



## REPORT OF THE HAWAI‘I TASK FORCE ON LAWYER WELL-BEING JUNE 1, 2021

### EXECUTIVE SUMMARY

The legal profession in Hawai‘i is committed to improving lawyer well-being. That is the conclusion of this report.

On May 10, 2019, Chief Justice Mark E. Recktenwald of the Supreme Court of the State of Hawai‘i issued an order establishing the Hawai‘i Task Force on Lawyer Well-Being ("**Task Force**"). Chief Justice Recktenwald's message was clear -- the well-being of Hawai‘i's legal community is of the highest priority not only for its members, but also for its stakeholders and the community it serves.

The Task Force was co-chaired by the Honorable Sabrina S. McKenna and Louise K.Y. Ing, Esq., and convened with the strong support of the Judiciary, the Hawaii State Bar Association ("**HSBA**"), and the William S. Richardson School of Law ("**WSRSL**"). The Task Force consists of members representing Hawai‘i's lawyers, judges, bar association, professional liability insurance carriers, law school, Office of Disciplinary Counsel, and Attorneys and Judges Assistance Program.

Before the pandemic, lawyer well-being was of such concern that the ABA convened a National Task Force on Lawyer Well-Being which produced a ground-breaking report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*

(2017). The National Report recommended that each state examine whether its recommendations applied in the state.

After meeting for almost two years, and producing this comprehensive report ("**Report**"), the Task Force strongly agrees that the Hawai'i legal profession is at a crossroads with respect to how we will address well-being going forward. The COVID-19 pandemic has highlighted the importance of well-being issues, and provided a turning point for us to envision a civil, courteous, positive, supportive, and collegial profession, in which all members can lead balanced lives and thrive, not just financially, but also physically and emotionally.

Well-being goes beyond stress management such as exercise, mindfulness, and relaxation. Well-being encompasses preventing suicide, substance abuse, and severe mental illness. Well-being is essential for law students while students, and as they move into the profession. It also requires civility in and out of the courtroom, and honoring the diversity of members of our profession.

Our well-being affects our ability to adequately represent our clients. It affects the perception of our profession in the community. Ultimately, when our attorneys are well, our entire community benefits.

The National Report is divided into two parts. Part I contains 13 recommendations, some with subparts, applicable to all stakeholders. Part II contains recommendations numbered from 14 to 44, some with subparts, applicable to the following specific categories of stakeholders: Judges, Legal Employers, Law Schools, Bar Associations, Lawyers Professional Liability Carriers, and Lawyers Assistance Program.

This Report follows that structure in assessing whether or not the recommendations in the National Report are appropriate for Hawai'i's unique legal community, and if so, how those recommendations can be implemented.

The Task Force agreed in principle with virtually every recommendation in the National Report. We noted that a number already had been implemented or were well underway in our state. Perhaps the most far-reaching recommendation made by our Task Force is that the HSBA create a Well-Being Committee to continue the momentum and expand the prioritization of well-being, as well as to follow-up on recommendations within this Report.

We encourage all stakeholders to carefully review this Report and begin implementing its recommendations, as deemed appropriate.

As indicated in Section 3, we first recommend that Chief Justice Recktenwald, HSBA President Levi Ho'okano, and Dean Camille Nelson of the University of Hawai'i William S. Richardson School of Law expeditiously issue a joint or separate press release(s) acknowledging receipt of this Report and committing the Judiciary, the HSBA, and the WSRSL to prioritizing well-being and to carefully considering the recommendations in the Report in the interests of the community we serve.

We also recommend that the HSBA Board and President Levi Ho'okano expeditiously begin the process of forming a HSBA Well-Being Committee, as recommended in Section 38, which can be tasked with following up with many of the recommendations pertaining to the bar.

Finally, the Task Force wishes to express its deepest appreciation to Chief Justice Recktenwald for recognizing and stressing the importance of lawyer well-being, especially by establishing this Task Force. We also greatly appreciate the willingness expressed by Chief Justice Recktenwald in his closing comments at the May 14, 2021 summit on the draft of this Report to encourage bar leaders to implement recommendations of this Report. It has been a privilege for all of us to be involved in this important endeavor.

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## INTRODUCTION

On August 14, 2017, a ground-breaking report entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* was issued by the National Task Force on Lawyer Well-Being ("**National Report**").<sup>1</sup> The National Report recommended that each state examine its recommendations.

On May 10, 2019, Chief Justice Mark E. Recktenwald of the Supreme Court of the State of Hawai'i ("**HSCT**") issued an order establishing the Hawai'i Task Force on Lawyer Well-Being ("**Task Force**"). Chief Justice Recktenwald's message was clear -- the well-being of Hawai'i's legal community is of the highest priority not only for its members, but also for its stakeholders, and the community it serves.

The Chief Justice's Task Force consists of the following:

Honorable Sabrina S. McKenna	Co-Chair
Louise K.Y. Ing, Esq.	Co-Chair
Honorable Leslie E. Kobayashi	U.S.D.Ct.
Honorable Darolyn Lendio Heim	First Circuit
Honorable Kirstin M. Hamman	Second Circuit
Honorable Wendy M. DeWeese	Third Circuit
Honorable Kathleen N.A. Watanabe	Fifth Circuit
Derek R. Kobayashi, Esq.	HSBA Board
Patricia Mau-Shimizu, Esq.	HSBA Exec. Dir.
Summer H.M. Kaiawe, Esq.	HSBA YLD
Ian L. Sandison, Esq.	HSBA SLD
Jamie A. Chuck, Esq.	HSBA Solo/Small
Laura S. Lucas, Esq.	HSBA Large Law Firm
Sherilyn K. Tavares, Esq.	Hawai'i County Bar Association
Lauren M. Kennedy, Esq.	West Hawai'i Bar Association
William A. Pannell, Esq.	Maui County Bar Association
Emiko L.T. Meyers, Esq.	Kaua'i Bar Association
Justin F. Kollar, Esq.	Prosecuting Attorney
Kirsha K.M. Durante, Esq.	Public Defender
Angela J. Lovitt, Esq.	Legal Services Organization
Liam M. Deeley, Esq.	Attorneys & Judges Assistance Program

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<sup>1</sup> The National Report is available at <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>.



Chloe M.R. Fasi, Esq.	Office of Disciplinary Counsel
Prof. Calvin G.C. Pang	WSR School of Law
Hugh R. Jones, Esq.	Ashford & Wriston
Rita Makana Risser Chai, Esq.	Certified Stress and Wellness Consultant
Michael J. McGrath, M.D.	American Society of Addiction Medicine
Kim Payton, Ph.D.	Organiz. Psych.
Debora Bjes, J.D., CPCU	Lawyers Prof. Liab.
Puananionaona P. Thoene, Esq.	Task Force Reporter

The Task Force expresses its deepest appreciation to Chief Justice Recktenwald for recognizing and stressing the importance of lawyer well-being, especially by establishing this Task Force.

The Task Force also expresses its appreciation to the community members, individuals, and organizations who have contributed to the work of the Task Force and in the preparation of this Report.

The Task Force especially wishes to thank the four Hawaii State Bar Association ("**HSBA**") 2020 Leadership Institute Fellows who volunteered many hours to assist in the preparation of this Report and in various other ways: Pōhai Nu'uhiwa Campbell, Paige Ogata, Tawnee Sakima, and Christine Terada.

The Task Force also wishes to thank the following additional members of the legal community who served on Committees of the Task Force: Associate Dean Ronette Kawakami and Ian Tapu on the Law School Committee.

In his May 19, 2019 order, Chief Justice Recktenwald ordered that this Task Force:

1. Review the recommendations of the National Report;
2. Assess which recommendations can be implemented to address the unique needs of Hawai'i's legal community; and
3. Recommend how those proposals can best be implemented.

The Chief Justice further ordered that the Task Force submit its final report containing its analyses of paragraphs 2 and 3 above, by June 1, 2021.

This Report of the Task Force ("**Report**") is submitted pursuant to this mandate.

In terms of process, the Task Force met every other month from its formation in 2019 through 2020, then monthly in 2021. As with others around the globe, when the COVID-19 pandemic hit the United States in early March 2020, the Task Force adjusted its operations and has since been meeting via Zoom.

Through HSBA's cooperation, the Task Force was able to create a webpage on the HSBA website. The Task Force also created a monthly lawyer well-being column in the HSBA newsletter, which provides useful information regarding well-being to the legal community. More recently, the Task Force also created and disseminated a video entitled "Calming Desk Exercises with Makana Risser Chai."<sup>2</sup> The Task Force and the HSBA also recently co-sponsored a free well-being seminar on "Energy Tapping Tools for Attorney Well-Being During Covid-19 Pandemic."

On January 15, 2020, as discussed in Section 12 below, the Task Force received an extremely important power-point presentation regarding suicide prevention from Ms. Nancy Deeley, MPH, a retired Suicide Prevention Coordinator for the State of Hawai'i Department of Health. The Task Force and the HSBA are creating a videotape regarding suicide prevention by Ms. Deeley, which will be posted in the near future on the HSBA website's well-being webpage.

The Task Force also created five committees: the Judges Committee, Law School Committee, Legal Employers Committee, Bar Organizations & Bar Association Committee, and Summit Committee. The first four committees were created to address various stakeholder recommendations within the National Report. The Summit Committee evolved from the Task Force's decision to hold an event to engage the Hawai'i legal community in well-being issues and to seek preliminary feedback.

The first Hawai'i Virtual Summit on Lawyer Well-Being was held on September 11, 2020 ("**September 2020 Summit**"), with more than 170 judges, attorneys and law students in attendance. The keynote speaker was Bree Buchanan, Co-Chair of the National Task Force on Lawyer Well-Being, and now President of the Institute for Well-Being in Law, a 501(c)(3) non-profit that evolved from the National Task Force.

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<sup>2</sup> The exercises are available here: <https://vimeo.com/526405696>.

In her keynote, Ms. Buchanan explained some findings from studies regarding lawyer and law student well-being. Ms. Buchanan also explained some of the recommendations of the National Report and actions taken by other states after its issuance.

After Ms. Buchanan's keynote, September 2020 Summit participants engaged in small group breakout discussions according to stakeholder groups identified in the National Report: judges, regulators, legal employers, law schools, bar associations, professional liability carriers, and lawyers assistance programs. These small group discussions focused on identifying well-being issues and recommendations specific to those groups.

In addition to the Summit, the Task Force's co-chairs regularly participated in discussions with similar organizations around the nation. Task Force members also attended various webinars/seminars on well-being to increase awareness of resources available to the Hawai'i stakeholders and to ascertain which strategies should be implemented for our legal community. The Task-Force co-chairs and members have also spoken in various forums regarding well-being issues.

Based on its initial efforts from 2019 to mid-2020, the Task Force was honored to be designated by 2020 HSBA President P. Gregory Frey to receive a HSBA President's Award, along with its co-awardee, the Attorneys and Judges Assistance Program ("**AAP**"), which is headed by Task Force member Liam Deeley, Esq. (The President's Award is awarded for distinguished service and outstanding achievements that exemplify the mission of the HSBA to unite and inspire Hawai'i's lawyers to promote justice, serve the public, and improve the legal profession.) Most importantly, the award highlighted the importance Chief Justice Recktenwald, the Task Force, the HSBA, and the entire legal community place on the issue of lawyer well-being.

From the end of 2020, the Task Force has concentrated its efforts on fulfilling its mandate to submit its final report by June 1, 2021. An initial draft of this Report was disseminated to the Hawai'i legal community on April 28, 2021. The Task Force then held its second Hawai'i Virtual Summit on Lawyer Well-Being on May 14, 2021 ("**May 2021 Summit**") to receive the Hawai'i legal community's feedback on the draft. The Task Force received valuable input after issuance of the draft of this Report both before and during the May 2021 Summit, much of which has been incorporated in this Report. Pursuant to Chief Justice

Recktenwald's mandate, and with the input of many members of the legal and Hawai'i community, this Report reviews the recommendations made by the National Report, assesses whether the recommendation can or should be implemented to address the unique needs of Hawai'i's legal community, and, where appropriate, recommends how those recommendations can best be implemented.

Before addressing the recommendations in the National Report, however, the Task Force highlights some important points contained therein to provide context for this Report.

First, the National Report highlights the need to focus on lawyer well-being. "Lawyer well-being," in turn, is defined as:

a continuous process whereby lawyers seek to thrive<sup>3</sup> in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. **Lawyer well-being is part of a lawyer's ethical duty of competence.** It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long term well-being.

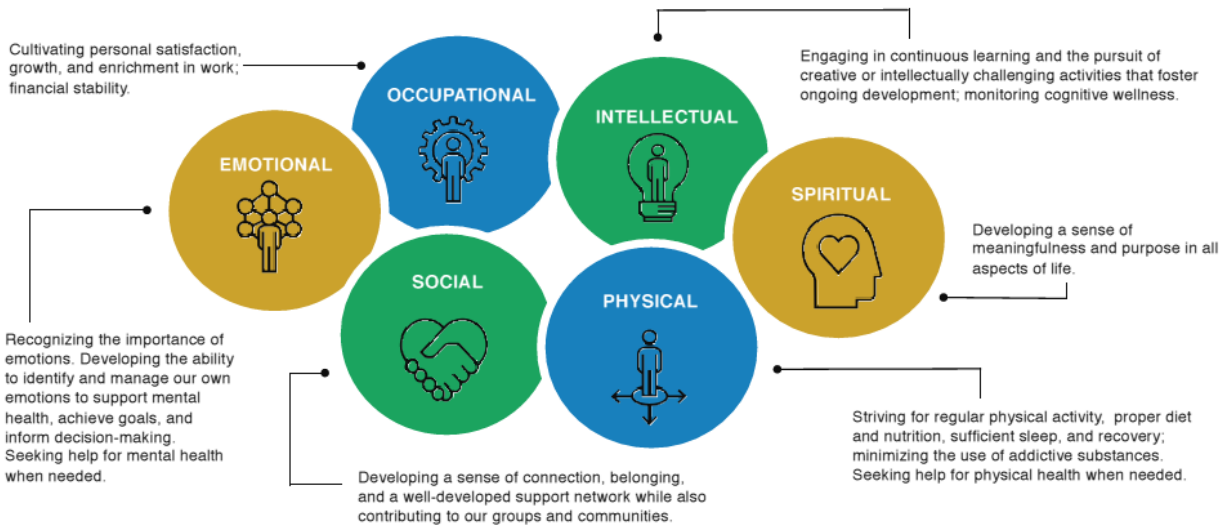
National Report at 9 (emphasis added). Thus, "complete health is not defined solely by the absence of illness; it includes a positive state of wellness." Five factors are considered key elements of well-being: (1) career, (2) social relationships, (3) community, (4) health, and (5) finances. Id. at 10.

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<sup>3</sup> The Task Force notes that the word "thrive" might imply laboring towards excellence; thus, the word "balance," which is consistent with the ongoing process of adjusting to life's uncertainties and challenges, may be preferable.

## Defining Lawyer Well-Being

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



Graphic taken from page 9 of the National Report.

The National Report also presents some uncomfortable, although not altogether unsurprising, statistics on national lawyer well-being:<sup>4</sup>

- Between 21 and 36 percent qualify as problem drinkers;
- Approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively;
- Other difficulties include suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, "diversity crisis," complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception;
- Younger lawyers in the profession (0-10 years of practice), particularly those in private firms, experience the highest rates of problem drinking and depression.

The National Report also highlighted sobering statistics on law students:<sup>5</sup>

<sup>4</sup> Taken from a survey of 13,000 currently-practicing lawyers. See National Report (Appendix A) at 7 & n.1 - n.2.

<sup>5</sup> Taken from a survey of over 3,300 law students and 15 law schools. See *id.* & n.3.

- Seventeen percent experienced some level of depression;
- Fourteen percent experienced severe anxiety;
- Twenty-three percent had mild or moderate anxiety;
- Six percent reported serious suicidal thoughts in the year preceding the survey;
- Forty-three percent binge drank at least once in the two prior weeks;
- Twenty-two percent binge drank two or more times during the same period;
- Twenty-five percent are categorized as being at risk for alcoholism.

The National Report concluded that the legal community is at an elevated risk for mental health and substance abuse disorders, to which alcohol-based social culture is a significant contributing factor. Furthermore, even though the majority of the legal community does not have a mental health or substance use disorder, lawyers are generally profoundly ambivalent about the profession.<sup>6</sup>

Also, given the timing of this Report, it is appropriate to discuss the impact of the COVID-19 pandemic on lawyer well-being. The pandemic has amplified many of the issues identified in the National Report as plaguing the legal profession. With technological advances allowing for remote working and a shrinking need for physical office space, members of the legal profession became extremely isolated, especially before they became more familiar with remote video conferencing technologies. For those experiencing well-being and/or mental health issues, the pandemic may have compounded those issues, while others may have experienced such issues for the first time. The importance of bringing awareness to the issues plaguing our profession is now, more than ever, in the spotlight.

The recommendations in the National Report focus on five core steps aimed at building a more sustainable legal culture:

1. Identifying stakeholders and the roles that each play in reducing the level of toxicity in the legal profession;
2. Ending the stigma surrounding help-seeking behaviors;

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<sup>6</sup> Id. & n.4 - n.5.

3. Emphasizing that well-being is an indispensable part of a lawyer's duty of competence;
4. Expanding education outreach and programming on well-being issues; and
5. Changing the tone of the profession one step at a time.

The National Report is divided into two parts. Part I contains 13 recommendations, some with subparts, applicable to all stakeholders. Part II contains recommendations numbered from 14 to 44, some with subparts, applicable to the following specific categories of stakeholders: Judges, Legal Employers, Law Schools, Bar Associations, Lawyers Professional Liability Carriers, and Lawyers Assistance Programs.

This Report follows that structure in assessing whether or not the recommendations in the National Report are appropriate for Hawai'i's unique legal community, and if so, how those recommendations can be implemented.

**Also, for ease of reference, and although it lengthens this Report, each recommendation in the National Report is provided verbatim without footnotes; changes to recommendations within the National Report are noted with brackets.**

**Thus, a reader who wishes to focus on the Hawai'i recommendations can read a numbered National Report Recommendation and then review the Hawai'i Recommendation. The reader can refer back to the National Report Recommendation to obtain context for the Hawai'i Recommendation.**

## **PART I--RECOMMENDATIONS FOR ALL STAKEHOLDERS**

### **1. Acknowledge the Problems and Take Responsibility.**

**National Report Recommendation ("NRR").** The National Report states:

Every sector of the legal profession must support lawyer well-being. Each of us can take a leadership role within our own spheres to change the profession's mindset from passive denial of problems to proactive support for change. We have the capacity to make a difference.

For too long, the legal profession has turned a blind eye to widespread health problems. Many in the legal profession have behaved, at best, as if their colleagues' well-being is none of their business. At worst, some appear to believe that supporting well-being will harm professional success. Many also appear to believe that lawyers' health problems are solely attributable to their own personal failings for which they are solely responsible. As to the long-standing psychological distress and substance use problems, many appear to believe that the establishment of lawyer assistance programs--a necessary but not sufficient step toward a solution--has satisfied any responsibility that the profession might have. Lawyer assistance programs have made incredible strides; however, to meaningfully reduce lawyer distress, enhance well-being, and change legal culture, all corners of the legal profession need to prioritize lawyer health and well-being. It is not solely a job for lawyer assistance programs. Each of us shares responsibility for making it happen.

**Hawai'i Recommendation.** The NRR concern that the legal profession has turned a blind eye to widespread health problems is also applicable to the Hawai'i legal community. Sadly, over many years, various members of the HSBA as well as law students have died by suicide. Also, members of the Hawai'i legal community have experienced serious mental health and substance abuse issues that have not only harmed themselves, but sometimes also clients.

The Chief Justice's creation of this Task Force, which has culminated in this Report, acknowledges the seriousness of these problems. The Task Force, its Summits, and this Report are important first steps in the right direction of bringing the problems of lawyer well-being to light and to taking responsibility as a profession for improvement on these issues.



The Task Force recognizes that the pressure to be intelligent, driven, organized, and at the top of your game affects lawyer well-being. This pressure begins when one enters law school. As a 1L in law school, budding lawyers, many whose accomplishments previously stood out, quickly realize that they are just one of many like them. The pressure does not let down after law school graduation, passing the bar, or finishing the first year in practice; it continues with each new assignment, client, case, or job position. This pressure contributes to the sobering statistics discussed in the National Report in the Introduction section above.

No matter what a particular lawyer is going through, the Hawai'i Rules of Professional Conduct ("**HRPC**") require that a lawyer be competent. "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Haw. R. Prof. Conduct Rule 1.1. The HRPC defines competence based on technical legal skills, but does not reference the importance of holistic well-being. A lawyer's physical or mental condition is discussed in the HRPC in the context of what a lawyer must NOT do--not allowing the lawyer's physical or mental condition to materially impair representation of a client. See Haw. R. Prof. Conduct Rule 1.16; see also commentary to Haw. R. Prof. Conduct Rule 1.3 (cautioning lawyers not to cause needless anxiety to a client).

The legal profession has long focused on results--case rulings, transactions, and client satisfaction. Obtaining a good result for the client is of utmost importance; however, in order to do so, a lawyer must be well, physically and mentally. Thus, well-being is critical to competent representation, and it is time for the Hawai'i legal profession to prioritize lawyer well-being.

Hence, as discussed in Section 20.2 below, the Task Force recommends an additional Comment 7 to HRPC Rule 1.1 to focus the entire legal profession on a culture of prioritizing well-being.

Although this Task Force has started an important discussion on lawyer well-being within the Hawai'i legal community, the challenge will be sustaining this momentum to ensure that the legal profession continues to prioritize and advance well-being.

Therefore, as specifically discussed in Section 38 below, and as mentioned in various other sections of this Report, the Task Force recommends that the HSBA create a Well-Being

Committee to continue the momentum and expand the prioritization of well-being, as well as to follow-up on recommendations within this Report.

**2. Use the National Report as a Launch Pad for a Profession-Wide Action Plan.**

**NRR.** The National Report states:

All stakeholders must lead their own efforts aimed at incorporating well-being as an essential component of practicing law, using this report as a launch pad. Changing the culture will not be easy. Critical to this complex endeavor will be the development of a National Action Plan and state-level action plans that continue the effort started in this report. An organized coalition will be necessary to plan, fund, instigate, motivate, and sustain long-term change. The coalition should include, for example, the Conference of Chief Justices, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the ABA, state bar associations as a whole and specific divisions (young lawyers, lawyer well-being, senior lawyers, etc.), the Commission on Lawyer Assistance Programs, state lawyer assistance programs, other stakeholders that have contributed to this report, and many others.

**Hawai'i Recommendation.** The Task Force has used the National Report as a launch pad. As discussed, pursuant to the Chief Justice's mandate, this Report assesses each NRR and assesses whether they are appropriate for the Hawai'i legal community. As more fully described below, there are recommendations for follow-up steps, including the formation of a Well-Being Committee within the HSBA. Therefore, the National Report has served as a launch pad for a profession-wide action plan through the continued auspices of the HSBA Well-Being Committee recommended in this Report.

**3. Leaders Should Demonstrate a Personal Commitment to Well-Being.**

**NRR.** The National Report states:

Policy statements alone do not shift culture. Broad-scale change requires buy-in and role modeling from top leadership. Leaders in the courts, regulators' offices, legal employers, law schools, and bar associations will be closely watched for signals about what is expected. Leaders can create and support change through their own demonstrated commitment to core values

and wellbeing in their own lives and by supporting others in doing the same.

**Hawai'i Recommendation.** We again thank Chief Justice Recktenwald for his leadership in this area. To begin the process of effectuating this NRR, the Task Force recommends that Chief Justice Recktenwald, HSBA President Levi Ho'okano, and Dean Camille Nelson of the University of Hawai'i William S. Richardson School of Law ("**WSRSL**") issue a joint or separate press release(s) acknowledging receipt of this Report and committing the Judiciary, the HSBA, and the WSRSL to prioritizing well-being and to carefully considering the recommendations in the Report in the interests of the community we serve.

The Task Force also recommends that, in the future, leaders within the legal community take action to demonstrate their own personal commitment to well-being, whether it be by publicizing actions taken to implement recommendations within this Report, forming well-being committees or designating well-being coordinators within their own law firms or organizations, supporting well-being programs and education, speaking about their own experiences, and/or organizing or encouraging participation in well-being activities, etc., which should not be limited to time periods of lawyer well-being week in the beginning of May or law school mental health days/weeks during the school year.

#### **4. Facilitate, De-stigmatize, and Encourage Help-Seeking Behaviors.**

**NRR.** The National Report states:

All stakeholders must take steps to minimize the stigma of mental health and substance use disorders because the stigma prevents lawyers from seeking help.

Research has identified multiple factors that can hinder seeking help for mental health conditions: (1) failure to recognize symptoms; (2) not knowing how to identify or access appropriate treatment or believing it to be a hassle to do so; (3) a culture's negative attitude about such conditions; (4) fear of adverse reactions by others whose opinions are important; (5) feeling ashamed; (6) viewing help-seeking as a sign of weakness, having a strong preference for self-reliance, and/or having a tendency toward perfectionism; (7) fear of career repercussions; (8) concerns about confidentiality; (9) uncertainty about the quality of organizationally-provided

therapists or otherwise doubting that treatment will be effective; and (10) lack of time in busy schedules.

The 2016 the American Bar Association (ABA) Commission on Lawyer Assistance Programs ("**ABA CoLAP**") and Hazelden Betty Ford Foundation published their study of nearly 13,000 currently practicing lawyers ("**the Study**"). The Study identified similar factors. The two most common barriers to seeking treatment for a substance use disorder that lawyers reported were not wanting others to find out they needed help and concerns regarding privacy or confidentiality. Top concerns of law students in the Survey of Law Student Well Being were fear of jeopardizing their academic standing or admission to the practice of law, social stigma, and privacy concerns.

Research also suggests that professionals with hectic, stressful jobs (like many lawyers and law students) are more likely to perceive obstacles for accessing treatment, which can exacerbate depression. The result of these barriers is that, rather than seeking help early, many wait until their symptoms are so severe that they interfere with daily functioning. Similar dynamics likely apply for aging lawyers seeking assistance.

Removing these barriers requires education, skill-building, and stigma-reduction strategies. Research shows that the most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder. Ideally, this person should be a practicing lawyer or law student (depending on the audience) in order to create a personal connection that lends credibility and combats stigma. Viewing videotaped narratives also is useful, but not as effective as in-person contacts.

The military's "Real Warrior" mental health campaign can serve as one model for the legal profession. It is designed to improve soldiers' education about mental health disorders, reduce stigma, and encourage help-seeking. Because many soldiers (like many lawyers) perceive seeking help as a weakness, the campaign also has sought to re-frame help-seeking as a sign of strength that is important to resilience. It also highlights cultural values that align with seeking psychological help.

**Hawai'i Recommendation.** The Task Force identified having conversations regarding well-being as the first step. The September 2020 and May 2021 Summits were well attended by members of the Hawai'i legal community--with over 200 participants between the two summits. In addition, the WSRSL

conducted its own sessions for law students during Law Student Mental Health Week in October 2020. This demonstrates the need for a safe space for professionals and law students to express their feelings and get information and access to available resources.

In order to destigmatize mental health and substance use disorders, the Task Force hopes that, to the extent doing so would be consistent with their own well-being, members of the legal profession speak out about their own experiences. For example, Task Force Co-Chair McKenna spoke publicly about her own experiences seeking mental health counseling and encouraged others to do the same in an interview in a 2020 Hawaii News Now segment regarding attorney well-being during the pandemic. Former BigLaw partner Kent Halkett sets an excellent example.<sup>7</sup>As noted in Section 38, the Task Force is recommending that the HSBA create a Well-Being Committee after submission of this Report. The Task Force also recommends that the HSBA Well-Being Committee continue to create links to well-being resources on its website. The webpage could also contain testimonials from leaders willing to discuss their own experiences to de-stigmatize and encourage help-seeking behaviors. The Well-Being Committee should also continue the well-being column in HSBA newsletters. Along with our recommendations in Section 3 above, these actions should facilitate, de-stigmatize, and encourage help-seeking behaviors.

