

Mental Health and Well-Being in a Post-COVID Environment: *Ethical Considerations*

Lawyers Concerned for Lawyers

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LCL gratefully acknowledges the work of Laura Mahr, from which this program draws inspiration. Please see Laura Mahr, "The Mental Health Factor: Accounting for the Emotional Toll of the Pandemic," *Law Practice Magazine*, (May 1, 2021), American Bar Association. https://www.americanbar.org/content/aba-cms-dotorg/en/groups/law_practice/publications/law_practice_magazine/2021/mj21/mahr/

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Lawyers Concerned for Lawyers (MN)

- Who We Are:
 - Minnesota's Lawyer Assistance Program (LAP)
- What We Help with:
 - Stress or Distress: substance use, mental health, cognitive, stress, burnout, and others
- Who We Support:
 - Lawyers, Judges & Law Students, their immediate family members AND support staff
 - Free Service and 100% Confidential
 - On average, we assisted over 400 individuals per year.

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Today's Topics

- Ethical Implications
- Our Current Environment
- The Long-Lasting Effects the Pandemic had on the Legal Profession
- Creating Resiliency and Support

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First, Let's Acknowledge



- The COVID-19 Pandemic
- Social Change & Justice
- Economic rollercoaster
- Hyper-partisan politics
- International conflict

-for lawyers AND our clients-

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The Path to Lawyer Well-Being:

*Practical
Recommendations
for Positive Change*

THE REPORT OF THE NATIONAL TASK
FORCE ON LAWYER WELL-BEING



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Three Reasons to Take Action

(1) Organizational success—in law firms, corporations, and government entities.

(2) Well-being influences ethics and professionalism.

- Rule 1.1 – competence
- Rule 1.3 – diligence
- Rule 5.1 – supervisory responsibilities

(3) ***Humanitarian reasons—untreated mental health and substance use disorders ruin lives and careers.

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It's an Ethics Issue!

Anxiety results in an ethical sinkhole

- We act rashly
- In our own self-interest

Trauma → Avoidance

The rules:

- Rule 1.1 – competence
- Rule 1.3 – diligence
- Rule 1.4 – communication

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Well-Being and Competence

➤ RULE 1.1: COMPETENCE

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

- Example: Accepting a case in a new area
- Issues: Overconfidence, financial, impaired or burned out

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Well-Being and Diligence

➤ RULE 1.3: DILIGENCE

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

- Example: not returning calls, no movement on case
- Issues: mental health, procrastination, client relationship

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Diligence Comment

RULE 1.3: DILIGENCE

Comment 2: "A lawyer's workload must be controlled so that each matter can be handled competently."

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Well-Being and Organizations

➤ RULE 5.1: RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules if
 - (2) the lawyer is a partner or has comparable managerial authority . . . and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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Well-Being and Organizations

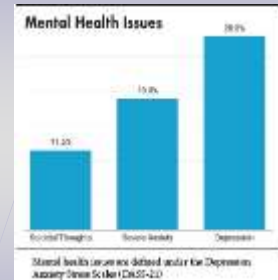
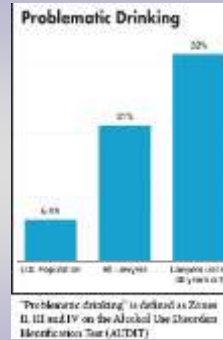
- Example: rumors about behavior, staff expressing concerns, client complaints, productivity
- Issues: mental health, substances, burn out, workplace issues
- Options: Foster a workplace that supports making it OK to get help early; early intervention
- Healthy Lawyer ↔ Healthy Employer

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ABA 2021 Profile of the Legal Profession



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Younger/Newer Lawyers

- Highest rate of substance misuse/depression
- Well-being initiatives and expectations
- Law Schools are increasingly supporting their students in these areas
- Increased 5.1 supervisor responsibilities



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Depression (last 2 weeks)

- A loss of interest in normally pleasurable activities
- Impaired ability to concentrate, remember, and decide
- It occurs in stages:
 1. Emptiness
 2. Hopelessness/helplessness
 3. Malaise
 4. Suicidal Ideation
- It's not just a blue mood that can be wished away
- In a colleague, look for changes in behavior.

