ATTORNEY LICENSURE and THE IMPAIRED PROFESSIONAL



Today's Speakers

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Set The Stage







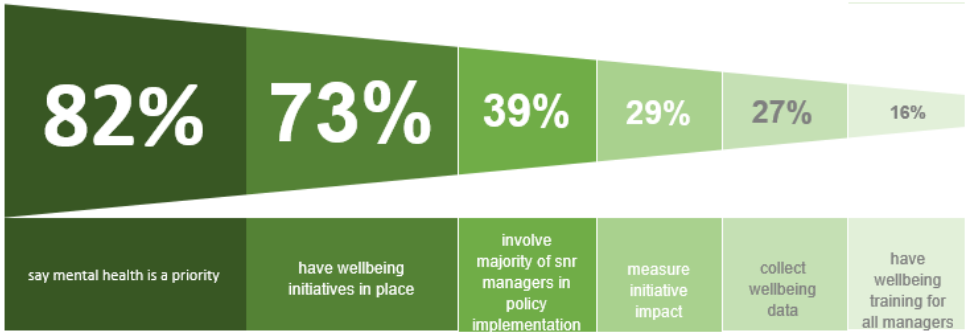
ABA/Hazelden- Betty Ford/Krill Study (2016) (pre-pandemic)

Depression, Anxiety and Stress Scale

- Depression – **28%** *of all attorneys*/judges (7-9% GP)
- Stress – **23%** *of all attorneys*
- Anxiety – **19%** *of all attorneys*
- Higher rates among younger lawyers/judges

Institutions summary

186 responses, majority law firms



43% Promote internal or external mental wellbeing activities

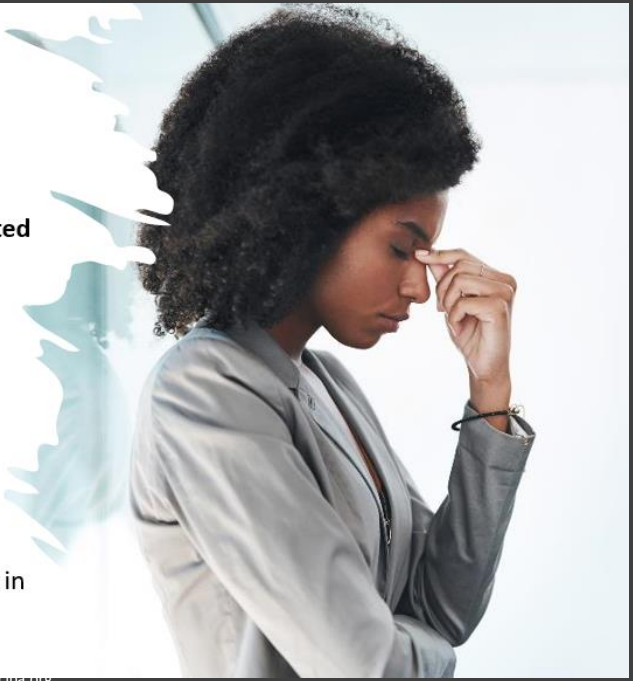
33% Provide external mental wellbeing funding

Base: Priority [186]; Initiative [186]; Snr. Managers [108]; Measure impact [130]; Collect data [185]; Training [160].

Mental Health By The Numbers

A 2020 survey of 3,800 legal professionals conducted by ALM Intelligence and Law.Com revealed:

- 74% feel the profession has had a negative impact on their mental health
- 44% use alcohol to deal with stress
- 64% feel they suffer from anxiety
- 31% feel they are depressed
- 74% feel their work environment contributes negatively to their well-being
- 18% have contemplated suicide at some point in their careers
- 10% feel they have an alcohol issue

