

HEALTHY LAWYERS ARE PRODUCTIVE LAWYERS

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The business case for promoting lawyer well-being

Lawyers who are impaired—whether because of substance use, diagnosed mental health issues, or simply garden-variety stress—are more likely to commit legal malpractice or violate ethical rules.

When considering malpractice and ethics risks, lawyers tend to focus on complying with ethical rules, meeting deadlines, maintaining attorney-client relationships, and monitoring client trust accounts. But many overlook the most impactful factor in risk management for lawyers: personal well-being.

Movies and books have glamorized the caricature of the overworked lawyer billing around the clock with little time for anything outside the office. The problem is that this narrative has been internalized by too many lawyers and has led some to believe the only way to be successful is to prioritize work above all else. As a result, many lawyers worry that taking time away from their work for family or personal interests—or even for their physical or mental health—will jeopardize their financial and professional goals.

Lawyers who assume (correctly or not) that their firms demand such devotion from them may neglect their individual well-being. This is dangerous for the lawyer personally and professionally, but also costly for their law firm. Impaired lawyers and their law firm face an increased risk of ethical and malpractice claims.¹

The financial and reputational consequences to a law firm when its lawyers neglect their personal well-being can include negative publicity when a lawyer is disciplined or disbarred, lost clients, costly lawyer and staff turnover, and adverse verdicts or settlements that can cripple a law firm's viability.

It may seem counter-intuitive to those who want to maximize firm profits, but it's a business necessity for law firms to make the personal well-being of their lawyers and staff a priority.

Although managing and reducing lawyers' workloads may have an acute negative impact on firm revenue, it will likely save money in the long run by avoiding turnover caused by burnout and reducing stress-induced errors... Importantly, addressing lawyer well-being also reduces the financial and reputational costs of malpractice and ethics violations.

What's the big deal?

Statistics paint a bleak picture of lawyer well-being. The American Bar Association (ABA) Hazelden Betty Ford Foundation Study released in 2016 showed that nearly one in three of the lawyers who responded struggle with depression, about one in five struggle with anxiety, and just over one in five identify as problem drinkers.² As acknowledged in the study, even more lawyers grapple with such issues and either did not respond to the study or did not want to admit their struggles. While some lawyers have diagnosed chronic mental health issues such as bipolar disorder or clinical depression, others struggle with situational depression or anxiety. Similarly, lawyers who don't identify as struggling with alcoholism or substance use may have unhealthy relationships with mind-altering substances.

But it is not just substance use or mental health struggles that can negatively affect a lawyer's ability to function at his or her best. The sedentary nature of the profession can exacerbate health hazards in ways akin to the effects of obesity or smoking. Many lawyers neglect their physical well-being with irregular mealtimes due to long hours in the office, an overabundance of caffeine and junk food to get them through the day, and little regard for proper nutrition. For some, physical activity is limited to the steps they take walking between their cars and

their office chairs. Many lawyers struggle to find the time to tend to their physical well-being, which can further compound the challenges otherwise inherent in the profession.

The practice of law is by nature stressful. Lawyers routinely face demands from clients and colleagues, and there is a perception that we should be available at all times—even when we are not in the office. The adversarial nature of resolving disputes or negotiating contracts can make “professional courtesy” seem like a fantasy. And of course, many of the people drawn to the practice of law are perfectionists who hold themselves—and others—to sometimes unreasonably high standards, terrified of falling short.

It is easy for lawyers to get caught up in competing with other firms or even other lawyers within their firm to work the most hours, charge the highest billable rate, and attract the most sophisticated clients. Lawyers often feel guilty when they take time for family, friends, or hobbies because they believe they will be perceived as uncommitted to the firm or their work. Scheduling a vacation can seem impossible when a simple work-free weekend is rare. Many lawyers become disillusioned that the actual practice of law differs so radically from what they imagined when they decided to go to law school. But they often see no way to change their status quo, which can compound already existing stress.

