

**VERMONT COMMISSION  
ON THE WELL-BEING OF  
THE LEGAL PROFESSION**

**STATE ACTION PLAN  
12/31/2018**

# INTRODUCTION

In August 2017, the American Bar Association National Task Force on Lawyer Well-Being raised an alarm throughout the country in its report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. The report highlighted two 2016 studies (of lawyers and law students) that show the legal community faces an *elevated risk* for mental health and substance abuse disorders—a risk that exists not only nationally, but here in Vermont.

The fact that lawyers are *more at risk* for anxiety, depression, and substance abuse raises substantial concerns about competence. Professional competence is more than knowledge of the law. It requires mental fitness for office. When our professional skills are undermined by mental illness and substance abuse, the capacity to serve is compromised. As practitioners of law, lawyers safeguard not only the rights of clients, but also the integrity of the justice system. If the profession fails to fulfill those obligations, public trust and confidence in the rule of law can suffer. Thus, a healthy and resilient legal community is essential to ensure the protection of the people of Vermont, now and in the future.

We are a self-regulated profession. Recognizing the risks posed by untreated mental illness and substance abuse, it is our responsibility to promote well-being among the bar, the bench, and future lawyers, students studying the law. To successfully satisfy the demands of our profession and to meet the challenging changes and innovations in the delivery of legal services, the health of the bar, bench and law students must be central to our work.

But this focus contemplates fundamental change in the way we think about the practice of law and change is never easy. As the National Task Force on Lawyer Well-Being stated in its report, “Change will require a wide-eyed and candid assessment of our members’ state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.”

In response, the Vermont Supreme Court decided to undertake a comprehensive, statewide approach to address lawyer fitness. This commitment was in concert with the resolution adopted by the Conference of Chief Justices following issuance of the ABA report, in which the Conference recommended each state’s highest court take an active role and convene relevant stakeholders in the effort.

In January 2018, the Court issued a Charge and Designation creating this Commission to make specific recommendations in each of the areas identified in the national report. The response from the bench, the bar and Vermont Law School, a pioneer in addressing this challenge among students, to the establishment of the Commission was very positive. When invited to join the effort, the leadership of each constituency immediately embraced the opportunity to participate in establishing aspirational goals for law students, lawyers and judges. This Plan reflects the considered effort of the Commission in response to the Court’s Charge.

Our profession has a duty to deliver competent legal and judicial services that will serve to uphold the integrity of the justice system. We recognize that the recommendations that follow may impose costs on the profession. We are certain, however, that the benefits of these proposals outweigh the modest cost of implementing them. Neglecting the truths of the national report that issued and its focus on the elevated risks for mental illness and substance abuse will, we believe, impose greater, more damaging costs—both on our profession, the public and its confidence in the rule of law. We hope that these proposals will be recognized as responsibilities fundamental to the privilege of practicing law.

## COMMISSION

The Commission first met on January 25, 2018 to review the Charge and Designation, and to establish a timeline to create a state-wide action plan with specific proposals for the Vermont Supreme and its relevant committees to consider. The Charge and Designation provided: By December 31, 2018 the Commission shall report to the Court with specific proposals and accompanying proposed rule changes to implement the proposals in the following areas:

1. Develop a policy for confidential interventions for lawyers, judges and law students struggling with mental health, well-being and/or substance abuse challenges.
2. Develop a plan to support and sustain a Lawyers Assistance Program in Vermont, to assist lawyers, judges, and law students with mental health, well-being and/or substance abuse challenges.
3. Provide educational opportunities for lawyers, judges and law students regarding mental health, well-being and/or substance abuse self-assessments, programs and resources.

As Chair of the Commission, Chief Justice Paul Reiber introduced members of the Commission, representing seven different stakeholder groups, to the Bar membership at the Vermont Bar Association Mid-Year Meeting on March 23, 2018.

Chief Justice Paul L. Reiber, *Chair*

Judge William D. Cohen, *Chair, Judges Committee*

Therese Corsones, Esq., *Chair, Bar Association Committee*

Michael Kennedy, Esq., *Chair, Regulators Committee*

Thomas McHenry, Esq., *Chair, Law School Committee*

Ian Carleton, Esq. & Laura Wilson, Esq., *Co-Chairs, Legal Employers Committee*

Joshua Simonds, Esq., *Chair, Lawyers Assistance Program Committee*

Christopher Newbold, Esq., *Chair, Professional Liability Carriers Committee*

The Commissioners invited the Bar to provide input to the various committees as they reviewed the recommendations of the National Task Force on Lawyer Well-Being relevant to each committee, and specific to Vermont. The Commission met again on July 12, October 30, and December 7, 2018. Following is a summary of the recommendations made by each of the stakeholder committees in their respective committee reports.

## JUDGES COMMITTEE

Hon. William Cohen, *Chair*

Hon. Marilyn Skoglund

Hon. John Treadwell

Barbara Blackman, Esq.

Wes Ward, *Judicial Conduct Board member*

Robert Hubbard, *Chief Trial Court Staff Attorney*

Angela Anderson, *COM Addison Unit*

## JUDGES COMMITTEE RECOMMENDATIONS

Judge Cohen first presented information about the Judges Committee and the National Task Force recommendations at Judicial College on June 6, 2018, and then again at the Judges' Meeting at the VBA Annual Meeting on September 28, 2018. Judge Colleen Brown, a member of the Lawyers Assistance Program Committee, also presented information about her Committee's work at the latter meeting. The Judges Committee met by telephone on August 31, 2018. Attached to this report are a memorandum submitted by Judge Brown to the Lawyers Assistance Program Committee Chair on August 27, 2018, the minutes from the August 31, 2018 Judges Committee telephone meeting, and a memorandum from Judge Brown to the Lawyers Assistance Program

Committee Chair summarizing the Judges' Meeting on September 28, 2018. Following is a summary of the recommendations made by the Judges' Committee as a result of the combined meetings:

***1. Communicate to the bench and the bar that well-being is a priority. Strive to reduce the stigma of mental health and substance abuse disorders.***

The stigma surrounding mental health and substance abuse disorders oftentimes poses an obstacle to treatment. Although there's evidence that the stigma of mental health and substance abuse disorders has been reduced somewhat, it appears that it is still an obstacle to persons seeking help. Given their leadership role in the legal profession, judges have a unique opportunity to reduce the stigma and encourage those in need of help to seek it. Specific ways that judges can assist to reduce the stigma is to volunteer as speakers at wellness programs, and to serve as Board members for the Vermont Lawyers Assistance Program, and, when appropriate, to share their own or their families' experiences with these issues.

Communication about mental health and substance abuse disorders is key. It can occur with judges at Judicial College and during the Judges Meetings at VBA meetings. Communication can occur from judges to lawyers at bench bar gatherings and openings of the term events in the individual units and divisions.

***2. Regularly provide well-being programming to judges and staff; familiarize judges and staff with LAP and other resources.***

The Committee stressed the importance of proper training for judges and staff regarding wellness issues. It supported the monthly in-service trainings in each unit as the best vehicle for providing consistently uniform and appropriate training. It recommended that the Court Administrator's Office ensure that relevant materials are regularly included in the system-wide in-service packets.

Judicial educators should also make use of wellness programming at Judicial College and at the semi-annual Judges Meetings held in conjunction with the VBA Annual and Mid-Year Meetings. Invited speakers, roundtable discussions, mentoring programs, and wellness guides specifically geared to Vermont judges and the challenges Vermont judges face are ways to signal that the Judiciary values judges' well-being.

***3. Increase awareness of signs of impairment; facilitate access to resources for judges (in-state and out-of-state)***

It would be helpful for judges and court staff to have training as to what to look for regarding impairment, and training on what to do when signs of impairment are present, recognizing that addressing perceived problems can often be difficult.

Judge resources that are available now include a National Helpline for Judges Helping Judges (1-800-219-6474) and a variety of resources including desk references, wellness guides for judges, and judicial stress resource guides.

***4. Make available secondary trauma resources for judges, lawyers, court personnel and jurors.***

The Judges Committee also suggested that resources be available for persons potentially suffering from “secondary trauma” associated with very difficult cases, including judges, lawyers, court staff, law enforcement and jurors. De-briefing is a helpful response to stressful cases. It recommended that the Commission consult with the Vermont Attorney General’s Office about resources that the AG’s Office has in this regard.

## BAR ASSOCIATION COMMITTEE

Therese Corsones, Esq., Chair

Jennifer Emens-Butler, Esq.

Samara Anderson, Esq.

Andrew Delaney, Esq.

Michael Kiey, Esq.

Kyle Landis-Marinello, Esq.

Rachel Strecker, Esq.

Micaela Tucker, Esq.

## BAR ASSOCIATION COMMITTEE RECOMMENDATIONS

The Bar Association Committee met monthly by phone on March 19, April 23, May 21, June 14, July 23, August 20, and September 10, 2018. Attached are minutes from the Committee meetings. Following is a summary of the recommendations made by the Bar Association Committee as a result of the meetings.

***1. Sponsor high quality well-being CLE programming; feature regular Bar Journal articles on well-being-related topics; publicize wellness-related topics on VBA social media.***

The VBA should offer at least one CLE program on well-being at each of the major meetings, including the Annual Meeting in September, the Mid-Year Meeting in March, every other year’s Solo & Small Firm Conference in May, and the YLD Mid-Winter Thaw in January.

The VBA began offering a Tech Conference in May during the alternate years that the Solo & Small Firm Conference is held. Whereas a wellness-related CLE might not lend itself to a Tech Conference, wellness programs could otherwise be promoted at the Tech Conferences.

The Bar Journal is published quarterly, and recent editions have included a number of wellness-related topics including “Pursuits of Happiness” interviews featuring activities that legal professionals participate in, outside of work, that bring them happiness. Each future Bar Journal edition will include at least one wellness-related article.

Vermont Bar Counsel Michael Kennedy has consistently discussed wellness matters in his popular Ethical Grounds blog, and such stories are shared, re-tweeted, liked and posted through the VBA website. Every effort will be made to publicize wellness-related topics on VBA social media.

***2. Make available educational materials and “best practice” model policies on well-being topics.***

The VBA will gather and make available, either through the VBA website, or through a LAP website, educational materials and “Best Practice” model policies on well-being topics. Educational materials might include a “Desk Reference” that lists signs and symptoms of depression and substance abuse, with contact information for resources. Topics for educational materials include such categories as alcohol, aging, eating disorders, stress management, grief, mental health, and trauma. Such educational materials will be included on the VBA and the LAP websites.

Examples of “Best Practice” model policies on well-being topics include “The Essentials of Law Office Management” published by the Louisiana Bar Association, “A Short Course in Succession Planning” offered by the American Bar Association, “Ten Tips for Lawyers Dealing with Stress” offered by the Texas Bar Association, and “Work-Life Balance for Attorneys”, published by Hire an Esquire. A variety of similar policies are available through other bar associations and lawyer assistance programs.

In recognition of the importance that mentors play in wellness matters, the Committee also recommends that the VBA enlist mentor lawyers for the new mentorship program through Attorney Licensing, and/or help enlist lawyer mentors in conjunction with the Vermont LAP.

***3. Include wellness questions in member surveys.***

Member surveys offer an opportunity for additional research on lawyer well-being and awareness of resources. Survey questions might gauge awareness of support resources, and also can be used to learn what topics lawyers would like to see addressed in CLE programs, articles or at events. Wellness questions will be included in the next VBA members survey, slated for the Spring of 2019. The minutes of the June 14, 2018 Bar Association Committee meeting detail the types of questions that are planned for the survey.

***4. Establish a VBA Lawyer Well-Being Committee.***

Bar associations are encouraged to form Lawyer Well-Being Committees, focusing not only on addressing disorders and ensuring competence to practice law, but also on optimal functioning and full engagement in the profession. Goals of such a committee include addressing attorney dysfunctions, ensuring competence, cultivating optimal functioning, creating a supportive

community, compiling wellness resources, creating a series of high-quality speakers, serving as a clearinghouse, and partnering with lawyer assistance programs to advocate for lawyer well-being initiatives.

The VBA Board of Managers voted at its September 28, 2018 Board meeting to approve the creation of a VBA Lawyer Well-Being Committee, co-chaired by Samara Anderson and Micaela Tucker. In addition to addressing the various goals described above, the Committee will also provide a more viable connection between the bar and the Vermont LAP, to ensure on-going relevance, connectivity, and accountability.

***5. Include at least one wellness activity at each major VBA meeting.***

Bar associations are encouraged to support members' well-being and to model best practices in connection with their own activities and meetings. While bar association events have traditionally centered around CLE programs, given members' preference for that focus, the VBA has offered a variety of well-being activities at bar association events, including tennis, golf and boating at the last Solo & Small Firm Conference, early morning walk/hike opportunities at Lake Morey and at the Equinox, and yoga at several large meetings. A purely social, family-friendly event was offered at Button Bay State Park two summer ago. Organizing functions to be family-friendly, offering well-being-related activities at events, and including related programming at conferences and other events will be a renewed focus.

Additional suggestions for purely social/recreational events are detailed in the August 20, 2018 Bar Association Committee minutes.

## REGULATORS COMMITTEE

Michael Kennedy, Esq., Chair

Carolyn Anderson, Esq. (*Professional Responsibility Board*)

Clara Giminez (*MCLE Board*)

Hon. Thomas Durkin (*Character & Fitness Committee*)

Andrew Maass, Esq. (*Judicial Conduct Board*)

Joshua Lobe, Esq. (*Board of Bar Examiners*)

Christopher Davis, Esq.

## REGULATORS COMMITTEE RECOMMENDATIONS

The National Task Force's *Path to Lawyer Well-Being: Practical Recommendations for Positive Change* includes recommendations for so-called "regulators." Key to the recommendations is a call to "transform the profession's perception of regulators from police to partner." The Task Force also urges regulators to "promote effective lawyer assistance and other proactive programs relating to well-being," thereby assisting lawyers to provide competent services throughout their careers.

In Vermont, the "regulators" are the boards, committees, and staff that perform the various functions related to the Supreme Court's constitutional prerogative to license attorneys. Vermont's regulators have long been ahead of the curve in promoting wellness. For instance:

- In June 2015, and in response to trends in disciplinary complaints and prosecutions, the Professional Responsibility Board ("PRB") directed bar counsel to recommend how the Board might provide additional support to the Lawyers Assistance Program ("LAP").
- In April 2016, the PRB, after hearing from disciplinary counsel, bar counsel, and the LAP, concluded that there was a need for a more robust LAP. The Board recommended that the Supreme Court study mechanisms to provide funding to the LAP, but without housing the LAP within the Professional Responsibility Program ("PRP). The recommendation to house the LAP somewhere other than the PRP reflected the PRB's concern that lawyers would not access a LAP that was too closely associated with the disciplinary program.
- For many years, the Character & Fitness Committee has taken part in an annual event at Vermont Law School in which students are encouraged to seek help & treatment without worrying that the fact of a diagnosis or treatment will adversely affect an application for admission. The Committee has long-stressed that it is focused on conduct, not health status.
- For many years, the Board of Mandatory Continuing Legal Education has approved CLE credit for courses that focus on lawyer wellness and well-being rather than simply "traditional" CLE.
- For many years, the Board of Bar Examiners has worked to reduce barriers to admission by granting accommodations to take the bar exam to applicants who provide appropriate documentation in support of requests for reasonable accommodations.

On a more micro level, in 2012, the Professional Responsibility Program restructured to devote more resources to prevention than to prosecution. As a result, the PRP already employs many of the Task Force's recommendations. Among them, a centralized intake system, a diversion program, and other services rooted in the concept of Proactive Management Based Regulation ("PMBR"). Since then, and in conjunction with other licensing bodies and the Vermont Bar Association, the Board and bar counsel have worked to educate the bar about the impact behavioral health issues are having on Vermont lawyers.

In short, the Court's licensing bodies have long promoted attorney wellness and worked to decouple behavioral health issues from both the admission and disciplinary processes. Nevertheless, the Regulators Committee recognizes that lawyer competence is central to the

missions of the Court’s various licensing bodies. The mission includes admitting competent attorneys and providing them with the tools and resources to maintain competence throughout their legal careers. Thus, the Committee was struck by language in the Task Force’s introductory note:

“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 abuse. **These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers’ basic competence.**” (emphasis added)

To ensure that the Court’s attorney regulation system continues to promote wellness as a component of competence, the Committee reports that Vermont’s regulators have taken the following steps in response to the recommendations from the National Task Force:

- 1. In December 2018, the PRB voted to recommend that the Court add a comment to V.R.Pr.C. 1.1 to make clear that behavioral health issues have the potential to adversely impact a lawyer’s ability to provide clients with competent representation.*
- 2. In December 2018, the PRB voted to recommend that the Court amend Administrative Order 9 to authorize bar counsel to refer complaints to a LAP.*
- 3. In October 2018, the Mandatory Continuing Legal Education Board voted to recommend that the Court consider requiring lawyers to take 1-hour of CLE in “wellness” every reporting cycle, with “wellness” defined broadly. More specifically, the CLE Board is working to define ‘Attorney Wellness Programming’ as CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public. The Board reached the conclusion that a broader definition gives more flexibility to the individual attorney to choose the self-care program that may be more appropriate for her or his needs.*
- 4. The Board of Bar Examiners voted to recommend that the Court consider amending Rules 12 and 15 of the Rules of Admission to incorporate wellness into the curriculum required of lawyers in their first year of admission to the Bar of the Vermont Supreme Court.*
- 5. The Character & Fitness Committee resolved to continue to focus on conduct over condition when reviewing applications for the admission to the Bar of the Vermont Supreme Court. The Committee also resolved to continue to work with law schools to educate students who are facing behavioral health issues that seeking treatment is not a barrier to admission.*
- 6. The Character & Fitness Committee will continue to study whether to recommend that the Court adopt a “conditional admission” program. The Chair, the Honorable Thomas*

*Durkin, has been asked to speak on the topic at the April 2019 meeting of the National Conference of Bar Examiners.*

- 7. The Judicial Conduct Board recommends that the State Action Plan recognize (a) that behavioral health issues are as likely to impact judges as lawyers; (b) that judges should be included in whatever wellness resources are provided to lawyers; (c) that judges should assist and, if necessary, make a confidential referral of a member of the bar to an assistance program, and, likewise, members of the bar should similarly make a confidential referral of a judge, with all able to do so without repercussion, and; (d) that more face-to-face interaction between members of the bar and judges will assist promoting the wellness initiatives of the State Action Plan.*

The Regulators Committee urges the Court to adopt a State Action Plan that adopts these measures as part of the on-going need to promote wellness as critical to lawyer competence.

## LEGAL EMPLOYERS COMMITTEE

Ian Carleton, Esq., *Co-Chair*

Laura Wilson, Esq., *Co-Chair*

T.J. Donovan, Esq., *Vermont Attorney General*

Christina Nolan, Esq., *U.S. Attorney*

Scot McGee, Esq.

Bonnie Badgwick, Esq.

Lucia White (*VPO President*)

## LEGAL EMPLOYERS COMMITTEE RECOMMENDATIONS

The Legal Employers Committee met by telephone on three occasions, and circulated drafts of the committee remote via e-mail. In addition, the co-chairs met twice. Attached is the Legal Employers' Committee full report, and following is a summary of the report recommendations. Local Vermont commentary provided by the Committee is also included for many of the sections.

