GEORGE MASON AMERICAN INN OF COURT

2018 ETHICS UPDATE

October 23, 2018

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****We are extremely grateful for the contribution of written material by James M. McCauley, Ethics Counsel, which is utilized by permission****

Introduction

A. Proposed Changes: There are three proposed changes which are currently pending.

(1) Proposed Revisions to Rule 1.8 regarding Conflicts of Interest: Prohibited Transactions – Pending consideration by Bar Council at its October 26, 2018, meeting.

(2) Proposed LEO 1889: Regarding Court-Appointed Lawyers and Parental Rights – On June 14, 2018, the VSB Council voted to send the proposed LEO to the Supreme Court of Virginia for its consideration.

(3) Proposed Revisions to Rule 1.1 regarding Competence – Pending approval by Supreme Court of Virginia.

B. Rules of Prof. Conduct Rule 1.8

(1) The current version of the rule reads as follows:

RULE 1.8. CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

(c) A lawyer shall not solicit, for himself or a person related to the lawyer, any substantial gift from a client including a testamentary gift. A lawyer shall not accept any such gift if solicited at his request by a third party. A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, a person related to a lawyer includes a spouse, child, grandchild, parent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of all aspects of a matter giving rise to the representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice, except that a lawyer may make such an agreement with a client of which the lawyer is an employee as long as the client is independently represented in making the agreement.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse, or who is intimately involved with another lawyer, shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case, unless prohibited by Rule 1.5.

(k) While lawyers are associated in a firm, none of them shall knowingly enter into any transaction or perform any activity when one of them practicing alone would be prohibited from doing so by paragraphs (a), (b), (c), (d), (e), (f), (g), (h), or (j) of this Rule.

(2) The following change to section (e) of Rules of Prof. Conduct Rule 1.8 is proposed:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter ~~provided the client remains ultimately liable for such costs and expenses~~; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) The proposal also adds a proposed comment that explains the rational for the prohibition on providing financial assistance as well as the permissible exceptions. The proposed comment is:

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

(4) This proposed amendment, which allows advancements of costs and expenses to be contingent on the outcome of the matter, would adopt the ABA Model Rule on the topic (as at least 47 other states have done) and adopt Comment 10 from the ABA Model Rules.

C. Proposed LEO 1889

(1) Regarding Court-Appointed Lawyers and Parental Rights – On June 14, 2018, the VSB Council voted to send the proposed LEO to the Supreme Court of Virginia for its consideration.

(2) The Virginia State Bar's Petition In the Matter of Legal Ethics Opinion 1889 is attached to these materials as Exhibit 1.

(3) This LEO examines the role of court-appointed counsel in termination of parental rights ("TPR") cases and the requirement that a client request or direct the court-appointed lawyer to appeal an adverse decision.

(4) This proposed LEO addresses whether a court-appointed lawyer has duty to appeal or continue representing a parent when that parent's parental rights have been terminated by a Juvenile and Domestic Relations District Court if the attorney has lost contact with the parent, the parent has not directed the attorney to appeal the matter, and the parent fails to appear in court or otherwise participate with the attorney in the course of the representation.

(5) In the proposed LEO, the Committee concluded that although the parent/client may have a right to court-appointed counsel and a right to appeal, the parent must communicate with the lawyer in order to exercise that right. The lawyer cannot exercise that right without the client's knowledge and consent. This LEO will be submitted to Council for approval in June 2018, after which the VSB will ask the Supreme Court of Virginia to adopt the LEO.

D. Rules of Prof. Conduct Rule 1.1

(1) The current version of the rule reads as follows:

> Rule 1.1; Competence
>
> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(2) The Proposed Change is to add a Comment 7 which reads:

> A lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law. See also Rule 1.16(a)(2).

(3) The Status of the Proposed Change

(i) At its April 3, 2018, meeting, the Standing Committee on Legal Ethics voted to send the proposed rule to VSB Council. The proposed rule amendment was approved by a vote of 52 to 8 by the council on June 14, 2018.

(ii) On June 21, 2018, the Virginia State Bar submitted a Petition which is attached to these materials as Exhibit 2.

(4) The Purpose of the Proposed Change

(i) The proposed revision adds a new Comment 7 to Rule 1.1, which calls attention to the fact that maintaining well-being is an aspect of maintaining competence to represent clients. The comment arises from the August 2017 report of the National Task Force on Lawyer Well-Being, which compiled extensive data on the extent of substance abuse, mental health issues, and

other wellness issues in the legal profession. The report made recommendations for a wide range of stakeholders in the legal profession, including regulators, one of which is a recommendation to amend Rule 1.1 to call attention to the fact that well-being is an aspect of providing competent representation to clients. The comment does not define well-being, nor does it require specific actions to be taken, but it establishes the fact that lawyers must be aware of the role of well-being in maintaining competence to practice law.

(5) The following comes from Ethics Counsel, James M. McCauley, with permission and with edited information:

(a) A recently issued **Report of the National Task Force on Lawyer Well-Being** and growing empirical data reveals that lawyers are 2-3 times more likely than the general population to abuse alcohol and suffer from depression and stress-related disorders.

(b) "Work hard and play hard" is an expression used by many to describe the life-style of a hard-driven lawyer, defined by long hours at the office and destructive behavior involving substance abuse, poor eating habits, lack of exercise and bad management of stress. David R. Brink, past-President of the American Bar Association put it like this:

(c) Lawyers, judges and law students are faced with an increasingly competitive and stressful profession. Studies show that substance use, addiction and mental disorders, including depression and thoughts of suicide—often unrecognized—are at shockingly high rates.

(d) There is a new movement afoot for stakeholders in the legal system to be concerned about "lawyer well-being" and recognition that being a good lawyer means being a healthy lawyer—physically, mentally and emotionally. On August 14, 2017, a National Task Force on Lawyer Well-being issued a report recommending that lawyers, judges, regulators, law schools,

employers that hire lawyers, admissions officials, bar associations, lawyers assistance programs and professional liability insurers take a serious and close look lawyer well-being issues, recommending practical steps for each stakeholder to take to improve the health of legal professionals. The fifteen-member task force, which included Chief Justice Donald Lemons, drew from prominent members of the legal community in the U.S. and representatives of the affected stakeholders. The Task Force relied on two studies conducted by the American Bar Association, cited in their Report.

(e) In **Legal Ethics Opinion 1886**, attached as Exhibit 3 to these materials, approved by the Supreme Court of Virginia on December 15, 2016, the Ethics Committee also pointed to the **2016 study by the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation**.[1] That study of nearly 13,000 active practicing lawyers found that between 21 and 36 percent qualified as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent were struggling with some level of depression, anxiety, and stress, respectively. The Study also found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression. A 2016 survey of 15 law schools and 3,300 law students revealed that that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended.

[1] Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Medicine, Issue 2 (March/April 2016), available here: https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.

(f) These studies point to the dire fact that the seeds of self-destructive behavior and unhealthy living begin early in the lawyer's career, and that our profession is afflicted much more than the general population.[2] Aside from mental health disorders and alcohol abuse, the Task Force identified increasing dissatisfaction among lawyers with their work, "burnout" and higher levels of incivility and unprofessional conduct. Lawyers are moving in between law firms at an ever-increasing rate, and typically multiple times over the course of their career.

(g) The Task Force's report urges a call to action to improve the culture and reduce the toxicity in our profession.

(h) **Lawyer well-being is important from a legal ethics perspective because lawyers owe a duty to represent clients competently and diligently.** Virginia Rules of Conduct, Rules 1.1 and 1.3, attached as Exhibits 4 and 5 to these materials. Indeed, a lawyer who is physically or mentally impaired may be required to withdraw from representing a client. Rule 1.16(a), attached as Exhibit 6 to these materials.

(i) In defining lawyer well-being the Task Force recognizes seven components or dimensions:

(1) emotional
(2) occupational
(3) intellectual
(4) spiritual
(5) physical
(6) social and
(7) intellectual.

(j) The Task Force provides detailed recommendations for each stakeholder in our legal community; emphasizing the role that each

[2] The Study reported that lawyers experience depression, alcohol and other substance abuse at a rate much higher than other populations and 2 to 3 times the general population.

can play for boosting well-being, reducing lawyer dysfunction and encourage lawyers to strive for competence and excellence in practicing law. At a minimum, the call to action requires that our profession acknowledge the problem, take responsibility and face the challenge of encouraging our lawyers to get well and stay well. This will require us to, among other things:

(1) educate to encourage lawyers to seek help and destigmatize the process of seeking help;
(2) enforce standards that foster collegiality, civility and respectful engagement;
(3) promote diversity and inclusivity;
(4) create programs that sponsor and mentor new lawyers, reduce lawyer isolation and restore enthusiasm in practicing law;
(5) enhance lawyers' sense of self control in the workplace by reducing workloads and adopt a culture that encourages improved work-life balance
(6) de-emphasize alcohol use at social events, conferences and meetings
(7) utilize proactive monitoring to support recovery from substance abuse disorders and other impairment
(8) develop a dialogue about suicide prevention
(9) educate, teach and train that well-being is a priority and require self-assessment
(10) adopt regulatory objectives that prioritize lawyer well-being
(11) amend the Rules of Professional Conduct to endorse lawyer well-being as part of the lawyer's duty of competence;
(12) expand CLE requirements to include well-being topics
(13) require law schools to include well-being as a curriculum and accreditation requirement;
(14) reevaluate bar application and admission policies that inquire about an applicant's mental history;

(k) The Report of the National Task Force on Lawyer Well Being has prompted the Virginia State Bar to propose some other regulatory changes recommended by the Task Force.

(1) Bar Counsel Sharing Mental Impairment or Health Information with Lawyers Assistance Programs

a. On March 7, 2018, the Committee on Lawyer Discipline (COLD) approved proposed amendments to Part 6, Section IV, Paragraph 13-1 and 13-30 of the Rules of the Supreme Court of Virginia. The amendment to Paragraph 13-1 defines a Lawyer Assistance Program. The amendment to Paragraph 13-30 addresses the provision of confidential information by Bar Counsel to a Lawyer Assistance Program. These amendments are responsive to the report of the National Task Force on Lawyer Well-Being, which recommends that when information indicating mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulation matters, confidentiality rules should allow sharing of such information with lawyer assistance programs.

b. These proposed rule amendments are attached as Exhibit 7; and the Petition to the Supreme Court to approve the amendments is attached to these materials as Exhibit 8.

c. The proposed rule change would carve out an exception to the strict rule of confidentiality about any bar investigation of a lawyer accused of misconduct. In the course of a misconduct investigation, bar counsel may discover information that the respondent attorney suffers from an impairment or an addiction. Under the current rule of confidentiality, they cannot disclose this information to others, including organizations like Lawyers Helping Lawyers, even though sharing that information could be helpful to the attorney struggling

with an addiction or impairment. Unless the attorney signs a release, a treatment program like Lawyers Helping Lawyers is also constrained by medical privacy laws and may not share any information about a lawyer with bar counsel. That restriction remains in place and is not affected by the proposed rule change. Lawyers in rehabilitation often sign releases to the VSB or their employers enabling them to monitor the lawyer's treatment plan and recovery. The requirement of a release may be a term or condition of the lawyer's disciplinary case or continued employment at a law firm or company.

d. On March 7, 2018, the Committee on Lawyer Discipline (COLD) approved proposed amendments to Part 6, Section IV, Paragraph 13-23 and Paragraph 3 of the Rules of the Supreme Court of Virginia. These amendments are motivated by the report of the National Task Force on Lawyer Well-Being and will facilitate retirement for a lawyer suffering from irreversible cognitive decline by allowing retirement with dignity instead of having the lawyer's license suspended on impairment grounds. With these amendments, the impaired lawyer could transfer to the Disabled and Retired class of membership as described in proposed Paragraph 13-23.K. The proposed language in Paragraph 3(d) conforms to the requirements of amended Paragraph 13-23. These proposed amendments are attached to these materials as Exhibit 9.

e. The proposed rule change would allow a lawyer with dementia or other irreversible disability to change membership status to "disabled and retired" and thereby avoid or bring to an end an impairment proceeding before the Disciplinary Board. Under the current rule a lawyer could take "disabled and retired" status in order to terminate an impairment proceeding, but may later

petition the Executive Committee to allow the lawyer to return to active status. Under the proposed rule, the lawyer must declare that he or she will not transfer off the "disabled and retired" list.

f. The proposed rule only applies to a lawyer with a permanent irreversible condition like dementia. It would not apply to lawyers having substance abuse issues or other health conditions that can be treated and resolved.

(l) In other recent developments, a new study found that lawyers rank first or highest among professionals on "the loneliness scale." According to an article published in *The Washington Post* [3]and discussed on the ABA's Online Journal[4], a survey of 1600 workers, including engineers, research scientists, restaurant industry workers, educators and librarians, revealed that lawyers and doctors were the loneliest, scoring 25% higher on the loneliness scale than workers without advanced degrees. The loneliness scale, from the University of California at Los Angeles, measures feelings of loneliness by asking people to indicate how often they experience the feelings described in 20 different statements. The statements include:

(1) I have nobody to talk to.
(2) I feel as if nobody really understands me.
(3) I feel left out.
(4) No one really knows me well.

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[3] Danielle Paquette, *American Workers Are Already Lonely. Here Come the Robots*, The Washington Post, March 30, 2018 found at https://www.washingtonpost.com/news/wonk/wp/2018/03/30/american-workers-are-already-lonely-here-come-the-robots/?noredirect=on&utm_term=.6380aed5fb90 , attached hereto as Exhibit 10.

[4] Debra Cassens Weiss, *Lawyers Rank Highest on the "Loneliness Scale," Study Finds,* ABA Online Journal, April 3, 2018 found at http://www.abajournal.com/news/article/lawyers_rank_highest_on_loneliness_scale_study_finds/?icn=most_read

(5) I feel isolated from others.
(6) It is difficult for me to make friends.
(7) I feel shut out and excluded by others.

(m) Gabriella Rosen Kellerman, a psychiatrist and chief innovation officer for workplace consulting firm BetterUp was involved in the conduct of the study. Kellerman told the *Post* that she has been hearing that loneliness was a mounting concern for employers, who worry about high turnover and sick days among lonely workers. Lonely workers in Kellerman's study reported less job satisfaction, fewer promotions and more frequent job changes.

(n) In another development, law students from several Virginia law schools have been petitioning the Virginia Board of Bar Examiners to withdraw questions from the application that inquired into the bar applicant's mental health history.[5] Section 18.2 of the lengthy Character and Fitness application questionnaire asks:

"Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner?"

(o) The law students maintain that these questions discourage law students from seeking counseling and mental health care during their graduate and under-graduate studies. Studies show that law students in particular experience a much higher level of stress, anxiety and depression than the general population. See Chart at Appendix A, prepared by Jim Lefler, Lawyers Helping Lawyers.

[5] Justin Mattingly, *Virginia Law Students Push State Panel to Scrap Mental Health Question on Bar Application*, Richmond Times Dispatch, April 10, 2018 at 1 and also posted April 6, 2018 at http://www.richmond.com/news/local/education/virginia-law-students-push-state-panel-to-scrap-mental-health/article_05e2af10-08a9-55eb-b319-894235e4eee8.html, attached these materials as Exhibit 11.

Compounding the problem is the prevalence of alcohol served at law school functions and social events which encourages abusive drinking behavior. In included the Report of the National Task Force on Lawyer Well Being is a reference to a 2016 ABA Study. An ABA survey of about 3,300 law school students found that more than one in six students screened for depression and nearly one in four screened for anxiety. Forty-two percent of the survey respondents said they needed mental health help.

(p) Of those respondents, only half of them ended up receiving counseling because of concern over how it would affect their bar admission, academic standing and job prospects, according to the ABA. The National Task Force on Lawyer Well Being recommended that regulators revisit these questions concerning an applicant's mental health.

(q) In September 2018, the Supreme Court of Virginia's Task Force on Lawyer Well-Being, chaired by Justice William Mims, issued a final report "A Profession at Risk" [6] making these observations:

- The well-being of lawyers, judges and law students in Virginia is integral to professional competence.
- The legal profession as a whole must support education and training that will ensure professional competency and provide the resources necessary to ensure intervention, assessment and referral services for at-risk and impaired lawyers.
- An alarming number of lawyers, judges and law students are experiencing a "wellness crisis" manifested by depression, behavior and mental health disorders, substance abuse and suicide. This crisis threatens the integrity of the profession, and in turn threatens public protection.
- Two national studies published in 2016 relating to behavioral health and substance abuse disorders among lawyers and law students demonstrate higher percentages of alcohol and drug abuse, depression and anxiety, and

[6] This report is posted on the VSB's website at http://www.vsb.org/docs/A_Profession_At_Risk_Report.pdf - attached as Exhibit 12.

attempted and completed suicide, when compared with the general population. (see earlier discussion under this Topic).

To address this "wellness crisis," the Committee's recommendations revolve around five central themes: (1) identifying stakeholders and the role each can play in reducing the toxicity in the legal profession; (2) eliminating the stigma associated with help-seeking behavior; (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence; (4) educating lawyers, judges and law students on well-being issues; and (5) taking incremental steps to change how law is practiced and how lawyers are regulated to increase well-being in the profession. The Committee makes these recommendations:

- Create a position and program within the Office of the Executive Secretary (OES) of the Supreme Court of Virginia to oversee the education and training of, and assistance to, lawyers, judges and law students regarding generalized health and wellness issues, collectively called "professional health initiatives."
- Provide adequate funding to Lawyers Helping Lawyers for implementation of its statewide strategic plan
- Appoint an advisory board to advise OES regarding all aspects of the comprehensive well-being initiatives.
- Continuing Legal Education (CLE) should be provided on a wide range of wellness topics.
- Primary Funding for the wellness initiatives should be the collective responsibility of all members of the bar.
- Develop polices for impaired judges, including a full review of JIRC and development of rules to better institute rehabilitative-focused policies, practices and procedures. Consideration should be given to the rehabilitative-focused practices and procedures of the Virginia State Bar (VSB) Disciplinary System as a model.
- Establish a confidential hotline for judges.
- Reduce the stigma of mental health and substance abuse disorders.
- Conduct judicial well-being surveys.
- Provide well-being programming for judges and staff.
- Promote judicial participation in LHL and other assistance programs and encourage judicial monitoring of impaired lawyers.

- Re-evaluate bar admission application inquiries about mental health history
- Adopt a rule for conditional admission to practice law with specific requirements and conditions.
- Publish data reflecting low rate of denied admissions due to mental health disorders and substance abuse
- Create best practices for detecting and assisting students experiencing psychological distress.
- Adopt a uniform policy to detect early warning signs of students in crisis, to include mandatory class attendance.
- Provide training to law school faculty members relating to student mental health and substance abuse disorders.
- Provide law students with mental health and substance abuse disorder resources.
- Assess law school practices and offer faculty education on promoting well-being in the classroom.
- Empower students to help fellow students in need.
- Include well-being topics in courses on professional responsibility.
- Law schools commit resources for onsite professional counselors.
- Law schools facilitate a confidential recovery network
- Provided education opportunities on well-being starting with the 1L
- Create well-being course and lecture series for law students
- Discourage alcohol-centered events in law school.
- Strengthen the relationship between LHL and the SCV.
- Make lawyer well-being more prominent in the admission of new lawyers; modify the Professionalism Course to include well-being topics; explore new screening of applicants to include well-being in the character and fitness review.
- Implement mandatory CLE for wellness.
- Establish blue ribbon panel of lawyers and health care professionals to establish aspirational well-being recommendations for private practitioners to implement.
- Develop informational pamphlet to educate family, staff and significant others of lawyers and law students on wellness.

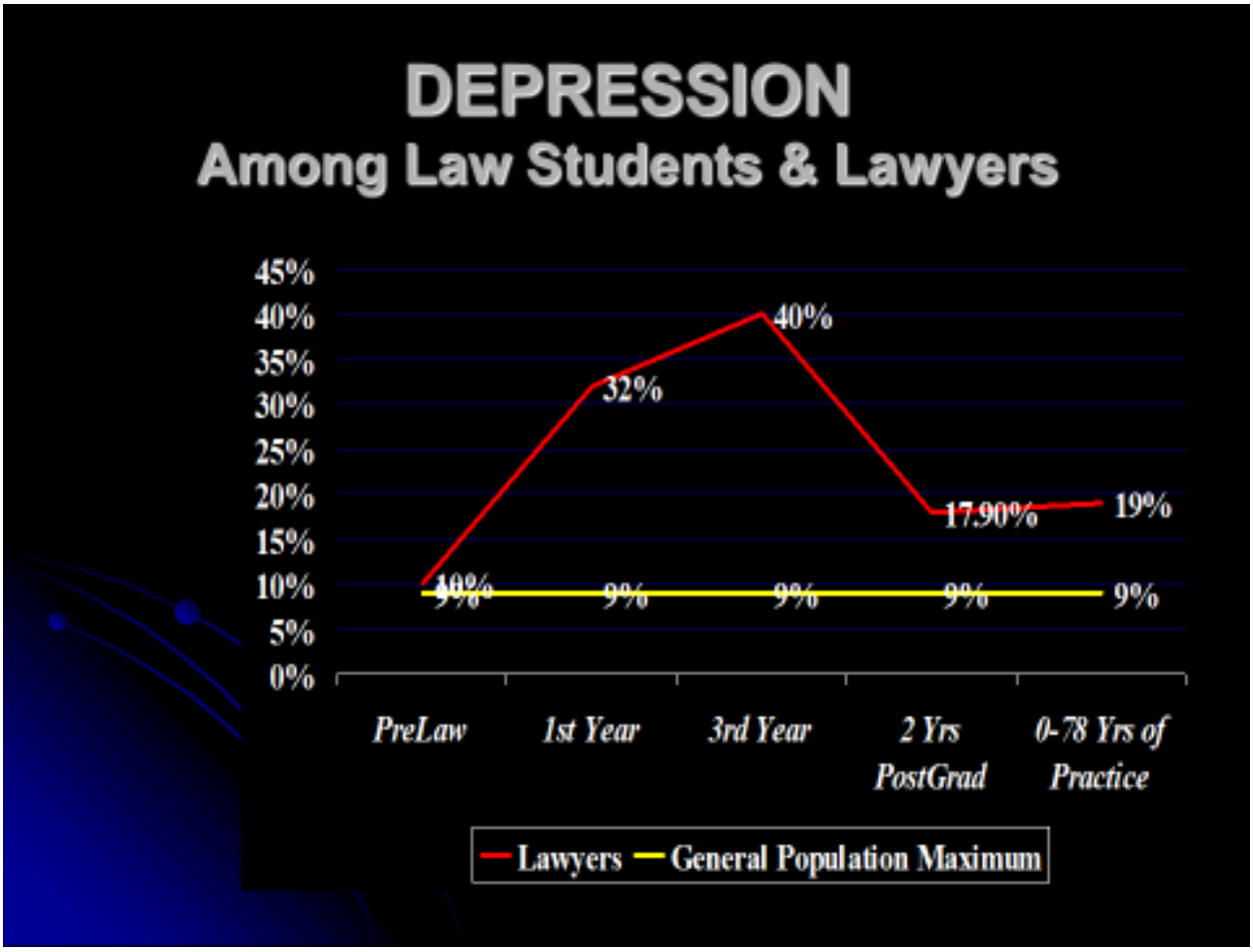
DEPRESSION
Among Law Students & Lawyers
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
40%
32%
17.90%
19%
9%
9%
9%
9%
9%
PreLaw
1st Year
3rd Year
2 Yrs PostGrad
0-78 Yrs of Practice
Lawyers
General Population Maximum

EXHIBIT 1

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

IN THE MATTER OF
LEGAL ETHICS OPINION 1889

PETITION OF THE VIRGINIA STATE BAR

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VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

IN THE MATTER OF
LEGAL ETHICS OPINION 1889

PETITION

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar, by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of proposed Legal Ethics Opinion 1889, as set forth below. The proposed Legal Ethics Opinion (LEO) was approved by a unanimous vote by the Council of the Virginia State Bar on June 14, 2018 (Appendix, Page 11).

I. Overview of the Issues

In this proposed opinion, the Virginia State Bar Standing Committee on Legal Ethics ("Committee") addresses whether a court-appointed lawyer has a duty to appeal or continue representing a parent when that parent's parental rights have been terminated by a Juvenile and Domestic Relations District Court if the attorney has lost contact with the parent, the parent has not directed the attorney to appeal the matter, and the parent fails to appear in court or otherwise participate with the

attorney in the course of the representation.

In this proposed opinion, the Committee applied Rule 1.2(a) to conclude that although the parent/client has a right to court-appointed counsel and a right to appeal, the parent must communicate with the lawyer in order to exercise that right. The lawyer cannot exercise the client's right to appeal without the client's knowledge and consent. Further, the lawyer might violate Rule 3.1 by filing an appeal without the client's instruction to do so, knowing that the client cannot be found and will not appear in court.

This opinion was written in response to an opinion request that suggested there is some confusion among court-appointed lawyers about the scope of their duty to protect the interests of a missing client, and what exactly the "right to appeal" requires court-appointed lawyers to do in this context.

The proposed opinion is included below in Section III.

II. Publication and Comments

The Standing Committee on Legal Ethics approved the proposed LEO at its meeting on January 10, 2018 (Appendix, Page 13). The Virginia State Bar issued a press release dated January 11, 2018, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court (Appendix, Page 14). Notice of the proposed opinion was also published on the bar's website on the "Actions on Legal Ethics Opinion" page

(Appendix, Page 22) and in the bar's E-News on February 1, 2018 (Appendix, Page 24).

One comment was received, from John C. Blair, II on behalf of the Local Government Attorneys, expressing their support for the proposed opinion (Appendix, Page 26).

III. Proposed Opinion

LEGAL ETHICS OPINION 1889: SCOPE OF REPRESENTATION—DUTY OF COURT- APPOINTED LAWYER TO APPEAL TERMINATION OF PARENTAL RIGHTS ORDER

In this opinion, the Committee addresses the scope of a court-appointed lawyer's duty to appeal or continue representing a parent when that parent's parental rights have been terminated by a Juvenile and Domestic Relations District Court if the attorney has lost contact with the parent, the parent has not directed the attorney to appeal the matter, and the parent fails to appear in court or otherwise participate with the attorney in the course of the representation.

Questions Presented

The questions presented in this opinion are:

1. Does court-appointed counsel for a parent have an ethical duty to appeal to a Circuit Court or to the Court of Appeals an order of a Juvenile and Domestic Relations District Court terminating a parent's residual parental rights, or other order involving removal or foster care in respect to a child, when the parent fails to appear after notice, fails to maintain contact with counsel and has never advised or requested counsel to appeal an adverse ruling?
2. Does court-appointed counsel have an ethical duty to appeal a termination in

the Circuit Court if the parent has never appeared or contacted counsel? In this scenario, the parent's whereabouts are typically unknown and they are served by publication.

The Committee concludes that the answer to both questions is "no," there is no duty for court-appointed counsel to file an appeal.

Hypothetical

A child is removed from care of a parent by an emergency removal order. The parent is appointed counsel pursuant to Va. Code §16.1-266 if they qualify as indigent. Va. Code §16.1-268 states that "[t]he attorney so appointed shall represent the child or parent, guardian or other adult at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law." After the parent is shown to have failed to remedy the circumstances which caused the child's removal, the Department of Social Services (DSS) files petitions to terminate the parent's residual parental rights pursuant to Va. Code §16.1-283.

Throughout the process from emergency removal to foster care to termination of parental rights (TPR), the court serves or attempts to serve the parent with notices of these hearings. A parent will often sign the DC-508 form acknowledging the date of the next hearing. Court-appointed counsel has informed or has attempted to inform the parent of her right to appeal a TPR order. At some point, the parent ceases communication with her court-appointed counsel, the GAL appointed for the child, and DSS, and does not appear at the termination hearing. After hearing sufficient evidence to support termination, the court terminates parental rights. Court-appointed counsel for the parent has not received any direction or request to appeal any adverse ruling. Court-appointed counsel asks if she is ethically required to appeal the termination order to the Circuit Court, in

spite of the fact that she has not received any direction from the parent to note an appeal?

Appeals from the Juvenile and Domestic Relations District Court to the Circuit Court are a matter of right if noted within 10 days from entry of the final order and other requirements, i.e., bond, filing fee, are met. When the parent fails to appear in Circuit Court, the appeals will be dismissed by the Circuit Court pursuant to Va. Code §16.1-106.1(D) on the motion of DSS for the failure of the parent(s) to appear.

Applicable Rules of Professional Conduct and Prior LEOs

In this opinion, the Committee reviewed Rules 1.2(a) (scope of representation) which indicates the decision to appeal belongs to and must be made by the client, 1.1 (duty to represent a client competently), 1.3 (diligence), and 1.4 (duty to communicate), which require the attorney to give competent advice and communicate with the client regarding her right to appeal. Also relevant is Rule 3.1 that prohibits a lawyer from filing a pleading or taking an action on behalf of a client that would be frivolous. See also Legal Ethics Opinion 1880 (duty of court-appointed counsel to follow client's direction to appeal defendant's conviction when the attorney believes the appeal would be frivolous).

Analysis

The Committee concludes that absent some direction or request from the client at some stage in the proceeding to appeal an adverse ruling, the court-appointed counsel should not be obligated to do so. The Committee acknowledges the grave consequences of a TPR, the parents' right to counsel in those proceedings and the right to appeal an adverse ruling. While the parent has a right to appeal an adverse decision, that right has to be exercised first by the client directing the attorney to appeal. Unlike the situation presented in LEO 1880, the parent in this

opinion has not directed the attorney to file an appeal and the attorney has not been able to determine the parent's wishes or desire in that regard. In addition, unlike the circumstances presented in LEO 1880 where the client is actively participating in the representation, in this opinion the parent either cannot be contacted or found or has essentially abandoned the representation or proceedings.

The decision to appeal is the client's after consultation with the lawyer. Rule 1.2(a). See Comment 1 ("The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations."). Although a TPR is a civil and not a criminal proceeding, the Committee finds guidance in standards for appeals in criminal cases. In criminal matters, counsel for the defendant is not required to appeal a decision *unless asked by the client to do so.* Standard of Practice 9.2 for Virginia Indigent Defense Counsel provides:

Standard 9.2 Right to Appeal

> Counsel shall inform the client of his or her right to appeal the judgment of the court, unless such right has been knowingly, intelligently, and voluntarily waived, and the action that must be taken to perfect an appeal. *If the client advises counsel that he or she wishes to note an appeal,* counsel shall take all necessary steps to perfect such appeal in a timely fashion pursuant to the Rules of the Supreme Court of Virginia. If trial counsel is relieved in favor of other appellate counsel, trial counsel shall cooperate in providing information to appellate counsel concerning the proceedings in the trial court. (Emphasis added).

The Restatement (3d) of the Law Governing Lawyers §22 (2000) states that the authority to appeal in civil or criminal matters is reserved to the client.

Comment (a) states that this section specifies decisions that fall outside a lawyer's presumptive authority. ABA Criminal Justice Standards, Defense Function Standard 4-5.2 (Control and Direction of the Case) sets out the decisions ultimately to be made by a competent client, after full consultation with defense counsel to include whether to appeal.

Therefore, the Committee believes that Rule 1.2(a) requires that the lawyer consult with the parent about filing an appeal of an adverse decision and that the parent must request that the lawyer file an appeal. In the hypothetical, the court-appointed counsel has advised or attempted to advise the parent of her right to appeal but has received no instruction to do so. Further, Rule 3.1 admonishes that an attorney must not bring a proceeding, assert, or controvert an issue therein unless there is a basis for doing so that is not frivolous. If the court-appointed counsel files an appeal of a TPR, without the parent's knowledge or informed consent, knowing that her client cannot be found and will not appear in court, that action may violate Rule 3.1.

In the facts presented, the client has made no direction to counsel to appeal adverse rulings at any point during the proceeding. The client's failure to maintain involvement in the proceeding provides the basis for the adverse ruling against the parent as the parent has "failed to substantially plan for the future of the child(ren)" or substantially remedy the situation which caused the child(ren) to be placed in foster care.

While the parent/client may have a right to court-appointed counsel and a right to appeal, the parent must communicate with the lawyer in order to exercise that right. The lawyer cannot exercise that right without the client's knowledge and consent.

IV. Conclusion

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the Virginia State Bar. Va. S. Ct. R., Pt. 6, § IV. Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and rules of professional conduct are promulgated and implemented. Proposed LEO 1889 was developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the Virginia State Bar requests that the Court approve proposed LEO 1889 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

Leonard C. Heath, President

Karen A. Gould, Executive Director

Dated this 21st day of June, 2018.

EXHIBIT 2

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

IN THE MATTER OF
RULE OF PROFESSIONAL CONDUCT 1.1
COMMENT 7

PETITION OF THE VIRGINIA STATE BAR

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IN THE SUPREME COURT OF VIRGINIA
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IN THE MATTER OF
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PETITION

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar, by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of proposed Comment 7 to Rule 1.1, as set forth below. The proposed rule amendment was approved by a vote of 52 to 8 by the Council of the Virginia State Bar on June 14, 2018 (Appendix, Page 6).

I. Overview of the Issues

The Virginia State Bar Standing Committee on Legal Ethics ("Committee") has proposed a new Comment 7 to Rule 1.1, Competence. This proposed comment arises out of a recommendation made by the August 2017 report of the National Task Force on Lawyer Well-Being ("Report"), which compiled extensive data on the extent of substance abuse, mental health issues, and other wellness issues in the legal profession. The Report made recommendations for a wide range of stakeholders in the legal profession, including regulators. One recommendation is

that regulators amend Rule 1.1 to call attention to the fact that well-being is an aspect of providing competent representation to clients. The comment proposed by the Committee does not define well-being, nor does it require that lawyers take specific actions, but it does draw attention to the role of well-being in maintaining competence to practice law.

The Report demonstrates via a number of statistical measures that the legal profession is falling short in terms of well-being. According to the task force, lawyers and law students experience high rates of depression, anxiety, and substance abuse. Even in the absence of a clinical condition, many lawyers struggle with chronic stress, ambivalence about the practice of law, and a feeling of a lack of control over their personal and professional lives, all of which are detrimental to their well-being. All of these issues have wide-ranging implications for the legal profession, most of which are beyond the scope of the Rules of Professional Conduct. Because this proposed comment draws lawyers' attention to the issue of well-being within the purview of the Rules of Professional Conduct, the Committee determined it contributes to the effort to address the serious issues raised by the task force.

The proposed comment is included below in Section III.

