

ARTICLE

# Lawyers' Health and Well-Being

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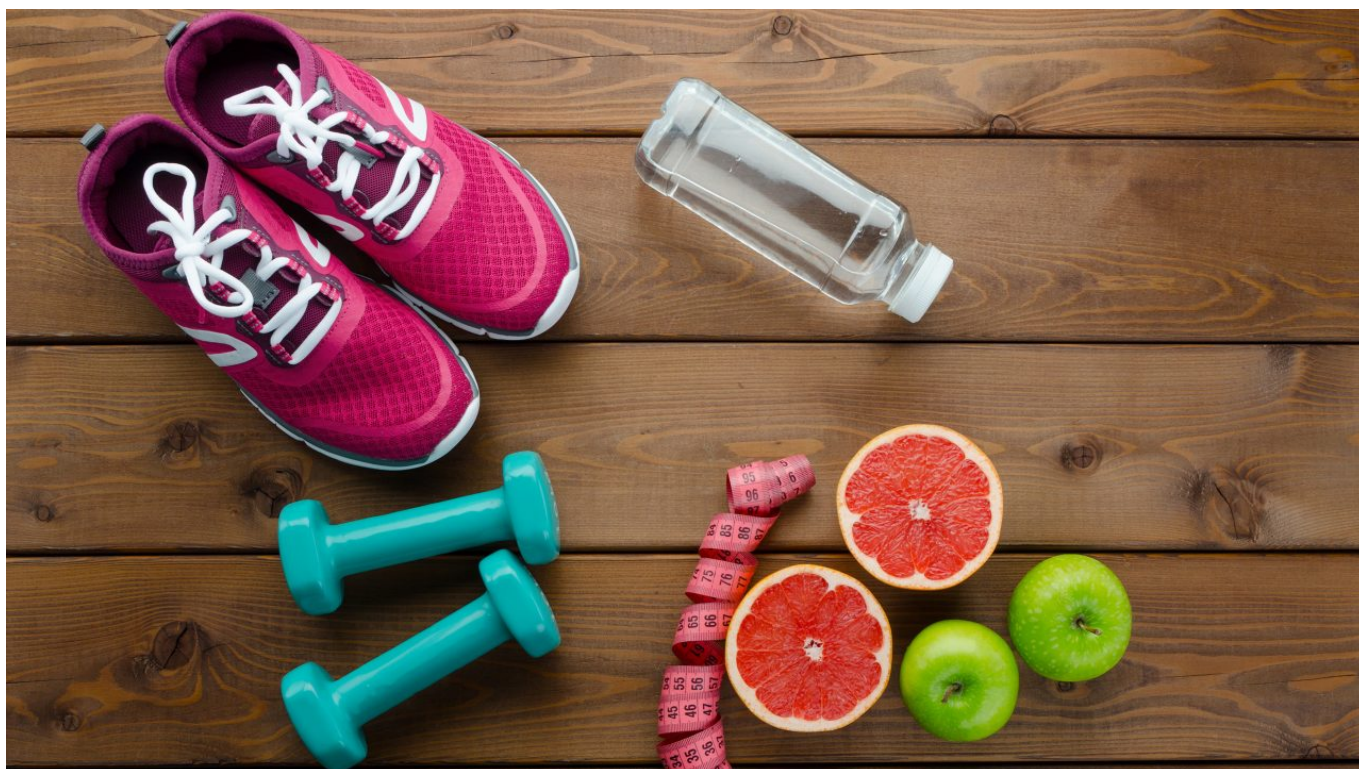
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K-Paul via Getty Images

*Self-love, my liege, is not so vile a sin / As self-neglecting.*

—William Shakespeare, *Henry V*, Act 2, Scene 4

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analysis, is being a lawyer. (Andrew Van Dam, [The Happiest, Least Stressful, Most Meaningful Jobs in America](#), Washington Post (Jan. 6, 2023).)

## The Crisis in Lawyer Wellness

Solid science supports the American Bar Association's founding in 2016 of a National Task Force on Lawyer Well-Being. For decades, studies have demonstrated unacceptably high rates of depression, anxiety, problematic drinking and other substance abuse, and burnout among U.S. lawyers and law students. In August 2017, the Task Force published a groundbreaking report entitled "[The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#)" (the 2017 Report). The Task Force itself realized that for its efforts to bring about improvement, it needed to develop a permanent model. To that end, the Institute for Well-Being in Law was formed in December 2020. This is its mission statement:

The Institute for Well-Being in Law (IWIL) is dedicated to the betterment of the legal profession by focusing on a holistic approach to well-being. Through advocacy, research, education, technical and resource support, and stakeholders' partnerships, we are driven to lead a culture shift in law to establish health and well-being as core centerpieces of professional success.

AM. BAR ASS'N NAT'L TASK FORCE ON LAW. [WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE](#) (Aug. 14, 2017).

According to the 2017 Report, at least 21 percent of lawyers are problem drinkers. Moreover, approximately 28 percent, 19 percent, and 23 percent struggle with some level of depression, anxiety, and stress, respectively.

