Professionalism: Problems, Practices, Possibilities

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Problems: The numbers are in

In the fall of 2014, the American Bar Association Commission on Lawyers Assistance Programs, in collaboration with the Hazelden Betty Ford Foundation, conducted a national study to collect data on mental health and substance use rates among legal professionals in 19 states. The findings were published in February, 2016 in the Journal of Addiction Medicine, in a report titled "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys."

The survey showed that 20.6% of licensed, employed attorneys completing the ABA study screened positive for hazardous, harmful, and potentially alcohol-dependent drinking. This is at a higher rate than in other professions.

Men and younger attorneys screened positive in higher proportions that respondents overall. Attorneys also screened positive for mental health distress at significant rates, with 28% experiencing symptoms of depression, 19% with symptoms of anxiety and 23% with symptoms of stress.

These findings confirmed what had been a long-held belief about the levels of alcohol and substance abuse and mental health concerns in the profession.

It is difficult for a lawyer to maintain high standards of professional conduct while struggling with substance abuse, depression, anxiety and other mental health issues. Suicide, early death from the effects of alcohol and drug abuse, malpractice claims, mishandling of client funds, and disciplinary action are among the potential consequences when substance abuse and mental health issues are not addressed.

Not every lawyer has a problem with substance abuse or mental health issues. But, all of us experience conflict, incivility, unprofessional behavior, competitive pressures, and a negative public perception of our profession. These and other sources of stress have an adverse impact on our health and well-being and challenge our ability to maintain standards of professionalism we expect of ourselves and our colleagues.

Consequences for health, relationships, professional competency

Lawyers are in the conflict business. We work in an adversarial process that can at times become contentious. Conflict triggers negative emotions, such as fear, anxiety, anger, and resentment, both in the client with the legal problem and in the lawyer who has assumed responsibility for handling that problem. Negative emotions produce stress and unrelieved stress can lead to adverse physical and mental outcomes.

Our bodies are designed to prepare us for an immediate response to physical threat, whether from a predator or a natural calamity. In the face of danger, our adrenal glands produce two emergency hormones, adrenaline and cortisol. Adrenaline increases heart rate, elevates blood pressure and provides an energy boost. Cortisol, the primary stress hormone, increases blood
sugar levels for our fight or flight response and suppresses other bodily functions in order that all resources can be available to aid in the immediate task of survival.

These two hormones prepare us for fight or flight by increasing resources we need immediately and suppressing other systems, such as our immune system, digestive system, reproductive system and growth processes, that are essential to long-term survival, but irrelevant if we don't live through the day.

If we survive the threat, other hormones kick in to reduce heart rate, lower blood pressure and return our bodily systems to normal levels. The problem we face today is that we live in a state of perpetual stress triggered, not by actual physical danger, but by our thoughts, anxieties, worries, fears and conflicts. Our bodies don't experience sufficient respite from being revved up for fight or flight.

Sustained elevated levels of cortisol as a result of living in a chronic state of stress impede the body’s ability to heal from wounds and put us at risk for a number of health problems, including anxiety, depression, heart disease, sleep problems, and weight gain. Chronic stress impairs attention, focus, learning, memory retrieval, willpower and resilience, all of which are important to professional competency and job satisfaction.

The stress of persistent conflict and negative emotions can also have adverse consequences for our personal relationships, increasing the likelihood of miscommunication, overreaction and blaming. We may find ourselves bringing into our personal life an aggressive, competitive attitude that has become part of our professional demeanor.

Chronic stress damages lawyers and our families, diminishes our ability to serve clients, raises health insurance costs and subjects law firms to greater risk of malpractice law suits.

**Practices: The path forward**

2017 Task Force Report on Lawyer Well-Being

Faced with the worrisome statistics of the 2016 study, the ABA Commission on Lawyer Assistance Programs, together with the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers, created a National Task Force on Lawyer Well-Being to address the health crisis identified in the ABA/Hazelden study. The work of the task force was published in a report, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," issued in August, 2017.

The task force found the legal profession at a crossroads, with immediate action required to address the current state of lawyers' health. The levels of chronic stress experienced by lawyers and the high rates of depression and substance use are a challenge to lawyer competency and professionalism and do not inspire public confidence in the profession.

The report sets out recommendations for all stakeholder groups—judges, bar regulators, legal employers, law schools, bar associations, professional liability carriers, and lawyers assistance programs. Goals are to eliminate the stigma of asking for help; emphasize that well-being is an
indispensable part of a lawyer’s duty of competence; educate lawyers, judges, and law students on lawyer well-being issues; and take small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The first recommendation for all stakeholders is to acknowledge the problems and take responsibility for addressing them. At the direction of President Barry Grodsky, the Louisiana State Bar Association has formed a lawyer wellness subcommittee of the LSBA Committee on the Profession charged with developing wellness resources for the legal community. These are anticipated to launch early 2019.