II. Publication and Comments

The Standing Committee on Legal Ethics approved proposed Comment 7 at its meeting on January 10, 2018 (Appendix, Page 8). The Virginia State Bar issued a press release dated January 11, 2018, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court (Appendix, Page 9). Notice of the proposed amendment was also published on the bar's website on the "Rule Changes" page (Appendix, Page 13) and in the bar's E-News on February 1, 2018 (Appendix, Page 11).

Nine comments were received, from: Alanna Williams (Appendix, Page 19), Andrea Bridgeman (Appendix, Page 21), Guy Siebold (Appendix, Page 22), Paul Fletcher (Appendix, Page 23), Benjamin Glass (Appendix, Page 25), John C. Blair, II on behalf of the Local Government Attorneys (Appendix, Page 28), Valerie O'Brien on behalf of the Virginia Trial Lawyers Association (Appendix, Page 29), Jeanne Franklin (Appendix, Page 30), and Bryan Klein (Appendix, Page 32).

Roughly half of the comments were in favor of the proposed comment, either as-is or with revisions to the proposed language. The bulk of the opposition was based on concerns that the comment is too broad and/or over-reaching, and that it would put the bar in a position of evaluating lawyers' health and telling them how much alcohol is acceptable to consume, or how much a lawyer may permissibly weigh and continue to represent clients. The Committee considered these comments, including the suggestions for alternative language, but ultimately

decided not to make any changes to its proposal. The comment is intended to be aspirational, much like Comment 6 to Rule 1.1, and appropriately does not attempt to define what well-being means for a particular lawyer or in connection with a particular representation. The language used in the comment is taken from the definitions used in the task force report, which was generated by a team of experts in the relevant fields, and the Committee determined that it best captured the issues raised by the task force.

During his presentation, Ethics Committee Chair Eric Page assured Council that the proposed comment was aspirational and would not be grounds for disciplining a lawyer unless the lawyer's physical or mental condition presents a material risk to the representation of a client under Rule 1.16(a)(2), which would then require the lawyer to terminate or decline representation. Stacey Rose Harris, a Council representative from Alexandria, expressed her opinion that proposed Comment 7 should explicitly state that it is "aspirational only." Mr. Page explained that the Ethics Committee had considered including that language, but voted against it for two reasons: (1) that it would dilute the import of the message the proposed comment seeks to convey; and (2) that all comments to the Rules of Professional Conduct are merely interpretive of the rules and do not impose any additional obligations for which a lawyer may be disciplined. *See* Preamble to the Rules of Professional Conduct ("Scope")("Comments do not add obligations to the

Rules but provide guidance for practicing in compliance with the Rules."). *See also Zaug v. Virginia State Bar*, 285 Va. 457, 462, 737 S.E.2d 914 (2013) ("The commentary provides guidance for interpreting the scope and meaning of the Rule."). The sole purpose of the proposed comment, as Mr. Page explained, was to call attention to the fact that lawyer well-being is an important aspect of maintaining competence to practice law.

III. Proposed Rule Change

(additions denoted by underlining)

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a

general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[2a] Another important skill is negotiating and, in particular, choosing and carrying out the appropriate negotiating strategy. Often it is possible to negotiate a solution which meets some of the needs and interests of all the parties to a transaction or dispute, i.e., a problem-solving strategy.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See* also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

[7] A lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law. *See also* Rule 1.16(a)(2).

IV. Conclusion

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the Virginia State Bar. Va. S. Ct. R., Pt. 6, § IV. Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and rules of professional conduct are promulgated and implemented. The proposed rule change was developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the Virginia State Bar requests that the Court approve proposed Comment 7 to Rule 1.1 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

Leonard C. Heath, President

Karen A. Gould, Executive Director

Dated this 21st day of June, 2018.

EXHIBIT 3

LEO 1886:

DUTY OF PARTNERS AND SUPERVISORY LAWYERS IN A LAW FIRM WHEN ANOTHER LAWYER IN THE FIRM SUFFERS FROM SIGNIFICANT IMPAIRMENT

Introduction

In this advisory opinion, the Committee analyzes the ethical duties of partners and supervisory lawyers in a law firm to take remedial measures when they reasonably believe another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public.[1] The applicable Rule of Conduct is Rule 5.1[2] which requires partners or other lawyers in the firm with managerial authority to make reasonable efforts to ensure that all lawyers in the firm conform to the Virginia Rules of Professional Conduct.[3] Lawyers in a firm may have an obligation under Rule 8.3 to report an impaired lawyer to the Virginia State Bar if the impaired lawyer has engaged in misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law. However, this opinion addresses the obligations of partners and supervisory attorneys to take precautionary measures *before* a lawyer's impairment has resulted in serious misconduct or a material risk to clients or the public. This opinion relies upon ABA Committee on Ethics and Professional Responsibility, Formal Opinion 03-429 (2003) [hereinafter ABA Formal Op. 03-429] for its approach to the issues raised by the mental impairment of a lawyer in a firm.

Scope of the Lawyer Impairment Problem

Studies report that lawyers experience depression, alcohol and other substance abuse at a rate much higher than other populations and 2 to 3 times the general population.[4] The incidence of alcohol abuse is higher among lawyers aged 30 or less.[5] Besides the potential lawyer impairment caused by substance abuse, the aging of the legal profession presents an increased incidence of cognitive impairment among lawyers. As of 2016, Virginia State Bar membership records revealed that of the 23,849 active members located in the Commonwealth, 8,366 or 35% are ages 55 or older. Fifteen percent of these attorneys or 3,584 members are 65 or over. These numbers reflect that Virginia's lawyers, like lawyers nationally, are moving into an older demographic profile, and they continue to practice as they age. Moreover, in the years ahead, the number of lawyers that will continue to practice law beyond the traditional retirement age will increase dramatically.[6] The substantial percentage of aging lawyers presents both opportunities and challenges for the state bars, and the scope and nature of the challenges and the best way to manage the challenges have been examined by bars around the country.

Question Presented

What are the ethical obligations of a partner or supervisory lawyer who reasonably believes another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public?

Hypotheticals

James practices in a mid-sized law firm in a large metropolitan area. One day, a junior associate informs James that Bill, a senior associate, has a serious cocaine and alcohol problem. The information is credible, detailed, and alarming; it also points to the potential for trust fund violations or other misconduct associated with substance use. James has also received calls from several clients complaining that Bill has missed appointments, appeared in court late, disheveled and smelling like alcohol, and has failed to return phone calls. Another client complains that Bill missed a filing deadline and placed the client in default. James has observed that Bill has problems remembering instructions, has difficulty completing familiar tasks, is challenged in problem solving at meetings, and experiences changes in mood and personality. When James

confronts Bill about these issues, Bill denies having any substance abuse problems, attributes his work performance to stress caused by marital discord, and promises to improve.

George is a sixty-year old partner in a small, two lawyer firm. He has been honored many times for his lifelong dedication to family law and his expertise in domestic violence protective order cases. He has suffered a number of medical issues in the past several years and has been advised by his doctor to slow down, but George loves the pressure and excitement of being in the courtroom regularly. Recently, Rachelle, his long-time law partner, has noticed some lapses of memory and confusion that are not at all typical for George. He has started to forget her name, calling her Mary (his ex-wife's name), and mixing up details of the many cases he is currently handling. Rachelle is on very friendly terms with the J&DR court clerk, and has heard that George's behavior in court is increasingly erratic and sometimes just plain odd. Rachelle sees some other signs of what she thinks might be dementia in George, but hesitates to "diagnose" him and ruin his reputation as an extraordinarily dedicated attorney. Maybe he will decide to retire before things get any worse, she hopes.

Analysis

The Rules of Professional Conduct do not explicitly require lawyers to deal with an impaired lawyer in the law firm. However, Rule 5.1(a) requires that a firm have in place measures or procedures to ensure that *all* lawyers, not just impaired ones, comply with the Rules of Professional Conduct. The measures required depend on the firm's size, structure and nature of its practice. Cmt. [3], Rule 5.1. It follows, therefore, that Rule 5.1 requires that the partner or supervisory lawyer make reasonable efforts to ensure that an impaired lawyer in the firm or under their supervisory authority does not violate the Rules of Professional Conduct. In addition to the requirement that the firm establish appropriate preventive policies and procedures, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the supervised lawyer conforms to the Rules of Professional Conduct. When a partner or supervising lawyer knows or reasonably believes that a lawyer under their direction and control is impaired, Rule 5.1(b) requires that they take reasonable steps to prevent the impaired lawyer from violating the Rules of Professional Conduct.

Impaired lawyers have the same ethical obligations as any other lawyer. Like all lawyers, an impaired lawyer owes a duty to represent a client competently and with diligence and to communicate with the client. A lawyer's impairment does not excuse the lawyer from compliance with the Rules of Professional Conduct. The lawyer's impairment may very well be the reason for the lawyer's failure to act competently or with diligence, or to communicate with the client. However, the lawyer's impairment is neither a defense to, nor an excuse for, those ethical breaches.[7]

A lawyer whose physical or mental health "materially impairs" his capacity to represent clients has a duty to refrain or withdraw from representation. Rule 1.16(a)(2).[8] Unfortunately, the impaired lawyer may not be cognizant of the scope and nature of the impairment, and does not recognize the need to withdraw from the representation.

As the ABA's Standing Committee on Ethics and Professionalism observed in ABA Formal Op. 03-429:

> The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

The law firm may be able to work around or accommodate some impairment situations. For example, the firm might be able to reduce the impaired lawyer's workload, require supervision or monitoring, or remove the lawyer from time-sensitive projects. The impaired lawyer may not be capable of handling a jury trial

but could serve in a supporting role performing research and drafting documents. Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, the firm may have an obligation to supervise the work performed by the impaired lawyer or may have a duty to prevent the lawyer from rendering legal services to clients of the firm, until the lawyer has recovered from the impairment. The impaired lawyer's role might be restricted solely to giving advice to and drafting legal documents only for other lawyers in the firm who in turn can evaluate whether the impaired lawyer's work product can be used in furtherance of a client's interests.

In order to protect its clients, the firm should have an enforceable policy that would require, and a partner or supervising lawyer should insist, that the impaired lawyer seek appropriate assistance, counseling, therapy, or treatment as a condition of continued employment with the firm. For example, the firm could recommend, encourage or direct that the impaired lawyer contact Lawyers Helping Lawyers[9] for an evaluation and assessment of his or her condition and referral to appropriate medical or mental health care professionals for treatment and therapy. Alternatively, making a confidential report to Lawyers Helping Lawyers may be an appropriate step for the firm. The firm or its managing lawyers might instead find it necessary or appropriate to consult with a professional medical or health care provider for advice on how to deal with and manage an impaired lawyer, including considering options for an "intervention" or other means of encouraging the lawyer to seek treatment or therapy.

In the first hypothetical, it is clear that James, as a managing partner in a law firm, and any other lawyer that has supervisory authority over the impaired lawyer, are required by Rule 5.1 to promptly make reasonable efforts to ensure that the impaired senior associate does not engage in any further conduct that breaches ethical duties owed to his clients. While the senior associate's past conduct might be considered violations of the Rules of Professional Conduct, only violations that raise a substantial question as to the violator's honesty, trustworthiness, or fitness as a lawyer must be reported. Rule 8.3(a). If James and any other supervising attorney have taken appropriate action to prevent the senior associate from engaging in further conduct that may violate the Rules of Professional Conduct, and the senior associate is in recovery from his impairment, i.e., the condition that caused the violations has ended, there is nothing to report to the bar. If, for example, the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the Rules of Professional Conduct through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation. On the other hand, if the past conduct of the impaired lawyer involves dishonesty, i.e., embezzlement of client funds, or stealing firm funds or assets, James and any other lawyer in the firm that knows of such misconduct must report it to the bar under Rule 8.3(a). This would be required even if the violating lawyer was participating with Lawyers Helping Lawyers and in recovery.[10] The reporting duty under Rule 8.3(a), however, does not diminish the importance of making a confidential report to a lawyer assistance program such as Lawyers Helping Lawyers. Both reports fulfill important objectives. The report to the lawyer disciplinary agency is necessary to address the misconduct and protect the public. The report to the lawyer assistance program is necessary to address the underlying illness that may have caused the misconduct. In the end, both reports protect and serve the public interest.

If, on the other hand, the impaired lawyer's condition raises a substantial question about his ability to comply with the Rules of Professional Conduct, James and any lawyer with supervisory authority must make reasonable efforts to ensure that the clients' interests are protected. This could require removal of the senior associate from their cases, or restricting his role and placing him under close supervision.

Further, if reasonable measures or precautions have been taken by James and any other lawyers in the firm to ensure that the impaired lawyer complies with the Rules of Professional Conduct, neither the partners or supervisory lawyers in the firm are ethically responsible for the impaired lawyer's professional misconduct, unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action. Rule 5.1(c).

In the second hypothetical, it is not clear that George has committed any violation of the Rules of Professional Conduct. Obviously, George's impairment, unaccompanied by any professional misconduct,

does not require any report to the bar under Rule 8.3(a). Yet his mental condition, as observed by his partner, Rachelle, would require that Rachelle make reasonable efforts to ensure that George does not violate his ethical obligations to his clients or violate any Rules of Professional Conduct. This would include, as an initial step, Rachelle or someone else having a confidential and candid conversation with George about his condition and persuading him to seek evaluation and treatment.

Approved by the Supreme Court of Virginia
December 15, 2016

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[1] This opinion seeks to address only the ethical obligations of lawyers in a law firm when faced with an impaired lawyer working in the firm. There may also be legal obligations to address in dealing with an impaired lawyer under the Americans with Disability Act, the Family and Medical Leave Act and the Health Insurance Portability and Accountability Act, for example. These issues are beyond the purview of this committee and outside the scope of this opinion.

[2] Rule 5.1 Responsibilities of Partners and Supervisory Lawyers

1. A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
2. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
3. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
    1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
    2. the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[3] The Committee is mindful that this opinion only addresses the duties of partners and supervisory lawyers pursuant to Rule 5.1 and does not consider a lawyer's ethical duties, if any, when dealing with a solo practitioner who suffers from a significant impairment.

[4] Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,* 10 J. Addiction Medicine, Issue 2 (March/April 2016). See also ABA Formal Op. 03-429 (2003) (citing George Edward Bailly, Impairment, the Profession, and Your Law Partner, 11 No.1 Prof. Law. 2 (1999)).

[5] *Id.* The Hazelton Betty Ford Foundation survey reported that one in five lawyers (20%) suffers from alcoholism and approximately 30% of the lawyer population suffer from depression.

[6] Report, National Organization of Bar Counsel, Association of Professional Responsibility Lawyers Joint Committee on Aging Lawyers (May 2007) at 3.

[7] ABA Formal Op. 03-429 (2003) (A lawyer's impairment does not excuse failure to meet a lawyer's duty to a client.). *See also Columbus Bar Ass'n v. Korda*, 760 N.E.2d 824 (Ohio 2002) (impaired lawyer who filed a brief on behalf of her clients but failed to take any further actions in the case suspended for failing to act diligently); *Attorney Grievance Comm'n v. Wallace*, 793 A.2d 535 (Md. 2001) (lawyer who claimed to be undergoing personal and psychological problems was disbarred for being negligent in his representation in six cases); *In re Sheridan*, 813 A.2d 449 (N.H. 2002) (impaired lawyer who failed to successfully file the articles of incorporation for his client and did not notify the client of his failure suspended for failing to

communicate with his client); *In re Francis*, 4 P.3d 579 (Kan. 2000) (depressed lawyer failed to respond to client's request for information, misrepresented the status of the client's case to her, and failed to communicate the problems he was experiencing in providing representation); and *State v. Southern*, 15 P.3d 1 (Okla. 2000) (lawyer with B-12 deficiency publicly censured after failing to respond to requests for information from client and bar association).

[8] *See, e.g., In re Taylor*, 959 P.2d 901 (Kan. 1998) (alcoholic lawyer failed to withdraw from representation although he had failed to appear in court on behalf of his clients or otherwise provide competent counsel); *see also State v. Southern,* 15 P.3d. at 8.

[9] Lawyers Helping Lawyers ("LHL") is an independent, non-disciplinary and non-profit organization that has been assisting legal professionals and their families since 1985 deal with depression, addiction and cognitive impairment. LHL can assist law firms dealing with an impaired lawyer through a confidential environment by planning and implementing intervention, providing a free clinical evaluation, referral to appropriate medical and mental health care providers, peer support and group counseling, establishing contracts to monitor and report recovery and rehabilitation and assist and identify financial resources for treatment. LHL is not affiliated with the Virginia State Bar and does not share information with anyone except and unless the participating lawyer expressly consents in writing to share information with third parties.

[10] N. C. State Bar Ethics Op. 2013-8 (2014), Inquiry No. 3 (If an impaired lawyer has committed misconduct that a lawyer must report under Rule 8.3(a), a lawyer may not fulfill that reporting duty by reporting the impaired lawyer to a lawyers assistance program, but not the Attorney Grievance Committee of the State Bar).

EXHIBIT 4

Rules of Prof.Conduct Rule 1.1

RULE 1.1. COMPETENCE

Currentness

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Credits

[Adopted effective January 1, 2000. Amended March 1, 2016.]

Editors' Notes

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[2a] Another important skill is negotiating and, in particular, choosing and carrying out the appropriate negotiating strategy. Often it is possible to negotiate a solution which meets some of the needs and interests of all the parties to a transaction or dispute, i.e., a problem-solving strategy.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See* also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Virginia Code Comparison

Rule 1.1 is substantially similar to DR 6-101(A). DR 6-101(A)(1) provided that a lawyer "shall undertake representation only in matters in which ... [t]he lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters." DR 6-101(A)(2) also permitted representation in matters if a lawyer "associated with another lawyer who is competent in those matters."

Committee Commentary

The Committee adopted the *ABA Model Rule* verbatim, but added the third paragraph of the Comment to make it clear that legal representation, in which a lawyer is expected to be competent, involves not only litigation but also negotiation techniques and strategies.

In addition, the Committee added the second sentence under Maintaining Competence Comment section to note Virginia's Mandatory Continuing Legal Education requirements.

Notes of Decisions (1)

Rules of Prof. Conduct Rule 1.1, VA R S CT PT 6 § 2 RPC Rule 1.1
State court rules are current with amendments received through March 1, 2018

EXHIBIT 5

Rules of Prof.Conduct Rule 1.3

RULE 1.3. DILIGENCE

Currentness

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

Credits

[Adopted effective January 1, 2000. Amended effective January 1, 2004; February 28, 2006.]

Editors' Notes

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. *See* Rule 1.2. A lawyer's work load should be controlled so that each matter can be handled adequately.

[2] Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategy in pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

[5] A lawyer should plan for client protection in the event of the lawyer's death, disability, impairment, or incapacity. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer's death, impairment, or incapacity.

Virginia Code Comparison

With regard to paragraph (a), DR 6-101(B) required that a lawyer "attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client." EC 6-4 stated that a lawyer should "give appropriate attention to his legal work." Canon 7 stated that "a lawyer should represent a client zealously within the bounds of the law."

Paragraphs (b) and (c) adopt the language of DR 7-101(A)(2) and DR 7-101(A)(3) of the *Virginia Code*.

Committee Commentary

The Committee added DR 7-101(A)(2) and DR 7-101(A)(3) from the *Virginia Code* as paragraphs (b) and (c) of this Rule in order to make it a more complete statement about fulfilling one's obligations to a client. Additionally, the Committee added the second paragraph to the Comment as a reminder to lawyers that there is often an appropriate collaborative component to zealous advocacy.

Rules of Prof. Conduct Rule 1.3, VA R S CT PT 6 § 2 RPC Rule 1.3
State court rules are current with amendments received through March 1, 2018

EXHIBIT 6

Rules of Prof.Conduct Rule 1.16

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION

Currentness

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is illegal or unjust;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

Credits

[Adopted effective January 1, 2000. Amended effective January 1, 2004.]

Editors' Notes

COMMENT

[1] A lawyer should not accept or continue representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See* also Rule 6.2. Difficulty may be encountered if withdrawal is based on the

client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to proceed *pro se*.

[6] If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. *See* Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is illegal or unjust, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

Retention of Client Papers or File When Client Fails or Refuses to Pay Fees/Expenses Owed to Lawyer

[10] Paragraph (e) eschews a "prejudice" standard in favor of a more objective and easily-applied rule governing specific kinds of documents in the lawyer's files.

[11] The requirements of paragraph (e) should not be interpreted to require disclosure of materials where the disclosure is prohibited by law.

Virginia Code Comparison

Paragraph (a) is substantially the same as DR 2-108(A).

Paragraph (b) is substantially similar to DR 2-108(B) which provided that a lawyer "may withdraw from representing a client if: (1) Withdrawal can be effected without material prejudice to the client; or (2) The client persists in a course of conduct involving the lawyer's services that the lawyer reasonably believes is illegal or unjust; or (3) The client fails to fulfill an obligation to the lawyer regarding the lawyer's services and such failure continues after reasonable notice to the client; or (4) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client."

Paragraph (c) is identical to DR 2-108(C).

Paragraph (d) is based on DR 2-108(D), but does not address documents in the lawyer's files (which are handled under paragraph (e).

Paragraph (e) is new.

Committee Commentary

The provisions of DR 2-108 of the *Virginia Code* derived more from *ABA Model Rule* 1.16 than from its counterpart in the *ABA Model Code*, DR 2-110. Accordingly, the Committee generally adopted the *ABA Model Rule*, but substituted the "illegal or unjust" language from DR 2-108(B)(2) for the "criminal or fraudulent" language of the *ABA Model Rule*. Additionally, the Committee substituted the language of DR 2-108(C) for that of paragraph (c) of the *ABA Model Rule* to make it clear that a lawyer, in circumstances involving court proceedings, has an affirmative duty to request leave of court to withdraw. The Committee recommended paragraph (e) instead of a "prejudice" standard as being more easily understood and applied by lawyers.

Rules of Prof. Conduct Rule 1.16, VA R S CT PT 6 § 2 RPC Rule 1.16
State court rules are current with amendments received through March 1, 2018

EXHIBIT 7

Professional Guidelines

An agency of the Supreme Court of Virginia

Search

- VSB Home

- Rules and Regulations
- Rules of Professional Conduct
- Legal Ethics Opinions
- Unauthorized Practice of Law Opinions
- Organization & Government of the Virginia State Bar
- Reciprocity: Admission on Motion
- Pro Hac Vice
- Corporate Counsel Limited Admission and Registration
- Foreign Attorneys — Registered Military Legal Assistance Attorneys
- Foreign Legal Consultant
- Military Spouse Provisional Admission
- Bylaws of the Virginia State Bar and Council
- Unauthorized Practice Rules
- Mandatory Continuing Legal Education Regulations
- MCLE Forms 2, 3 and 4
- Clients' Protection Fund Rules
- Attorney Trust Account Regulations
- Regulations of Attorney Real Estate Settlement Agents
- Virginia Licensed Legal Aid Society Regulations
- Principles of Professionalism
- Provision of Legal Services Following Determination of Major Disaster

- Actions on Rule Changes and Legal Ethics Opinions

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines Search

Home > Actions on Rule Changes and Legal Ethics Opinions > revisions to Paragraph 13-1 and 13-30 regarding a Lawyer Assistance Program.

Proposed | revisions to Paragraph 13-1 and 13-30 regarding a Lawyer Assistance Program. Pending approval by the Supreme Court of Virginia.

View the Current Rule

At its June 14, 2018, meeting, the council unanimously approved amendments to Part 6, Section IV, Paragraph 13-1 and Paragraph 13-30. The amendment to Paragraph 13-1 defines a Lawyer Assistance Program. The amendment to Paragraph 13-30 addresses the provision of confidential information by Bar Counsel to a Lawyer Assistance Program. These amendments are responsive to the report of the National Task Force on Lawyer Well-Being, which recommends that when information of mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulation matters, confidentiality rules will allow sharing of such information with lawyer assistance programs. The proposed changes were presented to the Supreme Court of Virginia for approval on June 19, 2018.

View the council petition to the Supreme Court (pdf)

Updated: June 21, 2018

1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026
All Departments: (804) 775-0500
Telecommunication Device for the Deaf/TDD (Hearing-Impaired Only): 804-775-0502
Office Hours: Mon.-Fri. 8:15 a.m. to 4:45 p.m. (excluding holidays)
The Clerk's Office does not accept filings after 4:45 p.m.

EXHIBIT 8

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

IN THE MATTER OF
SUPREME COURT RULES, PART 6, § IV,
PARAGRAPH 13 AND PARAGRAPH 3

PETITION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF VIRGINIA:

COMES NOW the Virginia State Bar (VSB), by its president and executive director, pursuant to Part 6, § IV of the Rules of this Court, and requests review and approval of proposed amendments to Paragraph 13 and Paragraph 3 of Part 6, § IV of the Rules of Court governing the Organization and Government of the Virginia State Bar, as set forth below.

These proposed rule changes were initially proposed and approved by the Rules Subcommittee of the Standing Committee on Lawyer Discipline (COLD), then approved by COLD, published for comment by the VSB, and then brought before Council for its consideration at its June 14, 2018 meeting.

I. Proposed Revisions to Subparagraphs 13-1 and 13-9 of Paragraph 13 [Guardian Ad Litem's Fee and Cost Changes]

A. Overview

Pursuant to Part 6, § IV, Paragraph 13-23.G of the Rules of Court, a guardian ad litem shall be appointed by the Disciplinary Board (the Board) in impairment matters when a respondent is not represented by counsel. The Board has also appointed guardians ad litem in other disciplinary proceedings when the respondent's law license is under suspension for an impairment and the respondent is not represented by counsel in the disciplinary proceeding. The proposed amendments will allow the Board the discretion to assess fees and costs of a guardian ad litem to be paid by a respondent when the guardian ad litem has been appointed by the Board.

The VSB endeavors to have guardians ad litem perform services on a pro bono basis. If a pro bono arrangement is not possible, the VSB compensates guardians ad litem at the same rate provided by the Supreme Court of Virginia for guardians ad litem appointed in Virginia courts. Under the proposed provision, assessment of the fees and costs of the guardian ad litem against the respondent will be at the discretion of the Board.

The purpose of this proposed rule change is to prevent abuse of appointments of guardians ad litem. For instance, a fee might be assessed by the Board in a misconduct case where a guardian ad litem had to be appointed because of a pending impairment proceeding and where the respondent seeks to use the guardian ad litem to fight the misconduct charge rather than retain counsel.

B. Publication for comment

On February 8, 2018, COLD approved the proposed amendments to subparagraphs 13-1 and 13-9 regarding fees and costs of guardians ad litem and the bar posted notice of the proposed amendments on its website on March 14, 2018, with a request for written comments and questions. Three comments were submitted, which are attached to this petition.

C. Approval by Council

The amendments regarding assessment of guardian ad litem's fees and costs were revised by Council at its meeting on June 14, 2018, to clarify that the assessment is not mandatory, but rather is at the discretion of the Board. Specifically, the language "if assessed by the Board" was added to the language in the definition of "Costs," and in Paragraph 13-9.E.7, the introductory phrase "[w]ith respect to Guardian Ad Litem's fees and costs" was added for further clarification. With those amendments in place, Council unanimously approved the proposed amendments at its meeting on June 14, 2018.

D. Proposed revisions to Paragraph 13-1 and 13-9

The proposed revisions to Paragraph 13-1 and 13-9 approved by Council are as follows:

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-1 DEFINITIONS

As used in this Paragraph, the following terms shall have the meaning herein stated unless the context clearly requires otherwise:

* * *

"Costs" means reasonable costs paid by the Bar to outside experts or consultants; reasonable travel and out-of-pocket expenses for witnesses; Court Reporter and transcript fees; Guardian Ad Litem's fees and costs, if assessed by the Board; electronic and telephone conferencing and recording costs, if such procedures are requested by Respondent; copying, mailing, and required publication costs~~,~~ ; translator fees; and an administrative charge determined by Council.

* * *

13-9 CLERK OF THE DISCIPLINARY SYSTEM

* * *

E. Costs. The Clerk of the Disciplinary System shall assess Costs against the Respondent in the following cases:

1. All cases in which a final determination of Misconduct is made by a Subcommittee, District Committee, three-judge Circuit Court, the Board or this Court;
2. All cases against a Respondent who consents to revocation;
3. All proceedings under this Paragraph in which there is a finding that a Respondent has been found guilty of a Crime;
4. All reciprocal cases under this Paragraph in which a final determination imposing discipline is made;
5. All Reinstatement cases under this Paragraph;
6. All cases before the Board in which sanctions were imposed for violations of CRESPA and/or the Bar's CRESPA regulations; and
7. With respect to Guardian Ad Litem's fees and costs, all Disciplinary Proceedings in which a Guardian Ad Litem is appointed and the Board, in its discretion, assesses the Guardian Ad Litem's fees and costs against Respondent.

* * *

II. Permanent Retirement: Transition from Impairment to Retirement [Revisions to subparagraph 13-23 and Paragraph 3]

A. Overview

The National Task Force on Lawyer Well-Being report inspired these amendments that emphasize the importance of supporting lawyers in planning their transition to retirement. They are intended to facilitate retirement for a lawyer suffering from a permanent impairment, such as irreversible cognitive decline, by allowing the lawyer to exit the profession with dignity instead of having his or her law license suspended because of an impairment. With these amendments, a lawyer with a permanent impairment who is the subject of an impairment proceeding could transfer to the Disabled and Retired class of membership as described in proposed Paragraph 13-23.K. The retirement would be permanent for the protection of the public. The proposed language in Paragraph 3(d) would prohibit any person who elected to take a permanent impairment retirement from reactivating their membership.

B. Publication for comment

On March 7, 2018, COLD approved the proposed amendments to subparagraph 13-23 and Paragraph 3 regarding retirement of impaired lawyers. The VSB posted notice of the proposed amendments on its website on April 16, 2018, with a request for written comments and questions. No comments were received.

C. Approval by Council

On June 14, 2018, Council unanimously approved the proposed amendments regarding retirement in subparagraph 13-23 and Paragraph 3.

D. Proposed revisions to Paragraph 13-23 and Paragraph 3

The proposed revisions to Paragraph 13-23 and Paragraph 3 are as follows:

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

* * *

13-23 Board Proceedings Upon Impairment
A. Suspension for Impairment. The Board shall have the power to issue an order of Suspension to a Respondent who has an Impairment. The term of such Suspension shall be indefinite, and, except as provided below, shall be terminated only upon determination by the Board that Respondent no longer has the Impairment. A Respondent who intends to rely upon evidence of an Impairment in mitigation of Misconduct shall, absent good cause excusing his or her failure to do so, provide notice not less than 14 days prior to the hearing to Bar Counsel and the District Committee or Board of his or her intention to do so. A finding of Impairment or transfer to the Disabled and Retired class of membership under Paragraph 13-23.K may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of ~~the existence of exceptional circumstances~~ a finding of Impairment or a transfer to the Disabled and Retired class of membership militating against further proceedings, which ~~circumstances of Impairment~~ shall be set forth in the Dismissal.

* * *

K. Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled and Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the Respondent will not seek transfer from the Disabled and

Retired class of membership. The declaration shall be endorsed by the Respondent and the Respondent's counsel or Guardian Ad Litem. Termination of the Impairment Proceeding shall not be considered a final order in an Impairment Proceeding under Paragraph 13-30. The Respondent's transfer to the Disabled and Retired class of membership and filing of the declaration pursuant to this subparagraph may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of transfer to the Disabled and Retired class of membership, militating against further proceedings, which shall be set forth in the Dismissal.

* * *

3. CLASSES OF MEMBERSHIP

* * *

(d) Disabled and Retired Members—Any member of the Virginia State Bar upon attaining the age of 70 or on the basis of a permanent disability, may submit to the executive director of the Virginia State Bar a written request to be transferred to the disabled and retired class of membership. Members who are electing this status based on a permanent disability must submit adequate medical and/or psychological documentation with the request. Members qualifying for transfer to the disabled and retired class shall not be entitled to practice law. Further, such members shall not be eligible to vote or hold office in the Virginia State Bar. Disabled and retired members who have not filed a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the member will not seek transfer from the Disabled and Retired class of membership pursuant to Paragraph 13-23 may submit a petition to the executive director in writing for reinstatement to active or associate membership and state in the petition each circumstance that has changed since the member elected disabled or retired status. Adequate medical and/or psychological documentation must be submitted with the petition showing that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending when the executive director receives a petition for reinstatement, or if the member appears to suffer from a disability, the executive director shall defer consideration of the petition until the misconduct or disability issues are resolved. The Executive Committee of the Virginia State Bar shall consider and act on any such petition, taking into account the recommendation of the executive director. The Executive Committee may deny a petition for reinstatement if the member is publicly disciplined or is determined to have a disability raising a serious question as to the

member's fitness or capacity to practice law. If the Executive Committee approves the petition, the member shall be returned to active or associate status upon payment of the appropriate dues, satisfaction of any other required membership obligations, and payment of any outstanding financial obligations to the ~~bar~~Virginia State Bar. Medical and/or psychological information provided pursuant to this subparagraph (d) is confidential and shall not be disclosed by the ~~bar~~Virginia State Bar.

* * *

III. Permitting the VSB to Share Confidential Information with Lawyer Assistance Program [Revisions to subparagraphs 13-1 and 13-30]

These amendments are responsive to paragraph 22.3 of the report of the National Task Force on Lawyer Well-Being, which recommends that the confidentiality rules be amended to allow Bar Counsel[1] to share confidential information with lawyer assistance programs. Bar Counsel is in a unique position to receive information about a lawyer's mental health or substance abuse issues. These amendments promote early intervention by a lawyer assistance program to help a lawyer in need of services. The amendment to Paragraph 13-1 defines a Lawyer Assistance Program. The amendment to Paragraph 13-30 addresses the provision of confidential information by Bar Counsel to a lawyer assistance program.

[1] The definitional section of Paragraph 13 defines "Bar Counsel" as "the Attorney who is appointed as such by Council and who is approved by the Attorney General pursuant to Va. Code §2.2-510, and such deputies, assistants, and Investigators as may be necessary to carry out the duties of the office, except where the duties must specifically be performed by the individual appointed pursuant to Va. Code §2.2-510."

B. Publication and comment

On March 7, 2018, COLD approved the proposed amendments to subparagraphs 13-1 and 13-30 regarding contact by Bar Counsel with lawyer assistance programs. The bar posted notice of the proposed amendments, with a request for written comments and questions, on its website on April 16, 2018. No comments were received.

C. Approval by Council

On June 14, 2018, the amendments regarding the transmission of confidential information to a lawyer assistance program were unanimously approved by Council.

