

A photograph of a modern building's interior, likely a courthouse. The space is characterized by large glass walls and concrete pillars. A wooden bench is positioned against a stone wall on the right. A potted plant sits on the floor near the glass wall. The text is overlaid on a semi-transparent blue rectangle in the center.

ARKANSAS SUPREME COURT
TASK FORCE ON
LAWYER WELL-BEING

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INTRODUCTION

Although the legal profession has known for years that many of its students and practitioners are languishing, far too little has been done to address it. Recent studies show we can no longer continue to ignore the problems. In 2016, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published their study of nearly 13,000 currently practicing lawyers (the “Study”). It found that between 21 and 36 percent qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively.

The parade of difficulties also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis,” complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception. Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression.

The budding impairment of many of the future generation of lawyers should be alarming to everyone. Too many face less productive, less satisfying, and more troubled career paths. Additionally, 15 law schools and over 3,300 law students participated in the Survey of Law Student Well-Being, the results of which were released in 2016. It found that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge-drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended.

INTRODUCTION

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



Given this data, lawyer well-being issues can no longer be ignored. Acting for the benefit of lawyers who are functioning below their ability and for those suffering due to substance use and mental health disorders, the National Task Force on Lawyer Well-Being urges our profession's leaders to act.¹

1- Introduction from The Path to Lawyer Well-Being: Practical Recommendations for Positive Change from the National Task Force on Lawyer Well-Being. On August 14, 2017, the National Task Force on Lawyer Well-Being released their Report, which sets forth the basis for why the legal profession is at risk, and the Task Force presented recommendations and action plans for building a more positive future. The full Report can be found at americanbar.org.

REASONS TO IMPROVE ATTORNEY WELL-BEING

The National Task Force offered three reasons to take action to improve lawyer well-being: organizational effectiveness, ethical integrity, and humanitarian concerns.

First, lawyer well-being contributes to organizational success — in law firms, corporations, and government entities. If cognitive functioning is impaired, legal professionals will be unable to do their best work.

Second, lawyer well-being influences ethics and professionalism. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline, and troubled lawyers can struggle with even minimum competence.

Third, from a humanitarian perspective, promoting well-being is the right thing to do. Untreated mental health and substance use disorders ruin lives and careers. They affect too many of our colleagues.