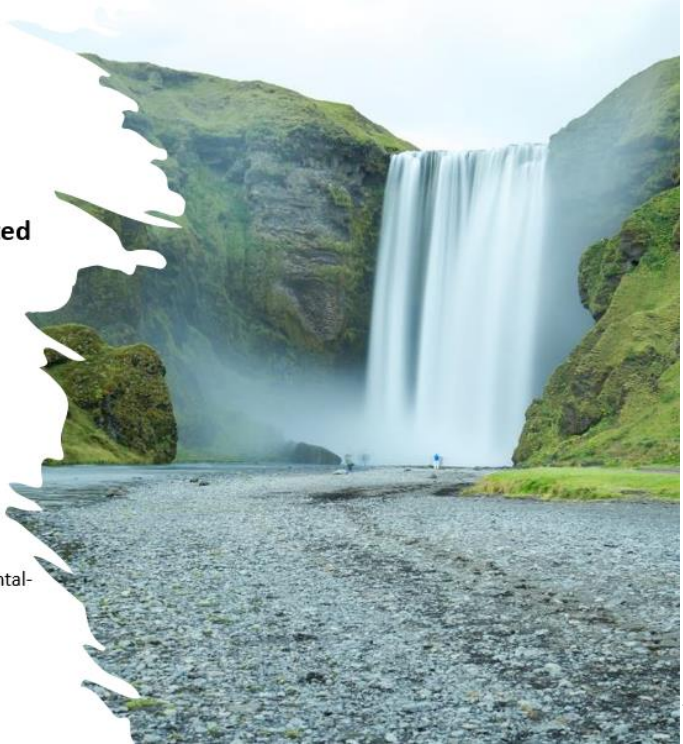


Mental Health By The Numbers

A 2020 survey of 3,800 legal professionals conducted by ALM Intelligence and Law.Com revealed:

- 36% use 100% of their vacation time (63% do NOT)
- 35% do not feel safe discussing their mental health at work
- 62% know a colleague who is *depressed*
- 50% know a colleague with an alcohol problem

https://www.law.com/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles/



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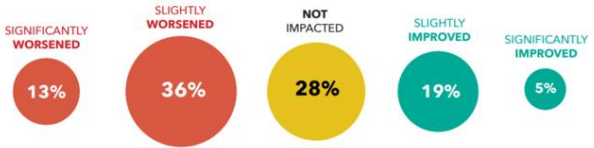
- 65% feel they could **NOT** take an extended leave from employment to tend to mental health issues
- 78% felt an extended leave tending to their mental health would hurt their career trajectory
- 77% were fearful of what their colleagues would think
- 56% felt they had too much work to take an extended leave

https://www.law.com/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles/



SATISFACTION AND WELLBEING 2021 Q1

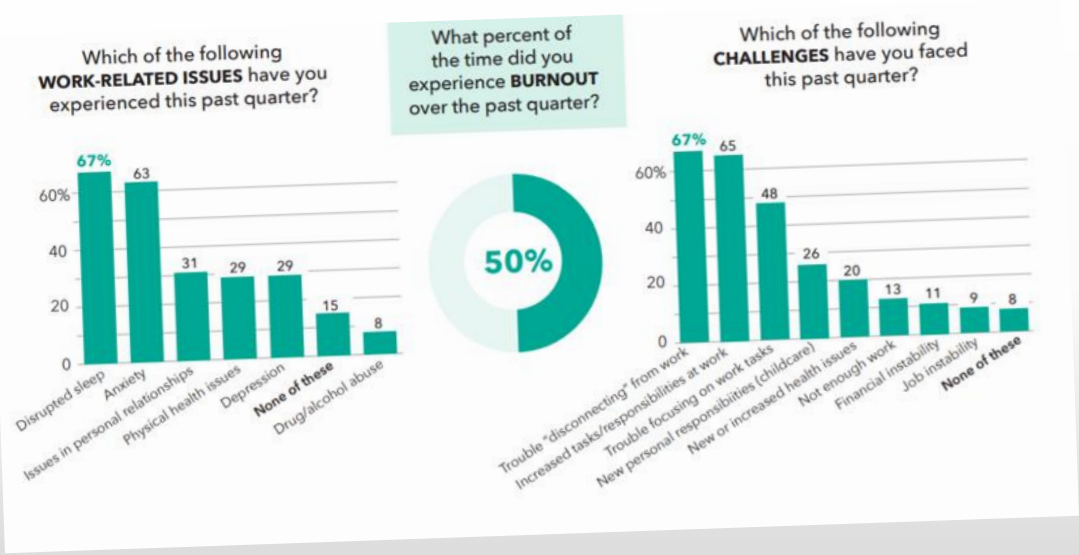
How has your overall **WELL-BEING CHANGED** over the past quarter?



The effects of the pandemic still have largely negative impacts to well-being in Q1. Similar to last year, the top work-related issues experienced this past quarter were disrupted sleep and anxiety.

