

Safety Notice

Safety is a top priority for ACC. We work closely with our venue partner to ensure a safe meeting.

General Tips

- Always be aware of your surroundings
- Identify at least two emergency exits
 - building exits marked on facility floor plan in meeting app
- See something? say something
 - **1-602-262-7271**; dial **85** from any house phone; or, **9-1-1** in case of emergency
- If an alarm sounds, follow directions from venue staff and the public announcement system.



Welcome

This session will utilize polling
technology

To participate:

Text ACCEDUCATION5 to 22333

or

Respond at Pollev.com/acceducation5



Ethics for Stressed *“Super Lawyers”*

Presenter

Claudette W. Patton

Moderator

James W. Patton

Panelists

Heidi K. Brown

Erica Salmon Byrne

Justin R. Martin

Our 4-Part **ROADMAP** for Today

- Characteristics that make you a *Super Lawyer*, may contribute to high risk behavior
- Stress, burnout, and hard truths
- Develop strategies and tools to promote sustainable high-level performance
- Ethics of getting assistance and helping a colleague who may need help





Corporate Counsel **Super Powers**

- Do more with less
- Cut costs
- Work harder
- Lawfare
- Trial prep room is called the "*War Room*"
- Win, Win, Win!

Is Stress Good or Bad?

It depends.

Stress isn't inherently bad;
what matters most is how you relate to it.

“Too much stress really has to do with experiencing *burnout* which may lead to abuses, unhealthy living, poor judgment, and even malpractice.”

Dr. David Ballard
American Psychological Association
Healthy Workplace Program

Burnout



So What is **BURNOUT**?

EXHAUSTED

Physically, Emotionally, Intellectually

"I'm exhausted."

DISENGAGED

Cynical, Frustrated, Disinterested

"I don't care."

PERFORMANCE SUFFERS

Reduced Creativity, Hard to Concentrate

"I'm not at my best...but, I'm exhausted and I don't care."

Legal Profession In Crisis?

- A 2016 study by Hazeldon - Betty Ford Center in conjunction with the American Bar Association's Lawyer Assistance Program identifies **current rates of addiction and depression are much higher** than a similar 1990 study by Johns Hopkins University.
- Out of nearly 13,000 surveyed attorneys, **law firms and bar administration** had the highest rates of addiction and depression.
- Alcohol Abuse – Substance Abuse – Mental Health

Crisis in Alcohol Abuse



The percent of "pure" alcohol expressed here as alcohol by volume (alc/vol) varies by beverage.

Crisis in Substance Abuse

- Addiction strikes even the best lawyers -- 18-20% of lawyers currently abuse drugs while the general population is 8-10%.
- Opioids – Cocaine - Heroin



Crisis in Mental Health

- **46% of lawyers** have experienced depression during their career.
- **61%** have high levels of anxiety often induced by chronic stress.
- Lawyers are nearly **4X more likely** to suffer from depression compared to 28 other professional industries.



CRISIS - why at these levels?

- Optimism vs Pessimism
- Workdays are long
- Lack of civility - practice has changed
- Exhaustion
- Loss of collective identity
- Loneliness

NO Lawyer Has Immunity

- The average lawyer works **50+ hours per week** and is **3X more likely** to abuse alcohol and drugs than those who work less.
- **25% of lawyers facing disciplinary actions** are abusing drugs or alcohol and are suffering from a psychological disorder.

Quick Examples

Patrick Mullen, Esq.

- After 34 years of practice, Mullen was disbarred after admitting that he used his profession to smuggle heroin to county jail inmates while keeping some for himself.
- He was addicted to alcohol, Oxycodone and heroin.

Aaron Slavin, Esq.

- Slavin was caught abusing drugs when a client secretly recorded him and offered to pay her legal bill with a bottle of 250 Oxycodone pills.
“Yup, lets do it...I would not use them all, but I have people that would take them.”
- Led to a trafficking charge and a 25-year sentence.

