in the legal profession is a well-established issue. Although the link between diversity and lawyer well-being may seem tenuous at first, leading research — including the report of the National Task Force on Lawyer Well-Being that was the impetus behind this and other wellness committees’ work — indicates that diversity and wellness are symbiotic. A collegial, respectful, and inclusive workplace contributes to a sense of connection, which has a direct bearing on well-being. Lawyers who feel they belong in their workplace are more likely to be engaged in their work and thus more productive.

In contrast, a lack of diversity in the profession can lead some attorneys to experience a feeling of isolation. Isolated attorneys tend to be healthier and poorer performers. They are also more likely to feel as though they lack control and autonomy over their professional lives and are more likely to suffer psychological disorders such as stress, anxiety, and depression.

 **Practice Pointers**

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In order to fully address lawyer well-being, law firms and organizations must adopt measures to increase the diversity and inclusion of lawyers throughout the profession. Legal employers and law schools should prioritize diversity and inclusion in recruiting students as well as in hiring and retaining attorneys. Similarly, developing or enhancing existing mentoring programs that engage diverse lawyers promotes an inclusive profession. Organizations currently lacking diversity programs should consider hiring consultants or other professionals with the necessary expertise to competently measure and assess the organization's overall levels of diversity and inclusiveness, engage a diverse group of employees and stakeholders in the conversation, and suggest approaches for improving organizational inclusivity.

Diversity is about more than employment statistics — there is an emotional and psychological component that is just as important to fostering a positive working environment. Legal organizations should strive to empathize and address personal experiences within the organization caused by or related to a lack of diversity. By promoting a team mentality among all members within the firm or organization and encouraging open and honest dialogues related to the organization or firm's diversity and inclusion practices, individual attorneys will feel that their experiences are recognized and appreciated. Employers should also include education on implicit bias and its effect on the organization or firm members as part of ordinary workplace training programs.

Bar associations and regulators should also strive to advocate for diversity and inclusion initiatives and educate the bar on why those initiatives are important to individual and institutional well-being. Doing so could take the form of offering CLEs focused on diversity and inclusion, developing diversity pipeline programs, and hosting business development events promoting diversity.

The effects of a lack of diversity in the profession are much harder for the individual lawyer to tackle as they tend to come from structural or institutional norms or practices and are not able to be easily or immediately altered by the individual lawyer. That said, individual lawyers can help mitigate this risk by actively seeking mentors inside and outside of their organization. Participation in diversity and inclusion sections in local, state, or national bars is a direct way to work toward increasing diversity in the legal profession.

Attorneys should be cognizant of the importance they place on being in a diverse and inclusive work environment and the effect that doing so has on their individual mental health. By being willing to communicate personal experiences with organization or firm leadership and hold management accountable, attorneys can help increase awareness of diversity's role in establishing a positive working environment. When searching for new jobs, attorneys should factor in a work environment's diversity objectives and culture in assessing their potential workplace satisfaction.

Finally, all attorneys should strive to be tolerant and develop a willingness to communicate and educate other attorneys on matters of diversity and inclusion. Nurturing this awareness of one's own implicit biases and how they may impact other individual attorneys and the organization or firm is essential to establishing positive, productive working environments.

## External Pressures on Lawyer Independence

Lawyer independence refers to a lawyer's freedom to act in his or her client's best interest without fear of interference. The independence of the legal profession and the judiciary is a fundamental aspect of the system of checks and balances protecting the rule of law in modern democracies. External pressures on that independence can come from a variety of forces that cause lawyers to set aside their independent judgment in favor of decision making based upon another interest. The importance of this independence has been summarized as follows:

In the great symphony of the American legal system, while it is the court that ultimately calls the final tune through judicial review, it is the lawyer who plays maestro and makes sure that each instrument of the orchestra is in place at precisely the right time so that the right tune is available to be played. Herein lies the true need of an independent legal profession, and simultaneously the reason our independence must be protected. The combination of the concepts of individual rights and American judicial review is unique in American jurisprudence and has a profound synergistic impact on our legal system. One good lawyer with one good case in front of one good court can literally change American society.<sup>54</sup>

Given the stakes involved, threats to a lawyer's independence harms not just the individual attorney's well-being, but the health of our legal system as a whole.