## **5. Build Relationships With Lawyer Well-Being Experts.**

### **5.1 Partner With Lawyer Assistance Programs.**

**NRR.** The National Report states:

All stakeholders should partner with and ensure stable and sufficient funding for the ABA CoLap as well as for state-based lawyer assistance programs. ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment. Many lawyer assistance programs employ teams of experts that are well-qualified to help lawyers, judges, and law students who experience physical or mental health conditions. Lawyer assistance programs' services are confidential, and many include prevention, intervention, evaluation, counseling, referral to

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<sup>7</sup> See <https://www.abajournal.com/voice/article/a-big-law-partners-journey-through-clinical-depression?>.

professional help, and on-going monitoring. Many cover a range of well-being-related topics including substance use and mental health disorders, as well as cognitive impairment, process addictions, burnout, and chronic stress. A number also provide services to lawyer discipline and admissions processes (e.g., monitoring and drug and alcohol screening).

Notably, the Study found that, of lawyers who had reported past treatment for alcohol use, those who had used a treatment program specifically tailored to legal professionals reported, on average, significantly lower scores on the current assessment of alcohol use. This at least suggests that lawyer assistance programs, which are specifically tailored to identify and refer lawyers to treatment providers and resources, are a better fit than general treatment programs.

Judges, regulators, legal employers, law schools, and bar associations should ally themselves with lawyer assistance programs to provide the above services. These stakeholders should also promote the services of state lawyer assistance programs. They also should emphasize the confidential nature of those services to reduce barriers to seeking help. Lawyers are reluctant to seek help for mental health and substance use disorders for fear that doing so might negatively affect their licenses and lead to stigma or judgment of peers. All stakeholders can help combat these fears by clearly communicating about the confidentiality of lawyer assistance programs.

We also recommend coordinating regular meetings with lawyer assistance program directors to create solutions to the problems facing the profession. Lawyer assistance programs can help organizations establish confidential support groups, wellness days, trainings, summits, and/ or fairs. Additionally, lawyer assistance programs can serve as a resource for speakers and trainers on lawyer well-being topics, contribute to publications, and provide guidance to those concerned about a lawyer's wellbeing.

**Hawai'i Recommendation.** A comprehensive analysis of the work of the AAP is contained in Section 44 and its recommendations. As discussed therein, all in all, the Task Force believes Hawai'i is already meeting the NRR 5.1 and has no additional recommendations at this time.

## **5.2 Consult With Lawyer Well-Being Committees and Other Types of Well-Being Experts.**

**NRR.** The National Report states:

We also recommend partnerships with lawyer well-being committees and other types of organizations and consultants that specialize in relevant topics. For example, the American Bar Association's Law Practice Division established an Attorney Well-Being Committee in 2015. A number of state bars also have well-being committees including Georgia, Indiana, Maryland, South Carolina, and Tennessee. The Florida Bar Association's Young Lawyers Division has a Quality of Life Committee "for enhancing and promoting the quality of life for young lawyers." Some city bar associations also have well-being initiatives, such as the Cincinnati Bar Association's Health and Well-Being Committee. These committees can serve as a resource for education, identifying speakers and trainers, developing materials, and contributing to publications. Many high-quality consultants are also available on well-being subjects. Care should be taken to ensure that they understand the particular types of stress that affect lawyers.

**Hawai'i Recommendation.** The membership of the Task Force is diverse with representatives from the local attorney assistance programs, judges, lawyers from the public and private sectors, an attorney who works as a certified stress and wellness consultant, as well as non-attorney members such as a psychologist, and a representative from a professional liability carrier. The Task Force also consulted with law students and other members of the Hawai'i community.

As indicated in Section 38, the Task Force recommends that a HSBA Well-Being Committee be created to implement this NRR recommendation. The Well-Being Committee should include members representing the diversity of the HSBA and its various stakeholder groups, as reflected by the members of this Task Force.

This Well-Being Committee should also coordinate with national, regional, and/or local well-being committees, including those within local organizations, and should consult with other well-being experts.

**6. Foster Collegiality and Respectful Engagement Throughout the Profession.**

**NRR.** The National Report states:

We recommend that all stakeholders develop and enforce standards of collegiality and respectful engagement. Judges,

regulators, practicing lawyers, law students, and professors continually interact with each other, clients, opposing parties, staff, and many others. Those interactions can either foment a toxic culture that contributes to poor health or can foster a respectful culture that supports well-being. Chronic incivility is corrosive. It depletes energy and motivation, increases burnout, and inflicts emotional and physiological damage. It diminishes productivity, performance, creativity, and helping behaviors.

Civility appears to be declining in the legal profession. For example, in a 1992 study, 42 percent of lawyers and 45 percent of judges believed that civility and professionalism among bar members were significant problems. In a 2007 survey of Illinois lawyers, 72 percent of respondents categorized incivility as a serious or moderately serious problem in the profession. A recent study of over 6,000 lawyers found that lawyers did not generally have a positive view of lawyer or judge professionalism. There is evidence showing that women lawyers are more frequent targets of incivility and harassment. Legal-industry commentators offer a host of hypotheses to explain the decline in civility. Rather than continuing to puzzle over the causes, we acknowledge the complexity of the problem and invite further thinking on how to address it.

As a start, we recommend that bar associations and courts adopt rules of professionalism and civility, such as those that exist in many jurisdictions. Likewise, law firms should adopt their own professionalism standards. Since rules alone will not change culture, all stakeholders should devise strategies to promote wide-scale, voluntary observance of those standards. This should include an expectation that all leaders in the profession be a role model for these standards of professionalism.

Exemplary standards of professionalism are inclusive. Research reflects that organizational diversity and inclusion initiatives are associated with employee well-being, including, for example, general mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, perceptions of organizational fairness, and intentions to remain on the job. A significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included, and supported by others. A weak sense of belonging is strongly associated with depressive symptoms. Unfortunately, however, a lack of diversity and inclusion is an entrenched



problem in the legal profession. The issue is pronounced for women and minorities in larger law firms.

**Hawai'i Recommendation.** The Rules of the Supreme Court of the State of Hawai'i ("**RSCH**") provide in the Preamble, "[9] [...]These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system." Further, they provide in section 1.5 (c), "The oath of office to be taken and subscribed by each attorney shall be as follows:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai'i, and that I will at all times conduct myself in accordance with the Hawai'i Rules of Professional Conduct.

"As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.

"I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice."

Additionally, the Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers (SCRU-17-0000651) ("**Civility Guidelines**") were adopted by the HSBA "as representing accepted norms of professional behavior upon which the successful functioning of the judicial system depends," and were adopted by the HSCT in 2004. "The Guidelines are not mandatory rules of professional conduct, nor standards of care, and are not to be used as an independent basis for either disciplinary charges by the Office of Disciplinary Counsel ("**ODC**") or claims of professional negligence. They are offered for the guidance of lawyers and for the information of their clients, as well as for reference by the courts." There is one section that specifically addresses civility in oral communication: "Section 6. COMMUNICATIONS WITH CLIENTS AND ADVERSARIES. A lawyer should at all times be civil, courteous, and accurate in communication with clients and adversaries, whether in writing or orally."

The National Report recommends "All stakeholders should devise strategies to promote wide-scale, voluntary observance of those [civility] standards." According to an article in the University of Michigan Journal of Law Reform, Hawai'i in the 1990s had such a strategy:

"A more aggressive way to improve awareness of a professionalism creed is to require lawyers to acknowledge the creed and commit to compliance with its charges. The Hawaii State Bar Association's (HSBA) Committee on Professional Responsibility has no enforcement capabilities, yet it undertook a program in the 1990s to obtain written commitments from lawyers and law firms to abide by the HSBA's Guidelines of Professional Courtesy and Civility. The Committee published a brief pledge to abide by the Guidelines in the Hawaii Bar Journal, which it encouraged lawyers to sign and mail to the HSBA office. The Committee also consulted with the judiciary and gained their support in encouraging lawyers to abide by the guidelines. [cf James Kawachika, If Not Us, Who? If Not Now, When?, HAW. B.J., Nov. 1998, at 4]"  
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1134&context=mjlr>

The Task Force recommends that the RSCH Rule 1.14 Mandatory Professionalism Course discuss the Civility Guidelines not just as an aspect of professionalism in general, but also as an aspect of attorney well-being. The Task Force also recommends that a to-be-formed HSBA Well-Being Committee examine how other states are advancing civility, including the possibility of continuing legal education ("**CLE**") courses providing CLE credit regarding fostering collegiality and professionalism.

### **6.1 Promote Diversity & Inclusivity.**

**NRR.** The National Report states:

Given the above, we recommend that all stakeholders urgently prioritize diversity and inclusion. Regulators and bar associations can play an especially influential role in advocating for initiatives in the profession as a whole and educating on why those initiatives are important to individual and institutional well-being. Examples of relevant initiatives include: scholarships, bar exam grants for qualified applicants, law school orientation programs that highlight the importance of diversity and inclusion, CLE programs focused on diversity in the legal profession, business development symposia for women and minority-owned law firms, pipeline programming for low-income high school and college students, diversity clerkship programs for law students, studies and reports on the state of diversity within the state's bench and bar, and diversity initiatives in law firms.

**Hawai'i Recommendation.** Research discussed in the National Report notes that organizational diversity and inclusion

initiatives were associated with employee well-being, mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, perceptions of organizational fairness, and intentions to remain on the job. Organizational belongingness (feeling personally accepted, respected, included and supported by others) is an important factor. "Unfortunately, however, a lack of diversity and inclusion is an entrenched problem in the legal profession. The issue is pronounced for women and minorities in larger law firms." Id. at 16.

Therefore, the Task Force recommends that the Hawai'i legal profession take concrete steps to promote organizational diversity and inclusion initiatives.

From a cultural and ethnic perspective, Hawai'i is much more diverse than most of the United States. Nevertheless, leadership and membership within the legal profession does not necessarily reflect the gender and actual ethnic diversity of Hawai'i.

Although the HSBA membership is relatively diverse, inclusion and equality for some remains elusive. According to HSBA's 2020 Bar Statistics, although 40% (3,266 out of 8,111) bar members are women, only 37% of active members (1,430 out of 3,870 total or 1,204 out of 3,241 bar members in Hawai'i) are women.

Also, in 2018, Hawaii Women Lawyers conducted a survey of its members on sexual harassment. Nearly 60% (42 attorneys) reported being sexually harassed at some time during their legal careers. Thirteen percent reported being harassed in the 2016-2017 timeframe. The harassment they experienced included assault, sexual comments, and unwanted advances. 40% of the harassment was perpetrated by the victim's partner, senior attorney, or supervisor; 30% by a co-worker; 20% by opposing or other counsel, and 10% by judges, court officers, clients, or others.

In September 2020, the HSCT accepted comments on the Proposal to Amend Rules of Court to Address Harassment and Discrimination within the Practice of Law, PROPOSALS FROM THE COMMISSION ON PROFESSIONALISM TO AMEND RULES OF COURT TO ADDRESS HARASSMENT AND DISCRIMINATION WITHIN THE PRACTICE OF LAW, as follows:

PROPOSED AMENDMENTS TO THE RULES OF THE SUPREME COURT OF  
THE STATE OF HAWAI'I

(Deleted materials are bracketed and stricken; new material is underlined.)

Rule 22. MANDATORY CONTINUING LEGAL EDUCATION.

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(b) Ethics and Professional Responsibility Minimum. Within every 3-year period [At least once every 3 years] in which CLE credits are required, every active member shall complete [1] 2 hours of approved ethics or professional responsibility education, with at least 1 hour from subsection (1) and the other hour from subsection (2) below. These [This] credit hours shall count toward the annual CLE requirement. "Ethics or professional responsibility education" means those courses or segments of courses devoted to:

(1) (i) the Rules of Professional Conduct;  
[[2]](ii) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;  
[[3]](iii) substance abuse and its effects on lawyers and the practice of law; [or]  
[[4]](iv) client trust administration[, bias awareness and prevention, and access to justice.]; or  
(v) access to justice.

(2) awareness and prevention of bias, harassment, and discrimination.

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PROPOSED AMENDMENTS TO THE HAWAI'I RULES OF PROFESSIONAL CONDUCT

(New material is underlined.)

Rule 8.4. MISCONDUCT.

(h) engage in conduct while acting in a professional capacity that the lawyer knew or reasonably should have known is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, gender identity and/or gender expression. This paragraph shall neither limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules, nor does it infringe on any constitutional right of a lawyer, including advocacy on matters of public policy, the exercise of religion, or a lawyer's right to advocate for a client.

These proposals are currently before the HSCT. The Task Force recommends that they be adopted.

In terms of ethnic diversity, of the 5088 HSBA members who self-identified their ethnicities in 2020 (3023 or 37.3% of the 8111 members did not respond to the ethnicity question), 2141 or 42% identified as Caucasian, 1017 or 20% identified as Japanese, 515 or 10.1% identified as Hawaiian or Part-Hawaiian, 443 or 8.7% identified as Chinese, 182 or 3.6% identified as Filipino, 152 or 3% identified as Korean, 80 or 1.6% identified

as Hispanic, 42 or 0.8% identified as Afro American, and 443, or 8.7% identified as Other.

According to the United States Census Bureau, as of July 1, 2019, Hawai'i's ethnic breakdown was as follows:<sup>8</sup> 37.6% Asian, 21.7% White alone (not Hispanic or Latino), 10.7% Hispanic or Latino, 10.1% Native Hawaiian and Other Pacific Islander alone, 2.2% Black or African American, Two or More Races, 24.2%.

	Census	HSBA
Asian	37.6%	35.3%*
Caucasian	21.7%	42%
Hispanic/Latino	10.1%	1.6%
Native Hawaiian/Pacific Islander	10.1%	10.1%
Black, African American	2.2%	0.8%
2 or more races	24.2%	na
Other	na	8.8%
Decline to state	na	37.3%

\* combining Japanese, Chinese, Korean and Filipino [US Census counts Filipino as Asian]

Thus, although the HSBA membership has much more diversity than memberships of other state bars, it is apparent that HSBA membership as well as leadership within segments of the bar does not fully reflect the diversity of our community, although we are pleased to see that the HSBA membership of 10.1% for Native Hawaiian/Pacific Islanders corresponds with the Census percentage.

Therefore, the Task Force recommends that the Judiciary, the HSBA, and the WSRSL take steps to promote additional diversity and inclusion with the bar. The Task Force understands that the WSRSL has formed a Diversity and Inclusion Committee. The Task Force recommends that the to-be-formed HSBA Well-Being Committee stress the importance of diversity and inclusion as part of its scope and purpose, as these factors are an important component of lawyer well-being.

The Task Force understands that Chief Justice Recktenwald has mandated regular sexual harassment and implicit bias training for all members of the state judiciary. The Task Force recommends that the entire legal community, as well as the Judicial Selection Commission, be required or encouraged to

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<sup>8</sup> See <https://www.census.gov/quickfacts/HI>.

attend regular training on implicit bias and sexual harassment.

Along these lines, HSBA has conducted recent CLE programs focused on diversity in the legal profession. Among them have been:

1. Implicit Bias in Hawaii's Legal System - Are We Different from the Mainland?  
Credits: 1 CLE (1 Ethics) November 6, 2020
2. A Conversation About the Language of Pronouns in the Workplace and in Practice, Credits: 1 CLE, November 4, 2020
3. From Theory to Practice: How Attorneys of All Genders are Becoming Allies for Women and Changing the Legal Profession, Credits: 3 CLE (3 Ethics), October 16, 2020 at the State Bar Convention
4. Transgender Student Rights: A Comprehensive Overview, Credits: 1 CLE, August 12, 2020
5. Preventing Sexual Harassment: Practical Steps for Employers, Credits: 1 CLE (1 Ethics), November 6, 2019

The Task Force recommends that HSBA continue with these types of CLEs that advance diversity and inclusion. The Task Force also recommends that the to-be-formed HSBA Well-Being Committee not only encourage CLEs along these lines, but also endeavor to have HSBA take additional leadership on these issues, perhaps by collaborating with the Diversity, Equality and the Law (DEAL) Committee of the HSBA. Further, the Task Force recommends that the annual survey of bar members recommended in Section 37 below also include questions on members' experiences of discrimination or harassment on various bases, not just limited to racial, gender, or sexual identity or orientation, but to include, for example, disability discrimination. The Task Force recommends that all segments of the legal community, including the bar, the judiciary, and the WSRSL, discuss and take additional steps to promote diversity and inclusivity.

As noted above, the HSBA's current member survey lists the following ethnicities for self-identification by members: Caucasian, Japanese, Hawaiian or Part-Hawaiian, Chinese Filipino, Korean, Hispanic Afro American, and Other. In order to be able to better track statistics regarding the actual ethnic diversity of Hawai'i, the Task Force recommends that the HSBA consider adding or breaking down ethnic categories, such as Native Hawaiian, Samoan, Tongan, Other Pacific Islander, Marshallese, Chuukese, Palauan, Other Micronesian, Melanesian, Vietnamese, Laotian, Thai, etc.<sup>9</sup> At minimum, the HSBA should

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<sup>9</sup> On March 31, 2021, the National Center for State Courts circulated an email along with the "National Open Court Data Standards,

also allow for respondents to answer "2 or more races," as in does the U.S. Census Bureau.

With respect to diversity, the Task Force also notes that the pandemic has also highlighted and exacerbated the burdens of lawyers who are also family caretakers, whether of children or the elderly. On May 12, 2021, a report authored by Patrick R. Krill and Justin Anker was released,<sup>10</sup> with the following abstract:

Rates of mental illness and heavy alcohol use are exceedingly high in the legal profession, while attrition among women has also been a longstanding problem. Work overcommitment, work-family conflict, permissiveness toward alcohol in the workplace, and the likelihood of promotion are all implicated but have yet to be systematically investigated. Data were collected from 2,863 lawyers randomly sampled from the California Lawyers Association and D.C. Bar to address this knowledge gap. Findings indicated that the prevalence and severity of depression, anxiety, stress, and risky/hazardous drinking were significantly higher among women. Further, one-quarter of all women contemplated leaving the profession due to mental health concerns, compared to 17% of men. Logistic models were conducted to identify workplace factors predictive of stress, risky drinking, and contemplating leaving the profession. Overcommitment and permissiveness toward alcohol at work were associated with the highest likelihood of stress and risky drinking (relative to all other predictors) for both men and women. However, women and men differed with respect to predictors of leaving the profession due to stress or mental health. For women, work-family conflict was associated with the highest likelihood of leaving, while overcommitment was the number one predictor of leaving for men. Mental health and gender disparities are significant problems in the legal profession, clearly requiring considerable and sustained attention.

This report highlights how gender disparity regarding well-being issues has been exacerbated by the pandemic. Women leaving the legal profession has been well known as be an issue for many

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<https://www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics/national-open-court-data-standards-nods>, which includes race and ethnicity data in all case types; he email specifically states, "Courts that serve a large, diverse community of Pacific Islanders, for example, may want to add Native Hawaiian, Samoan, or Marshallese for more specific information about the communities they serve."

<sup>10</sup> See "Stress, drink, leave: An examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys," available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563>.

years. Diversity, however, is not only desirable, it also benefits the bottom line.<sup>11</sup> Thus, diversity and inclusivity should be promoted for many reasons.

## **6.2 Create Meaningful Mentoring and Sponsorship Programs.**

**NRR.** The National Report states:

Another relevant initiative that fosters inclusiveness and respectful engagement is mentoring. Research has shown that mentorship and sponsorship can aid well-being and career progression for women and diverse professionals. They also reduce lawyer isolation. Those who have participated in legal mentoring report a stronger sense of personal connection with others in the legal community, restored enthusiasm for the legal profession, and more resilience—all of which benefit both mentors and mentees. At least states and the District of Columbia sponsor formal mentoring programs.

### **Hawai'i Recommendation.**

Although the HSBA does not currently have a formal mentoring program, the HSBA Leadership Institute ("**Institute**") was established in 2009 to identify attorneys with leadership potential for mentoring. Each year, fifteen attorneys are selected as Fellows. The Institute helps Fellows gain insights from representatives of some of Hawai'i's most diverse legal communities. Networking opportunities are provided to build professional relationships and promote civility within the profession.

At the WSRSL, the Environmental Law Program ("**ELP**") has a mentoring program called *Enviromentors*. In 2020, ELP held its 16th annual *Enviromentors* event, but for the first time via Zoom. The *Enviromentors* event typically includes 20 law students and 20 practicing attorneys from private firms, government, and environmental organizations that focus on environmental and energy law holding 5-minute interviews. The students switch off with the mentors until all have had a turn to speak with the mentors. This program allows students to be exposed to the many different practice areas of environmental law and to network with practicing attorneys. Following the event, the students are matched with a mentor for an extended one-on-one lunch where students are allowed to get more in-depth information from their mentors, including law school and practice pointers.

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<sup>11</sup> See <https://blog.lawline.com/the-benefits-of-diversity-in-the-legal-profession>.



The Task Force recommends that the HSBA or its to-be-created Well-Being Committee research mentoring programs in other states and consider implementing similar programs for Hawai'i.

## **7. Enhance Lawyers' Sense of Control.**

**NRR.** The National Report States:

Practices that rob lawyers of a sense of autonomy and control over their schedules and lives are especially harmful to their well-being. Research studies show that high job demands paired with a lack of a sense of control breeds depression and other psychological disorders. Research suggests that men in jobs with such characteristics have an elevated risk of alcohol abuse. A recent review of strategies designed to prevent workplace depression found that those designed to improve the perception of control were among the most effective. Research confirms that environments that facilitate control and autonomy contribute to optimal functioning and well-being.

We recommend that all stakeholders consider how longstanding structures of the legal system, organizational norms, and embedded expectations might be modified to enhance lawyers' sense of control and support a healthier lifestyle. Courts, clients, colleagues, and opposing lawyers all contribute to this problem. Examples of the types of practices that should be reviewed include the following:

- Practices concerning deadlines such as tight deadlines for completing a large volume of work, limited bases for seeking extensions of time, and ease and promptness of procedures for requesting extensions of time;
- Refusal to permit trial lawyers to extend trial dates to accommodate vacation plans or scheduling trials shortly after the end of a vacation so that lawyers must work during that time;
- Tight deadlines set by clients that are not based on business needs;
- Senior lawyer decision-making in matters about key milestones and deadlines without consulting other members of the litigation team, including junior lawyers;
- Senior lawyers' poor time-management habits that result in repeated emergencies and weekend work for junior lawyers and staff;
- Expectations of 24/7 work schedules and of prompt response to electronic messages at all times; and
- Excessive law school workload, controlling teaching styles, and mandatory grading curves.

**Hawai'i Recommendation.** The Task Force has learned that in the field of recovery in addiction medicine, which is based on other existing evidence-based therapies such as cognitive behavioral therapy, mindfulness therapy and positive psychology (the last of which has its framework in the teachings of Aristotle, the Buddha and other wisdom traditions), the word "**control**" is used with great caution. The reason is that often control is an illusion as it extends far beyond our personal agency and ultimately most outcomes are beyond one's singular effort or effect.

The Task Force therefore believes the focus should be on "autonomy," not "control."

In that light, the Task Force recommends the to-be-formed HSBA Well-Being Committee follow up on methods of addressing these concerns within the practice of law.

The Task Force also recommends that the judicial education programs recommended in Section 18 below include information on how judges' actions affect lawyer well-being, and that judges be encouraged that, to the extent possible, they not refuse to permit trial lawyers to extend trial dates to accommodate vacation plans and that they not schedule trials shortly after the end of a lawyers' vacation so that lawyers must work during their vacation time.

#### **8. Provide High-Quality Educational Programs and Materials About Lawyer Distress and Well-Being.**

**NRR.** The National Report states:

All stakeholders should ensure that legal professionals receive training in identifying, addressing, and supporting fellow professionals with mental health and substance use disorders. At a minimum, training should cover the following:

- The warning signs of substance use or mental health disorders, including suicidal thinking;
- How, why, and where to seek help at the first signs of difficulty;
- The relationship between substance use, depression, anxiety, and suicide;
- Freedom from substance use and mental health disorders as an indispensable predicate to fitness to practice;
- How to approach a colleague who may be in trouble;
- How to thrive<sup>12</sup> in practice and manage stress without reliance on alcohol and drugs; and

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<sup>12</sup> See *supra* note 3.

- A self-assessment or other check of participants' mental health or substance use risk.

As noted above, to help reduce stigma, such programs should consider enlisting the help of recovering lawyers who are successful members of the legal community. Some evidence reflects that social norms predict problem drinking even more so than stress. Therefore, a team-based training program may be most effective because it focuses on the level at which the social norms are enforced.

Given the influence of drinking norms throughout the profession, however, isolated training programs are not sufficient. A more comprehensive, systemic campaign is likely to be the most effective—though certainly the most challenging. All stakeholders will be critical players in such an aspirational goal. Long-term strategies should consider scholars' recommendations to incorporate mental health and substance use disorder training into broader health-promotion programs to help skirt the stigma that may otherwise deter attendance.

**Hawai'i Recommendation.** As noted earlier, the Task Force received an extremely important power-point presentation regarding suicide prevention from Ms. Nancy Deeley, MPH, a retired Suicide Prevention Coordinator for the State of Hawai'i Department of Health. This presentation was extremely informative and moving, and the Task Force and the HSBA are following up to have Ms. Deeley create a videotape regarding suicide prevention to be posted on the HSBA website's well-being page, which will help address part of the NRR.

Also, the RSCH Rule 1.14 Mandatory Professionalism Course for new bar admittees includes information regarding the AAP, and from this June, will include an additional well-being section. The Task Force recommends that new bar admittees be informed of well-being issues in general, but the time allotted will not be sufficient to address all the issues in the NRR.

Ongoing recovery from any previous or existing mental health or substance use disorder is an indispensable predicate to fitness to practice. How to find and maintain a balance in managing the stress of life and practice without the problematic use of alcohol or drugs, with "problematic use" defined as "use that entails some loss of control of use or life consequences from their use," is very important.

Therefore, the Task Force also recommends that the to-be-formed HSBA Well-Being Committee arrange for programming along

the lines of the NRR. The Task Force notes that Professor Ken Lawson speaks on some of the issues in the NRR. The Committee could seek out other appropriate speakers as well.

## **9. Guide and Support the Transition of Older Lawyers.**

**NRR.** The National Report states:

Like the general population, the lawyer community is aging and lawyers are practicing longer. In the Baby Boomer generation, the oldest turned 62 in 2008, and the youngest will turn 62 in 2026. In law firms, one estimate indicates that nearly 65 percent of equity partners will retire over the next decade. Senior lawyers can bring much to the table, including their wealth of experience, valuable public service, and mentoring of new lawyers. At the same time, however, aging lawyers have an increasing risk for declining physical and mental capacity. Yet few lawyers and legal organizations have sufficiently prepared to manage transitions away from the practice of law before a crisis occurs. The result is a rise in regulatory and other issues relating to the impairment of senior lawyers. We make the following recommendations to address these issues:

First, all stakeholders should create or support programming for detecting and addressing cognitive decline in oneself and colleagues.

Second, judges, legal employers, bar associations, and regulators should develop succession plans, or provide education on how to do so, to guide the transition of aging legal professionals. Programs should include help for aging members who show signs of diminished cognitive skills, to maintain their dignity while also assuring they are competent to practice. A model program in this regard is the North Carolina Bar Association's Senior Lawyers Division.

Third, we recommend that legal employers, law firms, courts, and law schools develop programs to aid the transition of retiring legal professionals. Retirement can enhance or harm well-being depending on the individual's adjustment process. Many lawyers who are approaching retirement age have devoted most of their adult lives to the legal profession, and their identities often are wrapped up in their work. Lawyers whose self-esteem is contingent on their workplace success are likely to delay transitioning and have a hard time adjusting to retirement. Forced retirement that deprives individuals of a

sense of control over the exit timing or process is particularly harmful to well-being and long-term adjustment to retirement.