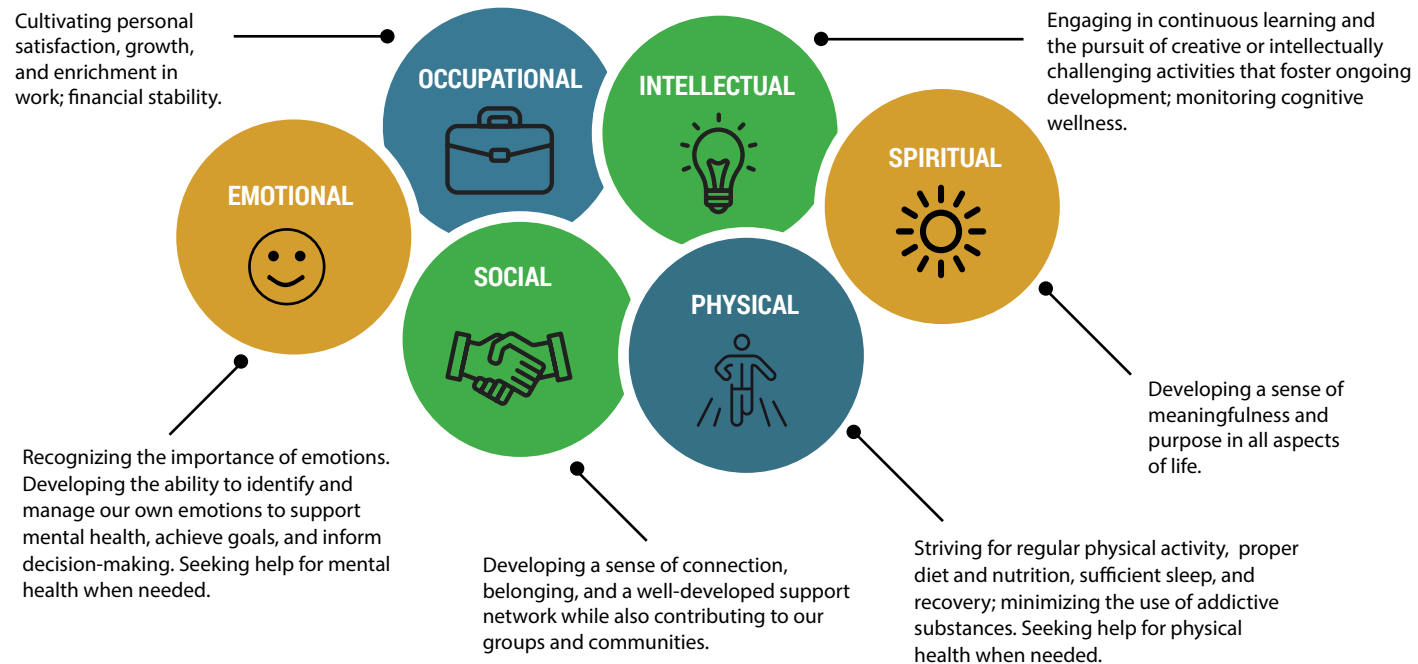


DEFINING “LAWYER WELL-BEING”

The National Task Force defined lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.

Lawyer well-being is part of a lawyer’s ethical duty of competence. It includes lawyers’ ability to make healthy, positive work/life choices to ensure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long-term well-being. This definition highlights that complete health is not defined solely by the absence of illness; it includes a positive state of wellness.

Lawyer well-being is a continuous process in which lawyers strive for thriving in each dimension of their lives:



ARKANSAS SUPREME COURT TASK FORCE ON LAWYER WELL-BEING

The following report contains recommendations to improve lawyer well-being in the State of Arkansas. It is a response to The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, The Report of the National Task Force on Lawyer Well-Being.

Following the publication of the National Report, the Arkansas Supreme Court authorized Chief Justice John Dan Kemp to form an Arkansas Task Force on Lawyer Well-Being to review the national report and make recommendations specific to Arkansas. The task force is made up of lawyers from varying professional backgrounds, judges, legislators, and medical professionals with expertise in addition.

The task force was divided into stakeholder groups mirroring those identified in the National Report:



Judges, Legal Regulators, Legal Employers, Law Schools, Bar Associations, Judges and Lawyers Assistance Program (JLAP). Each sub-committee identified specific goals and objectives that can be taken by the stakeholders to improve lawyer well-being in an effort to better serve litigants in the State of Arkansas.

It is the hope of the Arkansas Task Force that this Report is the first step toward instituting changes to our legal culture that improve the lives and professional careers of our attorneys, and enhance the experience of all those we serve.

RECOMMENDATIONS FOR ALL STAKEHOLDERS

“Every sector of the legal profession must support lawyer well-being. Each of us can take a leadership role within our own spheres to change the profession’s mindset from passive denial of problems to proactive support for change. All stakeholders must lead their own efforts aimed at incorporating well-being as an essential component of practicing law, using this report as a launch pad.”

–Report of the National Task Force on Lawyer Well-Being.

The Arkansas Task Force on Lawyer Well-Being has reviewed recommendations for all stakeholders from the National Report and makes the following recommendations for Arkansas. The highest priority recommendation is to use the National Report as a launch pad for a professionwide action plan — this effort is well underway with the formation of the Arkansas task force and the Chief Justice’s charge that the task force prepare an action plan for Arkansas. Additional recommendations, in order of priority, are addressed below.

Secure stable and adequate funding for Arkansas JLAP.

JLAP is understaffed and under-resourced to meet current and increasing demand for JLAP services. All stakeholders should partner with and ensure adequate funding for JLAP so that JLAP can effectively educate and empower the legal profession to identify, treat, and prevent conditions at the root of the well-being crisis. Judges, regulators, legal employers, law schools, and bar associations should ally themselves with JLAP, promote JLAP, and emphasize JLAP’s services and confidentiality.

In turn, JLAP can help other organizations establish confidential support groups, wellness days, trainings, and summits. With adequate funding,² JLAP can establish a comprehensive well-being program that serves all of the Arkansas Judiciary and Bar while also providing effective and comprehensive treatment for its growing population of clients.

2 - See Page 29 regarding funding - JLAP Recommendations



RECOMMENDATIONS FOR ALL STAKEHOLDERS

Provision of high-quality programming about lawyer distress and well-being.

Legal professionals need training in identifying, addressing, and supporting fellow professionals with mental health and substance use disorders. To help reduce stigma, educational programs should enlist recovering lawyers who are successful members of the profession.