Legal employers, meaning all entities that employ lawyers, paralegals and legal assistants, can play a pivotal role in promoting and maintaining lawyer well-being. While this is a broad and sizable group with considerable diversity, the recommendations below are intended to apply universally. Specific recommendations may need to be tailored to address the realities particular to each context, but the crux of each recommendation applies to all.

### ***1. Establish organizational infrastructure to promote well-being in the law office.***

Legal employers are encouraged to implement and sustain well-being strategies by dedicating personnel to the effort, either in the form of a Well-Being Committee, or by appointing a Well-Being Advocate at the place of employment. The committee or advocate should evaluate the work environment, identify how to best respond to the results of the evaluation, and ensure that employees are aware of resources and developments in well-being strategies.

In large and medium-size firms, a Well-Being Committee or Advocate makes sense. But for small firms of two or three lawyers and/or solo practitioners, a committee or even an appointed individual may not be practical. Particularly for solo practitioners, it might make sense to form well-being committees on the county bar association level, who hold regular meetings and do outreach to local attorneys practicing solo or in small firms. This might mean making sure that every county bar association holds at least a couple of well-being events per year, with one specifically for new lawyers in small firms/solos.

### ***2. Assess lawyers' well-being.***

Legal employers should provide a mechanism for assessing the state of well-being among lawyers and staff and strive to ensure that the workplace culture supports well-being. Anonymous surveys might be one mechanism to collect information about awareness of resources and the need for the same. Development of policies that provide reasonable accommodations for health conditions and promote support for well-being measures is also critical.

Assessment on a regular basis for the warning signs of work addiction, substance abuse, alcoholism, and social isolation are important. As part of the assessment process, consider drafting policies for handling the identified warning signs of lawyer impairment, before the disciplinary stage is reached.

### ***3. Establish policies and practices to support lawyer well-being.***

Legal employers should establish a confidential reporting procedure for lawyers and staff to use internally and establish a procedure for lawyers to seek confidential help for themselves without being penalized or stigmatized.

Remember that law firms of all sizes are workplaces, even if they do not always feel that way. We are all workers, and our work conditions matter, not only to our personal lives, but to the quality of services we provide. Treating employees fairly when it comes to salaries/wages, benefits, and hours will translate into improved lawyer well-being.

These suggestions apply with equal force to paralegals and legal assistants. Their well-being is crucial in the workplace too, for their own sakes, but also for the well-being of the attorneys they support and the success of the office in which they work.

Develop workplace policies that actively discourage work addiction. Discourage working consistently beyond 8 hours per day, apart from emergencies and emergency deadlines. Discourage working through lunch or eating lunch at one's desk and encourage lawyers to eat lunch with other staff – this is an easy and convenient daily opportunity to socialize and break down the stressful aspect of professional hierarchies. Let attorney employees know they are not just allowed but are expected to take breaks.

Make sure every attorney, paralegal and legal assistant is physically comfortable at his or her workstation. In virtually all cases this includes, at a minimum, an ergonomically sound desk, chair and computer, with a phone headset, if applicable. Poor ergonomics and even low-level physical discomfort has been directly linked to increased stress and anxiety, particularly in the context of high-stress professions.

In firms that impose billable hour quotas on attorneys, assess whether and how that quota system may be contributing to unproductive competition, excessive stress, and unhealthy work habits. In large firms, an anonymous survey may be the best way to assess this issue. In smaller firms, it can be done through simple observation. If a quota system appears to be encouraging unhealthy behavior and excessive stress, modify it, eliminate it, or consider alternatives.

Create policies that allow for, encourage and prioritize employee exercise, during work hours, if necessary. Look into participation in morale building events such as relay team for running races, charity sporting events and the like.

Consider a policy that employees should not—apart from emergencies—check their work email during non-working hours. Moreover, employers should allow all legal professionals to set reasonable boundaries on responding to emails, for example, letting clients know that barring an emergency, they may not get an email response immediately, but the employee will respond within a certain period of time.

Create and expand telecommuting opportunities wherever possible. When implemented properly and within appropriate limits telecommuting is a critical component of well-being and healthy work-life balance in the digital age, with particular benefits in rural state such as Vermont. Adopt attitudes and policies of trusting attorney employees to get the work done, wherever and whenever they do it.

Offer support for trauma and burn-out associated with particularly stressful subject matter, such as financial crisis, family conflict, crime victims, etc. All good legal professionals care for their clients, but that care must be managed so that it does not compromise attorney effectiveness. Legal employers must provide informal and formal avenues for addressing how client and subject matter-based anxiety can bleed into attorneys' personal lives.

Move toward increasing vacation and flex time, without guilt. Attorneys should be expected, and in some cases required, to take time off, and should be discouraged from not doing

so. Consider vacation, evenings, and weekends to be as much an integral part of professional competence as time at work.

Develop family-friendly policies in the workplace. Be flexible and generous with child-care and other family needs as they arise.

***4. Monitor for signs of work addiction and poor self-care.***

Inasmuch as research indicates that roughly one quarter of lawyers are workaholics, compared to the 10% rate estimated for the general population, it's recommended that legal employers should watch for signs of "work addiction" among employees. Legal employers should also expressly encourage lawyers to make time for themselves and to attend to personal obligations.

***5. Actively combat social isolation and encourage interconnectivity.***

Social support from colleagues is an important way to cope with stress and prevent burnout, while socializing also helps prevent lawyers from feeling isolated and disconnected. (It's recommended that alcohol not be emphasized at social events.)

Strengthen local bar associations, with the goal of bringing firms and small/solo practitioners together on a regular basis for venting, commiserating, and generating mutual support and fun. Create opportunities for "flex time" to do service in the community. (The United States Attorney's Office has this in place now.) Commit to mentoring new attorneys, both formally and informally. Encourage meaningful "open door policies," in which employees can routinely and genuinely communicate with bosses.

***6. Provide training and education on well-being, including during new lawyer orientation.***

Providing training and education on well-being related topics, especially during new lawyer and new staff orientations, will reflect the value employers attach to a culture of support for their employees' healthy well-being. Education should include information about assistance resources and about the confidentiality parameters pertaining to those resources.

***7. Emphasize a service-centered mission.***

Legal employers should be mindful of how the legal profession is first and foremost a service profession and reflect that focus when evaluating what they prioritize and value. When law office values evoke a sense of pride, work is more meaningful and lawyers and staff are more engaged. When the practice of law is primarily about generating profits, that sense of pride in contributing to the greater good risks being lost.

***8. Create standards, align incentives and give feedback on lawyer well-being topics.***

To genuinely adopt lawyer well-being as a priority, structural and cultural issues will need to be addressed through creating standards for leadership skills and competencies, aligning incentives toward well-being goals, and allowing feedback about how well the goals are being achieved.

Consider the relationship of junior attorneys to more senior ones. In many firms, junior lawyers are often considered “assistants” to the partners or seniors. This can be a double-edged sword. Sometimes it can provide invaluable mentorship, which young lawyers need; at other times it can impede professional growth. Employers should, where possible, move toward younger attorneys developing their own caseloads, professional identities and reputations, as well as being credited for the work they do. This is crucial for building ownership in one’s work and investment in the workplace, beyond just money earned.

## LAW SCHOOL COMMITTEE

Thomas McHenry, *VLS Dean, Chair*

Kristen Briggs, *Acute Care Coordinator, Clara Martin Center (invited)*

Brian Dunkiel, *Esq.*

Breanna Hayes, *Esq.*

Laurie Izutsu, *Staff Attorney, South Royalton Legal Clinic*

Shirley Jefferson, *Esq., VLS Associate Dean for Student Affairs and Diversity*

Jennifer O’Connor, *VLS 2L*

Ken Rumelt, *Staff Attorney, Env’t and Natural Resources Law Clinic*

Carlson Swafford, *VLS 1L*

Amanda Vega, *VLS 1L*

Ashley ZIai, *VLA Exec. Assistant to the Vice Deans*

## LAW SCHOOL COMMITTEE RECOMMENDATIONS

The Law School Committee includes VLS Deans, Staff Attorneys and Professors, alumni in private practice, law students, and an invited mental health professional. The committee met a number of times in person and offer the attached proposal in response to the National Task Force Report recommendations for law schools. Following is a summary of the proposal and “possible recommendations for further action” regarding each of the proposal’s components.

***1. Provide training for faculty members regarding student mental health issues.***

- Vermont Law School (VLS) does not currently mandate wellbeing training for faculty members. However, student ambassadors, staff in direct contact with students, and other interested students have been certified in Mental Health First Aid, an eight-hour course offered on campus at least twice a year by a certified instructor.

Possible Recommendation for Further Action:

- Hold annual mental health and substance abuse training sessions for faculty and staff during orientation and/or retreats.
- Incorporate mental health issue identification and discussion in faculty and staff meetings, including helpful tips and trends.
- Inform and remind faculty of their responsibility to report detection of student wellbeing issues.
- Report to faculty and staff on the correlation between mental health and bar passage rates.

***2. Implement a uniform attendance policy to detect early warning signs of well-being issues.***

- VLS has an attendance policy in its Academic Regulations that requires the professor to communicate in writing to the student with a warning after three unexcused absences (or 20% of the regularly scheduled classes). This complies with the American Bar Association standards.

Possible Recommendation for Further Action:

- Because absences and mental health issues are often connected to class absence, require professors to also notify the Vice Dean for Students of any written notice about a student's unexcused absences.
- For students receiving notice, require professors to set up a warning meeting with the student and the Vice Dean for Students to better enforce the attendance policy, and ensure the student is seeking help for the reason behind the unexcused absences.

***3. Provide mental health and substance use disorder resources.***

- VLS displays resources related to mental health on the Vermont Law School website, on a board located in the Chase Breezeway, in the waiting area outside of the Associate Dean for Student Affairs & Diversity's office, in the Mental Health Services Manager's office, and in a designated area of the Chase Computer Lab, which is accessible 24 hours a day by students, faculty, and staff. Printed mental health resources are also located in the President and Dean's Office.
- The VLS Mental Health Committee hosts a series of events, panels and meetings each academic year, focusing on striking the stigma of mental illness, highlighting prevalent mental health issues within the field and in everyday life, and recommending coping and management strategies.

Possible Recommendation for Further Action:

- Encourage each professor to provide wellbeing resources in their courses.
- Establish a buddy system pairing incoming 1L students with a 2L or 3L when they arrive on campus for orientation. This should ease the transition, introduce them to campus culture and community, and answer any possible questions they may have throughout their 1L year.

***4. Empower students to help fellow students in need.***

- The VLS Mental Health Committee holds weekly confidential support group meetings called “Swan Support,” during which students, faculty, staff, and alumni share stories of current or past struggles and triumphs related to mental illness and/or substance abuse.

Possible Recommendation for Further Action:

- Increase awareness of wellbeing issues by student ambassadors, academic mentors, and representatives of the VLS Mental Health Committee.

***5. Include well-being topics in the Professional Responsibility Course.***

- Mental health in the legal profession is currently a component of the required Professional Responsibility course for J.D. students.

Possible Recommendation for Further Action:

- Incorporate mental health awareness at the beginning of the Professional Responsibility course and highlight the topic throughout the course materials.
- Invite practicing attorneys at the beginning of the Professional Responsibility course to share their stories and provide tips on health and lawyer well-being.

***6. Provide resources for on-site professional counselors and a confidential recovery network.***

- VLS has contracted with the Clara Martin Center to provide ten (10) free counseling sessions per academic year (limit five per semester) to students, faculty, and staff. VLS provides a counselor on campus one day per week.
- VLS provides information for local resources providing support for individuals experiencing or recovering from sexual violence and domestic abuse, suicidal ideation, trauma, and substance abuse.
- VLS has hired a Mental Health Services Manager to assist students in obtaining mental health resources. This staff member will also be the first point of contact for students in crisis, and will essentially bridge the gap between the onset of a mental health issue and receiving appropriate professional care. The Mental Health Services Manager will also advise the VLS Mental Health Committee, instruct and certify participants in Mental Health First Aid, and take on various other mental health related responsibilities.

Possible Recommendation for Further Action:

Contact Alcoholics Anonymous (AA) and Narcotics Anonymous about holding meetings on campus.

- Contact the Lawyers Assistance Program about holding meetings on campus.
- Hire a part-time counselor to work on campus as a VLS staff member (instead of Clara Martin), allowing for greater scheduling flexibility and less wait time.
- Local AA meetings are held at The Red Door Church located at 67 S. Windsor St., South Royalton, VT 05068
- The VLS Mental Health Committee has created a weekly support group on campus called Swan Support as described above.

***7. Provide educational opportunities on wellness topics, including programming and a lecture series.***

- VLS does not currently have a year-round wellbeing program. However, the VLS Mental Health Committee hosts panels, events, and Swan Support, all of which provide information and outlets for students with respect to wellness and mental health.
- VLS offers meditation in the Belfry every week and massage therapists are on campus at various times throughout each semester.
- VLS provides a therapy dog and student appreciation days during exam periods, including free breakfast, lunch, and snacks to relieve stress.
- VLS conducted a Wellness Resources Session during Orientation 2018.

Possible Recommendation for Further Action:

- Offer additional wellbeing driven classes as part of the VLS curriculum.
- Offer additional wellbeing workshops during reading and exam periods.
- Plan a lecture series highlighting important issues and awareness of lawyer wellbeing.
- Offer lecture series as a course (potentially with CLE credit) for attorneys.
- Create a budget for speaking fees, or ask speakers if they would be willing to donate their time to this important cause for the legal field and the state of Vermont.

***8. Encourage alcohol-free social events.***

- VLS has limited the events that serve alcohol on campus.

Possible Recommendation for Further Action:

- Review current alcohol policy and solicit student opinion on the subject to see if VLS should further limit alcohol at events.
- Offer alcohol-free alternatives to popular student events.

***9. Offer anonymous surveys related to student well-being***

- The VLS Mental Health Committee circulated surveys during the 2017 and 2018 spring semesters and plans on circulating another during the spring 2019 semester.

## LAWYERS ASSISTANCE PROGRAM COMMITTEE

Joshua Simonds, Esq., *Chair*

Cecie Hartigan, Esq.

Hon. Karen Carroll

Hon. Colleen Brown

Gregory Mertz, Esq.

Craig Wetherly, Esq.

Meghan Purvee, Esq.

Shirley Jefferson, Esq.

Cara Cookson, Esq.

Wendy Collins, Esq.

## LAWYERS ASSISTANCE PROGRAM COMMITTEE RECOMMENDATIONS

The LAP Committee prepared the attached Preliminary Business Plan and Budget to accompany its recommendation that a funded “Vermont Judges, Lawyers and Law Student Assistance Program” be established. The Program’s proposed Mission Statement provides:

“To engage in proactive prevention and early intervention of impairment issues by enhancing awareness and understanding of substance use disorders, mental illness, stress management, and work/life balance relating to the practice of law and support of the legal system. To assure that every judge, lawyer and law student in Vermont has access to confidential support and assistance when confronting substance use disorders or mental health issues so that the afflicted individual is able to recover, families are preserved and clients and other members of the public are protected.”

A summary of the Lawyers Assistance Program Committee’s specific recommendations are as follows:

***1. Create a funded assistance program to bring together educational and support resources for wellness and impairment issues affecting the Vermont legal community.***

The take-away on impairment and wellness is that the legal profession is especially at risk for issues of alcohol and drug abuse, as well as mental health conditions. Moreover, the legal workplace likely contributes rather than relieves the circumstances fostering the impairment

issues. Stigma both real and perceived acts as a significant barrier to accessing help. As a result, individuals, the profession and the public suffer and our third branch of government and the access to justice it should provide is harmed.

With the support of the Vermont Commission on the Well-Being of the Legal Profession, this Committee recommends the creation of a funded assistance program to bring together educational and support resources for wellness and impairment issues affecting the Vermont legal community. Continuity of focus can be managed by continuing the role of the Commissioners for semi-annual gatherings to assess initiatives, track outcomes, and identify different and additional opportunities. Day to day promotion of these goals will be pursued and managed by a funded VTJLAP Director (.60 FTE moving to full time) and a network of trained volunteers. The VTJLAP Director will work closely with the VBA's newly established Lawyer Well-Being Committee and other bar associations to assure timely communication of information and CLE opportunities to fill out a "dialogue" with the legal community about wellness and impairment. A regular VBA Journal article and quarterly updates to the bar and judges could provide an important reminder of the Assistance Program's efforts, focus, etc. The VTJLAP Director will draw on national efforts of ABA CoLAP and other states' assistance programs for additional support and resources. The VTJLAP Director will travel in state to develop the program and a volunteer network for all regions. A network of third-party clinicians will be developed, possibly in association with Invest EAP which has successfully provided support in Vermont for other professional groups.

***2. Delivery of services should occur in three stages, the first involving infrastructure.***

The Program will continue to provide a personally monitored confidential telephone contact, outreach to referral sources, and availability for support services including materials for training presentations. As an alternative to the Vermont number, an "800" number answered by Massachusetts' Lawyers Concerned for Lawyers is also available. In the instance of potential callers with greater concerns for confidentiality, any contact can be managed with higher levels of sensitivity. In support of transitioning from a volunteer, essentially word-of-mouth program, to a professional program, greater infrastructure will be put in place during Stage 1.

Tasks in Stage 1 include:

**Internal**

- Continued work on confidentiality protections through the Lawyers Assistance Program Committee. This includes a survey of all existing state confidentiality provisions and working with the Rules Committees for immediate implementation of an evidentiary privilege and, ultimately, the addition of a statutory protection.
- Establish recruitment and hiring committee for VTJLAP Director, interview and hire position.
- Set up Board of Stakeholders- possibly keep Commissioners in place as a working board of directors for the Corporation, to include judiciary, bar association, regulators, legal employers (private and state) and to tie the organization together geographically by developing regional connections through leadership.
- Apply for IRS not-for-profit status.
- Obtain an office: need space, telephone (to take calls 24/7); cell phone; laptop; upgraded website; database software.

- Identify and recruit volunteers and begin to identify a mechanism for providing coverage across the state and for all constituencies to be served.
- Begin training for volunteers (trainings will also be convertible to programs for Disciplinary and Bar Counsel, judges, court staff, and any lawyers in supervisory positions, focused significantly on how to spot substance use disorder and/or mental health indicators, how to talk about it, how to guide persons in need to assistance programs, etc.).
- Identify and recruit potential third party referrals (clinicians with expertise with professionals and specific issue needs).
- Establish relationship with ABA-CoLAP and fellow directors in New England especially but also nationally – in particular there is a potential peer group of smaller bars, e.g. West Virginia, Wyoming, who have similar challenges to Vermont.

## External

- Establish contacts with Bar Counsel, Disciplinary Counsel, Professional Responsibility Program, Judicial Conduct Board, Court Administrator’s Office, Attorney Licensing Board, court staff, law clerks
- Establish contacts with bar associations: VBA, VTAJ, county bar associations
- Establish contacts with Judiciary (state and federal) – county visits
- Establish contacts with Vermont Law School
- Establish contacts with lawyer employers – private (firms 5+)
- Establish contacts with lawyer employers – public (fed/state/county) e.g., City Attorneys, State’s Attorneys, Defender General, Attorney General, U.S. Attorney, Federal Public Defender, Agency of Human Services, etc.
- Vermont Lawyer Survey – collaborate with Invest EAP or perhaps UVM Graduate/Sociology/Psychology, to launch a lawyer survey, ideally with the cooperation of the Attorney Licensing Board, which will both seek to gather information on impairment and wellness issues, as well as identify resource needs for practicing law / being part of the legal system in Vermont.
- Vermont Judicial Survey – collaborate with NH, possibly MA and possibly under the initiative of the ABA CoLAP, to engage the Vermont judges to participate in a survey, which will gather information on (i) the impairment and wellness issues Vermont judges experience, (ii) their perceptions of what Vermont’s practicing attorneys need, (iii) and the resources / training they need in order to assist and guide attorneys who appear in front of them in various states of impairment.

