

Vermont Commission on the Well-Being of the Legal Profession

First Annual Report

July 1, 2020

On December 23, 2019, the Vermont Supreme Court extended the Vermont Commission on the Well-Being of the Legal Profession Charge and Designation to require the Commission to meet annually to review the then-status of the State Action Plan. The review is to include progress made regarding the various Plan recommendations and to submit a written report to the Court summarizing the results of the Commission's annual review.

The Extended Charge and Designation also provided that the appointment of the Commissioners named in the original Charge and Designation shall remain in effect. The Commission is pleased to report that each of the originally appointed Commissioners has agreed to continue in their respective roles. Following is a review of each Committee's recommendations and observations about them to date. A summary of the Annual Report follows the review and observations.

Judges Committee Recommendations

- 1. Communicate to the bench and the bar that well-being is a priority and strive to reduce the stigma of mental health and substance abuse disorders.*
- 2. Regularly provide well-being programming to judges and staff; familiarize judges and staff with LAP and other resources.*
- 3. Increase awareness of signs of impairment; facilitate access to resources for judges (in-state and out-of-state).*
- 4. Make available secondary trauma resources for judges, lawyers, court personnel and jurors.*

The onset of the COVID-19 pandemic shortly after the date of the Extended Charge and Designation unexpectedly prevented implementation of several of the Judges Committee recommendations. For example, there was no in-person Judges' Meeting at the VBA Mid-Year Meeting, nor was Judicial College in-person. As a result, it wasn't feasible to offer the wellness programs that were recommended for each of those events. The pandemic also shifted judicial officers' focus first to the emergency closures and now to implementation of the Ramp-Up Report. The pandemic has, however, offered opportunities for regular connections promoting wellness (even if they're remote ones) among judicial officers that aren't typically available. The trial judges have had a weekly phone conference since March that offers trial judges the chance to communicate, interact and commiserate in ways that are helpful to their well-being. Chief Justice Reiber has led a weekly phone conference for all judicial officers, including Supreme Court Justices, Superior Court Judges, probate judges and assistant judges. Similarly, that weekly phone conference offers judicial officers to connect and communicate wellness concerns and recommendations. Many Superior Court Judges have also held remote bench bar conferences to connect with county bar practitioners, affording them a chance to communicate the importance of wellness considerations, especially in these stressful times.

With respect to wellness resources, a VBA Wellness Resources Page has been created and a section of the Page is dedicated to judicial officer wellness resources, including a National Helpline for Judges Helping Judges (1-800-219-6474) and a variety of resources including desk references, wellness guides for judges, and judicial stress resource guides. The resources also include training materials as to what to look for regarding impairment, and what to do when signs of impairment are present. Lastly, the resources also include resources for persons potentially suffering from "secondary trauma" associated with very difficult cases, including judges, lawyers, court staff, law enforcement and jurors. De-briefing is a helpful response to stressful cases.

With respect to the importance of proper training for judges and staff regarding wellness issues, the Judges Committee recognized the monthly in-service trainings in each unit as the best vehicle for providing consistently uniform and appropriate training. It has recommended that the Court Administrator's Office

ensure that relevant wellness materials are regularly included in the system-wide in-service packets.

Bar Association Committee Recommendations

- 1. The VBA should offer at least one well-being-related CLE program at each of the major meetings, including the Annual Meeting in September, the Mid-Year Meeting in March, every other year's Solo & Small Firm Conference in May, and the YLD Mid-Winter Thaw in January. Each Bar Journal edition should include at least one wellness-related article, and every effort should be made to publicize wellness-related topics on VBA social media.*
- 2. The VBA should gather and make available, either through the VBA website, or through a LAP website, educational materials and "Best Practice" model policies on well-being topics. The VBA should also enlist mentor lawyers for the new mentorship program through Attorney Licensing, and/or help enlist lawyer mentors in conjunction with VT LAP.*
- 3. The VBA should include wellness-related questions in every VBA membership survey.*
- 4. The VBA should establish a Lawyer Well-Being Committee.*
- 5. The VBA should include at least one wellness-related activity at each Annual Meeting, Mid-Year Meeting, Solo & Small Firm Conference, and Mid-Winter Thaw.*