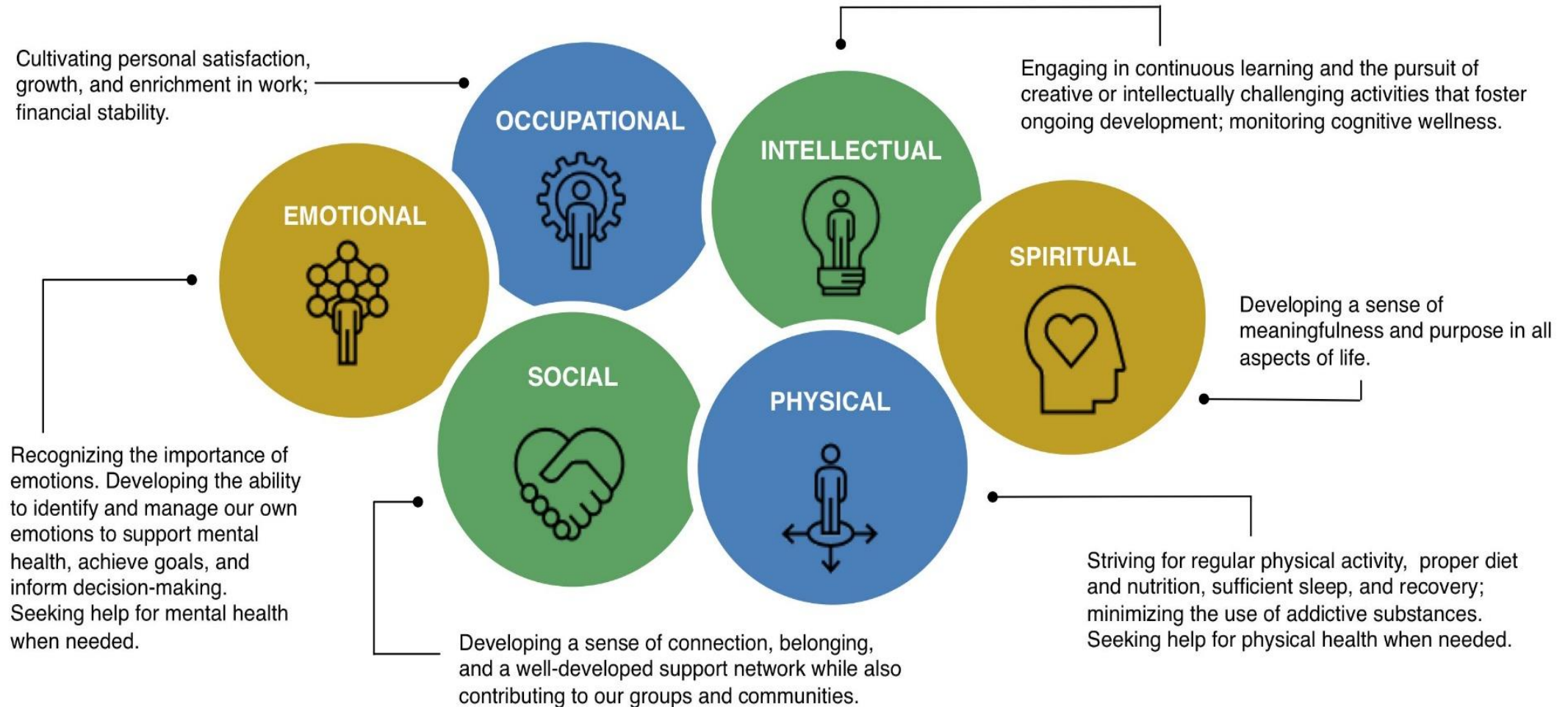
Why the Delay to Address the Stress?

“Most attorneys wear their hard-earned ability to swim in such rough professional waters as a badge of honor. They aren’t inclined to let others know they suddenly “can’t cut it” and it’s that fear – *that others will find out they’re weak, vulnerable or troubled* – that attorneys commonly say stands between them and getting the help they think they might need.”