D. Proposed revisions to Paragraphs 13-1 and 13-30

The proposed revisions to Paragraphs 13-1 and 13-30 are as follows:

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-1 Definitions

* * *

<u>"Lawyer Assistance Program" means a mental health and/or substance abuse treatment program for Attorneys that is approved by the Bar.</u>

* * *

13-30 Confidentiality of Disciplinary Records and Proceedings

* * *

M. Disclosure of Information to Lawyer Assistance Program. If Bar Counsel believes that an Attorney may benefit from the services of a Lawyer Assistance Program, Bar Counsel may make an informal referral to a Lawyer Assistance Program and may share information deemed confidential under this Paragraph as part of that referral. Bar Counsel shall not share information that is protected from disclosure by other state or federal privacy laws. Bar Counsel may, but shall not be required to, notify the subject Attorney of the informal referral or transmission of confidential information to the Lawyer Assistance Program. Unless the subject Attorney has signed a release allowing the Lawyer Assistance Program to share information with Bar Counsel, the Lawyer Assistance Program shall not report information about the subject Attorney to Bar Counsel, and Bar Counsel shall not receive such information from the Lawyer Assistance Program.

* * *

IV. Conclusion

The Virginia State Bar, respectfully requests the Court adopt the foregoing amendments to Part 6, § IV, Paragraph 13 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

Leonard C. Heath, President

Karen A. Gould, Executive Director

Dated this 19th day of June, 2018

From: Rhetta M.Daniel [mailto:rhettamdaniel@rhettaesq.com]
Sent: Thursday, February 15, 2018 10:27 AM
To: publiccomment
Subject: Rule would allow fee-shifting for lawyer's GAL

The Virginia State Bar sinks to a new low.

Let's punish the impaired, disabled and mentally ill attorneys even more with punitive costs.

After all, the VSB only has a $8,911,684.00++++ (6/30/17) - now over $9.7 Million illegal Slush Fund a/k/a Client Protection Fund.

Rhetta M. Daniel

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From: Joseph Painter [mailto:custer76@outlook.com]
Sent: Thursday, March 01, 2018 10:22 AM
To: publiccomment
Subject: GAL fees

To assess GAL fees is grossly unjust. GAL's are appointed when the attorney cannot afford to hire an attorney. It is hypocritical to assess fees in such cases.

From: attyabeq@aol.com [mailto:attyabeq@aol.com]
Sent: Monday, March 05, 2018 9:38 AM
To: publiccomment
Subject: Proposed Rules Regardingh Misconduct by Guardians

Anything that can deter abuses by attorneys appointed as Guardians is to be strongly supported. Those abuses impact on the most vulnerable in our society, and to prey on them is despicable. Strongly support efforts to address such problems.

August Bequai, Esq.
1800 Old Meadow Road, Suite 115
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EXHIBIT 9

Professional Guidelines

An agency of the Supreme Court of Virginia

Search

- VSB Home

- Rules and Regulations
- Rules of Professional Conduct
- Legal Ethics Opinions
- Unauthorized Practice of Law Opinions
- Organization & Government of the Virginia State Bar
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- Foreign Attorneys — Registered Military Legal Assistance Attorneys
- Foreign Legal Consultant
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- Bylaws of the Virginia State Bar and Council
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- Attorney Trust Account Regulations
- Regulations of Attorney Real Estate Settlement Agents
- Virginia Licensed Legal Aid Society Regulations
- Principles of Professionalism
- Provision of Legal Services Following Determination of Major Disaster

- Actions on Rule Changes and Legal Ethics Opinions

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines Search

Home > Actions on Rule Changes and Legal Ethics Opinions > revisions to Paragraph 3 and 13-23 regarding change of membership for impaired attorneys.

Proposed | revisions to Paragraph 3 and 13-23 regarding change of membership for impaired attorneys. Pending approval by the Supreme Court of Virginia.

View the Current Rule

At its meeting on June 14, 2018, the council unanimously approved amendments to Part 6, Section IV, Paragraph 3 and Paragraph 13-23. The amendments are motivated by the report of the National Task Force on Lawyer Well-Being and will facilitate retirement for a lawyer suffering from a permanent impairment, such as an irreversible cognitive decline, by allowing retirement with dignity instead of having the lawyer's license suspended on impairment grounds. With these amendments, the impaired lawyer could transfer to the Disabled and Retired class of membership as described in proposed Paragraph 13-23.K. The proposed language in Paragraph 3(d) conforms to the requirements of amended Paragraph 13-23. The proposed changes were presented to the Supreme Court of Virginia for approval on June 19, 2018.

View the council petition to the Supreme Court (pdf)

Updated: June 21, 2018

1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026
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Telecommunication Device for the Deaf/TDD (Hearing-Impaired Only): 804-775-0502
Office Hours: Mon.-Fri. 8:15 a.m. to 4:45 p.m. (excluding holidays)
The Clerk's Office does not accept filings after 4:45 p.m.

EXHIBIT 10

The Washington Post

Wonkblog Analysis

American workers are already lonely. Here come the robots.

By Danielle Paquette

Companies are starting to realize what workers have long sensed: Loneliness not only impairs one's mood and health — it can also hurt productivity and profits.

According to researchers who study the issue, the economic damage caused when employees suffer feelings of isolation could soon worsen as offices become increasingly automated and more people work remotely.

The share of American adults who say they're lonely has doubled since the 1980s to 40 percent, per AARP's latest numbers. Though the United States doesn't track the financial effect of disconnected workers, researchers in Britain, which recently appointed a "minister of loneliness," estimate the penalty to businesses can reach $3.5 billion a year, accounting for higher turnover and heftier health-care burdens.

Gabriella Rosen Kellerman, a psychiatrist and chief innovation officer for BetterUp, a workplace consulting firm in San Francisco, said employers who tackle the issue now — rather than brush it off as a personal matter — will save money in future. "Loneliness is an expensive problem that will affect their bottom line," she said, "whether they realize it or not."

Kellerman said she heard from her clients, a roster that includes Fortune 500 companies, that loneliness was a mounting concern. Employees who describe solitary days tend to quit, zone out and take sick time more often than those who feel connected to their colleagues, according to multiple studies.

So, her team crunched data from a survey of about 1,600 workers across the country to better understand the risk by profession. The results, published this month in the Harvard Business Review, alarmed her, she said: Sixty-one percent of the lawyers in her sample ranked "above average" on a loneliness scale from the University of California at Los Angeles.

Other particularly lonely groups were engineers (57 percent), followed by research scientists (55 percent), workers in food preparation and serving (51 percent), and those in education and library services (45 percent).

Some of the jobs, of course, involve plenty of human contact. But employees need more than basic interactions to fight loneliness, Kellerman said. "For a server, it is not an especially nurturing environment to be somewhat on your own, working for tips, fending for yourself," she said.

Generally, the happiest — and most productive — workers feel like valued team members, Kellerman said.

Cultures of camaraderie, though, are shrinking in some parts of the economy, as robots take on roles that humans once handled and more employees work from home. A recent study from the global consultancy firm McKinsey predicted that demand for office workers in the United States will drop by 20 percent over the next decade because of technological advances. That could mean smaller or more siloed teams.

A Gallup poll last year, meanwhile, found that 43 percent of working Americans said they did some of their job remotely, a four-percentage-point jump from 2012.

However, Sigal Barsade, a management professor at the University of Pennsylvania, notes that some people who work with robots or stay at home all day are content. Loneliness is subjective, she said, but employers would still be smart to check in with their workers and stamp out any bothersome isolation.

In a February study, Barsade and co-author Hakan Ozcelik, a business professor at California State University at Sacramento, linked loneliness at work to lackluster job performance. They surveyed 672 workers and 114 supervisors at two organizations and found the employees who reported more feelings of isolation — based on the same UCLA scale that Kellerman's team used — received, on average, harsher reviews from their bosses.

"When you're lonely, you start to lose your social skills," Barsade said. "You overshare or undershare. You're hypervigilant to social threat. You're less collaborative."

The occasional employee lunch won't ease those tensions, she said. Managers should create an emotionally open culture, where employees feel safe to say what's on their mind and have opportunities to bond.

Daniel Lukasik, a lawyer in Buffalo and creator of the Web community Lawyers With Depression, said he started a weekly support group for attorneys 10 years ago after realizing he and his colleagues routinely battled the grip of isolation. When he started his career in the 1980s, lawyers would go to libraries to do research and banter with others in the field. Now he can pull up a case on his smartphone.

"What that translates to is: You're working all the time," Lukasik said. "You get to the point where you're too exhausted to socialize."

Combine long hours with an adversarial culture, and the result can be fierce loneliness, along with deteriorating mental health. (A 2016 study from the American Bar Association found 28 percent of attorneys reported struggling with depression, compared with 6.7 percent of the broader population.)

That leads to burnout, Lukasik said, especially if you're just in it for the money. "Saying to somebody who is struggling 'Just deal with it' is a failing strategy," he said, "and it's actually costing firms money."

Danielle Paquette
Danielle Paquette is a reporter focusing on national labor issues. Before joining The Washington Post in 2014, she covered crime for the Tampa Bay Times in St. Petersburg, Fla. Follow

Market Watch

Dow 25,317.88	Today ↓ 0.5%
S&P 2,754.84	Today ↓ 0.47%
NASDAQ 7,458.44	Today ↑ 0.13%

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EXHIBIT 11

https://www.richmond.com/news/local/education/virginia-law-students-push-state-panel-to-scrap-mental-health/article_05e2af10-08a9-55eb-b319-894235e4eee8.html

Virginia law students push state panel to scrap mental health question on bar application

By JUSTIN MATTINGLY Richmond Times-Dispatch Apr 6, 2018

O'Dwyer

Gray O'Dwyer, 30, the leader of Virginia's push to scrap the mental health question on the bar application, sought counseling after an injury during her first year in law school at UR.

MARK GORMUS/TIMES-DISPATCH

Law students who need mental health counseling aren't getting it for fear they will be denied admission to the state bar, according to organizations across the state that are demanding changes to the application.

Student groups at the University of Richmond and Washington & Lee University have sent letters to Virginia's Board of Bar Examiners asking it to ax a portion of the application that prompts the disclosure of mental health conditions.

The University of Virginia Student Bar Association plans to join the effort, and law students at the College of William & Mary, George Mason University and Liberty University also are considering taking action.

Efforts to strip applications of mental health-related questions have surged since the national bar association recommended action on the matter this year across the four in five U.S. states that include some form of mental health question on their bar applications.

“It’s kind of contradictory that we’re preparing these lawyers and when we go to law school, these law schools are filled with counseling services during this stressful time, but when we’re going to be barred, it could potentially harm their entry to become a professional,” said Catherine Woodcock, the Student Bar Association president at Washington & Lee.

The outpouring follows a shift the group that grants entry into the state bar made to the application three years ago, which critics say does not do enough to prevent a chilling effect.

***

The Board of Bar Examiners, the five-person Supreme Court of Virginia panel that grants or denies entry into the bar, says a law license is not based on health diagnosis or treatment. A board spokesperson said the students’ input will be funneled through a committee.

“We do not want students to feel like they need to avoid seeking help if they need it for fear that it will become a problem later,” said Catherine Hill, the secretary-treasurer for the Board of Bar Examiners. “That is absolutely not the case.”

No applicants were denied a law license in Virginia last year based on their responses to the mental health question, Hill said.

Law students and law school leaders argue, however, that students fear decisions are made based on their answer to that part of the character and fitness questionnaire, leading them to not seek treatment.

"While we appreciate that it's not going to prevent admission, the fact that law students have to disclose it does prevent them from seeking services," Woodcock said.

The issue is personal for Gray O'Dwyer, the leader of Virginia's push to scrap the question.

While O'Dwyer was a first-year law school student at UR, she broke her left leg so severely in a rugby game that a steel rod had to be put in.

She struggled with the pain and sitting through her six- to eight-hour law classes. O'Dwyer had been diagnosed with anxiety and experienced panic episodes before. So as she fought the pain of the broken leg and the stress of her first year of law school, she decided to be proactive. Still, she worried about potential ramifications for her bar application after ultimately deciding to seek counseling.

"It was very hard to deal with that on my own," O'Dwyer said.

A year later, a bad breakup that meant the loss of her Forest Hill house left her at the same crossroads: Seek counseling and disclose it on her bar application, or go through it alone.

Again, she decided to seek treatment.

"I have risked it, but there are so many law students who wouldn't and don't," said O'Dwyer, 30. "The ability for me to have access to mental health services and access to counseling was so important for my success as a law student, and nobody should be denied that."

***

While O'Dwyer lived in Washington, D.C., she worked at the Lawyer Assistance Program. Still on the program's mailing list, she received a distribution this winter notifying her of a resolution passed by the American Bar Association that recommends lawyer regulators, such as Virginia's Board of Bar Examiners, re-evaluate bar application inquiries about mental health history, among other things.

Resolution 105, the resolution passed by the ABA, is part of a nationwide effort to discard the questions across the 80 percent of states that retain language about mental health on bar applications.

In Wisconsin, for example, a lawyer petitioned that the state's character and fitness process does not comply with the Americans with Disabilities Act, saying that someone who disclosed a mental health disorder and treatment on a specific question on the state's questionnaire would be subject to more scrutiny than someone who did not.

In Virginia, students are specifically objecting to Section 18.2 of the character and fitness questionnaire, which asks: "Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner? 'Currently' means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing lawyer."

Hill, of the state board, said the question's focus is on conduct and behavior and not diagnosis and treatment. This isn't the first time the board has grappled with mental health on its character and fitness questionnaire.

The board, which is the body that has the authority to amend the questionnaire, changed the focus of the question from treatment to conduct three years ago after a 2015 ABA resolution encouraged such agencies as the board to focus questions on conduct and behavior. Those changes were made in consultation with the Office of the Attorney General, Hill said.

Two decades earlier, an applicant, Julie Ann Clark, claimed that two questions on the board's application about treatment and counseling for mental and nervous disorders violated the ADA.

The District Court for the Eastern District of Virginia ruled that the questionnaire was framed too broadly and violated Clark's rights under the act.

In its rules for the character and fitness questionnaire, the board explicitly "encourages applicants who may benefit from treatment or counseling to seek it."

"The board has a statutory duty to find, prior to licensure, that each applicant has the requisite fitness to perform the obligations and responsibilities of a practicing attorney. In making those determinations, the board has to conduct investigations into each applicant's character and fitness," she said. "That's why we ask questions about conduct and behavior.

"We're trying to balance what is obviously a very sensitive issue with our duty to protect the public and really it's as simple as that."

***

An ABA survey of about 3,300 law school students found that more than one in six students screened for depression and nearly one in four screened for anxiety. Forty-two percent of the survey respondents said they needed mental health help.

Of those respondents, only half of them ended up receiving counseling because of concern over how it would affect their bar admission, academic standing and job prospects, according to the ABA.

Both Woodcock at Washington & Lee and Kurt Lockwood, UR's Student Bar Association president, said they have heard from students expressing concern that if they get treatment, it will affect their bar admission.

"As soon as (students) found out it was part of the character and fitness part of the questionnaire, it was a hindrance to them seeking help," Lockwood said. "Students struggle with these issues — at this point, it's common knowledge — and we need to be doing more to address those concerns."

While the question is worded so students use their own discretion on what to include, Lockwood said students are given advice from "all corners of the legal profession," including professors and practicing lawyers, to disclose everything.

"You're made very aware that it's your burden to answer that character and fitness to the best of your ability and the advice that you're given is to put everything down," he said.

Hill, the state board representative, said such feedback as the students' letters will be received through the Supreme Court of Virginia's Attorney Well-Being Committee, which she serves on with four law school deans and a Board of Bar Examiners member.

O'Dwyer, the leader of the state movement, will have been through the confidential bar application process by the time a change would be made, but said it's the right thing to do.

"Change doesn't happen unless you ask for it," she said, "and I'm asking."

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University of Richmond School of Law

State Bar Letter
BY JUSTIN MATTINGLY Richmond Times-Dispatch Apr 5, 2018

Justin Mattingly
Education Reporter

Justin Mattingly covers K-12 schools and higher education.

EXHIBIT 12

A PROFESSION AT RISK

Report of the
Committee on Lawyer Well-Being
of the Supreme Court of Virginia

Mission Statement

The well-being of lawyers, judges and law students in Virginia is integral to professional competence. A competent bench and bar in Virginia is essential to ensuring the protection of the public we serve.

As members of a self-regulated profession, we are devoted to client protection as a fundamental duty. To achieve this, the legal profession must support education and training that will ensure professional competency. Further, the legal profession as a whole must provide the resources necessary to ensure intervention, assessment, and referral services for at-risk and impaired lawyers, judges, and law students.

Recent studies have documented the prevalence of dysfunction, at-risk behaviors, and impairment in the legal profession. The response must be comprehensive in scope. Because of its statutory and regulatory responsibility for supervision of the entire legal profession, the Supreme Court of Virginia is uniquely empowered to create and implement such a comprehensive response.

This proposed approach is not unlike the origins of the Carrico Professionalism Course, which the Supreme Court of Virginia adopted in 1987 in response to a crisis arising from the increasing disregard of principles of professionalism. Resisted at first, the Professionalism Course has become accepted as essential training for every newly licensed Virginia lawyer. Aspirations to professionalism are now inculcated as an essential obligation of the legal profession.

As with that earlier crisis that threatened to destabilize the relationships of legal professionals with each other, their clients, the courts, and their communities, an alarming number of lawyers, judges and law students are experiencing a "wellness" crisis. Its most alarming manifestations include behavioral health and substance use disorders, as well as attempted and completed deaths by suicide. This crisis threatens the integrity of the profession, and in turn the members of the public.

Accordingly, the proposals in this report are conceived from a profound conviction that the personal health and wellness of legal professionals are inseparable from the duty of such professionals to provide competent services to the public and ensure its protection.

These proposals impose costs upon the legal profession. However, 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.

Committee Members

Justice William Mims, Chair

David Bobzien, Esq.
Judge Thomas Bondurant
Judge Manuel Capsalis
Doris Causey, Esq.
Dean Davison Douglas
Richard Garriott, Esq.
David Harless, Esq.
Leonard Heath, Esq.
Dean Brant Hellwig
Honorable Michael Herring
Catherine Hill, Esq.
Cynthia Hudson, Esq.
Lee Livingston, Esq.
Lorraine Lord, Esq.
Judge Mary Malveaux
Dean Sandra McGlothlin
Kailani Memmer, Esq.
David Mercer, Esq.
Dean Wendy Perdue
Judge Deanis Simmons
Judge Jacqueline Talevi
Judge John Tran
Pia Trigiani, Esq.
Kathleen Uston, Esq.

If we live for others, we will gradually discover that no one expects us to be "as gods." We will see that we are human, like everyone else, that we all have weaknesses and deficiencies, and that these limitations of ours play a most important part in all our lives. It is because of them that we need others and others need us. We are not all weak in the same spots, and so we supplement and complete one another, each one making up in himself for the lack in another.
-Thomas Merton, No Man is an Island

Background

Two national studies published in 2016 relating to behavioral health and substance use disorders among attorneys and law students sent shock-waves through the American legal community.[1] Both reported dramatically higher percentages of alcohol and drug abuse, depression and anxiety, and attempted and completed suicide, when compared with the general population. Among lawyers:

- 21-36% qualified as problem drinkers.
- 14% reported that problematic drinking began in law school.
- 28% were experiencing some level of depression.
- 11% had experienced suicidal thoughts.

Among law students,:

- 25% were at risk for alcoholism.
- 17% were experiencing depression.
- 14% were experiencing severe anxiety.
- 6% had experienced suicidal thoughts within the past year.

These findings were the impetus for creation of a 17-member national task force by the American Bar Association, the Conference of Chief Justices, and other entities. Virginia Chief Justice Donald Lemons was one of two judges on the task force.

In August 2017, the task force published a comprehensive report, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," which included 44 detailed recommendations for judges, regulators, legal employers, law schools, bar associations, professional liability carriers, and lawyer assistance programs. [2]

The recommendations include five central themes: (1) identifying stakeholders and the role each can play in reducing toxicity in the legal profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on well-being issues, and (5) taking incremental steps to change how law is practiced and how lawyers are regulated to increase well-being in the profession.

Immediately upon release of this report, Chief Justice Lemons appointed a 25-member committee to review it, to examine existing programs and procedures in Virginia, and to recommend improvements. The full committee met four times to receive detailed briefings on relevant topics, including the following:

- Overview of the national task force report from Chief Justice Lemons and the co-chair of the task force.
- Report on the current status of Lawyers Helping Lawyers ("LHL"), its limitations due to lack of adequate and reliable funding, and its adopted strategic plan if increased funding is provided. The PowerPoint slides from this presentation are attached as Appendix Exhibit 1.
- Summary of suicide prevention efforts in Virginia jointly by the Departments

1 "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," The Journal of Addiction Medicine, January/February 2016, Volume 10, Issue 1; "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns," Journal of Legal Education, Volume 66, Number 1 (Autumn 2016).

2 The report can be found here: https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf.

of Health ("VDH") and Behavioral Health and Disability Services ("DBHDS"), including the relationship between substance use and behavioral health disorders and deaths by suicide.[3]

- Strategies for maintaining wellness, including the six dimensions of wellness identified by behavioral health professionals (i.e. social, physical, emotional, occupational, intellectual, and spiritual). This included how wellness can be enhanced through continuing legal education ("CLE") courses and other educational materials to minimize substance use and behavioral health disorders, and through mentoring and changes in the legal culture. A handout that was reviewed by the Committee that lists six aspects for each of the six dimensions of wellness is attached as Appendix Exhibit 2.
- The effect of "vicarious trauma" on many legal professionals, including judges, prosecutors, defense attorneys, legal aid attorneys, guardians ad litem and others. Vicarious trauma symptoms are similar to post-traumatic stress disorder. A memorandum regarding vicarious trauma authored by committee member Kathleen Uston is attached as Appendix Exhibit 3.
- Briefings by the executive directors of statewide lawyer assistance programs ("LAPs"), in North Carolina and Pennsylvania that could be models for a more comprehensive program in Virginia. Twelve states already have statewide LAPs, typically managed by the supreme court or the mandatory bar, and 16 others are moving in that direction following release of the national report.
- A briefing by representatives of the Virginia Health Professionals Monitoring Program, which provides an alternative to disciplinary action for impaired health professionals in Virginia.

The minutes of the four full committee meetings are attached collectively as Appendix Exhibit 4.

The bulk of the committee's work was accomplished in four task groups, each of which included six members, relating to specific subsets of the legal profession: judiciary, law schools (including the Virginia Board of Bar Examiners ("VBBE")), private sector, and public sector (including legal aid). As their work was nearing completion, a separate task group began working on structural and funding recommendations that would apply across the legal profession. Because of the importance of these structural and funding recommendations, which are comprehensive and will permit the implementation of many of the recommendations of the other four task groups, they are addressed first herein.

Structural and Funding Recommendations

Create a position and program within the Office of the Executive Secretary of the Supreme Court to coordinate comprehensive well-being initiatives.

It is recommended that the Educational Services Department of the Office of the Executive Secretary ("OES") oversee the education and training of, and assistance to, lawyers, judges and law students regarding generalized health and wellness initiatives (collectively "professional

3 Additional information can be found at http://www.vdh.virginia.gov/suicide-prevention/.

health initiatives"). One individual with appropriate experience and training should manage this effort, with administrative support as needed.

Provide adequate funding to Lawyers Helping Lawyers for implementation of its statewide strategic plan.

Lawyers Helping Lawyers, a 501(c)(3) private organization, is a critical part of the solution to the wellness crisis in the legal profession. Yet it is severely under-funded, with a budget of only $275,000 and one full-time and one part-time employee. Last year it opened 107 new cases[4]. There are more than 32,000 active members of the Virginia State Bar (VSB).

LHL funding presently comes from VSB ($150,000), VBBE ($15,000), ALPS Insurance ($30,000), the Virginia Trial Lawyers Association (VTLA) ($17,000), and various smaller donations ($55,500). LHL has adopted a bold new strategic plan, the "Lighthouse Plan," which would allow it to grow from one office in Richmond to three (adding Roanoke and Alexandria), with 10 "lighthouses" which are additional locations throughout Virginia with trained volunteers. (For example, the Roanoke office would have a "lighthouse" in Abingdon to be the initial point-of-contact for attorneys in far Southwest Virginia.) Staffing would grow from 1.5 to 6.0 FTEs, and potential clients who could be served would increase dramatically. This strategic plan for growth assumes optimum funding of $775,000 annually.

We recommend that the Supreme Court, through OES, provide funding in a sufficient amount which, in conjunction with other funding sources, would allow LHL to achieve its Lighthouse Plan.

OES would enter into a Memorandum of Understanding ("MOU") with LHL, similar to LHL's present MOU with VSB, for the provision of recovery and behavioral health assistance services, including (1) training, mentoring, and management of a volunteer network, and (2) intervention, assessment, referral, and requested monitoring for impaired lawyers, judges, and law students. LHL's services would focus primarily on substance abuse and behavioral health-related matters, to include its continuing provision of critical services to VSB of monitoring lawyers and effectuating public protection.

LHL would continue to operate as a stand-alone 501(c)(3) organization. It is advisable, though, that LHL agree to amend its bylaws and/or other organizational documents to permit one-third (1/3) of its directors to be designated by OES for so long as the MOU is in effect.

Appoint an advisory board to advise OES regarding all aspects of the comprehensive well-being initiatives.

It is recommended that the Supreme Court create a multi-disciplinary advisory board composed of volunteer members, and including representatives of LHL. The advisory board would:

- Advise the Court and OES at their request regarding the implementation of the proposals of this committee and the professional health initiatives;
- Provide guidance to the Mandatory Continuing Legal Education ("MCLE") Board on issues relevant to professional health initiatives and, when appropriate, recommend changes to the Rules of Court with regard to professional health initiatives; and
- Monitor at the direction of OES the accountability and performance of the professional health initiatives, including monitoring the monthly financial and performance reports for

4 Of these cases, 58 related to alcohol and 37 to behavioral health issues. A detailed summary of the case categories is attached as Appendix Exhibit 5.

all outsourced services, and report to the Court and OES no less than annually regarding the expenditure of funds by, and the performance of, outsourced service providers.

Continuing Legal Education programming should be provided on a wide range of wellness topics.

OES Department of Educational Services, in conjunction with Virginia CLE, state agencies (e.g., VDH and DBHDS for suicide awareness and prevention), and other states' LAPs, will develop online professional health initiatives programming in 30-minute and one-hour modules that will qualify for MCLE credit and be available to Virginia lawyers free of charge. Also, for-profit MCLE providers and other sponsors of MCLE programming (e.g., bar associations, law firms, etc.) will be encouraged to develop and provide CLEs and programming for professional health initiatives.[5]

The Supreme Court is requested to amend the MCLE Rule of Court (i) to require lawyers to disclose on their MCLE forms as a reporting requirement only whether they have taken at least one (1) hour of professional health initiatives education or training within the past three (3) years; and (ii) to permit the MCLE Board to authorize MCLE attendance and teaching credit to active members of the VSB who, on a volunteer, non-compensated basis, prepare approved written materials for, or present approved instruction to, judges or law students regarding professional health initiatives.

Primary funding for the foregoing wellness initiatives should be the collective responsibility of all members of the Bar.

Such a comprehensive program cannot be operated without adequate funding. The primary source of such funds should be borne collectively by all members of our profession, since we all will benefit, directly or indirectly. It is recommended that the Supreme Court seek a budget amendment by the Governor in his mid-biennial submission for FY20. It would permit such funds to be collected, in a sum sufficient to initiate this comprehensive program, through a modest annual assessment on all active VSB members. Such assessment would be collected at the same time as VSB dues and transferred to OES. In support of this recommendation, we note that the annual assessment paid by each attorney for the Client Protection Fund ("CPF") was decreased by $15 at the beginning of this fiscal year, and that having multiple approved online CLE programs available for no charge confers a substantial financial benefit on any attorney who elects to use them.

5 It is noted that this recommendation, which was adopted by the full committee, is not as far-reaching as that of the private sector task group. That task group's recommendation is included in this report for discussion purposes.

The preceding structural and funding recommendations were guided in large measure by the experience of our sister state, North Carolina, which has a bar of similar size to Virginia's and has had a comprehensive LAP for many years. Guidance also came from the existing professional assistance program for health practitioners in Virginia, the Virginia Health Professionals Monitoring Program. These two programs, and their relevance for Virginia's legal professionals, are summarized below.

North Carolina's Lawyers Assistance Program ("NC LAP")

North Carolina, which has a bar similar in size to Virginia's, has a robust Lawyers' Assistance Program with 650 active files. While the NC LAP is a division of the state bar, which is not what we propose in Virginia, the similarities between the North Carolina program and our proposed program are significant.

North Carolina has approximately 28,000 bar members. With an average of 650 open files, the program's utilization rate is more than 2%. Virginia's LHL anticipates it could reach a 2% utilization rate with adequate funding and staffing. With more than 32,000 VSB members, 2% utilization would mean helping 600-700 lawyers.

NC LAP was founded in 1970 as a volunteer program. In 1994 it became an official state bar program and hired a director. It had approximately 50 open files. As bar membership increased, NC LAP increased the number of funded positions. Today, the program has 3 clinical staff, 2 administrative staff and an executive director. The clinical staff covers three parts of the state – Eastern, Piedmont, and Central – and the program has 250 active volunteers. This is similar to LHL's Lighthouse Plan. Like LHL, nearly all referrals are self-referrals or referrals by friends or co-workers. About 10% are referrals from law firms or courts.

North Carolina instituted mandatory CLE for alcohol and drug abuse issues in 2001, resulting in a surge of referrals to the NC LAP – from 230 active files in 2000 to 500 files the year after the rule change. Other states have experienced similar growth from required CLEs in substance abuse awareness and training. (A PowerPoint presentation by the NC LAP Executive Director is attached as Appendix Exhibit 6.)

CLE is any LAP's biggest marketing tool. On average, the North Carolina program receives one referral for each CLE program its staff presents. North Carolina requires 12 CLE credits annually with three of those credits in ethics. Every three years, one credit hour in substance abuse training is required. NC LAP staff are asked to conduct more than 100 presentations every year.

NC LAP has a budget of $750,000, which is similar to what LHL proposes. It is funded through bar dues, which are $325 per member. Because NC LAP is a division of the bar, there is not a separate assessment. However, based on the number of active bar members and the LAP's budget, it appears that about $25-26 per member is expended on the program.

Virginia's Health Practitioners' Monitoring Program, Code §§ 54.1-2515, *et seq.*

Health practitioners in Virginia who are struggling with substance abuse or mental health issues may be referred to the statutorily-created Health Practitioners' Monitoring Program ("the Monitoring Program" or "the Program"). (A PowerPoint presentation by representatives of the Program is attached as Appendix Exhibit 7.)

The Monitoring Program provides an alternative to disciplinary action for impaired health practitioners.[6] Disciplinary action is stayed when the practitioner enters the Program by written contract so long as the practitioner remains in compliance with the contract terms. Most of the Program's referrals come from disciplinary actions, rather than from voluntary participation, and there is, as yet, no general wellness component. The Program's Administrative Director is working to increase education and outreach to expand voluntary participation and the scope of the program.

The Program is operated under an umbrella agency, the Department of Health Professions ("DHP") for Virginia's 14 health regulatory boards. Any health practitioner licensed by a health regulatory board in Virginia or by a multi-state licensure privilege is eligible to participate. Accordingly, the Program serves all licensed health practitioners in Virginia, from nursing aides to surgeons, massage therapists to veterinarians, encompassing more than 100 disciplines.

The Program provides intake, referral and monitoring services, but no intervention or treatment. Operating costs are funded by licensing and administrative fees practitioners pay to their respective health regulatory board. However, participants may be charged a reasonable portion of the fees related to the costs of participation.

A portion of the fees practitioners pay to their health regulatory boards are deposited into a special fund and held to cover the expenses of the the Monitoring Program. The Monitoring Program then collects funds by invoicing each board for its licensees who are participating in the Program Most participants are in the program for five years.

The most recently available Annual Report shows that in December 2016, the Monitoring Program was serving 448 participants. Ninety percent were monitored for substance use (opioids 52%, alcohol 37%), 8% for psychiatric issues, and 2% for physical issues.

To provide the Monitoring Program's services, DHP has a Memorandum of Agreement ("MOA") with Virginia Commonwealth University Health Systems, Department of Psychiatry, Division of Addiction Psychiatry ("VCUHS"), which provides 14 full-time and 2 part-time employees. It is staffed by a part-time Interim Medical Director; an Administrative Director with an assistant; 6 case managers; an intake manager; 4 case manager assistants; a receptionist; and a part-time HR/ fiscal manager. All full-time staff are VCUHS or VCU employees. The DHP employs one full-time staff member – the Monitoring Program Manager, who serves as liaison between the Program and the DHP. The MOA provides for annual 3% increases in monthly fees charged by the Monitoring Program.

Oversight and coordination is provided by a nine-member committee that meets six times per year, or as needed, to review program operation, policies and specific cases. Members are appointed by the Director of the DHP and must be "knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health care practitioners." [7] Records of the Monitoring Program, to the extent they identify individual practitioners in the program, are privileged and confidential.

6 "Impairment" means a physical or mental disability, including but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public."

7 Our proposal contemplates providing oversight of LHL through an Advisory Committee selected by the Supreme Court. The Advisory Committee would oversee distribution of funds to LHL and ensure LHL is accountable for funds expended and services provided. It is not contemplated at this time that the Advisory Committee will make recommendations regarding disposition of cases or that it would have the health care expertise to endeavor to do that.

The reports of the four task groups relating to specific subsets of the legal profession follow. These reports collectively provide a thorough outline of how to enhance wellness throughout the legal profession. Some of the recommendations of these task groups are dependent upon the preceding structural and funding recommendations. However, most of them stand on their own and may be implemented without delay.

Report of the Judicial Task Group

The Judicial Task Group was composed of the following members:

- Fairfax County General District Judge Manuel Capsalis (Chair)
- Henrico General District Judge Thomas Bondurant
- Court of Appeals Judge Mary Malveaux
- Smyth County Circuit Judge Deanis Simmons
- Roanoke County General District Judge Jacqueline Talevi
- Fairfax County Circuit Judge John Tran

The Judicial Task Group proposes the adoption of the national task force report and its recommendations as pertinent to the judiciary (numbered 14-19 in the report). For each of the report's titled recommendations below, we include commentary and proposals which we believe are necessary and appropriately tailored for our Commonwealth's judiciary.

Communicate that well-being is a priority

Education, communication, awareness, and public protection are the cornerstones of prioritizing the well-being of our judiciary. Serving as a judge in the Commonwealth is a privilege and a unique opportunity to better one's community; however, the stress and isolation associated with the occupation can lead to a measurable deterioration in wellness if left unchecked.

