

By SUSAN HUMISTON

Lawyer well-being and lawyer regulation

To be a good lawyer, one has to be a healthy lawyer," wrote the co-chairs of a national panel on lawyer well-being earlier this year in introducing their report, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change."¹

Your thoughts? At first glance, I think most people would say they agree—this is obvious, right? On reflection, however, you may start thinking about all of the good lawyers you know whose lives are a mess. Their work/life balance is out of whack; they cannot find the time they need to spend with their children; their kids hate Mom or Dad's job and the constant competing for attention with a smart phone. Maybe their after-work happy hours get pretty rowdy as stressed co-workers blow off steam. Or perhaps you have co-workers with DUIs, or for whom exercise and healthy eating habits have fallen by the wayside. Yet many of them remain good, or even great, lawyers by and large.

This is the toxic contradiction that underlies our profession, and we are all too aware of this fact due to current studies and personal experiences. A recent task force led by a partnership of lawyer assistance programs and disciplinary counsel assembled a diverse group of stakeholders in an effort to push the profession to get serious about problem-solving. And that group has challenged each state's professional leadership to implement several very specific recommendations. I encourage everyone to read this call to action, particularly those in positions of leadership within the profession. In this column, I would like to

focus specifically on the recommendations related to attorney regulation and how this Office is thinking about these recommendations as part of our own strategic planning process.

Recommendations for regulators

The report defines "regulators" broadly so as to include everyone who helps the highest court in each state regulate the practice of law—including disciplinary and admission offices, boards, volunteer committee members, and professional liability attorneys who advise firms and represent lawyers in regulatory matters. There are 13 specific recommendations for this category of stakeholders.

1. Adopt regulatory objectives that prioritize lawyer well-being.
2. Modify the rules of professional conduct to endorse well-being as part of a lawyer's duty of competence.
3. Expand continuing education requirements to include well-being topics.
4. Require law schools to create well-being education for students as an accreditation requirement.
5. Reevaluate bar application inquiries

about mental health history.

6. Adopt essential eligibility admission requirements.
7. Adopt a rule for conditional admission to practice law with specific requirements and conditions.
8. Publish data revealing the rate of denied admissions due to mental health disorders and substance use.
9. Implement proactive management-based programs that include well-being components.
10. Adopt a centralized grievance intake system to promptly identify well-being concerns.
11. Modify confidentiality rules to allow one-way sharing of lawyer well-being-related information from regulators to lawyer assistance programs.
12. Adopt diversion programs and other alternatives to discipline that have proven successful in promoting well-being.
12. Add well-being-related questions to the multistate professional responsibility exam (MPRE).²

Minnesota has already implemented Items 6 and 7 through its conditional admissions rule and essential eligibility requirements.³ Items 1, 2, and 9-12 are generally within the purview of this Office. Because this Office has recently commenced strategic planning, it's a perfect time to talk briefly about each and let you know about our planning process.

Strategic planning and lawyer wellness

This Office has recently undertaken a strategic planning process in order to create a plan for the next three to five years. Committee members include the members of the Executive Committee of the Lawyers Professional Responsibility Board, the past chair of the board, as well as the director of professional services and staff of the OLPR. As part of this process, we are thinking about the mission, vision, and values of the Office, and how we fit generally within the framework of lawyer regulation. A terrific starting point has been Item 1 from the above list.

In 2016, the ABA adopted model regulatory objectives that they encouraged each state's highest court to adopt.⁴ These objectives specify the purposes of lawyer regulation in an attempt to provide guideposts for all regulation (i.e., protection of the public, transparency, access to justice). The Supreme Courts of Colorado and Washington have adopted their own regulatory objectives. Other states are discussing the subject. As noted, the report recommends including a wellness component within any adopted regulatory objectives. Because the planning committee is thinking broadly about issues of lawyer well-being and discipline, the adoption of regulatory objections and what they would look like in Minnesota is currently under active discussion.

Item 2, I'm sure, has sent shock waves through anyone who has actually read it. Change Rule 1.1 to include well-being as part of a lawyer's duty of competence? Oh great, another basis by which lawyers can be disciplined, you think to yourself. The report notes, however, that the task force does not recommend discipline solely for a lawyer's failure to satisfy the well-being requirement. The goal of the proposed rule change is not to threaten lawyers with discipline but to underscore the importance of lawyer well-being to client representation.



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Professional Responsibility

It will be interesting to see how this proposal plays out, and I am keeping an open mind about the proposal.

Item 9 is near and dear to my heart. In general, I believe that the more this Office can do to proactively educate and assist lawyers, the better off the profession and public are. That is why I and the attorneys in the Office try to prioritize making CLE presentations, and emphasize our advisory ethics line (651-296-3952). There are only so many hours in a day, however, and because our primary purpose is enforcement of the Rules of Professional Conduct, we cannot always do as much as we want to. But I believe strongly that proactive education and assistance are core responsibilities of the Office; the challenge for myself, the board, the Office, and the strategic plan is how to do as much of this as possible with the resources available.

Item 10, a centralized intake system, is something I want to study and learn more about. Item 11 is currently in process; we are working on a proposed rule change that would allow this Office to share information with a lawyer assistance program such as Lawyers Concerned for Lawyers if we believe there is an issue. Current confidentiality rules prevent us from doing so until a matter is public. Item 12, diversionary programs, is also something that I want to learn more about. As the report says, "Discipline does not make an ill lawyer well."⁵ The USPTO ethics office just adopted a diversionary program. Minnesota has private probation, which is used to sometimes address minor lawyer misconduct (which often includes an underly-

ing mental health or substance use disorder component), but private probation is considered discipline in Minnesota.

Conclusion

The recommendations listed above are just a small part of the practical recommendations contained in the well-being report. Many stakeholders are still digesting the recommendations, as this Office continues to do, and I'm excited to see people answering this call to action. As the year ends and we look ahead to 2018, I welcome your thoughts on how attorney regulation can assist you in your practice, and how we can work together to emphasize the importance of lawyer well-being. It truly is essential to public trust and confidence in the profession. I can be reached at the phone number listed above or susan.humiston@courts.state.mn.us. ▲

Notes

- ¹ "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," The Report of the National Task Force on Lawyer Well-Being, August 2017, introductory cover letter from Co-Chairs Bree Buchanan and James Coyle, report available at www.americanbar.org/content/dam/aba/images/abaneews/ThePathToLawyerWellBeingReportFINAL.pdf.
- ² Lawyer Well-Being Report at 25-30.
- ³ Rules 5 and 16, Minnesota Rules for Admission to the Bar (2017).
- ⁴ ABA Model Regulatory Objectives for the Provision of Legal Services, adopted February 8, 2016.
- ⁵ Lawyer Well-Being Report at 29.