

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

## **Second Annual Report**

**July 1, 2021**

The Vermont Commission on the Well-Being of the Legal Profession Extended Charge and Designation requires the Commission to annually 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 Commission submitted its First Annual Report to the Court on July 1, 2020. Following is the Second Annual Report.

### **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 COVID-19 pandemic continued to prevent in-person Judges' Meetings at the VBA Annual and Mid-Year Meetings during the Reporting Period. Judicial College was also remote once again. As a result, it wasn't feasible to offer all of the

wellness programs that were recommended for each of those events. A remote training session entitled “Judicial Stress and Well-Being” was presented to judicial officers on October 18, 2020. The pandemic continued to shift judicial officers’ focus, first to how to best conduct remote hearings and then to how to best re-open the courthouses and conduct in-person hearings, trials and jury trials.

The pandemic offered opportunities for remote connections promoting wellness among judicial officers that aren’t typically available. For example, trial judges had a regular weekly phone conference that offered them the chance to communicate, interact and commiserate in ways that were helpful to their well-being. Chief Justice Reiber also led a weekly and now an every-other-week phone conference for all judicial officers, including Supreme Court Justices, Superior Court Judges, probate judges and assistant judges. The phone conferences offered judicial officers a chance to connect and communicate wellness concerns and recommendations. Many trial 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.

With respect to wellness resources, the VBA Well Being Resources site includes a section 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.

The Judges’ Committee looks forward to the resumption of in-person gatherings in the coming months; a meeting room has been reserved for a Judges’ Meeting at the VBA Annual Meeting on October 8 in Burlington. How to best incorporate a wellness component into the program is currently being considered.

Lastly, Judge John Treadwell has recently assumed the position of Chair of the Judges Committee; many thanks to outgoing Committee Chair Justice Bill Cohen

for all of his contributions as Committee Chair, and for his willingness to continue as Commission Co-Chair.

### **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 offered the following well-being related CLE programs at the major meetings and otherwise from 7/1/20 through 6/30/21: Annual Meeting – October 2, 2020 “Lawyer Like an Athlete”; YLD Thaw - January 11, 2021 “Building Stress Resiliency Through Mindfulness”; Mid-Year Meeting – March 25, 2021 “Wellness Strategies for Legal Professionals; Stand-Alone Wellness Program – July 21, 2020 “How to Feel in Control When Things are Out of Control”.

The following wellness-related articles have appeared in the following Bar Journals: 1. Summer 2020 Bar Journal - “Join Me for Some Happiness Hacks this

Summer!"; Fall 2020 Bar Journal – “How to Feel in Control when Things are out of Control”; Winter 2020 Bar Journal – “Mindful Ways to Create Habits, Resolutions and Intentions to Improve Your Well-Being”; Spring 2021 Bar Journal – “If You Have Five Minutes, You Can Activate Your Own Internal Happiness”

The “Wellness Resources Page” dedicated to wellness resources for the legal community, including lawyers, judges, law students, paralegals and law office staff transitioned to an Attorney Well Being site on the new VBA website that launched in May 2021. It also includes “secondary trauma” resources for judges, lawyers, law office personnel, court staff and jurors. Several resources made available during the National Conference on Lawyer Well-Being held on April 7, 2021 have been added to the Page.

Samara Anderson is the current Chair of the Lawyer Well-Being Section. The Section is very involved with planning the wellness-related programs at the major meetings, and with the “Be Well” features in the Bar Journal. In addition, during the pandemic, Samara regularly offered the following mindfulness sessions since shortly after the emergency orders began. “Mindful Moments for Wellness” Programs per month during 2020 included: July 9 and 23; August 6 and 20; September 24; October 1, 15 and 29; November 5 and 19; and December 3 and 17. “Mindful Moments for Wellness” Programs per month during 2021 included: January 5, 11 and 19; February 2 and 16; March 16, 25 and 30; April 13 and 27; May 4 and 25; June 8 and 22.

The Section has also engaged with the VBA COVID-19 Committee to collaborate and to provide guidance about the “wellness” aspect of the COVID-19 Committee charge. Lastly, Samara organized a specialized wellness program for remote bar examinees during each of the remote bar exam periods.

The VBA Membership Committee is awaiting receipt of the VBA Workforce Development Committee’s recommendations for recruiting and retaining lawyers to Vermont. It’s anticipated that the recommendations will include a Mentorship Program, linking new lawyers with more experienced lawyers. It’s also anticipated that the Mentorship Program will have wellness as one of the primary considerations. In addition, the VBA has provided mentoring for new solo attorneys through the Incubator Project for the past several years.

## Regulators Committee Report

### Summary

The Regulators Committee consists of representatives from the Professional Responsibility Program, the Board of Bar Examiners, the Character & Fitness Committee, Continuing Legal Education Board, and the Judicial Conduct Board. The Committee reports two updates related to the Court's licensing functions. Fiscal Year 2021:

1. marked the first year that the Mandatory Rules for Continuing Legal Education included a wellness component; and
2. saw the creation and implementation of the Professional Responsibility Program's Bar Assistance Program.