We believe the terms "wellness" or "well-being" should be acknowledged as multi-dimensional and include (1) social, (2) emotional, (3) spiritual, (4) occupational, (5) intellectual and (6) physical wellness. Sustaining wellness within the judiciary promotes public confidence whenever judges approach conflicts with a balanced sense of assurance.

Awareness of and commitment to minimizing the risks to wellness must be a top priority of our judiciary. As discussed in our commentary to a subsequent recommendation below, education and communication should commence upon a judge's appointment to the bench and be maintained thereafter on a consistent basis.

Develop policies for impaired judges

The success of any policy for promoting and sustaining the well-being of judges is dependent on the availability of a recognized and fully supported assistance program.

To make this possible, we propose the recognition of LHL as a recommended assistance program for judges, and propose appropriate funding to deliver such assistance statewide.

We also propose a full review of the Rules of the Judicial Inquiry and Review Commission ("JIRC"). As appropriate, we recommend that JIRC amend or supplement those Rules to better institute rehabilitative-focused practices and procedures in cases of mental health and/or substance use issues. Consideration should be given to the rehabilitative-focused practices and procedures of the VSB's disciplinary system as a model.

Consistent with Judicial Inquiry and Review Commission of Virginia v. Elliott, 272 Va. 97 (2006), and to more fully clarify the ability of JIRC to institute rehabilitative-focused practices and procedures, as well as in addition to any other amendments to the Rules of JIRC as may be deemed appropriate, we propose that JIRC consider the following amendment to the Rules:

RULE 15. DISPOSITION OF CHARGES.

A. After an investigation has been concluded, the Commission may take any of the following actions:

. . .

2. If the Commission finds the charges against the judge to be well founded and of sufficient gravity to constitute the basis for retirement, censure or removal, it ~~shall~~ may file a complaint against the judge in the Supreme Court of Virginia or may proceed as set forth in paragraph (4) below.

. . .

4. If the Commission finds the charges against the judge to be well-founded, the Commission may, with the consent of the judge, place the judge on a period of supervision under such terms and conditions as the Commission shall determine. Violation of such terms and conditions shall be grounds for a new charge of failure to cooperate with the Commission.

Reduce the stigma of mental health and substance use disorders

Endemic with the occupational hazards of being a judge is the stigma of struggles with one's well-being and the perceived institutional disincentives to seek assistance. What if the local bar finds out? What if a colleague finds out? What if JIRC finds out? What if the public finds out? What if the General Assembly finds out?

We strongly support and reiterate the proposals discussed herein to develop policies and better promote an occupational environment conducive to well-being. Compassionate and rehabilitative-focused policies must not be considered as undermining, but rather as enhancing, public protection and the rule of law.

Confidentiality in help-seeking behaviors is imperative to foster the trust of judges who might otherwise not seek assistance. If judges feel confident that their information is protected when they seek assistance, this in turn will encourage them to seek help when needed. Not only will this promote better wellness among judges, it also will ensure protection of the public through the stability of the judges within our Commonwealth and the sustainability of our judicial institutions.

Conduct judicial well-being surveys

Surveys have proven very useful in assessing and better understanding the mental health and substance use struggles of lawyers in Virginia and elsewhere. Yet there has never been a judicial well-being survey in Virginia. We believe that if conducted in a way that assures confidentiality and statistically relevant responses, a judicial survey should be undertaken in the Commonwealth. We propose that the Supreme Court and/or OES take appropriate measures to conduct such a survey.

Provide well-being programming for judges and staff

Consistent with our commentary above, we fully support this recommendation and propose that such well-being programming commence as soon as possible upon a judge's appointment to the Bench and be made a part of bench books and other judicial publications.

We also propose a more prominent and consistent presentation of well-being programs at the mandatory judicial conferences. Further, well-being information should be disseminated to all members of the judiciary and staff throughout the year. In coordination with the Supreme Court and/or OES, we believe that LHL can assist in the development of such a year-round program of judicial and staff well-being.

Monitor for impaired lawyers and partner with lawyer assistance programs

The judiciary plays a vitally important role in promoting law student, lawyer and judge wellness, as well as in monitoring possible lawyer impairment. To this end, we believe that judicial participation in LHL and other law student, lawyer and/or judicial assistance programs should be strongly encouraged.

Judges can offer valuable insight to assist law students, lawyers, and fellow judges alike. In coordination with the law schools of our Commonwealth, we propose that the Supreme Court promote judicial participation in law student wellness presentations. Given the unique role of the judiciary and as a valuable way to promote lawyer and judge wellness, we also propose that the Supreme Court encourage judicial participation in lawyer well-being CLE's on both the state and local bar level, as well as participation in judicial wellness programs.

As stated in the national task force report, judges often are among the first to notice possible attorney or judge mental health and substance use struggles. However, there is uncertainty as to the permissible boundaries of judicial action in such situations. We propose a review and as appropriate, a clarification of the Canons of Judicial Conduct as to the permissible role and responsibilities of judges regarding the reporting, assisting and monitoring of lawyers or judges evidencing such struggles. It is important that the judiciary be given clear guidance as to what a judge can and cannot do in these situations. To this end, we propose the following amendments to the Canons of Judicial Conduct:

Canon 3(D) – Disciplinary Responsibilities.

. . .

(3) The provisions of this Canon do not require any action by a judge or the disclosure of knowledge or information gained by a judge who is a board member of Lawyers Helping Lawyers, or any committees of Lawyers Helping Lawyers, or who is a board member of any other wellness or assistance program, or who is a trained volunteer for any such program, or who is otherwise cooperating in a particular assistance effort when such knowledge or information is obtained for the purpose of fulfilling the recognized objectives of the program.

(4) ~~[3]~~ A judge shall have absolute immunity from civil action with respect to the discharge of disciplinary responsibilities required or permitted by Sections 3D(1) through 3D(3) ~~(2)~~.

. . .

Canon 4(D) – Governmental, Civic or Charitable Activities. -

(3) – Commentary.

Nothing contained in these Canons shall be deemed to prohibit a judge from serving in a nonvoting capacity on the Board of Directors of Lawyers Helping Lawyers, or any committees of Lawyers Helping Lawyers, or as a board member of any other wellness or assistance program or any committees thereof, or as a trained volunteer for any such program, or from cooperating in a particular assistance effort when such information is obtained for the purpose of fulfilling the recognized objectives of the program.

Conclusion

The members of the Judicial Task Group respectfully propose the foregoing recommendations. We believe these recommendations are necessary and beneficial in promoting an occupational environment conducive to the well-being of our judiciary and staff, as well as for lawyers and law students. We further believe that these recommendations will enhance public protection and the rule of law in our Commonwealth. We move for their adoption.

Report of the Law Schools and Virginia Board of Bar Examiners Task Group

The Law Schools and VBBE Task Group was composed of the following members:

- Dean Davison Douglas, William & Mary School of Law
- Dean Brant Hellwig, Washington & Lee School of Law
- Catherine Hill, VBBE Secretary (Chair)
- Dean Sandra McGlothlin, Appalachian School of Law
- Kailani Memmer, VBBE Member
- Dean Wendy Perdue, University of Richmond School of Law

We were tasked with examining the recommendations made in *The Report of the National Task Force on Lawyer Well-Being* ("Report") relevant to Virginia law schools and the Virginia Board of Bar Examiners. We reviewed the Report and identified recommendations 27-33 relating to law schools and 21-22 relating to regulators as being relevant to our task group. The following are our findings and recommendations.

Re-evaluate bar application inquiries about mental health history

In 2015, the American Bar Association (ABA) adopted Resolution 102, which encouraged bar admission agencies to focus character and fitness inquiries "on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner." The Report recommends that jurisdictions "follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment."

In 2015, the Virginia Board of Bar Examiners (Board) revised its Character and Fitness Questionnaire (CFQ) in response to the ABA's resolution. The current CFQ asks:

"Within the past five (5) years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?" The current CFQ also asks:

> "Do you currently have any condition or impairment, including, but not limited to, (1) any related to substance or alcohol abuse, or (2) a mental, emotional, or nervous disorder or condition, which in any way affects your ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, ethical and professional manner? 'Currently' means recently enough so that the condition could reasonably have an impact on your ability to function as a practicing lawyer."

The Board recognizes that law students may be anxious about the bar exam and the admissions process generally and acknowledges the stigma associated with seeking help. [8] Accordingly, the CFQ states, "the mere fact of treatment for health problems is not, in itself, a basis on which an applicant is denied admission in Virginia, and the Board of Bar Examiners regularly licenses individuals who have demonstrated personal responsibility and maturity in dealing with health issues. The Board encourages applicants who may benefit from treatment to seek it." Further, the CFQ emphasizes, "[t]he Board does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as relevant to the issue of whether an applicant is qualified to practice law."

The Board has a statutory obligation to determine whether an "applicant is a person of honest demeanor and good moral character... and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law." Va. Code § 54.1-3925.1 (A). In fulfilling this statutory obligation, the Board must balance student well-being issues with protecting the public.

In conjunction with the work of this Task Group, the Board re-evaluated the CFQ and revised the CFQ to emphasize that most diagnoses and treatments need not be disclosed. It is only when an applicant's condition or impairment is so severe that it affects his or her ability to practice law in a competent, ethical, and responsible manner that it is relevant to the character and fitness screening process and, therefore, must be disclosed.

We recommend that the Board continue to work with the Virginia law schools to educate students about the character and fitness screening process. Specifically, the Board and the law schools should educate students early, preferably in the 1L year, when there is sufficient time to seek treatment if needed, and to take steps necessary to prove rehabilitation prior to the admissions process.

We also recommend that a more formal ongoing relationship and communication system be established between the law schools and the Board, specifically through the annual Professionalism for Law Students Program presented by the VSB's Section on the Education of Lawyers. For example, during the 1L year, there should be a presentation by a member of the

8 The Report identifies the following factors that law students reported as discouraging them from seeking help: concerns that it would threaten their bar admission, job, or academic status; social stigma; privacy concerns; financial reasons; belief that they could handle problems on their own; and not having enough time.

Board or the Character and Fitness Committee explaining the process and requirements of character and fitness screening. This could become part of the Professionalism for Law Students program. We recommend that the Board continue to partner with LHL, and consider recruiting volunteers who have successfully completed the character and fitness screening to speak to current law students each year about their experience.

Adopt essential eligibility requirements

According to the Report, at least 14 states have adopted essential eligibility requirements for admission to practice law. The Board's Rules do not include a section titled "Essential Eligibility Requirements" (EER). However, the Board's Rules contain the following, which are similar to EER of other jurisdictions:

> In addition to demonstrating adequate knowledge of the fundamental principles of law and their application, an applicant must produce clear and convincing evidence to the satisfaction of the Board of Bar Examiners, in its sole discretion, that the applicant has the requisite character and fitness to: (a) comply with deadlines; (b) communicate honestly, candidly and civilly with clients, attorneys, courts and others; (c) conduct financial dealings in a responsible, honest and trustworthy manner; (d) avoid acts that are illegal, dishonest, fraudulent or deceitful; and (e) conduct himself or herself in accordance with the requirements of applicable state, local and federal laws and regulations, any applicable order of a court or other tribunal, and the Virginia Rules of Professional Conduct.

In addition, Supreme Court of Virginia Rule 1A:1 which governs admission without examination, provides, "[i]n evaluating whether an applicant has demonstrated satisfactory progress in the practice of law for admission to the practice of law in Virginia without examination, the Board considers whether the following requirements are evident from the information supplied by the applicant and from the investigative report:

1. Knowledge of the fundamental principles of law and the ability to recall that knowledge, to reason, to analyze, and to apply one's knowledge to relevant facts;
2. The ability to communicate clearly, candidly and civilly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Rules of Professional Conduct;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession."

In response to this Task Group's recommendation, the Board adopted these

requirements in the Board's Rules, so that they are clearly applicable to all applicants.

Adopt a rule for conditional admission to practice law with specific requirements and conditions

Virginia is one of 30 jurisdictions that do not have a rule providing for conditional admission to practice law. For those applicants who have successfully started rehabilitation efforts, but who are not able to prove rehabilitation at the time of their application, the Board offers an alternative to conditional admission. In lieu of denying their admission, leading to a minimum of two years before the applicant is eligible to reapply, the Board routinely will take the matter under advisement and defer a decision until the applicant is able to prove rehabilitation, typically six months. This deferral process is available not only for those applicants with current severe substance abuse or mental health conditions, but also for applicants with financial responsibility issues, poor driving records, criminal records, and other negative behavior.

The advantage of this process is the Board's ability to license applicants more quickly while fulfilling its mission and statutory duty to protect the public. In some jurisdictions with conditional admission rules, applicants may not be licensed until more than two years *after* they prove rehabilitation. Conditional admission rules reviewed in other jurisdictions contain confidentiality provisions, including prohibiting the disclosure of the applicant's underlying condition or impairment and, in some instances, prohibiting from disclosure the mere fact that an attorney's license is subject to a condition or restriction. In other words, the public is not made aware that an attorney's license is subject to some condition or restriction.

In Virginia, LHL provides free, confidential, non-disciplinary assistance to attorneys, judges, law students, bar applicants and others in the legal profession and their families with problems related to mental health and substance abuse. The Board works with LHL throughout the character and fitness screening process to ensure that applicants seeking treatment can achieve their goals of recovery and licensure.

We recommend that the Board continue to work with the Virginia law schools to educate law students about the admission process, including emphasizing the importance of getting the help they need sooner rather than later. This should result in fewer deferred or denied admissions. And for those applicants who enter the admission process needing more time to prove rehabilitation, we recommend that the Board continue to work with LHL to get applicants help early, so they may be licensed as soon as possible, without compromising the Board's duty to protect the public.

Publish data reflecting low rate of denied admissions due to mental health disorders and substance use

The Task Group is not aware of any jurisdiction that publishes data regarding applicants denied admission based upon mental health or substance use disorders. We acknowledge that publishing data reflecting the low rate of denied admissions due to mental health disorders and substance use could help alleviate common misperceptions about character and fitness decisions, and could help alleviate stigma and fear associated with seeking help.

We also recognize that publishing such data could compromise applicant confidentiality, and could result in additional misperceptions if such data is misinterpreted. Accordingly, we recommend that the Board continue to investigate

whether other jurisdictions publish such data, and consider whether it is feasible to publish such data in manner that protects and maintains applicant confidentiality.

Create best practices for detecting and assisting students experiencing psychological distress

The ABA Commission on Lawyer Assistance Programs (CoLAP) Law School Assistance Committee recently surveyed law schools across the country on curriculum and resources available to address issues of student well-being. Their goal is to develop access to resources available in law schools today and to share these resources. They intend to compile what they receive and provide a detailed summary of the responses.

In addition, our Task Group surveyed the eight Virginia law schools to inquire about current well-being programs and initiatives. What we have learned from our discussions and survey responses received thus far is that law schools in Virginia currently provide many different programs and resources to address their students' wellness issues as summarized below.

Provide training to faculty members relating to student mental health and substance use disorders

Some Virginia law schools currently provide faculty training on student mental health and substance abuse issues. For example, Regent University's Emergency Preparedness Committee speaks to all faculty and staff members on an annual basis to advise them about the mental health trends occurring within the student body. Faculty at University of Richmond School of Law (UR) receive periodic presentations from CAPS, the University's Counseling and Psychological Services Center. Appalachian School of Law (ASL) intends to incorporate training related to student mental health and substance abuse issues into the mandatory fall orientation training sessions for all faculty and staff. ASL intends to seek the advice and assistance of Jim Leffler, Clinical Director at LHL, for this training. Washington and Lee University School of Law (W&L) offers a faculty workshop on working with stressed students, promoting grit and resilience, and responding to red flags.

We recommend that all Virginia law schools provide training to faculty relating to student mental health and substance use disorders.

Adopt a uniform attendance policy to detect early warning signs of students in crisis

Currently all Virginia law schools have attendance policies. For example, ASL has a policy for regular and punctual class attendance. The policy requires that attendance be taken in all courses by sign-up sheets. The faculty assistant who compiles the attendance sheets monitors students for absences that exceed the limit of the policy, and notifies the associate dean of violations of the policy, so that he can contact the student to determine if the student is experiencing issues. UR has a General Policy on Class Attendance, Punctuality, and Preparation, and each professor is responsible for monitoring compliance with the policy. Consistent with ABA standards, W&L and William & Mary (W&M) require regular class attendance as a condition for receiving credit, and each faculty member includes the specific attendance policy for the course in the course syllabus.

We recommend that all Virginia law schools have procedures in place to determine if students are regularly in class to help identify early warning signs of students in crisis. Consistent with ABA requirements, law schools should have the discretion to determine the best approach to implement and utilize attendance policies and

practices as a tool to help identify students in crisis. In addition, we recommend that Virginia law schools collaborate to improve existing policies and, if feasible, to develop and adopt a uniform attendance policy that will work well in all Virginia law schools.

Provide mental health and substance use disorder resources

Virginia law schools provide a wide array of mental health and substance use disorder services. For example, at ASL, all students and employees are given a list of mental health resources, including information about the cost per visit for mental health counseling, as well as information about local substance abuse and rehabilitation meetings. In addition, Jim Leffler of LHL meets once each fall with the 1L students to discuss substance abuse and mental health issues in the legal profession. And a former circuit court judge who is a recovering alcoholic comes to ASL at least once each semester to conduct private, confidential counseling sessions with students and employees, and works with students by phone and email as necessary, all free of charge.

Regent provides resources to students on-campus through the Office of Counseling & Disability Services, which provides professional counseling to students for mental health and substance abuse-related disorders, and the Psychological Services Center offers counseling services to students by doctoral students in training. In addition, a comprehensive list of substance use disorder resources is available through University's Drug & Alcohol Abuse Prevention Program, and the Career Services office sends email notifications to students and faculty of the substance support group sponsored every other week by LHL.

UR provides resources on mental health and substance abuse issues through CAPS, and its active LHL law student group offers support and events relating to substance use. Through its "Balancing Act" program, UR alternates months of programming among physical, mental, financial, and professional wellness, including sessions on mindfulness and other stress reducing strategies. W&M has a similar program to the UR program called "Wellness Wednesdays" whereby students are offered regular training in mindfulness and other stress reduction activities.

Also, each spring semester VSB members present programming to the 1L classes at Virginia's law schools on matters of lawyer professionalism, including life balance, individual well-being, and resources to cope with substance abuse, depression, and other mental health concerns.

W&L provides all incoming students with information (which is also available for future reference on the website) on mental health and substance use disorders through the Student Health & Counseling Center. The Dean of Students office manages the peer mentoring program, collaborates with Jim Leffler at LHL to present in professional responsibility courses, and provides programming on physical and mental wellness. Peer mentors are trained by the University resident psychiatrist and Dean of Students to detect signs of distress. And the Student Bar Association formed a wellness committee to provide programming and to serve as an additional resource for students.

We recommend that all Virginia law schools identify and publicize mental health and substance use disorder resources so that students know that there are resources available to help them address stress and well-being issues. We also recommend that all Virginia law schools maintain a student chapter of LHL.

Assess law school practices and offer faculty education on promoting well-being in the classroom

Some Virginia law schools currently provide educational and training opportunities for faculty and staff on promoting well-being. For example, Regent's Emergency Preparedness Committee yearly delivers a required presentation to law school faculty and staff on issues related to campus security, which identifies warning signs to look for in assessing whether students are facing challenges relating to well-being, mental health, or substance abuse, so they can encourage students to seek help through the well-being services offered through the University Center for Student Happiness, the Office of Counseling & Disability Services, and the Psychological Services Center. At UR, a recent faculty retreat focused on student engagement, including student well-being.

We recommend that all Virginia law schools review current practices and offer faculty training and education focused on promoting well-being in the classroom.

Empower students to help fellow students in need

Virginia law schools provide many different opportunities for students to help other students in need. At ASL, members of the Student Services Committee determined the best way to empower students to help fellow students and detect issues early is to train ASL Ambassadors on how to spot issues. Ambassadors are students chosen by a faculty committee. They are assigned a small group of incoming students to mentor and meet in small groups once a week. The Ambassadors are trained how to detect issues (by Jim Leffler of LHL, for example). At Regent, students are encouraged to report serious student concerns to the Regent University Behavioral Intervention Team (RUBIT). Students reported to RUBIT receive support and resources from the appropriate University offices and staff.

At UR and W&M, the student-led LHL program provides opportunities for students to help fellow students. The W&M program includes a series of discussions on topics such as "Detecting Signs and Distress and Depression," and "Mindfulness." In addition, UR is developing a university-wide initiative to extend the Peer Sexual Misconduct Advisors (PSMA) program. This program will be a confidential resource to student victims of sexual assault.

W&L has a peer mentoring program where two 2Ls are paired with a small section (approximately 20) of 1L students. These peer mentors are trained to detect early warning signs and to promote and encourage wellness and positive, healthy behaviors. W&L's Student Bar Association has formed a standing committee on wellness in an effort to provide social offerings to students that promote physical and mental well-being. The University Counseling Center provides an outlet for students to support one another through the Washingtonian Society (a support network for students who have had problems with alcohol or substance abuse) and the Depression and Anxiety support group.

We recommend that all Virginia law schools provide resources and opportunities to empower students to help fellow students in need.

Include well-being topics in courses on professional responsibility

Some Virginia law schools currently include well-being topics in professional responsibility courses. In the required professional responsibility courses at Regent and UR, guest speakers from LHL speak to students about lawyer and law-student well-being, mental health, and substance abuse. Presentations include, for example, (1)

testimonials from lawyers who have benefitted from LHL services about the importance of getting help when one is facing challenges with well-being; (2) discussions regarding the obligation of law firms and their lawyers to have measures in place to ensure that problems of physical, mental, and emotional impairments or conditions that may adversely affect the lawyer's duties of competence and diligence are recognized, and steps taken to provide intervention, correction and support, with attention to recent pertinent Legal Ethics Opinions from the ABA and the VSB, as adopted by the Virginia Supreme Court; and (3) classes each semester on work-life balance, the pressures and demands of practicing law, excessive workloads, the importance of maintaining physical and mental fitness, family crises, personal relationships, etc. W&L covers similar topics in its required professional responsibility courses and continues to partner with LHL to speak with students about challenges they may face in law school and later in practice.

We recommend that all Virginia law schools include well-being topics in their professional responsibility courses.

Commit resources for onsite professional counselors

Some Virginia law schools currently provide resources for student counseling, both on and off-site. For example, at ASL, Jim Leffler of LHL conducts private, confidential counseling sessions with students and employees, free of charge, at least once each semester. In addition, for the past ten years, ASL has included a line in the operating budget for counseling services for students in need. Regent University has four full-time counselors on staff in the Office of Counseling & Disability Services, as well as a doctoral psychology program that offers individual counseling and mental health testing for free or at a reduced rate for students. And UR, W&L and W&M offer professional counseling services on campus.

Regarding onsite counselors, there are good reasons to have the counseling resources located in a separate part of campus. Importantly, off-site but on campus counseling services permit students to seek this assistance on a more discreet basis. For example, for a small, stand-alone law school comprised of few buildings, having a counselor onsite could result in a lack of privacy for the student seeking services or could result in a student not seeking services for fear that others would find out.

As an alternative, we recommend that law schools commit resources to assist students in need to seek counseling. Such counseling services could be provided off-site and with a counselor selected by the student.

Facilitate a confidential recovery network

Some Virginia law schools currently have a confidential recovery network for students. For example, at Regent, recovery groups and resources are available to the entire University community through the Drug & Alcohol Abuse Prevention Program. The law school also hosts groups organized through LHL. UR has an active student-run LHL, and one of its student leaders gives a presentation to entering 1L students during orientation. CAPS also offers access to support as well as connections to the state-wide chapters of LHL. In addition, CAPS refers members of the University community for assessment and support to Family Counseling Center for Recovery (FCCR). At W&L, information about campus recovery and support groups is available through the Student Health & Counseling Center and the Office of Law Student Affairs.

We recommend that all Virginia law schools provide resources to facilitate a confidential recovery network of practicing lawyers in recovery

from substance use to connect with law students in recovery.

Provide education opportunities on well-being related topics, including well-being programming during the 1L year

Some Virginia law schools currently provide education opportunities for students on well-being topics during their 1L year. For example, at ASL, an attorney and licensed therapist with A.S.A.P. Consulting Group, a drug addiction and treatment center, speaks to the 1Ls each fall about stress and time management and how to balance home life and school in healthy ways.

At Regent, student well-being is discussed annually with 1L students during orientation sessions in the fall and spring semesters. A faculty member from the School of Psychology & Counseling speaks to students about the importance of well-being and offers resources to students who are experiencing difficulties. And in the required spring semester Foundations of Practice course for 1L students, students discuss recent studies on lawyer and law student well-being.

At W&L, the Dean of Students collaborates with student organizations to provide wellness programming such as meditation and mindful thinking seminars. Peer mentors plan non-alcohol centered social events each semester for their 1L small sections. The university Outing Club facilitates opportunities for students to engage the outdoors year-round, particularly during orientation and exam periods. In March, W&L provides a wellness fair as part of ABA Mental Health Day.

We recommend that all Virginia law schools provide well-being programming during the 1L year.

Create a well-being course and lecture series for students

Virginia law schools currently provide various opportunities for students to participate in well-being related programs and activities. For example, ASL's Happiness Project supports, enhances, and ensures a mentally and physically healthy community of students, staff, and faculty by offering classes on nutrition, mental health-related topics, stress management, yoga, Zumba, and other fitness practices. It also provides resources and information about area services for mental health counseling, physical fitness, massage, meditation, time management strategies, and day care. Regent and W&L offer a variety of well-being related lectures and services. And UR's Balancing Act program provides education, programming, and resources to students on physical, financial, mental, and professional well-being to students.

We recommend that all Virginia law schools incorporate opportunities for students to participate in various types of programs and activities focused on well-being. We also recommend that Virginia law schools collaborate on ways to improve upon and expand existing well-being programs and activities. Recognizing that law schools face pressure on curricular offerings to prepare students for the bar exam while also providing opportunities to allow students to develop critical professional competencies, we recommend that each Virginia law school determine how best to fit wellness instruction into their program. Offering a course or lecture series on the topic is one of many ways for law schools to ensure that its students are exposed to wellness issues. Providing well-being topics in required courses on professional responsibility could provide the foundation in the curriculum.

Discourage alcohol-centered social events

Some Virginia law schools currently discourage alcohol-centered social events. For example, at Regent, all events at or sponsored by the University are alcohol-free. The school also provides information regarding alcohol-free events on-campus in the University's Drug & Alcohol Abuse Prevention Program. At UR, student leaders in LHL have been active in providing alcohol-free programs. In addition, the SBA actively promotes programming where alcohol is not the focus. On every Friday and Saturday night during the academic year, W&L offers alcohol-free social events on campus such as karaoke, board games, billiards, and student performances.

We recommend that all Virginia law schools actively discourage alcohol-centered social events.

Conduct anonymous surveys relating to student well-being

Some Virginia law schools have conducted anonymous surveys on student well-being. For example, Regent's Substance Abuse Prevention Committee administers an anonymous substance abuse survey to students as part of the Drug & Alcohol Abuse Prevention Program. And at UR, CAPS conducted a Healthy Minds survey in 2016. This survey is repeated every few years to gather data and other information regarding mental health and substance abuse. UR's law school also conducts the bi-annual LSSSE Survey, designed to measure the effects of legal education on law students, as well as an annual 3L exit survey that discuss in detail students' experience, including areas of well-being. W&L also conducts the LSSSE survey every three years. The Office of Health Promotion at the University conducts surveys and assessments of the student body.

We recommend that all Virginia law schools conduct anonymous surveys designed to measure student well-being.

Report of the Private Sector Task Group

The Private Sector Task Group was composed of the following members:

- Richard Garriott, president-elect of the Virginia Bar Association
- David Harless, former president of the Virginia State Bar
- Leonard Heath, president of the Virginia State Bar
- Lee Livingston (Chair), immediate past president of the Virginia Trial Lawyers Association
- David Mercer, former president of the Virginia Bar Association
- Pia Trigiani, former president of the Virginia Bar Association

This Task Group proposes the adoption of the national task force report and several of its recommendations as pertinent to the private sector:

Strengthen the Relationship Between Lawyers Helping Lawyers and of the Virginia Supreme Court

The success of an endeavor to promote the sustained well-being of lawyers is dependent on the availability of a recognized and fully supported lawyers' assistance program. In Virginia, since 1985, LHL has served this function. LHL provides confidential, non- disciplinary assistance to members of the legal profession who experience professional impairment as a result of substance abuse or behavioral health issues. LHL assists in

verifying problems, planning and implementing interventions, providing treatment referrals, conducting assessments, offering peer support for clients and counseling for families, establishing and monitoring rehabilitation contracts, and providing education regarding these issues.

LHL is a 501(c)(3) charitable entity, wholly dependent upon private contributions and contract arrangements with the VSB and the VBBE for much of its annual funding. Perennially, LHL begins its fiscal year with a substantial shortfall in projected revenues that must then be solicited from private donors. The sources and amount of funding are uncertain and unreliable.

Presently, LHL is underfunded to address its current mission. If LHL were able to double its current budget, these additional resources would not enable LHL to address fully the current substantial need. This circumstance will be exacerbated if LHL is tasked to assume the wellness initiatives and education envisioned by this Committee's recommendations.

The Task Group believes that LHL is the natural and appropriate organization to implement and educate the profession regarding the Court's wellness proposals. To be effective, however, the funding sources to and fiscal integrity of LHL must be ensured. We believe that this outcome can be achieved with certainty and reliability only if LHL's functions as an independent entity are closely coordinated with a more comprehensive lawyer assistance program created and administered by the Supreme Court. Funding would be part of the Supreme Court's regular budgeting process, but could be funded independently by professional assessments determined by the Supreme Court.

The Task Group believes that ensuring the confidentiality of assistance endeavors, encouraging professional self-reporting and self-help measures, and clearly separating lawyer assistance program administration from the disciplinary process is critical to its success. For this reason, the Task Group believes that the VSB should not and cannot be tasked to undertake the staffing and administration of the lawyer assistance program.

As this program is brought online as a fully integrated part of the judicial system, we propose a review of the Rules of the Professional Conduct as appropriate, and the amending or supplementing of the Rules, to acknowledge and incorporate rehabilitative-focused practices and procedures in cases of mental health and/or substance abuse issues. Consideration should be given to the rehabilitative-focused practices and procedures of the VSB's disciplinary system.

As stated in the national task force report, judges often are among the first to notice possible attorney mental health and substance use struggles. However, there is uncertainty as to the permissible boundaries of judicial intervention. We propose a review of the Canons of Judicial Ethics concerning the role and responsibilities of judges, to include a review of the ability of judges to make referrals and/or mandate evaluations. Issues such as whether judges should sit on cases when they make a referral of a lawyer for assessment should be addressed.

Make well-being more prominent in the induction of new lawyers to the profession. Specifically, modify the mandatory professionalism course and explore new screening for applicants to include well-being in the character review.

Education, communication, awareness, and public protection are the cornerstones of prioritizing the well-being of new lawyers. Serving as a lawyer in the Commonwealth is a privilege; however, the stress associated with the occupation can lead to a measurable deterioration in wellness, in the absence of careful attention to wellness.

This concept should be featured prominently in the mandatory professionalism course and as a part of character review. By starting new lawyers out with wellness front and center, applicants for the bar and new lawyers may be better prepared to address well-being concerns as they take their first steps in the profession.

While character and fitness review of bar applicants has been modified in more recent years to address some of the more apparent conditions that affect lawyer well-being, we recommend that further review of that process be considered in consultation with VBBE and with participation from representatives of Virginia law schools. We also propose adding a lawyer well-being segment to the mandatory professionalism course in consultation with course coordinators and LHL.

Implement mandatory CLE for wellness[9]

Education is the most efficient and effective way of promoting lawyer well-being and promoting a positive change in the legal profession. Recommendation 20.3 of the national task force report recommends "expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow[ing] credit for other well-being-related topics that affect lawyers' professional capabilities." The recommendation further references the ABA proposed new Model CLE Rule that requires lawyers to earn at least one credit hour every three years in the wellness subject-matter area. In response to the National Task Force report, Virginia's MCLE Board has already redrafted its Opinion 19 to make it clear that wellness topics are approvable for CLE topics.

Therefore, one component of the task force recommendations on MCLE requirements is already being met in Virginia. The second component of the National Task Force MCLE recommendation is that a wellness credit be required. Our Task Group believes that requiring one credit hour of wellness each year is not appropriate. However, the Task Group does favor the approach recommended by the national task force, i.e., requiring one credit hour of wellness every three years. Currently, Virginia attorneys must comply with a one-year MCLE cycle.

The more recent trend in MCLE requirement is to provide for multi-year compliance periods. Currently, seven states provide for a two-year cycle, [10] while an additional seven states provide a three-year cycle. [11] Our Task Group recommends that Virginia convert to a three-year MCLE cycle for the reasons set forth below.

Multi-year MCLE reporting periods provide several advantages. First, a three-year reporting period provides attorneys flexibility in meeting their MCLE requirements. Throughout an attorney's professional career, which may span more than 50 years, there are particular years that are more time sensitive than others. On the professional side, an intensive case, transaction, or other aspect of the practice of law may require the majority of the attorney's time for that particular year. On the personal side, there are normal life events that always have to be accommodated, such as marriages, births, and illnesses. Second, a three-year cycle should reduce the yearly compliance and enforcement workload of the VSB staff and MCLE Board, since only one-third (1/3) of the attorneys will be going through the compliance process each year.

9 The full committee declined to adopt this recommendation, preferring a less far-reaching recommendation from the structural and funding task group. (See page 6.)

10 These states are as follows: Delaware, Iowa (for ethics only), New York, Vermont, Illinois, Utah, and West Virginia.

11 These states are as follows: Colorado, Indiana, Minnesota, North Dakota, Oregon, Washington, and Florida.

Third, a three-year cycle will reduce by one-third (1/3) the critical deadline dates that an attorney will have to meet during the attorney's professional life. Each year, the MCLE Board must examine requests for extensions and waivers filed by attorneys who are experiencing health or other personal crises, particularly those that occur in the months of August, September, and October, and many of which are simply singular events that are not subject to repetition. On a three-year reporting cycle, such events that occur in August, September, or October of a non- reporting compliance year would not require the attorney to request an extension from the MCLE Board. In fact, such events would be of no significance to the MCLE compliance process at all. A fourth benefit is that adopting a three-year cycle will provide flexibility for additional credits that might be mandated. For example, mandating a wellness credit every year may be viewed as simply too draconian or, in the alternative, simply not needed. However, requiring one hour of wellness every three years, as recommended by the ABA, is workable, especially if Virginia is on a three-year reporting cycle. Additionally, other similarly situated subject-matter topics could be added in the future, if deemed appropriate.