### ***3. The second stage should involve program promotion, peer assistance, educational presentations, publications and volunteer training.***

Tasks in Stage 2 include:

- Continuing Legal Education (CLE) seminars with bar association partners
- Workshop and conference exhibits and presentations
- Law school presentations
- Presentations at Judicial College and identification of unique resources for judiciary, e.g., managing trauma in the courtroom, secondary trauma/compassion fatigue
- Social Media

- Website
- Digital and print material
- Newsletter and VBA Journal articles
- Personal contact and testimonials
- Develop support groups
- Establish peer-to-peer outreach
- Liaise with New Hampshire and Massachusetts assistance programs for cross border opportunities for support and connection
- Specialized retreats for lawyer wellness
- Data collection (within the confines of confidentiality protections) on Program contacts (both incoming and outgoing), maintain volunteer directory and contacts
- Prepare annual reporting on activities and accomplishments of the Program.

***4. The third stage should include assessment, strategic planning and support of the Commission to define the needs and methods of on-going support of the legal profession in Vermont.***

Tasks in Stage 3 include:

- Determine when Program Director position should be moved to full time
- Identify Program strengths and weaknesses and adjust
- Engage Board and Commissioners in planning process for additional outreach and support to legal profession in Vermont
- Buoy and solidify funding sources and justification
- Identify collaborative research opportunities
- To the extent possible, cross reference Discipline, Professional Responsibility and Legal Malpractice providers to assess impact on grievances and claims.

***5. Judges should be an integral part of a funded assistance program.***

We also need to consider how judges -- an essential element of our legal system -- maintain their own well-being. Studies show judges, too, suffer from alcoholism, depression and substance abuse at rates much higher than that of the general public. Not as well documented, but evident through CoLAP contacts and from the Lawyer Assistance Committee Program's exploratory work, done significantly by U.S. Bankruptcy Judge Colleen Brown, we also know the environment in which Vermont's judges work is beset with its own very stressful challenges. Our judges deal daily with intense time pressure, a heavy workload, regular exposure to the fallout from addiction and family dysfunctionality, frequent trials in which they must confront and examine heinous conduct, regular interaction with parties suffering secondary trauma, and, perhaps most importantly, their own isolation. All of this occurs in the context of increasing pressure on the court system to undertake the role of a social services provider for many of Vermont's most vulnerable individuals. We want to ensure that the Vermont Assistance Program includes services for judges as well as attorneys, taking into account the particular needs they have for assistance, and the higher level of confidentiality they may require.

Lastly, our research and conversations with judges persuades us that it is essential to the well-being of the legal system in Vermont, that the Assistance Program provides resources to support court staff, law clerks, and jurors. These players often are on the front line of dealing with

pro se parties, individuals who have been exposed to horrible facts and circumstances through a trial and who may suffer from secondary trauma. Though it may need to be a different model than for attorneys and judges, it is important that we support these people who are essential to the delivery of justice in Vermont.

The Lawyers Assistance Program Committee also briefly considered an alternative to an independent funded Vermont LAP, in the event funds for a funded program are not available. That alternative would involve Vermont Bar Counsel serving as the contact person for any lawyer, judge or law student seeking assistance for a lawyer well-being matter. Such work would be consistent with Bar Counsel's duty "to provide referrals . . . and preventive advice and information to assist attorneys to achieve and maintain high standards of professional responsibility." *Administrative Order 9, Rule 9*. Although the alternative would have the advantage of no additional costs, there are potential drawbacks.

First, the prevailing recommendation for effective lawyer assistance programs is that the program be separate from the courts and from any regulatory bodies. Even with confidentiality provisions, legal professionals might be loath to report well-being issues to individuals with any connection to the courts or to regulatory bodies. That being said, Bar Counsel's inquiry program suggests that lawyers are not loath to contact Bar Counsel when on the horns of an ethical dilemma. Bar Counsel has been especially effective in outreach to the Bar and has a proven record of confidentiality and trust in support of ethics consultation.

Second, conflict of issue challenges can be anticipated when a report is made to Bar Counsel, and Bar Counsel may have reason to review the subject matter later. Bar Counsel reports, however, that he has never had to conflict off a complaint as a result of previously having responded to an inquiry on the same matter.

Third, states which have devoted meaningful resources to lawyer assistance programs have reported significant increases in program utilization. The work might be too much to add to Bar Counsel's current workload. Conversely, it's likely that low usage rates will continue unless resources aimed at outreach, education and training are made available.

For now, the Committee does not recommend the unfunded alternative.

## LAWYER PROFESSIONAL LIABILITY CARRIER COMMITTEE

The Commission was fortunate to include Chris Newbold, Executive Vice President of ALPS (Attorneys Liability Protection Society) as Chair of the Lawyer Professional Liability Carrier Committee. Chris was a member of the National Task Force on Lawyer Well-Being when it researched and developed its "Path the Lawyer Well-Being Report" and is currently co-chair of the National Task Force. He was able to provide a national perspective on the many issues under discussion at Commission meetings. Following are the Lawyer Professional Liability Carrier Committee recommendations:

### **1. Actively support Lawyer Assistance Programs.**

Appreciating that an ounce of prevention is worth a pound of cure, lawyers' professional liability (LPL) carriers have oftentimes been important funders of lawyer assistance programs. ALPS is the primary source of liability coverage for Vermont lawyers. It has generously offered to contribute seed monies to a funded Vermont Lawyers Assistance Program, during at least the first two years of operation.

### **2. Emphasize well-being in loss prevention programs.**

Many LPL carriers have developed risk management programs that include law practice resources, sample forms and checklist templates to reduce susceptibilities to malpractice claims. They should also consider focusing on wellness programs, including addressing how such programs ideally help lawyers thrive in legal service delivery. LPL carriers could provide "thought leadership", if not financial support, in the development of wellness programs for their client firms or individuals.

### **3. Incentivize desired behavior in underwriting law firm risk.**

To the extent permitted by the Department of Financial Regulation in Vermont, LPL carriers should explore the possibility of lawyer well-being "credits" when applying schedule rating credits to reflect a firm's risk profile. Such credits could be factored into evaluating LPL information such as area of practice, claim frequency, claim severity, firm longevity, etc.

### **4. Collect data when lawyer impairment is a contributing factor to claims activity.**

LPL carriers do not typically currently track claims based on contributing factors such as substance abuse, stress or mental health issues. Because such information would likely be helpful to lawyer assistance programs, and because LLP carriers are in a unique position to collect such data, it's recommended that LPL carriers collect and share such data when and how appropriate.

## **CONCLUSION**

This State Action Plan includes numerous recommendations to assist Vermont lawyers, judges and law students meet their duty to deliver competent legal and judicial services. Specifically, the Plan recommends a policy for confidential interventions for lawyers, judges and law students struggling with mental health, well-being and/or substance abuse challenges. It recommends a funded and independent Lawyers Assistance Program in Vermont, to assist lawyers, judges and law students with mental health, well-being and/or substance abuse challenges. Lastly, it recommends that lawyers, judges and law students be provided with ample educational opportunities regarding mental health, well-being and/or substance abuse self-assessments, programs and resources. It is the Commission's hope that the combined recommendations will result in much positive change, benefiting all those who are part of the legal profession in Vermont, as well as the public they are proud to serve.

# APPENDICES

Charge and Designation

Commission Minutes

Committee Reports with referenced attachments

- Judges Committee
- Bar Association Committee
- Regulators Committee<sup>6</sup>
- Legal Employers Committee
- Law School Committee

LAP Business Plan

## CHARGE AND DESIGNATION

## **Vermont Commission on the Well-Being of the Legal Profession**

### **Charge and Designation**

The Vermont Supreme Court wishes to establish a Commission on the Well-Being of the Legal Profession in Vermont for the following reasons, and for the purpose set forth below:

- In December 2016 the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation published a study of practicing lawyers that found between 21 and 36 percent of lawyers qualify as problem drinkers, approximately 28 percent struggle with some level of depression, 19 percent suffer from severe anxiety and 23 percent with elevated stress.
- A similar Survey of Law Student Well-Being published in 2016 showed 25 percent of students were at risk for alcoholism, 17 percent experienced some level of depression, 14 percent severe anxiety, 23 percent mild or moderate anxiety, and 6 percent had serious suicidal thoughts in the past year.
- Supporting lawyer, judge and law student well-being contributes to success in the delivery of legal and judicial services, and enhances lawyer and judicial ethics.
- The National Task Force on Lawyer Well-Being was convened with representatives from the ABA Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the ABA Center for Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Young Lawyers Division, and the ABA Law Practice Division Attorney Well-Being Committee.
- The National Task Force on Lawyer Well-Being issued a report in August, 2017, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change" which contains 44 recommendations, including recommendations for judges, regulators, legal employers, law schools, bar associations, lawyer assistance programs, and lawyer professional liability carriers.

- The Vermont Supreme Court fully supports the concept of lawyer, judge and law student well-being as a critical component of lawyer and judicial competence and access to justice for Vermonters and reinforces the critical role of the Supreme Court in overseeing the profession.
- The Vermont Supreme Court recognizes its desire to take an active role in the development of effective mechanisms through convening the relevant stakeholders in Vermont to improve the well-being of the profession and the bench.

**Therefore**, the Vermont Commission on the Well-Being of the Legal Profession is hereby established for the purpose of creating a state-wide action plan with specific proposals for the Vermont Supreme Court and its relevant committees to consider regarding the three areas identified below. By December 31, 2018 the Commission shall report to the Court with specific proposals and accompanying proposed rule changes to implement the proposals in the following areas:

1. Develop a policy for confidential interventions for lawyers, judges and law students struggling with mental health, well-being and/or substance abuse challenges.
2. Develop a plan to support and sustain a Lawyers Assistance Program in Vermont, to assist lawyers, judges, and law students with mental health, well-being and/or substance abuse challenges.
3. Provide on-going educational opportunities for lawyers, judges and law students regarding mental health, well-being and/or substance abuse self-assessments, programs and resources.

The Vermont Bar Association is requested to provide the Commission with necessary staff and administrative support and will seek grant funding to provide technical assistance as necessary.

The Vermont Supreme Court hereby appoints to the Commission the following persons. In addition to serving on the Commission, each will chair the Committee designated in italics below his or her name. Each will also name the members, including a co-chair if desired, of their respective committees. The Commission will also identify a health care provider who will serve as a resource to the related Committees.

Paul L. Reiber Chief Justice, Chair

Judge William D. Cohen, Co-Chair

*Chair, Judges Committee on the Well-Being of the Legal Profession*

Therese Corsones, Esq., VBA Executive Director

*Chair, Bar Association Committee on the Well-Being of the Legal Profession*

Michael Kennedy, Esq., Vermont Bar Counsel

*Chair, Regulators Committee on the Well-Being of the Legal Profession*

Thomas McHenry, Esq., Dean and President, Vermont Law School

*Chair, Law School Committee on the Well-Being of the Legal Profession*

Joshua Simonds, Esq., Director, Vermont Lawyers Assistance Program

*Chair, Lawyers Assistance Program Committee on the Well-Being of the Legal Profession*

Ian Carleton, Esq., Principal, Sheehy Furlong & Behm

Laura Wilson, Esq., Morrissette, Young & Wilson

*Co-Chairs, Legal Employers Committee on the Well-Being of the Legal Profession*

Christopher Newbold, Esq., Executive V.P., ALPS Lawyers' Malpractice Insurance

*Chair, Lawyer Professional Liability Carriers Committee on the Well-Being of the Legal Profession*

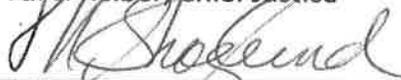
This Charge and Designation shall be effective on this date through January 15, 2019 unless further extended by the Court.

Done in Chambers at Montpelier this 2<sup>nd</sup> day of January 2018.



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Paul L. Reiber, Chief Justice



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Marilyn S. Skoglund, Associate Justice



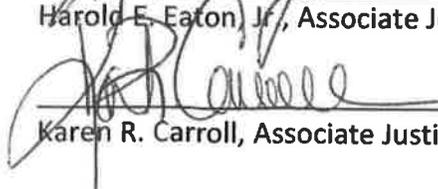
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Beth Robinson, Associate Justice



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Harold E. Eaton, Jr., Associate Justice



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Karen R. Carroll, Associate Justice

# COMMISSION MINUTES

## Commission on the Well-Being of the Legal Profession

### Minutes – January 25, 2018 Meeting

**Present:** Chief Justice Paul Reiber, Judge Bill Cohen, Dean Tom McHenry, Mike Kennedy, Ian Carleton, Josh Simonds and Teri Corsones were present. Chris Newbold and Laura Wilson participated by phone. Justice Marilyn Skoglund, a member of the Judges Committee, was also present.

Chief Justice Reiber began the meeting at 1:43 p.m. He welcomed all present. Each introduced himself or herself and spoke briefly about their interest in the Commission.

**Task Force Report:** Chris Newbold, a member of the National Task Force on Lawyer Well-Being, provided an overview of the Task Force Report and its recommendations. He very much appreciates the opportunity the Commission offers to address the Report's recommendations on a state level.

**Timeline:** Mike Kennedy reviewed the proposed timeline that was included with the agenda. Commissioners were asked to name their committee members and to schedule at least one committee meeting before the VBA Mid-Year Meeting scheduled for Friday, March 23. Commissioners were also asked to attend the Mid-Year Meeting, in order to participate in the plenary session at the beginning of the day. One possible adjustment to the proposed timeline is to explore inviting committee members to the Commission meeting scheduled for July, 2018. Commissioners will check with their committees about that possibility, when setting up their committee meetings. No other changes to the proposed timeline were suggested at this point.

**Lawyers Assistance Program:** Josh Simonds described the origins of Vermont's Lawyers Assistance Program, which John Webber began and led as a voluntary organization and Josh has similarly continued. He also described different possibilities for a funded Lawyers' Assistance Program. Part of the Commission work will be for each committee to provide input regarding what each would like to see in a funded Lawyers' Assistance Program.

**Committee Details:** Judge Cohen recommended that committees include 5-6 members, with geographic, demographic and experience-level diversity. He distributed copies of 1 V.S.A. §310 and the Vermont Secretary of State's Guide to Open Meetings. Committees should forward agendas and minutes of meetings to Teri for posting on the VBA website, where a page has been set up under the "For Attorneys" tab. Commission meeting agendas and meeting will be posted on the Judiciary website. Committee reports and the state action plan will also be posted when they are developed.

**VBA MYM Plenary Session:** Teri distributed a proposed outline for the VBA Mid-Year Meeting Plenary Session, beginning at 8:15 a.m. and ending at 9:45 a.m. on Friday, March 23. Cecie Hartigan, the long-time and recently-retired Executive Director of the New Hampshire Lawyers' Assistance Program and a national speaker regarding the well-being of the legal profession, will be the keynote speaker. Each Commissioner will speak briefly about his or her committee and the key recommendations the committee will review. Josh will also describe the current LAP in Vermont, and will briefly explore what a funded Lawyers' Assistance Program might look like, with input from Cecie Hartigan and Terri Harrington, Cecie's successor as Executive Director of the New Hampshire LAP. Information will be provided about how lawyers, judges and law students can provide input into the process.

The meeting adjourned at 4:00 p.m.

Respectfully submitted,

Ter Corsones

## Commission on the Well-Being of the Legal Profession

### Minutes – July 12, 2018 Meeting

**Present:** Chief Justice Paul Reiber, Dean Tom McHenry, Mike Kennedy, Josh Simonds and Teri Corsones were present. Judge Bill Cohen and Laura Wilson participated by phone.

Chief Justice Reiber began the meeting at 1:05 p.m. He asked for status reports from each of the participating Commissioners.

**Judges Committee Report:** Judge Cohen reported that he and Justice Skoglund presented information about the Commission and its Charge and Designation at Judicial College in June. Although there was little awareness of the Lawyers Assistance Program, Judge Cohen reported that there was strong support for the recommendations for judges, including communicating that well-being is a priority, developing policies for impaired judges, reducing the stigma of mental health and substance abuse disorders, conducting judicial well-being surveys, providing well-being programming for judges and staff, and monitoring for lawyers and partnering with Lawyer Assistance Programs. Teri will assist with scheduling a follow-up conference call with the Judges Committee.

**Bar Association Committee Report:** Teri reviewed the minutes from the several committee meetings that the Bar Association Committee has held on a monthly basis since the plenary session in March. The Committee recommendations to date include the VBA offering at least one wellness-related CLE program at each major meeting, including at least one wellness-related article in each Bar Journal, gathering and making available educational materials and “best practices” model policies on well-being topics, and including wellness-related questions in the upcoming membership survey. The next committee meeting will address formation of a VBA Lawyer Well-Being Committee, and the final one will address wellness activities at bar association events.

**Regulators Committee Report:** Mike Kennedy reported that the different regulatory boards in Vermont are reviewing the recommendations for regulators in the National Task Force Report. Each will separately report out their views regarding the recommendations. For example, the Professional Responsibility Board is reviewing the recommendation to endorse well-being as part of a lawyer’s duty of competence. The CLE Board is reviewing whether to expand continuing education requirements to include well-being topics, and the Character & Fitness Board is reviewing bar application inquiries about mental health or substance abuse history. Each Board will consider draft rule changes, to potentially be submitted to the Vermont Supreme Court for consideration.

**Law School Committee Report:** Dean McHenry’s committee has met three times, and he estimates that VLS has already implemented 90% of the National Task Force Report recommendations. The recommendations include creating best practices for detecting and assisting students experiencing psychological distress, assessing law school practices and offering faculty education on promoting well-being in the classroom, including well-being topics in courses on professional responsibility, committing resources for onsite professional counselors, and facilitating a confidential recovery network.

**Lawyers Assistance Program Committee:** Josh Simonds is in the process of gathering templates for business plans for various lawyer assistance programs around the nation, with the goal of identifying which aspects would be feasible for a Lawyers Assistance Program in Vermont. The business plan will

address the National Task Force Report recommendations that the LAP will be appropriately organized and funded, emphasizing confidentiality, developing high-quality well-being programming, and providing leadership and services to lawyers, judges and law students.

**Legal Employers Committee:** Co-chairs Ian Carleton and Laura Wilson have met twice to review the National Task Force Report recommendations, and plan to convene the committee to review a draft committee report in August, and to also review a final draft before it's submitted to the Commission. The recommendations include establishing an organizational infrastructure to promote well-being and to continually assess lawyers' well-being, to establish policies and practices to support lawyer well-being, monitoring for signs of work addiction and poor self-care, and actively combating social isolation and encourage interconnectivity. Ian and Laurie are also looking at workplace conditions, including salary, benefits, hours, and billing practices in the context of well-being considerations.

**Lawyers Professional Liability Carriers Committee:** Chris Newbold was unavailable during the scheduled time of the Commission meeting. He reported in advance of the meeting that the carriers are working with the ABA Working Group to Advance Lawyer Wellbeing in terms of coming up with a tool kit to be able to aid law firms interested in moving their culture forward when it comes to well-being. Chris also indicated that something should be available in that regard by the end of the year.

The meeting adjourned at 3:00 p.m. The next meeting will be scheduled in October; Teri will circulate a poll to select the date.