Source: Bloomberg Law's Attorney Workload & Hours Survey (Q1 2021) • Respondents were asked to report how their well-being has changed in the past quarter.

Bloomberg Law


Which of the following WORK-RELATED ISSUES have you experienced this past quarter?
67%
63
31
29
29
15
8
60%
40
20
0
Disrupted sleep
Anxiety
Issues in personal relationships
Physical health issues
Depression
None of these
Drug/alcohol abuse
What percent of the time did you experience BURNOUT over the past quarter?
50%
Which of the following CHALLENGES have you faced this past quarter?
67%
65
48
26
20
13
11
9
8
60%
40
20
0
Trouble "disconnecting" from work
Increased tasks/responsibilities at work
Trouble focusing on work tasks
New personal responsibilities (childcare)
New or increased health issues
Not enough work
Financial instability
Job instability
None of these


Stress,
Drink,
Leave
GENDER-SPECIFIC RISK FACTORS FOR MENTAL HEALTH PROBLEMS AND ATTRITION AMONG LICENSED ATTORNEYS

Why Are Legal Professionals at High Risk of Mental Health & Substance Use Disorders?

- Conflict driven and adversarial profession (you see some of the worst of humanity)
- You need to be emotionally detached to get through your caseload
- Perfectionism
- Excessive self-reliance

These traits are great for a successful career but not so great for mental health.

Why Are Legal Professionals at High Risk of Mental Health & Substance Use Disorders?

- High expectations and accountability
- Lack of work-life balance
- High stress level
- High stress levels & work-weeks >50 hrs. are consistent predictors of SUD's and their severity.
- 67% of attorneys/judges work more than 40 hours/week.
- Inherent pessimism





THE CONSPIRACY OF SILENCE

- Lawyers are trained to deal with and solve problems. Thus, it is most difficult for the lawyer to seek help since by doing so he/she feels he/she is admitting failure.
- Complicating this problem further is the tendency of the lawyer's peers to indulge in a conspiracy of silence (enabling) and lighten the normal stresses of our profession.
- Concerns that receiving help may impact future election/reputation in the community.

Dealing with *DENIAL*

- DENIAL = "don't even (sic) now I am lying"
- The most potent barrier
- Psychological defense mechanism
- Rationalize and minimize behavior
- Honestly believe they are under control
- I'm not one of "them" mentality



Attorney Impairment

Impairments Identified for Lawyers Disciplined in 2020, By Practice Setting

Practice Setting	*Solo Firm*	*Firm 2-10*	*Firm 11-25*	*Firm 26+*	*Gov't/ Judicial*	In-House Corporate	Academia	No Practice
24 Lawyers* with Impairments	14	2	0	3	1	0	0	4
Impairment								
Substances:								
Alcohol	5			2	1			3
Cocaine					1			1
Cannabis	1				1			1
Amphetamine								
Opioids	1							1
Other Substance	2							
Mental Illness:								
Depression	3	1		1				1
Bipolar	1							1
Schizophrenia								
Personality Disorder								
Gambling	1							
Sexual Disorder	1							
Cognitive Decline								
Other	4	1		1	1			
% of the 24 lawyers with impairments	58%	8%	0%	13%	4%	0%	0%	17%

*Seven lawyers have more than one impairment identified.

Illinois Attorney Registration & Disciplinary Commission Annual Report - https://iardc.org/Files/AnnualReports/AnnualReport2020.pdf

ARDC ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION

Disciplinary Statistics Relevant to Impairment Issues



- When untreated, the lawyer's capacity to practice law is almost always impacted
- Studies show that 25-30% of lawyers facing disciplinary charges suffer from some type of addiction or mental illness
- Many other attorneys belong in this category but are not listed because they default in the disciplinary proceeding or lose their licenses without ever appearing or answering

Lawyers who do not appropriately address their personal issues can harm the judicial system, destroy their own careers, and sometimes even lose their lives.

YOU MATTER!



- What to do?
  - Identifying signs in others & ourselves
  - Approaching the lawyer





www.lclpa.org

To Call LCL for someone else…or Not to Call…

- Is this really any of my business?
- I want to help but I don't want to get involved.
- Will I harm his/her or the firm's reputation?
- Must I report him or her to Discipline?
- I already tried to help and it didn't work.
- Let's wait and see. Maybe it will get better.
- I really don't have time for someone else's problems.
- What if I am wrong?
- I don't want to lose a friend…

BUT….WHAT IF YOUR CALL SAVES A LIFE???