And while the threats to lawyer well-being might change in the course of a career, they do not seem to ebb with years in practice. Young lawyers may experience stress and anxiety because they are afraid to make a mistake, but also afraid to admit they do not know something. Lawyers seeking partnership may struggle with developing a book of business when they have no experience doing so and feel a lack of support from their firms. Lawyers taking on supervisory or managerial roles may fear taking on seemingly overwhelming responsibility for the livelihoods of their partners, employees, and clients. Lawyers nearing retirement may be anxious about losing their identities when they are no longer spending the majority of their days in the office.

Regardless of the particular circumstances causing lawyer stress, ignoring mental and physical health can lead to devastation of personal and professional lives.

Why should we care?

Lawyers struggling with impairments face a conundrum. If we ask for help, will we be perceived as weak? Will we be risking our professional reputation?



Ironically, if we *don't* ask for help, we are actually far more likely to put our law firms, clients, and law licenses at risk. Lawyers who are impaired—whether it's because of substance use, diagnosed mental health issues, or simply garden-variety stress—are more likely to commit legal malpractice or violate ethical rules. Furthermore, in a society that seems to demand excellent results in the cheapest and shortest amount of time, clients can be very unforgiving of errors and delays caused by lawyers who are not taking care of themselves, which can have costly impacts to law firms by way of negative online reviews, non-repeat business, and costly malpractice lawsuits.

Minnesota Rules of Professional Conduct Rule 1.3 requires lawyers to act with reasonable diligence and promptness in representing a client, and Rule 1.4 requires lawyers to communicate promptly and effectively with their clients. Rules 3.3, 3.4(b), and 4.1 prohibit lawyers from lying to anyone involved in the legal process. Impaired lawyers are far more likely to fail to meet these basic ethical obligations than lawyers who make well-being a priority.

And it's not just the impaired lawyers whose behaviors implicate professional rule violations. Rule 5.1 imposes responsibilities on partners and lawyers in supervisory roles to ensure that other lawyers in their firm are meeting their ethical obligations to their clients and the legal profession. Rule 5.3 addresses responsibilities relating to non-lawyers. Ignoring the well-being of those around us can put our firm's reputation and our own law licenses on the line.

The potential for malpractice and ethics violations skyrockets when lawyers endure work-related stress in addition to regular personal stress. A lawyer working 50-60 hours per week for months on end is likely to burn out, even if everything else in his or her life is going well. The mental exhaustion associated with practicing law is difficult to manage without taking adequate time for the brain to rest, and the chance of making a mistake due to fatigue increases. If that same lawyer also faces personal relationship or money problems, or is struggling with substance use or depression, his or her malpractice and ethics risk can careen into the danger zone. It can be extremely difficult for even a highly skilled lawyer to thoroughly analyze a complex legal matter for a client when their brain is fraught with thoughts of a recent argument with their spouse, or the devastating news that they or a loved one has been diagnosed with a terminal illness, or worry about their aging parents or troubled children.

Lawyers concerned about money for whatever reason may overbill or churn files to increase their revenue. Some lawyers might deal with their personal stress by focusing solely on work, and others by not being productive at all. Some lawyers feel so overwhelmed by stress that they lie to their clients, opposing counsel, and the court in an attempt to cover up their mistakes or inaction in handling a matter.

Failing to appropriately identify and address impairments like substance use, anxiety, or even general stressors can negatively affect a lawyer facing a disciplinary matter. Of course, each disciplinary matter is handled on a case-by-case basis, but the core factors that guide the imposition of discipline are the nature of misconduct, cumulative weight of disciplinary violations, harm to the public, and harm to the profession.³ The goal of attorney discipline is not to punish the attorney, but to protect the public and the judicial system, and to deter future misconduct by the disciplined attorney and others.⁴

Lawyers who acknowledge their problems and are proactive in addressing them (and, in appropriate cases, seeking treatment) are better able to regain personal and professional well-being. While it is important to note that the mere existence of, for example, overwhelming stress, or a substance use problem, is not itself an excuse or defense to professional misconduct, a willingness to admit and address such issues may be considered a mitigating factor in the imposition of discipline.⁵ Lawyers are held to the same ethical standards regardless of their personal struggles, but those who actively address their situation head-on may have a better chance of returning to the practice of law after a disciplinary matter than lawyers who are uncooperative and refuse to acknowledge or take responsibility for their actions.