*Dr. David Ballard
American Psychological Association
Healthy Workplace Program*

Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



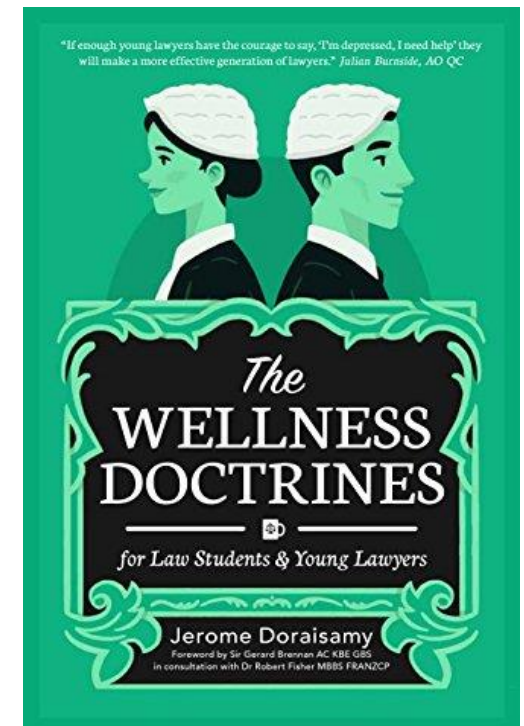
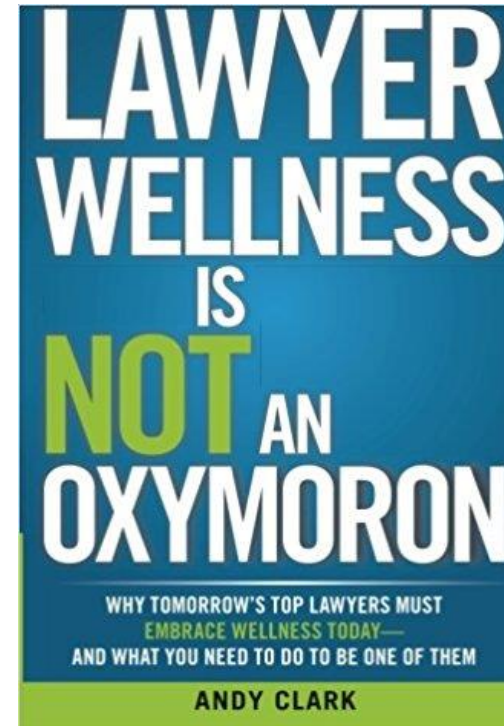
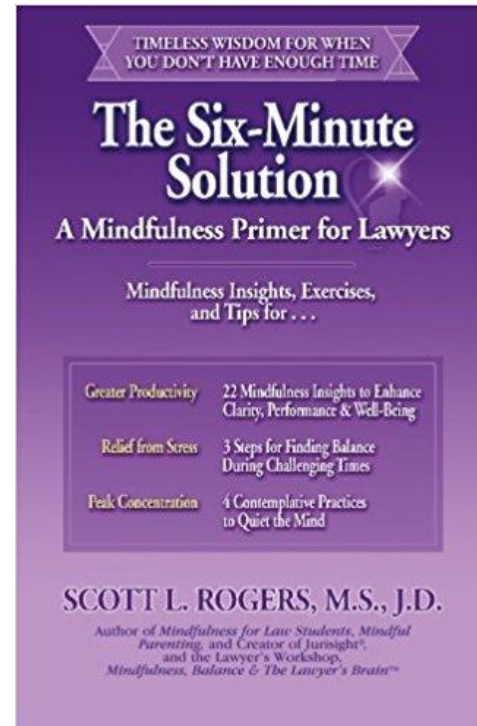
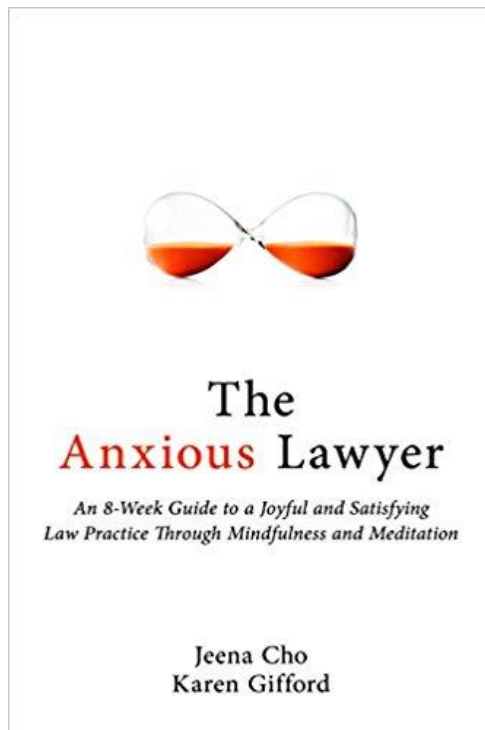
WELL-BEING as a Health Strategy