Watch for Changes from Baseline

- Everyone has a baseline for personality traits
- Warning signs are always relative to the person's baseline

- Follow the MAP*
  - **M**ood or attitude changes
  - **A**ppearance or physical changes
  - **P**roductivity - Changes in/quality of work

- Belleau & Pacione, ABA Solo Practice Journal 2015

What to Do: Approaching the Lawyer

- Remember that it is usually a process
  - -Impaired attorneys initially resist attempts to discuss concerns
- Gather information, consult resources, contact local LAP and take action
- Approach the lawyer - LAP can help you
  - -Partner with people the lawyer trusts & who have witnessed the behaviors of concern
  - -Approach the lawyer as a respectful, concerned colleague (think how you would feel)
  - -Good starters…

What to Do: Approaching the Lawyer

- Aim to get the lawyer to talk
- Review the lawyer's strengths & accomplishments
- Provide kindness, dignity and privacy
- Suggest assessment with a professional & have name(s) handy
- Offer to stay involved
- Remember this is a process



What to Do: Approaching the Lawyer

DO:

- Be direct & specific
- Be respectful
- Suggest alternatives
- Suggest potential consequences of inaction
- Be non-judgmental
- Let them know that you care
- Turn off technology & find a private place

DON'T:

- Diagnose & laundry list
- Threaten
- Ignore the situation
- Do nothing



Steps for the Supervisory Attorney

MRPC Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, 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.

MRPC Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

(b) 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.

- Applies to lawyers who have supervisory authority over the work of other lawyers in a firm

NM RPC 16-501

D. Responsibility for reporting impairment. A partner in a law firm and any lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall take prompt action to address any concern that a lawyer in the law firm is exhibiting signs of a severe impairment of the lawyer's cognitive function. Such action may include, but is not limited to

(1) making a confidential report to or otherwise seeking assistance from the New Mexico Judges and Lawyers Assistance Program;

(2) reporting the matter to the Office of Disciplinary Counsel to consider disability inactive status proceedings under Rule 17-208 NMRA and/or the appointment of an inventorying attorney under Rule 17-213 NMRA; or

(3) speaking with the lawyer and encouraging the lawyer to seek appropriate medical care and/or testing.

This obligation also applies to observations made by a lawyer with direct supervisory authority over a subordinate lawyer. A report made under this paragraph shall be treated as confidential and handled in accordance with the confidentiality rules, policies, and procedures of the agency, entity, or program to whom the report has been made.

- ***N.M. R. Prof'l. Cond. 16-501***

MRPC 8.3:Reporting Professional Misconduct

(a) A lawyer who ***knows*** that another lawyer has committed a violation of the Rules of Professional Conduct that raises a ***substantial*** question as to that lawyer's ***honesty, trustworthiness or fitness as a lawyer in other respects***, shall inform the appropriate professional authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Impairment in the Firm: Duties of Partner or Supervisory Lawyer

- ABA Formal Opinion 03-429 (2003)
  - "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."
- VA LEO 1886 (2016)
- D.C. LEO 377 (2019)
  - Address the obligation to take precautionary measures before misconduct occurs

THE IMPAIRED LAWYER'S RESPONSIBILITIES

To provide the client with competent representation.

MRPC 1.1

To cease representation when the lawyer's mental impairment materially affects his or her ability to represent the client. MRPC 1.16(a)(2).



To self-report certain rule violations [MRPC 8.3] & report potential/actual claims.

To obtain treatment and/or take other steps when the Firm requires them under appropriate circumstances.

Changes Around the Country



VERMONT

- Rule 1.1, Comment [9]
- A lawyer's ***mental, emotional, and physical well-being*** may impact the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law. See also Rule 1.16(a)(2).



VIRGINIA

- Rule 1.1 Comment [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).

Changes Around the Country



CALIFORNIA

Rule 1.1 (b)

For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) ***mental, emotional, and physical ability reasonably*** necessary for the performance of such service.

ABA MODEL RULES

- CPR
- Currently looking at revision to Comments of ABA Model Rule 1.1

AMERICANBARASSOCIATION

What Is LCL/JCJ?