To assist stakeholders in creating the programming to guide and support transitioning lawyers, the Task Force sets out a number of suggestions in Appendix C.<sup>13</sup>

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<sup>13</sup> Appendix C, in turn, states as follows:

Recommendation 9 advised stakeholders to create programs for detecting and addressing cognitive decline in lawyers, develop succession plans for aging lawyers, and develop reorientation programs to support lawyers facing retirement. Such initiatives and programs may include the following:

- [1] Gathering demographic information about the lawyer population, including years in practice, the nature of the practice, the size of the firm in which the lawyer's practice is conducted, and whether the lawyer has engaged in any formal transition or succession planning for the lawyer's practice;
- [2] Working with medical professionals to develop educational programs, checklists, and other tools to identify lawyers who may be experiencing incapacity issues;
- [3] Developing and implementing educational programs to inform lawyers and their staff members about incapacity issues, steps to take when concerns about a lawyer's incapacity are evident, and the importance of planning for unexpected practice interruptions or the cessation of practice;
- [4] Developing succession or transition planning manuals and checklists, or planning ahead guidelines for lawyers to use to prepare for an unexpected interruption or cessation of practice;
- [5] Enacting rules requiring lawyers to engage in succession planning;
- [6] Providing a place on each lawyer's annual license renewal statement for the lawyer to identify whether the lawyer has engaged in succession and transition planning and, if so, identifying the person, persons or firm designated to serve as a successor;
- [7] Enacting rules that allow senior lawyers to continue to practice in a reduced or limited license or emeritus capacity, including in pro bono and other public service representation;
- [8] Enacting disability inactive status and permanent retirement rules for lawyers whose incapacity does not warrant discipline, but who, nevertheless, should not be allowed to practice law;
- [9] Developing a formal, working plan to partner with Judges and Lawyer Assistance Programs to identify, intervene, and assist lawyers demonstrating age-related or other incapacity or impairment.
- [10] Developing "re-orientation" programs to proactively engage lawyers in transition planning with topics to include:
  - financial planning;
  - pursuing "bridge" or second careers;
  - identity transformation;
  - developing purpose in life;
  - cognitive flexibility;
  - goal-setting;
  - interpersonal connection;
  - physical health;

**Hawai'i Recommendation.** The HSBA and its members are increasingly experiencing the effects of the aging of the Baby Boomer generation of lawyers and the effects on the clients and other members of the HSBA. There are more and more attorneys dying or becoming incapacitated without clear succession plans, necessitating members to cover the fees charged by successor lawyers who are appointed as trustees to address the practices of incapacitated or dying lawyers. The HSBA annual registration form does have a space for a solo practice lawyer to identify whether the lawyer has engaged in succession and transition planning and, if so, identifying the person designated to serve as a successor. This designation is not binding on the designated successor, however, and not all designees accept the role after a lawyer dies.

The Task Force notes that some of the recommendations within the NRR, as well as its Appendix C, have been or are being addressed by the HSBA and its Senior Lawyers' Division and the HSCT. For example, recommendations 1, 6, 7, and 8 in Appendix C have been addressed, and the HSBA and its SLD have some programming along the lines of various recommendations. However, many of the recommendations have not been adopted.

Therefore, the Task Force recommends that the HSBA and its SLD, and the to-be-formed HSBA Well-Being Committee, carefully consider all of the recommendations in the NRR and Appendix C, and then determine what programming, including rule additions or changes, should be implemented or recommended.

#### **10. De-emphasize Alcohol at Social Events.**

**NRR.** The National Report states:

Workplace cultures or social climates that support alcohol consumption are among the most consistent predictors of employee drinking. When employees drink together to unwind from stress and for social bonding, social norms can reinforce tendencies toward problem drinking and stigmatize seeking help. On the other hand, social norms can also lead colleagues to encourage those who abuse alcohol to seek help.

In the legal profession, social events often center around alcohol consumption (e.g., "Happy Hours," "Bar Reviews," networking receptions, etc.). The expectation of drinking is embedded in the culture, which may contribute to over-

- 
- self-efficacy;
  - perceived control, mastery, and optimism.

consumption. Legal employers, law schools, bar associations, and other stakeholders that plan social events should provide a variety of alternative non-alcoholic beverages and consider other types of activities to promote socializing and networking. They should strive to develop social norms in which lawyers discourage heavy drinking and encourage others to seek help for problem use.

**Hawai'i Recommendation.** The Task Force agrees that alcohol consumption is common in the Hawai'i legal community's social events and concurs with the concerns expressed in the NRR. For example, in Hawai'i, free alcohol is often offered at law firm or legal organization events. Task Force members are aware that, sometimes, excessive alcohol consumption occurs at bar or law firm related events.

The Task Force is also anecdotally aware that the complete elimination of alcohol at bar or legal community related social functions will not necessarily eliminate alcohol consumption. For example, although the WSRSL has significantly reduced events at which alcohol is offered to law students, the Task Force is aware that some law students are now taking social events elsewhere, outside the law school, and that excessive alcohol consumption sometimes occurs.

The Task Force is also aware of at least one national bar association that has begun distributing one or two drink tickets at social functions at its conventions due to excessive alcohol consumption being connected to sexual harassment of attendees.

The Task Force agrees with the NRR that legal employers, law schools, bar associations, and other stakeholders that plan social events should provide a variety of alternative non-alcoholic beverages and consider other types of activities to promote socializing and networking. They should strive to develop social norms in which lawyers discourage heavy drinking and encourage others to seek help for problem use.

With respect to evening functions, as indicated in Section 43 below, mocktails and other non-alcoholic drinks can be promoted at social functions. The Task Force also recommends that the HSBA and social events within the legal community institute a two-drink maximum ticket system for alcoholic beverages, whether for hosted or no-host events.

The Task Force also recommends that the legal community consider adding other social activities that do not include any alcohol consumption. These could include guided Zoom

mindfulness, meditation, or yoga sessions, group book clubs, family-friendly hikes, picnics or other events. For example, since August 2020, the Maui County Bar Association has been hosting Stress-Less Tuesdays, a monthly half-hour Zoom seminar on stress management, breath, mindfulness, and meditation, taught by MCBA Directors and certified yoga teachers Christina Lizzi and Damir Kouliev, plus others special guests.

Arrangements could also be made for members to meet at certain times to walk around the State Capitol or the downtown area together. The Task Force understands that the HSBA must consider potential liability for certain types of activities. But for example, if guided hikes were to be arranged by certain sections, committees, or divisions of the HSBA, perhaps advance signing of liability waivers could address such concerns.

#### **11. Use Monitoring to Support Recovery from Substance Use Disorders.**

**NRR.** The National Report states:

Extensive research has demonstrated that random drug and alcohol testing (or "monitoring") is an effective way of supporting recovery from substance use disorders and increasing abstinence rates. The medical profession has long relied on monitoring as a key component of its treatment paradigm for physicians, resulting in long-term recovery rates for that population that are between 70-96 percent, which is the highest in all of the treatment outcome literature. One study found that 96 percent of medical professionals who were subject to random drug tests remained drug-free, compared to only 64 percent of those who were not subject to mandatory testing. Further, a national survey of physician health programs found that among medical professionals who completed their prescribed treatment requirements (including monitoring), 95 percent were licensed and actively working in the health care field at a five year follow-up after completing their primary treatment program. In addition, one study has found that physicians undergoing monitoring through physician health programs experienced lower rates of malpractice claims.

Such outcomes are not only exceptional and encouraging, they offer clear guidance for how the legal profession could better address its high rates of substance use disorders and increase the likelihood of positive outcomes. Although the benefits of monitoring have been recognized by various bar associations, lawyer assistance programs, and employers throughout the legal profession, a uniform or "best practices"



approach to the treatment and recovery management of lawyers has been lacking. Through advances in monitoring technologies, random drug and alcohol testing can now be administered with greater accuracy and reliability—as well as less cost and inconvenience— than ever before. Law schools, legal employers, regulators, and lawyer assistance programs would all benefit from greater utilization of monitoring to support individuals recovering from substance use disorders.

**Hawai‘i Recommendation.** Although law schools, legal employers, regulators, and lawyer assistance programs might benefit from greater utilization of random drug and alcohol testing to support individuals recovering from substance use disorders, due to various considerations, including the strong and explicit privacy protections of the Hawai‘i State Constitution, the Task Force does not believe it currently has the expertise necessary to take a position on this recommendation and therefore takes no position on whether such monitoring programs should be instituted by such entities. Based on what the Task Force understands to be the robustness of the outcomes data for other professions, however, the Task Force supports further review and development of AAP monitoring guidelines to optimize outcomes for attorneys and their clients.

The Task Force does, however, support encouraging law schools and legal employers to provide information about the benefits of monitoring to persons who have undergone rehabilitation, and offer the option to those persons to voluntarily enter into an agreement for such monitoring.

## **12. Begin a Dialogue About Suicide Prevention.**

**NRR.** The National Report states as follows:

It is well-documented that lawyers have high rates of suicide. The reasons for this are complicated and varied, but some include the reluctance of attorneys to ask for help when they need it, high levels of depression amongst legal professionals, and the stressful nature of the job. If we are to change these statistics, stakeholders need to provide education and take action. Suicide, like mental health or substance use disorders, is a highly stigmatized topic. While it is an issue that touches many of us, most people are uncomfortable discussing suicide. Therefore, stakeholders must make a concerted effort towards suicide prevention to demonstrate to the legal community that we are not afraid of addressing this issue. We need leaders to encourage dialogue about suicide

prevention. One model for this is through a "Call to Action," where members of the legal community and stakeholders from lawyer assistance programs, the judiciary, law firms, law schools, and bar associations are invited to attend a presentation and community discussion about the issue.

When people who have been affected by the suicide of a friend or colleague share their stories, other members of the legal community begin to better understand the impact and need for prevention. In addition, stakeholders can schedule educational presentations that incorporate information on the signs and symptoms of suicidal thinking along with other mental health/ substance use disorders. These can occur during CLE presentations, staff meetings, training seminars, at law school orientations, bar association functions, etc. Stakeholders can contact their state lawyer assistance programs, employee assistance program agencies, or health centers at law schools to find speakers, or referrals for counselors or therapists so that resources are available for family members of lawyers, judges, and law students who have taken their own life.

It's important for all stakeholders to understand that, while lawyers might not tell us that they are suffering, they will show us through various changes in behavior and communication styles. This is so because the majority of what we express is non-verbal. Becoming better educated about signs of distress will enable us to take action by, for example, making health-related inquiries or directing them to potentially life-saving resources.

**Hawai'i Recommendation.** Unfortunately, the statements within the NRR are true for Hawai'i as well. After the Task Force was established in 2019, members became aware that at least four Hawai'i attorneys had died by suicide in 2018.

Therefore, on January 15, 2020, the Task Force invited Ms. Nancy Deeley, MPH, a retired Suicide Prevention Coordinator for the State of Hawai'i Department of Health to educate the Task Force on suicide statistics and resources in the State.

Ms. Deeley's presentation was extremely informative and moving. The Task Force requested, and Ms. Deeley agreed, to allow her presentation to be videotaped, so that it could be made available to all members of the legal community. The videotaping was recently completed and Ms. Deeley's presentation will become available on the HSBA's Well-Being page. When it

does, it will be publicized, so that all members of the legal community can learn about suicide prevention.

The Task Force recommends that when Ms. Deeley's videotaped presentation becomes available, that the new HSBA Well-Being Committee constitute a "Call to Action," where members of the legal community and stakeholders from lawyer assistance programs, the judiciary, law firms, law schools, and bar associations are invited to attend a presentation of the video and engage in community discussion about the issue. So that members of the legal community throughout the state can attend, the Task Force recommends that this "Call to Action" be conducted through Zoom, whether or not the pandemic's effects continue to persist.

The event and the videotape's continued availability through an HSBA link should be highly publicized by the HSBA, the Judiciary, and the WSRSL. The Task Force also recommends that availability of the videotape through the HSBA link be periodically referred to in the Well-Being corner of HSBA e-newsletter.

Concerned with the isolation many have felt due to the pandemic, the Task Force also published several articles and attorney assistance and suicide resources in the Attorney Well-Being column in the HSBA monthly newsletter.

The Task Force also learned that continued use of the term "committed suicide" improperly stigmatizes suicide instead of addressing it as an issue of human suffering. As indicated in State v. Martin, 146 Hawai'i 365, 385 at n.20, 463, P.3d 1022, 1041 at n.20 (2020) (internal citations omitted):

Suicide was a felony at common law and was sometimes considered "self-murder." As an editorial published by the Centre for Suicide Prevention points out, contemporary language used to discuss suicide still reflects suicide's historic criminality, as the phrase to "commit" suicide equates the act with homicide or fratricide, and suggests that it is akin to "self-murder."

Therefore, the Task Force also strongly recommends that the entire legal community stop using the phrase "commit suicide" and instead use the phrase "died by suicide." The "Call to Action" day should also educate the legal community on this issue.

### **13. Support a Lawyer Well-Being Index to Measure the Profession's Progress**

**NRR.** The National Report states as follows:

We recommend that the ABA coordinate with state bar associations to create a well-being index for the legal profession that will include metrics related to lawyers, staff, clients, the legal profession as a whole, and the broader community. The goal would be to optimize the well-being of all of the legal profession's stakeholders. Creating such an index would correspond with a growing worldwide consensus that success should not be measured solely in economic terms. Measures of wellbeing also have an important role to play in defining success and informing policy. The index would help track progress on the transformational effort proposed in this report. For law firms, it also may help counterbalance the "profits per partner metric" that has been published by The American Lawyer since the late 1980s, and which some argue has driven the profession away from its core values. As a foundation for building the well-being index, stakeholders could look to, for example, criteria used in The American Lawyer's Best Places to Work survey, or the Tristan Jepson Memorial Foundation's best practice guidelines for promoting psychological well-being in the legal profession.

**Hawai'i Recommendation.** The Task Force recommends that the to-be-formed HSBA Well-Being Committee follow up with the ABA on this NRR.

The Task Force notes that in August 2018, a "Well-Being Toolkit" for Lawyers & Legal Employers was created for use by the ABA by Anne Brafford, J.D., MAPP (Master of Applied Positive Psychology), Ph.D. Candidate, and is available here:  
[https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_well-being\\_toolkit\\_for\\_lawyers\\_legal\\_employers.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf)

The Task Force recommends that this Toolkit also be circulated as appropriate by the to-be-formed HSBA Well-Being Committee.

## **PART II—SPECIFIC STAKEHOLDER RECOMMENDATIONS**

The National Report states:

Judges occupy an esteemed position in the legal profession and society at large. For most, serving on the bench is the capstone of their legal career. The position, however, can take a toll on judges' health and well-being. Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily. Some report lying awake at night worrying about making the right decision or the consequences of that decision. Other judges face the stress of presiding over criminal cases with horrific underlying facts.

Also stressful is the increasing rate of violence against judges inside and outside the courthouse. Further, many judges contend with isolation in their professional lives and sometimes in their personal lives. When a judge is appointed to the bench, former colleagues who were once a source of professional and personal support can become more guarded and distant. Often, judges do not have feedback on their performance. A number take the bench with little preparation, compounding the sense of going it alone. Judges also cannot "take off the robe" in every day interactions outside the courthouse because of their elevated status in society, which can contribute to social isolation. Additional stressors include re-election in certain jurisdictions. Limited judicial resources coupled with time-intensive, congested dockets are a pronounced problem. More recently, judges have reported a sense of diminishment in their estimation among the public at large. Even the most astute, conscientious, and collected judicial officer can struggle to keep these issues in perspective.

We further recognize that many judges have the same reticence in seeking help out of the same fear of embarrassment and occupational repercussions that lawyers have. The public nature of the bench often heightens the sense of peril in coming forward. Many judges, like lawyers, have a strong sense of perfectionism and believe they must display this perfectionism at all times. Judges' staff can act as protectors or enablers of problematic behavior. These are all impediments to seeking help. In addition, lawyers, and even a judge's colleagues, can be hesitant to report or refer a judge whose behavior is

problematic for fear of retribution. In light of these barriers and the stressors inherent in the unique role judges occupy in the legal system, we make the following recommendations to enhance well-being among members of the judiciary.

## RECOMMENDATIONS FOR JUDGES

### 14. Communicate that Well-Being is a Priority.

**NRR.** The National Report states:

The highest court in each state should set the tone for the importance of the well-being of judges. Judges are not immune from suffering from the same stressors as lawyers, and additional stressors are unique to work as a jurist.

Also, after the National Report, on December 23, 2020, the ABA released its National Judicial Stress and Resiliency Survey ("**Judicial Survey**") discussed more fully in Section 17 below: [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/journal-of-the-professional-lawyer-2020.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/journal-of-the-professional-lawyer-2020.pdf)

The Judicial Survey notes that those who serve as judicial leaders have the ability, pursuant to their legal authority and symbolic power, to create rules, trainings, and programs that will promote the well-being of their fellow jurists and to serve as exemplars of health and resilience, and states:

1. Judicial leaders should communicate and demonstrate by example that judicial well-being is a priority.
2. Justices should set an example and send a message that well-being is a priority by prioritizing their own self-care; also critically important is that judges at higher levels are aware and appreciate the different challenges and stresses of judges presiding in the lower courts.
3. The chief justice is encouraged to bring together representatives of all stakeholder groups to review potential ways in which well-being can be improved, to create priorities and develop and promote implementation of an action plan, by convening a statewide task force on well-being in the legal profession, including the judiciary and all other stakeholders.

**Hawai'i Recommendation.** As explained in the Introduction, Chief Justice Recktenwald has clearly conveyed the message that the well-being of judges is of the highest priority in the State of Hawai'i by convening the Task Force. The efforts of the Task Force to date, which includes direct involvement of state and federal judges, has continued to convey the clear message that

well-being of the entire legal community, including the judiciary, is of the highest priority.

Also as previously discussed, the Task Force's September 2020 and May 2021 Summits had break-out groups, which included break-outs for judges to address their well-being as well as the recommendations for judges discussed herein.

At the September 2020 Summit, judges discussed and emphasized the concern about the impact of the COVID-19 pandemic on justice in the courts; the geographic challenges for judges to share and collaborate while being located on separate islands; the need for a forum to discuss judges concerns and mechanisms to support judges; destigmatizing requests for assistance by judges and easing accessibility to the lawyers and judges assistance program; and incorporating programs for judges well-being into continuing legal education.

At the May 2021 Summit, judges participated in various break-out sessions and discussed various recommendations in this Report. One topic that was discussed, however, was the impact judges can also have on the well-being of attorneys. For example, it was recommended that judges consider well-being when scheduling court matters. One positive effect of the pandemic has been the increased use of technology for court matters. The Task Force recommends that the judiciary consider formalizing the availability of remote video or telephone conferences for short matters. Judges should also consider the effect of the scheduling of trials and hearings on attorney vacations or personal needs. Finally, as there are so many new judges, the Task Force recommends that judges receive judicial education regarding this Report as well as with respect to the AAP.

The challenge lies in how best to continue to communicate that well-being is a priority. The Judges Committee of the Task Force believes this important goal can be achieved by consistently incorporating a well-being message and component at the regular judges' meetings, CLE events, and Bench-Bar events, and recommends that the Chief Justice take steps that this is done, including through the Judicial Education Committee.

#### **15. Develop Policies for Impaired (Disabled) Judges.**

**NRR.** The National Report states as follows:

It is essential that the highest court and its commission on judicial conduct implement policies and procedures for



intervening with impaired members of the judiciary. For example, the highest court should consider adoption of policies such as a Diversion Rule for Judges in appropriate cases. Administrative and chief judges also should implement policies and procedures for intervening with members of the judiciary who are impaired in compliance with Model Rule of Judicial Conduct 2.14. They should feel comfortable referring members to judicial or lawyer assistance programs. Educating judicial leaders about the confidential nature of these programs will go a long way in this regard. Judicial associations and educators also should promote CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges

**Hawai'i Recommendation.** The NRR includes judges disabled by mental or physical limitations within the definition of "impaired" judges.

Model Rule of Judicial Conduct 2.14 referenced in the NRR provides:

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Hawai'i's Revised Code of Judicial Conduct ("**HRCJC**") did not adopt Model Rule 2.14. However, pursuant to RSCH Rule 16.1(a), the purpose of the AAP includes providing immediate and continuing assistance to judges within the State of Hawai'i.

The Judges Committee and Task Force therefore recommends that the HSCT adopt Model Rule 2.14, as follows:

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to the Attorneys and Judges Assistance Program.

Also, disabilities in judges<sup>14</sup> can have serious implications: changes in mental acuity and temperament due to cognitive decline or addiction can detrimentally affect a judge's ability to meet judicial obligations. Best practices

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<sup>14</sup> The American Bar Association correctly points out that being disabled (e.g., having a physical limitation) does not necessarily disqualify a judge from performing as a judicial officer thus it advocates use of the term "incapacity" rather than "disability".

suggest that four things should be in place to address concerns about a judge's ability to serve: (1) complaint process; (2) review of the complaint; (3) investigation process; and (4) corrective action.

In Hawai'i, the Commission on Judicial Conduct was established in 1979 by the HSCT and it exists

to investigate allegations of judicial misconduct and disability, and has jurisdiction over all justices and judges of the State of Hawai'i. Judicial misconduct is any violation of the [Hawai'i Revised Code of Judicial Conduct](#). Disability involves the physical or mental inability to perform judicial duties and functions. Complaints about state judges should be sent in writing to the Commission and include case numbers and the names of corroborating witnesses when available, as well as supportive material such as transcripts, copies of motions, etc.

Hawai'i State Judiciary, Commission on Judicial Conduct, [https://www.courts.state.hi.us/courts/judicial\\_conduct/commission\\_on\\_judicial\\_conduct](https://www.courts.state.hi.us/courts/judicial_conduct/commission_on_judicial_conduct) (last visited Jan. 19, 2021). This commission "consists of four lay members and three attorneys, one of whom serves as chair." *Id.* All members are appointed by the HSCT. *Id.*

While the HRCJC contains rules regarding the duty to be impartial and fair (Rule 2.2), to be competent and diligent (Rule 2.5), and to disqualify or recuse oneself where impartiality may be questioned (Rule 2.11), it does not have any specific rule for the initiation of a complaint alleging mental or physical incapacity or disability regarding a judge's performance. Nor do there appear to be rules set up for the Commission on Judicial Conduct to provide a process for the investigation of allegations of mental or physical incapacity or disability affecting a judge's ability, and any hearing or adjudication process. And, as noted, Hawai'i has not adopted Model Rule 2.14.

In the federal courts, the Guide to Judiciary Policy, Volume 2: Ethics and Judicial Conduct provides for a complaint process:

ARTICLE III. INITIATION OF COMPLAINT

5. Identification of Complaint

(a) Identification. When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the

information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the *Guide to Judiciary Policy*, Vol. 2E, Ch. 3 Page 14 allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.

(b) Submission Not Fully Complying with Rule 6. A legible submission in substantial but not full compliance with Rule 6 must be considered as possible grounds for the identification of a complaint under Rule 5(a).

*Guide to Judiciary Policy*, Vol 2E, Ch.3, Article III, Rule 5(a)-(b).

In federal courts, there is a specific form that can be used in lodging a complaint against a judge and, once the complaint is received, the circuit clerk must open a file, assign a docket number, and acknowledge the complaint's receipt. See generally, *Guide to Judiciary Policy*, Vol 2E, Ch.3, Rules 7 and 8.

When a complaint is filed, the chief judge of the circuit must review it (unless he or she is disqualified and then the most senior active judge will review it if not disqualified) as follows:

#### ARTICLE IV. REVIEW OF COMPLAINT BY CHIEF JUDGE 11.

##### Chief Judge's Review

(a) Purpose of Chief Judge's Review. When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25, in which case the most senior active circuit judge not disqualified will review the complaint. If a complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing a complaint, the chief judge must determine whether it should be:

- (1) dismissed;
- (2) concluded on the ground that voluntary corrective action has been taken;
- (3) concluded because intervening events have made action on the complaint no longer necessary; or
- (4) referred to a special committee.

*Guide to Judiciary Policy, Vol 2E, Ch.3, Article IV(a).*

The chief judge may conduct an inquiry and this may take the form of a limited inquiry or referral to an independent committee for review:

(b) Chief Judge's Inquiry. In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may obtain and review transcripts and other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule 11(f) and to the judicial council that considers the committee's report.

After review, the chief judge may dismiss the complaint for specific reasons only:

(c) Dismissal.

(1) Permissible grounds. A complaint may be dismissed in whole or in part to the extent that the chief judge concludes that the complaint: *Guide to Judiciary Policy, Vol. 2E, Ch. 3 Page 21*

(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists; (E) is based on allegations that are incapable of being established through investigation; (F) has been filed in the wrong circuit under Rule 7; or (G) is otherwise not appropriate for consideration under the Act.

(2) Impermissible grounds. A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) Corrective Action. The chief judge may conclude a complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6; or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) Intervening Events. The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.

*Guide to Judiciary Policy, Vol 2E, Ch.3, Article IV (b)-(d).*

If the chief judge appoints a special committee to investigate the complaint or any part of it, the following applies:

(f) Appointment of Special Committee. If some or all of a complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

*Guide to Judiciary Policy, Vol 2E, Ch.3, Article IV (f).*

If appointed, the special committee will file a report that will include findings as well as recommendations to the judicial council for its action. *Guide to Judiciary Policy, Vol 2E, Ch.3, Rule 17.*

Massachusetts, like Hawai'i, has a specific commission tasked with overseeing judicial conduct, the Massachusetts Commission on Judicial Conduct ("**Commission**"). Rule 12 of the Rules of the Commission on Judicial Conduct specifically applies to cases involving allegations of mental or physical disability. Rule 12 refers to Massachusetts law (specifically, Chapter 211C, Section 10 of the General Laws of the Commonwealth of Massachusetts) mandating the procedures to be followed when allegations of mental or physical disability are made regarding a judge. This law provides:

Section 10: Physical or mental disabilities

Section 10. (1) The commission shall have authority to receive information, investigate, conduct hearings, and make recommendations to the court relating to mental or physical disability affecting a judge's performance.

(2) In carrying out its responsibilities regarding physical or mental disabilities, the commission shall follow the

same procedures that it employs with respect to discipline for misconduct.

(3) If the judge in a matter relating to physical or mental disability is not represented by counsel, the commission shall appoint an attorney to represent him at public expense.

(4) If a complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.

(5) If medical privilege is waived, the judge shall be deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the commission. The report of the medical practitioner shall be furnished to the commission and the judge.

General Laws, Commonwealth of Massachusetts, Section 211C, Sec. 10(1)-(5).

The Massachusetts Commission's Rules provide, in relevant part, that if "the Commission finds facts support sufficient cause to believe that a judge has a mental or physical disability that may be affecting the judge's ability . . .", then the Commission shall request that an attorney is appointed to represent the judge; that "[i]f a sworn complaint or statements of allegations involves the current or past mental or physical health of a judge," and a denial is made, then "the judge shall be required to produce any and all medical records relevant to" whether "the judge has a mental or physical disability that may be affecting the judge's ability to perform judicial duties[]"; and where there is "a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission." Rule 12 A-C, Massachusetts Rules of the Commission on Judicial Conduct.

The American Bar Association ("**ABA**") has promulgated model rules related to judicial conduct known as the "Model Rules for Judicial Disciplinary Enforcement" ("**Model Rules**") that provide for a commission consisting of two panels: "an investigative panel of three members and a hearing panel of nine members, and to have separate disciplinary and commission counsel." ABA Model Rules, Sec. I, Organization and Structure, [https://www.americanbar.org/groups/professional\\_responsibility/model\\_rules\\_judicial\\_disciplinary\\_enforcement/preface/](https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/preface/) (last visited Jan. 19, 2021). Rule 27

sets forth a detailed rule to control cases involving allegations of the mental or physical incapacity of a judge. Most jurisdictions and the current ABA Standards use the term disability rather than incapacity; however, as

exemplified by the Americans with Disabilities Act, a disability does not necessarily disqualify a person from serving. Rule 27 uses the term incapacity instead of disability. The rule makes it clear that determination of incapacity is not a disciplinary proceeding. The purpose of the proceeding is to determine whether the respondent suffers from a physical or mental condition that adversely affects the respondent's ability to perform judicial functions. The Rule also establishes a procedure for handling disciplinary cases where the judge pleads incapacity as a defense.

Id., Sec. IV, Special Proceedings.

