

NYSBA: Navigating the Wheel of Well-Being for Lawyers; Recommendations for Change

We can now see possibilities that we could not see two years ago. Covid-19, the closures and the lockdowns brought the situation to a head. Not because we didn't already know that reform is needed, we just didn't know that change was possible. And now we know. Out of necessity, we made enormous changes in how law firms, law schools, court systems, government agencies and legal services operate. NYSBA formed task forces, held regular informational meetings, and offered many resources to lawyers who navigated the shutdown in real time. We made these changes quickly; we had to.

Now, as we collectively catch our breath, we have begun to look at our assumptions about our profession, our health and well-being – the law school model, the reward structure of law firms, access to resources, the role of the judiciary, ethics and triggers for professional problems – with the understanding that this will reveal what we value.

NYSBA is committed to leading the way for a profession in change, especially as it pertains to our fitness to practice. Through the Task Force process, we have come to understand that attorney well-being is an individual's concern but a collective responsibility. Such issues are pervasive in law and must be addressed on multiple, inter-related levels for real, meaningful change. We must make these changes with a collective, sustained effort.

Nationwide, bar associations are highlighting and instituting programs to address the attorney well-being crisis. NYSBA, along with other commercial CLE providers, has begun to regularly offer well-being programs and the New York delegation has supported the ABA resolution for well-being. While NYSBA is a voluntary bar association state and cannot mandate state-wide programs to address the issues raised in this Report, New York bar associations represent the collective voice of their member attorneys and have an obligation to address member concerns as well as ensuring the protection of the public. NYSBA acknowledges and accepts its critical position and role for state-wide efforts to address attorney well-being issues.

Therefore, the Task Force on Attorney Wellbeing submits the following recommendations to be considered by the NYSBA House of Delegates:

Recommendations for NYSBA	Suggested Considerations and Implementations
Formation of a NYSBA standing Committee on Attorney Well-Being	Tasked with (a) the development and implementation of well-being programs and initiatives for all New York attorneys and law students, (b) the state-wide coordination and advancement of well-being programs and resources for bar associations, the judicial system and employers, and (c) the encouragement of a “culture change” in which the stigma and other barriers to participation in well-being programs are lowered.

Well-Being Committee Composition	<p>NYSBA President may consider the following criteria for appointment to a newly-formed Committee:</p> <ul style="list-style-type: none"> a. A representative from each New York State LAP. b. Representatives from diverse areas of New York State, including non-lawyer well-being professionals. c. Representatives from newly-admitted and senior attorneys. d. Other stakeholders such as OCA, NY law schools and other local and affinity bar associations.
Well-Being Committee Mission	<p>NYSBA may wish to consider the following initiatives for the work of the Committee on Well-Being:</p> <ul style="list-style-type: none"> a. Implementation of the Task Force recommendations from the Report. b. The role of the current Lawyer Assistance Committee for cross-Committee initiatives. c. Develop outreach programming for attorneys who have been formally disciplined, with goal of rehabilitation. d. Work with LAPs, bar associations and others to advocate to NYS CLE Board regarding possible modifications of CLE regulations including: <ul style="list-style-type: none"> i. Skills development programs with CLE credit; currently, only presentations of theory offer credit; ii. Include credit for solutions-based well-being programming, rather than focusing on the negative aspects of ill-being; and iii. Broaden well-being CLEs offering ethics credit to include public trust and ethics work, focusing on prevention rather than the need for diversionary programs. e. Develop online resources and materials on topics which support well-being and the importance of self-care. f. Develop and promote a “Law Firm Roadmap for Well-Being Best Practices” for law firms or other legal employers in offering social opportunities which enable people to enjoy shared physical activity. g. Collaborate with the court system (OCA) to create a referral network of clinicians with specific experience

	dealing with the legal profession, such as North Carolina's Bar Cares program and Massachusetts' LOMAP.
NYSBA Well-Being Priorities	<p>As overall well-being policy and support, NYSBA may wish to consider:</p> <ul style="list-style-type: none"> a. Member benefits which facilitate participation in physical activity and other means of self-care. b. Consideration of mentoring in professional liability areas and civility. c. Devote part of Law Practice Management programming to educating on the business case for lawyer wellness. a. Budget for participation in national programs and conferences on attorney well-being for the Committee.
NYSBA LAP Funding Advocacy	<p>NYSBA House of Delegates should consider a resolution which establishes such a priority for NYSBA's LAP and urges a similar commitment for other LAP programs and a commitment by OCA (see Appendix E). The Committee should assist in addressing:</p> <ul style="list-style-type: none"> a. The LAPs as the foundation of other well-being programs. b. Ensure access to at least one clinician at each LAP in New York. c. Examine past and current funding, sustainability of existing LAPs (NYSBA, NYC Bar, Nassau County Bar). d. Consider supporting Lawyer Assistance Programs in other New York bar associations. e. Develop and present CLE programming on attorney well-being, emphasizing well-being as a component of compliance with the Rules of Professional Conduct; maintain dedicated webpage to educate law firms and lawyers about mental health resources and develop free or low-cost counseling opportunities.