"To provide a caring peer assistance program to save the lives and restore the health and professional competence of Pennsylvania's judges and lawyers, members of their families, and law students who may be facing mental health and/or substance use challenges. We carry out this mission through a combination of confidential helpline services, volunteer support and education."

Lawyers Concerned for Lawyers of Pennsylvania

- Free information and literature
- Free evaluation by a healthcare professional
- Free assistance with interventions
- Peer support
- 13 Lawyer/Judge/Law Student-only support group meetings (11 via zoom)
- LCL staff support
- **We help FAMILY MEMBERS!**

CONFIDENTIAL Helpline

1-888-999-1941

24 hrs./day, 7 days/week, 365 days/year

www.lclpa.org

Our services are **free**, **confidential**, **non-judgmental** and **non-obligatory**

LCL/JCJ Trends

- **2017** - 483 40% MH * record breaking year
- **2018** – 600 43% MH * record breaking year
- **2019** – 644 58% MH * record breaking year
- **2020** – 504 69% MH
- **2021** – 674 77% MH * record breaking year

https://www.lclpa.org/about

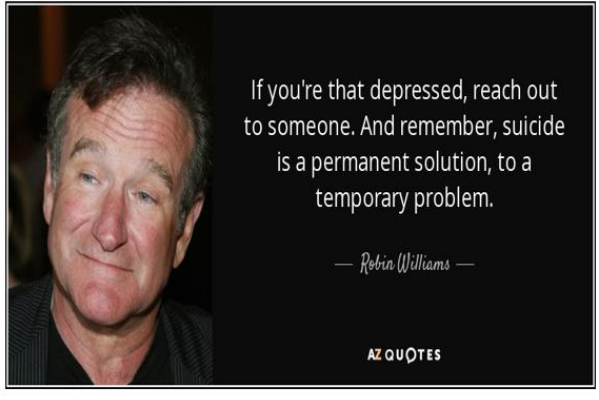
LCL/JCJ Presenting Concerns in 2021....

1. Stress 23%
2. Alcohol 20%
3. Depression 18%
4. Anxiety 14%
5. All Drug Misuse 5%



To Call LCL for self…or Not to Call….

- I'm ok. I can work this out for myself.
- I'm not like a "real" alcoholic anyway.
- I want help but I don't want anyone to know.
- Will I be reported to the Disciplinary Board?
- I already tried to get help and it didn't work.
- I don't have the money to pay for treatment.
- What will people say about me if I ask for help ?
- It's no use – nobody will understand – I give up!
- "I can THINK my way out of this."

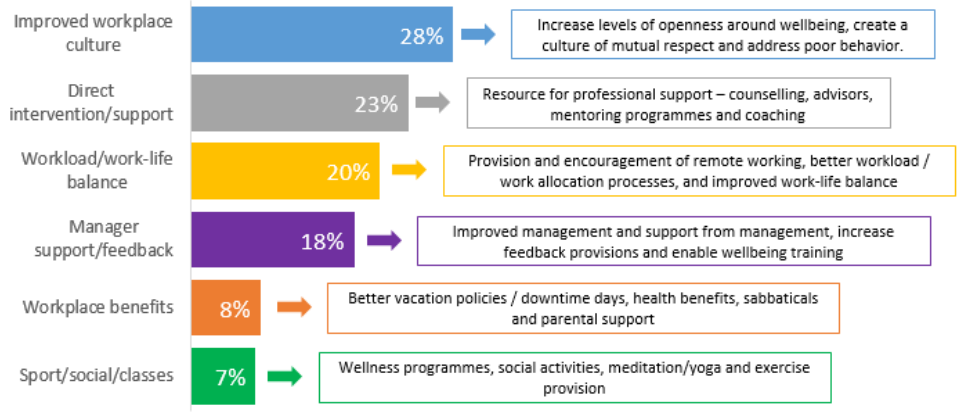


What Can The Firm Do?



What more should a firm do?