Respectfully submitted,

Teri Corsones

## Commission on the Well-Being of the Legal Profession

Minutes – October 30, 2018

**Present:** Chief Justice Reiber, Dean Tom McHenry, Mike Kennedy, Josh Simonds and Teri Corsones were present. Judge Bill Cohen, Ian Carleton and Chris Newbold participated by phone.

Chief Justice Reiber began the meeting at 1:10 p.m. He asked for the status of Committee Reports from each of the participating Commissioners.

**Legal Employers Committee:** Ian Carleton reported that the Legal Employers Committee has held two detailed conference calls with Committee members U.S. Attorney Christina Nolan, Vermont Attorney General TJ Donovan, Attorney Scott McGee, Attorney Bonnie Badgwick and VPO President Lucia White, representing a broad cross-section of legal employers. A draft report is nearly completed. In the course of discussing a number of recommendations from the National Task Force Report, Committee members agreed in principle with certain recommendations, but found that implementing them in practice might be complicated. Such recommendations included flex time, telecommuting, work life balance, billable hours expectations and expectations regarding the availability of a lawyer after hours. Ian anticipates the report being completed within the month.

**Judges Committee:** A copy of the Judges Committee Report was distributed. Judge Cohen noted that judges differed in terms of whether they would prefer in-state providers versus out-of-state providers. The Report recommends that both types of providers be included in the eventual Vermont LAP. He also noted the possibility of organizing a cadre of retired judges who could provide peer support to judges in need of support. It was recommended that the term "Monitor" in Recommendation C be modified to read "Increase awareness of signs of". Commissioners noted with approval Recommendation D regarding secondary trauma resources, and recommended that definitions be included. Judge Cohen referenced a secondary trauma program that the AG's office has offered.

**Bar Association Committee:** A copy of the Bar Association Committee Report was distributed. Among the recommendations in the Report, Teri Corsones highlighted the new VBA Lawyer Well-Being Committee co-chaired by Samara Anderson and Micaela Tucker that the VBA Board of Managers approved at its Board Meeting in September. The Committee is willing to work closely with a Lawyers Assistance Program, particularly with respect to wellness education and training, and to serve as a clearinghouse for wellness-related resources. With respect to the other bar association recommendations, the VBA has implemented the CLE, program activity and survey recommendations.

**Law School Committee:** Dean McHenry distributed a copy of the draft Law School Committee Report, which reflected the fact the Vermont Law School has already implemented a number of the National Task Force Report recommendations for law schools. The Report also includes a number of "Possible Recommendations for Further Action" with detailed, specific proposals relative to each recommendation. The Law School Committee includes students, professors, alumni, administrators and mental health professionals. Dean McHenry asked that the draft report not be circulated until the final draft is completed shortly; the draft is 90% complete.

**Regulators Committee:** Inasmuch as the Regulators Committee members were involved with different regulatory bodies (the Board of Bar Examiners, the Character & Fitness Committee, the Continuing Legal Education Board, the Judicial Conduct Board and the Professional Responsibility Board), each body is examining different recommendations relevant to the specific body. Mike Kennedy presented a summary of what each body has reviewed and currently recommends, including: incorporating a mandatory “wellness” curriculum into the 15 hours of CLE that new attorneys are required to take in their first year of licensure; requiring a 1-hour CLE in wellness-related programs every reporting period; including judges in whatever programs are developed; adding a comment to Rule 1.1 to clarify that competence includes wellness, but without making it a violation to be “unwell”; and amending A.O. 9 to allow bar counsel to refer a complaint to the LAP.

**Lawyer Professional Liability Committee Report:** Chris Newbold reported that he is now one of the co-chairs of the National Task Force. It has launched a national pledge for law firms to sign, to signify their commitment to improving lawyer well-being. (Mike Kennedy did a blog post about the pledge on September 19, 2018, noting that the pledge provides a great vehicle for legal employers to make the workplace healthier.) Chris indicated that a number of larger law firms have signed the pledge, and would like to expand the list to smaller firms in rural states. Teri indicated that the Bar Association Committee could review the initiative and will ask the Legal Employers Committee to do so, also, in the hopes of encouraging Vermont law firms to be included in the inaugural class of firms. In keeping with the ALPS commitment to supporting lawyer well-being business plans, Chris also announced a willingness for ALPS to contribute \$5,000 - \$10,000 as seed money for a Vermont Lawyers Assistance Program. Chief Justice Reiber thanked Chris and ALPS for this very generous offer.

**Lawyers Assistance Program Committee:** Josh Simonds distributed a detailed Preliminary Business Plan for a Vermont Judges and Lawyers Assistance Program. The business plan includes the following sections: Mission Statement, Market Need, Value Proposition, How to Address It, Funding, Delivery of Services, Tracking of Services and Outcomes and Competition. Josh also proposed a budget based partly on a lawyer license fee surcharge, to support a part-time executive director position. Members discussed issues surrounding a lawyer license fee surcharge, and the possibility of Bar Counsel fulfilling the part-time position responsibilities within the context of current Bar Counsel functions. The number of calls that Bar Counsel fields yearly (approximately 1,200) reflects the bar’s willingness to engage and to reach out for advice in situations that oftentimes involve wellness issues. Chief Justice Reiber will explore the feasibility of such an approach with the Court. He commended Josh for all of his work on the business plan and with respect to VTJLAP.

A “Healthy Lifestyle Program” proposal from Invest EAP was circulated, that describes services that it could potentially provide to lawyers, judges and law students. Josh indicated that Invest EAP could potentially assist with the survey recommendation in the business plan.

Teri will prepare a draft state action plan based on the Committee Reports and discussion above, and will circulate it to Commissioners before a December meeting date. The meeting adjourned at 3:00 p.m. The next meeting will be scheduled in December.

Respectfully submitted,

Teri Corsones

## Commission on the Well-Being of the Legal Profession

### Minutes – December 7, 2018

**Present:** Chief Justice Reiber, Dean Tom McHenry, Laura Wilson and Teri Corsones were present. Josh Simonds participated by phone.

Chief Justice Reiber began the meeting at 1:20 p.m. The agenda includes two primary discussion points: review of the draft state action plan outline and review of the draft LAP business plan.

**Draft State Action Plan Outline:** Teri prepared a draft state action plan outline, based on the committee reports submitted to date and associated resources. Laura indicated that the Legal Employers Committee Report was nearly complete, and was being circulated among committee members for final edits. She anticipated it would be available within the week. Josh indicated that he would also submit the Lawyers Assistance Program Committee Report within the next week. Dean McHenry provided the final draft of the Law School Committee Report.

Mike Kennedy was not able to attend the meeting, but had sent an e-mail that the Professional Responsibility Board will meet on December 10, and the agenda includes reviewing two proposed rule changes: one to add a comment to make clear that the duty of competence includes wellness, and the second to permit Vermont Bar Counsel to refer disciplinary complaints to the Lawyers Assistance Program.

Dean McHenry suggested drawing a distinction between the concept of “well-being” and “wellness” in the state action plan. It’s his understanding that the term “well-being” typically encompasses a more holistic perspective that could include mental health and addiction issues, and the term “wellness” typically encompasses physical health issues. He suggested a definition of each be included in the plan. He also recommended that the recommendations be termed aspirational in nature, versus obligatory. Laura suggested that the plan also make clear that addictions could include “addiction to work”.

Chief Justice Reiber will prepare the introductory sections of the plan. Teri will prepare a draft of the plan based on the outline, and will incorporate the Legal Employers Committee and Lawyers Assistance Program Committee Reports into the draft plan when they’re submitted next week. A draft of the state action plan will be circulated among Commissioners and the various stakeholder committees on December 17, with comments due by the end of December 21. The deadline for submitting the state action plan to the Vermont Supreme Court is December 31, 2018.

**Draft LAP Business Plan:** The draft business plan that Josh submitted at the October 30, 2018 Commission meeting includes a funding component based primarily on lawyer license fees. ALPS has also generously offered to provide “seed monies” of \$5,000 - \$10,000 during the first two years of a funded LAP. According to the Judges Committee, there is also the possibility of applying for a small grant through the U.S. Federal Courts to support a funded LAP.

Members discussed different considerations regarding lawyer license fees as the primary funding mechanism for a LAP. It appears that lawyer license fees are typically the primary funding mechanism for LAP programs nation-wide. For example, the Committee on Lawyer Well-Being of the Supreme Court of Virginia recently completed its report. Acknowledging that its report recommends additional costs to

the legal profession, the Committee nonetheless noted: "Our collective judgment is that the immediate benefit to individual members of the profession and the prophylactic benefit to the profession and the public of education, training, and prevention, including intervention for impaired legal professionals, substantially outweigh the slight cost associated with the establishment and funding of the following proposals. We believe that they are fundamental to competent and professional legal services; and will be accepted as core responsibilities attendant to the privilege of practicing law."

The current annual lawyer license fee for active attorneys in Virginia is \$250. The Virginia Report recommends that the Virginia Supreme Court seek a budget amendment by the Governor in his mid-biennial submission for FY20 to permit such funds to be collected in a sum sufficient to initiate the comprehensive program that the Report details. (The comprehensive program recommended in Virginia has a projected budget of \$775,000.) The current "Lawyers Helping Lawyers" program in Virginia is termed "severely under-funded with a budget of only \$275,000." The Virginia Report cites with approval the North Carolina LAP, which has a budget of \$750,000, funded through annual lawyer license fees of \$325 per member, with \$25-26 per member expended annually on the NC LAP.

The biennial lawyer license fees in Vermont for active attorneys are \$420 (or \$210 per year). The projected budget proposes a \$25 per year or \$50 biennial increase for active attorneys, a \$15 per year or \$30 biennial increase for inactive attorneys and a \$5 per year or \$10 biennial increase for pro bono licensed attorneys. Members also discussed the possibility of a graduated increase, based on years of practice, or possibly based on income level. There appears to be wide-spread support for the concept of a funded LAP in Vermont, especially given the number of attorney suicides in recent years. Members are sensitive to the fact, however, that any increase in lawyer license fees could be burdensome to a number of active lawyers.

Chief Justice Reiber asked that the state action plan also include the "un-funded alternative" that Mike Kennedy described during the October 30 meeting, as a basis of comparison. Josh asked that Mike address any conflict of issue issues that may arise with the un-funded alternative. Teri will follow up with Mike in that regard.

The meeting adjourned at 2:45 p.m. Members will next review the draft action plan and communicate via e-mail according to the timeline detailed above, versus meeting in person.

Respectfully submitted,

Teri Corsones

# JUDGES COMMITTEE REPORT

# Vermont Commission for the Well-Being of the Legal Profession

## Judges Committee Report

1. **Name of committee:** Judges Committee

2. **Committee members:** Judge Bill Cohen, Justice Marilyn Skoglund, Judge John Treadwell, Barbara Blackman, Robert Hubbard, Angela Anderson and Wes Ward

3. **Summary of meetings:** Judge Cohen presented information about the Judges Committee and the National Task Force Recommendation at Judicial College on June 6, 2018. Attached is a memo that Judge Colleen Brown submitted to the Lawyers Assistance Project Committee, documenting her conversation with Judge Cohen about the judicial perspective on the LAP Committee's work. Also attached are minutes from the Judges Committee's August 31, 2018 telephone meeting.

4. **Recommendation A: The Vermont Supreme Court should set the tone by communicating to the bench and the bar that well-being is a priority, and by striving to reduce the stigma of mental health and substance abuse disorders.**

- Timeline for implementation: Calendar year 2019

- Obstacles to implementation (if any): Finding time/opportunities to communicate

- Plan for overcoming obstacles: Build communication into current opportunities for communication, such as Opening of the Term events, Bench/Bar Meetings with county bar associations, Judicial College, VBA Annual, Mid-Winter and Mid-Year Meetings; VBA Journal articles

- Potential partners: Judicial officers, VBA, county bar presidents

- Resources needed: Time

- Is there a measurable outcome? Number of well-being seminars with judicial officers as presenters; number of events where judicial officers communicate well-being messages.

- Is recommendation sustainable? Yes

- Connection with VT LAP? Yes – include judicial officers on Board, and as presenters for programs

**5. Recommendation B: Provide regular well-being programming for judges and staff; familiarize judicial officers and court staff with LAP and other resources.**

- Timeline for implementation: Calendar year 2019

- Obstacles to implementation (if any): Scheduling constraints at Judicial College, Judges’ Meetings at VBA Annual and Mid-Year Meetings, and at In-Service trainings at the courthouses.

- Plan for overcoming obstacles: Require at least one well-being program at each of the aforesaid gatherings, and at least one well-being program quarterly during the monthly in-service programs.

- Potential partners: LAP resources; CAO regarding in-service trainings for court staff

- Resources needed: Speakers and materials for programming, as well as for easily accessible resources

- Is there a measurable outcome? Number of well-being programs offered and number of judicial officers and staff who attend programming

- Is recommendation sustainable? Yes

- Connection with VT LAP? Use VT LAP as resource for the programs

**6. Recommendation C: Monitor for impaired judges and lawyers and partner with Lawyer Assistance Programs.**

- Timeline for implementation: Calendar year 2019

- Obstacles to implementation (if any): Confidentiality regulations

- Plan for overcoming obstacles: Review relevant regulations to confirm if revisions are needed

- Potential partners: Judicial Conduct Board, Professional Conduct Board

- Resources needed: Page on LAP website devoted to judicial resources, such as National Helpline for Judges Helping Judges (1-800-219-6474); Judicial Well-

Being Desk Reference; Wellness Guides for Judges; Judges Helping Judges; Impairment in the Legal profession: A Guide for Judges; National Center for State Courts Judicial Stress Resource Guide

- Is there a measurable outcome? Number of referrals
- Is recommendation sustainable? Yes
- Connection with VT LAP? Referrals will typically be to LAP and providers connected with LAP

**7. Recommendation D: Make available secondary trauma resources for judges, lawyers, court personnel and jurors who have need for them.**

- Timeline for implementation: Calendar year 2019
- Obstacles to implementation (if any): Determining repository for materials; accessibility of resources; cost of treatment providers
- Plan for overcoming obstacles: Include page on LAP website for such resources
- Potential partners: CAO, Executive Director Vermont States Attorneys, Defender General, Vermont Attorney General
- Resources needed: Materials, providers
- Is there a measurable outcome? Yes, number of persons who access resources and providers, survey satisfaction levels
- Is recommendation sustainable? Yes
- Connection with VT LAP? Include resources on LAP website page

8. Suggestions as to what this committee would consider to be critical in a Vermont Lawyers Assistance Program: See the attached memo from Judge Brown to the LAP Committee.

**VERMONT COMMISSION ON THE WELL-BEING OF THE LEGAL PROFESSION  
~ LAP COMMITTEE ~**

TO: Joshua L. Simonds, Chair  
FROM: Colleen A. Brown  
RE: Judicial Perspective on the AP Committee, Based on Meeting with Judge William Cohen  
DATE: August 27, 2018

As requested, I met with Judge William Cohen, co-chair of the Commission, to discuss the judicial perspective with respect to the work of the LAP Committee. I met with Judge Cohen on Friday, August 24, 2018, and had a very productive conversation with him about many dimensions of the question. (I note at that outset that although he did not say he was speaking for his co-chair, Chief Justice Reiber, he did mention several times that he knew the CJ would support a certain statement he was making, and I got the impression the CJ would very likely concur with all of J. Cohen's suggestions/ responses.)

I will divide the far-ranging discussion we had into 4 salient topics: (i) focus of the VT LAP, generally, going forward; (ii) resources judges, in particular, need; (iii) whether there is a need for support from out of state; and (iv) suggested expansion of LAP's scope and structure.

(i) FOCUS OF THE VT LAP, GENERALLY, GOING FORWARD

Judge Cohen urged that, going forward, the Assistance Program ("AP") keep mental illness at the center of its focus. He observed there have been times when it appeared the AP was focusing more on issues of alcohol and substance abuse, than mental illness. He expressed concern about that and said he feels mental illness needs to be the principal focus. His position is that whether the professional's immediate issue is alcohol or drug abuse, or some other compulsive behavior disorder (e.g., an eating disorder) that interferes with the professional's ability to meet client needs, or distracts the professional from fulfilling responsibilities to clients, virtually all of the behaviors the professional manifests have a mental health component or root cause. He would like to see that understanding more vividly stated.

Judge Cohen underscored he believes the judiciary's two priorities for the AP going forward are: (a) making the judges aware the AP is available to them, so they can get the support and assistance they need from it; and (b) teaching judges how they can access the AP for the purpose of helping attorneys and court constituencies (more about the latter group below).

Judge Cohen also suggested the AP might include in its operating model a more visible proactive component. This, for example, might mean encompassing into its mission the five pillars of a professional's well-being, which he described as (1) physical well-being, (2) emotional well-being, (3) spiritual well-being, (4) financial well-being, and (5) work-life balance. He also suggested the AP consider writing an article for each issue of the VBA Journal about the resources available through the AP. (I would add to that a suggestion to include a Q&A-type component, even if we submit the Qs.)

(ii) WHAT RESOURCES JUDGES, IN PARTICULAR, NEED FROM AN ASSISTANCE PROGRAM

In response to the direct question of whether the judicial co-chairs envision the AP being available to support judges, as well as attorneys, Judge Cohen gave me an enthusiastic positive response. He feels strongly judges need the type of assistance the Vermont AP offers, and that the AP needs to publicize that judges may also access its services. He emphasized that, at this time, the vast majority of judges are unaware the AP is available to them, and do not understand how the AP works.

We talked, too, about the fact that judges can often feel comfortable with the decisions they make, while still being plagued by the consequences of those decisions (taking children from their parents – or

not, sentencing someone to prison time – or acquitting them, causing someone to lose their apartment or home, etc.) It can be a lot to carry, emotionally.

When I asked about renaming the AP to include a reference to judges, i.e., as the VT JLAP, I got the impression Judge Cohen did not seem to feel strongly one way or the other, but thought identifying it as a JLAP would be fine – and might make AP’s availability to judges clearer.

Judge Cohen also pointed to the crucial need to communicate to judges both the importance of professional well-being and the scope and availability of AP services. He indicated he has already had a conversation with Justice Marilyn Skoglund about including a regular, annual program on this topic of Judicial Wellness, in general, and the services available through the AP, at the Judiciary’s annual Judicial College. This would complement the VBA Journal articles.

(iii) WHETHER JUDGES NEED THE AP TO INCLUDE SUPPORT FROM OTHER STATES

At your suggestion, I inquired about whether Judge Cohen thought that some judges might be reticent to avail themselves of the AP’s services based on concerns about confidentiality, and therefore would prefer to have access to an AP in another state. He did not think that would be an issue at all. He saw no reason to add this additional layer of work and complication as he is convinced most judges (and especially the newer judges) would be comfortable with the current confidentiality protections and not let concerns of that nature stand in the way of their seeking assistance for the AP.

(iv) SUGGESTIONS FOR EXPANDING THE AP’S SCOPE AND STRUCTURE

While this may have been a bit beyond the particular issues you asked me to discuss with Judge Cohen, our discussion was quite comprehensive and he made some excellent points on this more global level. I distill it down to three. First, Judge Cohen expressed the hope that the AP’s structure could be set up to be agile enough to respond to changing needs. If it can build in some flexibility, it will be better able to respond to needs of the legal community, in years to come, that might not be evident at this time.