Research indicates that those who address their problems are at a significantly reduced risk of ethical and malpractice claims. In 2001, the Oregon Attorney Assistance Program conducted a study involving 55 lawyers in private practice who sought treatment for alcohol use and measured the malpractice and ethics complaints reported against these lawyers during the five-year periods before and after seeking treatment. The study revealed a 30 percent annual malpractice rate during the five years prior to seeking treatment, and only an 8 percent rate after seeking treatment.

Unfortunately, many lawyers feel paralyzed with respect to their personal well-being due to general stigma and the fear of losing the esteem of their clients and colleagues if their struggles become known. Others may struggle with under-

standing the type of help they need, or fear what will happen if seeking help does not resolve the issue. While these are valid concerns, it is far better to take action toward regaining well-being than simply to allow one's personal and professional life to deteriorate.

What can we do?

When lawyers are unsure how to address a complicated legal issue, it is common sense to research applicable case law and talk with other lawyers or experts with experience in the practice area. We should feel empowered to do the same when we face uncertainty about the stress in our professional and personal lives. Thus, best business practices include reducing the stigma of admitting personal and professional stressors, and increasing awareness of and access to tools for lawyers to improve their overall well-being. For legal employers, we recommend consulting the *Well-Being Toolkit for Lawyers and Legal Employers*, a resource created last year by Anne M. Brafford for use by the American Bar Association.

The first step in managing our personal well-being is to do a self-evaluation to determine the sources of our discomfort. One way to do this is to write out a list of everything in your current job or career path that causes you stress and then look for common themes for guidance on change. Is it a specific case—or working with certain clients/colleagues—that causes you stress? Is it the pressure of making a final recommendation to a client? Are you frustrated at the lack of control over your schedule or your level of passion for your work?⁶

Once these stressors are identified, we can make necessary changes. For some, a frank discussion with firm partnership could alleviate anxiety about performance issues. Others may benefit from moving out of highly stressful areas of practice, such as criminal law, family law, or child protection. Some may decide that the culture or expectations at a different firm or company are a better fit for them. Still others might decide to leave the practice of law altogether to pursue an in-house, teaching, or other non-practicing role. Some lawyers may come to the realization that they need treatment for alcohol or substance use, medication for mental health issues, or counseling to work through personal problems.

Unfortunately, many lawyers suffer in silence because they hope things will get better on their own. They won't. The decision to seek help can be scary for lawyers who believe they are supposed to be tough and able to handle everything on their own. This thinking is wrong.



Notes

¹ See G. M. Filisko, *Disbarred Lawyers Who Seek Reinstatement Have a Rough Road to Redemption*, ABA J., Aug. 2013 (citing Sarah Krauss, then-chair of the ABA Commission on Lawyer Assistance Programs, who said in 2013 that mental health or substance abuse issues may be a factor in more than half of lawyer discipline cases), available at http://www.abajournal.com/magazine/article/disbarred_lawyers_who_seek_reinstatement_have_a_rough_road_to_redemption.

² Krill, Patrick, Ryan Johnson, and Linda Albert, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys." *Journal of Addiction Medicine* 10, no. 1 (January/February 2016): 46-52.

³ *In re Nett*, 839 N.W.2d 716, 721 (Minn. 2013).

⁴ *In re Koss*, 611 N.W.2d 14, 16 (Minn. 2000).

⁵ See generally, *In re Bosman*, 876 N.W.2d 308, 309 (Minn. 2016).