The Task Group is mindful that there are disadvantages to this proposal. First, any new proposal is initially viewed as disruptive. However, we believe that the advantages of a three- year reporting cycle outweigh the disadvantages. A second disadvantage is that currently the one-year reporting cycle actually serves to identify attorneys who may be experiencing problems in their practice. Generally, individuals who cannot maintain the MCLE requirements, or simply forget to do so, are experiencing other problems in their personal or professional lives. Literally, the one-year MCLE reporting cycle helps to identify these individuals annually. A third disadvantage is the initial added costs to the Virginia State Bar in converting its computer systems from a one year to a three-year cycle and to further train staff with regard to the particular changes necessary for a three-year reporting cycle. However, the annual cost savings associated with converting to a three-year cycle should over time offset these initial expenses. Finally, a fourth disadvantage is a potential loss of income to the Virginia State Bar. Every year, numerous attorneys fail to take timely their MCLE courses or fail to report timely their hours, which results in significant late fees that generate income for the VSB.

In recommending adoption of a three-year MCLE reporting cycle, with one hour of wellness required each cycle, our Task Group has weighed these advantages and disadvantages. More importantly, we believe that mandating a wellness requirement every three years is truly one of the only permanent ways to assure that wellness is addressed.

Form a blue ribbon panel of lawyers and health care professionals to establish aspirational recommendations for private practice lawyers to implement.

When compared to professionals who study, evaluate, or teach wellness full-time, lawyers are not as well-suited to evaluate the specific risks to an individual's well-being that may be associated with the practice of law nor are we best-qualified to establish effective wellness practices. Even as we may fashion ourselves as capable accountants or marketers, experience shows that lawyers often overestimate our ability to prescribe remedies for problems that fall outside the practice of law. In addition, we may be too close to, or too vested in, the practices entrenched in the profession in order to perform alone a critical wellness review and evaluation.

Recognizing that we may not be our own best teachers, we recommend seeking out experts who study, evaluate, and teach wellness. For example, in our Committee work, we obtained, in a preliminary fashion, ideas from a physician who manages wellness issues and treats doctors who get into trouble at the University of Virginia. Such experts have a wealth of information to inform lawyers about what works best, and what may not work, to promote wellness among professionals.

Experienced lawyers from varying size firms and practice areas, working hand in glove with experienced experts on a panel, would produce a list of guidelines, and optional specific recommendations that would be ready-made for lawyers to implement.

As the ABA panel concluded, the terms "wellness" or "well-being" should be acknowledged as multi-dimensional and include (1) social wellness, (2) emotional wellness, (3) spiritual wellness, (4) occupational wellness, (5) intellectual wellness and (6) physical wellness.

Most lawyers are a far stretch from a comprehensive understanding of wellness. We could use experts to guide us toward implementing meaningful changes in a manner that would be most well received, based on their own experience implementing change in groups of other professionals who likely are just as uninitiated about comprehensive wellness as most lawyers.

Prepare an Informational Pamphlet to be Distributed to Families, Staff, and Significant Others of Lawyers and Law Students

Family and friends are often the first to recognize problems in those suffering from a lack of well- being. Therefore, it would be helpful to provide educational materials to those who may be first to observe impaired attorneys, to inform them of specific risks of the profession and to show them the resources available to assist impaired attorneys.

Once the blue-ribbon panel described above has completed its study, the information gained should be incorporated into a pamphlet. The pamphlet should be short, pithy, and educational. It may even be humorous and entitled something similar to "How to Care for and Train Your Attorney." The pamphlet can identify different types of occupational risks associated with practicing law, as well as the signs and symptoms of resulting mental health issues. Most importantly, the pamphlet should identify how a loved one can intervene early in the process.

A similar pamphlet should be prepared for the loved ones of law students.

Attached as Appendix Exhibit 8 is a matrix of some occupational risks that apply to lawyers. It may serve to assist in preparing the pamphlet described.

Report of the Public Sector Task Group

The Public Sector/Legal Aid Task Group was composed of the following members:

- David Bobzien, retired Fairfax County Attorney and former president of the Virginia State Bar
- Doris Causey, immediate past president of the Virginia State Bar
- Michael Herring, Richmond City Commonwealth's Attorney
- Cynthia Hudson, Chief Deputy Attorney General
- Lori Lord (Chair), Chief Staff Attorney for the Supreme Court of Virginia
- Kathleen Uston, President of the National Organization of Bar Counsel

While the recommendations of the Report of the National Task Force on Lawyer Well-Being are not expressly directed to public sector lawyers, the Public Sector Task Group has gravitated toward the National Report's Recommendations for Regulators. Specifically, our efforts have been directed to Recommendations Number 20 (Taking Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority) and 20.1 (Adopting regulatory objectives that prioritize lawyer well-being). We also address Recommendation 36.2 (Recommendations for Bar Associations: Create Educational Materials to Support "Best Practices" for Legal Organizations).

The Public Sector Task Group offers proposed action items and updates on the progress of other groups in the Virginia legal community working toward implementing the National Report's recommendations. Updates from the VSB's Committee on Lawyer Discipline ("COLD") and VSB's Young Lawyers' Conference ("YLC") are provided here, as are comments about lawyer well-being from ALPS Executive Vice President, Chris Newbold.

In February and March 2018, the Public Sector Task Group engaged in fact-finding interviews concerning the vicarious trauma that attorneys and judges endure. From these discussions we learned about the repetitive trauma faced by attorneys who work in capital litigation and those who prosecute child pornography, violent sexual predator, and other serious crimes. We heard from juvenile court judges who discussed the isolation implicit in being a judge and the burden they carry in trying to "fix" the intractable family problems they confront in their courtrooms and address the serious criminal offenses committed by the juveniles who come before them. We also interviewed Fairfax circuit court judges who have endured months, sometimes years, of MS-13 gang trials and heard about physical threats against the judges and the horrific facts they are exposed to daily. From these interviews and many other sources, the Task Group has developed action items which are set out below.

In addition, one of our members has prepared a report on "best practices" for public sector legal organizations, which the National Report addresses under Recommendations for Bar Associations at number 36.2 (Create Educational Materials to Support Individual Well-Being and "Best Practices" for Legal Organizations). The "best practices" report is attached here as part of an appendix. The appendix also contains statistics regarding lawyer well-being, links to wellness training materials, and a list of presenters who can provide content for CLEs and other substance abuse and mental health programs.

I. UPDATES FROM INDUSTRY GROUPS

COLD has been studying the National Report's recommendations and is considering specific suggestions for rule changes made by the VSB Office of Bar Counsel.

On February 24, 2017, the VSB Council ("Council") unanimously approved a change to the disciplinary procedural rules developed and approved by COLD. Specifically, Council voted to approve a clarification that a disciplinary record does not include administrative suspensions, such as impairment suspensions. By order effective June 15, 2018, the Virginia Supreme Court adopted this proposed rule change. This change will help remove the stigma of a disciplinary record from impairment findings, which are often temporary in nature, and will, in turn, address the mental and/or physical health concerns presented, as opposed to attorney ethical misconduct.

At its meeting on March 7, 2018, COLD approved additional amendments to the procedural rules intended to address lawyer well-being. One proposal will allow the Office of Bar

Counsel ("OBC") to share confidential information with LHL Specifically, if a lawyer comes to the attention of OBC through the bar complaint process, and it is suspected that either alcohol or substance abuse or mental health concerns may be at the root of the alleged misconduct, this proposal will permit OBC to confidentially refer the lawyer to LHL.

Currently, all complaints are confidential at these early stages and not even the fact that a complaint has been filed may be disclosed to anyone, including LHL. This would have obvious benefits, in particular to more quickly refer lawyers to an entity that can provide it. This proposal is on point with the National Report, which recommends that when information indicating mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulation matters, confidentiality rules should allow sharing of such information with lawyer assistance programs.

COLD also is considering a proposal to help facilitate retirement with dignity through adoption of a new rule that would permit a complaint, where there is no serious misconduct, to be resolved at a low level provided the lawyer at the center of the complaint agrees to retire. Under current rules, moving from active to retired status is not permitted if a disciplinary complaint is pending.

On April 3, 2018, the VSB Standing Committee on Legal Ethics voted to send a proposed amendment to the Comments to Rule of Professional Conduct 1.1 (Competence) to Council for its consideration and approval highlighting that wellness is inseparable from professional competency. The proposal provides that a lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and make responsible choices in the practice of law.

ALPS

At the National Task Force level, Christopher Newbold, Executive Vice President of ALPS, is leading a group of four carriers (of about 30-40 carriers in the total market) which is discussing the issue of lawyer wellness and its relevance to their business models. Mr. Newbold reports that these carriers have discussed the possibility of offering premium discounts to firms that provide wellness opportunities and/or CLE-type instruction on the subject, but the concept faces many challenges. Specifically, the cultural shift in the profession which this Task Force seeks will be best advanced not solely by "doing the right thing" but will have to be accompanied by economic incentives to accelerate the shift. In short, it may have to be demonstrated that wellness has economic value.

Mr. Newbold noted that each carrier has independent authority to embrace the notion of offering premium incentives, subject to approval by the state regulators in those states in which they do business. As with private law firms, carriers in many respects are motivated by the bottom line. Mr. Newbold believes that the legal community will need to demonstrate that law firms committed to the well-being of their attorneys are generally better, healthier risks and thus should be entitled to premium credits because of that lower risk.

Providing economic incentives without first having this proof in hand would be challenging. Mr. Newbold noted that carriers are increasingly turning to data analytics to understand which factors ultimately contribute to higher frequency of claims and little data exists concerning wellness in contrast to behaviors associated with law practice management such as conflicts and calendaring systems and other aids that, if used, reduce a law firm's susceptibility to a claim.

Also, state regulators will have to be convinced that a statistical correlation exists before carriers will be permitted to offer premium discounts.

Mr. Newbold observed that some states will understand it intuitively while others will require the data before permitting the credit into a carrier's rate formula.

Finally, Mr. Newbold noted the possibility of coming at the issue from the other side – charging higher premiums for those who maintain unreasonable billable-hour requirements. ALPS does not currently gather billable-hour requirements on its LPL application, but he noted they could begin, then use that information to correlate against their claims experience.

Young Lawyers' Conference of the Virginia State Bar

The Public Sector Task Group supports partnering with the YLC. Following is a summary of work the YLC has been doing to increase awareness and create programming for lawyer well-being

The YLC reported to us that it started a Wellness Initiative in April 2017, preparations for which began in 2016. The goal was to find programs addressing lawyer well-being, a topic of particular interest to young lawyer groups around the country. Tragically, two groups, the Texas Young Lawyers Association and the Florida Bar Young Lawyers Division, suffered suicides on their boards of governors in the 2012-2013 timeframe. In response, those associations created committees with mental and physical health components. In 2014, the ABA Young Lawyers started "FIT to Practice," incorporating movement elements such as walks, scavenger hunts, and yoga, similar to what the Virginia YLC does at its annual conference.

The YLC's initial goal was to sponsor interactive programming for its members and provide written materials for members to access at any time.

In early May, YLC held its first wellness CLE webinar, now archived on the VSB webinar system, featuring Professor Heidi Brown, author of *The Introverted Lawyer*.[12] The committee also has put out its first Docket Call column, the "Wellness Corner," in the spring issue.[13] Finally, the YLC has been working to implement the National Report's recommendations through existing programs and is working with the Senior Lawyers Conference to implement a mentorship program. YLC's wellness team also is considering sponsoring a wellness month, obtaining discounted gym memberships, and furthering a partnership with LHL

II. PUBLIC SECTOR TASK GROUP ACTION ITEMS

The Public Sector Task Group agrees with the National Task Force that wellness should be considered part of professional competence and that this message should be echoed in continuing legal education. (See Recommendation Number 20 (Taking Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority)). We also agree that adopting regulatory objectives that prioritize the well-being of legal professionals, particularly measures that increase access to lawyer and judicial assistance programs, is necessary to ensuring client protection. (See Recommendation 20.1 (Adopting regulatory objectives that prioritize lawyer well-being)).

LHL is severely underfunded. Adequate and dependable funding must be a top priority

Well-being is necessary for professional competence. The ABA Hazelden study demonstrated that a substantial need for services

12 YLC member Helen Chong joined with a fitness expert and a mental health expert to write a piece on wellness for Virginia Lawyer in December 2017. *See* http://www.vsb.org/docs/valawyermagazine/v11217-ylc-stress.pdf.

13 *See* page 5 of http://www.vsb.org/docs/conferences/young-lawyers/dc_s2018.pdf.

exists everywhere, including Virginia. Attorney assistance programs remain under-utilized not because of a lack of need, but a lack of awareness and education and a fear or stigma about seeking help.

Information provided at the Lawyer Well-Being Committee's June 13, 2018 meeting shows that providing attorneys with resources for intervention and treatment can dramatically reduce malpractice and disciplinary claims.

The Executive Directors of the North Carolina and Pennsylvania judicial and lawyer assistance programs who presented at the June meeting illustrated the importance of adequately funding lawyer assistance programs and publicizing these services through wellness CLEs. Pennsylvania also noted a dramatic increase in judges seeking referral services once a judicial hotline was created.

North Carolina, which has a bar similar in size to Virginia's but enjoys a fully funded LHL, has a 2% utilization rate from active attorneys versus Virginia's 0.5% utilization rate. Based on North Carolina's experience, Virginia could see at least 600 to 700 active attorneys seeking assistance annually.

CLE requirements should be expanded to include wellness topics. Eventually, mandatory CLE credit requirements should be considered for mental health and substance abuse, i.e., "wellness," topics

CLE serves as a cost-effective means of informing attorneys of the importance of well-being and increasing awareness of where and how to obtain help. CLE can teach legal professionals the warning signs of impairment and how to approach an impaired attorney. Offering CLE credit for these programs will underscore the importance our Supreme Court places on attorney and judicial wellness.

The MCLE Board has recently amended Opinion 19 to make clear that wellness programming can be approved for CLE credit. However, materials should be submitted in advance for approval and the programs must be substantive – the presenter should be a clinician or other mental health practitioner or expert – in order to increase the likelihood the program will be approved for credit.

The ABA new Model Rule provisionally recommends that states grant CLE credit for lawyer well-being programming and that it include topics beyond mental health and substance abuse. Coping with vicarious and secondary trauma is an example of a substantive topic outside of mental health and substance use disorders that could be the subject of wellness training. The Public Sector Task Group, through interviews with attorneys and judges and through its own resources, has collected a list of experts whose presentations likely would receive CLE credit. This list includes links to programs and other wellness resources and is attached as Appendix Exhibit 9.

Some of the nation's most successful judicial and lawyer assistance programs ("JLAPs") have relied on mandatory CLE programming for increasing awareness of intervention and referral services. After North Carolina mandated wellness CLE credit, the number of attorneys seeking assistance from the JLAP more than doubled.

Mandatory CLE programs appear to provide cost-effective means of increasing awareness and marketing to members of the bar and judiciary without absorbing JLAP funds that could be spent on intervention, referral and treatment. Further, making wellness programming mandatory and subject to MCLE approval likely would create a market for Virginia CLE and other independent groups to produce high-quality wellness content at no cost to the Supreme Court or LHL.

Establishment of a confidential "hotline" for judges

One of the judges we interviewed identified establishing a confidential hotline as the single most important action this committee could take to improve judicial well-being. How to implement this item is unclear as judges are unlikely to reach out to LHL. Perhaps the Supreme Court could consider setting up a hotline operated by a third-party provider and placing the hotline number on its website. Details including privacy and liability considerations would have to be resolved.

Addition of a wellness component to the Harry L. Carrico Professionalism Course for new lawyers

Reaching young lawyers as they start their careers is critical. We need to educate young lawyers about mental health, substance abuse and the risks of impairment and direct them to resources that can provide assistance. While the current YLC President includes wellness in his speech welcoming newly admitted lawyers to the bar, a substantive and permanent program is needed. Any such programming should be developed in coordination with the Law School/ VSBBE Task Group proposals.

The Office of the Executive Secretary should expand its provision of resources for judges and lawyers to become informed about coping with repetitive vicarious trauma and include this topic in the training of new judges.

The Chief Justice has agreed to send an open letter to various groups to advocate for voluntary attendance at wellness programs. Constituencies could include the annual mandatory judicial conferences, annual institutes for Virginia Commonwealth's Attorneys, the Office of the Attorney General, the Virginia Bar Association and other organizations.

Implement Best Practices

Cynthia Hudson, Chief Deputy Attorney General of Virginia, oversees the largest group of public sector attorneys in the Commonwealth. The Chief Deputy has identified best practices in running a public sector legal office. (The report is attached as Appendix Exhibit 10.) Implementing these practices supports National Task Force Report Recommendation 36.2 (Recommendations for Bar Associations: Create Educational Materials to Support "Best Practices" for Legal Organizations).

Conclusion

The legal profession is at risk from a wellness crisis. And when we are at risk, so is the public we serve. Fortunately, meaningful steps are already being taken.

Chief Justice Donald Lemons has made wellness initiatives a priority for his second term, which will begin in January 2019. The full Supreme Court has signaled its unanimous support for his efforts.

Likewise, the current Virginia State Bar president, Leonard Heath, and the immediate past president, Doris Causey, have done much to advance this cause, as have Executive Director Karen Gould and VSB's dedicated staff. The Office of Bar Counsel and Committee on Lawyer Discipline are notable for their significant work to-date.

With this Report, representatives from many groups within our profession have demonstrated their support for a comprehensive response. Judges, legal educators, law profession regulators, legal aid providers, public law offices, large and small private law firms, and solo practitioners all must work together.

May these recommendations light the path forward for our profession.

"Light can lift depression, dispel despair
Bring Hope to the weary, lead us from fear
Light can raise up emotions, quiet the storm
Beckon us from rolling seas into the calm
We learn by light, we grow by light
We sit in the dark transfixed by its sight
And as the light flickers our hearts respond
We can see the connections, we can feel the bonds."

(Excerpt from "Light the Soul,"
by Retired Justice John Charles Thomas)

APPENDIX
EXHIBIT
1

VIRGINIA Lawyers Helping Lawyers

Virginia Lawyers Helping Lawyers

TIM CARROLL

VIRGINIA Lawyers Helping Lawyers

Organization and Purpose

Independent 501(c)3 non-profit

Confidential, non-disciplinary assistance

Lawyers, judges, law students and legal professionals

Professional impairment as a result of substance abuse or mental health problems

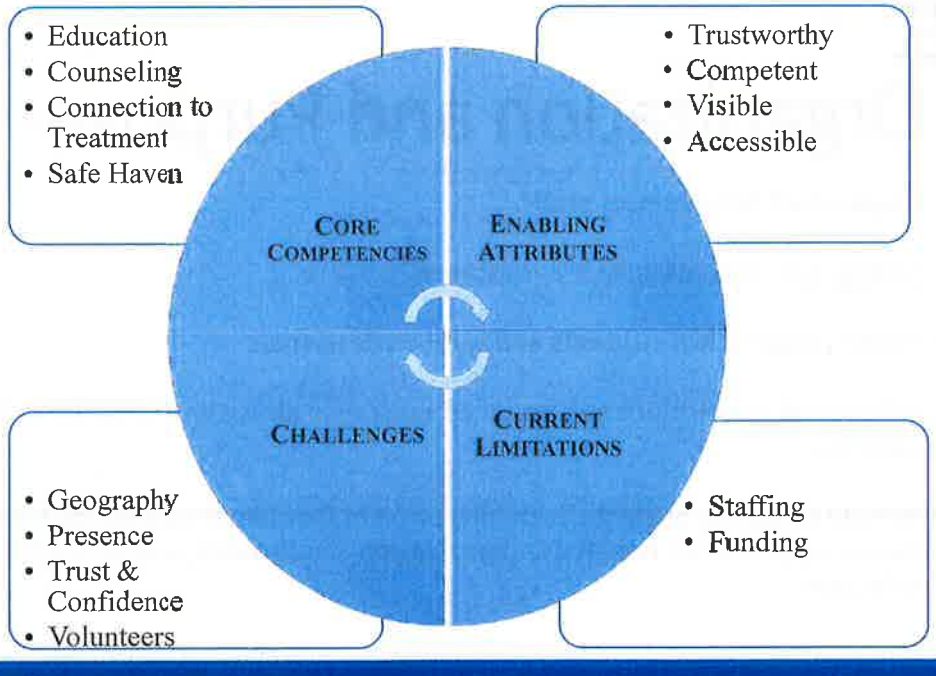
Promote recovery, protect the public, prevent disciplinary problems for the lawyer, support their families and professional associates, and strengthen the profession

VIRGINIA Lawyers Helping Lawyers

4 Key Processes

3

VIRGINIA Lawyers Helping Lawyers



4

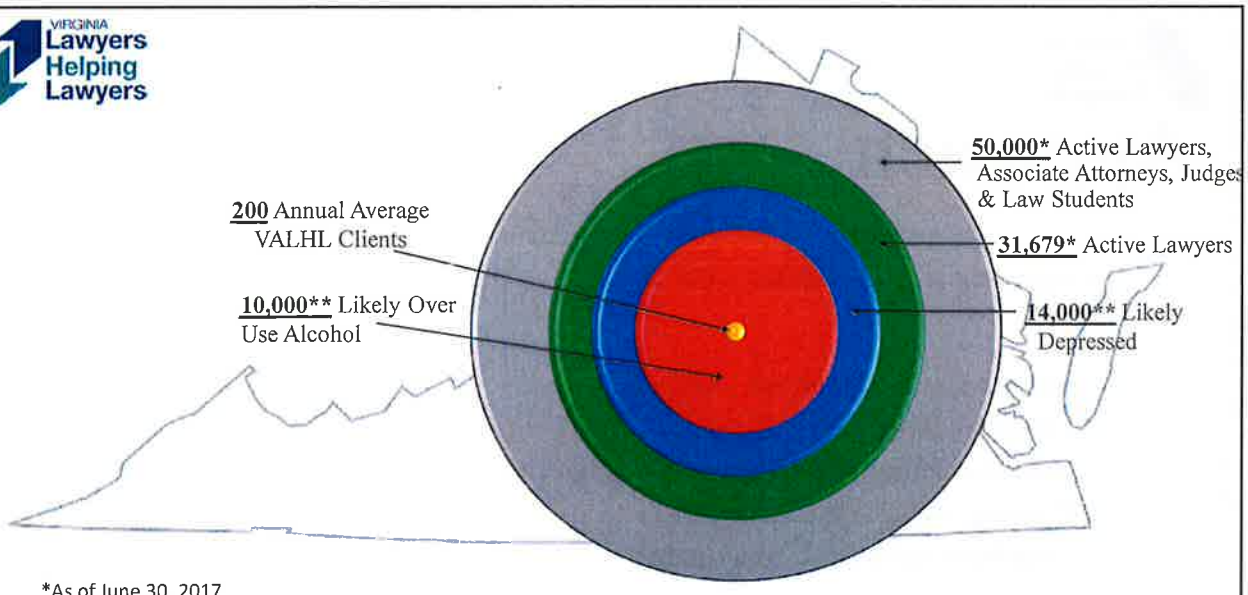
VIRGINIA Lawyers Helping Lawyers

Current Funding

FY 2018 Budget	$267,500
Virginia State Bar	$150,000
ALPS	$30,000
VTLA	$17,000
Board of Bar Examiners	$15,000
Fundraising	$55,500

5

VIRGINIA Lawyers Helping Lawyers



*As of June 30, 2017

**2014 Hazelden Betty Ford study predicts 30% of all lawyers are dealing with depression and over 20% are overusing alcohol

6

VIRGINIA Lawyers Helping Lawyers

Strategy

Reach more people!

Increase: **Visibility** & **Accessibility**

Mitigate: **Geography** & **Presence**

7

VIRGINIA Lawyers Helping Lawyers

Approach

Nationwide survey of other LAPS

Contracted with VCU EMBA program

- Validate survey
- Evaluate similar non-legal related programs
- Develop low cost tactical plan
- Develop long term strategic plan

8

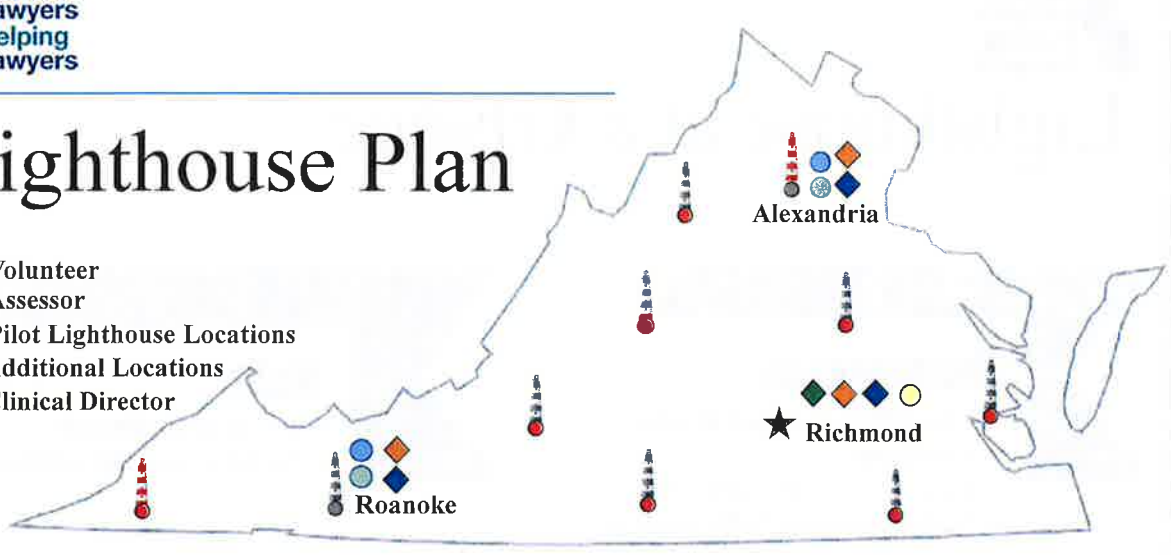
VIRGINIA Lawyers Helping Lawyers

Lighthouse Plan

VIRGINIA Lawyers Helping Lawyers

Lighthouse Plan

- Volunteer
- Assessor
- Pilot Lighthouse Locations
- Additional Locations
- Clinical Director



Outreach & Intake Assess Treatment Recommendations

10

VIRGINIA Lawyers Helping Lawyers

Lighthouse at a Glance

By The Numbers

- 1 additional Case Worker
- 4 months to complete pilot
- 10 Lighthouse locations
- 400 members assisted per year
- **$85K** estimated increase in existing budget

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VIRGINIA Lawyers Helping Lawyers

Lighthouse at a Glance

Dependencies

- Completion of current IT plan
- Volunteers
- Recruitment of the case worker
- Source additional **$85K** funding

Risks

- Volunteer Availability
- Sustainable Additional Funding

12

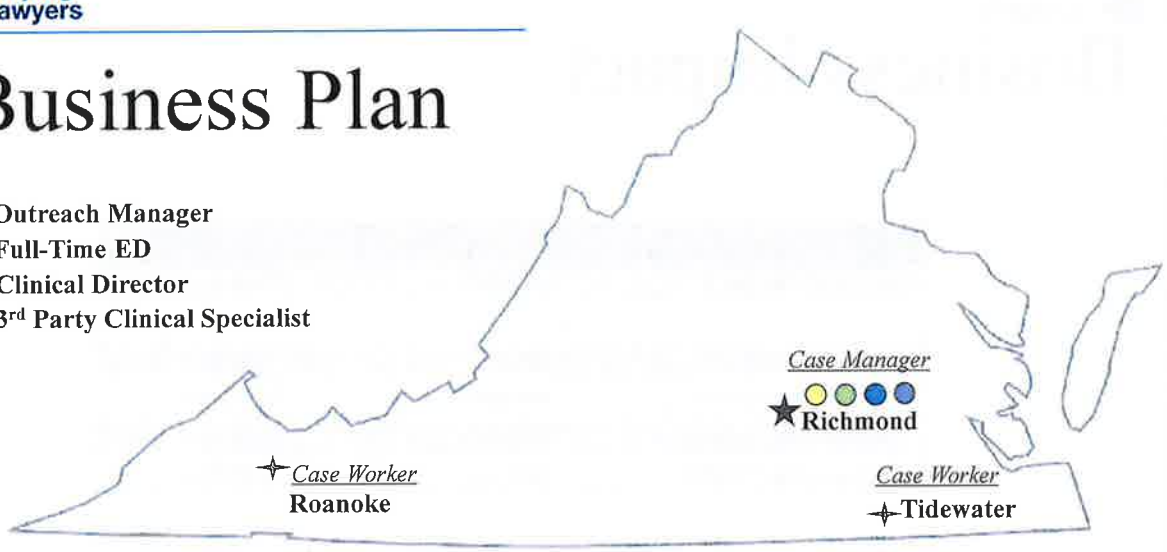
VIRGINIA Lawyers Helping Lawyers

New Business Plan

VIRGINIA Lawyers Helping Lawyers

Business Plan

- Outreach Manager
- Full-Time ED
- Clinical Director
- 3rd Party Clinical Specialist



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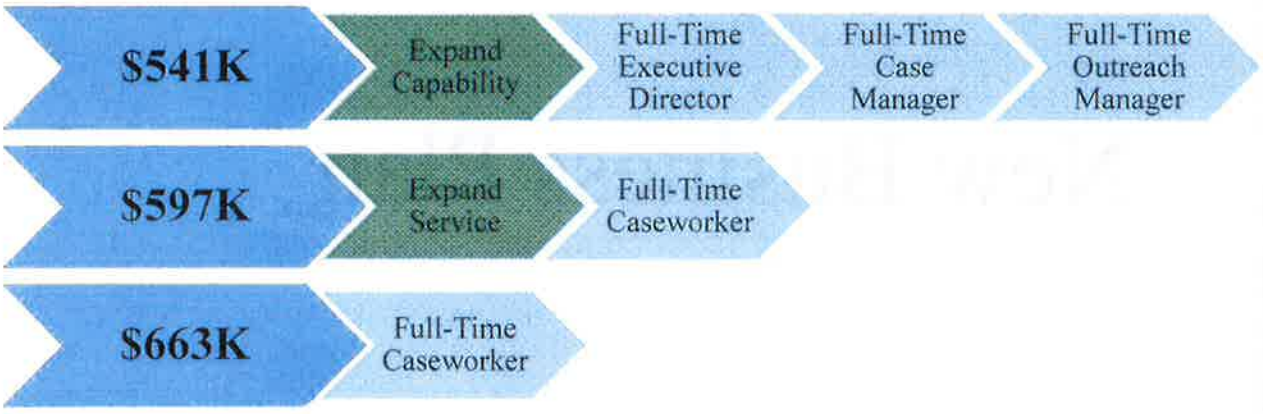
VIRGINIA Lawyers Helping Lawyers

Business Plan



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VIRGINIA Lawyers Helping Lawyers

Business Impact

Description	Annual Budget	Increase from FY18'
FY18' Budget	$265,000+	$0
Lighthouse Plan	$350,000	$85,000+
Business Plan (Phase 1)	$540,000+	$275,000+
Business Plan (Phase 2)	$597,000+	$332,000+
Business Plan (Phase 3)	$663,000	$398,000+

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VIRGINIA Lawyers Helping Lawyers

Summary

VIRGINIA Lawyers Helping Lawyers

Discussion

APPENDIX
EXHIBIT
2

THE SIX DIMENSIONS OF WELLNESS

Wellness is commonly viewed as having six dimensions. Each dimension contributes to our own sense of wellness or quality of life, and each affects and overlaps the others. At times one may be more prominent than others, but neglect of any one dimension for any length of time has adverse effects on overall health.

Social Wellness is the ability to relate to and connect with other people in our world.

1. I am able to resolve conflicts in all areas of my life
2. I am aware of the feelings of others and can respond appropriately
3. I have at least three people with whom I have a close trusting relationship
4. I am aware of and able to set and respect my own and others boundaries
5. I have a sense of belonging/not being isolated
6. I have satisfying social interaction with others

Physical Wellness: involves implementing regular physical activity, maintaining a healthy diet, and rejuvenating our bodies through rest and sleep - all things that protect us from chronic diseases and improve our quality of life.

7. I exercise at least 3 times per week.
8. I eat a balanced nutritional diet.
9. I am generally free from illness.
10. I am a reasonable weight for my height.
11. I do not use alcohol or use in moderation, am a non-smoker and avoid street drugs.
12. I take proactive steps to avoid and prevent injury, illness and disease (including sexually transmitted diseases).

Emotional Wellness is the ability to manage emotions, have a realistic and mostly positive view of ourselves, others, and the circumstances in our lives.

13. Others would describe me as emotionally stable.
14. I can express all ranges of feelings including hurt, sadness, fear, anger and joy and manage related behaviors in a healthy way.
15. I accept and appreciate my worth as a human being.
16. I manage stress and do some activity that elicits the "relaxation response" for at least 15 minutes each day.
17. I avoid blaming other people or situations for my feelings and behaviors.
18. I can realistically assess my limitations and cope effectively with stress and ego.

Occupational Wellness is the ability to get personal fulfillment from our jobs or our chosen career fields while still maintaining balance in our lives. Being financially secure also contributes to occupational wellness.

19. I have chosen a job role that I enjoy and that matches my values and lifestyle.
20. I have developed marketable job skills and keep them current.
21. I balance work with play and other aspects of my life.
22. I earn enough money to meet my needs and save to provide economic stability for myself and/or family.
23. I use money positively, e.g., little or no gambling or excessive massing of goods
24. My work benefits individuals and or society.

Intellectual Wellness involves a commitment to lifelong learning. We nurture our intellectual health when we engage in creative activities, learn new things, and expand our knowledge.

25. I have specific intellectual goals, e.g., learning a new skill, a specific major
26. I pursue mentally stimulating interests or hobbies.
27. I am generally satisfied with my education plan/vocation.
28. I appreciate and explore the creative arts of theatre, dance, music and expressive art.
29. I commit time and energy to professional and self-development.
30. I would describe myself as a life long learner.

Spiritual Wellness is the ability to establish peace and harmony in our lives. It involves learning to be more forgiving, grateful, and compassionate, to be kinder and less judgmental.