Second, we explored the possibility of expanding the scope of persons eligible for AP’s services to include others who suffer trauma as a direct result of participating in the judicial system in Vermont. In particular, he and I agreed it would be beneficial – and essential if we aim to improve the well-being of everyone working in the judicial system of Vermont – to make the AP’s services available to

- clerk’s office staff,
- side judges,
- court reporters,
- law clerks, and
- jurors.

All of these people are dealing with the emotionally charged issues in the court and courtroom, and can experience deep trauma, especially since they have little input on how the cases are handled and no control over when there are breaks in the proceeding.

Finally, we talked about creating the option of proactive care, so that a judge or court employee could contact the AP *prior to* a court hearing that is likely to be very difficult, to arrange for an AP team to be available. The team would provide appropriate support to the jurors, judge, law clerk, and whoever else feels the secondary trauma of the incidents they hear about, immediately, at the hearing’s conclusion.

(Courts in Connecticut, for example, had a team of counselors onsite and ready to meet with jurors after a particularly heinous child abuse case.) When the jurors, judiciary staff in the courtroom, and the judge spend several hours – or several days – dealing with a large child pornography, gruesome murder, severe

child abuse case, or other case involving horrendous facts, we would like to see the AP ready and able to provide immediate support and assistance to all who participated in the process and need it.

Judge Cohen and I recognize that adding this additional set of constituents to the population to be served, and proposing the AP act proactively upon a request made in anticipation of traumatic impact, will require more resources and increase the budget the AP will need. However, this seems to be the time to do this, when we are intentionally focusing on how best to meet the needs and well-being of the entire Vermont legal community. Therefore, I would urge you to include these suggestions and requests in the LAP's report.

I would be happy to answer any questions you have about this memo.

Cc: Judge William Cohen  
Wendy Collins

## Judges Committee – VT Commission on the Well-Being of the Legal Profession

### Minutes – August 31, 2018 Telephone Conference

**Present:** Angela Anderson, Judge Bill Cohen, Robert Hubbard, Justice Marilyn Skoglund, Judge John Treadwell and Wes Ward.

**Judicial College Presentation:** Judge Cohen briefly reviewed what he presented at Judicial College in June concerning the National Task Force Report. He reported that the judicial officers were very supportive of the Commission’s work, and supportive of the need for well-being resources. He indicated that there was little awareness among the judges of the current Lawyers Assistance Program and available resources. He also reviewed a memorandum that Judge Colleen Brown prepared, following her discussion with Judge Cohen about the Lawyers’ Assistance Program Committee on which she serves.

**National Task Force Report:** There was a general discussion about the recommendations for judges set forth on pages 22-24 of the Report. The Committee reviewed the following recommendations:

- 1. Communicate that well-being is a priority.** The Committee suggested that this communication can occur from judges to judges at Judicial College and during the judges’ meetings at VBA meetings. It suggested that this communication can occur from judges to lawyers at bench bar gatherings and openings of the term events in the individual units and divisions.
- 2. Develop policies for impaired judges.** The Judges Committee reviewed Model Rule of Judicial Conduct 2.14, which provides that a judge “having a reasonable belief that the performance of a lawyer or judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program”. The Committee compared Canon 3D of the Vermont Judicial Code of Conduct, which provides that a judge who knows of a judge’s or lawyer’s lack of fitness shall inform the appropriate authorities. The various licensing and conduct committees are looking at rule changes that affect procedures for intervening with members of the Judiciary or bar who are impaired. The Regulators Committee will report to the Commission on the results of the relevant committees’ reviews this Fall.
- 3. Reduce the stigma of mental health and substance abuse disorders.** The Committee discussed the fact that although there’s evidence that the stigma of mental health and substance abuse disorders has been reduced somewhat, it appears that it is still an obstacle to persons seeking help. Specific ways that judges can assist to reduce the stigma is to volunteer as speakers at wellness programs, and to serve as Board members for the Vermont Lawyers Assistance Program in the future.

**4. Provide well-being programming for judges and staff.** The Committee stressed the importance of proper training for judges and staff regarding wellness issues. It considers the monthly in-service trainings in each unit to be the best vehicle for providing uniform and consistent training. It recommended that the Court Administrator's Office ensure that relevant materials are regularly included in the system-wide in-service packets. Judge resources that are available now include a National Helpline for Judges Helping Judges (1-800-219-6474) and a variety of resources including desk references, wellness guides for judges, and judicial stress resource guides.

**5. Monitor for impaired lawyers and partner with Lawyer Assistance Programs.** The Committee noted that it would be helpful for judges and court staff to have training as to what to look for regarding impairment, and training on what to do when signs of impairment are present. It also suggested that resources be available for persons potentially suffering from "secondary trauma" associated with very difficult cases, including judges, lawyers, court staff, law enforcement and jurors. It recommended that the Commission consult with the Vermont Attorney General's Office about resources that the AG's Office has in this regard.

Teri Corsones will circulate a draft Judges Committee Report, based on the discussion during the phone conference. The Committee will decide whether to schedule another phone conference after reviewing the draft Report.

Respectfully submitted,

Teri Corsones

# BAR ASSOCIATION COMMITTEE REPORT

**Vermont Commission for the Well-Being of the Legal Profession**  
**Bar Association Committee Report**

**1. Name of committee:** Bar Association Committee

**2. Committee members:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Michael Kiey, Kyle Landis-Marinello, Rachel Strecker, Micaela Tucker

**3. Summary of meetings (attach minutes if available):** See attached minutes from telephone meetings held on March 19, April 23, May 21, June 14, July 23, and August 20.

**4. Recommendation A:** The VBA should offer at least one well-being-related CLE program at each of the major meetings, including the Annual Meeting in September, the Mid-Year Meeting in March, every other year's Solo & Small Firm Conference in May, and the YLD Mid-Winter Thaw in January. Each Bar Journal edition should include at least one wellness-related article, and every effort should be made to publicize wellness-related topics on VBA social media.

-**Timeline for implementation:** Immediate – per schedule above.

- **Obstacles to implementation (if any):** Time constraints in programs.

- **Plan for overcoming obstacles:** Commit to including at least one well-being program irrespective of time constraints.

- **Potential partners:** Lawyer Well-Being VBA Committee; LAP.

- **Resources needed:** VBA staff time; presenters – ideally, no monetary cost.

- **Is there a measurable outcome?** Note whether the programs happen, and number of attendees; programs will be included in usual post-program surveys.

- **Is recommendation sustainable?** Yes.

- **Connection with VT LAP?** Plan to consult with LAP when well-being programs are planned, to see if a particular topic would be helpful to LAP.

**5. Recommendation B:** The VBA should gather and make available, either through the VBA website, or through an LAP website, educational materials and “Best Practice” model policies on well-being topics. The VBA should also enlist mentor lawyers for the new mentorship program through Attorney Licensing, and/or help enlist lawyer mentors in conjunction with VT LAP.

-**Timeline for implementation:** During calendar year 2019.

- **Obstacles to implementation (if any):** Time/staff constraints.

- **Plan for overcoming obstacles:** Track progress on regular basis.

- **Potential partners:** LAP Committee; LAP.

- **Resources needed:** Materials and policies.

- **Is there a measurable outcome?** Number of policies and amount of materials made available.

- **Is recommendation sustainable?** Yes.

- **Connection with VT LAP?** Cross-post materials and policies on both websites; consult re content.

**6. Recommendation C:** The VBA should include wellness-related questions in every VBA membership survey.

-**Timeline for implementation:** Calendar year 2019; coincident with timing of future membership surveys thereafter.

- **Obstacles to implementation (if any):** Length constraints in membership surveys.

- **Plan for overcoming obstacles:** Commitment to including at least several questions.

- **Potential partners:** LAP Committee.

- **Resources needed:** Sample questions.

- **Is there a measurable outcome?** Inclusion of questions; number of responses.

- **Is recommendation sustainable?** Yes.

- **Connection with VT LAP?** Consult with LAP re sample questions.

**7. Recommendation D:** The VBA should establish a Lawyer Well-Being Committee.

- **Timeline for implementation:** September 2018 VBA Board Meeting.

- **Obstacles to implementation (if any):** None anticipated.

- **Plan for overcoming obstacles:** NA

- **Potential partners:** LAP.

- **Resources needed:** Time commitment for co-chairs and committee members.

- **Is there a measurable outcome?** Creation of committee; activity level of committee.

- **Is recommendation sustainable?** Yes.

- **Connection with VT LAP?** Close collaboration.

**8. Recommendation E:** The VBA should include at least one wellness-related activity at each Annual Meeting, Mid-Year Meeting, Solo & Small Firm Conference, and Mid-Winter Thaw.

- **Timeline for implementation:** September 2018 Annual Meeting and thereafter.

- **Obstacles to implementation (if any):** Weather, possibly!

- **Plan for overcoming obstacles:** Praying for good weather (just checking to see if anyone's read this far!)

- **Potential partners:** LAP Committee

- **Resources needed:** Creativity; expenses may be involved, depending on the activity.

- **Is there a measurable outcome?** Number of activities; number of participants.

- **Is recommendation sustainable?** Yes.

- **Connection with VT LAP?** Consult re suggestions for activities.

**9. Suggestions as to what this committee would consider to be critical in a Vermont Lawyers Assistance Program:**

The Bar Association Committee considers the following elements critical in a Vermont Lawyers Assistance program: accessibility, confidentiality and robustness in terms of a full spectrum of proactive and reactive services.

**Bar Association Committee – VT Commission on the Well-being of the Legal Profession**

**Minutes – March 19, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Kyle Landis-Marinello, Michel Kiey and Rachel Strecker.

**Welcome and Introductions:** Teri welcomed committee members, and each gave a brief introduction of their backgrounds and interest in serving on the committee.

**National Task Force Report:** General discussion about the recommendations geared to bar associations, as set forth on pages 41-42 of the Report. Given the plan for the committee to meet by phone monthly through August, 2018, and the number of recommendations geared to bar associations, it was decided that discussion about the following recommendations will take place on the following telephone conference meeting dates:

April 23 – CLE Programming

May 21 – Educational Materials

June 8 – Member Survey

July 23 – Lawyer Well-Being Committee

August 20 – Bar Association Events

Michael and Jennifer agreed to lead the April 23 discussion about CLE Programming, and Samara agreed to lead the July 23 discussion about formation of a VBA Lawyer Well-being Committee. Each telephone conference meeting will start at 3:00 p.m. and end by 4:00 p.m.

**MYM Plenary Session:** Teri outlined what will be covered at the VBA Mid-Year Meeting Plenary Session on March 23, which will be devoted to the Vermont Commission on the Well-being of the Legal Profession. Chief Justice Reiber will open the session, and each Commissioner will describe the different committees and general recommendations that the committees will be reviewing. The new Executive Director of the New Hampshire Lawyers Assistance program, Terri Harrington, will be the keynote speaker regarding her experience with Lawyers Assistance Programs.

The next telephone conference meeting is scheduled for Monday, April 23 at 3:00 p.m. The call-in number is 1-877-273-4202 and the conference room is 566-656-878.

Teri Corsones

## **Bar Association Committee – VT Commission on the Well-being of the Legal Profession**

### **Minutes – April 23, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Kyle Landis-Marinello, Michael Kiey and Rachel Strecker.

**CLE Programming Recommendation:** Michel and Jennifer led the discussion regarding Recommendation 36.1, which provides that bar associations should develop and regularly offer educational programming on well-being-related topics. They provided a number of related materials in advance of the meeting, including a memorandum detailing the present status of efforts to incorporate well-being topics into VBA programs and media.

**CLE Programs:** Jennifer explained that in recent years the VBA has tried to include at least one wellness-related CLE program at each of the VBA major meetings. The major meetings include the Annual Meeting in the Fall, the Mid-Year Meeting in the Spring, and the Solo and Small Firm Conference every other year. The other major meeting is the Mid-Winter Thaw in January, which the Young Lawyers Division coordinates. It doesn't appear that a wellness-related CLE program is typically offered at the Thaw. The VBA will also be offering a Tech Conference in May this year, and if it is successful, the plan is to offer it in the years that are alternate to the Solo and Small Firm Conference years. Jennifer suggested that whereas a wellness-related CLE might not lend itself to a Tech Conference, wellness programs could otherwise be promoted at future Tech Conferences. Teri will check with the YLD regarding the possibility of including a wellness-related CLE program at the Thaw, on a regular basis.

**Vermont Bar Journal:** The Bar Journal is published quarterly. Several articles and columns about wellness-related topics have been included in recent editions. In addition, the "Pursuits of Happiness" articles that Jennifer has included in the last several editions feature an activity that lawyers participate in, outside of work, that brings them happiness. She plans to continue those articles for as long as she finds willing subjects.

**Social Media:** Mike Kennedy has consistently discussed wellness matters in his Ethical Grounds blog, and such stories are shared, retweeted, liked and posted through the VBA website. Jennifer suggested putting the Pursuits of Happiness articles on social media, also, and maybe using social media to gather input from members regarding wellness topics.

**VLS Event:** Samara will be offering a Mindfulness Program at the Vermont Law School to VLS alumni on June 14, from 10:30 a.m. to 12:30 p.m. She asked if the program could be publicized through VBA Connect. Teri briefly relayed the VBA policy that generally prohibits advertising CLE programs that compete with VBA CLE programs. The policy is based on the VBA's heavy reliance on CLE income to cover operating expenses. The more CLE income there is, the lower VBA dues can be.

Members discussed the possibility of the VBA Board making an exception for the policy, given the importance of wellness-related CLE's. Teri will check with the Board. Samara also asked if any of the other Commission committees, in particular the Lawyers Assistance Program Committee, might plan a committee meeting at the time of the program on June 14, so that the committee can request input from those in attendance at the program. Teri will check with Josh Simonds about that possibility.

**Committee Recommendations:** Members recommend that the VBA offer at least one well-being-related CLE program at each of the VBA major meetings, including the Annual Meeting, Mid-Year Meeting, every-other-year Solo and Small Form Conference, and at the Mid-Winter Thaw. The every-other-year Tech Conference should promote wellness -related programs, if it's not feasible to offer a wellness-related CLE program at the Tech Conferences. Each Bar Journal edition should also include at least one wellness-related article, and every effort should be made to publicize wellness-related topics on VBA social media.

The next telephone conference meeting is scheduled for Monday, May 21 at 3:00 p.m. The call-in number is 1-877-27-420 and the conference room is 566-656-878. The topic will be "Education Materials". Teri will send materials in advance of the meeting. Michael recommended the ABA COLAP site for materials, and Samara recommended the NYS Bar Association resources. Teri will review each.

Teri Corsones

**Bar Association Committee – VT Commission on the Well-being of the Legal Profession**

**Minutes – May 21, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Kyle Landis-Marinello, Michael Kiey and Rachel Strecker. The April 23, 2018 minutes were approved with one typographical error corrected.

**Review of Educational Materials:** Recommendation 36.2 recommends creating educational materials to support individual well-being and “Best Practice” model policies on well-being related topics for legal organizations. Examples of “best practice” model policies that were cited include practices for responding to lawyers in distress, succession planning, diversity and inclusion, mentoring practices, and work-life balance policies.

With respect to educational materials, Teri circulated a 14-page “Reading Resource List” that the New Hampshire Lawyers Assistance Program offers that includes titles and short summaries for a variety of reading resources. Categories for the resources include “Inspirational Reading”, “Alcohol”, “Aging”, “Drugs”, “Eating Disorders”, “Grief”, “Mental Health”, and “Trauma”. Other educational materials that were circulated for review included a “Desk Reference”, that lists “Signs and Symptoms of Depression and Substance Abuse”, with contact information for different providers. Members thought that each type of educational material would be helpful to lawyers, and could be included on the VBA website, as well as on the LAP website

**Review of “Best Practices” Policies:** With respect to “Best Practices” policies, Teri provided links to several examples of policies in the categories suggested, including “The Essentials of Law Office Management”, published by the Louisiana Bar Association; “A Short Course in Succession Planning”, offered by the American Bar Association; “Ten Tips for Lawyers Dealing with Stress”, offered by the Texas Bar Association; and “Work-Life Balance for Attorneys”, published by Hire an Esquire. There appear to be a variety of similar policies available through other bar associations and lawyer assistance programs. Members discussed various ways to make such resources available. One possibility would be through VBA Connect, if a Lawyer Well-Being Committee is created. The archiving and searchability features of VBA Connect would facilitate access to the materials.

**Vermont Mentoring Program:** Mentoring is one of the recommended means for assisting lawyers, especially newly admitted lawyers. Teri reviewed the present mentoring requirement for new admittees in Vermont. Upon admission to the bar in Vermont, applicants have one year to certify completion of at least 40 hours of specified activities. According to Andy Strauss from Attorney Licensing, his office could use many more names of lawyers willing to serve as mentors. The VBA could assist with enlisting lawyers willing to serve as mentors for the licensing program. Another possibility is helping to enlist lawyers who could serve as mentors for lawyers who connect with LAP, and indicate a need for assistance.

**Committee Recommendations:** Members recommend that the VBA gather and make available, either through the VBA website, VBA Connect in connection with a Lawyer Well-Being Committee, or through an LAP website, educational materials and “Best Practice” model policies on well-being topics. Members also recommend that the VBA consider enlisting mentor lawyers for the new mentorship program through Attorney Licensing, and/or enlist lawyer mentors in conjunction with VT LAP.

The next telephone conference meeting is scheduled for Monday, June 8 at 3:00 p.m. The call-in number is 1-877-27-420 and the conference room is 566-656-878. The topic will be “Member Surveys”. Jen will send materials in advance of the meeting.

Teri Corsones

**Bar Association Committee – VT Commission on the Well-being of the Legal Profession**

**Minutes – June 14, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Kyle Landis-Marinello, Michael Kiey and Rachel Strecker. Micaela Tucker was also present. The May 21, 2018 minutes were approved as written.

**Review of Survey Materials:** Recommendation 37 recommends including questions in member surveys connected with well-being topics. For example, survey questions can gauge awareness of support networks either in law firms or through lawyer assistance programs. The questions can also survey lawyers on well-being topics they would like to see addressed in bar journal articles, at bar association events, or through CLE courses. Lastly, the data gathered can inform bar associations' outreach and educational efforts.

Jen explained that she plans to create a membership survey in the Fall of 2018. The last time that a membership survey was done was in 2014. Jen distributed two potential well-being related questions for discussion:

1. Please check all that apply for you, someone in your firm, or your firm policy: bring a pet to work on a regular basis, bring a child to work on a regular basis, flexible/non-regular hours, work from home, bike or walk to work on a regular basis, dress casually on a regular basis, maternity leave, paternity leave, office exercise or wellness program, office LAP programs or outreach, office private lounge...
2. What are the three most significant challenges you personally face as an attorney (check up to THREE): High stress, work-life balance, time management, keeping up with technology, lack of business, client expectations, net revenue, collection, retirement planning, billable hours, interaction with other attorneys, frivolous lawsuits, interaction with the judiciary.

Other questions that were suggested include whether the respondent does mindfulness practices during the work day, and/or after hours; whether their office provides mindfulness practices opportunities; how many times per week does the person exercise; how does the person handle stress at the end of the day; how their firm responds to wellness issues or problems; and how the person self-qualifies his or her level of stress.

Micaela Tucker kindly joined the call after expressing an interest in the committee's work. She is familiar with similar surveys done at other institutions, and will send Jennifer some additional sample questions for consideration. Teri noted that the different commissioners will be meeting on July 12, and she will ask them if they have specific survey questions that would be helpful to their committee work.