Individual lawyers are most likely to encounter threats to their independence in situations involving the potential for financial gain. The obvious examples are hornbook professional responsibility principles: engaging in a business transaction with a client without disclosure and consent, conducting a separate business activity that is contrary to a client's interests, acquiring a property interest adverse to a client, or acquiring a financial stake in a case's outcome. Any law student can tell you that these are all forbidden.

“One good lawyer with one good case in front of one good court can literally change American society.”

The reason for the taboo is that a lawyer in one of these positions has compromised his or her independence — such a lawyer has a financial incentive to act against the client's interest. Numerous ethics rules — particularly Rules of Professional Conduct 1.7, 1.8, and 5.4 — prohibit these and other conflicts of interest. Protection of lawyer independence is thus an essential aspect of why law is a self-regulating profession: an outside regulatory body could limit the profession's independence, but regulation is necessary to fight the financial incentive to compromise independence.

When these traditional ethical principles regarding lawyer independence are viewed in light of the modern, globalized legal market, a new quagmire of pressures on lawyer independence

<sup>54</sup> Leonard C. Heath Jr., *Lawyer Independence: Atticus Finch, Emerging Technology, and the American Lawyer*, VA. LAW., Dec. 2018, at 26, 30, <https://perma.cc/D3WA-WJ2E>.

emerges. As discussed elsewhere in this report, the changing paradigms of the legal profession have created an intensely competitive market characterized by proliferating alternative legal service providers, corporate clients increasingly taking legal work in-house, and client resistance to traditional billing models. **See Changing Legal Paradigms.** As a result, lawyers and their employers are feeling the pressure, making them increasingly likely to enter into conflicts to maintain the bottom line.

Economic pressures are heavily incentivizing lawyers and firms to innovate in ways that may compromise their independence. To keep profits up, some lawyers are turning to for-profit attorney-client matching services (ACMSs) to bring in fresh work. Similarly, startups combining venture capital funding with legal services are luring clients away from traditional law firms. The market clearly loves these innovative legal service providers. The problem with them is that they directly compromise lawyer independence — at least as traditionally understood. Many states, Virginia among them, have issued legal ethics opinions prohibiting lawyers from participating in certain for-profit ACMSs because doing so violates Rules 5.4 and 7.3, among others. However, other ACMSs comply with the Rules of Professional Conduct and are important to connecting clients with lawyers. Similarly, Rule 5.4 on its face prohibits lawyers from sharing legal fees or forming partnerships with nonlawyers — and in doing so, bans lawyers from harnessing venture capital or developing new methods of delivering legal services with nonlawyers.

### Practice Pointers

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This conflict between traditional values and ethical principles rooted in lawyer independence and the increasing commercialization and competitiveness of the legal field is developing into a crisis that law, as a self-regulating profession, must address. Alternative legal business structures that test the lines between ordinary businesses and law firms are nothing new and are here to stay. But lawyers must be forever mindful that lawyer independence as reflected in ethics rules ultimately serves to protect clients and the public. As one commentator put it, the Rules of Professional Conduct are our clients' Bill of Rights.<sup>55</sup>

What can lawyers and their employers caught in the middle of this conflict do? They should strive to stay at the forefront of developments in the legal market by studying new legal ethics opinions, reports about the state of the legal profession, and other news sources related to developments in law practice. No one really knows how the understanding of lawyer independence will develop in the future. That said, lawyers should seek to become involved in the organized bar and contribute to the profession's self-regulation. Legal employers should encourage this participation and make ample allowance for it because self-regulation is a primary pillar of lawyer independence.