However, the larger issue is a more delicate one. That is, how to go about evaluating and dealing with an impaired judge without having to file a formal complaint. The drawback to a formal process is that it may be cumbersome and take a long time for a decision to be made and corrective action to be taken. As judges and lawyers of the so-called "boomer generation" age and continue to work later into their 60s and 70s, concerns may be raised about whether they are demonstrating cognitive impairment. See, e.g., *The Graying of the Profession: The Ethical Implications of Aging*, <https://www.osbar.org/publications/bulletin/14nov/decline.html>. Suggestions to consider if a judge exhibits signs of impairment may include: talking to those who work closely with the judge; talking to the judge's family members or friends; monitor the cases and outcomes; report to the chief judge or chief justice. See e.g., *Aging Population of Lawyers Means Colleagues Need to Keep Watchful Eye*, 30 Law. Man. Prof. Conduct 637 (Sept. 14, 2014), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/current\\_reports\\_article\\_on\\_aging\\_lawyers\\_sept\\_2014.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/current_reports_article_on_aging_lawyers_sept_2014.authcheckdam.pdf)

While an informal process is often most desired to avoid embarrassment or discomfort by the person instigating the process, judicial ethics proponents advocate that formal processes are integral in addressing this problem:

It is essential that the highest court and its commission on judicial conduct implement policies and procedures for intervening with impaired members of the judiciary. For example, the highest court should consider adoption of policies such as a Diversion Rule for Judges in appropriate cases. Administrative and chief judges also should implement policies and procedures for intervening with members of the judiciary who are impaired in compliance with Model Rule of Judicial Conduct 2.14. They should feel comfortable referring members to judicial or lawyer

assistance programs. Educating judicial leaders about the confidential nature of these programs will go a long way in this regard. Judicial associations and educators also should promote CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges.

*Judicial well-being*, Center for Judicial Ethics of the National Center for State Courts, <https://ncscjudicialethicsblog.org/category/impairment/> (Sept. 26, 2017) (citing *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, National Task Force on Lawyer Well-Being).

In conclusion, policies to address impaired judges optimally should include a formal complaint and review process through the judiciary as well as an informal process. Through the informal process the possibly impaired judge's colleagues, support staff and family can assist in evaluating the concern and providing corrective action, if necessary. Both the formal and informal processes should be combined with a peer support network among the judges to support as well as detect possibly impaired judges. The affected judge's colleagues could assist in various ways including reducing case load, coordinating with family members, and providing support.

Hence, the Task Force recommends that the HSCT adopt Model Rule of Judicial Conduct 2.14 in the form above. The Task Force also recommends that the HSCT study possible options and adopt rules to address impaired judges.

Finally, the NRR also recommends that judicial associations and educators promote the ABA CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges, at (800) 219-6474. The Task Force also recommends that this be done by the Chief Justice or his appropriate designee.<sup>15</sup>

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See

[https://www.americanbar.org/groups/lawyer\\_assistance/articles\\_and\\_info/resources\\_for\\_judges/#:~:text=National%20Helpline%20for%20Judges%20Helping%20Judges&text=Both%20judges%20in%20need%20of,confidential%20and%20protected%20by%20state](https://www.americanbar.org/groups/lawyer_assistance/articles_and_info/resources_for_judges/#:~:text=National%20Helpline%20for%20Judges%20Helping%20Judges&text=Both%20judges%20in%20need%20of,confidential%20and%20protected%20by%20state). This Helpline is an ABA resource, and the website states:

Judges who need assistance because of alcoholism, substance use disorders, addiction or mental health issues may reach other judges, who are in recovery or who have gone through treatment, by calling a helpline sponsored by the American Bar Association. Judges who have volunteered to be a personal resource to other judges throughout the US and Canada are uniquely positioned to share their experiences, strengths and hope. Both judges in need of help and those



## **16. Reduce the Stigma of Mental Health and Substance Use Disorders.**

**NRR.** The National Report states:

As reflected in Recommendation 4, the stigma surrounding mental health and substance use disorders poses an obstacle to treatment. Judges are undisputed leaders in the legal profession. We recommend they work to reduce this stigma by creating opportunities for open dialogue. Simply talking about these issues helps combat the unease and discomfort that causes the issues to remain unresolved. In a similar vein, we encourage judges to participate in the activities of lawyer assistance programs, such as volunteering as speakers and serving as board members. This is a powerful way to convey to lawyers, law students, and other judges the importance of lawyer assistance programs and to encourage them to access the programs' resources.

**Hawai'i Recommendation.** The Task Force agrees with the NRR. Judges are esteemed members of the legal profession and the community as a whole. Because of this position, judges can play a vital role in the effort to reduce the stigma of mental health and substance use disorders. Judges can be leaders in communicating and educating others about why compassionate and supportive actions are necessary when individuals in the legal profession are struggling with mental health or substance use disorders.

Conversely, because of their positions within our communities, judges themselves may hesitate to seek help for their own struggles with mental health or substance use disorders. What if the bar finds out? What if the public finds out? What about the potential for disciplinary action? Judges need to feel supported to seek help when needed for their own well-being.

The NRR recommends that judges work to reduce the stigma of mental health and substance use disorders by creating open dialogue. Judges are encouraged to participate in the activities of lawyer assistance programs, such as volunteering as speakers

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interested in serving as a peer-to-peer volunteer should call 800-219-6474 during business hours Central time. All information is confidential and protected by statute.

and serving as board members. In Hawai'i the AAP Board has continuously included judicial members.

In order to further implement the recommendations of the National Report, the Task Force and Judges Committee also recommends the following:

1. Educate new judges on the importance of judges' well-being and provide a list of resources. This information should be included in the New Judge's Orientation Handbook of the Hawaii Benchbook and any other relevant material provided to a new judge.
2. Incorporate regular legal education on the topic of judicial well-being to teach judges of the warning signs for mental health and substance use disorders of members of the judiciary. At these trainings, permit judges to give their personal stories for overcoming mental health and substance use disorders.
3. Encourage presiding judges to convey an attitude of compassion and support for those in the legal profession or the judiciary struggling with mental health and substance use disorders.
4. Judges should regularly engage in and speak at bar events or bench bar conferences on the topic of lawyer and judges' well-being.
5. Amend the HRCJC to foster compassion and support for judges who may need help with mental health and substance use disorders. For example, in paragraph 2 of the preamble, include a line at the end of the paragraph that states something like, "Judges should make their own well-being a priority and seek assistance when needed without fear of retribution. The soundness of a judge's mental and physical well-being enhances public confidence in the legal system." Additionally, Rule 2.14 of the Model Code of Judicial Conduct, which is currently "reserved," should be adopted in the form indicated above, to explicitly provide an informal method of referral of another judge to the AAP if there is a concern.

## **17. Conduct Judicial Well-Being Surveys**

**NRR.** The National Report states:

This report was triggered in part by the Study and the Survey of Law Student Well-Being. No comparable research has been conducted of the judiciary. We recommend that CoLAP and other concerned entities conduct a broad-based survey of the judiciary to determine the state of well-being and the prevalence of issues directly related to judicial fitness such as burnout, compassion fatigue, mental health, substance use disorders and help-seeking behaviors.

After the 2017 National Report, as noted in Section 14 above, on December 23, 2020, the ABA released its judicial Survey. The Judicial Survey is based on responses received from 1,304 of an estimated 18,000 judges across the United States. The Judicial Survey sought to identify: (1) stressors unique to the judiciary, (2) how those stressors affect individual judges, and (3) strategies that judges have used to mitigate these stressors. The Judicial Survey discusses the results and makes recommendations to the stakeholders who comprise, regulate, and support the U.S. judicial system.

In summary, survey participants acknowledged a wide array of stressors that affected them. The most frequent identified items were related to importance/impact of their decisions (79.7%) and the heavy docket of cases (73.2%). Judges also identified sources of frustration, such as unprepared attorneys (67.6%), self-represented litigants (62.5%), dealing repeatedly with the same parties without addressing the underlying issues (58.1%), and a lack of public awareness about the courts (55.5%). Other stressors reported by about half of responding judges were long hours of work without a break (53.5%), hearing contentious family law issues (50.3%), isolation in judicial service (50.3%), and insufficient staff support (49.5%).

According to the Judicial Survey, judges rated the effects of stress on their lives in areas such as health, including fatigue and low energy (38.8%), sleep disturbance (36%), and disturbed attention and concentration (32.3%). With respect to depression and anxiety, survey items reflecting depression in respondents included: not having initiative (22.9%), preoccupation with negative thoughts (20%), work is no longer meaningful (17.8%), can't wait for the day's work to end (16.7%), depressed mood (15.3%), nothing to look forward to (12.6%), feel increasingly numb to pleas of urgency (11.2%), and care little about trial outcomes (6.9%).

Thus, more than one in five judges met at least one criterion for depressive disorder. Also, over two percent of the

judges responding reported experiencing thoughts of self-injury or suicide, as compared to previous studies reflecting 11.5% of lawyer respondents and 6% of law student respondents.

Judges experiencing anxiety were not as numerous as those experiencing depression, but were still significant. Judges reported: increased health concerns (27.6%), feelings of apprehension or anxiety (23%), having intrusive thoughts of traumatic images of people or evidence (19%), finding it difficult to ask a respected colleague for a critique of work (13.3%), breathing difficulties (7.4%), and being worried about panicking or losing control (4.6%). Twenty-three percent (23%) of judges responding to the survey met criteria for stress at a level that could be debilitating.

According to the Judicial Survey, the level of problematic alcohol use for judges in the past year (9.5% in 2019) was lower than that for lawyers (20.6%), but both rates are higher than that for the general population of adults over 25 years of age in the past year (6.6% in 2018). According to the Judicial Survey, the rate of 9.5% problematic alcohol use for judges is concerning.

With respect to stress management and resiliency activities, the Judicial Survey suggested that although only 36% of judges engaged in mindfulness activities, 81% were actually interested in such activities. Judges most frequently endorsed some form of physical exercise for stress management and resiliency promotion and also supported relaxation methods such yoga, t'ai chi (51.3%), meditation and mindfulness (35.9%), spiritual and faith practices (49.3%), reading (77.3%), and quiet hobbies and pastimes (73%). Sleep hygiene (e.g., healthy sleep practices) was identified by 66% of respondents, and good nutrition by 88.7% as a practice used to cope with stress. According to the Judicial Survey, judges are reluctant to seek peer support, which may be related to the isolation of judges.

The Judicial Survey indicates that many judges take affirmative steps to protect their health and build their resilience, but opines that to bring forth systemic and sustained improvement to the well-being of the judiciary as a whole, the burden cannot rest solely on the shoulders of individual judicial officers and also cannot be attained through exercise and healthy eating alone. Rather, the Judicial Survey recommends that entities charged with governance, regulation, education and support of judges must lead these efforts, which survey authors identify as state supreme courts, federal court

administration, judicial regulators, judicial educators, membership associations for judges, as well as judges and lawyers assistance programs.

The Judicial Survey recommends that the judiciary ensure it has access to well-being resources and programming, including services provided by Lawyer Assistance Programs. According to the Judicial Survey, through positions of authority in relation to judicial education and support organizations, as well as oversight of budgets for the state judicial system, justices are uniquely positioned to ensure the availability of well-being resources, programming, and protocols in their state. Further, fulfillment of this recommendation would also mean ensuring that judges and lawyers assistance programs have adequate resources to serve members of the judiciary at all levels. According to the Survey, an excellent example of this work occurred in 2017, when the National Center for State Courts released Elements of Judicial Excellence: A Framework to Support the Professional Development of State Trial Court Judges. The framework included recommendations for judicial well-being and the ways in which state court leaders can structure the professional development of judges to include information on wellness and stress management. Suggested ideas included formal mentoring and coaching programs, regular engagement with judicial colleagues, and intentional use of personal time to refresh and recharge. According to the Survey, it may also be important to identify and reduce barriers to implementing such practices before they can be successfully introduced.

The Survey also contains recommendations for adequate insurance, leave policies, and retirement benefits, as judges are more likely to get the professional help and treatment they need if the cost of that assistance is paid in full or in part by insurance that does not impose onerous out-of-pocket expenses on them. It notes financial considerations themselves could add to judicial stress by affecting financial security. The Survey also recommends paid leave policies to allow judges who need in-patient treatment for the effects of stress and/ or substance use to get the help they need.

The Judicial Survey also notes that in the event that a judge has a mental disability or other concern that renders the judge unable to perform judicial functions, a generous disability retirement plan that does not deprive the judge of the means to meet the expenses of treatment and other costs is crucial to encourage, not penalize, retirement.

The Judicial Survey also recommends authorizing caseload and staffing studies, as heavy dockets were cited as one of the primary sources of stress. Thus, courts should study whether caseloads are fairly divided by size and type of case, and whether judgeships and staffing are adequate within and across divisions, dockets, and locations, and make any necessary adjustments. The Judicial Survey recommends that adjustments could include strategic use of senior judges when such a resource is available. Finally, the Survey also notes that there are technological solutions to some of the docketing issues judges face and that the National Center for State Courts has performed numerous studies on these issues for courts.

**Hawai'i Recommendation.** Given the nature of the work of judges and the unprecedented pressures under which judges are currently working, it is important to be sensitive to, and to create avenues for, the well-being of judges. In 2016, a clinical psychologist was commissioned to conduct an oral survey of some Hawai'i state court judges in an attempt to assist in a judicial education presentation regarding judicial stress and suggested approaches, but no results were published to ensure promised confidentiality. Since 2016, however, there have been many judicial retirements and new judges in Hawai'i.

To properly identify programs that would be conducive to such support, the Task Force believes that there needs to be a current and relevant vehicle to measure the well-being of Hawai'i judges, by utilizing feedback directly from judges.

The Task Force therefore recommends that Chief Justice Recktenwald appoint a committee of judges within the judiciary to study the National Judicial Survey summarized above and to consider whether a similar survey should be conducted of Hawai'i judges, perhaps with the assistance of the Judicial Education Office. Perhaps the Judicial Education Office could assist in distributing, collating, and summarizing the responses. Appropriate steps can then be taken for judges, including integrating well-being into future judicial training conferences, as well as other suggestions within the Judicial Survey above.

#### **18. Provide Well-Being Programming for Judges and Staff.**

**NRR.** The National Report states:

Judicial associations should invite lawyer assistance program directors and other well-being experts to judicial

conferences who can provide programming on topics related to self-care as well as resources available to members of the judiciary experiencing mental health or substance use disorders. Topics could include burnout, secondary traumatic stress, compassion fatigue, strategies to maintain well-being, as well as identification of and intervention for mental health and substance use disorders.

Judicial educators also should make use of programming that allows judges to engage in mutual support and sharing of self-care strategies. One such example is roundtable discussions held as part of judicial conferences or establishing a facilitated mentoring program or mentoring circle for judicial members. We have identified isolation as a significant challenge for many members of the judiciary. Roundtable discussions and mentoring programs combat the detrimental effects of this isolation.

Judicial associations and educators also should develop publications and resources related to well-being, such as guidebooks. For example, a judicial association could create wellness guides such as "A Wellness Guide for Judges of the California State Courts." This sends the signal that thought leaders in the judiciary value well-being.

**Hawai'i Recommendation.** The Judges Committee and the Task Force believe well-being programming can and should be implemented to address the unique needs of Hawai'i's judges and staff. However, this will require strong top-level support and involvement. Well-being programming must be crafted so judges and their staffs want to, and in fact, do participate. As such it must also be highly visible, convenient and consistent.

The Judges Committee believes that the semiannual statewide judges' meeting provides a unique forum in which to provide well-being programming. The Committee recommends implementing the well-being programming by 1) conducting regular surveys of judges to determine current issues and topics of interest, 2) including a well-being topic in every semiannual meeting based on the results of the surveys, 3) scheduling breakout sessions during the semiannual judges' meeting for judges to informally talk and brainstorm in small groups about improving wellness, and 4) ending every semiannual meeting with a review of well-being resources.

The National Report recommends that any well-being programming for judges also include staff. In light of this recommendation, and to demonstrate top-level support, the Judges

Committee and the Task Force recommend quarterly brown bags inviting all courthouse staff. Judges could convey their message regarding the importance of well-being, brainstorm with staff to determine areas where well-being could be improved, and even bring in local speakers to talk about topics such as the importance of mindfulness, nutrition and exercise.

**19. Monitor for Impaired Lawyers and Partner with Lawyer Assistance Programs.**

**NRR.** The National Report states:

Judges often are among the first to detect lawyers suffering from an impairment. Judges know when a lawyer is late to court regularly, fails to appear, or appears in court under the influence of alcohol or drugs. They witness incomprehensible pleadings or cascading requests for extensions of time. We believe judges have a keen pulse on when a lawyer needs help. With the appropriate training, judges' actions can reduce client harm and save a law practice or a life. We make the following recommendations tailored to helping judges help the lawyers appearing before them.

Consistent with Recommendation 5.1, judges should become familiar with lawyer assistance programs in their state. They should learn how best to make referrals to the program. They should understand the confidentiality protections surrounding these referrals. Judges also should invite lawyer assistance programs to conduct educational programming for lawyers in their jurisdiction using their courtroom or other courthouse space. Judges, for example, can devote a bench-bar luncheon at the courthouse to well-being and invite representatives of the lawyers assistance program to the luncheon.

Judicial educators should include a section in bench book-style publications dedicated to lawyer assistance programs and their resources, as well as discussing how to identify and handle lawyers who appear to have mental health or substance use disorders. Further, judges and their staff should learn the signs of mental health and substance use disorders, as well as strategies for intervention, to assist lawyers in their courtrooms who may be struggling with these issues. Judges can also advance the well-being of lawyers who appear before them by maintaining courtroom decorum and deescalating the hostilities that litigation often breeds.



**Hawai‘i Recommendation.** In Hawai‘i, it is well recognized that we need to monitor for impaired lawyers. In 1989 the HSCT established the AAP. It recognized that professional performance is affected when an attorney, judge, or law student is incapable of devoting the time and attention to, and providing the quality of service in, their law practice, judicial duties, or law studies, which are necessary to protect the interests of a client, litigant, or law school career.

Impaired law professionals are obligated to seek assistance and to participate in services necessary to renew their full effectiveness as lawyers, judges, or other legal professionals. AAP offers informal self-tests for symptoms of problems with alcohol/drugs or depression. These tests are not substitutes for professional evaluation and diagnosis-evaluations that AAP can either perform or provide referrals to. AAP offers the following services:

- Unlimited access by phone to the AAP Executive Director
- Assessment of problems
- Information and referral to appropriate health professionals and facilities
- Peer support
- Alcohol, drug, and crisis intervention
- Education, emotional support, and guidance for persons of concern and concerned others
- Case management
- Support group meetings
- Mindfulness meditation sessions to mitigate stress and improve health

While we have an established program in place to monitor for impaired lawyers, we need to create and reinforce a culture that all licensed lawyers and judges have the ethical responsibility to recognize the signs and symptoms of a colleague who may be impaired and to assist the colleague in accessing appropriate services. The following is from the AAP website.

The table below is intended to provide a broad and general examination of some of the signs and symptoms that are often associated with drug abuse, alcohol abuse, and/or depression. This table is presented with thanks to G. Douglas Talbott, M.D. and Linda R. Crosby, MSN, Talbott Recovery Campus, Atlanta, GA.

Family	Office	Physical Professional	Community

Withdrawal from activities	Multiple complaints	Decrease in community affairs	Disorganized appointment schedule	Inappropriate behavior, moods
Frequent absences	Increased use of prescription medication	Change of friends, acquaintances	Hostile behavior to staff and/or clients	Decreasing quality of performance
Frequent arguments; child/spousal abuse	Increased hospitalizations	Drunk & disorderly, DUI arrests	"Locked door" syndrome (using it at work)	Inappropriate pleadings, decisions
Family members display codependent behaviors	Frequent visits to physicians, dentists	Loss of confidence in attorney by community leaders	Borrowing money from co-workers, staff	Co-workers and staff "gossip" about changes in behavior
Children engage in abnormal, antisocial, or illegal activities	Personal hygiene, dress deteriorate	Involvement with place of worship changes	Frequently sick	Malpractice and disciplinary claims
Sexual problems (impotence, affair)	Accidents, trauma, ER visits	Sexual promiscuity	Frequent unexplained absences	Missed hearings, appointments, depositions
Separation/divorce (initiated by spouse)	Serious emotional crisis	Isolation from support systems	Clients begin to complain to associates, staff	Loss of clients, practice, respect

Confidentiality is the cornerstone of AAP. Any legal professional who seeks assistance can be assured that their information is privileged and will be held in the strictest confidence. Similarly, those who are concerned about a co-worker, peer, family member, friend, or other legal professional are guaranteed the same confidentiality. (RSCH Rule 16.6) No potential disciplinary situation will be made worse by contacting AAP Hawaii.

The Judges Committee and the Task Force recommend that judges reinforce our existing program to monitor for impaired lawyers and partner with AAP by implementing the Task Force recommendations set forth in Sections 14 through 18 above. Actually implementing these recommendations will reinforce our mission to insure the highest standards of professional performance, both by lawyers and judges, in a way that is compassionate, caring and effective.

## **RECOMMENDATIONS FOR REGULATORS**

The National Report broadly defines "regulators" to encompass all stakeholders who assist the highest court in each state in regulating the practice of law, and defines the term to include lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process. The National Report also contains recommendations regarding law schools and bar admissions within this section.

In Hawai'i this definition of "regulators" would therefore appear to include the HSCT, the Disciplinary Board of the Hawai'i Supreme Court ("**Disciplinary Board**"), the Office of Disciplinary Counsel ("**ODC**"), the Board of Bar Examiners, and the attorneys advising these entities as well as law firms and lawyers in the regulatory process.

### **20. Take Actions to Meaningfully Communicate That Lawyer Well-Being is a Priority.**

**NRR.** The National Reports states:

Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible. We broadly define "regulators" to encompass all stakeholders who assist the highest court in each state in regulating the practice of law. This definition includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.

Courts and their regulators frequently witness the conditions that generate toxic professional environments, the impairments that may result, and the negative professional consequences for those who do not seek help. Regulators are well-positioned to improve and adjust the regulatory process to address the conditions that produce these effects. As a result, we propose that the highest court in each state set an agenda for action and send a clear message to all participants in the legal system that lawyer well-being is a high priority.

To carry out the agenda, regulators should develop their reputation as partners with practitioners. The legal profession often has a negative perception of regulators, who typically appear only when something has gone awry. Regulators can transform this perception by building their identity as partners with the rest of the legal community rather than being viewed only as its "police." Most regulators are already familiar with the 1992 Report of the Commission on Evaluation of Disciplinary Enforcement—better known as the "McKay Commission Report." It recognized and encouraged precisely what we seek to do through this report: to make continual improvements to the lawyer regulation process to protect the public and assist lawyers in their professional roles. Accordingly, we offer the following recommendations to ensure that the regulatory process proactively fosters a healthy legal community and provides resources to rehabilitate impaired lawyers.

In order to meaningfully communicate that lawyer well-being is a priority, in addition to other Recommendations within this Report and specific steps contained in Recommendations 20.1 through 23 below, the Task Force recommends that all regulators meaningfully communicate that lawyer well-being is a priority.

**Hawai'i Recommendation.** In 1989, the HSCT established one of the first state attorneys and judges assistance programs created pursuant to a state high court rule, our AAP. The AAP now serves as a resource for attorneys, judges, and law students who may suffer not only from substance abuse, but also from physical or mental illness or other infirmities. All law students at the WSRSL are introduced to the AAP and its Director during orientation week; likewise, new bar admittees are also introduced during the RSCH Rule 1.14 Mandatory Professionalism Course. From June of 2021, this course will also include a section on lawyer well-being.

Hawai'i regulators strongly promote well-being. The ODC strongly promotes the AAP as a resource in its interactions with attorney members of the bar. All attorneys who are the subject of formal disciplinary investigations receive an initial letter from ODC, which concludes with the contact information for AAP. In communicating with attorneys who ODC suspects may be facing personal issues including, but not limited to, mental, emotional, and substance abuse issues, ODC often refers attorneys to AAP for confidential counseling. ODC may also, in its discretion and without discussion of any particulars of a pending disciplinary matter, contact AAP directly and suggest a welfare check by AAP on the subject attorney. Judges also do so.

Also, in presenting CLE courses to members of the HSBA, ODC typically concludes its presentations by reminding the audience that AAP is always available as a resource, and by providing the contact information for AAP. ODC also makes joint CLE presentations with AAP, wherever possible. In formal disciplinary cases involving attorneys suspected of struggling from personal, mental, and/or emotional issues, ODC often refers the individual to AAP, as well as any other available resources.

The Task Force recommends that the HSCT, the ODC, the HSBA through the mandatory professionalism course for new bar admittees, and WSRSL through its orientation program as well as other programs throughout the year, continue to promote the AAP and other proactive programs relating to well-being, to show that lawyer well-being is a priority, and to promote public confidence in the administration of justice.

All of these efforts by regulators to meaningfully communicate that lawyer well-being is a priority should not only continue, but additional efforts should also be considered.

### **20.1 Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.**

**NRR.** The National Report states:

In 2016, the Conference of Chief Justices adopted a resolution recommending that each state's highest court consider the ABA's proposed Model Regulatory Objectives. Among other things, those objectives sought to encourage "appropriate preventive or wellness programs." By including a wellness provision, the ABA recognized the importance of the human element in the practice of law: To accomplish all other listed objectives, the profession must have healthy, competent lawyers. The Supreme Court of Colorado already has adopted a version of the ABA's Regulatory Objectives. In doing so, it recommended proactive programs offered by the Colorado Lawyer Assistance Program and other organizations to assist lawyers throughout all stages of their careers to practice successfully and serve their clients. The Supreme Court of Washington also recently enacted regulatory objectives.

We recommend that the highest court in each U.S. jurisdiction follow this lead. Each should review the ABA and Colorado regulatory objectives and create its own objectives

that specifically promote effective lawyer assistance and other proactive programs relating to wellbeing. Such objectives will send a clear message that the court prioritizes lawyer wellbeing, which influences competent legal services. This, in turn, can boost public confidence in the administration of justice.

**Hawai'i Recommendation.** According to this NRR, the Supreme Court of Colorado and the Supreme Court of Washington have adopted versions of regulatory objectives. The Task Force is not in a position to make a recommendation at this time. Rather, it recommends that the HSCT examine the ABA Model Regulatory Objectives and state regulatory objectives to ascertain whether adoption of such objectives make sense for Hawai'i. Perhaps this matter could be referred to the Commission on Professionalism for review.

## **20.2 Modify the Rules of Professional Responsibility to Endorse Well-Being as Part of a Lawyer's Duty of Competence.**

**NRR.** The National Report states:

ABA Model Rule of Professional Conduct 1.1 (Competence) states that lawyers owe a duty of competence to their clients. "Competent" representation is defined to require "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." We recommend revising this Rule and/or its Comments to more clearly include lawyers' wellbeing in the definition of "competence."

One alternative is to include language similar to California's Rule of Professional Conduct 3-110, which defines "competence" to include the "mental, emotional, and physical ability reasonably necessary" for the representation. A second option is to amend the Comments to Rule 1.1 to clarify that professional competence requires an ability to comply with all of the Court's essential eligibility requirements (see Recommendation 21.2 below).

Notably, we do not recommend discipline solely for a lawyer's failure to satisfy the well-being requirement or the essential eligibility requirements. Enforcement should proceed only in the case of actionable misconduct in the client representation or in connection with disability proceedings under Rule 23 of the ABA Model Rules for Disciplinary Enforcement. The goal of the proposed amendment is not to

threaten lawyers with discipline for poor health but to underscore the importance of wellbeing in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.

**Hawai'i Recommendation.** Rule 1.1 of the HRPC currently provides that lawyers owe a duty of competence to their clients. "Competent" representation is defined to require "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." As recommended by NRR 20.2, the Task Force recommends a revision to more clearly include lawyer well-being as relevant to "competence."

The Task Force does not, however, recommend that Hawai'i follow the apparent California example of defining "competence" to include the "mental, emotional, and physical ability reasonably necessary" for the legal representation within a disciplinary rule. This is because, in the Task Force's view, including such a requirement in a disciplinary rule would actually add even more stress and anxiety to HSBA members.