A comprehensive, systemic campaign is more effective than isolated training programs. Well-being programming should extend beyond disorder detection and treatment to include causes and consequences of distress, well-being in all areas of life, lawyer autonomy, professional transitions and cognitive decline, suicide prevention, and other topics such as those suggested in Appendix B of the National Report. Rules can and should be amended to require Arkansas attorneys to attend well-being continuing legal education (CLE) programming. With an amendment to CLE requirements establishing minimum well-being CLE credits, well-being programming will follow.

Creation of an effective mentoring program or programs for Arkansas.

Mentorship aids well-being, reduces lawyer isolation, enhances interpersonal connections, enhances enthusiasm for the profession, and enhances resilience for mentors and mentees. A professionwide mentorship program should be established for Arkansas lawyers. Separately, JLAP should continue and expand its mentorship program with JLAP volunteers who have experienced relevant challenges serving as mentors to JLAP clients facing similar challenges. As acknowledged repeatedly in the National Report, mentorship is an effective way to eradicate stigma and encourage help-seeking behavior. The mentor program could be aided with amendment of CLE rules to provide general CLE credit for serving as a mentor.

RECOMMENDATIONS FOR ALL STAKEHOLDERS

Promote civility, diversity, and inclusion in the legal profession.

Bar associations, courts, and law firms should adopt rules of professionalism, civility, diversity, and inclusion. Exemplary standards of professionalism are inclusive and embrace diversity. The Arkansas Supreme Court added civility language to the attorney oath in 2012 (2012 Ark. 82). Rules of professional conduct could be amended—see Rule 1.1, competence. CLE and other programming can be developed to promote civility, diversity, and inclusion.

The following recommendations from the National Report are goals that can be advanced through the prioritized recommendations discussed above and otherwise:

Acknowledge the problems and take responsibility.

To meaningfully enhance well-being and change legal culture, all corners of the legal profession must prioritize lawyer health and well-being. JLAP cannot solve this crisis alone.

Leaders should demonstrate personal commitment to well-being.

Leaders can create and support change through their own demonstrated commitment to well-being.

Facilitate, destigmatize, and encourage help-seeking behaviors.

All stakeholders must take steps to minimize the stigma of mental health and substance use disorders because the stigma prevents lawyers from seeking help. Research shows that the most effective way to reduce stigma is through direct contact with someone who has personally experienced a disorder.

RECOMMENDATIONS FOR ALL STAKEHOLDERS

Guide and support the transition of older lawyers.

Aging lawyers may have increased risk for declining physical and mental health. All stakeholders need education to detect and address cognitive decline. Employers, courts, and law schools should develop transition programming.

Deemphasize alcohol at social events.

Provide non-alcoholic beverages at events where alcohol is traditionally served and hold alcohol-free events.

Begin a dialogue about suicide prevention.

Lawyers have high rates of suicide. Suicide is stigmatized. Stakeholders should unite to organize presentations, education, and community discussion about suicide prevention. While lawyers may not tell us that they are suffering, they will show signs of distress through non-verbal communication and changes in behavior. Increased awareness and education saves lives.

Support a lawyer well-being index to measure the profession's progress.

Support a lawyer well-being index to be created by the ABA with metrics related to lawyers, staff, clients, the legal profession as a whole, and the broader community.

RECOMMENDATIONS FOR JUDGES

“Judges occupy an esteemed position in the legal profession and society at large. For most, serving on the bench is the capstone of their legal career. The position, however, can take a toll on judges’ health and well-being.”

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

We expect judges to be fair and impartial, neutral and detached at all times. However, we also expect judges to have a command of the law, relevant technology and to be connected to the communities they serve. Finding a “happy medium” between these expectations can weigh heavily on judges both mentally and physically. In addition to staying current and relevant, each judge carries a caseload that could be considered insurmountable. The robe a judge wears magnifies both on-and-off-the-bench conduct. This fact can overwhelm some members of the judiciary. Judges may hesitate to ask for direction or help from their assistance programs or conduct commissions.

Understanding the complexities of office, the following recommendations are made for judges to promote overall physical and mental wellness within the judiciary:

Conduct judicial well-being surveys at all continuing legal education functions associated with the Judicial Council and District Judges Council.

The survey concept can be introduced at all Judicial Council and District Judges Council conferences. Judges will complete the survey anonymously. Information obtained from the surveys will be used to identify well-being concerns and to develop educational programs for the judiciary. Representatives from the Arkansas Supreme Court, Administrative Office of the Courts, Judicial Discipline and Disability Commission and Judges and Lawyers Assistance Program should attend each conference in support of the information sought from the surveys.