### Wellness CLE

In the State Action Plan, the Committee reported that:

- "In October 2018, the Mandatory Continuing Legal Education Board voted to recommend that the Court consider requiring lawyers to take 1-hour of CLE in "wellness" every reporting cycle, with 'wellness' defined broadly. More specifically, the CLE Board is working to define 'Attorney Wellness Programming' as CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public. The Board reached the conclusion that a broader definition gives more flexibility to the individual attorney to choose the self-care program that may be more appropriate for her or his needs."

Following recommendation and approval by the CLE Board and Supreme Court, revised CLE rules took effect on July 1, 2020. The rules are [here](#), with a summary [here](#). As revised, the rules require at least 1 hour in Attorney Wellness Programming per reporting cycle. Per the summary,

- “Attorney Wellness Programming’ means CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public. Examples:
  - Depression, Competence and Substance Abuse in the Legal Profession
  - Stress Management: The Power of Change
  - Substance Abuse and Stress for Lawyers: Mindfulness as a Competence Tool
  - Lawyers and Mental Disorders
  - Recognizing, Understanding and Referring a Colleague in Need.”

### **Bar Assistance Program**

The State Action Plan recommended a funded lawyers assistance program. For now, that takes the form of a Bar Assistance Program housed within the Professional Responsibility Program.

The Professional Responsibility Program is governed by Supreme Court Administrative Order 9 (A.O. 9). In November 2020, the Court approved [amendments to A.O. 9](#) that created the Bar Assistance Program (BAP).

BAP builds on bar counsel’s role of providing proactive guidance on issues related to the Rules of Professional Conduct. In the new program, bar counsel’s role continues to include providing guidance and education on issues traditionally associated with the Rules of Professional Conduct - for instance, conflicts of interests, client confidentiality, and trust account management. However, effective April 1, 2021, bar counsel’s role expanded to provide guidance, education, and referrals to lawyers and judges on issues related to behavioral health.

Rule 4 of A.O. 9 states BAP’s purpose:

“The Bar Assistance Program is established within the Professional Responsibility Program. The Bar Assistance Program will assist lawyers to achieve, maintain, and enhance professional competence and professional responsibility by:

A. providing a forum for the nondisciplinary resolution of disputes involving lawyers, including the nondisciplinary resolution of professional conduct complaints filed against lawyers;

B. responding to inquiries regarding professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;

C. developing programs related to professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;

D. developing programs that promote attorney wellness and educate 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

E. assisting impaired judges and lawyers.”

The BAP’s creation is consistent with this Committee’s long support for the notion that well-being is an aspect of competence, a position endorsed by the Vermont Supreme Court’s 2019 decision to adopt Comment 9 to the Rule 1.1 of the Vermont Rules of Professional Conduct.<sup>1</sup> Notably, in creating the BAP, the Supreme Court continued the Commission’s work to destigmatize help-seeking behavior and to decouple behavioral health from conduct that warrants discipline. Rather, the BAP contemplates proactive assistance designed to incentivize help-seeking behavior in a program kept entirely confidential from the disciplinary office.

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▪ <sup>11</sup> V.R.Pr.C. 1.1 requires lawyers to provide competent representation. Per 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.”

The BAP took effect on April 1, 2021. As of June 30, 2021, five legal professionals had either self-referred or been referred to the BAP. In addition, during FY 2021, bar counsel presented 7 separate 1-hour seminars on wellness and well-being, and hosted a series of discussions in conjunction with [Well-Being Week in the Law](#).

### **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 Attorney Well Being Page on the new VBA website. The Committee plans to participate with Bar Counsel, who administers the new Bar Assistance Program, in a seminar at the VBA Annual Meeting in October 2021 regarding 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.

Dean Beth McCormack has assumed the position of Chair of the CWBLP Law School Committee; many thanks to out-going Chair Dean Thomas McHenry for all of his contributions to the Commission.

### **Lawyers Assistance Program Committee Report**

The Vermont Lawyers Assistance Program continues to provide confidential, meaningful assistance to lawyers, judges, law students and their families in coping with alcoholism and other addictions, depression, and other personal or professional crises. Counseling, peer support and professional assistance is available through either calling the VT LAP directly at 1-802-355-4352, or by calling Massachusetts Lawyers Concerned for Lawyers (“MA LCL”) at 1-800-525-0210, whereby the MA LCL can help refer the caller to a Vermont LAP volunteer.

Advertising is provided free of charge to the VT LAP in the VBA Directory, on the VBA website, and in each Vermont Bar Journal.

### **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 Attorney Well Being site on the new VBA website. 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**

Whereas the pandemic certainly presented challenges to implementing recommendations geared to in-person connections, the importance of attention to wellness in the legal profession became even more apparent in the COVID-19 era. A silver lining to the pandemic was its unifying effect. Now that in-person restrictions are being lifted, the Commission looks forward to furthering the State Action Plan goals in a combination of in-person and remote formats.

As detailed in the Regulators Committee section of the Report, the major change to the landscape of wellness in the legal profession in Vermont this past year involved the creation of the 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.

Another major change was requiring a wellness component in the mandatory CLE requirements. As detailed in the Bar Association Committee section of the Report, the VBA has offered a wide variety of wellness programs. Bar Counsel has similarly presented numerous wellness seminars and discussions.

The Commission looks forward to working with Bar Counsel to fully implement the new Bar Assistance Program, and any other recommendations following the Court's review of this Second Annual Report.