31. Principles/ethics/morals provide guides for my life
32. I trust others and am able to forgive others and myself and let go
33. I have a sense of meaning and purpose in my life
34. I have faith in a higher power
35. I practice meditation, pray or engage in some type of growth practice
36. I have a general sense of serenity

APPENDIX
EXHIBIT
3

VIRGINIA STATE BAR DISCIPLINARY CONFERENCE

THE INTERSECTION BETWEEN LAWYER WELLNESS AND THE DISCIPLINARY SYSTEM

VICARIOUS TRAUMATIZATION IN THE LEGAL PROFESSION AND THE ROLE AND FUNCTION OF THE VIRGINIA STATE BAR[1]

I. Introduction

An examination of whether or not attorneys experience vicarious trauma in the course of carrying out their professional duties is not a subject that has been extensively studied. Similarly, assuming such a phenomenon does exist, there is little information available to attorneys to address what is clearly something that many experience – the negative consequences of repeated, in depth, and/or long term exposure to traumatized clients. Think about it – as an attorney representing a domestic violence victim, or one accused of perpetrating that violence, it is necessary for you to delve deeply into the underlying event before you can competently and diligently represent your client. A GAL for an abused or neglected child, an attorney defending a parent in termination proceedings, a prosecutor dealing day in and day out with the victims of violent crimes. There is no question that this can and does take its toll on the professional whose job it is to be dispassionate and objective.

The question becomes – how can attorneys address these very real issues in their professional lives before they result in burn out, bar complaints, and malpractice suits? While this outline certainly does not contain the answers to these important questions, it will endeavor to present an exploration of the issues and provide information from other professionals who are attempting to help attorneys navigate these thorny paths.

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[1] These materials were originally prepared by Kathleen M. Uston, Assistant Bar Counsel with the Virginia State Bar, for a program sponsored by the City of Alexandria Juvenile and Domestic Relations Court.

II. Compassion Fatigue, Secondary Traumatic Stress ("STS"), and Vicarious Traumatization ("VT")

Although there is a shortage of thorough empirical studies focused on this topic, there is some literature discussing vicarious trauma in attorneys. One study broke this down into three categories – Compassion Fatigue, Secondary Traumatic Stress ("STS"), and Vicarious Traumatization ("VT").[2] STS can manifest with symptoms similar to those of Post-Traumatic Stress Disorder including re-experiencing the event witnessed (or relayed during a client interview), avoidance of recollections of those events, numbing in affect and function, and persistent arousal.[3] VT, on the other hand, develops as a result of the more intimate relationship with the traumatized individual over a longer period of time. Research into these phenomena has focused primarily on first responders, disaster workers, trauma therapists, and other mental health care providers, but not attorneys. Dr. Levin and Mr. Greisberg report, however, that some existing clinical literature has produced revealing and important facts.

First, there is evidence to suggest that attorneys who have worked with difficult and traumatized clients may exhibit responses including "counter-transference" and identification with victims. Second, this internalization can lead not only to symptoms of secondary trauma but also burnout which, in turn, can lead to substance and/or alcohol abuse. This path is one that almost inevitably leads to ethical lapses, bringing an otherwise competent and well intentioned attorney into the ambit of the Virginia State Bar.

These studies show that attorneys who work with traumatized clients experience significant symptoms of secondary trauma and burnout at a rate much higher than mental health

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[2] *Vicarious Trauma in Attorneys,* Andrew P. Levin, M.D. and Scott Greisberg, M.A., Pace Law Review, 24 Pace L. Rev. 245, www.giftfromwithin.org/html/vicarious-trauma-in-attorneys.

[3] Dr. Levin and Mr. Greisberg cite to Figley, CR: Compassion Fatigue as secondary traumatic stress disorder: an overview, in Compassion Fatigue. Edited by Figley CR. Levittown, PA: Brunner/Mazel, 1995, pp 1-20.

providers and social services workers also interacting with these client victims.[4] Why are attorneys disproportionately impacted? The studies point to the intensity and length of exposure as significant risk factors – while mental health providers or social workers may see victim clients with some frequency, the day to day contact an attorney must have with his client, as well as the necessity of digging deeply into the facts underlying the trauma, significantly increase the frequency and intensity of exposure to the trauma itself as well as to it's victim. Other significant contributors increasing an attorney's risk of secondary trauma and burnout include a prior mental health history, high case loads, a lack of systematic education regarding the effects of trauma on their clients and themselves, and the paucity of forums within which to regularly vent.[5]

"Burnout," a term coined by Herbert J. Freudenberger, is not merely stress, ennui, or disenchantment.[6] Instead, "burnout" is far more serious and can lead an attorney to literally stop in his or her tracks, thus implicating multiple ethical obligations that all attorneys owe to their clients – the duties of competence (Rule of Professional Conduct ["RPC"] 1.1), diligence (RPC 1.3), of keeping their client informed about what is transpiring in their case (RPC 1.4) among them. Freudenberger articulates burnout as progressing through twelve stages:

1. A compulsion to prove oneself;
2. Working harder;
3. Neglecting one's needs;
4. Displacement of conflicts;

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[4] *Vicarious Trauma in Attorneys,* Andrew P. Levin, M.D. and Scott Greisberg, M.A., Pace Law Review, 24 Pace L. Rev. 245, www.giftfromwithin.org/html/vicarious-trauma-in-attorneys.

[5] *Id.*

[6] American Bar Association Publications, Law Practice Magazine, Vol. 38, #3 (May-June, 2012).

5. Revision of values;
6. Denial of emerging problems;
7. Withdrawal from social contacts;
8. Obvious behavioral changes;
9. Depersonalization;
10. Inner emptiness;
11. Depression;
12. Burnout Syndrome

Hopefully, none of the attorneys reviewing these materials will identify with all twelve of these stages. However, we can all of us, no doubt, recognize ourselves in at least two or three. While the 12 stages articulated above do not necessarily amount to an inevitable path, recognizing the symptoms of burnout in oneself or one's colleagues at an early stage is critically important to avoiding a long, slow slide to an encounter with the Virginia State Bar that could result in a lengthy suspension or even disbarment. There are far too many cases where an attorney has run afoul of the Bar's rules requiring diligent and competent representation merely because that attorney was unable to recognize in herself that her avoidance of a particular case or client was the result of a treatable condition. In the most extreme situations, an attorney who falls victim to alcohol or drug addictions can succumb to misappropriating client funds – a one way ticket to disbarment.

III. Substance Abuse and the Practice of Law

For many years the American Bar Association and other entities have studied the correlation between alcohol and substance abuse and the practice of law. A 1990 study published in *The International Journal of Law and Psychiatry* offered some very revealing

statistics. The rate of problem drinking for attorneys was reported at 18% as compared to 10% in the general population. Evidence also suggests that early in our careers, those of us in the legal profession experience problems with substance abuse that worsen over time. According to one study, 8% of pre-law students, 15% of first-year law school students, and 24% of third-year law students reported concerns with alcohol use. Once they passed the bar, 18% of attorneys who had been licensed for 2-20 years reported concerns as compared to 25% of attorneys who had been practicing for more than 20 years. These numbers are staggering, and it should therefore come as no surprise that the ABA reports that 27% of disciplinary cases involve alcohol abuse, and that the longer attorneys with alcohol abuse issues remain in practice, the more likely they are to be the subject of malpractice suits.[7]

The question is why? Many theories have been posited – most attorneys are Type A to begin with and therefore take on too much work, work too hard, and do not given themselves a break; the culture surrounding law firm life is one that emphasizes social drinking with partners and clients on the golf course or other firm outings; attorneys take on heavy workloads and either cannot or do not take the time to establish a balance between their professional and personal lives; and finally there is intense stress that goes hand in hand with much of the work that we as attorneys do, some of which can literally have life or death consequence for the clients. Each of these explanations has merit.

At long last, Dr. Anker has also explored the correlation between prolonged relationships with clients who are trauma-exposed and attorney substance abuse. Dr. Anker reported that, in addition to having a higher prevalence of job related burnout, attorneys working in the public sector also experienced higher incidences of PTSD as compared to people in the general

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[7] *Attorneys and Substance Abuse,* Justin J. Anker, Ph.D., Butler Center for Research (September, 2012).

population.[8] This research also supports the very concerning proposition that criminal defense and family attorneys experience greater levels of trauma as compared to other high stress jobs in mental health and social services fields. Dr. Anker noted that the, ". . . need to understand intimate details of a client's trauma history" can, in turn, can lead to STS and/or VT. Interestingly, a survey of administrative staff, as compared to criminal defense attorneys on the front lines, did not indicate an increased incidence of STS or other symptoms in support staff thus supporting the theory that prolonged and in-depth exposure to clients and their trauma, an experience unique to the attorney handling the case, correlates to the onset of STS and VT.

Dr. Anker notes that despite the prevalence of STS amongst attorneys, it has been largely overlooked by the research community despite the seriousness of these issues from both the personal wellbeing standpoint of attorneys and the ethical implications for the Virginia State Bar. Specifically, STS and VT can lead to symptoms that mirror PTSD – increased stress, demoralization, anxiety, helplessness, exhaustion, social withdrawal, burnout, and functional impairment. As noted above, an attorney experiencing these types of symptoms may bring those with him to the workplace, pushing a problem case aside and neglecting what needs to be done, avoiding returning client phone calls, failing to do the research and preparation necessary to competently represent his client, and even failing to show up for court and dissembling with the client and others about what he has done or failed to do on a particular case. As bar prosecutors, we see these types of behaviors manifest in otherwise competent and well respected attorneys which, in turn, lead to bar complaints and prosecutions. It is indeed tragic, and often utterly avoidable, when the Bar must prosecute an attorney suffering from burnout, who has otherwise

[8] Citing to Kessler, R.C., McGonagle, K.A., Zhao, S., Nelson, C.B., Hughes, M., Eschelman, S., Wittchen, H., Kendeler, K.S. (1994).

been ethical and competent during the course of her career, and seek to have her license to practice either suspended or revoked.

IV. What is the Answer?

On August 5, 2017, a National Task Force, established through the joint efforts of the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, and the ABA Commission on Lawyer Assistance Programs, released its Report on Attorney Wellness. The Task Force, of which Chief Justice Donald Lemons is a member, did an excellent job in their Report of pointing up the challenges that face attorneys, and noted the disproportionate representation of attorneys in the population of people suffering from alcohol and drug dependence and mental health challenges. Most importantly, the Report offered concrete recommendations as to how to combat these problems in our profession. The issue is finally being looked at on a very serious level and the Report is being as widely distributed as possible.

It is expensive, challenging, and time consuming to obtain one's law degree. It also takes time, patience, and great effort to develop one's reputation in the legal community. All of this can be lost in the blink of an eye. More often than not, an attorney experiencing either STS or VT will not progress through Freudenberger's 12 stages of burnout or fall victim to debilitating substance abuse. However, it does happen. The good news is it can be avoided before an attorney harms either himself or his client. And we now have some concrete steps and recommendations to help attorneys as they navigate these difficult waters.

The fact that the issue of attorneys experiencing vicarious trauma is even being raised and researched has already had an impact. One study participant, a legal aid attorney representing victims of domestic violence, wrote, "It actually feels good to hear that I am not the only one

who feels depressed and helpless and that these issues are worth studying." This attorney went on to note, "Fortunately, the stress has decreased with experience and time for me, but I still have vivid memories of quite traumatic experiences representing victims of domestic violence who were so betrayed that it was difficult to continue to have faith in humankind."[9]

Attorneys working with traumatized clients frequently reported that they felt over-extended with their clients due to after-hours contacts and becoming mired in trying to assist their clients with ancillary issues like securing government benefits or safe housing. Overall, these attorneys attributed their secondary trauma responses to lack of preparation in understanding their clients, and the lack of a regular forum within which to vent their frustrations and feelings.[10] Obviously, high case loads, indifferent government administrators, and contentious relationships with law enforcement and court personnel can exacerbate secondary trauma.

What can an attorney do? Simply being aware of the potential problem is a huge first step. Attorneys on the front lines of dealing with traumatized clients must recognize that their client's trauma can become their own, and therefore they should be on the lookout for symptoms in themselves.

Developing "stress hardiness" is another proactive step attorneys can take to avoid STS, VT, and burnout which almost inevitably leads to an unpleasant encounter with the Virginia State Bar. The progression down Freudenberger's 12 stages is a grim path to take, but avoiding this progression can begin with a simple three-step process: recognition of the situation and the

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[9] *Vicarious Trauma in Attorneys,* Andrew P. Levin, M.D. and Scott Greisberg, M.A., Pace Law Review, 24 Pace L. Rev. 245, www.giftfromwithin.org/html/vicarious-trauma-in-attorneys.

[10] *Id.*

signs leading up to it; reversing the tide by reducing stress and seeking support; and fostering resilience through developing physical, emotional, and spiritual resources.[11]

Data and informal polling suggest that the development of programs for law students and attorneys regarding the effects of trauma on their clients and themselves can help fend off a significantly adverse and long term reaction. In addition, ground breaking brain research has been conducted which confirms the ability of all of us to essentially "reprogram" the way we think and react. Hallie Neuman Love, Esquire, a New Mexico attorney and certified mind-body therapist, has published extensively on this subject including an article titled "Work Smarter: The Power of Recharge."[12] In this article, Ms. Love discusses the brain science behind her theory that, by taking some very simple and concrete steps, attorneys – even those who deal extensively with trauma victims – can avoid STS, VT and burnout.

Pointing to the high demands on lawyers, the multitasking we are all required to do, the emotional impact of dealing with traumatized clients, and the sedentary nature of the practice of law, Ms. Love advocates simple behavioral interventions to counteract the problems that can result from these facts of our professional lives. These include engaging in "mini-recoveries" that switch off the stress responses that our bodies involuntarily produce, including the release of stress hormones that initiate the fight or flight response, throughout the day. This can be as simple as taking a 5 minute walk, or stopping your work for a few minutes to get up from your desk and take some deep breaths. As simple as this might sound, the impact can be profound.

In materials submitted to the National Organization of Bar Counsel by Joe Balkenbush, Oklahoma Bar Association Ethics Counsel, Mr. Balkenbush discusses "The Four Agreements"

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[11] American Bar Association Publications, Law Practice Magazine, Vol. 38, #3 (May-June, 2012). This article offers specific mechanisms by which to accomplish this including staying in contact with friends, scheduling vacations in advance, and maintain proper boundaries.

[12] Work Smarter: The Power of Recharge, Hallie Nemuan Love, New Mexico Lawyer, May, 2013.

articulated by Don Miguel Ruiz. Mr. Ruiz advocates reaching these "agreements" with yourself and never deviating from them, or doing so as infrequently as possible. These "agreements" are:

1. Be impeccable with your word. While we strive to be impeccable with our word to others, we must also work to be impeccable with our word to ourselves.

2. Don't take anything personally. This is a very important, and hard to learn, lesson, especially for us Type A attorneys.

3. Don't make assumptions. How often do we assume that we understand what someone said, only to find out that we have miscommunicated? When you're unsure, ask a clarifying question.

4. Always do your best. Keep in mind, our "best" may vary from day-to-day or minute to minute. But no matter what, if we always do our best, we will have no regrets.

V. Applicable Rules of Professional Conduct

It goes without saying that no attorney wants to receive a letter from the Virginia State Bar with a big, red "Personal and Confidential" stamp across it. The difficulties that attorneys who deal extensively with trauma victims face, however, are real and can lead to very real ethical concerns. As noted above, RPC 1.1 states as follows:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RPC 1.3 requires, and prohibits, the following:

> (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
>
> (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
>
> (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RPC 1.4 reads as follows:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
>
> (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RPC 1.16 places an affirmative obligation upon attorneys to withdraw when their own mental or physical state renders further representation impossible:

> (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
>
> > (1) the representation will result in violation of the Rules of Professional Conduct or other law;
> >
> > (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

All attorneys are well aware of our obligations under RPC 1.15 to safeguard client funds.

In cases where attorneys are suffering from substance abuse or other symptoms of secondary trauma or burnout, it is typically these Rules which are implicated. Generally speaking, the complaints of ethical misconduct filed against an attorney will come to the Virginia State Bar alleging that she won't return a client's phone calls, or has failed to respond to requests for a status update. When we investigate, we often discover that the problems run far deeper.

Avoiding this encounter with the Bar may be as simple as taking the steps outlined about to recognize that you are, or could be, suffering from secondary traumatization and then taking the steps to get some assistance. Sometimes, simply acknowledging the potential problem is more than half the battle.

VI. Conclusion

It is hoped that the information provided above offers some insight into an issue that has been too long ignored. From a purely practical standpoint, as a bar prosecutor, it is clear that these are very real issues that can have very serious consequences for attorneys. With education, attorneys can avoid these consequences, both in their personal and professional lives. It is not a sign of weakness but of strength to be able to recognize this in oneself and take the steps necessary to protect your investment in your law license, your reputation, and your career.

APPENDIX
EXHIBIT
4

SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: December 4, 2017

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

OTHERS IN ATTENDANCE: Chief Justice Donald Lemons; Jim Coyle and Jonathan White from The National Task Force on Lawyer Well-Being (by video conference); Jim Leffler and Tim Carroll from Lawyers Helping Lawyers; and Nicole Gore, Department of Behavioral Health and Developmental Services.

ACTIONS OF MEETING

Agenda Items 1 & 2:

Welcome and Opening Remarks -- Chief Justice Lemons
Overview of Meeting and Committee's Work – Justice Mims

Discussion:

After the conclusion of lunch, Chief Justice Lemons welcomed the committee members and discussed the importance of their work for the profession. The Chief Justice discussed whether well-being issues are related to the manner in which firms compensate attorneys and whether it was worth restructuring compensation and promotion practices to encourage attorney well-being. He also discussed the difficulty of determining when the bar should become involved in well-being issues: (1) during law school; (2) during character and fitness evaluations; or (3) when attorneys are admitted to practice.

Justice Mims provided an overview of the presentations and speakers and informed the committee he will email the PowerPoint slides used during the day's presentations as well as meeting notes and any revisions to their contact information.

Agenda Items 3:

"The Path to Lawyer Well-Being: Practical Recommendations for Positive Change" -- James Coyle and Jonathan White via video conference.

Discussion:

Mr. Coyle serves as Attorney Regulatory Counsel for the Colorado Supreme Court and is a co-chair of the National Task Force for Attorney Well-Being ("Task Force"). Mr. White serves as a staff attorney for the Task Force. Mr. Coyle reported that the Chief Justice worked with the Task Force on the report and served as a liaison for the National Conference of Chief Justices.

Mr. Coyle discussed the Hazelden study, which was the genesis for the Task Force's work. Hazelden was the first study since 1990 to address attorney well-being issue such as substance abuse, depression, and mental health issues in comparison to the general population. The study evaluated over 12,000 attorneys and found high incidences of depression (28.5%) and suicidal thoughts (11.5%), which far exceed the general population. The Task Force was most surprised and alarmed by a finding that one-third of attorneys under the age of 30 were at risk for problematic drinking habits (far higher than expected). Mr. Coyle also discussed the primary reasons attorneys do not seek help. In particular, many reported confidentality concerns.

Mr. White discussed the findings of a study on law school well-being, which was prompted by 10 student deaths during the 2014-15 school year. The study found that depression, anxiety, and alcohol abuse increased with each year of law school. Laws students also used more alcohol and participated in more binge drinking than other graduate students. One-fourth of law students were found to be at risk of developing alcoholism. The study found multiple barriers exist for students seeking help: (1) concerns about bar admission/character and fitness evaluation; (2) social stigma; (3) privacy; (4) negative employment prospects; and (5) perception the problem can be handled without help.

Mr. Coyle discussed the work behind the Task Force's report and how it aims to change the culture of the legal profession. The report took approximately 1 year to draft and contains 44 recommendations directed at all stakeholders in the legal profession including: (1) legal employers, (2) judges; (3) law schools; and (4) insurance liability carriers.

The Task Force considers attorney well-being to be multifaceted and multi-layered comprising of 6 elements including: occupational, spiritual, physical, and emotional well-being. It is a continuous process: strive to thrive.

There are three reasons to take action: (1) promoting well-being is good for business; (2) well-being is a competency issue; and (3) it is a humanitarian issue.

Messrs. Coyle and White discussed the following Task Force recommendations in detail.

1. All stakeholders must acknowledge there is a well-being problem.
2. Use Report as an action plan nationally and on the state level. National and state leaders must emphasize this is a priority.
3. Bar leaders must show a personal commitment to well-being.
4. Encourage "help seeking" by reducing stigma and eliminating perceptions of any barriers to getting help. Mr. Coyle suggested stigma can be reduced by relying on attorneys who have successfully recovered from impairments as role models and bar educators.
5. Foster collegiality because incivility creates burnout and depletes energy that should be devoted to clients. Teach attorneys how to politely disagree.
6. Implement proactive programs for assisting attorneys. Mr. Coyle discussed his experience in Colorado and challenged the committee to find funding for assistance programs. In 2011, Colorado had a budget of less than $200,000 for such programs. They then transformed the program into a Colorado Supreme Court agency and increased the budget to over $500,000

and hired 4 staff members by increasing bar dues by 40%. In response to a question about where to find funding, Mr. Coyle suggested raising funds by increasing bar registration fees.

7. Foster environments which give attorneys a sense of control. Control contributes to mental health.
8. Implement high quality educational programing on well-being issues and re-write CLE rules to allow for these courses. Effective training can occur by using lawyers who were disbarred and re-admitted.
9. Focus on senior attorneys not only as mentors but to ensure they are not suffering from a decline in physical and mental capacity that could impair their competency.
10. De-emphasize alcohol at social events, especially at law school events during law.
11. Start dialogue about suicide. Mr. Coyle mentioned that 4 members of his small law school class have committed suicide and he believes suicide is quite common in the legal profession.
12. Adopt regulatory objectives to increase competency through mentoring. Regulation should take a more holistic approach to assist attorneys at early stages of problems and develop pro-active programs to remediate problems.
13. Link competency to well-being in regulatory rules.
14. Adopt diversion programs to rehabilitate attorneys with impairments.
15. Develop a central grievance intake system to identify well-being issues through client complaints. Under a centralized process, regulators can see patterns developing early.
16. Educate judges about available resources for impaired attorneys because they are on the frontlines and will see the issues first.
17. Educate legal employers about resources and encourage development of workplace tools for well-being. Mr. Coyle referred the committee to the Tristan Jepson Memorial Foundation as a resource for finding tools on work place well-being.
18. Use law schools and bar associations to get the word out on well-being.
19. Engage liability carriers to track data on claims related to impairment.

*Mr. Coyle mentioned that many of these recommendations are similar to recommendations that were made to medical students and doctors 20 years ago. The legal profession is far behind the medical profession in addressing well-being.

Mr. Coyle also suggested the committee refer to work conducted by the Department of Defense on resilience and coping mechanisms to find ideas that are adaptable to the legal profession.

Agenda Items 4:

Virginia Lawyers Helping Lawyers – Timothy Carroll

Discussion:

Mr. Carroll provided an overview of the history and mission of Lawyers Helping Lawyers ("LHL"). LHL does not provide treatment, but evaluates treatment options and connects their clients with resources. LHL is limited by a small budget, small staff, and the geographic diversity of the state. The current budget of $286,000 funds only 1.5 positions. There are approximately 50,000 people who might qualify for LHL services, including judges, associate bar members, law

students, and active attorneys (32,000). By reference to the Hazelden study, LHL estimates 14,000 people it serves in Virginia are suffering from depression and 10,000 overuse alcohol.

LHL helps approximately 200 people each year. In the last year, LHL handled 161 new cases. Of this number, 80 were attorneys and 24 were law students. 80 of the cases concerned alcohol, 31 cases concerned depression, and 12 cases concerned drug use.

In terms of funding organizations like LHL, the average for Virginia's peer states is $556,000 with a staff of 4.4. LHL helps 0.48% of practicing attorneys whereas peer states help 1.24% of their practicing attorneys. Most states fund these programs through registration dues.

Mr. Carroll discussed the strategic business plan it developed with the VCU MBA program and the Lighthouse Plan he wants to institute. The goal is to have volunteers around the state to serve as contact points with attorneys in their communities. LHL needs approximately $85,000 in increased funding to finalize the Lighthouse Plan because it must hire an additional case worker. When the Lighthouse Plan becomes operational, LHL believes it will reach over 400 new people each year.

Mr. Carroll also discussed the three phases of the strategic business plan. At part of the plan, LHL wants to staff case manager positions in Roanoke, Tidewater, and NOVA and fund the executive director as a full time position. The first phase of the plan would require $275,000 in additional funding; the second phase $332,000, and the final phase would require a total increase of $398,000 from the current LHL budget. A committee member noted that it would take a $15 increase in VSB dues to fully fund phase 3 of the LHL strategic plan.

In response to a question from the committee, Jim Leffler discussed the effectiveness of law school LHL programs. Mr. Leffler said the effectiveness depends on faculty involved in the programs. LHL has not had the resources to work with law schools to develop "real programs," but they travel to each of the 8 law schools in the state to raise awareness about wellness issues and to provide information on LHL.

A committee member also noted the data showed that of the new LHL cases approximately one-fifth involve law students. Mr. Leffler attributed this high number to law schools proactively referring students to LHL who might have trouble getting admitted to the bar.

Agenda Items 5:

Suicide Prevention Efforts in Virginia – Nicole Gore

Discussion:

Ms. Gore provided an overview of suicide statistics in Virginia and discussed the various warning signs and risk factors to be aware of.

She informed the committee she can arrange training sessions on suicide prevention for bar organizations and law schools.

Agenda Item 6:

Closing remarks and task groups.

Discussion:

Justice Mims provided an overview of the four task groups and said he will email the VBA, VTLA an VSB, Young Lawyer's Conference about the committee's work. He also suggested the task groups reach out to various bar organizations and peer groups for input and assistance. He provided examples such as the Judicial Council, Association of Virginia Law School Deans, and Old Dominion Bar Association.

Justice Mims also shared a timeline. He anticipates at least two more meetings: (1) in April 2018 at a time and location to be determined and (2) a meeting in Virginia Beach to coincide with the VSB summer conference.

Following Justice Mims' remarks, the committee broke into individual task groups.

NEXT MEETING: April 2018 (date and location to be determined)

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

12/5/17

SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: April 12, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

OTHERS IN ATTENDANCE: Amy Shane and Darrell Moon of Orriant

ACTIONS OF MEETING

Agenda Item 1:

Live Video Presentation by Amy Shane: "Finding Balance: The Six Dimensions of Wellness."

Discussion:

Justice Mims introduced Ms. Shane and gave a brief overview of the topic she would be discussing with the committee.

During the 45-minute presentation, Ms. Shane discussed a PowerPoint presentation on the six dimensions of wellness. Copies of the presentation slides were distributed to attendees.

Ms. Shane also administered a wellness survey to the attendees.

Agenda Item 2:

Live Telephone Presentation by Darrell Moon, CEO of Orriant: "Strategies for Managing Mental Health Challenges."

Discussion:

Mr. Moon has become a national expert on behavioral health in the workplace. Mr. Moon worked on the "treatment" side of mental health before he began working on the preventative side.

He discussed ways to improve mental health in the work place:

1. **Increase awareness about the issue**. Although many employer insurance plans have Employee Assistance Programs to address mental health issues, the programs are under-utilized.
2. **Coordinate Care**: After someone seeks treatment, it is important a case manager be involved to coordinate treatment across disciplines and ensure all treatment needs are being addressed.

3. **Keep people in care**. An engaged case manager can improve treatment retention.

After Mr. Moon's presentation, he took several questions from the committee.

One member asked how he addressed resistance from organizations about well-being programs and the data he used to convince organizations to adopt well-being programs. In response, Mr. Moon discussed the concept of participatory underwriting. Under this concept, everyone in an organization "pays into the pot" and those who don't want to participate subsidize those who do participate. It increases the number of contributors. Participatory underwriting can increase health and productivity in populations.

Justice Mims commented that law firms currently recognize the connection between physical well-being and productivity. The next step is to convince them how other aspects of well-being will also increase productivity. He asked which organizations could promote the message that employees and employers benefit from balance.

Mr. Moon next discussed the concept of "if then" rewards as incentivizing employees to adopt healthy behaviors. While the concept gets people to do simple tasks, it is less effective at getting people to change complex behaviors. An organization can use an "if then" reward to get employees to the table and to "connect" to other individuals.

Mr. Moon mentioned that the Utah Bar Association was conducting work on wellness issues and he would provide Justice Mims with a contact he could use to obtain more information about their work.

At the conclusion of the presentation, members offered their insights on changing wellness in the profession, the obstacles to doing so, and the reasons attorneys struggle with wellness.

Justice Mims also discussed a VSB journal article on mentoring and read an excerpt of the article about a young attorney's positive interaction with a mentor.

Agenda Item 4:

Presentation on Vicarious Trauma by Katie Uston.

Discussion:

Ms. Uston provided an overview of her work on repetitive vicarious trauma, which is trauma attorneys and judges face through long-term exposure to violent crime, damaged families and children, and other traumatic situations they face in their work. Few other professions experience such long-lasting trauma. Ms. Uston noted that simply talking about the issue can help.

David Bobzien discussed interviews he and Lori Lord conducted with juvenile court judges and attorneys from the Attorney General's office in February. He noted judges act in a caretaker role and can be vulnerable to the trauma they are exposed to in the courtroom.

Mr. Bobzien also discussed interviews he and Ms. Uston conducted with Fairfax circuit court judges who have endured years of MS-13 trials.

The group discussed how habitual pro se litigants can place a strain on judges. There is a tendency to assign the same judge to a repeat litigant, but this can be harmful and can cause the pro se litigant to obsesses about one judge. Judge Tran said he and his colleagues now try to have repeat filers appear before all of the judges in the circuit.

Lori Lord also discussed her impressions from the vicarious trauma interviews she participated in. Attorneys prosecuting child sex crimes said being surrounded by understanding colleagues, working with other professionals, including law enforcement professionals, who understand the issues, and attending national conferences with attorneys who do the same work were helpful to them. She said the Public Sector task group would provide a list of clinical practitioners and other experts in its final report. These practitioners could be called upon to present on vicarious trauma and other substantive issues that would help a wellness program be approved for CLE credit.

Agenda Item 5:

Update on **Private Sector Task Group** by Lee Livingston and David Harless.

[Note: Mr. Livingston distributed this task group's full written proposal by email on April 9, 2018]

Discussion:

The task group sought feedback from private bar groups, but got limited responses. The task group made the following recommendations:

1. Formation of a blue ribbon commission to address wellness in the profession.
2. Change LHL's structure and convert it into an agency of the Supreme Court.
    a. Becoming an agency of the Court will enhance LHL's credibility and emphasize to the bar the importance of wellness.
    b. Wellness initiatives should come from the Court and be separated from the VSB to distance the initiatives from the disciplinary process. Associating LHL with VSB could discourage attorneys from seeking help. North Carolina's program could serve as a reference point for how to reorganize the program.
    c. However, if the program is placed with the VSB, it may be more effective in working with firms to adopt a wellness culture. VSB could use its relationship with insurers to negotiate rates that would incentivize participation by firms. Data suggest larger firms are dealing with wellness issues more effectively and that smaller firms (fewer than 40 attorneys) are struggling with the issue.
    d. LHL governance should be multidisciplinary—more than just judges and attorneys.
    e. To become more effective, LHL's budget would need to be doubled. The task group is not suggesting this be done with tax payer dollars. The profession should fund the program. Colorado's program can be a reference point for funding through bar dues.

3. Recommend changing what is asked of new bar applicants and that the mandatory professionalism course for new attorneys include a wellness component.
4. Change MCLE requirements to include wellness credit. To accomplish this change, the task group recommends CLE reporting be done on a 3-year cycle with 1 hour of wellness required every 3 years. This change may receive pushback from the VSB, which collects $500,000 in annual CLE late fees. The Court would also need to modify the MCLE rule to change the reporting cycle.

***New Task Group**: After the recommendations from the task group, Justice Mims formed a new task group to address creating a Supreme Court agency or department that would be in addition to LHL.

This task group includes: David Harless, Chair;
Judge Capsalis,
Richard Garriot;
Lori Lord;
Len Heath.

Justice Mims suggested this task group also work with Dennis Sisk and Tim Carroll.

The committee also discussed the 2009 judicial wellness program and materials about the program were distributed.

Agenda Item 6:

Update from **Judicial Task Group** by Judge Manuel Capsalis.

[Note: Judge Capsalis distributed this task group's full written proposal by email on April 10, 2018.]

Discussion:

This task group recommends adopting the national task force report's recommendations related to the judiciary (paragraphs 14-19 in the report).

Judge Capsalis also discussed how judges experience stress differently because they are isolated from other professionals. The task group also recommended the Judicial Inquiry and Review Commission's rules be reviewed with a focus on rehabilitation. Even if there is a basis for removal of a judge, the rules could be amended to allow for some discretion over whether the case is certified to the Court. Under the current system, there is an institutionalized disincentive for judges to seek help.

This task group proposed a wide-ranging judicial well-being survey be conducted with LHL and the Office of Executive Secretary.

Agenda Item 7:

Update from **Law Schools/VBBE Task Group** by Catherine Hill.

Discussion:

Ms. Hill discussed the ABA's recommendation on bar applicant questions regarding conduct and behavior. She emphasized there should be an effort to educate law students about the character and fitness process. She also discussed the adoption of essential eligibility requirements like other states have done, but noted Virginia has implicit essential eligibility requirements.

The task group supports the recommendations from the national task force specific to law schools. The task group also believes law schools should consider adopting policies to monitor attendance.

Agenda Item 8:

Closing Remarks by Justice Mims

Discussion:

Justice Mims provided an overview of the June meeting. He would like the four task groups to finalize their reports in time for the June meeting. Justice Mims suggested the private sector task group see if they could find a representative from the North Carolina attorney wellness program to speak at the June meeting. He also discussed the work that would need to be done after the June meeting to generate a final report and to obtain approval by the full Court for any final proposal on LHL and CLE rule changes.

The meeting adjourned at 5:30 p.m.

NEXT MEETING: June 13, 2018 at VSB conference in Virginia Beach.

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

04/24/18

SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: June 13, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Virginia, Beach, Virginia.

ACTIONS OF MEETING

Agenda Item 1:

Welcome Remarks -- Justice Mims

Justice Mims informed the committee he anticipated the four task groups would complete their reports within three to four weeks.

Agenda Item 2:

Live Presentation by Robynn Moraites, Executive Director, North Carolina Lawyer Assistance Program (LAP").

Discussion: 2:05 to 2:57 p.m.