Law schools and bar associations should strive to educate both lawyers and the public about the lawyer's role in society and how an independent bar contributes to the rule of law and a thriving democracy. An independent bar requires public trust and support, so all legal stakeholders — law firms, lawyers, law schools, bar associations, and governments — should strive

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<sup>55</sup> ABA Commission on Multidisciplinary Practice, House of Delegates Annual Meeting 7/11/00 Transcript, <https://perma.cc/YA2D-5ZA2>.

to overcome the common negative perception of lawyers and restore the legal profession's public image.

Finally, legal employers can reduce the risk of their employees entering into conflicts of interest or otherwise compromising their independence by providing attorneys with adequate compensation. Doing so will reduce financially induced temptation to skirt ethics rules.



## SELF-ACTUALIZATION RISKS

### Losing Control of Professional Destiny



#### The Risk

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Losing control of professional destiny is an occupational risk especially acute for young lawyers. Not to be confused with the expectations-reality gap in law practice discussed elsewhere in this report, the risk of losing control of professional destiny refers to becoming locked into a particular area of law or type of legal employment that is at best unfulfilling and at worst actively detrimental to a lawyer's health and well-being.

Perhaps the archetypical example of this occupational risk is the young lawyer who, after graduating law school with a massive student debt load, feels obligated to become an associate with a large law firm. The new lawyer may have gone to law school with aspirations of becoming a prosecutor or family lawyer, but the firm offered a position in the government contracts section that came with a six-figure salary. The job was prestigious and paid well, but at the cost of a satisfying personal life.

One of the most insidious aspects of this risk is that many young lawyers who experience it feel as though it just happened to them and was not the result of their own volition. As one article discussing the struggles of new associates put it:

[O]verachieving law students have ended up at large firms by privileging the external measures of professional success and by resisting the possibility that less celebrated career options will open the door to other important and ultimately more satisfying facets of life. By eliding hard choices, these young associates find themselves in unhappy, unfulfilling environments without really knowing how they got there, disempowered and alienated from their work.<sup>56</sup>

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<sup>56</sup> William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087, 1088–89 (2007).

## Practice Pointers

This risk is characterized by a sense of feeling trapped or powerless, as young associates typically feel at the mercy of their supervising partners and firms. The realities of the legal market mean that employers — especially large firms — are unlikely to change the factors that make an associate’s life unpleasant. The reason behind this unfortunate reality is simple: “if the firm management places too much emphasis on social or ‘lifestyle’ goals, powerful partners are free to exit the firm in pursuit of an environment that will permit them to maximize the value of their book of business.”<sup>57</sup>

That said, there are steps employers and other organizations can take to help their young associates without harming competitive margins. The most natural, practical action is to leverage existing human capital by fostering mentorship relationships. This is cost-effective because the people involved are already together. Plus, developing working relationships among lawyers within an organization increases individual effectiveness. These mentorship relationships will help young lawyers make the most of their experience in a challenging environment and provide resources for developing an action plan for career goals.

Although young lawyers may feel trapped by these professional realities, the best way for them to counteract this risk is to leverage the control they do have. Andy Clark, a wellness coach, advises taking proactive steps in the earliest stages of a legal career to stave off larger problems later in life:

[Young lawyers are] likely still at the stage of your career where you don’t feel in control of your time and that, for now, the interests of your superiors or your clients must supersede your own. You’re likely still paying down your law school debt, so you feel that your career and the salary it provides must come first.

But here’s the thing. Since you’re young — 25 to 35 — you probably have yet to see the full effects of unbalanced, career-comes-first living. If you’ve neglected your level of fitness, you may have gained a few pounds, but that’s no big deal, right? If you haven’t focused enough attention on your spouse and children, you can always do that later, when you’re less busy, right? If you haven’t managed your professional stress and it’s starting to wear on your emotional well-being, there are pills for that, aren’t there?

Wrong. Now is the time. The full effects of unbalanced living — i.e. increasingly eroding health, relationships, happiness and well-being — will show up in your life sooner than you think.<sup>58</sup>



**Now is the time. The full effects of unbalanced living — i.e. increasingly eroding health, relationships, happiness and well-being — will show up in your life sooner than you think.**

<sup>57</sup> *Id.* at 1093.