<p>NYSBA and CLE</p>	<p>NYSBA could create a signature CLE initiative entitled “Reducing Stigma and Increasing Access” which would include:</p> <ul style="list-style-type: none"> a. Free well-being, mental health and substance use disorder programs offering CLE on a regular cycle; b. Require incorporation of well-being programming as a “best practice” into NYSBA section and committee CLEs, as well as at section destination meetings; c. Make well-being CLE programming a standard inclusion in Bridging-the-Gap CLEs; and d. Develop a well-being CLE program as a standard offering for all newly-admitted attorneys. e. Expand NYSBA offerings CLE, such as workshops and retreats which allow attorneys to explore the complex issues of attorney well-being, as well as how well-being intersects with diversity, equity, inclusion, disability, etc.
<p>NYSBA collaboration with New York law schools</p>	<p>NYSBA is in a leadership position to expand collaboration with all New York law school which may include:</p> <ul style="list-style-type: none"> a. Meetings of wellness liaisons at law schools and legal employers. b. Co-host virtual programming across law schools and among State bar, law firms, public interest organizations, the judiciary and law schools. c. Develop a roundtable program (LAP) tailored to the law student audience; consider reintroducing NYSBA’s toolkit. d. Host yearly meetings between NYSBA LAP and deans of students of all NY law schools to foster statewide collaboration in law school well-being. e. Offer mental health training focused on detection and response for law faculty, staff, administrators throughout the state (in collaboration with Mental Health First Aid). f. Create a wellness pledge for law schools and legal employers. g. Collaborate with law schools on programs to address student debt load and financial well-being, particularly within the context of pursuing public service or public interest positions in the State of New York. h. Convene quarterly meetings with affinity bar associations and the law schools in the State to discuss issues of diversity, equity and inclusion in legal education and the legal profession.

	<p>Communication initiatives to include:</p> <ul style="list-style-type: none">a. Stories of members of the legal profession who are prioritizing their holistic health and well-being on state bar websites, programming, and materials.b. Educate the legal profession on NYSBA’s effort to help eliminate mental health questions from the character and fitness application. Increase transparency for law schools and law students about how mental health diagnosis and treatment will affect bar admission through programming and information campaigns.
	<p>Curriculum initiatives to include:</p> <ul style="list-style-type: none">a. Partner with leading faculty and practitioners statewide to develop a unit and/or teaching resources on wellness to be incorporated into professional responsibility courses required for graduation.b. Advocate for New York to become a national leader in by requesting that the Court of Appeals and Board of Law Examiners require completion of a course on wellness as a condition of graduation from a NY-accredited law school and/or as a condition of licensure.c. Provide and highlight no or low-cost well-being initiatives to address law schools’ resource limitations.d. Convene at least one meeting of the states’ law school deans a year about how NYSBA can assist with achieving representational diversity in faculty hiring, consistent with each school’s mission and goals, to address barriers to belonging that negatively impact student mental health.

Recommendations for Law Schools	Suggested Considerations and Implementations
<p><i>Collaboration Across the Profession:</i> Law student wellbeing is the collective responsibility of several constituencies: students, faculty, staff, the bench, and the practicing bar. The following recommended best practices can help each of these constituencies advance and achieve the collective goal.</p>	<ol style="list-style-type: none"> 1. Appoint a wellness liaison at each school to coordinate with NYSBA on issues of well-being. Liaisons to meet regularly to share current events, strategies, and program ideas. 2. Develop a list of providers, vendors, campus and community partners for wellness programming and resources, to share with students and counterparts throughout the State – especially critical for law schools in more remote parts of the State. 3. Collaboration with local law schools and professionals about financing a legal education, information that may serve to lessen the stresses relating to financial burdens. 4. Offer counseling services on site at the law school, if possible, preferably staffed by providers who have experience with the unique stressors of the law school experience. 5. Host an LAP program as early as Orientation to reduce stigma, encourage help-seeking behaviors, and introduce students to resources and mentors in the profession. 6. Develop programming focusing on marginalization of individuals of color, first-generation students, disabled students and students who are members of the LGBTQ+ community and the importance of diversifying the legal arena and having a sense of belonging. Work to eliminate the barriers to an affordable legal education that impact the numbers who make it to and through law school. 7. Develop resources to support disabled students to lessen the negative impact on their mental state and wellness while in law school. 8. Offer training to law students to support their fellow students, possibly in conjunction with legal employer professional development partners. 9. Present wellness programs in partnership with members of NYSBA that reduce and address stigma, demystify the daily work of attorneys, and encourage and assist students in developing habits that help their health and well-being.