Therefore, the Task Force recommends that a new Comment 7 be added to the end of Rule 1.1 of the HRPC, to read along the lines of the recommendation below:

**Well-Being**

[7] In order to be able to provide competent representation, a lawyer should also strive for well-being, which includes the mental, emotional, and physical ability reasonably necessary to provide competent representation.

The goal of adding such a comment would be to highlight the importance of the physical, mental, and emotional well-being of practicing lawyers. This modification to the comments to the rule would also serve to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care within the lawyer community.

**20.3 Expand Continuing Education Requirements to Include Well-Being Topics.**

**NRR.** The National Report states:



We recommend expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow credit for other well-being related topics that affect lawyers' professional capabilities.

In 2017, the ABA proposed a new Model Continuing Legal Education ("**MCLE**") Rule that recommends mandatory mental health programming. The Model Rule requires lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of "mental health and substance use disorders." We recommend that all states adopt this provision of the Model Rule. Alternatively, states could consider authorizing ethics credit (or other specialized credits) for CLE programs that address these topics. California and Illinois are examples of state bars that already have such requirements.

The ABA's new Model Rule also provisionally recommends that states grant CLE credit for "Lawyer Well-Being Programming." The provision encompasses a broader scope of topics than might fall under a narrow definition of mental health and substance use disorders. Tennessee is one example of a pioneering state that authorizes credit for a broad set of well-being topics. Its CLE Regulation 5H authorizes ethics and professionalism credit for programs that are designed, for example, to: enhance optimism, resilience, relationship skills, and energy and engagement in their practices; connect lawyers with their strengths and values; address stress; and to foster cultures that support outstanding professionalism. We recommend that regulators follow Tennessee's lead by revising CLE rules to grant credit for similar topics.

**Hawai'i Recommendation.** RSCH Rule 22(b) currently requires at least one hour of approved ethics or professional responsibility education every three years, which can include courses or segments of courses devoted to:

- (1) the Rules of Professional Conduct;
- (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;
- (3) substance abuse and its effects on lawyers and the practice of law; or
- (4) client trust administration, bias awareness and prevention, and access to justice.

The Task Force recommends that the Hawai'i Supreme Court amend RSCH Rule 22(b) (3) as follows:

- (1) the Rules of Professional Conduct;
- (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;
- (3) the prevention, detection, and/or treatment of mental health and substance abuse disorders and [its] their effects on lawyers and the practice of law; [or]
- (4) lawyer well-being, including programs that are designed to enhance optimism, resilience, relationship skills, and energy and engagement in lawyers' practices; connect lawyers with their strengths and values; address lawyer stress; and to foster cultures that support outstanding lawyer professionalism; or
- (5[4]) client trust administration, bias awareness and prevention, and access to justice.

#### **20.4 Require Law Schools to Create Well-Being Education for Students as an Accreditation Requirement.**

**NRR.** The National Report states:

In this recommendation, the Task Force recognizes the ABA's unique role as accreditor for law schools through the Council of the Section of Legal Education and Admissions to the Bar of the ABA. The Task Force recommends that the Council revise the Standards and Rules of Procedure for Approval of Law Schools to require law schools to create well-being education as a criterion for ABA accreditation. The ABA should require law schools to publish their well-being-related resources on their websites. These disclosures can serve as resources for other law schools as they develop and improve their own programs. Examples of well-being education include a mandatory one credit-hour course on well-being topics or incorporating well-being topics in to the professional responsibility curriculum.

A requirement similar to this already has been implemented in the medical profession for hospitals that operate residency programs. Hospitals that operate Graduate Medical Education programs to train residents must comply with the Accreditation Council for Graduate Medical Education ("**ACGME**") Program Requirements. The ACGME requires hospitals to "be committed to and responsible for . . . resident well-being in a supportive educational environment." This provision requires that teaching hospitals have a documented strategy for promoting resident well-being and, typically, hospitals develop a wellness curriculum for residents.

**Hawai'i Recommendation.** In terms of law school education, the Director of the AAP is included in WSRSL's orientation program. Also, the Chief Disciplinary Counsel and Director of AAP regularly present guest lectures at professional responsibility classes at the WSRSL, and speak to the students about issues regarding lawyer well-being and attorney discipline.

The Task Force agrees with this actual recommendation and recommends that a letter be sent by the Task Force co-chairs to the Council of the Section of Legal Education and Admissions to the Bar of the ABA to express the Task Force's agreement with this recommendation.

**21. Adjust the Admissions Process to Support Law Student Well-Being.**

**NRR.** The National Report states:

To promote law student well-being, regulations governing the admission to the practice of law should facilitate the treatment and rehabilitation of law students with impairments.

**Hawai'i Recommendation.** The National Report's actual recommendations in furtherance of this NRR are in Sections 21.1 to 21.4 below.

**21.1 Re-Evaluate Bar Application Inquiries About Mental Health History.**

**NRR.** The National Report states:

Most bar admission agencies include inquiries about applicants' mental health as part of fitness evaluations for licensure. Some critics have contended that the deterrent effect of those inquiries discourages persons in need of help from seeking it. Not everyone agrees with that premise, and some argue that licensing of professionals necessarily requires evaluation of all risks that an applicant may pose to the public. Over the past several decades, questions have evolved to be more tightly focused and to elicit only information that is current and germane. There is continuing controversy over the appropriateness of asking questions about mental health at all. The U.S. Department of Justice has actively encouraged states to eliminate questions relating to mental health, and some states have modified or eliminated such questions. In 2015, the ABA adopted a resolution that the focus should be directed "on

conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner." We recommend that each state follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment history.

**Hawai'i Recommendation.** Hawai'i already follows the ABA recommendation. From 30 years ago, the Hawai'i Bar examination applications only asks:

Item 28. Do you currently consume alcoholic beverages or use drugs in such quantities that your consumption affects your ability to practice law on a day-to-day basis?

Item 29. Do you currently have any condition(s) that would impair your ability to obey the law, to competently practice law, or to carry out fiduciary duties and ethical responsibilities to clients or as an officer of the court?

Thus, the Task Force has no additional recommendations at this time with respect to NRR 21.1.

## **21.2 Adopt Essential Eligibility Admission Requirements.**

**NRR.** The National Report states:

Promoting lawyer well-being includes providing clear eligibility guidelines for lawyers with mental or physical impairments. Regulators in each state should adopt essential eligibility requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether or not an individual has the required abilities, with or without reasonable accommodations.

At least fourteen states have essential eligibility requirements for admission to practice law. These requirements help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law. Essential eligibility requirements also aid participants in lawyer disability and reinstatement proceedings, when determinations must be made of lawyers' capacity to practice law.

**Hawai'i Recommendation.** An example of such essential eligibility requirements is from Ohio:<sup>16</sup>

**DEFINITIONS OF ESSENTIAL ELIGIBILITY REQUIREMENTS FOR THE  
PRACTICE OF LAW**

In fulfilling its obligations for investigating whether an applicant possesses the requisite character, fitness and moral qualifications for admission to the practice of law, the Board of Commissioners on Character and Fitness considers the following to be essential eligibility requirements for the practice of law:

1. The cognitive capacity to learn, to recall what has been learned, to reason and to analyze;
2. The ability to communicate clearly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Ohio Rules of Professional Conduct;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

The Task Force does not have a recommendation as to whether Hawai'i should adopt such eligibility requirements at this time. Instead, the Task Force recommends that this matter be studied by the HSCT and/or its Board of Examiners.

**21.3 Adopt a Rule for Conditional Admission to Practice Law  
with Specific Requirements and Conditions.**

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<sup>16</sup> See, e.g., SUP. CT. OF OHIO, OFF. OF BAR ADMISSIONS, OHIO ESSENTIAL ELIGIBILITY REQUIREMENTS; available at [http://www.supremecourt.ohio.gov/AttySvcs/admissions/pdf/ESSENTIAL\\_ELIGIBILITY\\_REQUIREMENTS.pdf](http://www.supremecourt.ohio.gov/AttySvcs/admissions/pdf/ESSENTIAL_ELIGIBILITY_REQUIREMENTS.pdf); MINN. RULES FOR ADMISSION TO THE BAR, RULE 5, available at [https://www.revisor.leg.state.mn.us/court\\_rules/rule.php?type=pr&subtype=admi&id=5](https://www.revisor.leg.state.mn.us/court_rules/rule.php?type=pr&subtype=admi&id=5).

**NRR.** The National Report states:

Overly rigid admission requirements can deter lawyers and law students from seeking help for substance use and mental health disorders. To alleviate this problem, states should adopt conditional admission requirements, which govern applicants for admission to the practice of law who have successfully undergone rehabilitation for substance use or another mental disorder, but whose period of treatment and recovery may not yet be sufficient to ensure continuing success. Conditional admission programs help dismantle the stigma of mental health and substance use disorders as "scarlet letters." Especially for law students, they send a meaningful message that even in the worst circumstances, there is hope: seeking help will not block entry into their chosen profession.

**Hawai'i Recommendation.** In accordance with the National Task Force recommendations, the Task Force recommends that Hawai'i adopt conditional admission requirements, which govern applicants for admission to the practice of law who have successfully undergone rehabilitation for substance use or another mental disorder, but whose period of treatment and recovery may not yet be sufficient to ensure continuing success. Conditional admission programs can help to dismantle the stigma of mental health and substance use disorders, and send the message to law students that seeking help will not block entry into the practice of law.

The Task Force therefore recommends that the HSCT and/or its Board of Examiners examine other states' examples to adopt rules appropriate for Hawai'i.

**21.4 Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.**

**NRR.** The National Report states:

At present, no state publishes data showing the number of applications for admission to practice law that are actually denied or delayed due to conduct related to substance use and other mental health disorders. From informal discussions with regulators, we know that a low percentage of applications are denied. Publication of this data might help alleviate law students' and other applicants' fears that seeking help for such disorders will inevitably block them from practicing law. Accordingly, we recommend that boards of bar examiners collect

and publish such data as another means of encouraging potential applicants to seek help immediately and not delay until after their admission.

**Hawai'i Recommendation.** In accordance with the National Task Force's recommendations, the Task Force recommends that the HSCT and/or its Board of Examiners collect and publish this data in order to help alleviate applicants' fears that seeking help for such issues will certainly block them from being admitted to practice law in Hawai'i, and to encourage such applicants to immediately seek help for such issues.

## **22. Adjust Lawyer Regulations to Support Well-Being.**

### **22.1 Implement Proactive Management Based Programs (PMBP) That Include Lawyer Well-Being Components.**

**NRR.** The National Report states:

[Proactive Management Based Programs (PMBP)] programs encourage best business practices and provide a resource-based framework to improve lawyers' ability to manage their practice. Such programs are designed to alleviate practice stress, improve lawyer-client relationships, and enhance career satisfaction. Further, PMBP programs allow regulators to engage with the profession in a service-oriented, positive manner, reducing the anxiety, fear, and distrust that often accompanies lawyers' interactions with regulators. Transforming the perception of regulators so that they are viewed as partners and not only as police will help combat the culture of stress and fear that has allowed mental health and substance use disorders to proliferate.

**Hawai'i Recommendation.** It appears PMBPs are systems designed to prevent ethical missteps by requiring lawyers without malpractice insurance to review their operations. See [https://www.americanbar.org/groups/professional\\_responsibility/scpd\\_cpr\\_pnbr\\_web\\_resource/specific\\_pnbr\\_programs/](https://www.americanbar.org/groups/professional_responsibility/scpd_cpr_pnbr_web_resource/specific_pnbr_programs/). According to the ABA, Proactive Management-Based Regulation ("**PMBR**") generally refers to regulatory measures or other programs that seek to assist lawyers and law firms develop ethical infrastructures that will help improve the delivery of legal services and help prevent misconduct and malpractice. To provide information and guidance about this subject, the ABA Standing Committee on Professional Regulation compiled resources that include information about domestic and international PMBR developments, and PMBR is not a "one-size-fits-all"

proposition. Some PMBR programs involve entity regulation and others do not. In the U.S., Colorado and Illinois have adopted PMBR programs, and a number of other jurisdictions are actively studying whether and how to do so. See [https://www.americanbar.org/groups/professional\\_responsibility/scpd\\_cpr\\_pnbr\\_web\\_resource/#:~:text=One%20of%20these%20developments%20is,help%20prevent%20misconduct%20and%20malpractice.](https://www.americanbar.org/groups/professional_responsibility/scpd_cpr_pnbr_web_resource/#:~:text=One%20of%20these%20developments%20is,help%20prevent%20misconduct%20and%20malpractice.)

Implementing PMBPs or PMBRs may help to promote regulator engagement with the members of our bar in a positive, and service-oriented way, which might help to transform the perception of regulators from police to partners.

In investigating cases where the attorney is struggling with accounting issues, and/or facing difficulties in managing his or her law practice, ODC will, when appropriate, refer attorneys to lawyer mentors and/or other accounting and practice management professionals for assistance. ODC also recommends these resources to the Board in formal discipline cases, when appropriate. With respect to PMBRs, however, as this is a developing and unclear area, the Task Force is unable to make a recommendation at this time. Perhaps the ODC or the Commission on Professionalism could be asked to further examine whether PMBRs should be adopted in Hawai'i.

## **22.2 Adopt a Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.**

**NRR.** The National Report states:

We recommend that regulators adopt centralized intake systems. These allow expedited methods for receipt and resolution of grievances and help reduce the stress associated with pending disciplinary matters. With specialized training for intake personnel, such systems also can result in faster identification of and possible intervention for lawyers struggling with substance use or mental health disorders.

**Hawai'i Recommendation.** ODC currently has a centralized lawyer complaint intake system through which the Chief Disciplinary Counsel processes all incoming grievances. This allows for consistency and quick identification and possible intervention for lawyers struggling with mental health or substance abuse issues. The Task Force has no additional recommendations in this area at this time.



### **22.3 Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information from Regulators to Lawyer Assistance Programs.**

**NRR.** The National Report states:

Regulators' information-sharing practices can contribute to the speed of help to lawyers in need. For example, admissions offices sometimes learn that applicants are suffering from a substance use or other mental health disorder. Other regulators may receive similar information during investigations or prosecutions of lawyer regulation matters that they consider to be confidential information. To facilitate help for lawyers suffering from such disorders, each state should simplify its confidentiality rules to allow admissions offices and other regulators to share such information immediately with local lawyer assistance programs. Allowing this one-way flow of information can accelerate help to lawyers who need it. To be clear, the recommended information sharing would be one-way. As always, the lawyer assistance programs would be precluded from sharing any information with any regulators or others.

**Hawai'i Recommendation.** Rule 2.22(c) of the Rules of the Supreme Court of Hawai'i ("RSCH") provides for an exception to confidentiality in disciplinary cases. This rule provides as follows:

Disclosure of evidence of infirmity. The Chairperson of the Board, upon the receipt of trustworthy evidence, may authorize Counsel to disclose an attorney's possible substance abuse, physical or mental illness, or other infirmity to the Director of the Attorneys and Judges Assistance Program.

This exception authorizes ODC to disclose an attorney's possible substance abuse, physical or mental illness, or other infirmity to the Director of AAP, but only upon receipt of trustworthy evidence and with approval of the Chairperson of the Disciplinary Board. The current process is cumbersome and time consuming.

This contrasts with the National Report suggestion that where ODC receives information or otherwise learns during investigation or prosecution of a disciplinary complaint that a lawyer is or may be suffering from such a disability, the rules should allow for immediate one-way communication from ODC to AAP. As the National Report remarked: "Allowing this one-way flow of information can accelerate help to lawyers who need it."

To be clear, the recommended information sharing would be one-way. As always, the lawyer assistance programs would be precluded from sharing any information with any regulators or others."

The ability to immediately communicate is crucial for not only the well-being of the individual lawyer, but for the protection of clients and public as well as the integrity of the judicial system and the profession. When ODC investigators or counsel speak to respondent lawyers, ODC staff have cause to worry that the lawyer is not well, or "on the edge." Occasionally, ODC staff even get indicia of the possibility of self-harm or other issues. Because of RSCH Rule 2.22(c)'s complexity, ODC can currently only call AAP and request a welfare check. The process could be much more effective if AAP knew more precise details. ODC appreciates that its communications with AAP must be "one-way." Absent consent from the subject lawyer, AAP cannot even confirm that communication with the lawyer, which is fine with ODC.

The purpose behind RSCH Rule 2.22 confidentiality is not diminished by allowing ODC to promptly communicate with the AAP; the benefits to the lawyer, the courts and the bar, by preserving health and welfare, far outweigh any potential negative impact.

Thus, the Task Force proposes that RSCH Rule 2.22(c) be amended to read along the lines of:

(c) Disclosure of possible infirmity. Counsel may disclose an attorney's possible substance abuse, physical or mental illness, or other infirmity to the Director of the Attorneys and Judges Assistance Program.

#### **22.4 Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven.**

**NRR.** The National Report states:

Discipline does not make an ill lawyer well. We recommend that regulators adopt alternatives to formal disciplinary proceedings that rehabilitate lawyers with impairments. Diversion programs are one such alternative, and they have a direct and positive impact on lawyer well-being. Diversion programs address minor lawyer misconduct that often features an underlying mental health or substance use disorder. When lawyers enter a diversion program, they agree to follow certain

conditions to continue practicing law. Those conditions can include training, drug or alcohol testing, peer assistance, and treatment. Monitoring plays a central role in ensuring compliance with the diversion agreement and helps lawyers successfully transition back to an unconditional practice of law and do so healthy and sober. By conditioning continued practice on treatment for an underlying mental health disorder or substance use disorder, diversion agreements can change a lawyer's life. In addition, probation programs also promote wellness. Lawyer misconduct that warrants a suspension of a lawyer's license may, under certain circumstances, qualify for probation. In most jurisdictions, the probation period stays the license suspension and lawyers may continue practicing under supervision and specified conditions that include training, testing, monitoring, and treatment. Once again, this places a lawyer facing a mental health or substance use crisis on the path to better client service and a lifetime of greater well-being and sobriety.

**Hawai'i Recommendation.** RSCH Rule 2.7(b) provides that ODC may refer lawyers to a minor misconduct program, as an alternative to formal disciplinary proceedings. If referred to minor misconduct, the lawyer is subject to potentially non-disciplinary disposition, which may consist of fee arbitration, arbitration, mediation, lawyer practice assistance, substance abuse recovery programs, psychological counseling, mentoring, or other non-disciplinary proceedings authorized by the Supreme Court. This type of diversion program helps to address underlying mental health or substance abuse issues, and promotes the transition of the lawyer back to the unconditional practice of law.

Also, RSCH Rule 2.19 provides an option for attorneys facing a formal disciplinary investigation to petition the Hawai'i Supreme Court to transfer to "inactive status" if they are suffering from "a disability by reason of mental or physical infirmity or illness, or because of the use of drugs or intoxicants, which makes it impossible for the respondent to defend himself or herself adequately." For attorneys who fall into this category, ODC typically assists them in petitioning the court to transfer them to "inactive status" in accordance with RSCH 2.19(c).

Hawai'i does not currently have a probation program for lawyers whose misconduct warrants suspension of the lawyer's license. In jurisdictions that mandate a probation program, the probation period typically stays the license suspension to allow

the subject lawyer to continue practicing under supervision and specified conditions which may include training, testing, monitoring, and treatment.

The Task Force recommends that Hawai'i implement a probation program which can be recommended for lawyers whose conduct warrants license suspension, where appropriate.

**23. Add Well-Being-Related Questions to the Multistate Professional Responsibility Exam (MPRE).**

**NRR.** The National Report states:

A 2009 survey reflected that 22.9 percent of professional responsibility/legal ethics professors did not cover substance use and addiction at all in their course, and 69.8 percent addressed the topic in fewer than two hours. Notwithstanding the pressure to address myriad topics in this course, increased attention must be given to reduce these issues among our law students. The National Conference of Bar Examiners should consider adding several relevant questions to the MPRE, such as on the confidentiality of using lawyer assistance programs, the frequency of mental health and substance use disorders, and the tie-in to competence and other professional responsibility issues. Taking this step underscores both the importance of the topic and the likelihood of students paying closer attention to that subject matter in their course. In addition, professional responsibility casebook authors are encouraged to include a section devoted to the topic, which will in turn compel instructors to teach in this area.

**Hawai'i Recommendations.** Fortunately, it appears our law school does cover substance use and addiction from the time of orientation week. It also appears our law school's professional responsibility course covers well-being issues.

The NRR regarding the MPRE questions and the textbooks have probably been submitted to the National Conference of Bar Examiners and textbook authors. But as the Hawai'i Bar Examination also includes multiple choice questions on Hawai'i law, the Task Force recommends that a letter be submitted to the Board of Examiners to adopt the NRR above with respect to bar examination questions.

## **RECOMMENDATIONS FOR LEGAL EMPLOYERS**

### **24. Establish Organizational Infrastructure to Promote Well-Being.**

#### **24.1 Form a Lawyer Well-Being Committee.**

**NRR.** The National Report states:

Without dedicated personnel, real programs on well-being strategies will be difficult to implement and sustain. Accordingly, legal employers should launch a well-being initiative by forming a Lawyer Well-Being Committee or appointing a Well-Being Advocate. The advocate or committee should be responsible for evaluating the work environment, identifying and addressing policies and procedures that create the greatest mental distress among employees, identifying how best to generate a positive state of well-being, and tracking progress of well-being strategies. They should prepare key wellness benchmarks and milestones, communicate them to all employees, and create accountability strategies. They should also develop strategic partnerships with lawyer assistance programs and other well-being experts and stay abreast of developments in the profession and relevant literature.

**Hawai'i Recommendation.** While a well-being committee or advocate makes sense in a medium or large sized law firm, for Hawai'i's smaller or solo firms, well-being committees established through the HSBA and other local bar associations may be an alternative. Emphasis should be placed on the HSBA's active involvement in the operation of the committee, compilation of a list of well-being resource organizations and information, and the participation of lawyers from all islands.

#### **24.2 Assess Lawyer's Well-Being.**

**NRR.** The National Report states:

Legal employers should consider continually assessing the state of well-being among lawyers and staff and whether workplace cultures support well-being. An assessment strategy might include an anonymous survey conducted to measure lawyer and staff attitudes and beliefs about well-being, stressors in the firm that significantly affect well-being, and organizational support for improving well-being in the workplace. Attitudes are formed not only by an organization's explicit messages but also implicitly by how leaders and lawyers

actually behave. Specifically related to the organizational climate for support for mental health or substance use disorders, legal employers should collect information to ascertain, for example, whether lawyers:

- Perceive that you, their employer, value and support well-being.
- Perceive leaders as role modeling healthy behaviors to lawyers who may be struggling; is work addiction encouraged or rewarded?
- Can suggest improvements to better support well-being.
- Would feel comfortable seeking needed help, taking time off, or otherwise taking steps to improve their situation.
- Are aware of resources available to assist their well-being.
- Feel expected to drink alcohol with partners or at organizational events.
- Feel that substance use and mental health problems are stigmatized.
- Understand that the organization will reasonably accommodate health conditions, including recovery from mental health disorders and addiction.

As part of the same survey or conducted separately, legal employers should consider assessing the overall state of lawyers' well-being. Surveys are available to measure concepts like depression, substance use, burnout, work engagement, and psychological well-being. The Maslach Burnout Inventory (MBI) is the most widely used burnout assessment. It has been used to measure burnout among lawyers and law students. Programs in the medical profession have recommended a bi-annual distribution of the MBI.

Legal employers should carefully consider whether internal staff will be able to accurately conduct this type of assessment or whether hiring an outside consultant would be advisable. Internal staff may be more vulnerable to influence by bias, denial, and misinterpretation.

**Hawai'i Recommendation.** Firms should assess on a regular basis the warning signs of work addiction, substance abuse, alcoholism, and social isolation. Partners should review time sheets for excessive billing. Partners should talk to staff about observations and at least one trusted lawyer should be available with an open-door policy to speak with associates with concerns.

Draft and publicize policies for handling the identified warning signs of lawyer impairment, before the disciplinary stage is reached. Discuss the policies openly at meetings and encourage staff and lawyers to follow them.

Legal employers should also consider assessing the overall state of lawyers' well-being through surveys to measure concepts like depression, substance use, burnout, work engagement, and psychological well-being. The Maslach Burnout Inventory is available on-line, along with a robust website with further resources, and is the most widely used burnout assessment. Legal employers may also consider whether hiring an outside consultant would be more advisable.

## **25. Establish Policies and Practices to Support Lawyer Well-Being.**

**NRR.** The National Report states:

Legal employers should conduct an in-depth and honest evaluation of their current policies and practices that relate to well-being and make necessary adjustments. This evaluation should seek input from all lawyers and staff in a safe and confidential manner, which creates transparency that builds trust. Appendix D sets out example topics for an assessment.<sup>17</sup>

Legal employers also should establish a confidential reporting procedure for lawyers and staff to convey concerns about their colleagues' mental health or substance use internally, and communicate how lawyers and staff can report concerns to the appropriate disciplinary authority and/or to the local lawyer assistance program. Legal employers additionally should establish a procedure for lawyers to seek confidential help for themselves without being penalized or stigmatized. CoLAP and state lawyer assistance programs can refer legal

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<sup>17</sup> Appendix D is available at [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/lawyer\\_well\\_being\\_report\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.authcheckdam.pdf), pp. 59-60.

employers to existing help lines and offer guidance for establishing an effective procedure that is staffed by properly-trained people. We note that the ABA and New York State Bar Association have proposed model law firm policies for handling lawyer impairment that can be used for guidance. The ABA has provided formal guidance on managing lawyer impairment.

**Hawai'i Recommendation.** According to research, work addiction affects about a quarter of lawyers. Attorneys who are workaholics can develop various health and relationship problems including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout and family conflict. A recent World Health Organization and International Labor Organization study reports that people working 55 hours or more per week have a 35% higher risk of stroke and 17% higher risk of heart disease compared to those who work 35 to 40 hours per week, and in 2016, long working hours lead to an estimated 745-194 deaths worldwide from stroke and heart disease.<sup>18</sup> Therefore, we strongly recommend that legal employers monitor employees for indications of work addiction and poor self-care.

Legal employers should also cultivate a work environment where employees prioritize self-care. They should proactively encourage employees to take care of their physical and mental well-being. Physical activity will improve an employee's physical health and mental well-being thus allowing for the employee to be more productive when at work. Additional ideas to assist lawyers are as follows:

- Establish a confidential reporting procedure for lawyers and staff to use internally to request confidential help for themselves or to convey concerns about their colleagues' mental health or substance use without being penalized or stigmatized. The procedure should be readily available for both lawyers and staff.
- The Policy Committee of the ABA Commission on Lawyer Assistance Programs (CoLAP) and the ABA Working Group to Advance Well-Being in the Legal Profession developed a *Well-Being Template for Legal Employers* to provide suggested guidelines to legal employers for responding to an employee who is experiencing impairment due to a substance use disorder, mental health disorder or cognitive

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<sup>18</sup> See [https://www.huffpost.com/entry/long-working-hours-kills-deaths\\_1\\_60a279aae4b0909248063351?ncid=APPLENEWS00001](https://www.huffpost.com/entry/long-working-hours-kills-deaths_1_60a279aae4b0909248063351?ncid=APPLENEWS00001).



impairment. The template is intended to serve as a tool that can be modified as needed to suit the individual employer. Each employer should tailor this document to meet the specific needs of its workplace, taking into consideration size, resources and practice setting, as well as consult with labor and employment counsel.<sup>19</sup>

- Encourage more flexible work hours and continue the option to work from a home office. Throughout the pandemic, we have learned that lawyers appreciate the opportunity to create a home office and design a work schedule that conforms to their own personal situation.
- Reexamine billable work hour requirements as well as "goals," and consider adopting alternative billing methods or benchmarks for measuring attorney productivity or success, such as flat-fee systems,<sup>20</sup> client satisfaction, and/or the efficient completion of attorney goals/projects.
- Establish policies to not email or call attorneys after a certain time each day, as "down-time" or personal time is also critical to well-being.<sup>21</sup>
- Commit to prioritizing diversity, equity and inclusion ("DE&I"). DE&I affects employee engagement and sense of belonging, and recruitment and retention efforts. "A more human workplace is one that promotes people's strengths, capabilities and functioning, leading to high levels of

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<sup>19</sup> American Bar Association, *Well-Being Template for Legal Employers*, at [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/well-being-template-for-legal-employers-final-3-19.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/well-being-template-for-legal-employers-final-3-19.pdf).