Lori Lord introduced Ms. Moraites who discussed the history and changes LAP has undergone since its founding in 1970 as a volunteer program. LAP was initially modeled after Alcoholics Anonymous. It became an official state bar program in 1994 and hired a director. In 1994, the program had approximately 50 files. As bar membership increased, LAP increased the number of funded positions. Currently, the program has 3 clinical staff, 2 administrative state and an executive director. The clinical staff cover three separate parts of the state (Eastern, Piedmont, and Central). Clinical staff are licensed. LAP has 250 active volunteers.

In 2001, North Carolina instituted mandatory CLE for alcohol and drug abuse issues. This CLE rule change has led to a significant increase of cases referred to LAP. In 2000, LAP had approximately 100 active files. However, by 2002, over 500 files were active. Currently, LAP has 800 active files.

Typically, 100 to 125 files are opened each year. On average, 600 files are active at any given time. North Carolina has over 28,000 active bar members. Thus, LAP has a 2% utilization rate. Half of all cases are "self-referred"; 40% by friends or co-workers; and 10% from 3rd party entity (law firm, court).

LAP has a $750,000 budget: staffing and marketing are biggest expenditures. Because of the mandatory CLE every three years, LAP staff conduct over 100 presentations annually.

LAP also uses its budget to pay for volunteer conferences/retreats (hotel and meals). Additionally, LAP is involved in a minority outreach conference.

Mandatory CLE is LAP's biggest marketing tool. The more CLE programs LAP presents the more referrals it receives. On average, LAP receives one referral for each CLE presentation.

LAP historically focused on alcoholism, but CLE topics have been expanded to broader topics applicable to the rest of the bar: work life balance, compassion fatigue.

As the mission of the program expands from alcoholism to other wellness issue, Ms. Moraites noted there is resistance (an "uprising") from original volunteers. When programs expand to mental health and wellness, there is a risk to the program. Ms. Moraites cited Washington State as an example of a top-notch program which declined because an expansion was not managed properly.

With LAP programs, Ms. Moraites' experience has been, "If you build it they will come." In Louisiana, there were only 9 cases per year. The year after full funding more than 700 cases were opened. West Virginia also experienced a substantial increase after full funding.

In response to questions from the Committee, Ms. Moraites stated the NC program is funded through bar dues ($325 per member). She also noted some states like Louisiana obtain funds through a per lawyer assessment.

She also stated only a small percentage of the LAP cases are judges -- 1 to 3 % -- and she does not know the utilization rate for judges in the state. As to referrals from the state bar, 3 to 5% of cases are referred by the disciplinary board.

The North Carolina Supreme Court has no oversight or involvement in the LAP program. Oversight is by the State Bar only.

Agenda Items 3:

Live Skype Presentation by Laurie J. Besden, Executive Director, Pennsylvania Lawyers Concerned for Lawyers ("LCL").

Discussion: 3:00 to 3:45 p.m.

Ms. Besden shared her background and told the Committee how important LCL had been in helping her recover from an addition. LCL started in 1988 as a non-profit and now operates as an agency of the Supreme Court. LCL is funded from two separate agencies, which in turn are fully funded from bar fees ($225 per member). Pennsylvania has 49,000 active bar members. The current annual budget is $727,000, which equates to approximately 5% of bar fees.

They conduct no in-house assessment or treatment, but operate as a "nexus" for treatment resources. Staff devote a lot of time to marketing. LCL first got state funding in 1994. The program has contracts with health care providers in each county. They try to match insurance with providers. For those unable to pay, they have a fund that can cover costs of treatment. The program relies heavily on volunteers. Confidentiality agreements are required for all volunteers.

The program spends approximately $15,000 annually on literature. The program has 5 full and part time staff. No clinical staff.

LCL maintains a 24/7 phone helpline. In 2017, the helpline received 483 calls. In 2017, LCL conducted 228 CLE programs. Ms. Besden stated that almost every CLE presentation brings a new case to LCL. Judges Concerned for Judges ("JCJ") falls under the LCL umbrella. In reference to the JCJ, Ms. Besden also discussed the concept of, "If you build it they will come." In 2012, before implementing a helpline devoted to judges, LCL received 6 contacts from judges. However, since the JCJ helpline was started, contacts from judges have jumped to 78 per year, as of 2017. LHL participates in the orientations of all 9 of the state's law schools and has a presence in professional responsibility classes.

While taking questions from the Committee, Ms. Besden clarified that of the calls LCL receives 15% relate to questions and guidance for the caller to approach an impaired attorney. Of the calls from judges, 1/3 related to assistance for the judges personally. The remaining calls were in regard to attorneys the judges were concerned needed assistance.

Agenda Items 5:

Update from David Harless.

Mr. Harless provided an update on proposed plans for implementing a special committee's recommendations regarding providing increased funding to Virginia's LHL. Mr. Harless proposed the Supreme Court's Office of the Executive Secretary have staff members devoted to wellness issues who work with an advisory committee appointed by the Court.

Mr. Harless also discussed funding sources. The first step is to educate the General Assembly on the need to raise bar dues above the current cap. During this process, LHL will continue to be a stand-alone, independent organization. LHL staffing cannot increase until funding increases are approved. A portion of the new funding would go to one full time position and a part time position in the education division of the Office of the Executive Secretary. LHL would also enter a memo of understanding with the Court on provision of services.

A new rule of court regarding CLE wellness credits might be needed. Wellness CLE credits would not have a cap but would not be eligible for ethics credit. The Court would develop on-line CLE content available at no charge for bar members. The initial recommendation is that wellness CLE not be mandatory.

Agenda Items 6:

Closing remarks

A law student wellness summit is being planned at the University of Virginia on February 5-6, 2019, which will be hosted by Virginia CLE.

Justice Mims asked that each task group complete their reports by July 17 and circulate final drafts. In late August, the Court will hold a retreat and Lori Lord and David Harless will present the committee's recommendations to the Justices. The next committee meeting will take place on September 6, when a vote on all the recommendations will be held.

The meeting adjourned at 4:00 p.m.

NEXT MEETING: September 6, 2018 in Richmond.

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

06/15/18

SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: September 6, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Richmond, Virginia.

ACTIONS OF MEETING

Agenda Item 1:

Live Presentation by Peggy Wood, Program Manager for Virginia Health Practitioners' Monitoring Program ("HPMP" or "program"), and Janet Knisley, Ph.D, Administrative Director of the program.

Discussion: 1:00 to 1:45 p.m.

Ms. Wood and Dr. Knisely gave a PowerPoint presentation on the structure and funding of the HPMP. They also discussed the intake and monitoring process for program participants.

HPMP has a staff of 14 full-time employees, including 7 case managers, plus 2 part-time employees. Each case manager handles approximately 75 cases. The program serves all licensed health practitioners or those with pending applications for a license or those seeking reinstatement of a license. Most participants in the program are non-voluntary. Approximately 40% of participants are ordered into the program; 15-20% are under investigation at the time they enter; 7 % are self-referrals; and the remainder are referred by employers.

The program serves a population of approximately 400,000 health professionals in Virginia. There are approximately 38,000 physicians, 14,000 pharmacists, and 7,000 dentists covered by the program. Of this population, approximately 10-12% are estimated to be at risk. However, approximately 1% are treated through the program.

HPMP is seeking additional money for treatment because participants are responsible for payment for their own treatment. The largest obstacle to successful outcomes is the unavailability of treatment center. The program sees higher success rates for those who voluntarily enter the program because they tend to begin treatment at the early stage of an illness/impairment.

Ms. Wood noted that the electronic monitoring platform they use is quite helpful and the software could be easily adapted by other groups.

Agenda Item 2:

Committee Discussion and Vote on Draft Report

Discussion: 1:45 to 2:50 p.m.

Justice Mims requested members provide him with any suggested changes immediately because he plans for the report to be finalized by September 7. After finalization and approval by the committee, it will be sent to Chief Justice Lemons for review on September 10. Chief Justice Lemons will meet with Governor Northam on September 12 to discuss a budget amendment funding the report's recommendations. In the coming weeks, the final report will also be discussed at the Lawyers Helping Lawyers ("LHL") board meeting and at the Virginia Bar Council meeting.

In reference to the draft report, the members discussed whether there were any inconsistencies between the task group reports and the full committee's recommendations that should be revised. In particular, the group discussed the issue of mandatory CLE for wellness which the private task force group recommended but the full report omits. Justice Mims indicated he does not view this as a conflict. He also stated he does not want to downplay or change task group recommendations because they are particularized to each of the working group's constituencies. It was suggested a footnote be added to explain the full committee reached a consensus on handling wellness CLE through a mandatory reporting rather than mandatory attendance. Justice Mims will circulate additional language on the CLE issue for the final report.

The committee then discussed the recommended funding mechanism. The funding will occur through a $30 per attorney assessment rather than through bar dues. This charge will operate like the collection of fees for the client protection fund. The money will be collected with annual bar dues and will be transferred to OES rather than to the VSB. OES will enter a memorandum of understanding with LHL for provision of services.

Judge Simmons asked whether the committee had anticipated that some attorneys will question why judges have not been asked to help fund the new program as judges are not required to pay bar dues. A subcommittee did discuss funding by judges but elected not to pursue assessments from the judiciary. Judges are free to donate to LHL, which will remain a stand-alone 501(c)(3) organization.

Mr. Harless made two points about the recommendations: First, this is not a proposal of the legal profession but one from the Supreme Court intended to enhance the protection of the public from impaired attorneys. Second, the recommendations maintain a complete separation between treatment and the regulatory and disciplinary process.

LHL has agreed to amend its governing documents to allow the Supreme Court to appoint up to one-third of the members of LHL's board.

Justice Mims noted that the program manager at the Supreme Court will be key to implementing the committee's recommendations. OES will create a position to manage the program and this person

will report to Caroline Kirkpatrick, the director of OES' Educational Services Division. This person will also take a leading role in providing CLE materials on wellness. If the General Assembly approves the bar assessment, the position should be funded on July 1, 2019.

The budget for LHL will be handled on an annual basis.

At the conclusion of the discussion, a motion was made to adopt the report's recommendations, including proposed changes to the report discussed during the meeting. The motion passed unanimously.

Agenda Items 3:

Implementation of the Report and Closing Remarks

Discussion: 2:50 to 3:00 p.m.

Justice Mims distributed a sheet listing volunteer opportunities for implementing the committee's recommendations. Any recommendations or changes to the volunteer list should be provided to Justice Mims by email.

The meeting adjourned at 3:00 p.m.

Minutes Prepared by William Childress, Office of Chief Staff Attorney.

09/6/18

SUPREME COURT OF VIRGINIA COMMITTEE ON LAWYER WELL-BEING

MEETING DATE: September 6, 2018

COMMITTEE CHAIR: Justice William C. Mims

COMMITTEE MEMBERS ATTENDING: See Attached list

LOCATION: Richmond, Virginia.

ACTIONS OF MEETING

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Minutes Prepared by William Childress, Office of Chief Staff Attorney.

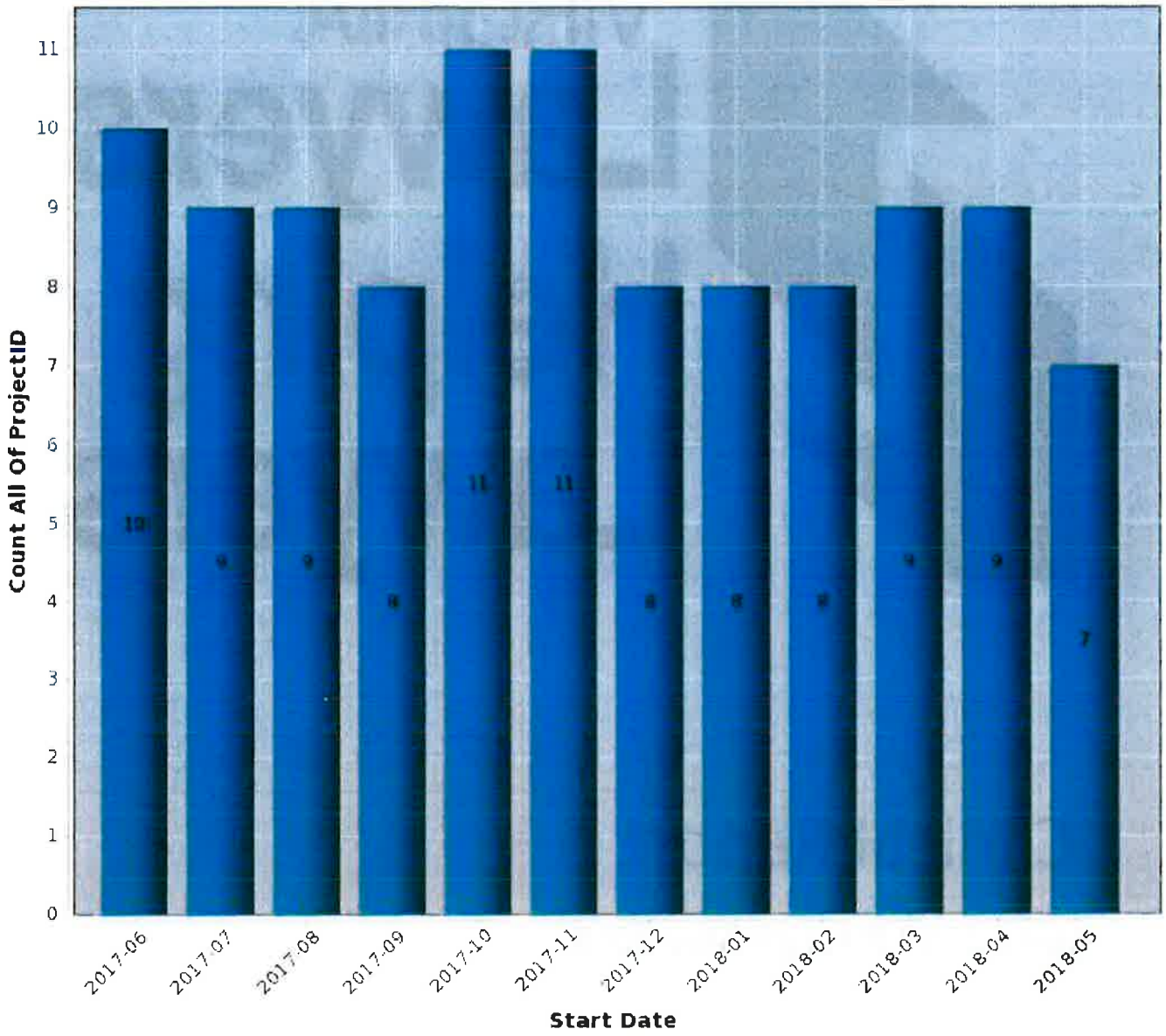
09/6/18

APPENDIX
EXHIBIT
5

Clinical Report

June 2017 through May 2018

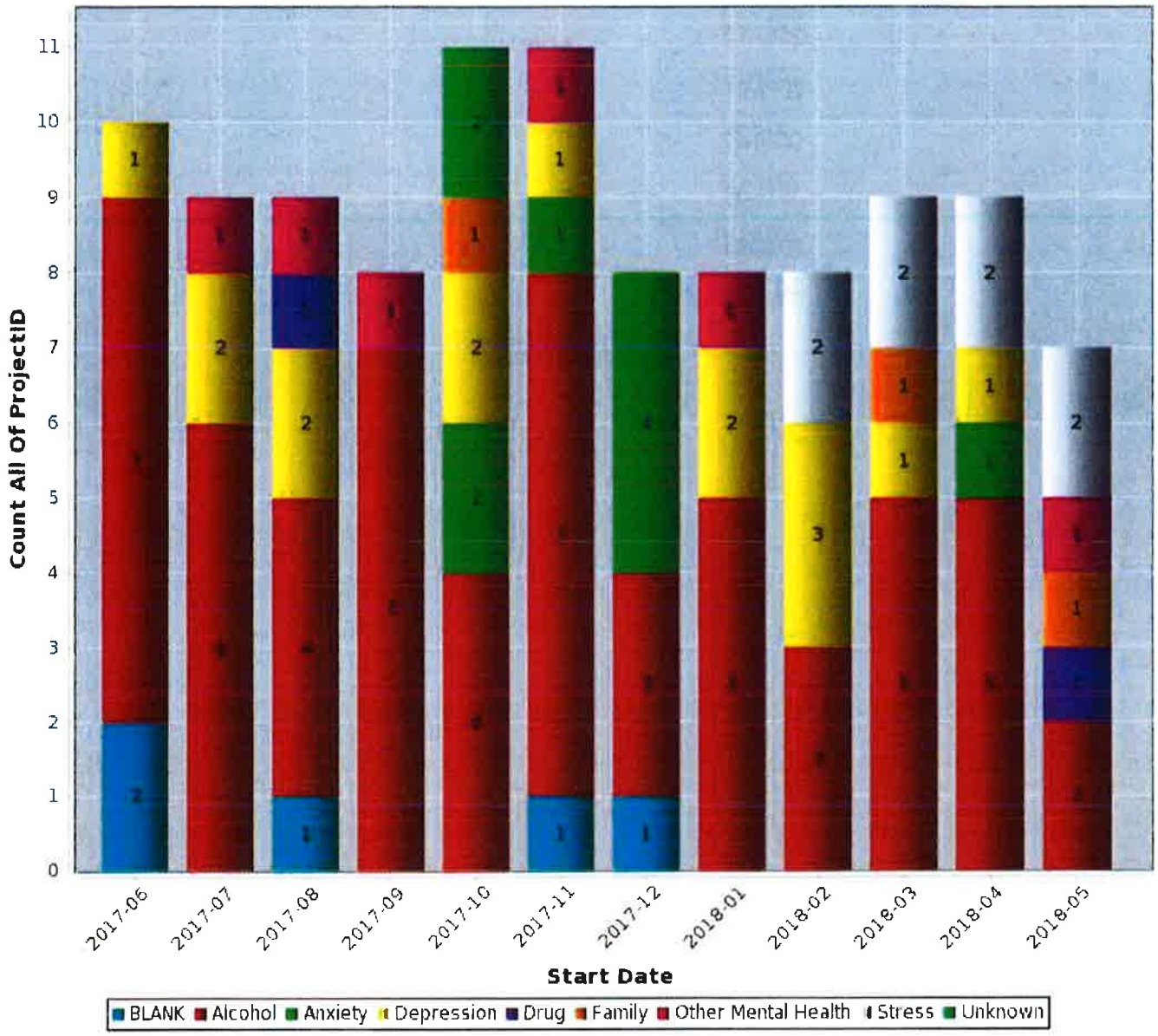
New Cases Last 12 Months



Start Date	ProjectID Total
2017-06	**10**
2017-07	**9**
2017-08	**9**
2017-09	**8**
2017-10	**11**
Report Totals:	**107**

Start Date	ProjectID Total
2017-11	11
2017-12	8
2018-01	8
2018-02	8
2018-03	9
2018-04	9
2018-05	7
Report Totals:	**107**

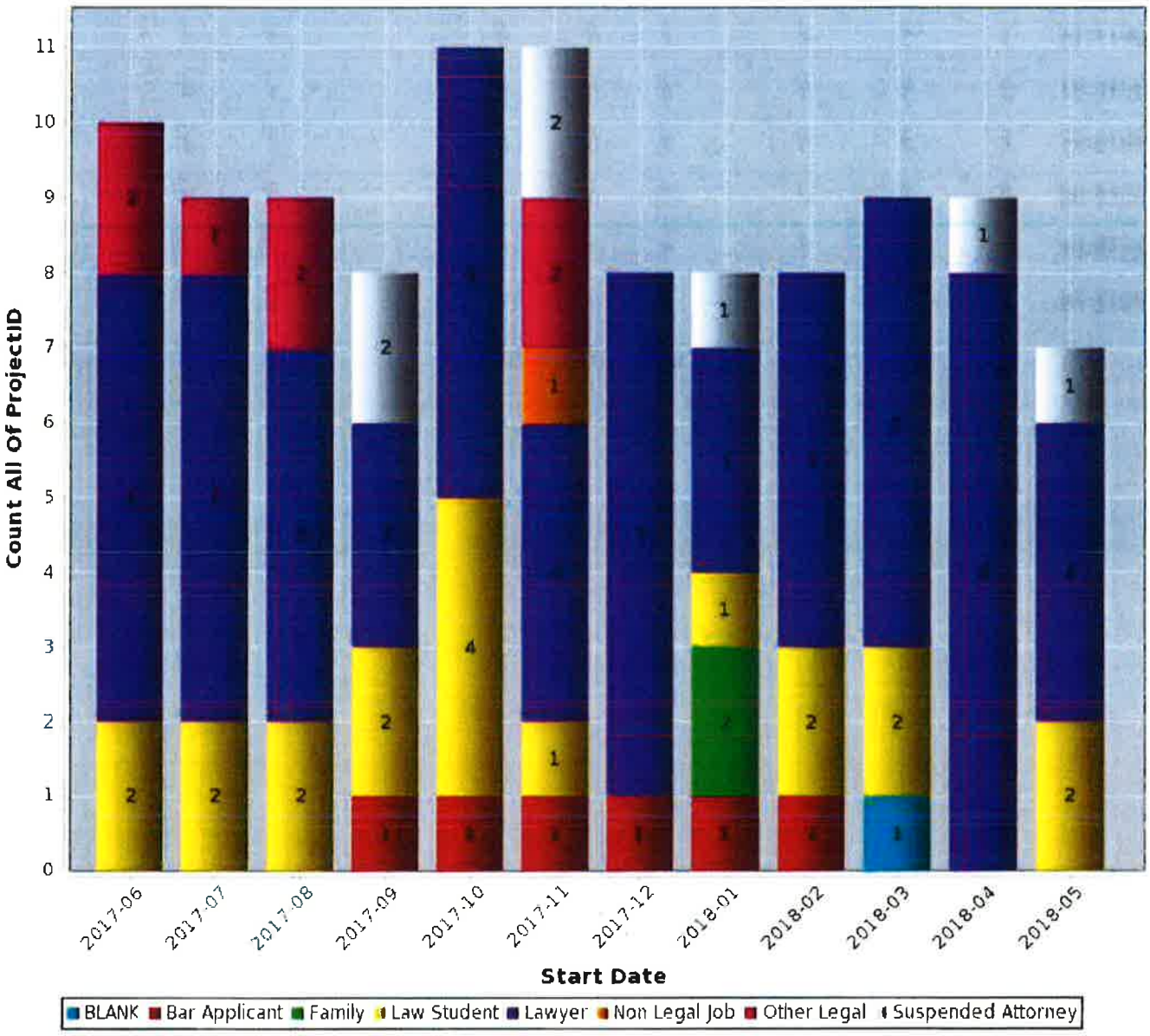
Cases By Date, by Problem Last 12 Months



Start Date		Alcohol	Anxiety	Depression	Drug	Family	Other Mental Health	Stress	Unknown	Total
2017-06	**2**	**7**	0	**1**	0	0	0	0	0	**10**
2017-07	0	**6**	0	**2**	0	0	**1**	0	0	**9**
2017-08	**1**	**4**	0	**2**	**1**	0	**1**	0	0	**9**
2017-09	0	**7**	0	0	0	0	**1**	0	0	**8**
2017-10	0	**4**	**2**	**2**	0	**1**	0	0	**2**	**11**
	5	**58**	**8**	**15**	**2**	**3**	**6**	**8**	**2**	**107**

Start Date		Alcohol	Anxiety	Depression	Drug	Family	Other Mental Health	Stress	Unknown	Total
2017-11	1	7	1	1	0	0	1	0	0	11
2017-12	1	3	4	0	0	0	0	0	0	8
2018-01	0	5	0	2	0	0	1	0	0	8
2018-02	0	3	0	3	0	0	0	2	0	8
2018-03	0	5	0	1	0	1	0	2	0	9
2018-04	0	5	1	1	0	0	0	2	0	9
2018-05	0	2	0	0	1	1	1	2	0	7
	5	58	8	15	2	3	6	8	2	107

Client Role Last 12 Months



Start Date		Bar Applicant	Family	Law Student	Lawyer	Non Legal Job	Other Legal	Suspended Attorney	Total
2017-06	0	0	0	**2**	**6**	0	**2**	0	**10**
2017-07	0	0	0	**2**	**6**	0	**1**	0	**9**
2017-08	0	0	0	**2**	**5**	0	**2**	0	**9**
2017-09	0	**1**	0	**2**	**3**	0	0	**2**	**8**
	1	**6**	**2**	**20**	**63**	**1**	**7**	**7**	**107**

APPENDIX
EXHIBIT
6

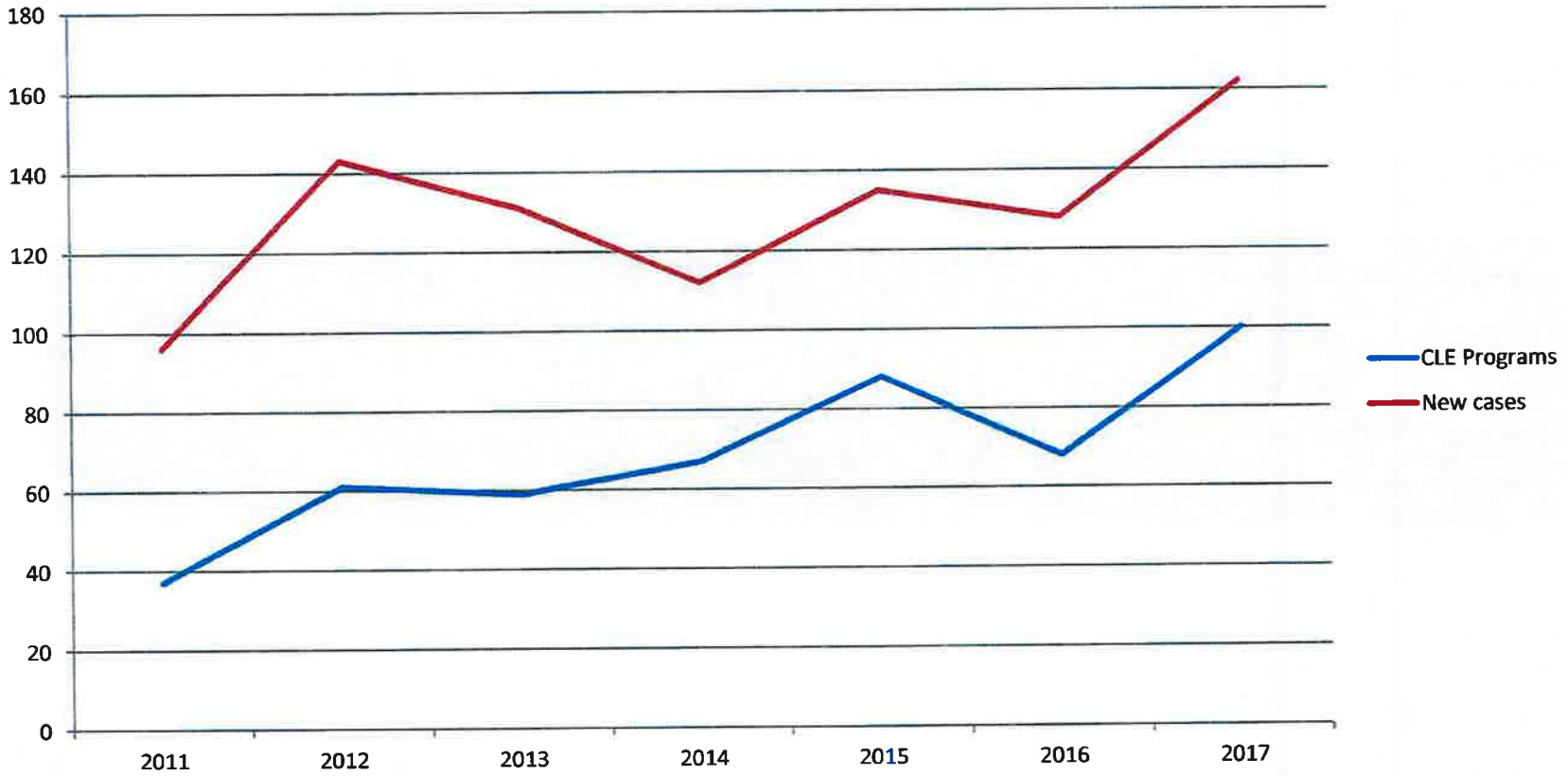
Correlative Statistics for VA

Summary of Statistics Reported to the VA
ABA Wellness Report Implementation Commission

Robynn Moraites, Director
NC Lawyer Assistance Program

NCLAP

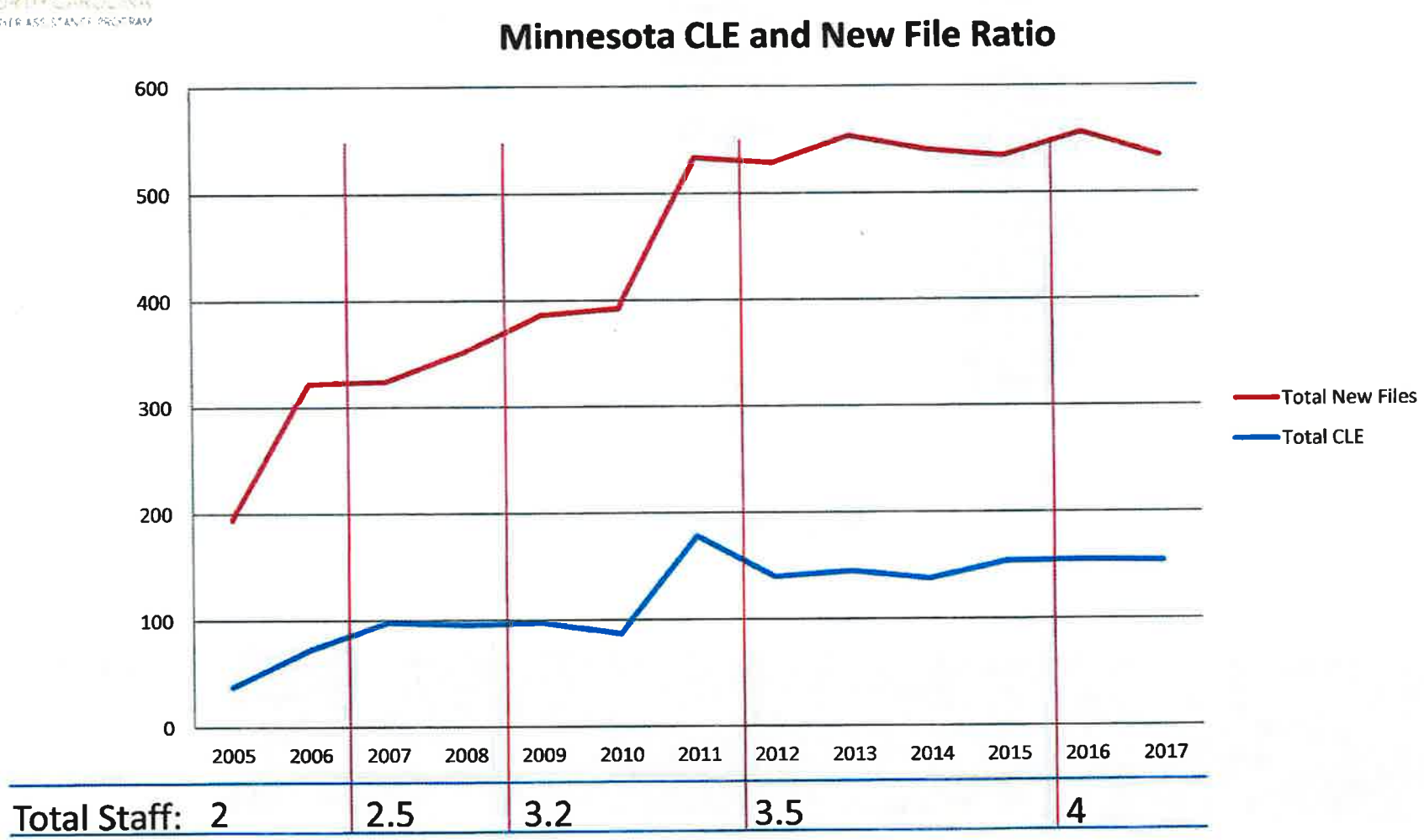
NC # of CLE & # of New Cases



Marketing/Outreach most crucial. The more lawyers hear about LAP, see us at events and CLE, get to know and trust us, the more willing they are to reach out for assistance or refer a friend in need. Smaller programs have no time or bandwidth to do outreach – too busy with direct services clinical work. If lawyers don't about LAP, they can't refer.