The Judges and Lawyers Assistance Program (JLAP) website, www.louisianajlap.com, contains resources on lawyer wellness and information on how to identify signs of depression, suicide, and addiction and where to get help. It is a good starting point for understanding the problems of impairment in our profession and learning what steps we can take for our own health and recovery or to help a fellow lawyer we suspect may have a problem.

In addition to the efforts of LSBA and JLAP, we each have a responsibility to acknowledge the problems facing our profession and our fellow lawyers and to decide how we will respond. One place to start is by working to remove the stigma for those asking for help, whether for addictions or mental illness. We can work to create a culture in which we look out for one another, learn the signs of potential trouble for our colleagues, and befriend and encourage those who seem to be struggling. We can commit to creating a culture of civility, reducing unnecessary conflict.

Change begins with our own behavior. How are we attending to our well-being? What steps can we take to create a healthier personal and professional life? What can we do to alleviate stressors that incline us to react unprofessionally? How can we incorporate new habits that allow us to behave civilly and courteously in response to the challenges of conflict and negative emotions that are a part of the legal system?

Reducing unnecessary conflict, learning to manage stress, and adopting healthier patterns of living and working contribute to our well-being and that of the profession. When we are healthier, everyone benefits—our families, our clients and the legal system.

**Defining well-being**

What are some of specific areas that should get our attention in the quest for well-being in our life and in the profession? The following six dimensions of life have been identified as essential to achieving a balanced, healthy life:

- **Emotional**—Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

- **Intellectual**—Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.
Occupational—Cultivating personal satisfaction, growth, and enrichment in work; financial stability.

Physical—Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.

Social—Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

Spiritual—Developing a sense of meaningfulness and purpose in all aspects of life.

**Intellectual**

Intellectual—Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.

Continuous learning, pursuing intellectually challenging activities and committing time and energy to professional development is part and parcel of our work as lawyers. But that alone doesn't cover this dimension. Other components include pursuing mentally stimulating interests or hobbies, exploring the creative arts of theatre, dance, music and expressive art, and committing to life-long learning.

How much time do you devote to exercising your intellect outside the confines of your work life? Spending time reading poetry, learning another language, learning to play a musical instrument, working crossword puzzles, or studying a discipline outside of the law that interests you are all ways to bring balance to your intellectual engagement.

**Occupational**

Occupational—Cultivating personal satisfaction, growth, and enrichment in work; financial stability.

One component of this dimension is whether you balance work with play and other aspects of your life. Do you have outside hobbies and interests, separate from your work, that engage you in a positive way?

Another factor is whether your work benefits individuals or society. Doing something that benefits others expresses an intrinsic value. Intrinsic values are those whose reward comes from the sense of satisfaction derived from building relationships, helping others, concern for the community, and self-understanding. Extrinsic values are contingent on external rewards, such as money, material luxuries, influence, and personal appearance.

Research shows that external rewards, however appealing, do not bring us happiness. Data from a study by Lawrence S. Kreiger, Clinical Professor of Law at Florida State University College of Law and his colleague, Ken Sheldon, psychology professor at University of Missouri-Columbia, "What Makes Lawyers Happy?," indicate that a happy life as a lawyer is derived from finding work that is interesting, engaging, personally meaningful, and focused on providing needed help to others. Law school grades, affluence, and prestige do not have the same impact on happiness and well-being.
Further, the extrinsic values of power, money, influence, and material luxuries are limited resources that encourage competitiveness and induce stress. They do not support ideals of professionalism. We are more likely to act professionally when we are motivated by intrinsic values that encourage us toward helping, caring, community improvement, wisdom, and patience.

Another component of the occupational dimension is financial stability. Financial stability requires both an income adequate to meet your needs and a manageable level of debt, free from excessive spending or gambling.

Reducing debt and getting expenses under control, as you are able, reduces the stress of financial demands that may tie you to an unsatisfactory job situation. Financial stability leaves you with more flexibility in career choices.

**Physical**

Physical—Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.

These goals are familiar. In some combination or variation, they typically comprise our New Year's resolutions: exercise at least three times a week; eat a balanced, nutritional diet; maintain a reasonable weight for your height, avoid alcohol or use in moderation; avoid tobacco and street drugs; and take sensible precautions to prevent injury, illness or disease.

This is a good place to start your wellness regime. You already know what you need to do and likely have been making promises to yourself about at least one item on that list. Some practices, such as exercise, can produce immediate benefit through improvement in mood, energy, attention and focus.