<sup>20</sup> The Task Force notes that the Rule 1.5(c) was recently added to the Hawai'i Rules of Professional Responsibility to explicitly allow for and govern flat fees.

<sup>21</sup> For example, at least one mainland law firm recently began piloting a process in which their attorneys' status would be switched to "away" for electronic communications transmitted outside of regular business hours (from 9 a.m. to 6 p.m.). See <https://abovethelaw.com/2021/05/the-scourge-of-constant-monitoring-is-partially-gone-at-latham/>. The Task Force also notes that attorney vacation time must be that-actual vacation time. The Task Force recommends that legal employers adopt policies that allow for this, whether through having others take over some work so that a returning attorney not have a pile of work to do upon returning from vacation, or by not allowing emails or phone calls to go to an attorney on vacation unless it is an actual emergency.

engagement, productivity, satisfaction and retention businesses need.”<sup>22</sup>

- Offer time-management training either through in-house seminars or on-line sessions. Further, often, lawyers must learn that there is always time for what one considers a priority. While lawyers often ask for the secret to leaving by 6:00, they are often surprised to find that the secret is simply to leave by 6:00.
- Consider adopting leave-sharing policies as allowed by some state department agencies, including the judiciary, so that lawyers can care for themselves or family members, or take time off for personal or family issues; well-being is affected not just by a lawyer's own issues, but also the needs or issues of a lawyer's family members.

Also, according to the Harvard Business Review, the individuals who are single or childless have a higher degree of loneliness. Individuals who identify as anything other than heterosexual also have a lower social support in the workplace.<sup>23</sup> Legal employers should consider policies or practices to address such issues; policies or practices adopted by other employers can be examined as examples.

The Task Force is particularly concerned about the well-being of solo practitioners. The Task Force recommends that the HSBA Solo and Small Firms Section convene regular meetings, whether in-person or remotely, and encourage solo practitioners to meet and confer to share their unique problems and stresses and to discuss possible approaches to those problems. Also, many solo practitioners enter private practice upon graduation or from government practice without sufficient knowledge or background in the law office management/billing/tax/compliance side of legal practice.

Also, compared to lawyers in firms, solo practitioners do not have other lawyers readily available to assist, whether it is to cover appearances or meetings or to help meet deadlines.

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<sup>22</sup> Christine Porath, Ph.D., *SHRM Foundation's Effective Practice Guide Series: Creating a More Human Workplace Where Employees and Businesses Thrive*, at <https://www.shrm.org/hr-today/trends-and-forecasting/special-reports-and-expert-views/Documents/Human-Workplace.pdf>.

<sup>23</sup> Shawn Achor et al., *America's Loneliest Workers, According to Research*, Harv. Bus. Rev., March 19, 2018, at <https://hbr.org/2018/03/americas-loneliest-workers-according-to-research>.

Solo practitioners often bear the pressure of the bottom line alone. All of these factors result in additional stress and anxiety for solo practitioners.

CLE programs or other offerings targeting the unique issues of solo practitioners could help improve the well-being of solo practitioners.

In addition, the Task Force believes it is important for legal employers to destigmatize mental health issues and be more supportive of lawyers on issues of well-being. Because the mandatory professionalism course for new bar admittees did not exist decades ago, and because the AAP Director began speaking at that course more recently, the Task Force perceives that older lawyers might not be as familiar with the true confidentiality of and the range of services provided by the AAP. The Task Force therefore suggests brown bag lunches in Honolulu law firms to discuss these issues, to include the AAP Director, when available.

The Task Force also notes that the COVID-19 pandemic forced the legal profession to become much more adept at using technology, and that the practice of law has been relying heavily on technology and remote proceedings since early 2020. The Task Force also notes that some firms have begun examining whether to make remote practice of law more permanent, at least for some attorneys. The Task Force recommends that legal employers examine the possibility of continuing remote or hybrid remote/in-person options, as such options could enhance well-being for some lawyers. As noted in the May 12, 2021 report discussed in Section 6.1 above, however, the Task Force also notes that remote practice has actually been detrimental to well-being for some lawyers whether based on personal work preferences or based on competing family or other demands while being forced to practice remotely at home. Therefore, the Task Force recommends that legal employers consider an individualized approach to remote or hybrid practice of law.

**25.1 The Task Force also recommends that legal employers consider adding well-being programs or services as part of benefits packages. Monitor for Signs of Work Addiction and Poor Self Care.**

**NRR.** The National Report states:

Research reflects that about a quarter of lawyers are workaholics, which is more than double that of the 10 percent rate estimated for U.S. adults generally. Numerous health and

relationship problems, including depression, anger, anxiety, sleep problems, weight gain, high blood pressure, low self-esteem, low life satisfaction, work burnout, and family conflict can develop from work addiction. Therefore, we recommend that legal employers monitor for work addiction and avoid rewarding extreme behaviors that can ultimately harm their health. Legal employers should expressly encourage lawyers to make time to care for themselves and attend to other personal obligations. They may also want to consider promoting physical activity to aid health and cognitive functioning.

**Hawai‘i Recommendation.** We recommend that legal employers monitor employees for indications of work addiction and poor self-care.

Additional ideas to assist lawyers are as follows:

- Determine whether the organizational culture encourages patterns that cause burnout, e.g. overcommitment; excessive workload; lack of recognition; perfectionism; and workaholism. If such pattern(s) exist, communicate how desired values and behaviors are translated into actionable behaviors throughout the organization.
- Encourage lawyers and staff to use accrued leave time, vacation, and/or flex time. Legal employers should encourage lawyers and staff to avoid working or checking email while on leave without guilt.
- Develop workplace policies that allow for, encourage and prioritize physical and mental well-being during work hours, if necessary. This could include creating wellness program incentives or rewards, participating in teambuilding events or volunteering for pro bono activities.
- Offer the option of having a flexible work schedule and/or telecommute. Due to the COVID-19 (Coronavirus) outbreak, legal employers have created or further implemented remote work policies. Legal employers should determine whether some telecommuting arrangements should become a permanent option.
- Encourage employees to be mindful of the behavior of their fellow workers.

- Include job/life satisfaction as one of the topics discussed in regular departmental/employee meetings and reported to the management committee.

## **25.2 Actively Combat Signs of Social Isolation and Encourage Inter-Connectivity.**

**NRR.** The National Report states:

As job demands have increased and budgets have tightened, many legal employers have cut back on social activities. This could be a mistake. Social support from colleagues is an important factor for coping with stress and preventing negative consequences like burnout. Socializing helps individuals recover from work demands and can help stave off emotional exhaustion. It inhibits lawyers feeling isolated and disconnected, which helps with firm branding, messaging, and may help reduce turnover. We recommend deemphasizing alcohol at such events.

**Hawai'i Recommendation.** Social support from colleagues is an important factor for coping with stress and preventing negative consequences like burnout. Socializing helps individuals recover from work demands and can stave off emotional exhaustion. To actively combat social isolation and encourage interconnectivity, legal employers should:

- Encourage lawyers and staff to identify their vital connections and update their contact information. They should list people that are viewed as essential to one's health, well-being, and quality of life, including friends, neighbors, family, and healthcare professionals.
- Law firms can create mentor or buddy systems so that more junior lawyers have someone watching over them and so that junior lawyers look forward to a, for example, weekly touch-base meeting to share concerns or ask questions. These programs should encourage co-mentoring, so that in addition to the junior lawyers receiving assistance and advice from more senior attorneys, the younger firm members can mentor the older ones in areas such as technology and social media.
- Law firms can encourage lawyers to gather their vital connections' telephone numbers, mailing addresses, and email addresses. This makes it easy to stay in touch regularly with the people one cares about by phone, email – and yes, even writing old-fashioned letters. Lawyers can be

encouraged to set up times to call friends and family and make staying in touch with each other a priority.

- Law firms can encourage lawyers to seek to have up-to-date communications equipment and use them to connect with others. When using a cell phone, lawyers should consider using FaceTime or Skype rather than just calling. Being able to see faces can make the lawyer feel more connected. With a computer or tablet, lawyers should seek out and can join on-line groups of people who share their interests. Lawyers should also create a routine for connecting with friends and family.

- Law firms can encourage lawyers to get creative! For example, during the pandemic people enjoyed virtual dinners using FaceTime or Zoom and tried to de-emphasize the consumption of alcohol with a focus on "mocktails." Engaging in creative activities can also help prevent feelings of loneliness. Encourage lawyers to talk with friends about reading the same book or watching the same movie so they can chat about it in a group later. Encourage lawyers to take the time to practice their favorite crafts or activities, such as needlework, scrapbooking, knitting, or crocheting.

- Law firms, for the benefit of their own attorneys, or through participating in HSBA sponsored activities, can join groups with a non-legal focus, such as cooking, gardening, book clubs, walking groups or a variety of sports. Virtual Happy Hour (mocktails encouraged) and on-line Bingo games are also a fun way to bring people together.

- Encourage lawyers and staff to get outside the office through mandatory work breaks. Lawyers and staff should be encouraged to take a walk. If working from home, lawyers can sit on the porch and wave to their neighbors. Even cleaning up one's garden or planting seeds can provide a mental health break.

- Lawyers and staff should stay as physically active as possible. Law firms may consider subsidizing health club memberships (and some insurance plans offer these benefits). There are also many different fitness programs online. There are some excellent suggestions from the National Institute on Aging. Encourage participation in group activities when appropriate and develop health and

fitness challenges or competitions. Form such groups with other law firms or via the HSBA sections and divisions or the county bar associations. Lawyers should consider re-starting sports leagues via the HSBA.

- Encourage lawyers and staff working from home to develop a routine when possible. It's important to clearly separate work and home responsibilities, especially if children are home from school. To reduce feelings of becoming shut-in, lawyers should create a dedicated workspace and stick to normal working hours. Encourage lawyers to close their computers at the end of the day, and don't return to the workspace until the following day. This routine will help lawyers avoid feeling endlessly trapped at work.

- Lawyers and staff should educate themselves about their local healthcare options. Encourage lawyers and staff to learn about how their healthcare providers are taking care of their patients, and during the pandemic, what to do if one needs a COVID-19 test. They may be able to get a telephone or online health visit, get a test at a drive-through facility, or email their provider with questions.

- Lawyers and staff should upgrade their basic self-care habits. Encourage lawyers and staff to make sure they're eating well. Encourage them to get to bed and wake up at the same time every day. Remind and encourage them to do their best to stay active. Even a walk around the block is helpful.

- Encourage lawyers and staff to keep in touch with people in long-term care facilities. If they care for someone in long-term care, email pictures or letters that can be printed out and "delivered" to their loved one. Encourage lawyers and staff to consider asking the staff to help them FaceTime with their loved one as well.

- Lawyers and staff should be encouraged to deal with caregiver isolation. Caregiving itself can be isolating and during the pandemic, practicing social distancing can make a lawyer or staff person who is also a caregiver feel even more alone. Encourage such caregivers to consider connecting with other caregivers through virtual support groups online. Some are specific for caregivers of people with Alzheimer's disease or other illnesses.

- Endeavor to dial down the bad news among lawyers and staff. Too much bad news can overwhelm one's emotions. Recommend that lawyers and staff tune into news sources just once or twice a day for only 10 or 15 minutes. Then turn off the news and focus on activities that help them stay happy and positive.

- Encourage lawyers and staff to call a hotline if they need someone to talk to about how they are feeling. If one is feeling overwhelmed, the CDC recommends using the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Disaster Distress Helpline:

Phone: 1-800-985-5990

Text: text TalkWithUs to 66746.

TTY: 1-800-846-8517

## **26. Provide Training and Education on Well-Being, Including During New Lawyer Orientation.**

**NRR.** The National Report states:

We recommend that legal employers provide education and training on well-being-related topics and recruit experts to help them do so. A number of law firms already offer well-being related programs, like meditation, yoga sessions, and resilience workshops. We also recommend orientation programs for new lawyers that incorporate lawyer well-being education and training. Introducing this topic during orientation will signal its importance to the organization and will start the process of developing skills that may help prevent well-being problems. Such programs could:

- Introduce new lawyers to the psychological challenges of the job.
- Reduce stigma surrounding mental health problems.
- Take a baseline measure of well-being to track changes over time.
- Provide resilience-related training.
- Incorporate activities focused on individual lawyers' interests and strengths, and not only on organizational expectations.



Further, law firms should ensure that all members and staff know about resources, including lawyer assistance programs, that can assist lawyers who may experience mental health and substance use disorders. This includes making sure that members and staff understand confidentiality issues pertaining to those resources.

**Hawai‘i Recommendation.** We have discussed many of these recommendations in Section 25 and its subparts, above, but we agree with the additional recommendation for orientation programs for new lawyers that incorporate lawyer well-being education and training, including the recommendations in Section 25 and its subparts, above.

### **26.1 Emphasize a Service Oriented Mission.**

**NRR.** The National Report states:

At its core, law is a helping profession. This can get lost in the rush of practice and in the business aspects of law. Much research reflects that organizational cultures that focus chiefly on materialistic, external rewards can damage well-being and promote a self-only focus. In fact, research shows that intrinsic values like relationship development and kindness are stifled in organizations that emphasize extrinsic values like competition, power, and monetary rewards. Work cultures that constantly emphasize competitive, self-serving goals will continually trigger competitive, selfish behaviors from lawyers that harm organizations and individual well-being. This can be psychologically draining. Research of Australian lawyers found that 70 percent reported that the practice of law is bottom-line driven. Lawyers who reported that the practice of law was primarily about generating profits were more likely to be depressed. This affects the bottom line since poor mental health can cause disability and lost productivity.

Consequently, we recommend that legal employers evaluate what they prioritize and value, and how those values are communicated. When organizational values evoke a sense of belonging and pride, work is experienced as more meaningful. Experiencing work as meaningful is the biggest contributor to work engagement—a form of work-related well-being.

**Hawai‘i Recommendation.** Legal Employers should be mindful of how the legal profession is first and foremost a service profession and reflect that focus when evaluating what they

prioritize and value. When a law office's values evoke a sense of pride, work is more meaningful, and lawyers and staff are more engaged. When the practice of law is primarily about generating profits, that sense of pride in contributing to the greater good is at risk of being lost.

We recommend that legal employers evaluate their values and priorities and examine how those values are communicated and actualized in the workplace. We recommend that employers provide opportunities for attorneys and staff to contribute to the firm, the bar, and the community in ways that exhibit and enhance those values. Experiencing work as meaningful is a significant contributor to work engagement - a form of work-related well-being.

## **26.2 Create Standards, Align Incentives and Give Feedback.**

**NRR.** The National Report states:

Contextual factors (i.e., the structure, habits, and dynamics of the work environment) play an enormous role in influencing behavior change. Training alone is almost never enough. To achieve change, legal employers will need to set standards, align incentives, and give feedback about progress on lawyer well-being topics. Currently, few legal employers have such structural supports for lawyer well-being. For example, many legal employers have limited or no formal leader development programs, no standards set for leadership skills and competencies, and no standards for evaluating leaders' overall performance or commitment to lawyer well-being. Additionally, incentive systems rarely encourage leaders to develop their own leadership skills or try to enhance the well-being of lawyers with whom they work. In law firms especially, most incentives are aligned almost entirely toward revenue growth, and any feedback is similarly narrow. To genuinely adopt lawyer well-being as a priority, these structural and cultural issues will need to be addressed.

**Hawai'i Recommendation.** Creating dedicated policies and procedures regarding well-being helps impaired or struggling lawyers. This should be a focus, and may start a change in culture. To that end, some suggestions for legal employers are as follows:

1. Find a group of professionals who are interested in attorneys as a client group. This group might include psychiatrists, psychologists, body workers, financial

consultants, and trainers /coaches. Attorneys have certain common issues that may include being part of a profession that focuses exclusively on the bottom line/productivity, acquiring new business, dealing with toxic opposing counsel/ colleagues, burn-out, and finally, financial stress from student loans or lifestyle choices. These curated professionals may be able to assist lawyers with navigating these specific issues.

Engage this group in developing a system of support for attorneys at the critical points in their career such as: surviving as an associate, making partner, junior partners who have not developed client acquisition/ other key skills, partners who are getting burned out and sick of their work, and older partners who will soon be retiring.

2. Identify a group of people for whom impaired lawyers are a problem. This may include office managers, managing partners, managing committees, co-counsel and/or judges. Task this group with designing a referral center or website where such people can voice concerns about an impaired lawyer and connect with useful resources.

3. Develop a master list of people who are or should be concerned about lawyer well-being and provide an orientation to the support site.

4. In view of the current lack of leader development programs and standards for leadership skills and performance, legal employers in Hawai'i should explain and emphasize the importance of leadership to their new attorneys at their initial training and mentoring sessions, making clear that success in the profession will require more than just mastering the technical nuts and bolts of practicing law, and that, in addition to serving their clients, they should serve their fellow employees and society as a whole. Feedback, both from the firm attorneys and their clients, on the work of the other attorneys should be regularly given; policies and procedures should be developed to ensure that this is done. For instance, interviews with the employer's clients regarding their satisfaction with the work performed should be conducted at the conclusion of each project or engagement and shared with the lawyers who had worked on the matter, so as to understand that their efforts were meaningful and to build client relationships.

## RECOMMENDATIONS FOR LAW SCHOOLS

The National Report states:

Law students start law school with high life satisfaction and strong mental health measures. But within the first year of law school, they experience a significant increase in anxiety and depression. Research suggests that law students are among the most dissatisfied, demoralized, and depressed of any graduate student population. The 2016 Survey of Law Student Well-Being found troublesome rates of alcohol use, anxiety, depression, and illegal drug use at law schools across the country. Equally worrisome is students' level of reluctance to seek help for those issues. A large majority of students (about 80 percent) said that they were somewhat or very likely to seek help from a health professional for alcohol, drug, or mental health issues, but few actually did. For example, while 42 percent thought that they had needed help for mental health problems in the prior year, only about half of that group actually received counseling from a health professional. Only four percent said they had ever received counseling for alcohol or drug issues—even though a quarter were at risk for problem drinking. The top factors that students reported as discouraging them from seeking help were concerns that it would threaten their bar admission, job, or academic status; social stigma; privacy concerns; financial reasons; belief that they could handle problems on their own; and not having enough time. Students' general reluctance to seek help may be one factor explaining why law student wellness has not changed significantly since the last student survey in the 1990s. It appears that recommendations stemming from the 1993 survey either were not implemented or were not successful. The Survey of Law Student Well-Being did not seek to identify the individual or contextual factors that might be contributing to students' health problems. It is important to root out such causes to enable real change. For example, law school graduates cite heavy workload, competition, and grades as major law school stressors. Others in the legal community have offered additional insights about common law school practices, which are discussed below. Law school well-being initiatives should not be limited to detecting disorders and enhancing student resilience. They also should include identifying organizational practices that may be contributing to the problems and assessing what changes can be made to support student well-being. If legal educators

ignore the impact of law school stressors, learning is likely to be suppressed and illness may be intensified.

The above reflects a need for both prevention strategies to address dysfunctional drinking and misuse of substances as well as promotion strategies that identify aspects of legal education that can be revised to support well-being. The recommendations below offer some ideas for both.

## **27. Create Best Practices for Detecting and Assisting Students Experiencing Psychological Distress.**

**NRR.** The National Report states:

Law schools should develop best practices for creating a culture in which all associated with the school take responsibility for student well-being. Faculty and administrators play an important role in forming a school's culture and should be encouraged to share responsibility for student well-being.

**Hawai'i Recommendation.** The William S. Richardson School of Law ("**WSRSL**"), the state's only law school, must continue to align itself with other law schools nationwide that take student well-being seriously. In Spring 2019, the Journal of Legal Education published an article entitled *Where Are We on the Path of Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*.<sup>24</sup> It described a groundswell of law school initiatives to monitor and improve student well-being. It also evaluated the degree to which these endeavors met the recommendations discussed in this section. For WSRSL, the article provides a source of ideas and a checklist. The school has already adopted many of the practices and is well on its way.

As noted in the NRR, faculty and administrators play an important role in shaping the law school culture and share responsibility for student well-being. Discussions and activities aimed at student well-being should always preserve an inquiry about the well-being of faculty and administration. Not only is their example crucial, but their own wellness influences their perception of student well-being and anchors the efficacy of their efforts to assist struggling students.

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<sup>24</sup> Jordana Alter Confino, *Where Are We on the Path of Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650 (Spring 2019).

Before preparing these recommendations, two Task Force members, both WSRSL alumni and members of the practicing bar, convened separate student focus groups on March 18 and 23, 2021. In addition, the Task Force's law school representative consulted the associate dean of student services, as well as several faculty members, including the instructor of the largest section of our Professional Responsibility course.

### **27.1 Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.**

**NRR.** The National Report states:

Faculty members have significant sway over students but generally students are reluctant to approach them with personal problems, especially relating to their mental health. Students' aversion to doing so may be exacerbated by a perception that faculty members must disclose information relating to students' competence to practice to the state bar. To help remove uncertainty and encourage students to ask for help, law schools should consider working with lawyer assistance programs on training faculty on how to detect students in trouble, how to have productive conversations with such students, what and when faculty need to report information relating to such students, as well as confidentiality surrounding these services. Students should be educated about faculty's reporting requirements to add clarity and reduce student anxiety when interacting with faculty.

Additionally, faculty members should be encouraged to occasionally step out of their formal teaching role to convey their respect and concern for students, to acknowledge the stressors of law school, and to decrease stigma about seeking help for any health issues that arise. Faculty should consider sharing experiences in which students confronted similar issues and went on to become healthy and productive lawyers. To support this recommendation, deans of law schools must be engaged. The well-being of future lawyers is too important to relegate to student affairs departments. For faculty to take these issues seriously, it must be clear to them that deans value the time that faculty spend learning about and addressing the needs of students outside the classroom. With the full backing of their deans, deans of students should provide training and/ or information to all faculty that includes talking points that correspond to students' likely needs—e.g., exam scores, obtaining jobs, passing the bar, accumulating financial debt,

etc. Talking points should be offered only as a guideline. Faculty should be encouraged to tailor conversations to their own style, voice, and relationship with the student.

Law schools should consider inviting law student and lawyer well-being experts to speak at faculty lunches, colloquia, and workshops to enhance their knowledge of this scholarship. Such programming should include not just faculty but teaching assistants, legal writers, peer mentors, and others with leadership roles in whom law students may seek to confide. Many of these experts are members of the Association of American Law Schools section on Balance in Legal Education. Their scholarship is organized in an online bibliography divided into two topics: Humanizing the Law School Experience and Humanizing the Practice of Law.

**Hawai'i Recommendation.** WSRSL should consider working with lawyer assistance programs to train faculty members on detecting "students in trouble," having productive conversations with these students, and what and when faculty need to report information relating to students. In addition, faculty members should be taught to have "talking points" that correspond to a student's common needs: exam scores, obtaining jobs, passing the bar, accumulating financial debt, to name a few. Because faculty members vary in style, personality, and outlook, they should tailor their conversations to preserve the authenticity of their voices while being helpful to the student.

Resources need not be just from lawyer assistance programs. Other lawyer wellness experts, especially those who have produced scholarship on some aspect of wellness, as well as students might be useful speakers at faculty lunches, colloquia, and workshops.

Some, if not many WSRSL faculty members assist struggling students, either in collaboration with the associate dean of student services or on their own. However, they do so with varying degrees of expertise, perspective, and skill. To help them and encourage other colleagues to join the effort, the training as recommended by the NRR would be welcomed. Faculty should provide input on the topics of interest and need. This would help build engagement.

In an announcement dated March 29, 2021, the UH Mānoa Counseling and Student Development Center (CSDC) introduced its free online program, "Kognito," to equip faculty, staff, and students with the knowledge and skills to recognize trauma or

distress. This includes a faculty-specific module, which allows faculty to practice challenging conversations in a variety of virtual role-play scenarios. The program is tailored to the UH Mānoa campus, where WSRSL is located, and provides a new training opportunity to faculty interested in helping students through trauma or distress. Faculty should be made aware of it and encouraged individually or as a group to try it.

### **27.2 Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.**

**NRR.** The National Report states:

While law students may occasionally miss class due to personal conflicts, their repeated absence often results from deteriorating mental health. Creating a system to monitor for chronic absences can help identify students for proactive outreach. Consequently, law schools should adhere to a consistent attendance policy that includes a timely reporting requirement to the relevant law school official. Absent such a requirement, deans of students may be left with only a delayed, reactive approach.

If faculty members are reluctant to report student absences, a system can be created to ensure that a report cannot be traced to the faculty member. Several law schools have adopted "care" networks or random check-ins whereby someone can report a student as potentially needing assistance. In these programs, the identity of the person who provided the report is kept confidential. Certain models on this issue include the American University Washington College of Law, which implements random "check-in" outreach, emailing students to visit the Student Affairs office for brief conversations. This method allows for a student about whom a concern has been raised to be folded quietly into the outreach. Georgetown Law School allows anyone concerned about a student to send an email containing only the student's name, prompting relevant law school officials to check first with one another and then investigate to determine if a student meeting is warranted. The University of Miami School of Law uses an online protocol for a student to self-report absences in advance, thus enabling the dean of students to follow up as appropriate if personal problems are indicated.

**Hawai'i Recommendation.** The associate dean of student services explained that many faculty members already communicate irregular attendance or other untoward student behavior to her.



At faculty meetings, the associate dean has consistently encouraged the faculty to bring concerns about individual students to her attention. The intent is not to punish the student but to flag possible trouble. This results in the associate dean checking on the student (this might include a socially distanced home visit) and reporting back to the faculty member. For now, this *ad hoc* method is effective and sufficient.

Formally reshaping attendance reporting to include "warning bells" might complicate a sometimes difficult conversation on how much to require of faculty in recording attendance for a classroom of adult learners. For this reason, it would be best to allow the law school to maintain its *ad hoc* process.

### **27.3 Provide Mental Health and Substance Use Disorder Resources.**

**NRR.** The National Report states:

Law schools should identify and publicize resources so that students understand that there are resources available to help them confront stress and well-being crises. They should highlight the benefits of these resources and that students should not feel stigmatized for seeking help. One way to go about this is to have every course syllabus identify the law school's mental health resources. The syllabus language should reflect an understanding that stressors exist. Law schools also can hold special events, forums, and conversations that coincide with national awareness days, such as mental health day and suicide prevention day.

Developing a well-being curriculum is an additional way to convey that resources are available and that the law school considers well-being a top priority. Northwestern University's Pritzker School of Law has accomplished the latter with well-being workshops, mindfulness and resilience courses, and meditation sessions as part of a larger well-being curriculum.

Another noteworthy way to provide resources is to establish a program where law students can reach out to other law students who have been trained to intervene and help refer students in crisis. Touro Law School established a "Students Helping Students" program in 2010 where students volunteer to undergo training to recognize mental health problems and refer students confronting a mental health crisis.

**Hawai'i Recommendation.** From the first day of orientation, WSRS administration and staff talk about student mental health and the problems of substance use disorders. Students are introduced early to the Judiciary's Attorneys and Judges Assistance Program (AAP) and the UHM Counseling and Student Development Center (CSDC) and invited to use their confidential services. If students need other mental health and substance use disorder resources, they can turn to the office of the associate dean of student services to get information or a referral.

This existing process should continue. Further, it should be open to enhancement. This might include peer-based sources of information as mentioned elsewhere in this section.

The Task Force also notes that while in the past, use of substances was often describing as "checking out," use of substances among law students now also involving "checking in," such as through use of Adderall. Perhaps law schools can highlight this issue for the community, to lead discussions on the increase in diagnoses in childhood resulting in amphetamine prescriptions and the connection to increased abuse of such substances by law students.<sup>25</sup>

## **28. Assess Law School Practices and Offer Faculty Education on Promoting Well-Being in the Classroom**

**NRR.** The National Report states:

Law school faculty are essential partners in student well-being efforts. They often exercise powerful personal influence over students, and their classroom practices contribute enormously to the overall law school experience. Whether faculty members exercise their influence to promote student well-being depends, in part, on support of the law school culture and priorities. To support their involvement, faculty members should be invited into strategic planning to develop workable ideas. Framing strategies as helping students develop into healthy lawyers who possess grit and resilience may help foster faculty buy-in. Students' mental resilience can be viewed as a competitive advantage during their job searches and as support along their journeys as practicing lawyers toward sustainable professional and personal identities.