RECOMMENDATIONS FOR JUDGES

Communicate within the judiciary that overall mental and physical well-being is a priority.

Incorporate regular legal education sessions regarding judicial well-being within the Judicial Council and District Judges Council, educating judges of warning signs for depleted wellness within members of the judiciary.

Allow judges to give their personal testimonies for overcoming mental and physical challenges.

Schedule members of the Arkansas Supreme Court to attend these meetings and stress the importance of overall wellness in the profession, as a requirement for the judicial job function.

Consider small group sessions to discuss judicial well-being during all annual conferences. The exposure of continuous education and discussion within the divisions of our bar can condition our minds to help reduce the stigma associated with both physical and mental disorders for lawyers and judges.



RECOMMENDATIONS FOR JUDGES



Develop policies for impaired judges.

Appoint a committee of judges with representatives from each judicial division. Allow this committee to develop and implement policies of communication between the agencies responsible for overseeing conduct.

Create a designated well-being liaison between the Judicial Discipline and Disability Commission (JDDC) and Administrative Office of the Courts or Supreme Court. This person could serve as a conduit of information between the Supreme Court and JDDC for disability related claims against judges. Responsibilities include seeking out education opportunities with JDDC, and educating the judiciary about the disability component of the Code of Judicial Conduct.

Finally, work with JDDC to educate judges about the importance of self-care and how overall well-being is a priority within the judiciary.

RECOMMENDATIONS FOR JUDGES

Expand the portions of the Rules for the Procedure of the Arkansas Judicial Discipline and Disability Commission that deal with disability related complaints against judges.

Currently, there is only one rule that discusses processes to deal with complaints alleging mental or physical disability against a judge. This rule, Rule 13, deals with denials by judges of any alleged disability and how that denial constitutes a waiver of medical privilege and consent to be examined by a physician.

The rules should be revised to expand Commission procedures when dealing with complaints about mental or physical disability. Consideration should be given to incorporating a diversion or intervention program for judges dealing with complaints regarding overall wellness. This diversion plan would operate on a different course than a normal ethics complaint within JDDC.

Create diversionary programs for judges with depleted mental or physical wellness.

The JDDC regularly offers diversion type measures within disciplinary proceedings, such as compassion fatigue training. We can expand those options even further. Offering judges remedial options, such as courses to reduce burnout, courses to address traumatic stress and strategies to maintain overall physical and mental well-being may reduce the likelihood of discipline from depleted wellness complaints.

Mentoring measures are also good options within the judiciary because often when a lawyer becomes a judge, his or her network of connections changes or lessens. Establishing a mentoring program for new judges, before the disciplinary process, may divert meritorious complaints against judges for wellness related issues. The committee referenced above can assist with this goal.

RECOMMENDATIONS FOR JUDGES

Monitor for signs of impairment within each local bar association and ask each administrative judge to prepare a plan for reporting to JLAP.



Promote confidentiality in the assistance process.

Confidentiality is critical. Judges should be reminded that JLAP and JDDC proceedings are completely confidential unless that confidentiality is waived by a judge or a disciplinary action is filed against a judge. Often, judges who receive disability related complaints do not fully understand the confidentiality provisions of the Code of Judicial Conduct.

Disability related complaints against judges remain wholly and completely confidential unless the judge waives confidentiality, or the complaint evolves into a disciplinary matter with formal charges against a judge. A minor disability related complaint to the JDDC may never be disclosed to the public, other than a generic final disposition letter.

Negotiated resolutions for judges who suffered disability related complaints and the terms of the negotiated resolution are never made public, if charges are never filed and the judge never discloses details. Judges need to be assured that this process is available to them. This assurance will promote open, candid conversations with Commission staff and JLAP staff, which will benefit the public and the judge.

RECOMMENDATIONS FOR REGULATORS

“Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible. We broadly define “regulators” to encompass all stakeholders who assist the highest court in each state in regulating the practice of law.

Courts and their regulators frequently witness the conditions that generate toxic professional environments, the impairments that may result, and the negative professional consequences for those who do not seek help.”

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

Modify the rules of professional conduct to endorse well-being as part of a lawyer’s duty of competence.

Arkansas Rule of Professional Conduct 1.1 (competence) should be amended by the Court to add to the duties of competence owed by lawyers to clients the language “mental, emotional, and physical ability.” The amended Rule would then state: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, preparation, and mental, emotional, and physical ability reasonably necessary for the representation.”