Desired improvements largely focus on cultural change and intervention, better workload provision and increased support from management



Firm Impairment Policy & Well-Being Templates

- Addressing Impairment Concerns
- Confidentiality Provisions
- Considerations Upon determination of Impairment
  - Leave of absence
  - Referral/Treatment
  - Restriction of Work Duties
  - Review of Activity
  - Remedial Action
  - Reporting to Discipline
  - Conditional Employment
  - Consequences of Violations

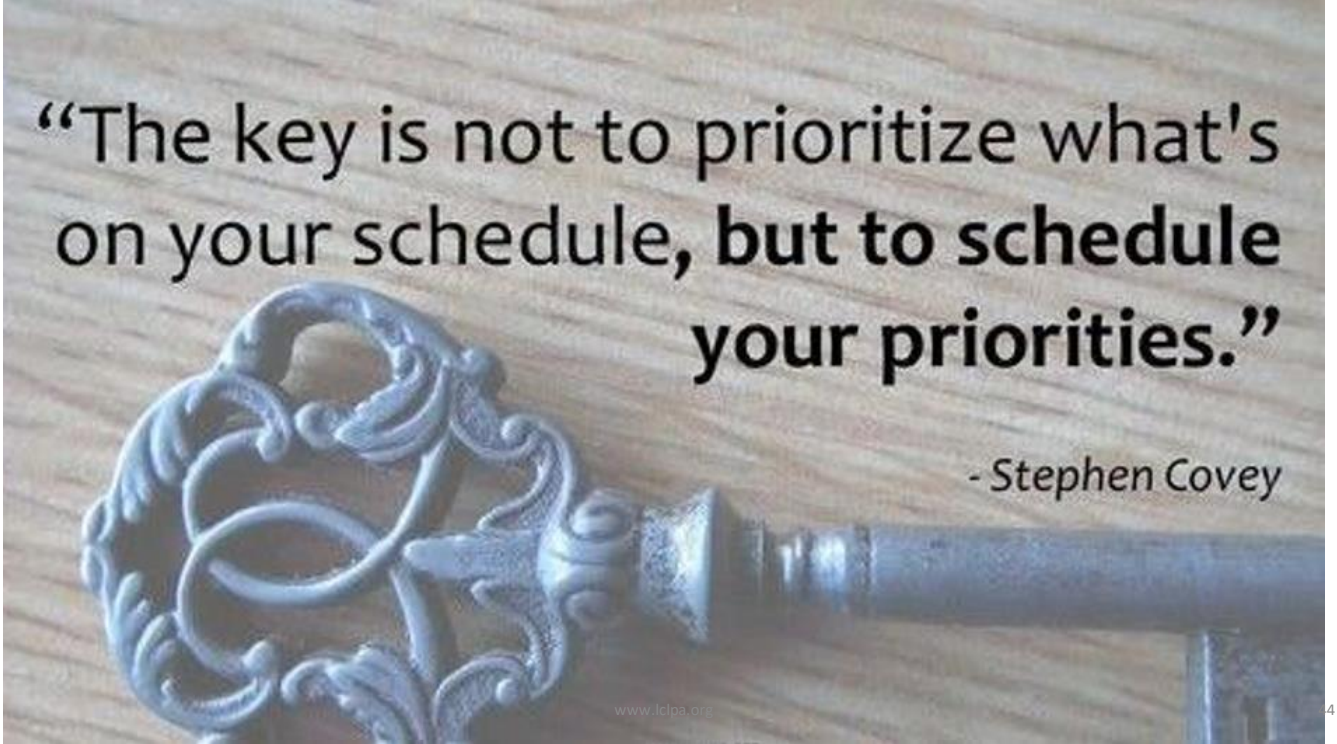


- Appoint a Lawyer Well-Being Committee or a Well-Being Advocate
- Assess lawyers' well-being through ongoing assessments.
- Adopt model law firm policies for handling lawyer impairment.
- Establish a confidential reporting procedure for lawyers and staff concerned about a colleague's impairment.
- Establish procedures that allow for lawyers to seek confidential help.
- Work with lawyer assistance programs to secure services for impaired lawyers.
- Actively combat social isolation and encourage interconnectivity
- Monitor for signs of work addiction and poor self-care

So…..what can one person do?




impossible
Set *REALISTIC*
Goals for Yourself


"The key is not to prioritize what's on your schedule, but to schedule your priorities."
- Stephen Covey

Prioritize your day

- Step back and look at your “to-do” list.
- How many items are "critical" and MUST be done *that day?*
- What are you working to achieve?
- Create a plan that will work with your schedule.

  THEN schedule your priorities
- DON’T have 10 things on your list – focus on 3 or 4!