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<sup>25</sup> See <https://www.cdc.gov/ncbddd/adhd/data.html>.

Educating law school faculty on how classroom practices can affect student well-being is one place to start the process of gaining faculty buy-in. For example, law professor Larry Krieger and social scientist Kennon Sheldon identified potential culprits that undercut student well-being, including hierarchical markers of worth such as comparative grading, mandatory curves, status-seeking placement practices, lack of clear and timely feedback, and teaching practices that are isolating and intimidating.

Because organizational practices so significantly influence student well-being, we recommend against focusing well-being efforts solely on detecting dysfunction and strengthening students' mental toughness. We recommend that law schools assess their classroom and organizational practices, make modifications where possible, and offer faculty programming on supporting student well-being while continuing to uphold high standards of excellence. Harmful practices should not be defended solely on the ground that law school has always been this way. Teaching practices should be evaluated to assess whether they are necessary to the educational experience and whether evidence supports their effectiveness.

**Hawai'i Recommendation.** The start of the 2020-2021 academic year saw the arrival of WSRSL's new dean, Camille Nelson. She has initiated and sparked several "strategic conversations." These conversations will ultimately shape a larger strategic planning effort in the foreseeable future.

This time of renewed inquiry and reflection would be a good time to discuss student well-being and whether the teaching methods we use or the learning experience we create has an untoward effect on WSRSL students. While academic freedom, which includes the choice of teaching approaches and methods, is a cherished value in American universities, it should be exercised thoughtfully and in good faith, always anchored by sound pedagogical objectives. The NRR cited to Professor Lawrence Krieger's article, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*,<sup>26</sup> which lays the foundation for examining long-standing law school practices and provides a framework for addressing the concerns raised in NRR 28.

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<sup>26</sup> L.S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002).

The emerging discussion on including Professional Identity Formation and Lawyer Well-Being into the law school curriculum as part of the American Bar Association's law school accreditation standards also provides fertile ground for a conversation within the law school.<sup>27</sup>

In sum, the Task Force agrees with NRR 28.

The Task Force also noted that basing a law student's entire grade on one exam at the end of the semester creates stress and anxiety on law students that might not be necessary and recommends that to the extent such grading practices still exist, they be reexamined.

## **29. Empower Students to Help Fellow Students in Need.**

**NRR.** The National Report states:

As noted above, students often are reluctant to seek mental health assistance from faculty members. Empowering students to assist each other can be a helpful alternative. One suggestion is to create a peer mentoring program that trains student mentors to provide support to fellow students in need. The ideal mentors would be students who are themselves in recovery. They should be certified by the local lawyer assistance program or another relevant organization and should be covered by the lawyer assistance program's confidentiality provisions. Peer mentors should not have a direct reporting obligation to their law school dean of students. This would help ensure confidentiality in the peer mentoring relationship and would foster trust in the law school community.

**Hawai'i Recommendation.** WSRSL already supports initiatives developed by students to help other students. Two recent examples come to mind: (1) the nationally recognized food pantry developed by students for students, and (2) a nascent mental health student group designed to not only provide student-to-student support but advocate for affordable mental health resources for students. This includes a dedicated mental health professional for law students.

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<sup>27</sup> See Memorandum from The Standards Committee to The Council of the ABA Section on Legal Education and Admissions to the Bar (February 3, 2021) [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/feb21/4-feb-21-council-memo-std303-and-508.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/feb21/4-feb-21-council-memo-std303-and-508.pdf).

WSRSL recognizes the tangible benefits of peer-initiated and led activities. In addition to developing leadership, executive, and other essential skills, these activities address student-identified needs with student-generated solutions. WSRSL has a history of empowering students and should be encouraged to continue. This would allow students to bring their unique understanding, empathy, and expertise to student well-being issues.

**30. Include Well-Being Topics in Courses on Professional Responsibility.**

**NRR.** The National Report states:

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and PR professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

**Hawai'i Recommendation:** The principal Professional Responsibility ("PR") course instructor already dedicates one class, as recommended, to mental health and substance use. He also sprinkles these topics through the course. However, as some students have pointed out, this practice is not uniform, with some students receiving no treatment of these topics in their PR course sections.

As long as the PR course is divided into sections, a conversation among the instructors should be encouraged to discuss incorporating mental health and substance use issues in class. While this might challenge those prone to presenting more traditional PR topics, the school is fortunate to have one PR faculty member who has experience presenting these topics and could provide guidance and a template for others.

In sum, the Task Force supports NRR 30.

**31. Commit Resources for onsite Professional Counselors.**

**NRR.** The National Report states:

Law schools should have at minimum, a part-time, onsite professional counselor. Doing so would not only create easier access to mental health services but communicate that seeking help should be supported and not be stigmatized.

**Hawai'i Recommendation.** WSRSL falls into the category of law schools that use on-campus mental health services for students enrolled in the larger university. Due to resources, WSRSL does not have a dedicated mental health professional and instead relies on the CSDC, which lists about fifteen mental health professionals on its website for a campus of over 17,000 students. The CSDC offices are a 5 to 10-minute walk from WSRSL.

In the student focus groups, the Task Force learned that a dedicated mental health professional would be perceived by at least some students as evidence of WSRSL's commitment to law student emotional health. It would not only bring an important resource to the law campus but help destigmatize the use of mental health services. One advantage to a dedicated professional would be the consistency of care and contact, which is less likely with the CSDC. The growing use of tele-health provides a promising possibility that the administration has begun to explore with students.

Hurdling funding barriers and working toward a sensible protocol to make the services inviting and confidential are challenges that require persistence. The Task Force recommends that WSRSL and the students continue working collaboratively to describe the student need and demand for a dedicated mental health professional and find pathways around existing barriers. The student mental health committee has begun securing faculty partners to be part of this conversation.

## **32. Facilitate a Confidential Recovery Network.**

**NRR.** The National Report states:

Law schools should consider facilitating a confidential network of practicing lawyers in recovery from substance use to connect with law students in recovery. Law students are entering a new community and may assume that there are few practicing lawyers in recovery. Facilitating a confidential network will provide an additional support network to help students manage the challenges of law school and maintain health. Lawyers Concerned for Lawyers is an example of a legal peer assistance group that exists in many regions that may be a confidential network source.

**Hawai'i Recommendation.** WSRSL will continue its work with the AAP to provide peer or mentoring relationships between lawyers in recovery and students who could benefit from such relationships. It should be mentioned that one faculty member has shared his recovery testimony publicly and compellingly. Over the years, he has assisted students who experience struggles and has modeled behavior and attitudes helpful to them.

During the student focus groups, the Task Force heard that students need help understanding how law practice (and law school) may trigger or exacerbate maladaptive behavior. Significantly, this could form part of the response to concerns about student reliance on alcohol or other mood-altering substances.

The Task Force agrees with NRR 32.

### **33. Provide Education Opportunities on Well-Being Topics.**

#### **33.1 Provide Well-Being Programming During the 1L Year.**

**NRR.** The National Report states:

We agree with the Survey of Law Student Well-Being report's recommendation that law schools should incorporate well-being topics into student orientation. We recommend that during 1L orientation, law schools should include information about student well-being and options for dealing with stress. Communications should convey that seeking help is the best way to optimize their studies and to ensure they graduate and move successfully into law practice. Other vulnerable times during which well-being-related programming would be particularly appropriate include the period before fall final exams, the period when students receive their first set of law school grades (usually at the start of spring semester), and the period before spring final exams. The Task Force commends Southwestern Law School's 1L "Peak Performance Program" and its goal of helping new law students de-stress, focus, and perform well in law school. This voluntary program is the type of programming that can have a transformative effect on law student well-being.

**Hawai'i Recommendation.** As early as the 1L orientation, WSRSL presents "taking care of yourself" as a priority. It is during this time that students are introduced to the CSDC and the AAP.

Wellness-promoting activities like mindfulness, massage, therapeutic pets, and yoga sessions are scheduled and communicated through law campus e-mail and the "Richardson Current," which regularly lists scheduled events and opportunities through the law academic calendar. The Current includes sections on Wellness and Health, as well as a "Diversity and Inclusion Corner." These are for 1Ls, upperclassmen, faculty, and staff.

WSRSL recognizes that "stress points" exist through the school year. For 1Ls, the entire first year might feel like a singular stress point with spikes during exam periods and as due dates for first year writing assignments approach. It would be useful for the law school to think about the special needs of 1Ls and continue developing strategies helpful to first year students.

During the student focus groups, the Task Force received suggestions such as turning some of the law school's mandatory "RAP" sessions into talks on well-being topics. This would help support a culture where student and faculty well-being are valued and welcomed. However, the Task Force also received comments that the law school should reach beyond yoga or mindfulness sessions to tackle thornier questions like providing a dedicated mental health professional, examining classroom practices that are perceived as unnecessarily stressful, even detrimental, and reviewing institutional "norms" (e.g., the subtle emphasis on "prestige" placements and high GPAs) that may unwittingly lead to unhealthy choices. This would help not only 1Ls but the entire student body.

These comments suggest the need for law school commitment and courage in apportioning time, energy, and financial resources to elevate student well-being. The Task Force recognizes that the university is subject to a cloud of fiscal restraint due to economic uncertainties related to the pandemic. Yet, this should not deter the law school from prioritizing the well-being of its members and finding or making resources available.

In sum, the Task Force agrees with the premise of NRR 33.1. It encourages the law school to continue the programming already in place, but always with an eye toward expanding and deepening its endeavors.



### **33.2 Create a Well-Being Course and Lecture Series for Students.**

**NRR.** The National Report states:

To promote a culture of well-being, law schools should create a lecture series open to all students and a course designed to cover well-being topics in depth. Well-being has been linked to improved academic performance, and, conversely, research reflects that well-being deficits connect to impaired cognitive performance. Recent research also has found that teaching well-being skills enhances student performance on standardized tests, and improves study habits, homework submission, grades, and long-term academic success, as well as adult education attainment, health, and wealth. A well-being course can, for example, leverage research findings from positive psychology and neuroscience to explore the intersection of improved well-being, enhanced performance, and enriched professional identity development for law students and lawyers. Further knowledge of how to maintain well-being can enhance competence, diligence, and work relationships—all of which are required by the ABA's Model Rules of Professional Conduct. The content of a well-being course could be guided by education reform recommendations. Appendix E provides content suggestions for such a course.<sup>28</sup>

**Hawai'i Recommendation.** See recommendation for NRR 33.1. The Task Force agrees with NRR 33.2. The law school should consider a course designed to cover well-being topics even while the American Bar Association considers a proposal to incorporate Professional Identity Formation and Lawyer Well-Being into the law school curriculum as part of the ABA's law school accreditation standards. Already, the law school hosts a few stand-alone lectures on well-being topics and will continue to do so.

### **34. Discourage Alcohol-Centered Social Events.**

**NRR.** The National Report states:

Although the overwhelming majority of law students are of legal drinking age, a law school sends a strong message when alcohol-related events are held or publicized with regularity. Students in recovery and those thinking about it may feel that

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<sup>28</sup> Appendix E is available at [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/lawyer\\_well\\_being\\_report\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.authcheckdam.pdf), pp. 61-62.

the law school does not take the matter seriously and may be less likely to seek assistance or resources. A law school can minimize the alcohol provided; it can establish a policy whereby student organizations cannot use student funds for the purchase of alcohol. Events at which alcohol is not the primary focus should be encouraged and supported. Further, law school faculty should refrain from drinking alcohol at law school social events.

**Hawai'i Recommendation.** WSRSL has long communicated this message. It requires students to apply for permits to serve alcoholic beverages. It also stresses that alcohol must never be the focus of any social event. This message is reinforced in the advertising of the events. In addition, the school has long limited the amount of alcohol that can be available and served.

The Task Force agrees with NRR 34 and its suggestion that faculty and administration should also model the message. An effort should be undertaken to coordinate and, if possible, integrate law school measures with those taken within the professional legal community.

### **35. Conduct Anonymous Surveys Relating to Student Well-Being.**

**NRR.** This National Report recommendations extends Recommendation 24 - legal employers should assess the well-being of their lawyers - to law schools. The assessment tool should be anonymous and would measure such matters as attitudes toward well-being, significant stressors in the work environment, and organization support. The study could be performed by an outside group to insulate the law school from the survey participants.

**Hawai'i Recommendation.** The associate dean for student services understands that WSRSL students are over-surveyed. Unfortunately, this contributes to diminishing returns no matter how well-designed the survey is. Yet, she remains undeterred, surveying the students last year and again this year.

This year's effort will be part of a national survey, including the Law School Survey of Student Engagement, known as "LSSSE," which surveys students at over 200 U.S. and Canadian law schools, to gather student viewpoints on a wide range of legal education topics. The LSSSE offers topical modules that could be appended to the core survey. This year's modules include "Coping with COVID," "Diversity and Inclusiveness," and "Student Stress."

The Task Force supports WSRSL's continuing attempts to gather student viewpoints anonymously, including the use of the LSSSE. It suggests that the school consider adding the topical modules pertinent to student well-being to its core LSSSE survey.

## RECOMMENDATIONS FOR BAR ASSOCIATIONS

### 36. Encourage Education on Well-Being Topics in Association with Lawyers Assistance Programs

#### 36.1 Sponsor High-Quality CLE Programming on Well-Being-Related Topics

**NRR.** The National Report states:

In line with Recommendation 8, bar associations should develop and regularly offer educational programming on well-being-related topics. Bar leadership should recommend that all sections adopt a goal of providing at least one well-being related educational opportunity at all bar-sponsored events, including conferences, section retreats, and day-long continuing legal education events.

**Hawai'i Recommendation.** The Task Force agrees with this recommendation, has begun to effectuate it, and recommends that a HSBA Well-Being Committee further such efforts.

The Task Force's September 11, 2020, virtual summit via Zoom titled: "The State of Lawyer Well-Being: Why it Matters and What We Can Do" was an important first step. As noted earlier, it featured Bree Buchannan, Esq., one of the founding co-chairs of the National Task Force on Lawyer Well-Being. The Summit successfully brought or elevated awareness and acceptance of the concepts of well-being and mental health in the legal profession.<sup>29</sup> Key stakeholders from all areas of our legal profession—from law students to current practicing attorneys, judges, the HSBA, and AAP—participated in the Summit and engaged in robust discussions on the topic of well-being. With the information that was gathered at the Summit, each committee of the Hawai'i Task Force on Lawyer Well-Being received data on the members' well-being helpful in developing their respective recommendations.

The Task Force also co-sponsored a free one hour Zoom well-being webinar on April 6, 2021, by Dr. Caroline E. Sakai, Ph.D., on "Energy Tapping Tools for Attorney Well-Being During Covid-19 Pandemic."

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<sup>29</sup> There were 172 attorneys, law students, and judges virtually present at the Summit to hear Ms. Buchannan. Of those individuals present, 98 of them participated in breakout rooms, which were designed to learn more about their individual ideas on well-being.

The Task Force also arranged for a helpful video on the topic of "Well-Being at Your Desk" entitled "Calming Desk Exercises With [Task Force member] Makana Risser Chai," which is available on the HSBA website. She will also be preparing another video regarding what lawyers can do to improve well-being while on remote video conferences.

The Task Force is also arranging for a video on Suicide Prevention by Ms. Nancy Deeley, MPH, a retired Suicide Prevention Coordinator for the State of Hawai'i Department of Health, which will also be available through its page on the HSBA website.

The May 14, 2021 follow-up summit of the Task Force was also an important step in continuing the legal community's focus on well-being.

The Task Force supports and recommends the development by the HSBA and other Continuing Legal Education (hereinafter CLE) providers of programming on well-being topics for CLE credit in Hawai'i.

Pursuant to the Task Force's suggestion, the Mandatory Continuing Legal Education (hereinafter MCLE) Board, which helps the HSBA administer Hawai'i's Rules of the Supreme Court of Hawai'i ("**RSCH**") mandatory CLE program, has recommended that the Hawai'i Supreme Court entertain an amendment to specifically incorporate substantive wellness topics as a category eligible for CLE or ethics CLE credit.<sup>30</sup> Consideration should be given, wherever possible and feasible, to the inclusion of well-being information in every CLE program. Thus, as indicated in Section

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<sup>30</sup> The Rules of the Supreme Court of Hawai'i ("**RSCH**") Rule 22(b) specifically addresses the minimum qualifications necessary for the ethics and professional responsibility portion of the MCLE.

**(b) Ethics and Professional Responsibility Minimum.** At least once every 3 years in which CLE credits are required, every active member shall complete 1 hour of approved ethics or professional responsibility education. This credit hour shall count toward the annual CLE requirement. "Ethics or professional responsibility education" means those courses or segments of courses devoted to:

- (1) the Rules of Professional Conduct;
- (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;
- (3) substance abuse and its effects on lawyers and the practice of law; or
- (4) client trust administration, bias awareness and prevention, and access to justice.

20.3 above, the Task Force recommends that the Hawai'i Supreme Court amend RSCH Rule 22(b)(3) as follows:

- (1) the Rules of Professional Conduct;
- (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;
- (3) the prevention, detection, and/or treatment of "mental health and substance abuse disorders and [its] their effects on lawyers and the practice of law; [or]
- (4) lawyer well-being, including programs that are designed to enhance optimism, resilience, relationship skills, and energy and engagement in lawyers' practices; connect lawyers with their strengths and values; address lawyer stress; and to foster cultures that support outstanding lawyer professionalism; or

The Task Force also recommends that the RSCH Rule 1.14 mandatory professionalism course, which is administered by a separate HSBA committee, and which is geared toward new bar admittees, also include a section on well-being. In this regard, the June 2021 mandatory professionalism course will be conducted via pre-recorded video presentations, for which the Task Force Co-Chairs and members Liam Deeley and Makana Risser Chai are scheduled to participate.

### **36.2 Create Educational Materials to Support Individual Well-Being and "Best Practices" for Legal Organizations**

**NRR.** The National Report states:

We recommend that bar associations develop "best practice" model policies on well-being-related topics, for example practices for responding to lawyers in distress, succession planning, diversity and inclusion, mentoring practices, work-life balance policies, etc.

**Hawai'i Recommendation.** This is a broad recommendation, and some aspects are discussed in other recommendations in this Report. The Task Force recommends that a newly formed HSBA Well-Being Committee follow-up more specifically on whether model policies on well-being-related topics such as practices for responding to lawyers in distress, succession planning, diversity and inclusion, mentoring practices, work-life balance policies, etc., should be developed for the Hawai'i bar.

With respect to the work of the Task Force to date, every month, HSBA members receive e-newsletters that highlight

scheduled events coming up within the month, messages from Presidents from the various bar organizations, and a mixture of other notifications concerning the legal profession. In an effort to incorporate the recommendation from the National Report of creating educational materials to support individual well-being and "best practices" for legal organizations, a section has been added to the HSBA monthly e-newsletters on attorney well-being, offering tips and further information on such issues as coping with job stress and anxiety<sup>31</sup> and the importance of sleep for attorneys.<sup>32</sup> Additionally, contact information and information regarding confidential services offered by the AAP is included in the e-newsletters for attorneys to utilize.<sup>33</sup> The Task Force recommends the continued inclusion of well-being related matters in the HSBA monthly e-newsletters.<sup>34</sup>

Additionally, throughout the month of October 2019, the Young Lawyers Division ("YLD") and Senior Counsel Division ("SCD") hosted a Well-Being #Fit2Practice Challenge for their members. As a way to encourage well-being and good health practices, participants earned points for activities completed in the following categories: physical fitness, mental fitness, general fitness, and social media posts using the hashtag #Fit2Practice. This challenge was a great way to encourage participants to incorporate more than just work into their daily lives, as exercising and taking time throughout the day to focus on mental health creates happier, healthier attorneys. The participation and feedback from this challenge were positive and encouraging to see. The YLD and SCD intend to host similar challenges in the future. The Task Force recommends supporting the YLD and SCD's efforts to host future well-being challenges.

### **36.3 Train Staff to Be Aware of Lawyer Assistance Program Resources and Refer Programs.**

**NRR.** The National Report states:

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<sup>31</sup> See HSBA E-Newsletter (December 16, 2020).

<sup>32</sup> See HSBA E-Newsletter (August 18, 2020).

<sup>33</sup> See e.g., HSBA E-Newsletters (January 15, 2020; February 18, 2020; March 16, 2020; April 15, 2020; May 15, 2020; and August 18, 2020);

<sup>34</sup> See the Task Force's page on the HSBA website for links to some articles that have been included in e-newsletters. [https://hsba.org/HSBA\\_2020/Membership/Lawyer\\_Resources/Hawaii\\_Task\\_Force\\_on\\_Lawyer\\_Well-Being.aspx](https://hsba.org/HSBA_2020/Membership/Lawyer_Resources/Hawaii_Task_Force_on_Lawyer_Well-Being.aspx)

Educating bar association staff regarding lawyer assistance programs' services, resources, and the confidentiality of referrals is another way to foster change in the legal community. Bar association staff can further promote these resources to their membership. A bar association staff member may be the person who coordinates a needed intervention for a lawyer facing a mental health or substance use crisis.

**Hawai'i Recommendation.** HSBA Executive Director Pat Mau-Shimizu has been an active member of the Task Force and its Executive Committee, and has already begun such efforts. The Task Force recommends that the AAP and the HSBA continue to work closely with one another, and that HSBA staff also be trained in the resources offered by the AAP so that the HSBA can continue to promote these services to its members. HSBA personnel may find themselves in situations that call for a referral of a member to the AAP. In an effort to promote this collaboration, information regarding available resources such as the AAP is incorporated into all CLE presentations hosted by the HSBA.

**37. Sponsor Empirical Research on Lawyer Well-Being as Part of Annual Member Surveys.**

**NRR.** The National Report states:

Many bar associations conduct annual member surveys, which offer an opportunity for additional research on lawyer well-being and awareness of resources. For example, questions in these surveys can gauge awareness of support networks either in law firms or through lawyer assistance programs. They can survey lawyers on well-being topics they would like to see addressed in bar journal articles, at bar association events, or potentially through continuing legal education courses. The data gathered can inform bar associations' outreach and educational efforts.

**Hawai'i Recommendation.** The Bar Association Committee of the Task Force is spearheading the first Well-Being Survey of our current members with the goal of bringing the topics of well-being and mental health to the forefront. By starting the conversation and allowing individuals an avenue to voice their concerns, if any, we can gain a better understanding of the current status of our members' well-being. This Well-Being Survey is planned for dissemination soon, and will seek input from members on a variety of issues related to the current state of the well-being and mental health of our members. The Task Force recommends that the HSBA regularly survey its members on well-being issues, topics, and concerns to identify where well-being has improved or worsened and which efforts to improve



well-being are working or not working in an effort to continue to support increased well-being in an evidence-based manner.

### **38. Launch a Lawyer Well-Being Committee.**

**NRR.** The National Report states:

We recommend that bar associations consider forming Lawyer Well-Being Committees. As noted in Recommendation 5.2, the ABA and a number of state bar associations already have done so. Their work supplements lawyer assistance programs with a more expansive approach to well-being. These committees typically focus not only on addressing disorders and ensuring competence to practice law but also on optimal functioning and full engagement in the profession. Such committees can provide a valuable service to members by, for example, dedicating attention to compiling resources, high-quality speakers, developing and compiling educational materials and programs, serving as a clearinghouse for lawyer well-being information, and partnering with the lawyer assistance program, and other state and national organizations to advocate for lawyer well-being initiatives.

The South Carolina Bar's Lawyer Wellness Committee, launched in 2014 and featuring a "Living Above the Bar" website, is a good model for well-being committees. In 2016, the ABA awarded this Committee the E. Smythe Gambrell Professionalism Award, which honors excellence and innovation in professionalism programs.

**Hawai'i Recommendation.** As recommended by National Report, the Task Force joins in the recommendation to follow the trend of state bar associations and create a Well-Being Committee within the HSBA. In addition to providing input regarding and collaborating with the HSBA on CLE and other educational programs referenced in Section 36 above, this Well-Being Committee could undertake additional activities, such as: initiating more social interactions with solo practitioners and those on neighbor islands; bringing back lawyer athletic leagues, fun runs, etc.; coordinating interactive Zoom meetings for different practice groups; coordinating a support system/buddy system for practitioners, particularly solo practitioners; and providing more well-being related, stress reduction, and mental health suggestions and encouragement to attorneys in the HSBA emails and various other forms of communication.

### **39. Serve as an Example of Best Practices Relating to Lawyer Well-Being at Bar Association Events.**

**NRR.** The National Report states:

Bar associations should support members' well-being and role model best practices in connection with their own activities and meetings. This might include, for example, organizing functions to be family-friendly, scheduling programming during times that do not interfere with personal and family time, offering well-being related activities at events (e.g., yoga, fun runs, meditation, providing coffee or juice bars, organizing support group meetings), providing well-being related education and training to bar association leaders, and including related programming at conferences and other events. For instance, several bar associations around the country sponsor family-friendly fun runs, such as the Maricopa County Bar Association annual 5k Race Judicata.

**Hawai'i Recommendation.** The Task Force supports the National Report recommendation to support members' well-being and role model best practices in relation to HSBA events and meetings. The HSBA offers a variety of events that aim to serve the various interests of a diverse group of members. The Task Force recommends that the HSBA continue to serve as an example of best practices through its events. The Subcommittee further recommends that the HSBA offer additional functions that are scheduled during family-friendly times that do not interfere with personal and family time and offer additional well-being related activities (fun runs, yoga/meditation, coffee and juice bars, support group meetings, etc.).

## **RECOMMENDATIONS FOR LAWYERS PROFESSIONAL LIABILITY CARRIERS**

**NRR.** The National Report states:

Lawyers' professional liability (LPL) carriers have a vested interest from a loss prevention perspective to encourage lawyer well-being. Happier, healthier lawyers generally equate to better risks. Better risks create stronger risk pools. Stronger risk pools enjoy lower frequency and often less severe claims. Fewer claims increases profitability. For lawyers, the stronger the performance of the risk pool, the greater the likelihood of premium reduction. Stakeholders interested in lawyer well-being would be well-served to explore partnerships with lawyers' professional liability carriers, many of whom enjoy bar-related origins with their respective state bar and as members of the National Association of Bar-Related Insurance Carriers ("**NABRICOs**"). Even commercial carriers active in the lawyers' malpractice market enjoy important economic incentives to support wellness initiatives, and actively assess risks which reflect on the likelihood of future claims. Below are several recommendations for LPL carriers to consider in their pursuit of improving lawyer well-being.

**Hawai'i Recommendation.** LPL carriers are best served when they underwrite law firms that are better risks. As the National Report explains, better risks result in a book of business with lower frequency and less severe claims which in turn leads to increased profitability. Moreover, most LPL carriers employ attorneys who, on a personal level, support the National Report, which advocates that encouraging well-being is simply the right thing to do for the good of the profession.

### **40. Actively Assist Lawyer Assistance Programs.**

**NRR.** The National Report states:

In certain jurisdictions, lawyers' professional liability carriers are amongst the most important funders of lawyer assistance programs, appreciating that an ounce of prevention is worth a pound of cure. An impaired or troubled attorney who is aided before further downward spiral harms the lawyer's ability to engage in high-quality professional services can directly prevent claims. Thus, LPL carriers are well-served to understand lawyer assistance program needs, their impact, and how financial and marketing support of such programs can be a worthy investment. At the same time, where appropriate, lawyer

assistance programs could prepare a case for support to LPL carriers on how their activities affect attorneys, much like a private foundation examines the impact effectiveness of grantees. If the case for support is effectively made, support may follow.