**Social**

Social—Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

Well-being in this area is related to our ability to relate to and connect with other people. Are you able to resolve conflicts in your personal and your professional life? Can you recognize the feelings of others and respond appropriately? Do you have a sense of belonging or do you feel isolated? Do you have a healthy sense of personal boundaries and the ability to respect the boundaries of others? Are you able to form close relationships with at least three other people whom you trust?

A longitudinal study, the Harvard Study of Adult Development, has followed a group of several hundred men, beginning in 1938, to learn what factors lead to healthy and happy lives. The results show that the secret to well-being is having friends. Those abilities that comprise the social dimension are the ones necessary to forming and maintaining enduring friendships. If you don't have three close, trusted friends, begin today to remedy that.
Emotional

Emotional—Recognizing the importance of emotions. Developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

This dimension asks how well we manage our emotions. Do we have a realistic and mostly positive view of ourselves and others? Are we able to express hurt, sadness, fear, and anger in a healthy way without blaming other people or situations? Can we manage our behavior when experiencing unsettling emotions? Can we accept our own worth as a human being? Do we manage stress by engaging in some relaxation activity for at least 15 minutes each day?

Learning to identify and manage emotions and the language of emotional well-being are not part of our law school experience. By training and inclination, lawyers are competitive, analytical thinkers with a tendency toward a pessimistic viewpoint. These are attributes for success as a lawyer, but can leave us underdeveloped in the emotional dimension of wellness. We are also inclined to judge ourselves against a set of extrinsic values we adopted in law school vying for class rank, law review, and clerkships.

Mindfulness meditation is a practice that can help us manage stress and enhance emotional regulation. Meditation teaches us to train our attention, first by learning to notice our breath, then by learning to notice our thoughts and feelings. These practices are tools to help us manage our emotions. We develop the ability to notice our feelings without judging or reacting when we are able to continue to sit in stillness and silence, notwithstanding the thoughts or emotions that arise, and gently direct our attention back to our breath.

Spiritual

Spiritual—Developing a sense of meaningfulness and purpose in all aspects of life.

The spiritual dimension includes the ability to create a life of peace and harmony. It asks us to be more forgiving, grateful, compassionate, and kinder and to be less judgmental. It invites us to examine the moral and ethical principles that guide our life. Do you have a sense of meaning and purpose in life? Do you have faith in a higher power? Do you have a regular practice of prayer, meditation or other form of personal growth?

Find a place or a practice, religious or secular, that brings you a sense of harmony and serenity. Keep a gratitude journal and make it your habit to daily write down the things for which you are grateful. Discover the poets who touch you and inspire you and read them regularly. Listen to music that soothes your spirit and makes your heart soar. Learn to forgive. Let go of the anger that holds you captive to the past.
Possibilities: What's in your toolkit?

2018 Well-Being Toolkit for Lawyers and Legal Employers

The Toolkit was designed for use by lawyers and legal employers to enhance individual and workplace well-being. It was created by Anne M. Brafford for use by The American Bar Association and can be found on the ABA website. Brafford is a former Big Law equity partner and co-author of the National Task Force report, The Path to Lawyer Well-Being.

Explore the Well-Being Toolkit on the American Bar Association website. It contains a variety of assessment tools and activities for wellness, along with on-line resources, book recommendations, well-being speakers and consultants and much more.

Visit the LSBA and JLAP websites to familiarize yourself with the resources and services offered there?

Check out the appendix to this presentation for a brief description of mindfulness meditation and a suggested list for additional reading.

Use these tools and resources to assess your current situation. Are you where you want to be in the six dimensions of well-being—intellectual, occupational, physical, social, emotional, and spiritual?

Do you have a self-care plan for wellness that is geared toward balance in all six dimensions? What practices that support well-being will you incorporate into your life?

Are you pursuing intrinsic goals that bring a sense of well-being? If your job doesn’t offer those opportunities, can you find them in other areas of your life? Should you consider a job change? Even within your current job, can you find ways to pursue intrinsic goals by promoting teamwork, community, and helping others in your work environment.

Volunteer your legal skills to a cause you believe in or a group doing good work, such as pro bono legal services to victims of natural disasters, homeless vets, animal rights, abused children, victims of domestic violence, immigration. If you don't know where to volunteer your services, look for opportunities with LSBA or your local bar association.

Lawyers are researchers and problem solvers. When you have identified areas in the six dimensions of well-being that need more attention in your life, use these tools to craft your personal self-care plan and marshal the support resources you need to carry it through.
Daily Habits for Wellness

• **Stop.** At least once a day, stop what you're doing and notice what's happening around you. Drop any thoughts about the last email or the next client. Put aside the looming deadline. Pay attention to your surroundings. Notice details your eye typically glosses over. What are the smells and sounds that fade into the background of your constantly churning brain?

• **Take a deep breath.** Take several deep breaths, breathing in slowly and breathing out even more slowly. A slow out breath sends an "all is well" signal to your body. As you breathe, let your mind focus solely on the breath, gently brushing aside any intrusive thoughts, returning your focus to noticing the breath.