RECOMMENDATIONS FOR REGULATORS

Expand CLE requirements to include well-being topics.

A required one hour “well-being” CLE course in webinar and other formats should be offered several times each year to meet a new CLE requirement that every lawyer in active status take one hour each year.³

As part of a broader support effort for lawyers, along with well-being support, Administrative Order No. 17 on the “new attorney course” should be used as a vehicle to deliver more program content on law office management assistance (LOMA) and risk management in law practice, possibly in conjunction with existing liability carrier programming and resources. A specific course on LOMA for 3Ls or those who have just passed the bar exam and will likely practice as new solos or in small firms is strongly encouraged for both those individuals and law schools.

3 - The Task Force Recommends that the annual 12-hour CLE requirement include 1 hour of Ethics and 1 hour of Lawyer Well-Being.

RECOMMENDATIONS FOR LEGAL EMPLOYERS

“Legal employers, meaning all entities that employ multiple practicing lawyers, can play a large role in contributing to lawyer well-being. While this is a broad and sizeable group with considerable diversity, [the] recommendations apply fairly universally.

A specific recommendation may need to be tailored to address realities particular to each context, but the crux of each recommendation applies to all.”

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

Paid or reimbursed gym membership for attorneys.

About a quarter of legal professionals are workaholics, more than double that of the 10 percent rate estimated for U.S. adults generally. Work addiction can lead to health and relationship problems, including depression, anger, anxiety, weight gain, high blood pressure and more. We recommend legal employers pay for or reimburse attorneys for gym memberships to aid in combatting health and relationship problems. Offering legal professionals a gym membership can make it easier for these individuals to engage in healthy behaviors. Employer sponsored gym membership helps promote both physical and mental health and is an alternative to substance abuse for those struggling with addiction issues.



RECOMMENDATIONS FOR LEGAL EMPLOYERS

Form a Lawyer Well-Being Committee.

Implementing and sustaining real progress on well-being strategies requires dedicated personnel. We recommend legal employers launch a Lawyer Well-Being Committee tasked with the responsibilities of evaluating the work environment, identifying and addressing policies and procedures that create the greatest mental distress among employees, identifying how best to promote a positive state of well-being, and tracking progress of well-being strategies. Legal employers should send the members of the committee to training to stay abreast of developments in the profession and to develop strategic partnerships with lawyer assistance programs and other well-being experts. With the help of the committee, legal employers should budget for wellness efforts that include lawyer well-being education and training.⁴

We further recommend that legal employers monitor for signs of work addiction and poor self-care. Work addiction can lead to the development of multiple health and relationship problems. Legal professionals should be encouraged to take time for themselves and attend to other personal obligations. Legal employers, with the help of the Well-Being Committee, should establish policies and practices that create a confidential reporting procedure for legal professionals to convey concerns about their colleagues' mental health or substance use internally as well as an assessment strategy which could include anonymous surveys for all employees to measure attitudes and beliefs about well-being.

4 - The American Bar Association Well-Being Toolkit for Lawyers and Legal Employers is a resource to be considered.

RECOMMENDATIONS FOR LEGAL EMPLOYERS

Young lawyer inclusion in the well-being mission.

The legal community is always growing and young legal professionals cannot be overlooked in the well-being mission. We recommend legal employers assign new lawyers to a well-being committee member for mentoring. Mentorship is a critical component for improving well-being. Legal employers should also require a wellness plan from each lawyer within the first five years of practice as part of their annual goals. Wellness plans can include well-being-related training and education. Law is a helping profession, a fact which can be lost in the everyday business aspects of the practice. Monthly meetings between the well-being committee and lawyers with less than five years of practice are also recommended. These meetings can be an opportunity to discuss resources, including lawyer assistance programs that can assist lawyers who may experience mental health and substance use disorders.

Actively combat social isolation and encourage interconnectivity.

Social support from colleagues is an important factor in the well-being of legal professionals. Social interactions help individuals to cope with stress and recover from work demands. We recommend legal employers increase and promote social interactions. In the legal profession, social events often revolve around alcohol consumption, and legal employers should plan social events that provide a variety of non-alcoholic beverages or host other activities to promote socializing and networking. Legal employers should strive to have social interactions that deemphasize drinking and encourage legal professionals to seek help for problem substance use.

“Law students start law school with high life satisfaction and strong mental health measures. But with the first year of law school, they experience a significant increase in anxiety and depression. Research suggests that law students are among the most dissatisfied, demoralized, and depressed of any graduate student population.”