**Hawai'i Recommendation.** One potential obstacle to coordinated support across states is the state-by-state nature of the Lawyer Assistance Programs. If carriers are to support the programs, there is no universal program to coordinate funding. Carriers would necessarily have to pick and choose states or perhaps make more modest contributions to each program. To the extent that the HSBA has a designated carrier partner, coordination of funding could be discussed between the carrier and the Bar. For example, Westport Insurance Corporation (Westport) is considered a member benefit provider for the HSBA and could facilitate funding.

The Task Force recommends that a newly formed HSBA Well-Being Committee pursue the possibility of funding support from LPL carriers to the Hawai'i AAP.

#### **41. Emphasize Well-Being in Loss Prevention Programs.**

**NRR.** The National Report states:

Most LPL carriers, as a means of delivering value beyond just the promise of attorney protection in the event of an error or omission, are active in developing risk management programs via CLE, law practice resources, checklists, and sample forms designed to reduce the susceptibility of an attorney to a claim. These resources often center on topics arising from recent claims trends, be it law practice management tips, technology traps, professionalism changes, or ethical infrastructure challenges. LPL carriers should consider paying additional attention to higher level attorney wellness issues, focusing on how such programs promote the emotional and physical foundations from which lawyers can thrive in legal service delivery. Bar associations are increasingly exploring well-being programs as a member benefit, and LPL carriers could be helpful in providing financial support or thought leadership in the development of such programs.

**Hawai'i Recommendation.** It appears many LPL carriers seek touch points with their insureds beyond just the administration of a claim. Carriers strive to deliver a value-add and are already active in developing risk management programs

and law practice resources. While these resources can certainly center on practice management and claim trends, LPL carriers can also provide resources on attorney well-being issues, such as on-site education for their larger clients and other organizations, as well as produce or tape CLE/Risk Management options for individual viewing.

For example, Westport has developed a Well-Being module that is used for presentation at selected law firms to create awareness of attorney well-being issues. Additionally, Westport has supported the WSRSL by providing Risk Management Lunch & Learns for law students that feature a well-being segment in the presentation. Westport has also provided content for the HSBA Continuing Legal Education on-line library and would be happy to feature well-being issues or segments in future tapings.

The Task Force recommends that a newly formed HSBA Well-Being Committee further explore this NRR recommendation.

#### **42. Incentivize Desired Behavior in Underwriting Law Firm Risk.**

**NRR.** The National Report states:

The process of selecting, structuring, and pricing LPL risk is part art, part science. Underwriters, in addition to seeking core LPL information such as area of practice, claim frequency, claim severity, firm size, firm longevity and firm location, are also working to appreciate and understand the firm's complete risk profile. The more effectively a firm can illustrate its profile in a positive manner, the more desirable a firm will be to a carrier's risk pool. Most states permit carriers flexibility in applying schedule rating credits or debits to reflect the individual risk characteristics of the law firm. LPL carriers should more actively explore the application of lawyer well-being premium credits, much like they currently do for internal risk management systems, documented attorney back-up systems, and firm continuity.

**Hawai'i Recommendation.** As the NRR explains, the process of underwriting law firms is complicated and dependent upon various factors that are all thought to inform the ultimate risk profile. A state rate filing, once it is ultimately approved by the Department of Insurance, sets forth objective rating criteria, and then often allows a carrier to credit pricing based upon certain desirable characteristics.

Currently, underwriters may apply risk management credits when they are satisfied that a law firm is taking appropriate proactive steps to positively impact their risk profile and decrease the chances of a claim. There is no reason why carriers, at this point, cannot embrace loss control programs that feature well-being themes as an acceptable way to satisfy the "Loss Control/Risk Management" credit, presuming that this would be acceptable to the Department of Insurance.

Moreover, carriers should also consider, as an industry, modifying pricing to conform to the well-being profile of the firm, presuming acceptance by the Department of Insurance. Once the industry embraces the concept that organizational success is tied to attorney well-being, this pricing should become part of the rating structure. A well-being profile, while likely defined carrier-to-carrier, should reflect a list of best practices, some of which are found in the law firm section of this report, such as mandatory vacations, an established well-being committee, procedures to monitor work addiction or poor self-care, and emphasizing a service-focused mission. As numerous studies have also shown, being in nature can improve mental health; Hawai'i law firms in particular, with such year-round availability to nature, can incorporate this component of mental health by allowing the time and freedom, where appropriate, for attorneys to embrace nature. Certain meetings could be scheduled outside, on walks, or at times to allow for an afternoon break to enjoy the outdoors.

Carriers can help educate law firms, through risk management presentations, that well-being drives operational success, and may also then incentivize such policy through providing the immediate benefit of decreasing an insurance premium.

The Task Force therefore recommends that a newly formed HSBA Well-Being Committee further explore this NRR.

#### **43. Collect Data When Lawyer Impairment Is a Contributing Factor to Claims Activity.**

**NRR.** The National Report states:

LPL carriers traditionally track claims based on area of practice or the nature of the error. LPL carriers do not ordinarily track when substance abuse, stress, depression, or mental health are suspected to be contributing factors to the underlying claim. This is primarily due to the fact that most

LPL claims adjusters, usually attorneys by trade, lack sufficient (or usually any) clinical training to make such a determination. That being said, anecdotal evidence suggests the impact is substantial. Thus, LPL carriers should consider whether a "common sense" assessment of instances where attorney impairment is suspected to be a contributing factor to the underlying claim. Such information would be helpful to lawyer assistance programs and as an important data point for what bar counsel or disciplinary units similarly see when investigating bar grievances. LPL carriers are in a prime position to collect data, share such data when appropriate, and assess the manner in which lawyer impairment has a direct correlation to claims activity.

**Hawai'i Recommendation.** As noted in the National Report, LPL carriers traditionally track data surrounding claims based upon criteria such as the Area of Practice from where the claim arises and the cause of the loss. Hawai'i LPL carriers also do not universally track when substance abuse, stress, depression, or mental health (well-being issues) are suspected to be contributing factors to the underlying claim.

While in theory, LPL carriers seem to be in a prime position to collect and share such data when appropriate, as well as to assess the way lawyer impairment has a direct correlation to claims activity, some factors to consider are as follows:

- The report may be presuming far more information is known to the individual claims person or carrier than what is actually known during the course of most claims. Even if a claims person suspects they are dealing with an attorney with a well-being issue, they are not in a position to expertly diagnose it. Attorneys are experts at masking individual well-being issues and the actual time that the claims person spends talking to an insured is minimal in the grand scheme of such issues.
- Law firms may report a claim arising out of a clear breach of duty without any knowledge that the root cause was a well-being issue. There will likely be under-reporting of the well-being component simply because lawyers are so good at masking issues and are reluctant to share these issues with colleagues. Often, the attorney that actually made the mistake is no longer with the firm.

- Law firms may actively choose to conceal the well-being issue from the carrier, due to fear of being viewed as a bad risk, as well as the current perceived stigma associated with some of these well-being issues. This is a rather sensitive topic and some partners will just prefer to eliminate that fact from the initial report.

Assuming that a law firm discloses the data, the carrier will then be tasked with collecting and reporting the data in a sensitive manner that protects the privacy of the law firm. If a carrier's coding process is not currently programed to collect the data, this may also be an impediment. As well-being issues become more important to the legal community, however, it is anticipated that law firm reporting is more likely to become transparent and carriers will evolve so that they begin tracking these important statistics.

Finally, LPL carriers are often called upon to support state Bar Programs, the American Bar Association, and other various organizations. LPL carriers can easily incorporate well-being initiatives and education through their support of such events:

- Demonstrate a Commitment to Well-Being. Carriers can provide support at conferences through well-being newsletters, links, or brochures to remind participants to take the time to devote to their own well-being. For example, a list of well-being podcasts, hotlines, and ideas to promote spending time with nature can assist. If there are other well-being initiatives offered at the conference, such as morning yoga or a 12-step program, the LPL carrier can highlight such features. Finally, the carrier can promote fun activities that do not involve alcohol use. Indeed, by providing this feedback to law firms that typically sponsor client events, we have seen the activities move beyond social hours and instead to featuring events such as Segway tours, boat trips, cooking classes, and historic walking tours.
- Deemphasize alcohol. LPL carriers can sponsor and encourage mocktails and other non-alcoholic drinks. For example, Westport is the Wellness Sponsor for the ABA's Legal Malpractice Seminars and sponsors beautiful mocktails that are advertised at the bars at social hours. There is, therefore, at least one



attractive non-alcoholic choice when attendees approach the bar.

The Task Force recommends that a newly formed HSBA Well-Being Committee further explore this NRR as well as the suggestions above.

## **RECOMMENDATIONS FOR LAWYERS ASSISTANCE PROGRAMS**

**NRR.** The National Report states:

Because lawyer assistance programs are so well-positioned to play a pivotal role in lawyer well-being, they should be adequately funded and organized to ensure that they can fulfill their potential. This is not consistently the case. While a lawyer assistance program exists in every state, according to the 2014 Comprehensive Survey of Lawyer Assistance Programs their structures, services, and funding vary widely. Lawyer assistance programs are organized either as agencies within bar associations, as independent agencies, or as programs within the state's court system. Many operate with annual budgets of less than \$500,000. About one quarter operate without any funding and depend solely on volunteers. The recommendations below are designed to equip lawyer assistance programs to best serve their important role in lawyer well-being.

**Hawai'i Recommendation.** As discussed below, at the current time, the Task Force has no additional recommendations with respect to our AAP program. However, as indicated in Section 40 above, the Task Force does recommend that a newly-formed HSBA Lawyer Well-Being Committee explore funding options from lawyers' professional liability carriers for the AAP.

### **44. Lawyers Assistance Programs Should Be Appropriately Organized and Funded.**

#### **44.1 Pursue Stable, Adequate Funding.**

**NRR.** The National Report states:

Lawyer assistance programs should advocate for stable, adequate funding to provide outreach, screening, counseling, peer assistance, monitoring, and preventative education. Other stakeholders should ally themselves with lawyer assistance programs in pursuit of this funding.

**Hawai'i Recommendation.** The HSCT's AAP is well positioned to continue meeting the recommendation to obtain stable,

adequate sources of funding. The AAP was established in 1989 as a result of then HSCT Chief Justice Herman Lum's attendance at the National Conference of Chief Justices. The HSCT decided that Hawai'i should join the growing ranks of American states, Canadian provinces and territories, and English shires that recognized that attorneys who are impaired for any reason injure their clients and the public perception of lawyers, judges, and our legal system.

Given its foundation, the AAP has strong allies with other stakeholders and receives stable funding. In particular, a portion of mandatory bar association fees are collected for the Program, such that all active and inactive members, including judges and government members, must pay the fee each year.

As Hawai'i meets this NRR, the Task Force has no additional recommendations regarding this NRR.

#### **44.2 Emphasize Confidentiality.**

**NRR.** The National Report states:

Lawyer assistance programs should highlight the confidentiality of the assistance they provide. The greatest concern voiced by lawyer assistance programs in the most recent CoLAP survey was under-utilization of their services stemming from the shame and fear of disclosure that are bound up with mental health and substance use disorders. Additionally, lawyer assistance programs should advocate for a supreme court rule protecting the confidentiality of participants in the program, as well as immunity for those making good faith reports, volunteers, and staff.

**Hawai'i Recommendation.** The AAP meets this recommendation, as confidentiality is the cornerstone of the Program. Any legal professional that seeks assistance can be assured that their information is privileged and will be held in the strictest confidence. Similarly, those who are concerned about a co-worker, family member, friend, or other legal professional are guaranteed the same confidentiality, pursuant to HSCT Rule 16.6.

RSCH Rule 16.6 protects the confidentiality of participants in the AAP, including volunteers, and applies to all of the AAP's programs, including its interventions and 12-step meetings:

(a) The identity of any person who provides information to the Director or Lawyer Volunteer Committee shall be confidential and shall not be subject to discovery or subpoena.

(b) All records and information maintained by the Director, the Lawyer Volunteer Committee or their agents, employees or members relating to matters that are being or have been reviewed and evaluated by the Director or Committee shall be confidential and shall not be revealed to the Board, the supreme court or any other person and shall not be subject to discovery or subpoena; provided, however, that the Director may compile and disclose to the Board statistical information, devoid of all identifying data, relating to the AAP.

(c) A participant in the AAP has a privilege to refuse to disclose and to prevent any other person from disclosing information provided to or maintained by the AAP. A "participant" shall include, but not be limited to, the Director, any employee or agent of the AAP, members of the Board, members of the Lawyers Volunteer Committee, and attorneys, judges, and law students seeking assistance under the AAP.

As Hawai'i meets this NRR, the Task Force has no additional recommendations regarding this NRR.

#### **44.3 Develop High-Quality Well-Being Programming.**

**NRR.** The National Report states:

Lawyer assistance programs should collaborate with other organizations to develop and deliver programs on the topics of lawyer well-being, identifying and treating substance use and mental health disorders, suicide prevention, cognitive impairment, and the like. They should ensure that all training and other education efforts emphasize the availability of resources and the confidentiality of the process.

Lawyer assistance programs should evaluate whether they have an interest in and funding to expand their programming beyond the traditional focus on treatment of alcohol use and mental health disorders. Some lawyer assistance programs already have done so. The 2014 Comprehensive Survey of Lawyer Assistance Programs reflects that some well-resourced lawyer assistance programs include services that, for example, address transition and succession planning, career counseling, anger management, grief, and family counseling. Increasingly, lawyer assistance programs are expanding their services to affirmatively promote well-being (rather than seeking only to

address dysfunction) as a means of preventing prevalent impairments.

This expansion is consistent with some scholars' recommendations for Employee Assistance Programs that encourage engagement in a broader set of prevention and health-promotion strategies. Doing so could expand the lawyer assistance programs' net to people who are in need but have not progressed to the level of a disorder. It also could reach people who may participate in a health-promotion program but would avoid a prevention program due to social stigma. Health-promotion approaches could be incorporated into traditional treatment protocols. For example, "Positive Recovery" strategies strive not only for sobriety but also for human flourishing. Resilience-boosting strategies have also been proposed for addiction treatment.

**Hawai'i Recommendation.** The AAP already meets this NRR because its scope goes beyond treatment of alcohol use and mental health disorders. The AAP provides educational outreach to raise awareness of the availability of resources while also emphasizing the Program's confidentiality. For instance, reaching members of the Judiciary is an important part of its mission. Judges are in a unique position to observe impaired attorneys and to confidentially refer them to the AAP. Judges, however, are just as susceptible to alcoholism, addiction, depression, stress disorders, and other impairments. The AAP is a member of the ABA CoLap Judicial Assistance Initiative that provides resources once a member of the Judiciary reaches out for help. It is important for the AAP to continually familiarize the Judiciary with the AAP and provide them with accessibility to the Program for themselves or when making referrals.

In addition, reaching out to law students to let them know about the AAP is an important part of its mission. Law school can be a stressful time and students often need assistance with stress, anxiety, alcohol abuse, and chemical dependency. The AAP reaches out to WSRSL students during student orientation and sometimes as part of ethics classes or other special events. The Director's goal is to help create the opportunity to reach each law student two or three times during each student's law school career. The AAP's goal is to make certain that students know that the AAP is a safe and available resource when they or their friends are faced with addiction and/or mental health issues - either while they are in school or later in their careers.

The AAP also speaks to attorneys upon being sworn in to the Hawai'i bar on various wellness topics, and raises awareness of wellness issues and the AAP's services. The AAP is included as a part of the RCSH Rule 1.14 Mandatory Professionalism Course for new bar admittees.

With the increase of women in the legal profession, the AAP continues to reach out to this demographic, as well as provide an environment that supports women participating in the AAP.

In addition, the Program meets the recommendations described above by providing a wide range of services that affirmatively promote well-being, in addition to services that address treatment. The AAP serves the needs of the Hawai'i community by providing a breadth of services, including the following:

- Unlimited access by phone to the AAP Executive Director
- Assessment of problems
- Information and referral to appropriate health professionals and facilities
- Peer support
- Alcohol, drug, and crisis intervention
- Education, emotional support, and guidance for persons of concern and concerned others
- Case management
- Support group meetings
- Mindfulness meditation sessions to mitigate stress and improve health

Further, the AAP provides a number of outreach and educational sessions to the community, as described above. The AAP also gives Continuing Legal Education programming throughout the year on such topics as attorney well-being and on ways to handle stress. The AAP's office is always available as a safe and supportive space, and as part of the AAP's health-promotion, the AAP offers a meditation room that bar members can use, and volunteers provide guided Mindfulness Meditation sessions. The AAP holds weekly Lawyer's Meetings and Professionals Meetings, and it holds Women Professionals Meetings, Al-Anon, and Lawyer Mentoring meetings upon request.

As Hawai'i meets this NRR, the Task Force has no additional recommendations regarding this NRR.

#### **44.4 Lawyer Assistance Programs' Foundational Elements.**

**NRR.** The National Report states:

All lawyer assistance programs should include the following foundational elements to provide effective leadership and services to lawyers, judges, and law students:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals;
- A well-defined program mission and operating policies and procedures;
- Regular educational activities to increase awareness and understanding of mental health and substance use disorders;
- Volunteers trained in crisis intervention and assistance;
- Services to assist impaired members of the legal profession to begin and continue recovery;
- Participation in the creation and delivery of interventions;
- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities; and
- A helpline for individuals with concern about themselves or others.

**Hawai‘i Recommendation.** As explained above and as discussed below, the AAP meets this NRR, as its strong foundational elements allow the Program to reach a range of individuals and provide a variety of services that promote well-being.

Roles within the AAP. The AAP is structured with well-defined roles. Within the organization, the AAP Board of Directors consists of HSBA members who are both knowledgeable and interested in the goals and objectives of the AAP. Board members are appointed by the HSCT to fill three judge seats and six attorney seats. Within the scope provided by the HSCT, the committee sets policy for the program and develops and oversees its administration, pursuant to HSCT Rule 16.2.

The Director coordinates the administration of AAP to ensure that its mission statement and purpose are known and met with, by, and through, each lawyer, judge, law student, law firm, the HSBA, the HSCT and its components including the

Judiciary, the ODC, the Board of Examiners, and the WSRSL, pursuant to HSCT Rule 16.3. The AAP Director has been trained as a substance abuse counselor and has trained volunteers on a breadth of mental health issues facing the legal community.

The AAP Administrative Assistant works with the Director to support and coordinate all aspects of the Program. The AAP accountant is an independent contractor who prepares reports and provides financial information to management by researching and analyzing accounting data.

The AAP's Mission and Operating Policies and Procedures.  
The mission of the AAP is to provide immediate and continuing confidential assistance to attorneys who practice law in the State of Hawai'i, judges of the courts of the State of Hawai'i, and law students of the WSRSL who suffer from problems, disability or impairment which affect their professional performance for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity. Professional performance is affected when an attorney, judge, or law student is incapable of devoting the time and attention to, and providing the quality of service in, his or her law practice, judicial duties, or law studies which is necessary to protect the interest of a client, litigant, or law school career.

The AAP's policies and procedures are set forth in its Program Goals and Guiding Principles. The AAP's Program Goals are as follows:

- To assist in the identification of legal professionals who may be troubled;
- To assist AAP clients in their personal recovery from addiction, physical or mental health conditions;
- To educate the legal community on identification, assessment, referral, treatment and community-based resources available to meet the needs of judges, lawyers, law students and their families;
- To provide a network of lawyer volunteers who are available to respond to the needs of AAP clients through a peer assistance model;
- To monitor and assist clients while they work to gain admission to practice law, rehabilitate and

return to the practice of law, to the bench or to a better quality of life;

- To establish and maintain a cooperative relationship with the HSCT, the ODC, the Board of Examiners, and the legal community at large.

The AAP Guiding Principles are as follows:

- The program is motivated by a humanitarian and professionalism concern for the legal community and the public;
- Addiction, mental health concerns and physical disabilities should not be ignored and are conditions from which recovery to a state of fitness to practice law is usually possible, with work;
- Impaired judges and lawyers are obligated to seek assistance and to participate in services necessary to renew their full effectiveness as a lawyer, judge or other legal professional;
- All licensed lawyers and judges have the ethical responsibility to recognize the signs and symptoms of a colleague who may be impaired and to assist the colleague in accessing appropriate services.

Educational Activities. As discussed above in Section 44.3, the AAP offers a number of educational activities and services to increase awareness and understanding of mental health and substance use disorders.

Trained Volunteers and Services. The AAP offers the services of the Director and volunteers, all of whom are thoroughly trained, to assist impaired members of the legal profession in beginning and continuing recovery. The AAP provides support, education, guidance, emotional support, peer support, professional health referrals for substance abuse or dependence, mental health problems, family and/or relationship problems, and work-related issues, as needed. The AAP strives to assist the client in finding the resources needed to address his or her problem or impairment.

The stages of the AAP's case management process are as follows:

1. Investigation - Initial contact with the Director begins with a client self-referral, third party



referral, law firm referral, family referral, judge's referral, law school referral, or ODC referral. All efforts at this stage are directed to determining whether the client has a problem that AAP can refer to health professionals, or directly assist, the nature of the problem, and whether the client is willing to accept assistance, or whether intervention is necessary.

2. Treatment, Intervention, and Recovery Work - This phase begins when a client accepts that he or she has a problem, agrees to work on recovery upon intervention, accepts assessment and diagnosis of a referred health professional, or accepts the education, guidance, emotional and peer support, and referral to appropriate treatment providers.
3. Monitoring and Aftercare - This begins when the client has completed inpatient/outpatient treatment or initial therapy consultations and is stabilized. In this stage, the volunteer support and AAP group support is most active and helpful.
4. Inactive Status - A file is placed on inactive status when the role of AAP terminates by way of monitor completion of contracted period and/or no longer needs monitoring, if the client moves out of state or dies, or if the client no longer wants assistance.

The Director provides an immediate response and ongoing support, and is always on-call 24/7 to provide immediate assistance. The Director and volunteers are trained in crisis intervention, and cover a wide range of areas, including assistance in winding down an attorney's practice. The AAP has a designated group of people who have come through the program and now serve as volunteers, and know how to set up an intervention. The volunteers are trained on how to contact an individual's family and/or friends and get them set up with a substance abuse center. There are volunteers who can quickly step in on the neighbor islands if the Director cannot get there in time.

The AAP does not provide treatment to impaired attorneys, judges, or law students, but rather utilizes a breadth of community resources to respond to the individual needs of its

clients. The AAP provides guidance and referrals to health professionals and facilities, and can set up individuals at a treatment center and also assist with outpatient programs. The AAP also offers 12-step meetings for lawyers and professionals as part of its aftercare.

In addition, the AAP monitors individuals on behalf of the ODC, law firms, family, interventions, and from clients who voluntarily come into monitoring. The AAP will not disclose any information about any impaired attorney to anyone without that attorney's written consent. The AAP will not report any lawyer to the disciplinary authorities. In cases that the ODC refers a client to the program, the only communication regarding the client is whether or not the client is cooperating and participating with the program, and/or whether the person successfully completed the program. Files for monitored clients are the only files the AAP retains, and such files are only retained during the duration of the contract.

The monitoring program uses the client's self-diagnosis and/or the diagnosis of a professional such as an addiction specialist, doctor, psychiatrists, or psychologist. The client may utilize their personal psychiatrist or psychologist, or one will be referred by the AAP Director to assist the client to accept that the client is in fact impaired and identify any and all impairments that may impact fitness to practice law and lead a healthy life.

The monitoring program's standards were developed by and in consultation with the physicians and psychiatrists of the Hawai'i Physician's Health Committee, now called Pu'ulu Lapa'au. The goal of the monitoring program is to hold lawyers accountable to their own program of recovery to achieve fitness to practice law and live a healthy and emotionally supported lifestyle. In some cases, the goal of monitoring is to ensure retirement and closure of an attorney's practice with dignity that satisfies both the attorney's clients and the courts.

Helpline. The AAP provides a confidential helpline where individuals can call or email and ask for advice either on behalf of others or themselves. Large law firms can also consult and coordinate with the AAP in seeking advice and/or in preparing for an intervention. The Director may approach individuals if others do not feel comfortable. If there is any concern with respect to any topic, the Director is available and can provide a number of available resources. The AAP may refer individuals to different counselors or psychiatrists, either

male or female, depending on the individual's preferences. The AAP maintains an updated list of, and is in constant contact with, different treatment programs; this allows the AAP to quickly assist individuals with licensed professionals.

The AAP's strong foundation demonstrates that the organization is well positioned to serve a significant and pivotal role in lawyer well-being, and is adequately funded and organized to ensure that it can fulfill its potential.

As Hawai'i AAP meets this NRR, the Task Force has no recommendations regarding this NRR.

## CONCLUSION

**NRR.** The National Report states:

This Report makes a compelling case that the legal profession is at a crossroads. Our current course, one involving widespread disregard for lawyer well-being and its effects, is not sustainable. Studies cited above show that our members suffer at alarming rates from conditions that impair our ability to function at levels compatible with high ethical standards and public expectations. Depression, anxiety, chronic stress, burnout, and substance use disorders exceed those of many other professions. We have ignored this state of affairs long enough. To preserve the public's trust and maintain our status as a self-regulating profession, we must truly become "our brothers' and sisters' keepers," through a strong commitment to caring for the well-being of one another, as well as ourselves.

The members of the National Task Force for Lawyer Well-Being urge all stakeholders identified in this report to take action. To start, please review the State Action Plan and Checklist that follows in Appendix A. If you are a leader in one of these sectors, please use your authority to call upon your cohorts to come together and develop a plan of action. Regardless of your position in the legal profession, please consider ways in which you can make a difference in the essential task of bringing about a culture change in how we, as lawyers, regard our own well-being and that of one another. As a profession, we have the capacity to face these challenges and create a better future for our lawyers that is sustainable. We can do so—not in spite of—but in pursuit of the highest professional standards, business practices, and ethical ideals.

**Hawai'i Recommendation and Conclusion.** Recognizing the sobering truths of the unique problems regarding well-being that beset the legal profession, Chief Justice Recktenwald convened and ordered this Task Force and Report. The Task Force appreciates the opportunity to learn so much about these issues and support many of the worthwhile recommendations made in the National Report, as more specifically discussed above, and has tailored some recommendations for Hawai'i's circumstances, as reflected in this Report.

The Task Force strongly agrees that the Hawai'i legal profession is at a crossroads with respect to how we will address well-being going forward. The COVID-19 pandemic has highlighted the importance of well-being issues, and provided a

turning point for us to envision a positive, mutually supportive profession in which all members can lead balanced lives and thrive, not just financially, but also physically and emotionally.

We encourage all stakeholders to carefully review this Report and begin implementing its recommendations, as deemed appropriate.

As indicated in Section 3, we first recommend that Chief Justice Recktenwald, HSBA President Levi Ho'okano, and Dean Camille Nelson of the University of Hawai'i William S. Richardson School of Law expeditiously issue a joint or separate press release(s) acknowledging receipt of this Report and committing the Judiciary, the HSBA, and the WSRSL to prioritizing well-being and to carefully considering the recommendations in the Report in the interests of the community we serve.

We also recommend that the HSBA Board and President Levi Ho'okano expeditiously begin the process of forming a HSBA Well-Being Committee, as recommended in Section 38 above, which can be tasked with following up with many of the recommendations pertaining to the bar.

It is time for the legal profession to undergo positive changes. We stress how critical it is for leaders within the legal profession, including leaders of law firms and public and private legal organizations, to become familiar with the well-being issues discussed in this Report and with the recommendations in this Report. We encourage the legal profession implement the recommendations, as relevant. Change requires leadership and leaders must set good examples. The Hawai'i bar has many leaders who do so, but there must be more buy-in to the importance of well-being. Thus, the Task Force encourages leaders to set good examples of the importance of prioritizing well-being. This Report contains many recommendations on how to do so.

Finally, the Task Force again wishes to express its deepest appreciation to Chief Justice Recktenwald for recognizing and stressing the importance of lawyer well-being, especially by establishing this Task Force and ordering this Report, which we hope will serve as a touchstone for true change towards well-being in the Hawai'i legal profession. We also greatly appreciate Chief Justice Recktenwald's willingness to meet with leaders of law firms and legal organizations, to encourage adoption of the recommendations of this Report.

DATED: Honolulu, Hawai'i, June 1, 2021.

HAWAI'I TASK FORCE ON LAWYER WELL-BEING, By Its Co-Chairs:

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