

# Tackling the Mental Health Crisis in the Legal Profession

Breaking the Silence, Removing the Stigma, and Providing the Resources

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There is a mental health crisis in the legal profession, both nationally and in New Jersey. Many attorneys struggle with depression, anxiety, and burnout. It is a high-pressure field of work, which is often lacking in flexibility and work-life balance. While mental health challenges in the legal profession have existed for years, it is only recently gaining more visibility and attention. There are growing efforts to study and address the crisis, but there is still a long road ahead. Fortunately, there are also increasing resources to support attorneys who need help in these areas. The issues are of critical importance to the legal profession. When attorneys are well and thriving, they are in the best position to fulfill their clients' expectations and their ethical obligations.

## National Efforts/ABA Study and ALM Study

In 2017, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation jointly published a study (ABA 2017 Study) of almost 13,000 practicing lawyers across 19 states on lawyer well-being issues.<sup>1</sup> The findings included that 28% of the participants experienced some level of depression, 19% experienced some level of anxiety, and 23% experienced some level of stress.<sup>2</sup> The study found that lawyers in their first 10 years of practice, as well as those working in private firms, had the highest rates of depression and drinking problems.<sup>3</sup> An astounding 44% of participants felt that mental health and substance abuse problems in the legal profession were “at crisis levels.”<sup>4</sup>

Following the ABA 2017 Study, in 2021 *The American Lawyer* conducted a survey, *ALM’s 2021 Mental Health and Substance Abuse Survey* (2021 ALM Survey), finding that 37% of survey participants reported feeling depressed, 71% reported feeling anxiety, and 14% reported that they suffered from a different mental illness.<sup>5</sup> These numbers had increased from the

previous year.<sup>6</sup> The COVID-19 pandemic only exacerbated the problems in the legal profession, causing disproportional mental health struggles.<sup>7</sup>

## New Jersey Efforts/Putting Lawyers First Task Force Report

When it comes to the prevalence of mental health issues among attorneys, the New Jersey legal community is no exception.<sup>8</sup> The problem is so pervasive that the New Jersey State Bar Association’s (NJSBA) Putting Lawyers First Task Force (PLF) published *A Comprehensive Report and Recommendations on How to Improve the Legal Profession for Lawyers* (PLF Report) in February 2023 to get to the root cause of the problem surrounding mental health and substance abuse issues for lawyers in New Jersey. The PLF Report is largely meant to provide real solutions in order to achieve real results for the well-being of lawyers in New Jersey.<sup>9</sup>

The PLF Report includes a 90-question survey (PLF Task Force Survey) conducted in November 2022 confirming this statement. The survey includes responses from 1,643 New Jersey lawyers on their health and well-being.<sup>10</sup> Overall, New Jersey “attorneys are experiencing a decline

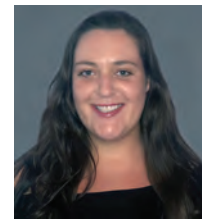
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in health and well-being in comparison to other professionals.”<sup>11</sup> The survey uncovered some alarming results. For example, 28% of the participants said they are considering leaving the legal profession altogether, which is higher than in other working populations.<sup>12</sup> Survey participants reported burnout, depression (3.5 times higher than other working populations), suicidal thoughts (three times higher than other working populations), substance abuse disorders (alcohol misuse was six times higher than other working populations), and anxiety (five times higher than other working populations).<sup>13</sup> The report found that 56% of the New Jersey attorneys that responded reported a high prevalence of alcohol misuse.<sup>14</sup>

### Why all the Problems?

Law is a demanding profession, and a large part of the issue is that lawyers rarely put themselves first. Attorneys often prioritize the courts and their clients, as well as their firms and their families.<sup>15</sup> Additionally, the PLF Task Force Report cited that many lawyers cannot disconnect from their work and have a lack of boundaries to take “down time” and feel uncomfortable taking time off to address well-being.<sup>16</sup>

A frequently cited problem that lawyers face, especially younger lawyers, is the lack of work-life balance. According to a survey of about 1,600 lawyers by Major, Lindsey & Africa (MLA) and Above the Law (MLA Survey), the top priorities among millennials when evaluating a potential employer is work-life balance and compensation.<sup>17</sup> However, over half of the participants said they will give up compensation for reduced billable hours or more time off.<sup>18</sup> Work-life balance is more than just working less hours, it is also about flexibility on when to work those hours.<sup>19</sup> Associates are often allowed little flexibility and little control over their workday, which over a long period of time is hard to deal with.<sup>20</sup>