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

Law schools are the entry point to the legal profession, and well-being should be incorporated into the culture to improve student performance and help students develop into healthy, well-rounded lawyers. Laying the foundation for well-being at the very beginning of their professional training is a key component to fostering change in the legal profession.

Commit resources for onsite professional counseling services.

Students should have access to regular, on-site counseling services at their law school. As noted in the National Report, on-site counselors provide easier access to students in need and send a symbolic message to the law school community that seeking help is supported and should not be stigmatized.

University of Arkansas campuses currently provide resources for student counseling, both on-site and off-site.



For example, at the University of Arkansas Fayetteville campus, CAPS (Counseling and Psychological Services) provides confidential short-term individual counseling, psychiatry, group therapy and workshops, 24-hour emergency services, case management, outreach and prevention, advocacy, consultations, and training programs. Students are able to use these on-site services throughout their law school careers.

At UA Little Rock, Counseling Services also provides confidential counseling, limited psychiatric care, group therapy, workshops and general wellness programming. However, UA Little Rock currently provides no on-site counseling services to law students at the William H. Bowen School of Law campus. Emphasizing the availability of these resources should be a high priority for both law schools.

Prioritize regular student well-being training for law school faculty members.

Current practices should be reviewed and faculty should be offered training and education focused on promoting law student well-being. This may include identifying warning signs to look for in assessing whether students are facing challenges relating to well-being, mental health, or substance abuse, so they can be referred to the appropriate university department or law school administrator.

This training priority should include the creation of a faculty well-being committee or revising the job description of an existing faculty development administrator to oversee the coordination, research, and planning of these training events.

RECOMMENDATIONS FOR LAW SCHOOLS



Conduct a regular well-being survey.

Anonymous surveys on student well-being should be conducted at Arkansas law schools. Currently, the law schools participate in the Law School Survey of Student Engagement (LSSSE) survey, which measures the level of student engagement and effects of legal education on law students. Internal surveys should be developed to provide more detailed and specific input on student well-being. The results of these surveys should be submitted to any faculty committee or administrative office tasked with ensuring the well-being of current law students and used to create a regularly updated action plan or address any areas that need improvement.

Student well-being should be incorporated into learning outcomes for the J.D. program.

The Task Force recommends that a student well-being component be incorporated into the formal learning outcomes for the J.D. program at each law school. Both law schools require current students to enroll in experiential learning or professionalism courses that are designed to prepare students for practice after graduation. Adding an additional learning outcome to the experiential learning curriculum would ensure that all students would receive adequate education on how to implement these practices into their legal careers after graduation.

RECOMMENDATIONS FOR LAW SCHOOLS

Conduct research and provide faculty education on the impacts of grading policies and teaching methods on student health and well-being.

Both Arkansas law schools should conduct research to identify teaching methods that can negatively affect student well-being. As referenced in the National Report, law professor Larry Krieger and social scientist Kennon Sheldon identified comparative grading, mandatory curves, status-seeking placement practices, lack of clear and timely feedback, and teaching practices that are isolating and intimidating and negatively impact student well-being.⁵

The Task Force recommends that law schools provide faculty education sessions devoted to reviewing research on teaching methods and best practices for teaching and learning in the law school environment.

5 - National Task Force on Lawyer Well-Being, *Creating a Movement to Improve Well-Being in the Legal Profession*, 38, <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>, citing K.M. Sheldon & L.S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *PERSONALITY & SOC. PSYCH. BULL.* 883 (2007); K.M. Sheldon & L. S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 *BEHAV. SCI. & THE LAW* 261 (2004).

RECOMMENDATIONS FOR BAR ASSOCIATIONS

“Bar members who are exhausted, impaired, disengaged, or overly self-interested will not live up to their full potential as lawyers or positive contributors to society. Below are recommendations for bar associations to foster positive changes in the well-being of the legal community which, in turn, should benefit lawyers, bar associations, and the general public.”

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

The Lawyer Associations Subcommittee recommends that lawyer associations use their leadership positions to set an example, provide education and training, and obtain input from their membership in order to promote lawyer well-being in Arkansas.

Serve as a resource for lawyers seeking to foster their well-being.

Our lawyer associations are very interested in sponsoring CLEs on wellness and well-being, raising awareness among the associations’ staff of lawyer assistance program resources, training staff to make referrals to lawyer assistance programs, providing wellness screenings at large meetings, and launching lawyer well-being committees within their respective organizations. Associations are also interested in developing and offering CLE programs on dealing with impaired colleagues and impaired judges.