**Lawyer Well-Being Committee:** Samara will lead the discussion during the next committee call that will focus on a Lawyer Well-Being Committee. Samara and Micaela discussed co-chairing the committee. Samara will send an agenda for the meeting in advance of the meeting, and asked that anyone with ideas about what such a committee should do and what it should provide to please send her their thoughts before July 12, if possible.

**Committee Recommendations:** Members recommend that the VBA include wellness-related questions in the upcoming membership survey, and thereafter in any future membership surveys. Jennifer will review the suggested survey questions, as well as any submitted by the other committees, and inform the committee of the final questions selected.

The next telephone conference meeting is scheduled for Monday, July 23 at 3:00 p.m. The call-in number is 1-877-27-420 and the conference room is 566-656-878. The topic will be "Lawyer Well-Being Committee". Samara will send materials in advance of the meeting.

Teri Corsones

**Bar Association Committee – VT Commission on the Well-Being of the Legal Profession**  
**Minutes – July 23, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Andrew Delaney, Jennifer Emens-Butler, Kyle Landis-Marinello, Michael Kiey and Rachel Strecker. Micaela Tucker was also present. The June 14, 2018 minutes were approved as written.

**Review of Lawyer-Well-Being Committee Materials:** Recommendation 38 recommends that bar associations consider forming Lawyer Well-Being Committees, focusing not only on addressing disorders and ensuring competence to practice law, but also on optimal functioning and full engagement in the profession. Samara distributed a proposed agenda in advance of the meeting, with the three topics described below:

**Topic 1: Proposed Focus of the Well-Being Committee.** Topic 1 listed eight goals of such a committee, including addressing attorney dysfunctions, ensuring competence, cultivating optimal functioning, creating a supportive community, compiling wellness resources, creating a series of high-quality speakers, serving as a clearinghouse, and partnering with lawyer assistance programs to advocate for lawyer well-being initiatives. The last goal was discussed in some detail, in the context of a well-being committee being a liaison and resource for the new Lawyers Assistance Program that the Commission envisions for the future. A Lawyer Well-Being Committee could ideally provide the on-going connection between the bar and a Lawyers Assistance Program, to ensure on-going relevance, connectivity and accountability.

**Topic 2: Example of a Functioning Lawyer Well-Being Committee.** Samara provided a link to the website for an Attorney Wellness Committee in South Carolina, which Samara commended to the Bar Association Committee. The South Carolina Attorney Wellness Committee began as a Task Force to “promote all aspects of lawyer wellness by attempting to identify factors that impact both the emotional and physical well-being of attorneys and educate members of the Bench and Bar about wellness issues and resources”. It evolved in to a bar committee, and maintains a website and blog covering three sections of interest: mental health, physical health and social well-being. Members discussed the possibility of a similar resource that could be tied in to VBA Connect and linked through the VBA website.

**Topic 3: Next Steps to Create the VBA Lawyer Well-Being Committee.** The VBA Constitution provides that the “Board of Managers shall establish and disband such committees and sections of the Association as it, from time to time, deems necessary and appropriate.” Samara and Micaela will e-mail Teri a short statement expressing their request for approval of a Lawyer Well-Being Committee, and indicating their willingness to serve as co-chairs. The statement will reference the proposed focus of the Committee. Teri will place the request on the agenda at the next ensuing Board meeting.

**Lawyer Well-Being at Bar Association Events:** Teri and Jen will lead the discussion during the next committee call that will focus on Lawyer Well-Being at Bar Association Events.

**Committee Recommendations:** Members recommend that the VBA approve a Lawyer Well-Being Committee chaired by Samara and by Micaela, and that the Committee develop goals similar to those outlined in Topic 1 above. It also recommended that the Committee explore a presence through VBA Connect with materials similar to those outlined in Topic 2 above, accessed through a link on the VBA website. Lastly, members recommend that the Committee be an on-going liaison to the future Vermont Lawyers Assistance Program that will hopefully result from the Commission's state action plan.

The next telephone conference meeting is scheduled for Monday, August 20 at 3:00 p.m. The call-in number is 1-877-273-4202 and the conference room is 566-656-878. The topic will be "Best Practices Related to Lawyer Well-Being at Bar Association Events".

Teri Corsones

*Bar Association Committee – VT Commission on the Well-Being of the Legal Profession  
#38 Launch a Lawyer Well-Being Committee  
July 23, 2018 Agenda  
Samara D. Anderson*

**ABA Recommendations: Form a Lawyer Well-Being Committee to supplement any existing lawyer assistance programs with a more expansive approach to well-being.**

**Topic 1: Proposed Focus of the Well-Being Committee:**

1. Address attorney dysfunctions and disorders
2. Ensure competence to practice law
3. Cultivate optimal functioning as lawyers with full engagement in the profession.
4. Create a sense of supportive community to enhance holistic attorney wellbeing and wellness.
5. Compile supportive attorney wellness resources (educational materials and programs) in one place with easy access for use.
6. Create a series of high-quality speakers on attorney wellness topics.
7. Serve as a clearinghouse for lawyer well-being information.
8. Partner with the lawyer assistance program and other state and national organizations to advocate for lawyer well-being initiatives.

**Topic 2: Example of a Functioning Lawyer Well-Being Committee exists in South Carolina:**

1. Created a "Living Above the Bar" Website (<https://www.livingabovethebar.org> )
2. Focus on this Committee: "This Committee identifies factors that impact lawyer wellness, recommends programs to promote health and wellness of Bar members, and educates the bench and bar about wellness issues and resources."
3. *Wellness Matters Blog with the following sections:*
  - a. **Mental Health**
    - i. Depression
    - ii. Addictions
    - iii. Eating Disorders
    - iv. Mindfulness
    - v. Trauma, Burnout, Etc.
    - vi. Suicide Prevention
    - vii. Resources (finding help, informative links to groups, definitions, etc.)
  - b. **Physical Health**
    - i. Nutrition
    - ii. Physical Fitness
    - iii. Resources (finding help, informative links to groups, definitions, etc.)
  - c. **Social Well-Being**
    - i. Work-Life Balance (I believe this should be integration...)
    - ii. Stress Management
    - iii. Time Management
    - iv. Debt Management

**Topic 3: Next Steps to Create the VBA Lawyer Well-Being Committee**

**Bar Association Committee – VT Commission on the Well-Being of the Legal Profession**  
**Minutes – August 20, 2018 Telephone Conference**

**Present:** Samara Anderson, Teri Corsones, Jennifer Emens-Butler, Kyle Landis-Marinello, and Michael Kiey. The July 23, 2018 minutes were approved as written.

**Review of Lawyer-Well-Being Opportunities at Bar Association Events:** Recommendation 39 recommends that bar associations should support members' well-being and role model best practices in connection with their own activities and meetings. This might include organizing functions to be family-friendly, offering well-being -related activities at events, and including related programming at conferences and other events.

Jennifer reviewed what well-being activities have been offered to date at bar association events, including a "Sip and Paint" activity, tennis, golf and boating at the last Solo & Small Firm Conference at Basin Harbor, early morning walk/hike opportunities at meetings at Lake Morey, and yoga at several large meetings. An early morning walk/hike will be offered at the Equinox Resort at the Annual Meeting in September. The only purely social/family-friendly event in recent memory was a retirement party/VBF fundraiser event at Button Bay State Park two summers ago. Attendance was light, but persons who did attend were enthusiastic about the chance to recreate at a bar event that was purely social. Bar association events have traditionally centered around CLE programs, given members' preference for that focus.

Some suggestions for purely social/recreational events that might be tested included monthly social dance lessons, a "Battle of the Bands" event, a "Fun Run", and "Lake Monster" baseball games. Teri indicated that as part of the VBA Board's strategic planning, the Membership Committee has been asked to review member benefits, and to evaluate whether special discounts or preferred rates associated with recreational activities might be added. This might involve fitness clubs, ski areas, outdoor equipment centers, golf courses or swimming pools, etc. Meditation sessions and massage chairs at bar association events were also mentioned as possibilities that could be explored.

**ABA's Well-Being Toolkit for Lawyers and Legal Employers (August 2018):** Members briefly reviewed a lengthy publication that the ABA recently issued that includes numerous wellness resources and a comprehensive guide for legal employer policies. Teri will forward it to the Legal Employer Committee for its review, and will post it on the VBA's Commission on the Well-Being of the Legal Profession page on the website.

**Template for Committee Reports:** Teri distributed the draft minutes from the Commission's meeting held July 12, 2018. Included in the minutes was a request for a template for the Committee Reports that each committee has been asked to submit to the Commission in September. Teri prepared a draft template, and members offered helpful suggestions for

improving it. Teri will distribute the revised template to the Commissioners, and will prepare a draft report for the Bar Association Committee to review at its next meeting.

**Bar Association Committee Report** Teri will lead the discussion during the next committee call that will review a draft Bar Association Committee Report.

**Committee Recommendations:** Members recommend that the VBA include at least one well-being-related activity at the Annual Meeting, Mid-Year Meeting and every-other-year Solo & Small Firm Conference. It also recommended that the new Lawyers Assistance Committee explore the possibility of a purely social bar association event, to gauge interest in such events. Lastly, members encouraged the VBA Membership Committee to investigate adding discounts for recreational activities or equipment to the current member benefits.

The next telephone conference meeting is scheduled for Monday, September 10 at 7:00 p.m. The call-in number is 1-877-273-4202 and the conference room is 566-656-878. The purpose of the meeting will be to review a draft Bar Association Committee Report.

Teri Corsones

# REGULATORS COMMITTEE REPORT

The National Task Force's [\*Path to Lawyer Well-Being: Practical Recommendations for Positive Change\*](#) includes recommendations for so-called "regulators." Key to the recommendations is a call to "transform the profession's perception of regulators from police to partner." The Task Force also urges regulators to "promote effective lawyer assistance and other proactive programs relating to well-being," thereby assisting lawyers to provide competent services throughout their careers.

In Vermont, the "regulators" are the boards, committees, and staff that perform the various functions related to the Supreme Court's constitutional prerogative to license attorneys.

Vermont's regulators have long been ahead of the curve in promoting wellness. For instance:

- In June 2015, and in response to trends in disciplinary complaints and prosecutions, the Professional Responsibility Board ("PRB") directed bar counsel to recommend how the Board might provide additional support to the Lawyers Assistance Program ("LAP").
- In April 2016, the PRB, after hearing from disciplinary counsel, bar counsel, and the LAP, concluded that there was a need for a more robust LAP. The Board recommended that the Supreme Court study mechanisms to provide funding to the LAP, but without housing the LAP within the Professional Responsibility Program ("PRP"). The recommendation to house the LAP somewhere other than the PRP reflected the PRB's concern that lawyers would not access a LAP that was too closely associated with the disciplinary program.
- For many years, the Character & Fitness Committee has taken part in an annual event at Vermont Law School in which students are encouraged to seek help & treatment without worrying that the fact of a diagnosis or treatment will adversely affect an application for admission. The Committee has long-stressed that it is focused on conduct, not health status.
- For many years, the Board of Mandatory Continuing Legal Education has approved CLE credit for courses that focus on lawyer wellness and well-being rather than simply "traditional" CLE.
- For many years, the Board of Bar Examiners has worked to reduce barriers to admission by granting accommodations to take the bar exam to applicants who provide appropriate documentation in support of requests for reasonable accommodations.

On a more micro level, in 2012, the Professional Responsibility Program restructured to devote more resources to prevention than to prosecution. As a result, the PRP already employs many of the Task Force's recommendations. Among them, a centralized intake system, a diversion program, and other services rooted in the concept of Proactive Management Based Regulation ("PMBR"). Since then, and in conjunction with other licensing bodies and the Vermont Bar Association, the Board and bar counsel have worked to educate the bar about the impact behavioral health issues are having on Vermont lawyers.

In short, the Court's licensing bodies have long promoted attorney wellness and worked to decouple behavioral health issues from both the admission and disciplinary processes.

Nevertheless, the Regulators Committee recognizes that lawyer competence is central to the missions of the Court's various licensing bodies. The mission includes admitting competent attorneys and providing them with the tools and resources to maintain competence throughout their legal careers. Thus, the Committee was struck by language in the Task Force's introductory note:

- “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 abuse. **These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers’ basic competence.**” (emphasis added.)

To ensure that the Court’s attorney regulation system continues to promote wellness as a component of competence, the Committee reports that Vermont’s regulators have taken the following steps in response to the recommendations from the National Task Force:

1. In December 2018, the PRB voted to recommend that the Court add a comment to V.R.Pr.C. 1.1 to make clear that behavioral health issues have the potential to adversely impact a lawyer’s ability to provide clients with competent representation.
2. In December 2018, the PRB voted to recommend that the Court amend Administrative Order 9 to authorize bar counsel to refer complaints to a LAP.
3. In October 2018, the Mandatory Continuing Legal Education Board voted to recommend that the Court consider requiring lawyers to take 1-hour of CLE in “wellness” every reporting cycle, with “wellness” defined broadly. More specifically, the CLE Board is working to define ‘Attorney Wellness Programming’ as CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public. The Board reached the conclusion that a broader definition gives more flexibility to the individual attorney to choose the self-care program that may be more appropriate for her or his needs.
4. The Board of Bar Examiners voted to recommend that the Court consider amending Rules 12 and 15 of the Rules of Admission to incorporate wellness into the curriculum required of lawyers in their first year of admission to the Bar of the Vermont Supreme Court.
5. The Character & Fitness Committee resolved to continue to focus on conduct over condition when reviewing applications for the admission to the Bar of the Vermont Supreme Court. The Committee also resolved to continue to work with law schools to educate students who are facing behavioral health issues that seeking treatment is not a barrier to admission.
6. The Character & Fitness Committee will continue to study whether to recommend that the Court adopt a “conditional admission” program. The Chair, the Honorable Thomas Durkin, has been asked to speak on the topic at the April 2019 meeting of the National Conference of Bar Examiners.
7. The Judicial Conduct Board recommends that the State Action Plan recognize (a) that behavioral health issues are as likely to impact judges as lawyers; (b) that judges should be included in whatever wellness resources are provided to lawyers; (c) that judges should assist and, if necessary, make a confidential referral of a member of the bar to an assistance program, and, likewise, members of the bar should similarly make a confidential referral of a judge, with all able to do so without repercussion, and; (d) that more face-to-face interaction between members of the bar and judges will assist promoting the wellness initiatives of the State Action Plan.

The Regulators Committee applauds each action and urges the Court to adopt a State Action Plan that adopts these measures as part of the on-going need to promote wellness as critical to lawyer competence.

# LEGAL EMPLOYERS COMMITTEE REPORT

Legal employers, meaning all entities that employ lawyers, paralegals and legal assistants, can play a pivotal role in promoting and maintaining lawyer well-being. While this is a broad and sizable group with considerable diversity, the recommendations below are intended to apply universally. Specific recommendations may need to be tailored to address the realities particular to each context, but the crux of each recommendation applies to all.

## **24. ESTABLISH ORGANIZATIONAL INFRASTRUCTURE TO PROMOTE WELL-BEING.**

### 24.1. Form A Lawyer Well-Being Committee.

Without dedicated personnel, real progress on well-being strategies will be difficult to implement and sustain.<sup>113</sup> Accordingly, legal employers should launch a well-being initiative by forming a Lawyer Well-Being Committee or appointing a Well-Being Advocate.

The committee or advocate should be responsible for evaluating the work environment, identifying and addressing policies and procedures that create the greatest mental distress among employees, identifying how best to promote a positive state of well-being, and tracking progress of well-being strategies. They should prepare key wellness benchmarks and milestones, communicate them to all employees, and create accountability strategies.<sup>114</sup> They also should develop strategic partnerships with lawyer assistance programs and other wellbeing experts and stay abreast of developments in the profession and relevant literature.

**Local Vermont Addendum and Commentary: In large and medium-size firms, a well-being committee or advocate makes sense. But for small firms of two or three lawyers and/or solo practitioners, a committee or even an appointed individual may not be practical. Particularly for solo practitioners, it might make sense to form well-being committees on the county bar association level, who hold regular meetings and do outreach to local attorneys practicing solo or in small firms. This might mean making sure that every county bar association holds at least a couple of well-being events per year, with one specifically for new lawyers in small firms/solos.**

### 24.2. Assess Lawyers' Well-Being.

Legal employers should continually assess the state of well-being among lawyers and staff and whether workplace cultures support well-being. An assessment strategy might include an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being, stressors in the firm that significantly affect well-being, and organizational support for improving well-being in the workplace. Attitudes are formed not only by an organization's explicit messages but also implicitly by how leaders and lawyers actually behave. Specifically related to the organizational climate for support for mental health or substance use disorders, legal employers should collect information to ascertain, for example, whether lawyers:

- Perceive that you, their employer, value and support well-being.
- Perceive leaders as role modeling healthy behaviors and empathetic to lawyers who may be struggling.
- Can suggest improvements to better support well-being.
- Would feel comfortable seeking needed help, taking time off, or otherwise taking steps to improve their situation.
- Are aware of resources available to assist their well-being.
- Feel expected to drink alcohol at organizational events.
- Feel that substance use and mental health problems are stigmatized.
- Understand that the organization will reasonably accommodate health conditions, including recovery from mental health disorders and addiction.

As part of the same survey or conducted separately, legal employers should consider assessing the overall state of lawyers' well-being. Surveys are available to measure concepts like depression, substance use, burnout, work engagement, and psychological well-being. The Maslach Burnout Inventory (MBI) is the most widely used burnout assessment. It has been used to measure burnout among lawyers and law students.<sup>115</sup> Programs in the medical profession have recommended a bi-annual distribution of the MBI.<sup>116</sup>

Legal employers—especially small ones--should carefully consider whether internal staff will be able to accurately conduct this type of assessment or whether hiring an outside consultant would be advisable. Internal staff may be more vulnerable to influence by bias, denial, and misinterpretation.