- **Well-being** is your personal health and lifestyle: good nutrition, proper weight control, exercise, and controlling risk factors such as smoking, alcohol and drug abuse.
- **Well-being** research shows those who take care of themselves and manage their lifestyles are healthier, more productive, have fewer absences from work, and make fewer demands for medical services.
- **Well-being** encourages you to adopt habits and behaviors that promote better health and improved quality of life around physical, psychological, social, and spiritual needs.

MINDFULNESS as a Health Strategy

- **Mindfulness** means maintaining a moment-by-moment awareness of our thoughts, feelings, bodily sensations, and surrounding environment.
- **Mindfulness** also involves acceptance, meaning that we pay attention to our thoughts and feelings without judging them in a given moment. When we practice mindfulness, our thoughts tune into what we're sensing in the present rather than rehashing the past or imagining the future.
- Issues with the word *mindfulness*? Let's go with "contemplative thinking" or "abiding thinking".

Mindful and Wellness Resources to Consider



Friend or colleague demonstrating outward signs?

- Talking about suicide or death and even glorifying death
- Self-isolating from friends and family
- Increased use of alcohol or drugs (legal or illegal)
- Work product has deteriorated and missing deadlines
- Starting to give away cherished possessions
- Exhibiting sudden unexplained improvement in mood
- Neglecting his or her appearance and hygiene
- Acting out of “normal” character
- Exhibiting reckless behavior by taking unnecessary risks

Overcome C-Suite Resistance with Data

Well-being programs contribute to bottom line*

- Average 26% lower medical spend
- Average 28% reduction in Absenteeism
- Average 30% decreased Workers' Comp and Disability claims
- Average \$5.93 to \$1 savings-to-cost ratio
- Improved productivity, morale and engagement

* Howell Benefit Services www.howellusa.com, 2019

Ethical Considerations & Scenarios

Manifestation of Impairment – Bar associations see highest level of complaints around impaired attorneys in areas around

- **Diligence**
- **Communication**
- **Competence**

Duty to Report

ABA MODEL RULE 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.**
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate 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.**

Your Duty to Report

“ETHICS HELPLINE”

It is prudent to first call the bar association’s **Ethics Helpline** and **speak confidentially** and share the scenario in a *hypothetical format* for feedback on “next steps.”

Commission on Lawyer Assistance Program

The ABA Commission on Lawyer Assistance Programs (CoLAP) has a mission to assure that every judge, lawyer and law student has access to support and assistance when confronting issues such as:

- Depression
- Suicide
- Eating Disorders
- Alcohol Abuse
- Gambling
- Stress
- Drug Addiction
- Compassion Fatigue
- Social Media Addiction

Help is available so lawyers are able to recover, families are preserved and clients and other members of the public are protected.