Promote wellness and well-being through modeling best practices and healthy behaviors.

As leaders in the legal community, our lawyer associations feel strongly that they are responsible for setting an example for all attorneys and taking the lead in promoting activities that encourage lawyer well-being. These can include sponsoring fun runs and walks at multi-day meetings, by limiting complimentary alcoholic beverages, and by affirmatively offering non-alcoholic beverages at social events.

RECOMMENDATIONS FOR BAR ASSOCIATIONS

Advance lawyer well-being by conducting research.

Lawyer associations can conduct surveys of both members and law firms on well-being issues. Information from the surveys can be used to develop educational materials on wellness for both legal organizations and lawyers.



RECOMMENDATIONS FOR BAR ASSOCIATIONS

Sponsor alternatives to alcohol-centered social events.

Bar associations should sponsor social events and networking opportunities that are not alcohol-centered. Historically, many association events have revolved around alcohol, and alternatives should be explored. There are many venues, for example sporting events, where local bar associations could host events which would encourage community without alcohol being the focus.

Encourage responsible alcohol consumption and offer non-alcoholic options at events.

Bar associations should encourage responsible alcohol consumption at events and social functions. Associations could provide a limited number of complimentary alcoholic drinks to attendees and should also consider providing complimentary food at events when alcohol is served. Non-alcoholic beverages should be offered separately, but in the same manner and with similar amenities as those provided with beverages containing alcohol.

RECOMMENDATIONS FOR JUDGES & LAWYERS ASSISTANCE PROGRAM (JLAP)

“Because lawyer assistance programs are so well-positioned to play a pivotal role in lawyer well-being, they should be adequately funded and organized to ensure that they can fulfill their potential.”

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

Pursue additional JLAP funding to meet demand and expand services provided by JLAP.

The National Task Force report recommends expanding LAP (Lawyer Assistance Program) funding to address increasing demand for treatment services and to expand the LAP mission to lead the well-being initiative for the bench and bar. Arkansas JLAP (JLAP) is understaffed and under-resourced to meet the growing demand for JLAP services, with or without an expanded well-being mission. JLAP staff includes licensed therapists, and JLAP provides clinical therapy services directly to clients. Arkansas JLAP is an industry leader—many state LAPs do not provide therapy services but only serve as a referral service for clinical services.

JLAP’s current funding is stable, but inadequate to meet statewide needs, especially given the commitment to providing clinical services through JLAP professional staff at no charge to JLAP clients. JLAP currently has nearly 200 active clients receiving clinical services. From 2012 to 2018, the number of JLAP clients has nearly tripled—and the number is expected to continue growing in coming years. This has forced JLAP to refer some clients to the extent that funding is available for grants through funds raised by the nonprofit JLAP Foundation. JLAP clinical staff has also been forced to reduce the time of therapy sessions, space sessions farther apart, and place limits on the number of sessions that clients may receive, to allow JLAP to provide some clinical services to all clients in need. JLAP is a source of pride for the Supreme Court; therefore, the Court should take steps to ensure that JLAP can continue to provide clinical services to the entire legal community in Arkansas.

RECOMMENDATIONS FOR JUDGES & LAWYERS ASSISTANCE PROGRAM (JLAP)

JLAP's clients (the bench and bar) would benefit tremendously from the hiring of additional clinical staff, to increase the clinical services that JLAP can provide directly to clients. With additional clinical staff, the Executive Director could reduce his or her clinical caseload to enable the Executive Director to handle administrative responsibilities, including oversight of a new comprehensive well-being program for Arkansas's judiciary. Additional clinical staff would enable JLAP to fulfill its core mission of providing clinical treatment for its growing population of clients, while also taking on new responsibilities emanating from the action plan.

JLAP would also benefit tremendously from increased funding for referral grants. Some of JLAP's clients reside in the corners of the state, and are unable to meet with therapists in Little Rock without substantial disruption to their practice. JLAP currently has contractual relationships with private clinicians in some cities, and provides grants as funding is available from funds raised by the nonprofit JLAP Foundation. Because of increased demand for JLAP services in recent years, JLAP Foundation funding is low and JLAP is unable to fund grants at the ideal level. Increased grant funding would allow JLAP to better serve clients who do not reside in Central Arkansas. Increased grant funding could also alleviate the caseload of clients currently receiving therapy directly through JLAP, and provide expanded clinical services that JLAP staff cannot provide (such as psychiatrist sessions and inpatient treatment where indicated).