**Local Vermont Addendum and Commentary: Assess on a regular basis for the warning signs of work addiction, substance abuse, alcoholism, social isolation. As part of the assessment process, consider drafting policies for handling the identified warning signs of lawyer impairment, before the disciplinary stage is reached.**

## 25. ESTABLISH POLICIES AND PRACTICES TO SUPPORT LAWYER WELL-BEING.

Legal employers also should establish a confidential reporting procedure for lawyers and staff to convey concerns about their colleagues' mental health or substance use internally, and communicate how lawyers and staff can report concerns to the appropriate disciplinary authority and/or to the local lawyer assistance program. Legal employers additionally should establish a procedure for lawyers to seek confidential help for themselves without being penalized or stigmatized. The state lawyer assistance programs can refer legal employers to existing help lines and offer guidance for establishing an

effective procedure that is staffed by properly-trained people.<sup>117</sup> The ABA and New York State Bar Association have proposed model law firm policies for handling lawyer impairment that can be used for guidance.<sup>118</sup> The ABA has provided formal guidance on managing lawyer impairment.<sup>119</sup>

#### **Local Vermont Addendum and Commentary:**

**Remember that law firms of all sizes are workplaces, even if they do not always feel that way. We are all workers, and our work conditions matter, not only to our personal lives, but to the quality of services we provide. Treating employees fairly when it comes to salaries/wages, benefits, and hours will translate into improved lawyer well-being.**

**These suggestions apply with equal force to paralegals and legal assistants. Their well-being is crucial in the workplace too, for their own sakes, but also for the well-being of the attorneys they support.**

**Develop workplace policies that actively discourage work addiction. Discourage working consistently beyond 8 hours per day, apart from emergency and emergency deadlines. Discourage working through lunch or eating lunch at one's desk, and encourage lawyers to eat lunch with other staff – this is an easy and convenient daily opportunity to socialize and break down the stressful aspect of professional hierarchies. Let attorney employees know they are not just allowed, but expected to take breaks.**

**Make sure every attorney, paralegal and legal assistant is physically comfortable at his or her workstation. In virtually all cases this includes, at a minimum, an ergonomically sound desk, chair and computer, with a phone headset, if applicable. Poor ergonomics and even low-level physical discomfort has been directly linked to increased stress and anxiety, particularly in the context of high-stress professions.**

**In firms that impose billable hour quotas on attorneys, assess whether and how that quota system may be contributing to unproductive competition, excessive stress, and unhealthy work habits. In large firms, an anonymous survey may be the best way to assess this issue. In smaller firms, it can be done through simple observation. If a quota system appears to be encouraging unhealthy behavior and excessive stress, modify it, eliminate it, or consider alternatives.**

**Create policies that allow for, encourage and prioritize employee exercise, during work hours, if necessary. Look into participation in morale building events such as relay team for running races, charity sporting events and the like.**

**Consider a policy that employees should not—apart from emergencies—check their work email during non-working hours. Moreover, employers should allow all legal professionals to set reasonable boundaries on responding to emails, for example, letting clients know that barring an emergency, they may not get an email response immediately, but the employee will respond within a certain period of time.**

**Create and expand telecommuting opportunities wherever possible. When implemented properly and within appropriate limits telecommuting is a critical component of well-being and healthy work-life balance in the digital age, with particular benefits in rural state such as Vermont. Adopt attitudes and policies of trusting attorney employees to get the work done, wherever and whenever they do it.**

**Offer support for trauma and burn-out associated with particularly stressful subject matter, such as financial crisis, family conflict, crime victims, etc. All good legal professionals care for their clients, but that care must be managed so that it does not compromise attorney effectiveness. Legal employers must provide informal and formal avenues for addressing how client and subject matter based anxiety can bleed into attorney's personal lives.**

**Move toward increasing vacation and flex time, without guilt. Attorneys should be expected, and in some cases required, to take time off, and should be discouraged from not doing so. Consider vacation, evenings, and weekends to be as much an integral part of professional competence as time at work.**

**Develop family-friendly policies in the workplace. Be flexible and generous with child-care and other family needs as they arise.**

#### 25.1. Monitor For Signs of Work Addiction and Poor Self-Care.

Research reflects that about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally.<sup>120</sup> Numerous health and relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction. Therefore, we recommend that legal employers monitor for work addiction and avoid rewarding extreme behaviors that can ultimately harm their health. Legal employers should expressly encourage lawyers to make time to care for themselves and attend to other personal obligations. They may also want to consider promoting physical activity to aid health and cognitive functioning.

#### 25.2. Actively Combat Social Isolation and Encourage Interconnectivity.

As job demands have increased and budgets have tightened, many legal employers have cut back on social activities. This could be a mistake. Social support from colleagues is an important factor for coping with stress and preventing negative consequences like

burnout.<sup>121</sup> Socializing helps individuals recover from work demands and can help stave off emotional exhaustion.<sup>122</sup> It inhibits lawyers feeling isolated and disconnected, which helps with firm branding, messaging, and may help reduce turnover. We recommend deemphasizing alcohol at such events.

**Local Vermont Addendum and Commentary: strengthen local bar associations, with the goal of bringing firms and small/solo practitioners together on a regular basis for venting, commiseration, mutual support and fun.**

**Create opportunities for “flex time” doing service in the community. (The United States Attorney’s Office has this in place now.)**

**Commit to mentoring new attorneys, both formally and informally.**

**Encourage meaningful “open door policies,” in which employees can communicate genuinely with bosses, not just the cliché.**

## 26. PROVIDE TRAINING AND EDUCATION ON WELL- BEING, INCLUDING DURING NEW LAWYER ORIENTATION.

We recommend that legal employers provide education and training on well-being-related topics and recruit experts to help them do so. A number of law firms already offer well-being related programs, like meditation, yoga sessions, and resilience workshops.<sup>123</sup> We also recommend orientation programs for new lawyers that incorporate lawyer well-being education and training.<sup>124</sup> Introducing this topic during orientation will signal its importance to the organization and will start the process of developing skills that may help prevent well-being problems. Such programs could:

- Introduce new lawyers to the psychological challenges of the job.<sup>125</sup>
- Reduce stigma surrounding mental health problems.
- Take a baseline measure of well-being to track changes over time.
- Provide resilience-related training.
- Incorporate activities focused on individual lawyers’ interests and strengths, and not only on organizational expectations.<sup>126</sup>
- Further, law firms should ensure that all members and staff know about resources, including lawyer assistance programs, that can assist lawyers who may experience mental health and substance use disorders. This includes making sure that members and staff understand confidentiality issues pertaining to those resources.

### 26.1. Emphasize a Service-Centered Mission.

At its core, law is a helping profession. This can get lost in the rush of practice and in the business aspects of law. Much research reflects that organizational cultures that focus chiefly on materialistic, external rewards can damage well-being and promote a self-only focus. In fact, research shows that intrinsic values like relationship-development and kindness are stifled in organizations that emphasize extrinsic values like competition,

power, and monetary rewards.<sup>127</sup> Work cultures that constantly emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors from lawyers that harm organizations and individual well-being. This can be psychologically draining. Research of Australian lawyers found that 70 percent reported that the practice of law is bottom-line driven.<sup>128</sup> Lawyers who reported that the practice of law was primarily about generating profits were more likely to be depressed.<sup>129</sup> This affects the bottom line since poor mental health can cause disability and lost productivity.

Consequently, we recommend that legal employers evaluate what they prioritize and value, and how those values are communicated. When organizational values evoke a sense of belonging and pride, work is experienced as more meaningful.<sup>130</sup> Experiencing work as meaningful is the biggest contributor to work engagement—a form of work-related well-being.<sup>131</sup>

## 26.2. Create Standards, Align Incentives, and Give Feedback.

Contextual factors (i.e., the structure, habits, and dynamics of the work environment) play an enormous role in influencing behavior change. Training alone is almost never enough. To achieve change, legal employers will need to set standards, align incentives, and give feedback about progress on lawyer well-being topics.<sup>132</sup>

Currently, few legal employers have such structural supports for lawyer well-being. For example, many legal employers have limited or no formal leader development programs, no standards set for leadership skills and competencies, and no standards for evaluating leaders' overall performance or commitment to lawyer well-being. Additionally, incentive systems rarely encourage leaders to develop their own leadership skills or try to enhance the well-being of lawyers with whom they work. In law firms especially, most incentives are aligned almost entirely toward revenue growth, and any feedback is similarly narrow. To genuinely adopt lawyer well-being as a priority, these structural and cultural issues will need to be addressed.

**Local Vermont Addendum and Commentary: Consider the relationship of junior attorneys to more senior ones. In many firms, junior lawyers are often considered “assistants” to the partners or seniors. This can be a double-edged sword. Sometimes it can provide invaluable mentorship, which young lawyers need; at other times it can impede professional growth. Employers should, where possible, move toward younger attorneys developing their own caseloads, professional identities and reputations, as well as credit for the work they do. This is crucial for building ownership in one’s work and investment in the workplace, beyond just money earned.**

<sup>113</sup>Companies with dedicated wellness personnel achieve, on average, a 10 percent higher rate of employee participation. See OPTUM HEALTHCARE, WELLNESS IN THE WORKPLACE 2012: AN OPTUM RESEARCH UPDATE (Resource Center for Health & Wellbeing White Paper 2012), available at <https://broker.uhc.com/assets/wellness-in-the-workplace-2012-WP.pdf>.

<sup>114</sup>For guidance on developing their own strategic plan, Well-Being Committees could look to the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession, see *supra* note 76. They might also consider creating an information hub to post all well-being related resources. Resources could include information about the growing number of mental health apps. See, e.g., R. E. Silverman, Tackling Workers' Mental Health, One Text at a Time, WALL ST. J., July 19, 2016, available at <https://www.wsj.com/articles/tackling-workers-mental-health-one-text-at-a-time-1468953055>; B. A. Clough & L. M. Casey, The Smart Therapist: A Look to the Future of Smartphones and eHealth Technologies in Psychotherapy, 46 PROF. PSYCHOL. RES. & PRAC. 147 (2015).

<sup>115</sup>See, e.g., S. E. Jackson, J. A. Turner, & A. P. Brief, Correlates of Burnout Among Public Service Lawyers, 8 J. ORG. BEHAV. 339 (1987); see also R. Durr, Creating 'Whole Lawyers': Wellness, Balance, and Performance Excellence At Northwestern University School of Law, NW. SCH. OF L. (2015), available at [http://www.americanbar.org/content/dam/aba/events/professional\\_responsibility/2015/May/Conference/Materials/8\\_wellbeing\\_program\\_catalog\\_2014\\_2015%204%203%2015%20version.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2015/May/Conference/Materials/8_wellbeing_program_catalog_2014_2015%204%203%2015%20version.authcheckdam.pdf).

<sup>116</sup>J. Eckleberry-Hunt, A. Van Dyke, D. Lick, & J. Tucciarone, Changing the Conversation from Burnout to Wellness: Physician Well-being in Residency Training Programs, 1 J. GRADUATE MED. EDUC. 225 (2009). The MBI is available at <http://www.mindgarden.com/117-maslach-burnout-inventory>.

<sup>117</sup>CoLAP's website provides help-line information and a directory of state-based lawyer assistance programs: [http://www.americanbar.org/groups/lawyer\\_assistance.html](http://www.americanbar.org/groups/lawyer_assistance.html).

<sup>118</sup>AM. BAR ASS'N RESOL. 118, MODEL LAW FIRM/LEGAL DEPARTMENT IMPAIRMENT POLICY & GUIDELINES (Aug. 1990), available at <https://www.texasbar.com/AM/Template.cfm?Section=Employers1&Template=/CM/ContentDisplay.cfm&ContentID=15131>; NEW YORK STATE BAR ASSOCIATION LAWYER ASSISTANCE COMMITTEE MODEL POLICY, N. Y. STATE BAR ASS'N (2010), available at [https://www.nassaubar.org/UserFiles/Model\\_Policy.pdf](https://www.nassaubar.org/UserFiles/Model_Policy.pdf).

<sup>119</sup>AM. BAR ASS'N FORMAL OPINION 03-429 (2003), available at [http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03\\_429.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03_429.authcheckdam.pdf).

<sup>120</sup>Brafford, *supra* note 2.

<sup>121</sup>C. Maslach, W. B. Schaufeli, & M. P. Leiter, Job Burnout, 52 ANN. REV. OF PSYCHOL. 397, 415 (2001); T. Reuter & R. Schwarzer, Manage Stress at Work Through Preventive and Proactive Coping, in Locke, *supra* note 7.

<sup>122</sup>M. J. Tews, J. W. Michel, & K. Stafford, Does Fun Pay? The Impact of Workplace Fun on Employee Turnover and Performance, 54 CORNELL HOSPITALITY QUARTERLY, 370 (2013).

<sup>123</sup>E.g., C. Bushey, Kirkland & Ellis to Offer Wellness Training to All U.S. Lawyers, CRAIN'S CHICAGO BUS., May 2, 2016, available at <http://www.chicagobusiness.com/article/20160502/NEWS04/160509972/kirkland-ellis-to-offer-wellness-training-to-all-u-s-lawyers>; N. Rodriguez, What the Army Can Teach BigLaw about Bouncing Back, LAW360, Feb. 17, 2017, [https://www.law360.com/in-depth/articles/891995?nl\\_pk=972d8116-f9f0-4582-a4c6-0ab3cf4a034c&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=in-depth](https://www.law360.com/in-depth/articles/891995?nl_pk=972d8116-f9f0-4582-a4c6-0ab3cf4a034c&utm_source=newsletter&utm_medium=email&utm_campaign=in-depth) (identifying Goodwin Procter LLP, O'Melveny & Myers LLP, Morgan Lewis & Bockius LLP, Fish & Richardson PC, Drinker Biddle & Reath LLP, Quarles & Brady LLP, and Neal Gerber & Eisenberg LLP as having hosted resilience workshops).

<sup>124</sup>See A. M. Saks, & J. A. Gruman, Organizational Socialization and Positive Organizational Behaviour: Implications for Theory, Research, and Practice, 28 CANADIAN J. ADMIN. SCI. 14 (2011).

<sup>125</sup>See generally J. P. Wanous & A. E. Reichers, New Employee Orientation Programs, 10 HUMAN RESOURCE MGMT. REV. 435 (2000), available at <http://homepages.se.edu/cvonbergen/files/2013/01/New-Employee-Orientation-Programs.pdf>.

<sup>126</sup>See D. M. Cable, F. Gino, & B. R. Staats, Reinventing Employee Onboarding, M.I.T. SLOAN MGMT. REV. (2013), available at <http://sloanreview.mit.edu/article/reinventing-employee-onboarding>.

<sup>127</sup>T. Kasser, Materialistic Values and Goals, 67 ANN. REV. OF PSYCHOL. 489 (2015); T. Kasser, Teaching about Values and Goals: Applications of the Circumplex Model to Motivation, Well-Being, and Prosocial Behavior, 41 TEACHING PSYCHOL. 365 (2014).

128A. J. Bergin & N. L. Jimmieson, Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets, 21 PSYCHIATRY, PSYCHOL. & L. 427 (2014).

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# LAW SCHOOL COMMITTEE REPORT

VERMONT COMMISSION ON THE WELL-BEING OF THE LEGAL PROFESSION  
PROPOSAL FROM VERMONT LAW SCHOOL (12/7/18)

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**I. TRAINING FOR FACULTY MEMBERS – STUDENT MENTAL HEALTH**

- Vermont Law School (VLS) does not currently mandate wellbeing training for faculty members. However, student ambassadors, staff in direct contact with students, and other interested students have been certified in Mental Health First Aid, an eight-hour course offered on campus at least twice a year by a certified instructor.

Possible Recommendation for Further Action:

- Hold annual mental health and substance abuse training sessions for faculty and staff during orientation and/or retreats.
- Incorporate mental health issue identification and discussion in faculty and staff meetings, including helpful tips and trends.
- Inform and remind faculty of their responsibility to report detection of student wellbeing issues.
- Report to faculty and staff on the correlation between mental health and bar passage rates.

**II. UNIFORM ATTENDANCE POLICY TO DETECT EARLY WARNING SIGNS**

- VLS has an attendance policy in its Academic Regulations that requires the professor to communicate in writing to the student with a warning after three unexcused absences (or 20% of the regularly scheduled classes). This complies with the American Bar Association standards.

Possible Recommendation for Further Action:

- Because absences and mental health issues are often connected to class absence, require professors to also notify the Vice Dean for Students of any written notice about a student's unexcused absences.
- For students receiving notice, require professors to set up a warning meeting with the student and the Vice Dean for Students to better enforce the attendance policy, and ensure the student is seeking help for the reason behind the unexcused absences.

**III. MENTAL HEALTH AND SUBSTANCE USE DISORDER RESOURCES**

- VLS displays resources related to mental health on the Vermont Law School website, on a board located in the Chase Breezeway, in the waiting area outside of the Associate Dean for Student Affairs & Diversity's office, in the Mental Health Services Manager's office, and in a designated area of the Chase Computer Lab, which is accessible 24 hours a day by students, faculty, and staff. Printed mental health resources are also located in the President and Dean's Office.
- The VLS Mental Health Committee hosts a series of events, panels and meetings each academic year, focusing on striking the stigma of mental illness, highlighting prevalent mental health issues within the field and in everyday life, and recommending coping and management strategies.

Possible Recommendation for Further Action:

- Encourage each professor to provide wellbeing resources in their courses.

- Establish a buddy system pairing incoming 1L students with a 2L or 3L when they arrive on campus for orientation. This should ease the transition, introduce them to campus culture and community, and answer any possible questions they may have throughout their 1L year.

#### **IV. PRACTICES AND FACULTY EDUCATION: WELL-BEING IN THE CLASSROOM**

- See II and III above

#### **V. ADDITIONAL GOALS: EMPOWER STUDENTS TO HELP FELLOW STUDENTS IN NEED**

- The VLS Mental Health Committee holds weekly confidential support group meetings called “Swan Support,” during which students, faculty, staff, and alumni share stories of current or past struggles and triumphs related to mental illness and/or substance abuse.

##### Possible Recommendation for Further Action:

- Increase awareness of wellbeing issues by student ambassadors, academic mentors, and representatives of the VLS Mental Health Committee.

#### **VI. WELL-BEING TOPICS IN PROFESSIONAL RESPONSIBILITY COURSE**

- Mental health in the legal profession is currently a component of the required Professional Responsibility course for J.D. student.

##### Possible Recommendation for Further Action:

- Incorporate mental health awareness at the beginning of the Professional Responsibility course and highlight the topic throughout the course materials.
- Invite practicing attorneys at the beginning of the Professional Responsibility course to share their stories and provide tips on health and lawyer well-being.

#### **VII. RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS**

- VLS has contracted with the Clara Martin Center to provide ten (10) free counseling sessions per academic year (limit five per semester) to students, faculty, and staff. VLS provides a counselor on campus one day per week.
- VLS provides information for local resources providing support for individuals experiencing or recovering from sexual violence and domestic abuse, suicidal ideation, trauma, and substance abuse.
- VLS has hired a Mental Health Services Manager to assist students in obtaining mental health resources. This staff member will also be the first point of contact for students in crisis, and will essentially bridge the gap between the onset of a mental health issue and receiving appropriate professional care. The Mental Health Services Manager will also advise the VLS Mental Health Committee, instruct and certify participants in Mental Health First Aid, and take on various other mental health related responsibilities.

##### Possible Recommendation for Further Action:

- Contact Alcoholics Anonymous (AA) and Narcotics Anonymous about holding meetings on campus.
- Contact the Lawyer’s Assistance Project about holding meetings on campus.
- Hire a part-time counselor to work on campus as a VLS staff member (instead of Clara Martin), allowing for greater scheduling flexibility and less wait time.

### **VIII. CONFIDENTIAL RECOVERY NETWORK**

- Local AA meetings are held at The Red Door Church located at 67 S. Windsor St., South Royalton, VT 05068
- The VLS Mental Health Committee has created a weekly support group on campus called Swan Support as described above.

Possible Recommendation for Further Action:

- See sections V and VI, above.

### **IX. EDUCATIONAL OPPORTUNITIES ON WELL-BEING RELATED TOPICS**

- VLS does not currently have a year round wellbeing program. However, the VLS Mental Health Committee hosts panels, events, and Swan Support, all of which provide information and outlets for students with respect to wellness and mental health.
- VLS offers meditation in the Belfry every week and massage therapists are on campus at various times throughout each semester.
- VLS provides a therapy dog and student appreciation days during exam periods, including free breakfast, lunch, and snacks to relieve stress.

Possible Recommendation for Further Action:

- Offer additional wellbeing driven classes as part of the VLS curriculum.
- Offer additional wellbeing workshops during reading and exam periods.

### **X. WELL-BEING PROGRAMMING DURING THE 1L YEAR**

- VLS conducted a Wellness Resources Session during Orientation 2018.
- See section IX, above.

Possible Recommendation for Further Action:

- See section X, above.

### **XI. WELL-BEING COURSES AND LECTURE SERIES FOR STUDENTS**

- VLS does not currently offer well-being courses and/or a lecture series with respect to this topic.

Possible Recommendation for Further Action:

- See section X, above.
- Plan a lecture series highlighting important issues and awareness of lawyer wellbeing.
- Offer lecture series as a course (potentially with CLE credit) for attorneys.