<sup>58</sup> Andy Clark, *Life Balance for the Millennial Lawyer*, 40 L. PRAC. 41, 43 (2014).

Forces such as overwhelming debt loads that drive young lawyers into unsatisfying practices are not going anywhere anytime soon. Lawyers who want to avoid this trap should act proactively. Because most lawyers have to suffer through a challenging career phase at some point, they should plan to make the absolute most of the unpleasant experience. Proactively set an end-goal of where you want your career to be at certain milestones, brainstorm the steps needed to reach that goal, then take them.

Taking these steps will almost certainly involve changing employers. In that sense, young lawyers should avoid seeing their current position as a lifetime career trap — instead, they should consider how it is a stepping stone to where they want to be. By intentionally developing a plan for making the most of what might seem to be a bad experience and combining it with an exit plan for moving to the next stage, young lawyers who feel trapped may find that they have significantly more opportunities than they realized.

## Values Conflict with Client or Practice Setting

### The Risk

The Preamble to the Virginia Rules of Professional Conduct provides, “[i]n the nature of law practice ... conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an upright person while earning a satisfactory living.” Such conflicts between the lawyer’s responsibilities to the client and to his or her own interest “in remaining an upright person” can create an internal conflict within the lawyer that harms his or her well-being.

“The one thing that doesn’t abide by majority rule is a person’s conscience.”

– *To Kill a Mockingbird*

Research indicates that many lawyers experience value conflicts in their practice in which their client or supervisor asks them to do something that is not unethical, but to which they are morally opposed. Those attorneys often overlook their personal moral judgment in responding to the conflict and proceed with the representation.

For instance, a survey of young lawyers conducted by Robert Granfield and Thomas Koenig revealed that most of the respondents resolved ethical dilemmas in practice simply by retreating into their role as advocates in which they concentrated on the legal issues and ignored the social consequences of their lawyering. Although one respondent admitted he personally disliked representing some of his clients, he said, “I just close my eyes and do it.” Other attorneys in the survey revealed that the organizational pressures of law firm life caused them to compromise their personal ethical standards.<sup>59</sup>

<sup>59</sup> Robert Granfield & Thomas Koenig, “It’s Hard to Be a Human Being and a Lawyer”: *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 513–14 (2003).

Such lawyers' responses to value conflicts with their clients or with aspects of their practice may appear understandable because lawyers serve as representatives of the clients. Additional research, however, indicates that channeling such conflicts in this way negatively affects lawyers' wellness. Specifically, studies indicate that lawyers who fail to resolve such conflicts in a way that protects their personal integrity may encounter difficulty in maintaining a stable, integrated self. These studies on "self-concept differentiation" indicate how sharp separation between lawyers' professional and personal identities can actually lead to emotional maladjustment. The studies show that individuals who do not integrate their identity across these roles — that is, they have high self-concept differentiation — "were relatively more depressed, anxious, and neurotic and had lower levels of self-esteem and wellbeing."<sup>60</sup>

In opining on how this research relates to lawyer well-being, one researcher observed:

Lawyers, like those in Granfield and Koenig's study, who see their attorney role as a rather rigid construct and who act in that role in ways that do not match their sense of self in their other life roles (like parent or spouse), are evidencing a fragmented self. Such an unintegrated life is, in the words of the psychologists, "likely to result in difficulties in psychological adjustment." Lawyers must see their role as attorneys as an extension of who they are at home, at church, and in life. The research ... indicates that lawyers need not view themselves simplistically and should recognize that different aspects of themselves may be more important in different roles. They therefore might rightly recognize their advocacy role in representing clients requires them to accentuate a personality trait they might not convey in their other roles. Nevertheless, their personal, moral beliefs, which are important to the core self, must be integrated into their role as lawyers. As Charles Wolfram writes, "Acting against one's moral beliefs leads to a loss of integrity, to a sense of being at war with oneself."<sup>61</sup>

Predictably, living in such a state of turmoil with oneself without adequately addressing the effects of such an existence can be exhausting and severely detrimental for the lawyer involved.