A. Funding from attorney license fees

The Client Security Fund (CSF) was created by per curiam order of the Supreme Court in 1973 (254 Ark. 1075, 493 S.W.2d 422) to compensate citizens harmed by attorney misconduct and dishonesty. Twenty dollars of each attorney license fee is credited to the CSF. This funding source will be adequate to meet the CSF's future needs and claims based on the history of the CSF's revenue and claim payments. The CSF has a fund balance from past revenue that is unlikely to be needed or used by the CSF Committee to investigate and pay future claims against the CSF.

RECOMMENDATIONS FOR JUDGES & LAWYERS ASSISTANCE PROGRAM (JLAP)

The funds that are comfortably in excess of a prudent reserve for the CSF should be redirected to JLAP, either to expand JLAP's budget and enable JLAP to hire an additional clinician or clinicians, or to supplement JLAP's grant funding to allow JLAP to make additional referrals, or both.

The Task Force has also discussed the possibility of increasing the annual attorney license fee in Arkansas, and using increased funds to address JLAP's funding needs. The Task Force endorses this recommendation to address JLAP's funding needs. At \$200 per year, the annual fee for Arkansas attorneys is low in comparison with surrounding states and states nationwide.⁶ The amount of the attorney license fee is set by the Supreme Court and funds raised from the license fees "shall be used as ordered by the Supreme Court of the State of Arkansas." See Arkansas Rules Governing Admission to the Bar, Rule VII(A).

6 - In a 2017 survey of license fees, Arkansas ranked 45th among all states and Washington D.C. in license fee amount at \$200 per year.

B. JLAP Foundation funding

The JLAP Foundation was created to raise money to pay for JLAP services throughout the state, beyond services provided through the JLAP office and budget. Funds raised through the JLAP Foundation cannot be used to pay salaries of JLAP staff, but Foundation funds enable JLAP to fund grants to clients for receipt of services outside the JLAP office. The Foundation is redoubling and expanding fundraising efforts—for example, through a forthcoming recurring giving program modeled after the Arkansas Access to Justice Foundation's Rule 6.1 Society—to enable more grants for services by contract therapists, and to expand services in other ways that directly benefit JLAP clients. Fundraising by the JLAP Foundation is inadequate to meet current needs. The Foundation Board hopes to expand fundraising over time through the recurring giving program and other fundraising initiatives. Ideally, at the conclusion of a multi-year grant from the CSF as discussed above, the Foundation will have sufficient funding for referral grants — especially if JLAP's clinical

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staff is increased to enable the provision of more services directly by JLAP, and correspondingly reduce the need for referrals to provide services for clients in excess of reasonable caseloads carried by JLAP's clinical staff.

Provide/promote comprehensive well-being programming.

The National Task Force report recommends the development and implementation of comprehensive well-being programming for the bench and bar, both in the form of CLE programming and through other initiatives to increase awareness and education about well-being among attorneys and judges. JLAP strongly supports this recommendation, and is well-positioned to take a leadership role if the staffing and client caseload issues discussed above can be resolved through adequate JLAP funding.

JLAP has developed and promoted a successful CLE program regarding substance use and mental health disorders in the legal profession, based on the 2016 study published by the American Bar Association Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation (as referenced in the introduction of the National Report). JLAP volunteers, mostly lawyers, could generate additional programming on topics as outlined in Appendix B of the National Report. The JLAP Committee could set a goal and ask Committee members and JLAP volunteers to develop programming, and investigate already developed wellness programming and potential programming outside JLAP.

JLAP could collaborate with other stakeholders to develop CLE programming. JLAP could also investigate and perhaps implement more well-being and health-promotion programming in its treatment approach and services offered to clients. Other stakeholders would likely contribute to the development of comprehensive well-being programming if rules were amended to specifically require attorneys to attend well-being CLE programming. JLAP strongly supports the recommendation that attorneys and judges be required to attend some minimum amount of well-being CLE programming.

"This report is an important first step to address lawyer well-being in our state in a comprehensive and holistic manner. It is the wish of the Court that the Task Force remain in place so that, after an appropriate period of time, the members may assess implementation of the recommendations by the various stakeholder groups and make additional recommendations, if needed. A special thank you to Bree Buchanan, co-chair of the National Task Force, and to the Arkansas Supreme Court Task Force members for their hard and important work on this project."

-Chief Justice John Dan Kemp

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Arkansas Court of Appeals Judge

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