The PLF Report identified several factors contributing towards anxiety, depression, and burnout, including:

- A lack of boundaries between work and personal life;
- Expectation to be available outside of normal business hours;

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- Feeling isolated at work;
- Lawyers (39%) not taking or feeling comfortable taking time off to address well-being (these lawyers are 10 times more likely to report feeling burnout than lawyers who are more comfort-

able taking time off);

- Lawyers under 34 years of age were four times more likely to report depression than lawyers over 65 years of age;
- Lawyers who work between 6-10 hours on the weekend were more likely to report depression than lawyers who work 1-5 hours.<sup>21</sup>

Around 74% of participants reported having to work on the weekends, and 51% of participants believe that they are frequently or always expected to be available outside of normal business hours by their employers, while 29% believe that these expectations are frequently or always interfering with their personal lives.<sup>22</sup>

The struggles with work-life balance, and other concerns are often more pronounced for women lawyers. In August 2022, the Rutgers Center for Women and Work published a report entitled, *Women in Private Law Firms: Slow Progress on Equality of Promotion and Compensation*, which showed that, while women have been entering law firms for decades in greater numbers, many of them are choosing to leave the practice of law. In addition to concerns about bias and unequal pay, this is also frequently due in part to dissatisfaction stemming from time demands and integration of work and family.<sup>23</sup> Recent studies have suggested that women experience higher rates of mental health issues, stress, and burnout.<sup>24</sup> The Rutgers Law School International Human Rights Clinic launched a cutting-edge study into the many challenges facing women lawyers in a wide array of sectors to find solutions that will create meaningful change.<sup>25</sup>

Race, like gender, plays a role in the experiences of lawyers. At the time of the PLF Report, a statistically significant relationship was found between lawyers who reported their credentials being questioned and both race and gender.<sup>26</sup> Women were two times more likely than

men to be questioned about their credentials, while 30% of Hispanics and 41% of Black people reported having their credentials questioned, as opposed to only 17% of white people.<sup>27</sup> The PLF Task Force has done limited analysis of this issue, and concludes that it would be important to report on the analysis of “the relationships between all well-being measures and its impact on diverse attorneys.”<sup>28</sup>

One potential cause of mental health issues among marginalized individuals can be due to microaggressions.<sup>29</sup> Microaggressions correlate with greater anxiety and alcohol abuse.<sup>30</sup> Moreover, people who experience microaggressions regularly can also experience anger, confusion, anxiety, hopelessness, frustration, fear, and paranoia that can all lead to poor coping mechanisms, including denial and substance abuse.<sup>31</sup> A 2018 study conducted by LeanIn.org found that 64% of women experienced microaggressions. Members of the LGBTQ community are further affected: 71% of lesbians have experienced microaggressions at work, and gay men are more likely to hear demeaning remarks about themselves or people like them.<sup>32</sup> A 2006 ABA study showed that 47% of white women, 49% of women of color, and 34% of men of color experienced demeaning comments or harassment.<sup>33</sup>

A significant volume of work, coupled with high billable hour requirements, also contribute to the challenges with mental health and well-being. One participant from the 2021 ALM Survey stated that the “obsession” over billable hours and 24-hour availability expected of associates while working remotely has to change and that associates “feel on-call at all hours.”<sup>34</sup> The PLF Task Force Report indicated that lawyers who reported working 15–20 additional hours on average per week were six times as likely to report depression than lawyers who reported rarely or never working additional hours.<sup>35</sup> Additionally, lawyers who reported taking five or less days of vacation were six times as likely to report

depression than those with more than 20 days of vacation.<sup>36</sup>

The 2021 ALM Survey reported on law firms trying to address and fix the problem of declining mental health and well-being in the workplace, with 54% of participants saying their firm was trying to make a greater commitment to mental health.<sup>37</sup> Some examples of their efforts include yoga sessions, therapy and medi-

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tation, bringing in mental health professionals to give advice, and time periods where screen time and internal meetings were restricted so that employees may get outside while it’s still light out.<sup>38</sup> However, some participants felt their firms’ efforts were disingenuous, providing examples of online coffee meetings to

discuss mental health and well-being which they believed were unlikely to elicit any meaningful change.<sup>39</sup>