**“Determine never to be idle. No person will have occasion to complain of the want of time who never loses any. It is wonderful how much can be done if we are always doing.”**

*– Thomas Jefferson*

<sup>60</sup> See Larry O. Natt Gantt II, *Integration as Integrity: Postmodernism, Psychology, and Religion on the Role of Moral Counseling in the Attorney-Client Relationship*, 16 REGENT. U. L. REV. 233, 252 (2003–04).

<sup>61</sup> *Id.* at 255.

 **Practice Pointers**

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The sorts of values conflicts discussed above are intrinsic to the practice of law. To best steel themselves against the psychological stressors associated with them, individual lawyers should take a moment to identify their core personal values. Before joining a new legal employer or other organization — or if already employed, before assuming new responsibilities — lawyers should seek to understand and identify the central values promoted by their firm or other employer. They should also consider the values espoused by practitioners in their primary practice area and by their usual clients. They then should assess the two areas for potential conflicts: identify how those values may conflict with personal values and determine whether proceeding in that firm or area is consistent with the attorney’s personal integrity. They should ask whether continued involvement in that firm or practice area promotes a larger value that is important to the attorney and that transcends the conflict (e.g., the attorney’s desire to serve the underrepresented transcends a specific conflict with his or her employer), or instead contributes to psychological dissonance.

Obviously, most practitioners are not in a position to change employers or practice areas when values conflicts arise. As such, attorneys should also develop a plan and decision-making framework to deal with conflicts. Maintaining good communication with work supervisors and clients is key, as conflicts attorneys sense may be resolvable upon open and respectful conversation with the others involved. Also, maintaining an accountability or support relationship with friends, family, clergy, or fellow attorneys to work through potential personal conflicts will also aid in protecting psychological wellness during values conflicts.

Organizations that employ attorneys should clearly note any organizational values that affect the type of clients or cases accepted when considering new hires and throughout the employment relationship. Highlighting these usually hidden values or cultural norms can ensure that employers and employees are able to find a healthy match that will promote a positive working environment. Employers should also allow attorneys to assert personal, moral conflicts of interest and decline representative tasks or assignments as appropriate. Asserting such conflicts may be appropriate under the Rules of Professional Conduct, and the cost in revenue will likely be minor compared to the value of promoting positive workplace relationships that lead to greater employee retention and productivity. Finally, employers should promote mentor relationships within the organization to help attorneys resolve values conflicts.

## The Expectations-Reality Gap in Law Practice

 **The Risk**

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As this report has made apparent, the legal profession is leading in some disturbing categories: depression, substance abuse, alcoholism, and overall career dissatisfaction, to name only a few. This sobering truth begs the question: How much of a lawyer’s need to cope or dissatisfaction stems from failed expectations of what life as a lawyer would be like in contrast to actual realities?

Many lawyers admit to having dissatisfying careers. One study of 4,500 attorneys found that, regardless of their student debt load, around a quarter of them were dissatisfied with the decision to become a lawyer.<sup>62</sup> Aspiring lawyers enter law school with all sorts of expectations of what their professional life will look like, and when realities fail to meet those expectations, resentment, anger, and regret can result. There are a variety of reasons why the expectations and reality of law practice do not match up:

Aspirations of practicing in ways glorified by movies and television, such as using the law degree to bring about societal change, argue high issues of constitutional law, or helping the less fortunate in substantial ways, which ultimately are derailed by law school debt realities, job market opportunities, salary expectations, the detail-oriented nature of legal practice, and similar factors;

- Misalignment of early career client work with personal values;
- Unrealistic salary expectations based on the popular perception of lawyers as all being wealthy;
- Discomfort with the realities of the adversarial system compared with its glorification in pop culture;
- Diminishing respect and professionalism among lawyers in practice;
- Failure to appreciate or understand the substantial commitment of time and energy necessary to become an effective lawyer; and
- Frustration with poor life-work balance in practice.

