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

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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.  

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Today’s Topics

- Why this is an ethics issue
- Our current environment
- Challenges we face
- Effects of the pandemic, generally
- Effects of the pandemic on the legal profession
- Surge capacity
- Moving forward in uncertainty
- Creating a surge capacity/resiliency toolkit

First, Let’s Acknowledge

- The COVID-19 Pandemic
- Social Change & justice
- Economic rollercoaster
- Hyper-partisan politics
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.
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

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, impairment, financial, impaired or burned out
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

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.
Well-Being and Organizations

- Example: rumors about behavior, staff expressing concerns, client complaints, production
- Issues: mental health, substances, burn out, workplace issues
- Options: Make it OK to get help early; early intervention

ABA 2021 Profile of the Legal Profession

- Problematic Drinking
  - U.S. Population: 6.4%
  - All Lawyers: 21%
  - Lawyers under 30 years old: 25%

- Mental Health Issues
  - Suicidal Thoughts: 11.8%
  - Severe Anxiety: 19.0%
  - Depression: 18.3%

*Problematic drinking* is defined as having 2 or more positive responses on the Alcohol Use Disorders Identification Test (AUDIT)
Younger/Newer Lawyers

- Highest rate of substance misuse/depression
- Increased 5.1 responsibilities
- Well-being initiatives and expectations

Alcohol and remote work

- Remote workers more likely to drink during work hours
- Distress, getting away with it, relapse
- Disorganized, absent or late, slurring, appearance, inappropriate
- People in recovery often found they had the tools to cope
- Other drugs and behaviors
Depression

- 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
- Time element

In a colleague, look for changes in behavior.

Depression: From the Outside

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

The key is a change in behavior
Depression: #1 Predictor for Suicide

- Suicide rates among lawyers up to 6X national rate
- More Women Attempt, More Men Die
- Symptoms Include:
  - Depression symptoms
    - Statements of hopeless, helplessness, or worthlessness
    - Preoccupation with death
  - Sometimes unexpected sudden improvement in mood
  - Giving away possessions
  - Tying up “loose ends, setting one’s affairs in order”
  - Giving “hints” of plans

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 or take them somewhere.
- Do talk with their family or others if they are reluctant to accept help
- Call 911. The person may be angry with you, but better mad than dead.
- Doing nothing is not an option, but sometimes nothing you do will stop it.
Other Mental Health Issues

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

High-Functioning and Impaired

- Competitive overachievers
- No public consequences
- Little accountability
- Physical appearance
- Subtle isolation
- Seems to have good boundaries
- “Hyperawareness” of others’ use
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.”


Issues & Challenges

- Vaccination, Masking & Distancing
- Hybrid or Flex Scheduling
- Policy Exception??
- Physical Office Changes
- Sick Policy
- Communication within the Firm
- Communicating with Clients
- Diversity, Equity, & Inclusion
- What Don’t We Know???
Emotional Long-Haul

- We’re all experiencing additional stress and anxiety
- The tunnel gets longer
- We’re on the front lines of everything
- From anguish to languish

Languishing

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

Grief

- Loss of loved ones
- Ambiguous grief
  - Control
  - Opportunities
  - Choice
  - Predictability and benchmarks
  - Connections and access

Trauma

Trauma is the unique individual experience of an event, series of events, or set of circumstances:

- The individual’s ability to integrate their emotional experience is overwhelmed; and
- The experience is physically or emotionally harmful or threatening and has lasting effects on the individual’s functioning and 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.
Racial Trauma

- Cumulative effect
- Historical and present
- Insensitivity, demeaning and dismissive treatment and comments
- World view impact

POST TRAUMATIC GROWTH – BUILDING RESILIENCE
Incremental Buildup of Stress

- Gradual accumulation of minor stresses throughout the day/week
- Noticeable stress reaction
- Low stress level

Moderating Stress Buildup

- Stress reduction activities
Post-traumatic Growth

- Mental health comes first
- Fresh start effect
- New doors open
- One step at a time

Why do we need Resilience?

- Life Stressors
- Work Stressors
- Trauma
- Secondary Trauma
- Health problems

LCL offers programs addressing resilience strategies in greater detail.
### 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))*

### Resilience Benefits

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

“Surge Capacity is a collection of adaptive systems – mental and physical – that humans draw upon for short-term survival in acutely stressful situations, such as natural disasters. Pandemics are different – the disaster itself stretches out indefinitely.” – Dr. Ann Masten

- Depletes over time
- Prolonged, intense stress
- Isolation
- Individual response, not uniform across population
Ethics and Well-Being

- A lawyer’s workload must be controlled so that each matter can be handled competently. Rule 1.3 comment [2]
- Lawyer as Advisor. Rule 2.1

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

➢ Emotions will vacillate
➢ Perfection? I’m doing the best I can
➢ Consider the well-being components
   ➢ What triggers you?
   ➢ Where are you strongest?

Antidotes to Languishing

➢ Unfragmented attention - Boundaries!
➢ Connections
➢ Mindfulness tools
➢ Small manageable goals
   ➢ Conversations
   ➢ Projects
   ➢ All in
YOU’RE NOT ALONE

Ask for Help
What happens when you do?

What Happens When You Get Help?

<table>
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<th>After</th>
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<td>Failing/Superficial Relationships</td>
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<tr>
<td>Depressed</td>
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<td>Anxiety Ridden</td>
<td>Capable of Dealing with Ups and Downs</td>
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<td>Felt Like a Fraud</td>
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- Who we help –
  - Lawyers, Judges, Law students, and Families; Staff on a case-by-case basis
- What we help with –
  - Substance use and mental health, cognitive, stress, burnout
- Communications are confidential
- Services or Referrals –
  - Licensed professionals
  - Group support
- Peer support
- Education and public awareness

Well-Being Resources

- [www.mnlcl.org](http://www.mnlcl.org) - Resources and links to all ABA well-being content
- The Path to Lawyer Well-being – [www.americanbar.org/colap](http://www.americanbar.org/colap)
- Lawyer Well-being Week Resources [https://lawyerwellbeing.net/lawyer-well-being-week/](https://lawyerwellbeing.net/lawyer-well-being-week/)
Partnership with The Sand Creek Group

- Up to 4 free counseling sessions
- Resource website
  - www.sandcreekeap.com
  - Click on “Member Portal & App”
    - When registering use the Company Code “lawyers”
- Contact Sand Creek directly at
  612-430-3383 or toll-free: 1-888-243-5744
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THERE IS HELP and THERE IS HOPE

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