## Recommendations and Resources

### Recommendations

The PLF Attorney Health and Well-Being working group has included recommendations based on survey findings to help remove stigmas and to increase well-being for New Jersey lawyers. These recommendations include, but are not limited to, the following:

#### *Beginning a State-Wide Conversation About Attorney Well-Being*

- Encouraging wellness needs to include personal, cultural, and systemic changes that address the stigma and attitudes working against well-being.<sup>40</sup>

#### *Outreach and Education*

- Identifying needs and educating judges, lawyers, and law school students about stress, pitfalls, and the resources available for them to address problems and promote wellness.<sup>41</sup>

#### *Law Firms*

- The well-being of law firm employees is essential to the success of the firm.<sup>42</sup>

#### *Board-Approved CLE*

- Continuing legal education state-wide to provide essential information about wellness issues.
- Provide free, or low-cost CLE programs on mental health and wellness topics.<sup>43</sup>

#### *Bench-Bar Relations*

- Conduct a well-being survey for the judiciary;
- Provide programming for judges and staff on well-being;
- Educate the judiciary on topics such as reducing stigma, spotting trouble, and temperament; and
- Continue virtual appearances for court events.<sup>44</sup>



### *Law Schools*

- Address law students at each level of law school on professional responsibility, the demands of practice, well-being, etc.;
- Provide speakers on well-being;
- Provide information to law students on identifying problems and the resources available to them; and
- Incorporate wellness into the law school curriculum.<sup>45</sup>

### *Partnering with Third Parties*

- Explore the ways to offer discounts for fitness programs/gyms, group health insurance benefits to solo practices/small firms, and mental health services.<sup>46</sup>

### *Centralizing and Coordinating Well-Being Efforts*

- Establishing an on-going Lawyer and Judicial Well-Being Task Force under the Administrative Office of the Courts.<sup>47</sup>

### *Further Survey Analysis*

The current survey analysis only focused on six areas: burnout, depression, suicidal ideation, problem drinking, isolation, and anxiety. PLF is supportive of any further survey analysis.<sup>48</sup>

### *Adjust Bar Application Character and Fitness Questionnaires that Perpetuate Problems*

One problem that persists is that bar admission questions often prevent law students and future lawyers from seeking help, fearing that disclosure of any mental health issues, or addictions to a character committee could deem them unfit to practice. For example, Question 12B of the New Jersey Character and Fitness Questionnaire previously read:

Do you CURRENTLY have any condition or impairment (including but not limited to substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or con-

dition) that in any way affects your ability to practice law in a competent, ethical and professional manner and in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable case law?

If yes, please describe any ongoing treatment programs you receive to reduce or ameliorate the condition or impairment.<sup>49</sup>

However, on Sept. 19, 2023, the New Jersey Supreme Court ruled to change the Character and Fitness Questionnaire on the New Jersey Bar. The PLF's Attorney Well-Being working group prompted this rule change by asking the Supreme Court of New Jersey to eliminate question 12B entirely. Instead, they updated the preamble, which now reads:

Section 12 addresses recent conduct or behavior that could call into question a candidate's ability to practice law in a competent, ethical, and professional manner, meaning in compliance with the Rules of Professional Conduct, the Rules of Court, and applicable authority.

Section 12's inquiry includes, but is not limited to, conduct and behavior related to a candidate's mental health, addiction or dependency, or other condition. The purpose of these questions is to determine the current fitness of an applicant to practice law. To that end, a candidate need not disclose any conduct or behavior related to a mental health diagnosis, addiction, or condition that is or has been treated effectively under the care of a health care provider or other medical professional, or through consistent participation in an established treatment program.

The Supreme Court and the Committee on Character encourage candidates to seek support and treatment, and candidates should not view the attorney licensure process as a deterrent to pursue treatment. The Committee regularly recommends licensing of individuals who have demonstrated personal responsibility and maturity in dealing with mental health, addiction,

and dependency matters.