CoLAP

ABA COMMISSION ON
LAWYER ASSISTANCE PROGRAMS

We're Better Together: Lawyers Helping Lawyers

ABA National Task Force Report on Lawyer Well-being

- National report is **72 pages** containing **74 recommendations** to create a movement to improve lawyer well-being.
- Recommendations touch all aspects of legal profession:

Judges

Bar Associations

Regulators

Professional Liability Insurance

Law Firms

Lawyer Assistance Programs

Law Schools

Corporate Counsel

Diligence - Ethics Scenario “Theresa”

ABA MODEL RULE 1.3 DILIGENCE

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

Reasonable diligence as used in this Rule generally means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

As of 10.2.19

Scenario 1: Where might Theresa go for help?

**Does Theresa have an environment where she can talk
about her personal challenges?**

No

Somewhat

How do you think about the question of psychological safety in your own professional environment?

Is your department or organization one where you can express relevant thoughts and feelings to colleagues and supervisors?

Yes

No

Communication - Ethics Scenario “Bill”

ABA MODEL RULE 1.4 COMMUNICATION

A lawyer shall:

- a. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;**
- b. reasonably consult with the client about the means by which the client's objectives are to be accomplished;**
- c. keep the client reasonably informed about the status of the matter;**
- d. promptly comply with reasonable requests for information; and**
- e. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.**

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Do you agree with Bill's CLO that his judgment could potentially be compromised?

Yes

No

What kind of obligations does he have to his colleague to brief her on the work the firm has done?

Is there a touch of retaliation in this scenario?

Yes

No

Competence - Ethics Scenario “Judge”

ABA MODEL RULE 1.1 COMPETENCE

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

Competent representation as used in this Rule generally means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

As of 10.2.19

Do you believe this is a true story?

Yes

No

**Do you know a lawyer or colleague who you think needs
mental health support but you are reluctant to say
anything or intervene?**

Yes

No

Approximately 2010



Approximately 2002



Where Do We Go From Here?

Well-being Tips and Take-aways (Appendix A)

7 Steps to Crafting a Well-being Program

1. Educate ourselves and our corporate counsel community – read and commit
2. Encourage/require individual self-assessment
3. Cultivate awareness of, empathy for, and non-judgment of others
4. Plan a calendar of monthly chats/check-ins/discussion groups
5. Schedule seasonal well-being activities and periodic reminders
6. Connect employees with outside resources (programs/coaches/counselors)
7. Foster accountability

Crafting Your Wellbeing Program

See Appendix A

1. Educate ourselves and our corporate community, then commit
2. Encourage (or require) individual self-assessment
3. Cultivate awareness of, empathy for, and non-judgment of others
4. Plan a calendar of monthly chats/check-ins/discussion groups
5. Schedule seasonal well-being activities and periodic reminders
6. Connect employees with outside resources (programs/coaches/counselors)
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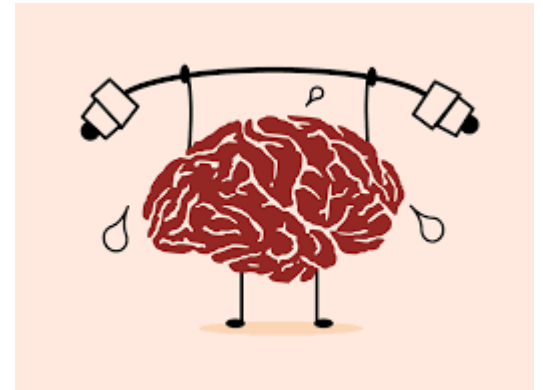
Step 1: Education & Commitment

- Educate ourselves and our in-house community by reading:
 - The National Task Force Report
 - “The 2019 Most Popular Workplace Well-Being Programs”
 - The ABA Well-Being Toolkit Nutshell
 - The ABA Well-Being Toolkit (especially, Action Plan, p. 10, p. 29)
- Provide all employees with copies
- Conduct an institutional assessment/audit (Well-Being Toolkit, pp. 12-13, 24)
- Craft a Well-Being Mission Statement
- Sign the 7-Point ABA Well-Being Pledge