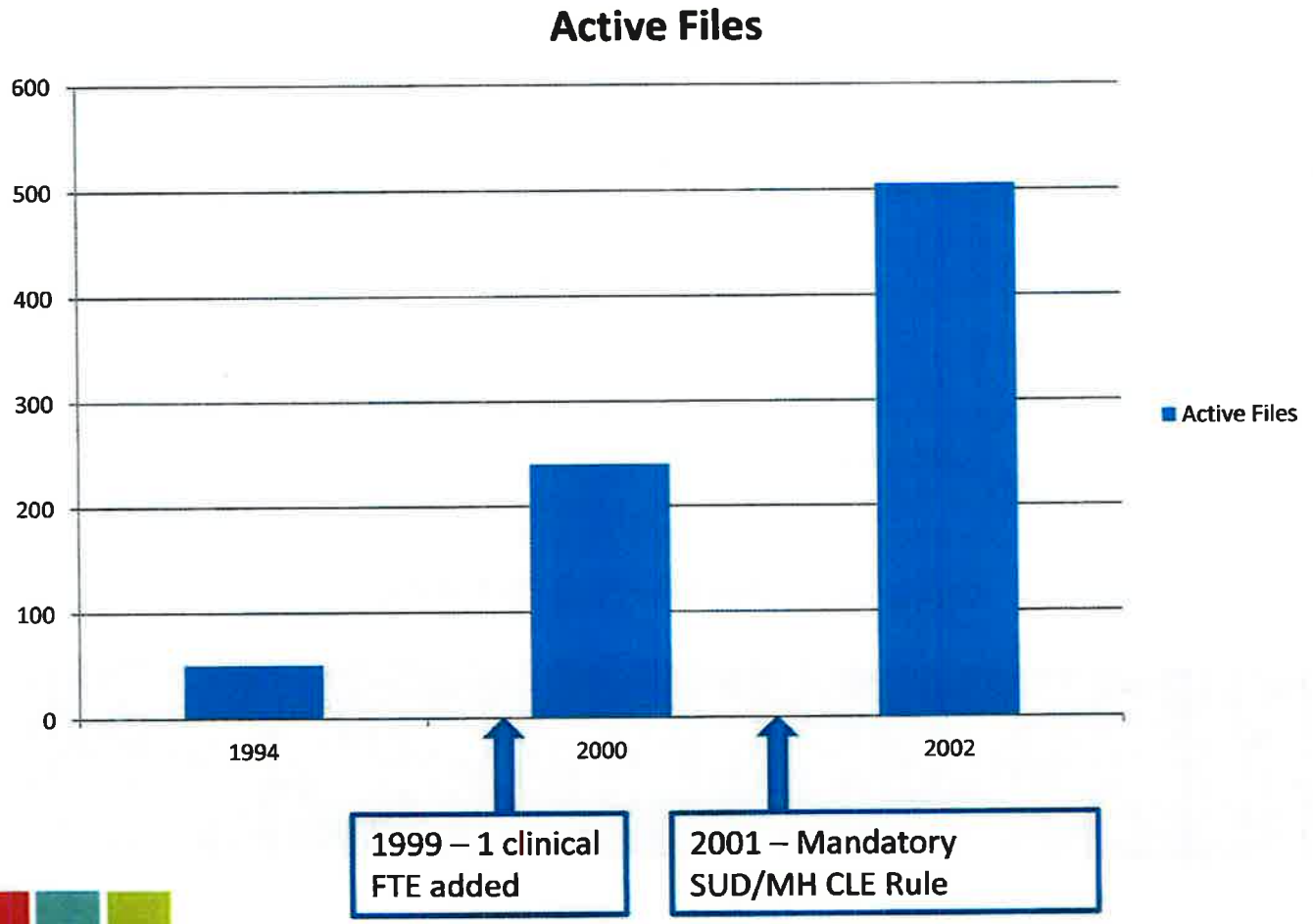
NCLAP
NORTH CAROLINA

MN # of CLE & # of New Files



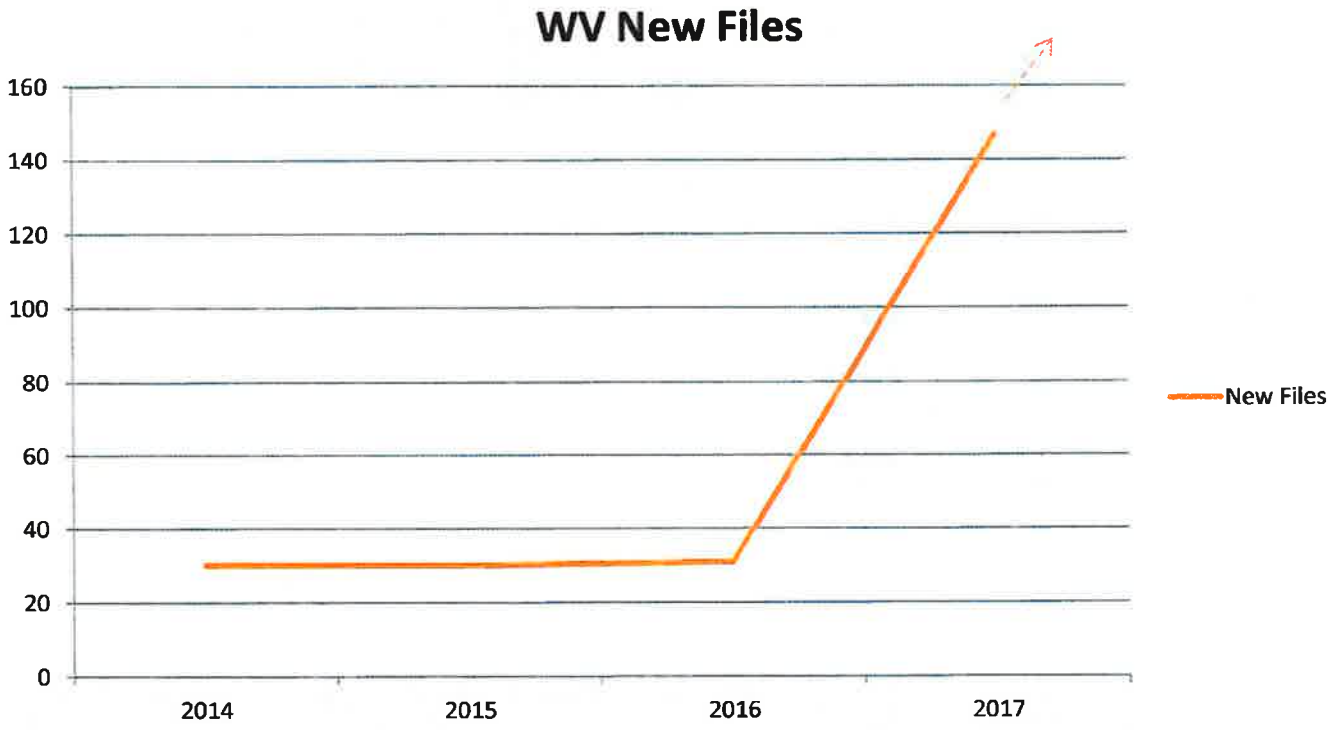
NCLAP
NORTH CAROLINA

NC Before and After Mandatory CLE



NCLAP
NORTH CAROLINA

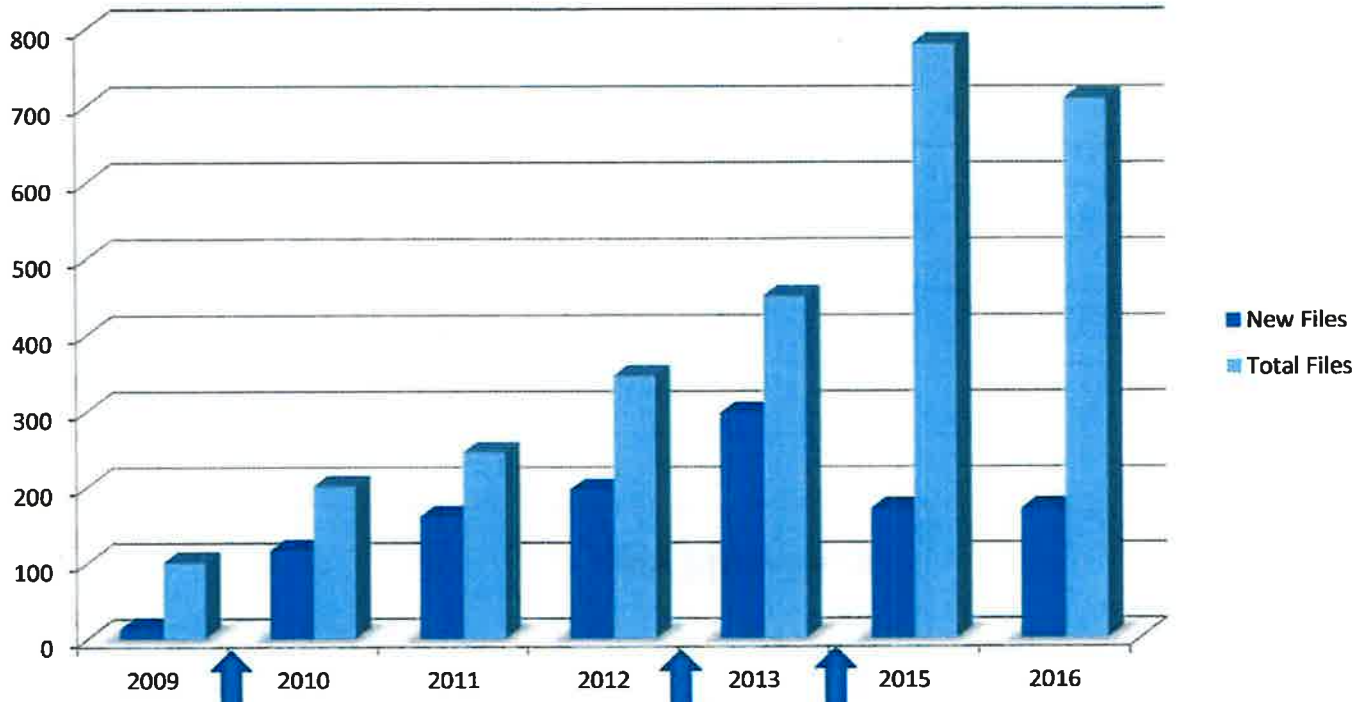
WV Fully Funded in Aug. 2017



Funded August 2017 – a jump from 30 new files/yr average to 147 new files to date (reporting period will end July 31, 2018).

NCLAP
NORTH CAROLINA

Louisiana Program Growth Correlated with Funding Infusion



2010 – new director hired; he built a case for full funding outside of ODC referrals

2013 – First stop gap additional funding infusion

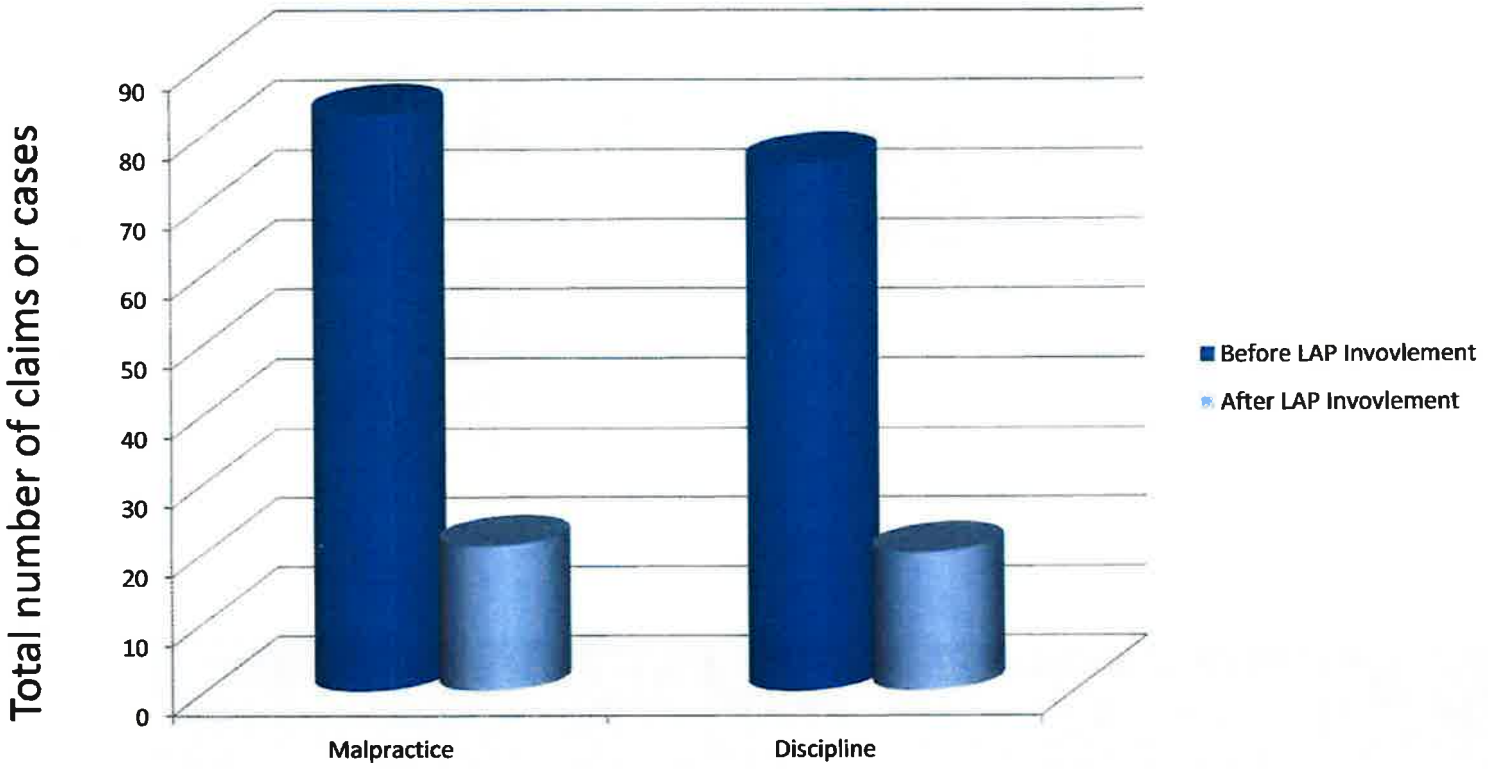
2014 – Full funding and staff restructure

*2014 omitted due to change in reporting period time frame.

Louisiana does a great deal of multi-year monitoring, so total open files is a significant factor - more so than for some other LAPs (like NC)

NCLAP
NORTH CAROLINA

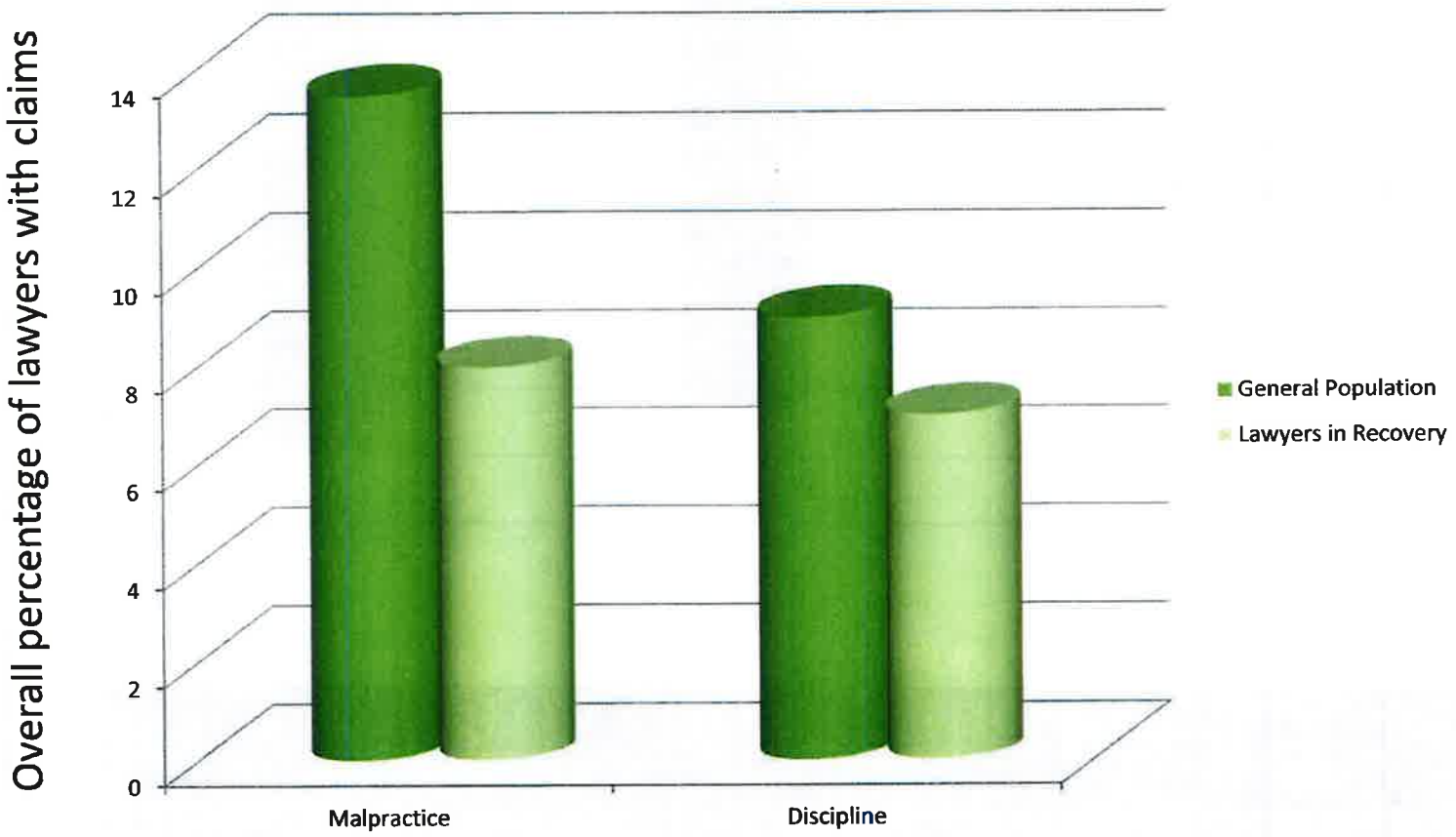
(Oregon Study) Risk Management & Protection of the Public



Study data is combined total of the 5 years before recovery and 5 years into recovery (i.e., before and after LAP involvement)

NCLAP
NORTH CAROLINA

(Oregon Study) Risk Management & Protection of the Public



APPENDIX
EXHIBIT
7

Virginia Department of
Health Professions

Health Practitioners' Monitoring Program

"An Alternative to Discipline"

Virginia Department of Health Professions

SCOPE OF SERVICES

- Initial enrollment (to include eligibility determination)
- Toll-Free Telephone #
- Monitor compliance with each participant's contract including restrictions on practice and terms of Board Orders
- Establish a process for reporting non-compliance with a contract, board order and/or a law or regulation
- Methods of communication between health regulatory boards and vendor's staff

Virginia Department of
Health Professions

MONITORING PROGRAM COMMITTEE

The following duties occur with consultation between the Department of Health Professions (DHP) and the vendor senior staff:

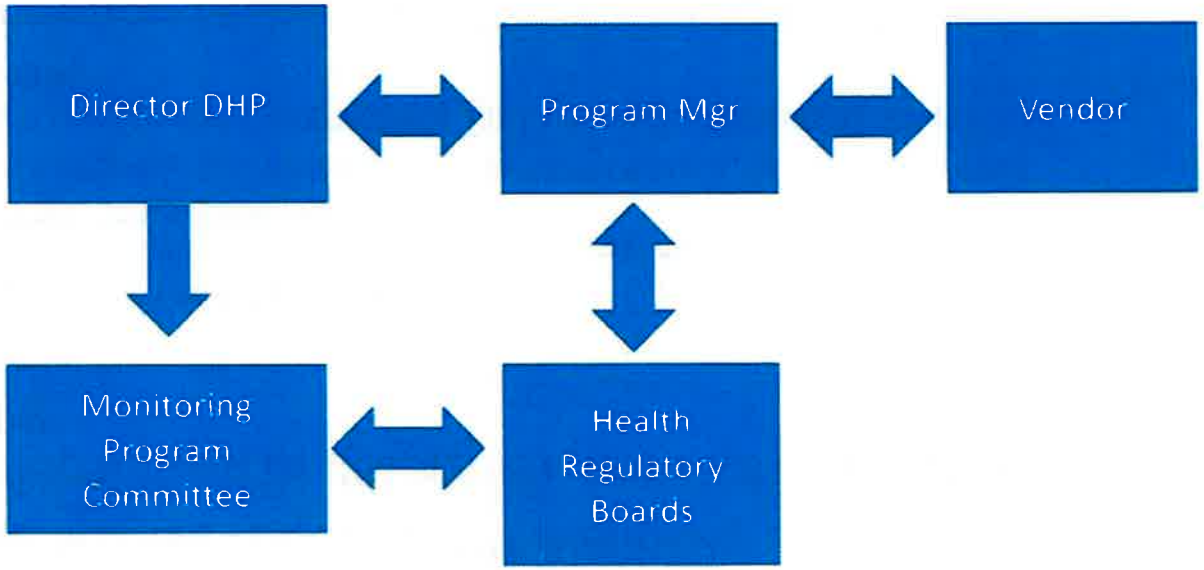
- Eligibility for a stay of disciplinary action
- Approval of participant completions and dismissals
- Respond to non-routine requests from participants
- Policy decisions
- Changes to program regulations presented for approval by the Director of DHP

Virginia Department of
Health Professions

BUDGET

- DHP is a non-general fund agency fully supported by licensing fees. Each Board is assessed a monthly amount determined by the # of participants enrolled in HPMP
- The agreement between DHP and the vendor establishes the per participant amount
- Budgeting for each board is based on historical cost data from previous annual payments to HPMP

Virginia Department of
Health Professions



Virginia Department of Health Professions

Intake Process

- Determine license requirement eligibility
- Clinical information to determine appropriateness for monitoring
- Request treatment records
  - Current treatment providers
    - Contact to verify enrollment in treatment, diagnoses, treatment progress, treatment plan
    - Obtain records (assessment, treatment reports, lab reports, etc.)
  - Previous treatment providers (all records relevant to HPMP admission)
- Run Prescription Monitoring Program report (12 mo)
- Participation Contract, Releases of Information

Virginia Department of Health Professions

Intake Process (con't)

Monitoring plan

- Assessment
  - Substance abuse
  - Psychiatric
  - Neuropsychological
- Treatment
  - Level of intensity based upon severity of illness
  - Residential, intensive outpatient program, outpatient
  - Medication management
- Multiple provider options

Toxicology Testing

- Third Party Administrator
- Medication adherence (e.g. lithium, naltrexone, buprenorphine, methadone)
- Abstinence monitoring
- Medical Review Officer (MRO) practice – U.S. Department of HHS/DOT
- Confirmatory testing
- Specimens collected
  - Urine ($29-$140) 22 panels
  - Blood ($25-$110) 3 panels
  - Hair ($80-$390) 14 panels
  - Nails ($80-$390) 14 panels
- Dilute/abnormal/invalid

Case Management

Program orientation

- Meet with case manager
- Recovery Monitoring Contract
- Review orientation handbook
- Observed toxicology screen

Monitoring components

- Monthly telephone contact
- Participant reports & meeting attendance logs
- Treatment provider reports
- Work site, employer, peer monitor reports
- Toxicology screening compliance
- Prescription Monitoring Program reports

Virginia Department of Health Professions

Ongoing Monitoring

Contract changes

- Treatment changes
- Provider changes
- Return to practice

Monitoring components

- Monthly check-ins with HPMP
- Toxicology program
- Treatment attendance/engagement
- Reporting requirements
- Abstinence/medication adherence
- Practice concerns/practice restrictions

APPENDIX
EXHIBIT
8

Health Matrix of Occupational Risks to Lawyer Well-being

Occupational Risk	Potential Primary Effects	Remediation/Treatment/Cure
Sedentary Nature of Work	Becoming less resilient to cope with mental health issues	Exercise; work/life balance; vacations; regular medical exams
Long hours	Becoming less resilient to cope with mental health issues	Set appropriate hours for work; work breaks; meditation; vacations
Unusual hours	Stress, depression, anxiety, work addiction, and sleep disturbance	Set appropriate hours for work; work breaks; meditation; vacations; manage client expectations; delay delivery of emails to others, especially subordinates (so that they are not receiving assignments
Managing problems of others	Stress, depression, anxiety, PTSD, and sleep disturbance	Maintain your own support groups both inside and outside the profession. For example, inside the profession: lunch with partners, end of day discussions, memberships, and participating
Adversarial nature of work	Stress, depression, anxiety, PTSD, and sleep disturbance	Civility CLEs, participating in professional organizations, court intervention, VSB
Individual work	Loneliness	Join groups (professional, sports, civic, religious, etc.); mentor relationships; build relationships with people you can trust
Client demands	Stress, depression, anxiety, work addiction, and sleep disturbance	Establish appropriate client expectations and boundaries; proper client/case selection; if necessary, end attorney/client relationship
Court demands	Stress, depression, anxiety, work addiction, and sleep disturbance	Courts need to be educated on wellness issues
Professional demands	Stress, depression, anxiety, work addiction, and sleep disturbance	Minimize professional deadlines, such as converting MCLE reporting periods from annual to every three years
Education Debt (College, possible Graduate School, Law School)	Stress, depression, anxiety, work addiction, and sleep disturbance	
Vicarious trauma	Stress, depression, anxiety, work addiction, and sleep disturbance	Monitor and limit exposure to traumatic events or material; spread work that may cause vicarious trauma so that participants can provide support to each other
Working indoors	Depression, becoming less resilient to other mental health issues	Get outdoors, seasonal effective disorder awareness and treatment
Duty of confidentiality	Loneliness, stress, anxiety, depression, sleep disturbance, and becoming less resilient to other mental health issues	VSB ethics hotline; LPL carrier's risk management provider
Financial (other than Education Debt)	Stress, depression, anxiety, work addition, and sleep disturbance	Require law schools to teach law firm management courses; take business
Changing legal paradigms	Stress, depression, anxiety, work addiction, and sleep disturbance	Attend meetings of legal professional organizations, participate on bar committees, attend VSB Tech Show

Health Matrix of Occupational Risks to Lawyer Well-being (continued)

Occupational Risk	Potential Primary Effects	Remediation/Treatment/Cure
Technological changes	Stress, depression, anxiety, work addiction, and sleep disturbance	Attend meetings of legal professional organizations, participate on bar committees
External pressures on Lawyer independence	Stress, depression, anxiety, work addiction, and sleep disturbance	Educate the public on the importance of a lawyer's independent judgment
Need to display confidence and conceal vulnerability	Stress, depression, anxiety, work addiction, and sleep disturbance	Attend meeting of legal professional organizations; memberships; maintain relationships outside of "the Law."
Lack of diversity in profession	Stress, depression, anxiety, sleep disturbance, and loneliness	Actively recruit and promote minorities; mentorships
Losing control of professional destiny	Stress, depression, anxiety, and sleep disturbance	

APPENDIX EXHIBIT 9

EXPERTS IN WELLNESS

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Meghan Zwisohn
Deputy Commonwealth's Attorney
Gloucester County
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Gloucester, VA 23061
(804) 693-4995
Mzwisohn@gloucesterva.info

Dr. Allison Sampson-Jackson
CEO
Integration Solutions, Inc.
ajackson@integrationsolutions.org
(804) 432-0056
(804) 205-4461
(Trains judges and others about how childhood trauma affects children's brains and development)

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Psychologist and Professor in the Faculty of Education at the University of Western Ontario and Academic Director of the Centre for Research & Education on Violence against Women & Children
Director Emeritus for the London Family Court Clinic
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Centre for Research on Violence against Women & Children
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(519) 661-4040 ext. 84040

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(Trial lawyer, mediator, teacher and minister)

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Norfolk Circuit Court
4th Judicial Circuit of Virginia
150 St. Paul's Boulevard
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(757) 769-8539 (Clerk's office)
(George E. Schaefer, Clerk)
gschaefer@circuitcourtva.us

David. Peter Coleman, MD
(804) 353-1230

Desi Farren
(703) 464-5122

Christine Galli
(804) 363-2583

Tim Hilton
877-934-4253

INSTITUTIONAL RESOURCES

National Council of Juvenile and Family Court Judges (NCJFCJ)
P.O. Box 8970
Reno, NV 89507
(775) 507-4777
contactus@ncjfcj.org

National Attorneys General Training & Research Institute (NAGTRI)
1850 M Street NW, 12th floor
Washington DC 20036
(202) 326-6000
lthrash@naag.org

Association of Government Attorneys in Capital Litigation (AGACL)
1108 Lavaca Street, Suite 110 Box 141
Austin, TX 78701
agacl@msn.com
(512) 484-7022
(Holds an annual conference focusing on technical issues, not on wellness or trauma, for appellate litigators, prosecutors, capital habeas practitioners, method of execution lawyers).

Sandra L. Karison, Director
Court Improvement Program
Office of the Executive Secretary
Supreme court of Virginia
100 North Ninth Street
Richmond, VA 23219
(804) 786-6455
skarison@vacourts.gov
(Provides training in trauma to GALs, court-appointed attorneys, DSS heads, social services attorneys)

Commonwealth's Attorneys' Services Council
Jane Sherman Chambers, Director
William and Mary Law School, Room 220
613 South Henry Street
P.O. Box 3549
Williamsburg, VA 23187
(757) 253-4146
jscham@wm.edu

Greater Richmond Trauma-Informed Community Network
Lisa Wright, Community Manager
(804) 257-7226
http://www.acesconnection.com/g/greater-richmond-va-trauma-informed-community-network-ticn

Main SCAN Office, Family Support Program and FAM (Families Are Magic)
103 E. Grace Street
Richmond, Virginia 23219
Phone: (804) 257-7226
Fax: (804) 257-7109
http://grscan.com/trauma-informed-community-network/

Richmond CASA (Court Appointed Special Advocates)
1600 Oliver Hill Way
Richmond, VA 23219
Phone: (804) 646-0516
Fax: (804) 646-0624

Child Advocacy Centers
Directions available upon request
Phone: (804)643-7226
Fax: (804) 643-3529

The Circle Preschool Program
1205 W. Franklin Street
Richmond, VA 23220
Phone: (804) 257-7226

PROGRAM MATERIALS

"Vicarious Trauma/Compassion Fatigue/Secondary Traumatic Stress/Countertransference; So many names for the effects of caring"; March 4, 2015.

"Vicarious Trauma: Support For Those Who Support," Robert Emerick, M.Ed., Founder, Silent Injuries, Sedona, AZ; Presentation to National District Attorneys Association.

Self-Care Assessment, Adapted from Saakvitne, Pearlman & Staff of TSI/CAAP (1996). "Transforming the pain: A workbook on vicarious traumatization." Norton.

http://www.clemetrobar.org/cmba_prod/CMBA/CMBA/Legal_Professionals/Sections_Committees/Committees/Mental_Health/Mental_Health___Wellness_Committee.aspx

Wellness articles from bar associations around the country:

http://www.clemetrobar.org/CMBA_Prod/cmbadocs/About/July_August_Journal.pdf

Beginning in 2010, the Cleveland Metropolitan Bar Association's Task Force on Mental Health & Wellness coordinated an effort to increase awareness of mental health issues among attorneys by featuring these nine articles in the CMBA Bar Journal written by behavioral health care professionals and practicing attorneys:

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Dec10.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Jan11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Feb11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Mar11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Apr11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-May11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Jun11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Jul_Aug11.pdf

http://www.clemetrobar.org/cmba_prod/CMBADOCS/Committees/Lawyers_Mental_Health_Task_Force/mental_health-Nov11.pdf

http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety

https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf

http://www.vsb.org/docs/valawyermagazine/vl1217-ylc-stress.pdf

http://www.vsb.org/docs/conferences/young-lawyers/dc_s2018.pdf (p. 5)

APPENDIX EXHIBIT 10

Public Employer "Best Practices" in Support of Attorney Well-being**

Foundation

Strong leadership support: Agency/organization leaders must show commitment to well-being in policy adoption; by regular messaging directly from the leader(s) – not HR – regarding the importance of prioritizing wellness and well-being; and by personally discussing/endorsing well-being matters (via newsletters, all-staff emails, at group gatherings). Leader should even consider a signed, regular mail letter to each employee's home address stressing commitment.

Clarify Focus (via the written policy): Five elements: (1) physical health and fitness, (2) mental health, (3) work-life balance, (4) nutrition & sleep, (5) responding to lawyers in distress as observed or reported.

Evaluate to Learn and Set Baseline for Change and Improvement: Survey (anonymously with freedom to voluntarily self-identify) how employees feel about existing workloads; ask about workplace and outside contributors to stress and anti-wellness behavior/habits; ask what promotes their productivity and feeling of well-being; ask what they want to see us do to promote their best wellness interests. (And continue to survey periodically to assess effectiveness of efforts informed by the baseline information).

Formation of Wellness Committee: Committee of peers and managers will be tasked to lead the Office's efforts with respect to attorney/employee well-being.

Topics for Inclusion in Wellness Program (Coordinated by Committee)

Physical Health and Fitness

1. Actively encourage "walking" meetings where conditions and subject matter permit.
2. Provide support and resources for tobacco cessation programs.
3. Provide support and resources for weight loss programs (e.g., Weight Watchers At Work)
4. Promote the formation of recreation-league sports teams.
5. Form fitness meet-up groups (walking clubs, training teams for local races)
6. Provide stand-up desks upon request.
7. Schedule ergonomic seminars.
8. Encourage friendly competitions with team captains (i.e. most steps walked, etc.).
9. Offer health screenings – maybe in coordination with other government agencies/insurance provider/administrator.
10. Sponsor flu shot clinics.

11. Include a health-tips and healthy recipes page in newsletters or all-staff email messaging.
12. Ensure that leaders/managers participate in as many of the health and fitness programs as possible.

Mental Health

1. Establish attorney mentoring/"buddy" programs to better ensure formation of relationships that promote disclosure of well-being issues.
2. Provide designated relaxation space(s) in the building and encourage brief "timeouts" for those who find them useful.
3. Encourage peer groups to form and meet at lunch times (in the work building or grounds) or after work around activities and common interests/concerns (i.e., working mothers, gardeners, book groups, adult caregivers).
4. Offer introductions to meditation, mindfulness, or yoga classes.
5. Provide outlets or targeted counseling for attorneys working on traumatic cases (involving violence, child endangerment/abuse and exploitation, etc.).
6. Establish employee recognition programs – monetary or nonmonetary rewards for achievements or for demonstrating commitment to stated office values in both substantive work and well-being activities.

Work-Life Balance/Quality-of-Life

1. Allow flexible work schedules.
2. Schedule financial seminars/brown-bag lunches.
3. Provide lactation rooms for new mothers.
4. Schedule periodic "Family Days" in the office, with safeguards in place for client confidentiality, (or "Bring Your Pet Days").
5. If possible, use "PTO" (personal time off) for leave, rather than prescribed leave types (sick leave, vacation leave, etc.) OR increase leave amounts for school- or family-related or community-service leave.

Nutrition & Sleep

1. Host tastings and recipe swaps.
2. Replace vending machine choices with healthier food choices.
3. Offer nutrition consulting and seminars (perhaps as part of a brown-bag lunch series offering.

Responding to Lawyers in Distress

1. Increase awareness of existing Bar programs (Lawyers Helping Lawyers).

2. Increase awareness (or remind employees) of your Employee Assistance Program and how it really works.
3. Establish policies that encourage attorneys to reach out for help without fear of retribution.
4. Include as a required part of periodic performance conversations/evaluations a "check up" inquiry about how the employee is adjusting/coping or otherwise handling the job (mindful of legal implications around privacy, disability laws, etc.).
5. Assemble a team of attorneys willing to volunteer to provide confidential mentoring or guidance to other attorneys about handling work load, or difficult client relationships, and other work difficulties that may compromise well-being

Other Ideas

- Wellness-specific newsletters or communications (like the Weekly Wellnote, a topical newsletter put out by the state's CommonHealth program) or provide a regular wellness feature in a general employee newsletter.
- Brown-bag lunches with topical health conversations.
- Collaborate with other state/local government agencies to contribute speakers, consultants, spaces, experiences or activities in the implementation of the well-being program (e.g., Dept. of Health, Va. State Parks, higher education facilities).
- Use health insurance providers that include rewards or other financial incentives, such as reducing health insurance premiums, by completing a health assessment or flexible spending accounts.
- Increase awareness of access to health discounts through CommonHealth.

****These practices are currently in place or under active consideration in many public sector attorney workplaces in the state and, of course, apply to all agency staff.**