This guidance applies to Question 12A. Candidates must provide full and complete responses to all other questions in the Character and Fitness Questionnaire, including Section 8B (regarding criminal charges).<sup>50</sup>

They also reframed the question itself, which now reads:

B. Within the past five (5) years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure?

If you answered "yes" to this question, furnish a thorough explanation in the space provided, and upload related documentation through your User Home Page after submitting the Character and Fitness Questionnaire on-line. Detailed instructions for uploading documents are available in Section 1A of this Questionnaire.<sup>51</sup>

The changes became effective on Oct. 1, 2023. These changes limit what bar applicants need to disclose about any mental health conditions. Now, the question is "narrowed to ask about past conduct and behavior as opposed to mental health treatment or diagnosis."<sup>52</sup> New Jersey joins 26 states where question 12B has either been eliminated, modified, or never used on applications for the bar.<sup>53</sup>

This question has done more harm than good as it has been said to stop future lawyers from getting help. Before, law students were told not to get any help for their mental health and well-being as that information would have to be disclosed.<sup>54</sup> The changes will now help advance the mental health and well-

being movement forward and allow the focus to be on the applicant's conduct opposed to their mental health treatment or diagnosis.<sup>55</sup>

### **Encourage Use of Resources to Help**

There are several organizations and resources to help address mental health challenges in the legal profession.

- Nationally, the ABA has a website with links for mental health assistance: [americanbar.org/groups/lawyer\\_assistance/resources/covid-19—mental-health-resources/](http://americanbar.org/groups/lawyer_assistance/resources/covid-19—mental-health-resources/);
- The Institute for Well-Being in the Law also has a website focused on mental health resources available to lawyers: [lawyerwellbeing.net](http://lawyerwellbeing.net);
- Additionally, the National Alliance on Mental Health has a general website to learn more about mental illness and find support: [nami.org](http://nami.org).

Resources are available to help New Jersey lawyers who are or know someone who is struggling with mental health and substance use issues. The New Jersey Lawyers Assistance Program (NJLAP) is among these resources. NJLAP is a free and confidential, independent mental health and well-being resource for anyone in the New Jersey legal profession, including lawyers, judges, law students and law graduates.

The goal of NJLAP is to help people within the New Jersey legal profession achieve well-being both personally and professionally. NJLAP offers assessments, referrals for resources on substance abuse and mental health, ongoing support, prevention and education programs, mental-health related news and updates as well as a newsletter focusing on “balance.” They also offer CLEs and YouTube programs addressing topics from “Working with Difficult Clients” to “Coping with Depression.” For more information on NJLAP visit [njlap.org](http://njlap.org) or get in touch with the program if you need help by

calling 800-246-5527 or sending an email to [info@njlap.org](mailto:info@njlap.org).

The New Jersey Supreme Court has approved amendments to the rules regarding NJLAP, specifically to Rule

...question [12B] has done more harm than good as it has been said to stop future lawyers from getting help. Before, law students were told not to get any help for their mental health and well-being as that information would have to be disclosed. The changes will now help advance the mental health and well-being movement forward and allow the focus to be on the applicant's conduct opposed to their mental health treatment or diagnosis.

1:20-9 and Rule 1:28B-3.<sup>56</sup> Previously, the court rules enabled lawyers to directly seek help from NJLAP, but they did not allow a third party, such as a concerned colleague, family member or friend to confidentially refer a law professional that may need help in order to establish a

connection between the two.<sup>57</sup> The amendments to the rules facilitate third-party referrals to NJLAP.<sup>58</sup> Recommendations for the amendments included that confidential referrals can be made when an investigation by the Office of Attorney of Ethics finds there is reasonable cause to believe the respondent can benefit from NJLAP, as well as allow NJLAP to directly contact the lawyer.<sup>59</sup>

Additionally, the NJSBA Member Assistance Program connects members and their families to mental health professionals, and includes in-person counseling sessions (three per issue), and unlimited phone, text, and email support.<sup>60</sup> Additionally, members of the NJSBA have access to a self-help wellness library with interactive resources that are available to help both employees and families. Some resources include: a training center to build skills for professional and personal growth; an emotional well-being resource center; health risk assessments; health videos; and recipes. Access the self-help wellness library at [charlesnechtem.com/the-wellness-library/](http://charlesnechtem.com/the-wellness-library/).

### **Conclusion**

Mental health and well-being issues are pervasive and widely felt in the legal profession. Ignoring mental health awareness and treatment has a detrimental impact on lawyers, their families, and their clients. It is encouraging to see these issues finally getting attention, but the conversation must continue. To make the legal profession better for everyone, mental health issues must be de-stigmatized, lawyers must be encouraged to seek help when needed, and the profession must become more understanding and inclusive of individuals with mental health related issues. Overall, it is important to continue learning what causes these issues to become rampant in the legal profession and changes need to be implemented to elicit meaningful and long-lasting progress. ■

## Endnotes

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