⁶ On the flip side, make a list of everything in life both personally and professionally that makes you happy. Circle everything that your current lifestyle allows you to experience, at a minimum, on a bi-weekly basis. If over half the list is not circled, something needs to change. Also, mark the top 10 things most important to your happiness, and if those are not already circled, that is an even bigger indicator that change is needed. There is no reason why you should not be able to experience the things in life that bring you the most joy at least twice per month!

⁷ For information published by the ABA Working Group to Advance Well-Being in the Legal Profession, please visit the following website: https://www.americanbar.org/groups/lawyer_assistance/working_group_to_advance_well-being_in_legal_profession/.

⁸ Please visit the following website to learn more about the National Task Force on Lawyer Well-Being: https://www.americanbar.org/groups/professional_responsibility/task_force_lawyer_wellbeing/

⁹ Please visit the following website to learn more about the MSBA Well-Being Committee: <https://www.mnbar.org/about-msba/leadership/msba-committees/life-the-law>.

Everyone needs assistance at some point, and it takes a tremendous amount of courage to make the decision to seek help.

For work-related concerns, this might be as simple as talking with a mentor or another lawyer. Other times, and especially when personal stress, anxiety, substance use, or serious mental health issues are in play, it can be more difficult to talk with people we know. Lawyers might be concerned that their confidences will be breached, or that their jobs might be in jeopardy, based on something they share with their firm. Lawyers with such concerns are encouraged to seek help from a mental health professional. Whether this is a therapist, a psychiatrist, or a similar specialist, many lawyers are relieved to share their struggles with someone who is not a colleague, spouse, family member, or friend, and who is there to help rather than judge. Certain mental health professionals believe the hardest part is getting lawyers through the front door, but once they're in, they tend to stick with it because it is in their nature to want to succeed at everything they do.

Many lawyers will wish to privately consult with a specialist or group of their choice. Another fantastic option is Lawyers Concerned for Lawyers (LCL), which provides free, confidential support and services to Minnesota lawyers, judges, law students, and their immediate family members on any issue that causes stress or distress. (You can contact LCL through its website—www.mncl.org—or by phone: 651-646-5590 in the metro area and 866-525-6466 for greater Minnesota callers.)

Being engaged with others through professional organizations and events also promotes lawyer well-being. Getting to know other lawyers on a personal level can alleviate a sense of isolation. The realization that other people experience self-doubt and stress in their personal and professional lives might be what a person who is struggling needs to enable tangible steps to improve their situation.

Firm management may understandably be reluctant to take steps that shift focus away from firm revenue, since all law firms are at their core businesses. But from a business perspective, such reluctance could hurt the firm's bottom line far more than, for example, billing fewer hours. Lawyers and firms who prioritize well-being are likely to be rewarded with happier and healthier work environments and better results for clients. Although managing and reducing lawyers' workloads may have an acute negative impact on firm revenue, it will likely save money in the long run by avoiding turnover caused by burnout and reducing stress-induced errors. Firms that encourage lawyers to take time off to recharge create positive morale that permeates the entire practice; lawyers who are rested and focused are generally better able to provide clients with excellent representation. Finally, addressing lawyer well-being also reduces the financial and reputational costs of malpractice and ethics violations.

Conclusion

A focus on lawyer well-being can help reduce malpractice and ethics violations, can prevent turnover, and can make the practice of law more rewarding for lawyers and their clients. Prioritizing lawyer well-being is necessary for the betterment of the profession, and can have long-range positive impact on the financial health of the firm. For additional ideas about how to promote well-being at your firm, consult the materials published by the ABA Working Group to Advance Well-Being in the Legal Profession,⁷ the report published by the ABA National Task Force on Lawyer Well-Being entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*,⁸ and information available on the MSBA Well-Being Committee website.⁹

You can also contact your malpractice carrier for guidance. Be well! ▲

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