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Depression: From the Outside

- Gloomy
- Pessimistic
- Cynical
- Negative
- Moody
- Irritable
- Complaining
- Brooding
- Anxious
- Critical

The key is a change in behavior



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Depression: #1 Predictor for Suicide

- Suicide rates among lawyers up to 6X national rate
- More Women Attempt, More Men Die (women are twice as likely to suffer from a depressive episode)
- Depression Symptoms Include:
 - Statements of hopeless, helplessness, or worthlessness
 - Preoccupation with death
 - Improvement in mood
 - Giving away possessions, tying up loose ends,
 - Giving "hints" of plans

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Suicide Prevention

- Be aware of the warning signs
- Be willing to get involved
- Ask if they are considering harming themselves
- Tell them you care about them and can assist them
- Call LCL, talk with a professional or take them somewhere if needed
- Talk with their family/others if they are reluctant to accept help
- Call 911 (this may anger them, but it's better than the alternative)
- Doing nothing is not an option, but sometimes nothing you do will stop it.

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Other Mental Health Issues

- Anxiety Disorder – Avoiding More Anxiety
- Bipolar Disorder
- Obsessive Compulsive Disorder
- ADHD
- Unresolved Grief
- Post Traumatic Stress Disorder
- Cognitive Impairment

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Alcohol and Remote Work

- Remote workers more likely to drink during work hours
- Easier to get away with it
- Signs: disorganized, absent or late, slurring, appearance, inappropriate
- People in recovery often found they had the tools to cope
- Other drugs and behaviors

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Personal Signs of Impairment

- Appearance
- Isolation and withdrawal
- Social behavior
- Distorts truth
- Financial concerns
- Defensiveness
- Smells of alcohol (if the drug is alcohol)



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Professional Signs of Impairment

- Attendance: arrival, absences, missed appointments
- Job Performance:
 - Procrastination or neglect
 - Decline in productivity
 - Client complaints
 - Procrastination and excuses
 - Trust account questions
 - Staff morale



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High-Functioning and Impaired

- Competitive overachievers
- No public consequences
- Little accountability
- Physical appearance
- "Hyperaware" of others' use

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Impairment & Attorney Discipline

"These issues can have major consequences. Studies show that 25% to 30% of lawyers facing disciplinary charges suffer from some type of addiction or mental illness."

2021 Profile of the Legal Profession, (quoting "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," J. Addict Med, January-February 2016)

Questions before next section?

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Current Issues & Challenges

- Hybrid or Flex Scheduling
- Increased Reliance on Technology
- Sick Policy
- Others looking to you for answers
- The way you communicate (with coworkers and clients – confidentiality)
- Varied Court Appearances and Procedures

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Emotional Long-Haul

- We're all experiencing additional stress and anxiety (making it okay to ask for help)
- We're on the front lines of everything
- Shouldering all of these issues (for ourselves and our loved ones) AND our clients' issues
- From anguish (extremely distressed) to languish (forced to remain in an unpleasant place)

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Languishing

- The absence of well-being
- Less motivation, focus, and achievement
- Questioning meaning
- Fragmented attention
- Predictor for depression and PTSD

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Antidotes to Languishing

- Unfragmented attention
 - Boundaries/Full Attention – with yourself and others
- Connections
- Mindfulness tools
- Small manageable goals
 - Conversations
 - Projects
 - Personal and Professional

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Hanging on...

...can be exhausting!

<https://medium.com/@joegerlitz/whatever-happened-to-the-hang-in-there-kitten-230623ed6121>

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Grief and Trauma

Grief:

- Loss of loved ones
- Ambiguous grief (missing things we used to have)
 - Predictability and Controllability
 - Opportunities
 - Choices
 - Connections and access

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Trauma

Trauma is the unique individual experience of an event(s) or set of circumstances:

- The individual's ability to integrate their emotional experience is overwhelmed; and
- Physically or emotionally harmful or threatening; lasting effects on physical, social, emotional, or spiritual well-being
- Direct, secondary and *vicarious*

That the pandemic is traumatic for everyone is a given. How each person experiences it will vary according to many factors unique to themselves.