Any of these reasons, or a combination of them, can lead lawyers to experience career dissatisfaction, resentment toward the decision to pursue a legal career, and a feeling of being trapped. Living with professional regret can lead to misery and contributes to the epidemic of unwell lawyers.

### Practice Pointers

The legal profession must take a hard look at the realities of the expectations-reality gap if it is truly committed to facilitating a happier, healthier, and optimistic outlook on life as a lawyer.

Changing the negative realities of law practice will take substantial effort and a profession-wide perspective shift, but it is possible. After all, most commentators agree that the factors causing the present expectations-reality gap among so many attorneys only became prevalent in the last few decades.

Organizations that employ lawyers should strive to mitigate failed expectations by setting forth clear expectations of the realities of practicing there during the hiring and talent-acqui-

“This time, like all times, is a very good one, if we but know what to do with it.”

– Ralph Waldo Emerson

<sup>62</sup> Ronit Dinovitzer et al., *Buyers' Remorse? An Empirical Assessment of the Desirability of a Lawyer Career*, 63 J. LEGAL. EDUC. 211, 216–17 (2013), <https://perma.cc/Z75Z-3A5U>.

sition process. Employers should recognize their role in establishing a productive, positive, and enticing environment that helps lawyers feel fulfilled and self-actualized in their roles. Establishing a culture of empathy and understanding in the workplace can help ease the transition into full-time law practice. Employers control the mechanisms of practice and can use that power to create a better environment. For instance, they should cultivate an understanding about how adherence to billable hours and other metrics of short-term profitability that are currently in vogue can produce diminishing returns in the long term and negatively affect satisfaction in practice. Research indicating that client-focused innovations with regard to billing and service delivery support the decision to overcome institutional inertia in this regard. **See Changing Legal Paradigms.**

Those considering a legal career should strive to develop accurate expectations about the realities of law practice. To that end, law schools and bar organizations should promote programming designed to educate current and potential law students about the practice realities in order to set measured expectations. Attorneys who feel frustrated or trapped by their career choice should seek to leverage their own agency and consider career pivots beyond traditional legal practice areas. **See Losing Control of Professional Destiny.** JD-preferred and other nontraditional careers that value the lawyer's skill set may provide a way to use a legal education while finding a better match between professional expectations and realities.

## CONCLUSION

**O**n May 12, 1985, William B. Spong Jr., former United States Senator from Virginia and celebrated dean of our nation’s oldest law school, the Marshall-Wythe School of Law at the College of William & Mary, issued farewell remarks that have echoed to the present. In addressing the Class of 1985, Dean Spong reflected on the legal profession and had this advice to offer:

You should try to avoid awakening in your middle years, after the coveted partnership is obtained, to discover that a life of billable hours, club memberships and foreign automobiles is not enough; that success and happiness are not always the same; and that your capacity to be helpful to others and relate to others may have been impaired by single-minded efforts in your practice, often in a specialized area of competence not related to human needs and human understanding.

Am I suggesting that you should avoid specialization in one of the myriad of new areas of the law? No. Am I suggesting that you should avoid large firm practice? No. Am I so naive that I would attempt to dissuade you from seeking the most competitive of situations? No.

I am, however, alerting you to the danger of spending your formative years bereft of literature, music, art, an appreciation of nature, and most important, of the joys of family life. Jefferson’s idea of taking the study of law away from the apprentice model and into an academic setting, was, I believe, to assure that the practicing lawyer would be a whole person, with an understanding and appreciation of many things beyond the artisan demands of a skilled trade.<sup>63</sup>

Dean Spong’s heartfelt admonition still rings true today. We must strive to not only be good practitioners, but also “whole person[s].” It is the committee’s sincere hope that this report will further the discussion concerning the well-being of the legal profession and that it will positively affect the personal lives and professional experience of those who read it and of those they hold dear.

“I am, however, alerting you to the danger of spending your formative years bereft of literature, music, art, an appreciation of nature, and most important, of the joys of family life.”

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## RESOURCES

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