<p><i>Communication on Well-being:</i> Reducing the stigma associated with mental health issues and giving law students and lawyers permission to make their well-being a priority are laudable aims that are more relatable and, thus, achievable when admired members of the profession share their personal stories of success and struggle.</p>	<ol style="list-style-type: none"> 1. Encourage law schools to have a dedicated page on their websites that identifies wellness resources. 2. Implement systems for students and faculty to share wellness concerns with responsible administrators or campus health professionals. For example, faculty awareness and reporting of excessive absences, which often signal an underlying wellness issue. 3. Host special events commemorating mental health awareness days. Address well-being during orientation and reorientation programs, including a wellness-focused perspective on law school and wellness resources. 4. Establish a culture of wellness throughout the institution – e.g., feature law faculty speakers at wellness-focused events, including faculty discussing their own struggles, would help remove the facade of perfectionism endemic to the culture of law.
<p><i>Curricular Innovations:</i> The role of faculty governance over law school curriculum cannot be underestimated. Through their empowered governance and leadership functions, law school faculty can greatly influence and shift the culture of legal education, demonstrating that wellness is a valued priority of the legal academy and profession as a whole, not an “add-on” to be sacrificed for academic success or client and supervising attorney needs.</p>	<ol style="list-style-type: none"> 1. Proactively incorporate wellness into the curriculum through for-credit or non-credit bearing courses. 2. Discuss mental health and substance use in Professional Responsibility courses as well as client counseling and clinical courses. 3. Develop opportunities to discuss professional identity formation to encourage students to be mindful of their individual values, strive for a career path aligned with those values and promote self-awareness. 4. Include lectures or a workshop series on wellness topics in both doctrinal and experiential courses throughout the curriculum. 5. Promote well-being in the classroom by mindful attention to use of the Socratic method and engaging in conversations that raise awareness on issues of diversity, equity and inclusion. 6. Acknowledge the impact of the lack of representational diversity at the podium, particularly in required doctrinal courses and commit to addressing this through examination of the composition of and charges to faculty appointments committees. 7. Adopt learning outcomes and, possibly, technical or essential performance standards, specific to wellness (e.g., tools needed to promote personal and professional well-being).

Recommendations for Employment and Culture Change	Suggested Considerations and Implementations
Promote attorney well-being as an ethical and professional obligation of lawyers, as well as a business imperative.	Attorney well-being: (i) reduces expensive turnover, results in higher client satisfaction and loyalty, higher productivity and profitability; and (ii) it is a core to a lawyer's Duty of Competence under the Rules of Professional Conduct; competent representation suffers when a lawyer's health declines.
Develop a "Law Firm Roadmap" for Well-Being Best Practices	<ol style="list-style-type: none"> 1. Creation of lawyer and staff well-being committees and strong mentoring programs and sponsorship programs; 2. Cap billable hours and bonus availability no higher than 1800 hours; consider alternative billing arrangements and client expectation of value; 3. Support taking full allotment of vacation time and parental leave/flexible work policies; actively encourage fathers to take parental leave; 4. Sign the ABA "Well-Being Pledge for Legal Employers." 5. Develop best practices tailored to the firm and institutionalize periodic HR assessment of attorneys' well-being, at least annually. 6. Actively manage client expectations; create a formal "coverage" system to avoid disruption of services to clients. 7. Establish discussion groups for confidential and safe forums for lawyers to discuss well-being issues. 8. Encourage sabbaticals; emphasize the importance of HR intervention or involvement. 9. Resources tailored to smaller firms and solo practitioners to developed by the NYSBA Well-Being Committee and LPM including coverage policies, programs on work/life balance, technology assistance, health/disability insurance affordability, student loan forgiveness, etc.
Recommendations for Courts	Suggested Considerations and Implementations
In the Courtroom	<ol style="list-style-type: none"> 1. Judiciary should make a greater effort to seek attorney input when establishing scheduling orders, when requests for virtual appearances are made and must be more flexible when valid attorney concerns call into question the feasibility of that schedule; 2. Allow virtual appearances to continue for certain proceedings. 3. Standardize the Rules of Court for particular courts within the Unified Court System (UCS) as a whole, to the greatest extent possible. 4. Accommodations for attorneys with disabilities should include the opportunity to participate virtually.

	<ol style="list-style-type: none"> 5. Assign attorneys at the earliest possible point in the courts that are highly charged arenas – i.e., family court, criminal court and housing court.
Well-Being and Diversion	<ol style="list-style-type: none"> 1. All Appellate Divisions to use diversion programs when disciplinary proceedings are brought against attorneys engaging in conduct due to issues with mental health, substance and alcohol abuse. 2. Take steps to minimize the potential for an ignored complaint of professional misconduct/grievance; and 3. Develop and implement mandatory pre-admission professionalism courses.
Well-Being and Education	<ol style="list-style-type: none"> 1. OCA to join NYSBA in supporting the tenets of the following Attorney Wellness Policy Statement (Appendix E). 2. UCS to institutionalize services and policies relating to substance use, mental health and other addiction disorders, including education, training, peer support and access to treatment. 3. Judicial training programs should stress the importance of judges treating members of the bar with dignity and respect; the challenges of mental health challenges and substance use disorders prevalent in the profession; and the ethical obligations to avoid even the appearance of bias. 4. Provide court system leaders with specific objectives including, but not limited to: <ol style="list-style-type: none"> a. A commitment to establish “wellness liaisons” in every District to act as initial points of contact; b. A commitment to offer and encourage attendance at regularly scheduled wellness programming throughout each District; and c. A commitment to set aside funding in each District’s annual budget to ensure consistent provision of wellness programs.