** Same Storm, Different Boats **

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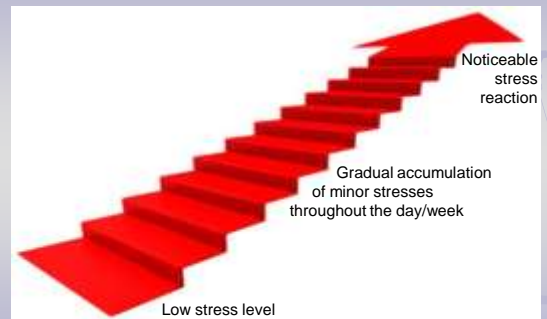
POST TRAUMATIC GROWTH – BUILDING RESILIENCE

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Incremental Buildup of Stress

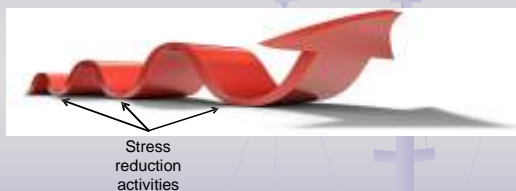


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Moderating Stress Buildup



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Post-Traumatic Growth

- Mental health comes first
 - So that you & your co-workers can do your best work
- One step at a time
 - Baby Steps

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Why do we need Resilience?

- Life Stressors
- Work Stressors
- Trauma
- Vicarious Trauma
- Health problems

LCL offers programs addressing resilience strategies in greater detail.

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What is Resilience?

"The ability to respond *to stress* in a healthy, adaptive way such that personal goals are achieved at minimal psychological and physical cost." (Physician Wellness Research)

"The ability to persist *in the face of challenges* and to bounce back from adversity." (US Army MRT; Reivich et al., *American Psychologist*, vol. 66, no. 1, pp. 25-34 (2011))

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Resilience Benefits

- Immunity
- Lower mental illness risk
- Better physical health
- Greater optimism, fewer feelings of isolation
- Improved trust
- Reduced perceptions of pain and threat

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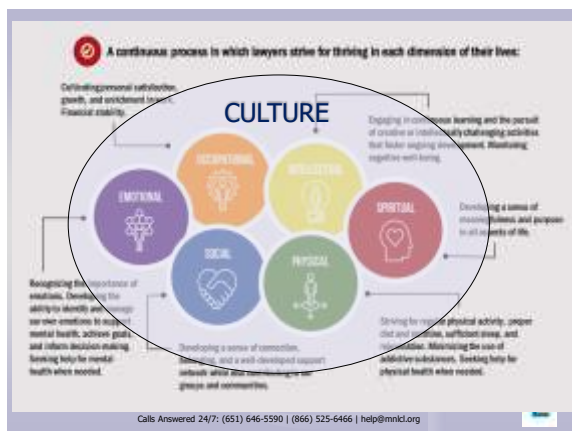
Ethics and Well-Being

- A lawyer's workload must be controlled so that each matter can be handled competently - Rule 1.3 comment [2]
 - *Do you hold yourself to this standard?*
- Reporting Professional Misconduct - Rule 8.3 (does not apply to LAP's)
 - *Are you seeing other lawyers (in and outside of your office) struggling?*
- Lawyer as Advisor - Rule 2.1
 - *Other factors should be included (moral, economic, social). Does this also include the well-being of your client?*

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Expecting the Expected

- Emotions will ping-pong
- Perfection? Show yourself grace (I'm doing the best I can)
- Consider the well-being components
 - What were your challenges?
 - Where are you strongest?



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YOU'RE NOT ALONE

Ask for Help...

*(the cat doesn't have to fall from the tree –
you can always call for help!)*

What happens when you do?

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What Happens When You Get Help?

Before

- High Functioning and Miserable
- Failing/Superficial Relationships
- Depressed & Anxious
- Felt Like a Fraud
- Constant Sense of Dread

After

- Personal & Professional Fulfillment
- Great Relationships
- Confident and Content
- Capable of Dealing with Ups and Downs

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Well-Being Resources

- www.mncl.org - Resources and links to all ABA well-being content
- The Path to Lawyer Well-being – www.americanbar.org/colap
- Lawyer Well-being Week Resources <https://lawyerwellbeing.net/lawyer-well-being-week/>
- Minnesota Supreme Court Well-Being <https://www.mncourts.gov/lawyer-well-being.aspx>

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How LCL Can Help...

➤ Available Services:

4 Free Counseling Sessions
Peer Volunteers (Maybe You?)
24-hour hotline
Coaching
Group Therapy & Support Group
CLEs, Outreach, Tabling & Education
Referral to Community Services
Crisis Intervention
Someone to listen

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Partnership with The Sand Creek Group

- Up to 4 free counseling sessions
- Legal professionals and their families
- Resource website
 - www.sandcreekeap.com
 - Click on "Member Portal & App"
 - When registering use the Company Code "lawyers"
- Contact Sand Creek directly at
651-430-3383 or toll-free: **1-888-243-5744**

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THERE IS
HELP *and*



THERE IS
HOPE



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