UTILIZE QUICK STRESS-BUSTERS

- Pause. Lean back, literally. Give your eyes a rest for a couple minutes.
- Take three deep breaths and imagine your muscles relaxing from head to toe.
- Be mindful. Focus on the immediate present. Enjoy the moment.
- Stretch. Walk around your office or go outside.
- Turn your cell phone off (YES – OFF) and go outside for 5 minutes and notice that GRASS is really **GREEN**!
- Maintain a sense of humor about yourself (and others).
- Vary your routine (work/exercise). Don't get trapped in a rut.
- Prioritize at work and home and manage your time effectively.
- **ASK FOR/ACCEPT SUPPORT/HELP**. Talk it out with someone you trust.
- Do a five-minute guided or breathing meditation (Insight Timer/CALM/Peloton).







SET BOUNDARIES

Boundaries: Disconnect

- Turn off notifications (email and social media).
- Do not charge your phone beside bed.
- Do not keep phone with you during meals, exercise, or social activities.
- Read a book or magazine rather than your phone or tablet.
- Get away from your PC to do some work, take HEALTHY breaks from the screen, and don't take the laptop with you on weekends or vacations.



Melissa G. Hunt, Rachel Marx, Courtney Lipson and Jordyn Young, No More FOMO: Limiting Social Media Decreases Loneliness and Depression, Journal of Social and Clinical Psychology, Vol. 37, Issue 10 (December 2018).

Boundaries: Set Limits

- Check email x times per day at designated times (and let clients and colleagues know/expect that).
- Use "away message" when on vacation.
- Limit Social Media to 10 minutes per platform per day, Use a timer (Hunt et. al, 2018).
- Monitor your use (use monitoring apps, check Screen Time on iPhone (VERY SCARY), etc.).
- Use Do Not Disturb (especially when DRIVING)



Melissa G. Hunt, Rachel Marx, Courtney Lipson and Jordyn Young, No More FOMO: Limiting Social Media Decreases Loneliness and Depression, Journal of Social and Clinical Psychology, Vol. 37, Issue 10 (December 2018).



MORE QUICK STRESS-BUSTERS

- Meditate and/or pray. CONSISTENT stress reduction occurs with only 10 minutes of da meditation https://www.meditationlifeskills.com/guided-meditatio stress-and-anxiety/
- Unplug from social media when acutely stressed.
- Exercise. Movement is medicine.
- Eat a healthy diet.
- Cultivate a positive attitude/gratitude list/handwrite a note to a friend.
- Sleep 8 hours/night when possible.
- Avoid overuse of alcohol or prescription drug These short term "fixes" mask the problem a can lead to negative health and social consequences.

Nine Steps for Beating Burnout

1. Do not isolate!
2. Declutter (office space, home, drawers, & desk)!
3. Take a *real* vacation (and put your 'away email reply" on)!
4. Connect to a greater life purpose/volunteer!
5. Gratitude lists/journal/jar!
6. Understand perfectionism vs. excellence
7. Create new experiences and cultivate new skills.
8. Treat yourself like a good friend who needs a break (compassion, grace, empathy).
9. **REMEMBER – DON'T OVERDO IT! BE REALISTIC !!** We all live **ONE DAY AT A TIME!**



Spend quality time with family








“Need a helping hand? Here’s what a lawyers assistance program can do for you”

http://www.abajournal.com/news/article/podcast_monthly_episode_97

“What Are Partners’ Duties When a Colleague is Impaired? Draft Opinion Calls for These Steps”

http://www.abajournal.com/news/article/what_are_partners_duties_when_a_colleague_is_impaired_draft_opinion_calls_f/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email

Resources for Lawyers from American Bar Association

https://www.americanbar.org/groups/lawyer_assistance/resources/covid-19--mental-health-resources/

Resources from the Institute for Well-Being in Law

https://lawyerwellbeing.net/

Key Take Aways

- *Ahhh…Youth*: Younger, less experienced lawyers working in small firms or bar associations have higher levels of distress symptoms than their more seasoned and experienced peers.
- *Smash the Stigma*: Lawyers don't seek help for their behavioral health problems because they fear someone will find out and it will discredit them and possibly affect their license.
- *HELP is Not a Four Letter Word*: Look for signs in yourself and others and don't be afraid to start that conversation with a colleague.
- *Culture Shift*: Make having a culture of well-being a priority in your firm or practice setting





“One More Day” (February 19, 2019)