Step 2: Self-Assessment

- Foster a culture of “the whole lawyer”
 - Great athletes focus on excellence in skills, but also mental and physical health
 - Anne Brafford: “Well-being is a team sport.” (Well-Being Toolkit, p. 4)
- Encourage (or require) employee self-assessment
 - Budget Booster: Team Surveys
- Provide self-assessment tools
 - Well-Being Toolkit, Self-Assessment Resources, pp. 25-28
 - Pennsylvania Lawyer Assistance Program (online self-assessment tools for lawyers)



Step 3: Noticing Others

- Encourage awareness of, empathy for, and non-judgment of others
- Provide resources for noticing subtle or obvious signs of distress
 - See LoCap Resources above
- Help reduce the stigma around seeking help
 - See tips in the Well-Being Toolkit, pp. 18-20
 - Review the ABA's Anti-Stigma Campaign
- See something, say something:
 - Provide tips for “getting out of our own way” and reaching out to others
 - Establish protocols for getting help for others

*it's ok
not to be
okay*

Step 4: Monthly Programming

- Plan monthly discussion/chat groups:
 - ABA Well-Being Toolkit: Education and Development Topics, pp. 18-23
 - ABA Well-Being Toolkit Worksheets #1-17
 - Consider topics on anxiety, fear, and mistake-making in lawyering (see Appendix A to *Untangling Fear in Lawyering* book)
 - Invite outside counsel's and Directors of Well-Being to facilitate
- Budget Boosters:
 - Book Club (Well-Being Toolkit, p. 30)
 - Outside facilitators: State LAP Directors (Well-Being Toolkit, pp. 96-99); Lawyer malpractice insurance advisors; Experts in grit, resilience, imposter syndrome, etc. (Well-Being Toolkit, pp. 33-42)



Step 5: Well-Being Re-Chargers

- Schedule seasonal well-being activities (Well-Being Toolkit, p. 15)
- Incorporate periodic well-being reminders
- Budget Boosters:
 - Leverage technology: well-being apps, fitness apps (see Well-Being Toolkit, pp. 16, 29)
 - Well-being office stations: healthy snacks & drinks, positive & inclusive signage
 - Well-being office: standing desks, stress balls, plants
 - Gym/fitness partnerships and incentives
 - Corporate well-being retreats



Step 6: Outside Resources

- Connect employees with outside resources:
 - Lawyer Assistance Programs (Well-Being Toolkit, pp. 96-99)
 - Information about insurance coverage for confidential sources
 - Information about physical fitness resources
 - Budget Booster:
 - Financial support for confidential outside counseling and mentoring
 - In-house confidential coaching, counseling and mentoring support
- Collaborate with outside resources:
 - “Best Practices” program directors at law firms (Well-Being Toolkit, pp. 16-17) and other recommended Partners (Well-Being Toolkit, p. 29)

Step 7: Foster Accountability

- Complete the 7-Point ABA Well-Being Pledge One-Year Update
- Communicate with outside counsel about signing the Pledge (see *Corporate Counsel 8/2/19 article*)
- Report back:
 - To the C-Suite
 - To participants
- Garner and incorporate participant feedback
- Spread the word
 - Use social media to share your corporate well-being initiatives



Accountability is an inside job.

Some Final Guideposts

- All lawyers are susceptible to stress, leading to burnout, self-harm and harm to others.
- The skillful Super Lawyer can rationalize that self-harming behavior is acceptable as long as there is no decline in performance.
- Do a self-examination - pay attention to the problem – observe your colleagues - use available resources - and start a Wellbeing conversation.

“As long as someone is breathing, there is hope. We are in the business of saving lives.”

Laurie Besden, Director of Lawyers Concerned for Lawyers of Pennsylvania

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**On behalf of the ACC Law
Department Management Network...**

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