- Create a budget for speaking fees, or ask speakers if they would be willing to donate their time to this important cause for the legal field and the state of Vermont.

## **XII. DISCOURAGEMENT OF ALCOHOL-CENTERED SOCIAL EVENTS**

- VLS has limited the events that serve alcohol on campus.

### Possible Recommendation for Further Action:

- Review current alcohol policy and solicit student opinion on the subject to see if VLS should further limit alcohol at events.
- Offer alcohol-free alternatives to popular student events.

## **XIII. ANONYMOUS SURVEYS RELATING TO STUDENT WELL-BEING**

- The VLS Mental Health Committee circulated surveys during the 2017 and 2018 spring semesters, and plans on circulating another during the spring 2019 semester.

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### **SUBMITTED BY: VLS WELL-BEING COMMITTEE**

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# LAWYERS ASSISTANCE PROGRAM BUSINESS PLAN

# Vermont Judges and Lawyers Assistance Program<sup>1</sup>

## Preliminary Business Plan

### *Mission Statement*

To engage in proactive prevention and early intervention of impairment issues by enhancing awareness and understanding of substance use disorders, mental illness, stress management, and work/life balance relating to the practice of law and support of the legal system. To assure that every judge, lawyer and law student in Vermont has access to confidential support and assistance when confronting substance use disorders or mental health issues so that the afflicted individual is able to recover, families are preserved and clients and other members of the public are protected.

### I. Market Need

*Lawyer<sup>2</sup> Impairment:* Since the first comprehensive survey on the topic, in 1990, reliable data has consistently shown that the legal profession experiences higher rates of alcoholism and depression than the general public (18% vs \_\_% and 19% vs \_\_%, respectively, at that time). In 2014, a year-long study, conducted by the American Bar Association Commission on Lawyer Assistance Programs (“ABACoLAP”) in collaboration with the Minnesota Treatment Hospital Hazelden/Betty Ford Foundation, reported updated results based on comprehensive attorney surveys. The ABA/Hazelden study concluded 21% of attorneys exhibited problem drinking behaviors and mental health disorders. The mental health disorders these attorneys experienced fell primarily into four clinically significant categories: 19% of them experienced anxiety

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<sup>1</sup> “VTJLAP” is the operating tradename for Lawyers Concerned for Lawyers, Inc. a Vermont Non-profit Corporation. As part of its organizational development, the corporation will seek not for profit recognition under the Internal Revenue Service Code (i.e. recognition under 26 U.S.C. 501(c)(3)).

<sup>2</sup> We know that Judges are lawyers only more so but unfortunately studies and judicial surveys and data have not been collected. There is a national push for a comprehensive judicial survey and some states are preparing to undertake surveys. As will be noted in Section III, a Vermont survey of Judges (possibly with expansion to MA, NH and ME) is suggested to further refine **needs and issues unique to judicial assistance.**

(with rate among females attorneys even higher), 23% of them suffered from stress related disorders, and 28% of them suffered from depression (with the rate among male attorneys even higher). The study also documented attorneys suffering from other mental health conditions at lower rates, including social anxiety, ADHD, panic disorder, bipolar disorder. By contrast, in the general population 6.4% of adults experience alcohol use disorder<sup>3</sup> and 6.6% of adults suffer from a major depressive disorder.

Rates of suicide and self-reports of suicidal ideation were also significantly higher than in the general population. In the last 6 years six Vermont attorneys have committed suicide.

The ABA/Hazelden study did not document a significant rate of problem drug use/abuse among attorneys but anecdotally, many LAP programs' client caseloads unequivocally indicate attorneys significantly underreport drug use/abuse and any illegal conduct with respect to drugs, due to the risk that disclosing such conduct puts their law license at risk. The Vermont experience mirrors this reluctance to self-report in this area, especially with regard to younger attorneys and law students.

The ABA/Hazelden study also documented numerous barriers to attorneys seeking help, chief among them: stigma associated with the condition and concerns regarding privacy or confidentiality.

Importantly, the study found that a majority of lawyers clinically in need of mental health assistance (63%) chose not to avail themselves of available mental health services, and the vast majority of lawyers in need of drug or alcohol treatment (93%) also opted not to obtain help.

In addition to the personal costs associated with lawyer impairment, family members, work places, clients and the legal system all "pay the price." Targeted studies have also uncovered strong links among lawyer impairment issues and malpractice/discipline issues. One study concluded that 60% of malpractice claims and disciplinary cases

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<sup>3</sup> See <http://www.samhsa.gov/atod/alcohol>

involved substance abuse and that 85% of trust fund violations were implicated.

This is also a serious issue among law students. In 2016, the Survey of Law Student Well-Being was released. It was based on data from 15 law schools and over 3,300 law students. It found 17% of the law students experienced some level of depression, 14% suffered from severe anxiety, 23% had mild or moderate anxiety, and 6% had thought seriously about committing suicide in the prior year. As to alcohol use, 43% of the students reported binge drinking at least once in the prior two weeks and nearly one-quarter of them (22%) 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. Other longitudinal studies of law school students suggest that symptoms get worse with the education. Evaluation of students' baseline mental health, before and after law school, showed that, for many, their law school experience left them more vulnerable and more likely to experience substance use-related ailments and the symptoms of mental health disorders.

*Lawyer Wellness*: Fueled by the ABA/Hazelden study as well as the 2016 Survey of Law Student Well-Being, national LAP leaders joined with other major stakeholders who focused on attorney discipline, attorneys' professional responsibility, and bar exam results, and with the National Conference of Chief Justices, to form ***The National Task Force on Lawyer Well-Being***. In August of 2017, that task force published its first report: "The Path To Lawyer Well-Being: Practical Recommendations for Positive Change." Its cover letter summarized its findings and call to action:

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 [--- and ---] reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling

implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to reenvisioning what it means to live the life of a lawyer.

We also need to consider if and how judges -- an essential element of our legal system -- maintain their own well-being. Studies show judges, too, suffer from alcoholism, depression and substance abuse at rates much higher than that of the general public. Not as well documented, but evident through CoLAP contacts and from the Lawyer Assistance Committee Program's exploratory work, done significantly by U.S. Bankruptcy Judge Colleen Brown, we also know the environment in which Vermont's judges work is beset with its own very stressful challenges. Our judges deal daily with intense time pressure, a heavy workload, regular exposure to the fallout from addiction and family dysfunctionality, frequent trials in which they must confront and examine heinous conduct, regular interaction with parties suffering secondary trauma, and, perhaps most importantly, their own isolation. All of this occurs in the context of increasing pressure on the court system to undertake the role of social services provider for many of Vermont's most vulnerable individuals. We want to ensure that Vermont LAP include services for judges as well as attorneys, taking

into account the particular needs they have for assistance, and higher level of confidentiality they may require.

Lastly, our research and conversations with judges persuades us that it is essential to the well-being of the legal system in Vermont, that the LAP provide resources to support court staff, law clerks, and jurors. These players often are on the front line of dealing with pro se parties, individuals who have been exposed to horrible facts and circumstances through a trial, and are suffering from secondary trauma. Though it may need to be a different model than for attorneys and judges, it is important that we support these people who are essential to the delivery of justice in Vermont.

*Conclusion:* The take-away on impairment and wellness is that the legal profession is especially at risk for issues of alcohol and drug abuse, as well as mental health conditions. Moreover, the legal workplace likely contributes rather than relieves the circumstances fostering the impairment issues. Stigma both real and perceived acts as a significant barrier to accessing help. **As a result, individuals, the profession and the public suffer and our third branch of government and the access to justice it should provide are harmed.**

## II. Value Proposition

*Assistance and Well-Being Programs Work:* Confidentiality, accessible support, and education tailored to the legal profession make a difference. Impaired professionals find their way to recovery and management of mental health conditions. They return to successful practice of law and often pay it forward with peers in distress. Education offering information, skills, and perspectives to support better work/life balance and stress management strategies contribute to individual and organizational success. Lawyer ethics and professionalism are likewise improved.<sup>4</sup>

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<sup>4</sup> Other professionals echo the conclusion that legal assistance programs work. Perhaps most tellingly, legal malpractice insurers incentivize policyholders with premium breaks to participate in CLE grounded in lawyer's assistance and wellness topics. In many states

### III. How to Address It

*Historical Efforts:* Rutland Attorney John Webber pioneered Lawyer Assistance in Vermont beginning in the early 1990s. Lawyers Concerned for Lawyers, Inc. was incorporated in 2006 and now operates as Vermont Judges and Lawyers Assistance Program - “VTJLAP”. Efforts to date have been purely volunteer, largely word of mouth, with periodic support from the Vermont Bar Association, occasional CLE presentations, and support of Massachusetts LCL at which an “800 number” available to Vermont attorneys is answered. The 2014 ABA/Hazelden Betty Ford study, the general publicity about mental health and substance abuse afflictions in the professional community, and the “start the dialogue” efforts of Michael Kennedy (Bar Counsel and Past President of the Vermont Bar Association) have been integral to a wider recognition and knowledge of issues related to lawyer impairment and well-being in Vermont. Finally, the Vermont Supreme Court was the first in the nation to respond to the call of the National Task Force on Lawyer Well-Being by creating and appointing the Vermont Commission For the Well-Being of the Legal Profession. It brought together the stakeholders in the legal system, along with the experts on impairment and professional well-being, to advance attention and work on these issues for the Vermont legal community.

*Professional Director with Trained Volunteers and Third Party Clinical Support:* With the support of the Vermont Commission For the Well-Being of the Legal Profession, this plan proposes the creation of a funded assistance program to bring together educational and support resources for wellness and impairment issues affecting the Vermont

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legal malpractice insurers are a consistent pillar of financial support to Assistance Programs. Oregon, which self-insures, has one of the most robust Assistance Programs in the country, reflecting that when risk management and benefit is considered, resources are readily directed to Assistance Programs.

legal community. Continuity of focus can be managed by continuing the role of the Commissioners for semi-annual gathering to assess initiatives, track outcomes, and identify different and additional opportunities. Day to day promotion of these goals will be pursued and managed by a funded VTJLAP Director (.60 FTE for year one moving to full time) and a network of trained volunteers. The VTJLAP Director will work closely with the VBA's newly established **Wellness Section** and other bar associations to assure timely communication of information and CLE opportunities to fill out a "dialogue" with the legal community about wellness and impairment. A monthly VBA Journal article and quarterly updates to the bar and judges could provide an important reminder of the Assistance Program's efforts, focus, etc. The VTJLAP Director will draw on national efforts of ABA CoLAP other states' assistance programs for additional support and resources. The VTJLAP Director will travel extensively in state to develop program and issue recognition and will develop a volunteer network for all regions. A network of third-party clinicians will be developed, possibly in association with Invest EAP which has successfully provided support in Vermont for other professional groups. A more complete description of activities of the Program appears in section V.

#### IV. Funding

The primary source of revenue will come from a surcharge on attorney licensing. This annual source of funding will be complemented by funds from the judiciary's budget supporting access to justice initiatives. These revenue sources make sense given the fact that a healthy legal system is critical to the provision of legal and judicial services. It is anticipated that, at least to start, ALPS will provide seed money and perhaps a continuing relationship with VTJLAP; other malpractice insurers will supply modest annual revenues.<sup>5</sup>

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<sup>5</sup> Opportunities for CLE revenue may exist but a collaborative relationship with state Bar Associations will strive to link all assistance and wellness programming no matter which organization derives the financial benefit to VTJLAP since the two (assistance and

## V. Delivery of Services

The Program will remain live, with a personally monitored telephone contact, outreach to referral sources and availability for support services including materials for CLE and training presentations. The line should be monitored by someone who is not an attorney (to protect confidentiality and be more comfortable for judges) and is trained with at least clinical triage skills for persons who are suffering from symptoms of mental health problems, drug abuse, or depression.

In a phased approach involving at least three stages:

**Stage 1:** Infrastructure; Getting the Word Out; Identifying Volunteer Base and “Customer/Referral” Base (first six months and ongoing)

### **Internal**

- Continued work on confidentiality protections through the Committee on Lawyer Assistance Program
- Establish recruitment and hiring committee for VTJLAP Director, interview and hire position.
- Set up Board of Stakeholders- keep Commissioners in place(?) – i.e. working board of directors for Corporation which includes judiciary, bar association, regulators, legal employers (private and state) and also ties the organization together geographically by developing regional connections through leadership.
- Apply for IRS not-for-profit status
- Obtain an office: need space, telephone (to take calls 24/7); cell phone; laptop; upgraded website; database software
- Identify and recruit volunteers and begin to identify a mechanism for providing coverage across the state and for all constituencies to be served

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wellness) are naturally coupled and “wellness” can be a side door to assistance. Barriers to help are often reduced when doing wellness programming, e.g., fear of the unknown and impact to career, family, etc., stigma associated with addiction and mental health diseases, ego and pride, and reluctance to accept that a problem exists without some of the worry over stigma.

- Begin training for volunteers (trainings will also be convertible to programs for Disciplinary and Bar Counsel, judges, court staff, and any lawyers in supervisory positions, focused significantly on how to spot substance use disorder and/or mental health indicators, how to talk about it, how to guide persons in need to assistance programs, etc.)
- Identify and recruit potential third party referrals (clinicians with expertise with professionals and specific issue needs)
- Establish relationship with ABA-CoLAP and fellow directors in New England especially but also nationally – in particular there is a potential peer group of smaller bars, e.g. West Virginia, Wyoming, who have similar challenges to Vermont.

## **External**

- Establish contacts with Bar Counsel, Disciplinary Counsel, Professional Responsibility Program, Judicial Conduct Board, Court Administrator's Office, Attorney Licensing Board, court staff, law clerks
- Establish contacts with bar associations: VBA, VTAJ, County bar associations
- Establish contacts with Judiciary (state and federal) – county visits
- Establish contacts with Vermont Law School
- Establish contacts with lawyer employers – private (firms 5+)
- Establish contacts with lawyer employers – public (fed/state/county) e.g., City Attorneys, State's Attorneys, Defender General, Attorney General, U.S. Attorney, Federal Public Defender, Agency of Human Services, etc.
- Vermont Lawyer Survey – collaborate with Invest EAP or perhaps UVM Graduate/Sociology/Psychology, to launch a lawyer survey, ideally with the cooperation of the Attorney Licensing Board, which will both seek to gather information on impairment and wellness issues, as well as identify resource needs for practicing law / being part of the legal system in Vermont.

- Vermont Judicial Survey – collaborate with NH, possibly MA and possibly under the initiative of the ABA CoLAP, to engage the Vermont judges to participate in a survey, which will gather information on (i) the impairment and wellness issues Vermont judges experience, (ii) their perceptions of what Vermont’s practicing attorneys need, (iii) and the resources / training they need in order to assist and guide attorneys who appear in front of them in various states of impairment.<sup>6</sup>

**Stage 2: Program Promotion, Peer Assistance, Educational Presentations, Publications, Volunteer Training (in the first six to twelve months, and then ongoing)**

- Continuing Legal Education (CLE) seminars with bar association partners
- Workshop and conference exhibits and presentations
- Law school presentations
- Presentations at Judicial College and identify unique resources for judiciary, e.g., managing trauma in the courtroom, secondary trauma/compassion fatigue
- Social Media
- Website
- Digital and print material
- Newsletter and VBA Journal articles
- Personal contact and testimonials
- Develop support groups
- Establish peer-to-peer outreach
- Liaise with New Hampshire and Massachusetts assistance programs for cross border opportunities for support and connection
- Specialized retreats for lawyer wellness

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<sup>6</sup> It is anticipated that various sources may provide limited grants which could support the Lawyer and Judge surveys.

- Data collection (within the confines of confidentiality protections) on Program contacts (both incoming and outgoing), maintain volunteer directory and contacts
- Prepare annual reporting on activities and accomplishments of the Program.

**Stage 3:** Assessment, Strategic Planning and Support of the Ongoing Work of the Vermont Commission For the Well-Being of the Legal Profession to Define the Needs and Methods of Ongoing Support of the Legal Profession in Vermont (after the first anniversary of program)

- Determine whether Program Director should be moved to full time position
- Identify Program strengths and weaknesses and adjust
- Engage Board and Commissioners in planning process for additional outreach and support to legal profession in Vermont
- Buoy and solidify funding sources and justification
- Identify collaborative research opportunities
- To the extent possible, cross reference Discipline, Professional Responsibility and Legal Malpractice providers to assess impact on grievances and claims.

## VI. Tracking of Services and Outcomes

Annual reporting (within the confines of confidentiality) cases and outcomes, CLEs, contacts etc.

## VII. Competition

Lawyers with impairment issues sometimes find their way to help and outside treatment. Twelve-step and other programs often work (and are often part of the ‘treatment’ for lawyers who come in through APs). But, there is something unique about the connection with another lawyer which enhances the impact of the assistance and reduces the sense of

isolation. Lawyer education, de-stigmatization and prevention efforts through wellness specifically geared at the legal workplace do not exist outside of Assistance Programs. Furthermore, confidential opportunities to manage impairment and mental health issues without having to go to “public” in the larger recovery community are especially valuable to Attorneys and Judges who may work in small communities and have outsized roles in the those communities.

VTJLAP Fiscal Year 2020 Projected Budget

(June 2019-July 2020)

Anticipated Income	\$120,000
Licensing fee surcharge	
Active License \$25/an \$50/cycle	\$67,500 (based on 1350 biannual active)
Inactive License \$15/an \$30/cycle	\$9,000 (based on 300 biannual inactive)
Pro Bono License \$5/an \$10/cycle	\$100 (based on 10 biannual pro bono)
Access to Justice funding – PRB	\$23,400 (diversion panel work and education and judiciary support, e.g., trauma informed court training & secondary trauma/compassion fatigue)
Federal Court discretionary funds	\$10,000 (Website Development or other one-time grant)
Miscellaneous Charitable Donations	\$10,000 (ALPS, Firms first 2 yrs for ALPS)

Line Item Expenses

ABA Evaluation	0
Board Development	\$ 3,100
Admin. Assistant	0
Advertising	\$ 1,500
Computer	\$ 1,200
Printer	\$ 250
Fees -ABA (CoLAP)	\$ 500
Fees- VBA	\$ 300
Insurance	\$ 4,500
Internet	\$ 2,100

Library	\$	1,000
Mailing	\$	500
Meals	\$	1,000
Mileage/Parking	\$	1,500
Misc	\$	500
Office Expenses	\$	2,500
Payroll- 401K Employer Contribution	\$	3,400
Payroll-Benefit (Medical .6 premium)	\$	4,731.50 - (full premium BCBS Std Gold \$7885)
Payroll- Salary E.D.	\$	42,468.40 - based on .60 FTE for SOV Staff Attorney III median hiring range effective Jan 1, 2019
Payroll-Taxes/Fees	\$	3,250 (check)
Printing	\$	1,000
Programming	\$	3,000
Rent	\$	3,900 (disclose BLP @\$325)
Software (with system setup)	\$	1,500 (ACT (database), Office Suite, Quickbooks)
Telephone (cell, internet and ans serv)	\$	2,800
Training- E.D.	\$	5,000
Training- Volunteers	\$	4,000
Travel (ABA Annual with one volunteer and Directors' Retreat)	\$	4,200
Volunteers	\$	500
Website Upgrade	\$	7,500

Total Projected Expenses	\$107,699.90
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Total Projected Income	120,000
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Less Total Projected Expenses	107,700
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Projected Net	12,300
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