The VBA has offered the following well-being related CLE programs at the major meetings from 12/31/18 through 7/1/20: YLD Thaw - January 17, 2019 "Going Public – Issues That Keep Public Service Lawyers Awake at Night and How to Fix Them"; Mid-Year Meeting – March 21, 2019 "Ethics and Attorney Wellness" and "Tools for Mindfulness and Wellness"; Solo & Small Firm Conference – May 23, 2019 "How Being Mindful Can Reduce Workplace Stress"; Annual Meeting – September 27, 2019 "Changing the Culture and Mental Health"; YLD Thaw – January 17, 2020 "Real Stories on Attorney Wellness" and "Mindfulness for Stressed Professionals"; Mid-Year Meeting – June 26, 2020 "Commission on the

Well-being of the Legal Profession: A Review of the State Action Plan Recommendations”. The following wellness-related articles have appeared in the following Bar Journals: Spring 2019 Bar Journal - “Lawyer Well-Being Committee and ‘Be Well’ Introduction”; Summer 2019 Bar Journal - “Stressed Much?”; Fall 2019 Bar Journal – “Lower Your Stress, Increase Your Resiliency”; Winter 2019 Bar Journal – “Is it Possible to do Less to Achieve More?”; and Spring 2020 Bar Journal – “Time for Holistic Spring Cleaning”.

The VBA created a “Wellness Resources Page” dedicated to wellness resources for the legal community, including lawyers, judges, law students, paralegals and law office staff. It also includes “secondary trauma” resources for judges, lawyers, law office personnel, court staff and jurors.

The VBA conducts a membership survey every five years. The most recent membership survey was conducted in the Fall of 2019. It included the following wellness questions: Generally, how satisfied are you with your professional life; If you had it to do all over again, would you become a lawyer; How would you describe your over-all well-being (physical and mental health); How would you describe your overall work/life balance; Did you know that Vermont has a Lawyers Assistance Program; What would you like to see offered for lawyer assistance resources?

The VBA Board of Bar Managers voted to create the VBA Lawyer Well-Being Section on September 27, 2019. Samara Anderson and Micaela Tucker are the Co-Chairs of the Section, which has been very involved with planning the wellness-related programs at the major meetings, and with penning the “Be Well” features in the Bar Journal. In addition, during the pandemic, Samara has taught two mindfulness sessions every other week on Thursdays since shortly after the emergency orders began. The dates are continuing into September at this point. Lastly, the Section has engaged with the VBA COVID-19 Committee to collaborate and to provide guidance about the “wellness” aspect of the COVID-19 Committee charge.

With respect to wellness-related activities at each Annual Meeting, Mid-Year Meeting, Solo & Small Firm Conference, and Mid-Winter Thaw, so far yoga, meditation and early morning walk opportunities have been offered. Winter recreational activities have also been offered, weather permitting.

Regulators Committee Recommendations

- 1. In December 2018, the PRB voted to recommend that the Court add a comment to V.R.Pr.C. 1.1 to make clear that behavioral health issues have the potential to adversely impact a lawyer's ability to provide clients with competent representation.*
- 2. In December 2018, the PRB voted to recommend that the Court amend Administrative Order 9 to authorize bar counsel to refer complaints to a LAP.*
- 3. In October 2018, the Mandatory Continuing Legal Education Board voted to recommend that the Court consider requiring lawyers to take 1-hour of CLE in "wellness" every reporting cycle, with "wellness" defined broadly.*
- 4. The Board of Bar Examiners voted to recommend that the Court consider amending Rules 12 and 15 of the Rules of Admission to incorporate wellness into the curriculum required of lawyers in their first year of admission to the Bar of the Vermont Supreme Court.*
- 5. The Character & Fitness Committee resolved to continue to focus on conduct over condition when reviewing applications for the admission to the Bar of the Vermont Supreme Court. The Committee also resolved to continue to work with law schools to educate students who are facing behavioral health issues that seeking treatment is not a barrier to admission.*
- 6. The Character & Fitness Committee will continue to study whether to recommend that the Court adopt a "conditional admission" program.*
- 7. The Judicial Conduct Board recommends that the State Action Plan recognize (a) that behavioral health issues are as likely to impact judges as lawyers; (b) that judges should be included in whatever wellness resources are provided to lawyers; (c) that judges should assist and, if necessary, make a confidential referral of a member of the bar to an assistance program, and, likewise, members of the bar should similarly make a confidential referral of a judge, with all able to do so without repercussion, and; (d) that more face-to-face interaction between*