• **Slow down.** Move slowly, with intention. Pick up your paper, your book, a pen, or your cell phone with deliberate attention. When the phone rings, allow yourself to stop, take a slow breath and answer with thoughtfulness. Focus on the person who is calling and how you can bring your mind to full awareness of the conversation they are initiating with you.

• **Pay attention.** Notice what is happening around you. Select a space or an object and give it your focused attention. Notice the minutest detail that you would ordinarily overlook. When your mind wanders, bring it back to the object of your focus. In this way, you train your mind to direct its attention as you command. The practice of taming the wandering mind also builds willpower.

• **Smile.** Whether you feel happy or not, smile anyway. Research shows that moving facial muscles into a smile, without more, will elevate your mood in a positive direction. We feel happier when we smile, apart from any other factors that might effect a state of happiness.

**Begin today ❖ Be aware ❖ Pay Attention ❖ Practice ❖ Be Well**
Mindfulness Meditation

One tool recommended by the Task Force report as a means to improve lawyer well-being is the practice of mindfulness meditation. It has been shown to be an effective way to address a variety of stress-related psychological and psychosomatic disorders. Citing research into the benefits of a mindfulness practice, the report noted that "mindfulness can reduce rumination, stress, depression and anxiety...[and] enhance competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making."

Mindfulness is a form of meditation that adapts ancient Buddhist practices to modern needs. Jon Kabat-Zinn, founder of the Stress Reduction Clinic at the University of Massachusetts Medical Center and creator of the Mindfulness Based Stress Reduction program, has developed mindfulness meditation programs to help people with chronic pain and stress-related disorders. This is just one of many mindfulness programs accessible to anyone new to meditation.

Kabat-Zinn defines mindfulness as “paying attention in a particular way, on purpose, in the present moment, non-judgmentally.” Paying attention, on purpose, in the present moment, non-judgmentally creates a space for us to notice what emotions we are experiencing without judging them or reacting to them. If feelings of fear, worry, anxiety or regret arise, we simply notice them in the moment without judging ourselves for those feelings or judging others who may be connected in our mind with those feelings.

The discipline of training our mind to pay attention to the present moment without allowing our thoughts to be derailed by distractions or distressing feelings helps us develop the ability to manage our emotions, to calm ourselves when we are in distress, to avoid lashing out at others or berating ourselves when we experience an emotional upheaval.

Learning to manage our emotions develops self-control. Being in a state of distress inhibits our ability to learn, to focus, to remember, to stay on task. When we're stressed it's hard to think straight.

As we learn to be more aware of our own emotions, we find it easier to understand the emotions of others. These four abilities allow us to manage our relationships with others by giving us the tools to interact in a way that reduces incivility and needless conflict.

The most commonly practiced form of mindfulness is sitting meditation. And the simplest form of mindfulness meditation is to follow your breath. Just sit quietly, in a relaxed posture and notice your breath coming in and your breath going out. Whenever your mind wanders and thoughts begin to intrude, simply return your attention to your breathing.

Learning to direct your attention to your breath, notwithstanding the intrusion of uninvited thoughts, is a good first step in learning to notice your emotions without allowing them to direct your behavior.
But meditation is just the starting point in teaching us to still our racing thoughts and soothe our distressed state of mind. The benefit of a mindfulness practice is the skills you take with you into the rest of your day. When stressful situations arise or we encounter negative emotions, either our own or others, mindfulness helps us return more quickly to a relaxed, non-anxious state.

You can create a mindfulness moment in your office. Simply bringing your wandering mind back to the present moment for as little as 3-5 minutes can offer a welcome respite from the stresses of the day.

Find a point of focus somewhere in your office—a photo, a book, a plant, the window. Select something that is pleasant to look at and doesn't generate anxious thoughts—no legal material, computer screen or case file.

Give your attention to that focal point in a relaxed manner for 5 minutes without analyzing, evaluating or ruminating. Breathe slowly. Count each breath. When your mind wanders, bring it back to the breath. No one will know you are practicing mindfulness. They’ll think you're just deep in thought.

Paying attention to your breath is a mindfulness tool you can use anywhere, at any time. When you're sitting in a stressful meeting or annoyed by long lines at the DMV, the courthouse or the grocery checkout, simply notice your breath. Breathe in slowly, breathe out slowly. Notice those around you, paying attention to them as they are, in the present moment, without judging.

Walking mindfully is another way to incorporate mindfulness into your day. When you are walking, either for exercise or to reach a particular destination, notice the movement of your body as you walk. Pay attention to how your body feels as it moves you through time and space. Notice the people around you. Notice the flora and fauna of the natural world.
Additional Reading