members of the bar and judges will assist promoting the wellness initiatives of the State Action Plan.

The Supreme Court has amended the comments to Rule 1.1 of the Vermont Rules of Professional Conduct to acknowledge that “[m]aintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law.” The Board’s Notes state that “the amendment urges lawyers to be cognizant of the toll that the profession may take on its members if behavioral health issues re ignored. The amendment is intended to remind lawyers that their behavioral health may impact clients and the administration of justice, and to encourage lawyers to employ preventive strategies and self-care.”

The Supreme Court adopted a new mandatory MCLE rule, which now requires at least one credit hour per reporting period of “Attorney Wellness Programming”. This is defined as “programing designed to help lawyers detect, prevent, or respond to substance abuse , mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties.”

The Supreme Court has proposed amending Administrative Order No. 9 to create a “Bar Assistance Program” within the Professional Responsibility Program. The Bar Assistance Program will develop “programs to educate judges, lawyers, legal professionals, law students, and the public on issues related to professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law; . . . develop [] programs that promote lawyer wellness and educate judges, lawyers, legal professionals, and law students on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect professional competence and impact the practice of law; and . . . help [] impaired lawyers and judges to begin and continue recovery.”

Finally, with the support of the Professional Responsibility Board, Bar Counsel has worked to include proactive wellness and well-being in the larger discussion. To that end, Bar Counsel has encouraged lawyers and legal employers to prioritize well-being and to commit to the goals outlined in the American Bar Association’s Well-Being Toolkit. As part of the effort, Bar Counsel presented seminars on

proactive wellness & well-being, including a series of videos in conjunction with National Lawyer Well-Being Week.

Legal Employers Committee Recommendations

- 1. Establish organizational infrastructure to promote well-being in the law office.*
- 2. Assess lawyers' well-being.*
- 3. Establish policies and practices to support lawyer well-being.*
- 4. Monitor for signs of work addiction and poor self-care.*
- 5. Actively combat social isolation and encourage interconnectivity.*
- 6. Provide training and education on well-being, including during new lawyer orientation.*
- 7. Emphasize a service-centered mission.*
- 8. Create standards, align incentives and give feedback on lawyer well-being topics.*

The Legal Employers Committee recommendations were designed to aid all Vermont entities that employ lawyers, paralegals and legal assistants to ensure that workplace cultures support well-being. The recommendations are an on-going resource for legal employers of all sizes. Sample policies, assessment and monitoring tools and lawyer well-being educational topics are included in the Legal Employers section of the Wellness Resources Page. In addition, during the June 26 CWBLP State Action Plan webinar, Committee Co-Chairs Laura Wilson and Ian Carleton described ways that legal employers have coped and can cope with the wellness issues associated with the COVID-19 pandemic. The Committee also plans to present a seminar in the coming months geared to legal employers and practical examples of how the State Action Plan recommendations can best be implemented.

Law School Committee Recommendations

- 1. Provide training for faculty members regarding student mental health issues.*
- 2. Implement a uniform attendance policy to detect early warning signs of well-being issues.*
- 3. Provide mental health and substance use disorder resources.*
- 4. Empower students to help fellow students in need.*
- 5. Include well-being topics in the Professional Responsibility Course.*
- 6. Provide resources for on-site professional counselors and a confidential recovery network.*
- 7. Provide educational opportunities on wellness topics, including programming and a lecture series.*
- 8. Encourage alcohol-free social events.*
- 9. Offer anonymous surveys related to student well-being.*

Vermont Law School has successfully implemented a majority of the Law School Committee recommendations, including: providing wellness training for faculty, staff and students; requiring professors to notify the Vice Dean for Students of any written notice about a student's unexcused absences so any possible wellness issues connected with the absences can be addressed; working with the VLS Mental Health Committee to continue outreach and educational programs focusing on striking the stigma of seeking help for wellness issues; supporting the "Swan Support" group meetings; highlighting the topic of mental health awareness during the required Professional Responsibility course for J.D. students; continuing the Clara Martin Center to provide ten free counseling sessions per academic year to students, faculty and staff; and offering alcohol-free alternatives at student events.

Lawyers Assistance Program Committee Recommendations

- 1. Create a funded assistance program to bring together educational and support resources for wellness and impairment issues affecting the Vermont legal community.*
- 2. Delivery of services should occur in three stages, the first involving infrastructure.*
- 3. The second stage should involve program promotion, peer assistance, educational presentations, publications and volunteer training.*
- 4. The third stage should include assessment, strategic planning and support of the Commission to define the needs and methods of on-going support of the legal profession in Vermont.*
- 5. Judges should be an integral part of a funded assistance program.*

The Lawyers Assistance Program Committee recommendations were largely focused on a funded assistance program. An increase in lawyer license fees is typically the mechanism for funding assistance programs. The recommendations also outlined but recommended against an unfunded alternative involving shifting responsibility for lawyer assistance to Bar Counsel. Through its Chair, the Lawyers Assistance Program Committee has submitted comments regarding the Proposed Amendments to Administrative Order No. 9. The Annual ABA Commission on Lawyer Assistance Programs had been scheduled to take place in October 2020 in Springfield, Massachusetts but has been cancelled. This was a disappointing loss of opportunity to motivate and increase volunteer participation and awareness of Lawyer Wellness and Assistance in Vermont.

Lawyer Professional Liability Carrier Committee Recommendations

- 1. Actively support Lawyer Assistance Programs.*
- 2. Emphasize well-being in loss prevention programs.*

3. Incentivize desired behavior in underwriting law firm risk.

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

Recognizing that “an ounce of prevention is worth a pound of cure”, lawyers’ professional liability (LPL) carriers have traditionally been strong supporters of assistance programs, including providing wellness seminars free of charge and sample forms and checklists for their client firms. A number of those resources are included on the Wellness Resources Page. LPL’s are also actively reviewing possible ways to incorporate wellness credits when applying schedule rating credits to reflect a firm’s risk profile.

Summary

The Commission is grateful to the Court for extending the Charge and Designation, and for including a requirement to annually review the State Action Plan in the form of an Annual Report. That exercise will ideally ensure that the Plan remains relevant and that its recommendations will be continually reviewed and recognized as responsibilities fundamental to the privilege of practicing law.

The review revealed that whereas much has been accomplished in the last year, there are ample opportunities to accomplish even more in the coming year. The importance of attention to wellness in the legal profession has become even more apparent in the COVID-19 era. A silver lining to the pandemic is its unifying effect. Now more than ever, there’s a recognition that we’re truly in this together.

The major alteration of the landscape of wellness in the legal profession in Vermont this past year involves the Proposed Amendments to Administrative Order No. 9, consisting of the creation of a Bar Assistance Program within the purview of the Professional Responsibility Program, to provide a forum for the non-disciplinary resolution of professional conduct complaints; to respond to inquiries regarding professional responsibility, legal ethics and behavioral health issues; to develop programs that promote attorney wellness and education on wellness; and to assist impaired judges and lawyers. It’s anticipated that the

Supreme Court will soon review the comments provided in response to the proposed amendments and will ultimately decide the next steps regarding the assistance program.

The Commission stands ready to follow through on the Court's decision regarding the Proposed Amendments, and any other recommendations following the Court's review of this First Annual Report.