In addition, lawyers die by their own hand at an alarming rate. (Rosa Flores & Rose Marie Arce, [Why Are Lawyers Killing Themselves?](#), CNN (Jan. 20, 2014).) In late 2018, Joanna Litt, the wife of 42-year-old Sidley Austin partner Gabe MacConaill, wrote a searing piece

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I would venture that, at various times and because of various difficulties we face during our careers, 100 percent of lawyers experience depression, anxiety, and stress at one time or another. Indeed, how could we not? We develop caring relationships with our clients, and none of us always wins for them. We suffer from “compassion fatigue,” comparable to post-traumatic stress disorder at a somewhat lower temperature. ([Compassion Fatigue](#), AM. BAR. ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS (last visited Feb. 19, 2023).) We take pride in our work, but we make mistakes all the time: We misunderstand our boss’s wishes. We fail to catch an error in a brief. We provide a carefully researched and well-written legal memorandum, but our analysis misses the mark. We fail to strike a juror whom we have misjudged during voir dire. We respond to a motion for summary judgment with a motion for extra time to conduct essential discovery but fail to include an affidavit pursuant to FRCP Rule 56(d). I don’t know a single lawyer who doesn’t suffer when she makes a stupid (even a meaningless) mistake or, worse, when the clients we care about experience legal setbacks or even lose a case. Even if a mistake is silly or ultimately unimportant, it takes an emotional toll. Every lawyer I know is too busy and overtaxed. And if she isn’t busy, she’s worrying why she isn’t. We are almost all “maladaptive perfectionists.” We want to produce superb work product, and we want our clients to win. When things don’t live up to our hopes (overlooking our absurd expectations), we suffer.

There are times that arise when it seems we *must* stop to consider how our work is impacting our health, but even when we must, it appears we simply can’t. In 2015, after a partner at Wilson Sonsini’s Silicon Valley office died of an infection typically affecting intravenous drug users, his ex-wife, Eilene Zimmerman, wrote about the events surrounding her ex-husband’s death. (Eilene Zimmerman, [The Lawyer, the Addict](#), N.Y. TIMES (July 15, 2017).) As her husband was being eulogized by an associate who was reduced to tears, “[q]uite a few of the lawyers attending [his memorial] service were bent over their phones, reading and tapping out emails. Their friend and colleague was dead, and yet they couldn’t stop working long enough to listen to what was being said about him.” (*Id.*)

One extraordinarily common effect of overwhelming mental suffering is neglecting our own health. We delay getting our annual mammogram or physical. If the

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As a result of my delay, I underwent two surgeries on my foot in 2022 (one just three days before Christmas), along with months of physical therapy and more to come.

In one graphic that separates out the various aspects of “well-being,” the 2017 Report includes in our physical health “striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances. Seeking help for physical health when needed.” Here’s my report card for 2022:

- **Striving for regular physical activity:** N/A due to broken toe
- **Proper diet and nutrition:** C+ (because who cares?)
- **Sufficient sleep:** B- (because new puppy)
- **and recovery:** I don’t even know what this means
- **Minimizing the use of addictive substances:** B- (should eliminate alcohol entirely but instead just “cut back”)
- **Seeking help for physical health when needed:** F (walked for four months on a broken toe)

And this is my report card despite the fact that my firm is exceptional in its care for and attention to wellness (or its absence) among its lawyers and staff.

## Stress and the Adversarial System

One contributing factor to our stress that seems immutable is that we work within the adversarial system. The following appears on the website of the North Carolina Lawyer Assistance Program:

As a lawyer, you are like a brain surgeon. Imagine the patient is laid out on the table in front of you. It is your job to operate and save his life. You are

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[Stress, Burnout and Balance](#), N.C. Law. Assistance Program (last visited Feb. 19, 2023).

The example is admittedly silly. It is, however, uncomfortably accurate. For every good thing I am trying to accomplish for a client, another lawyer—likely as knowledgeable as I, as smart as I, and as diligent as I—is using every tool he has to make sure I fail. In the context of the adversarial system, of course, gallons of ink have been spilled on the subject of why lawyers are frequently such . . . hmmm . . . let's call them "difficult people." During my research for this article, though, I was especially astounded at how much ink has been wasted in advising those of us who work with such "difficult people" to simply "suck it up," "live with it," and "just get over it."

Nope. Not my style. Years ago, I practiced until I perfected a defense mechanism to the verbal offenses launched at me by such "difficult people." I try my hardest to let them finish any tirade they begin without any protest or interruption from me. Let the vituperative nonsense flow. Then I quietly ask, "Are you okay?" My means of dealing with inappropriate behavior from opposing counsel, my superiors, or almost anyone is surprisingly effective. It often stops any nonsense in its tracks. If nothing else, it calls the attention of anyone who's watching to the aggressor's behavior, it forces a recognition that the conduct is unacceptable, and it unfailingly focuses the attention on them and removes it from me.

## Why Lawyer Wellness Matters

Why should lawyer wellness matter to us as a profession? Some of the answers to this question are painfully obvious. People who suffer from anxiety disorders worry disproportionately in comparison to the severity of the issues they worry about. They also share certain symptoms with individuals with depressive disorders, including undue fatigue, trouble sleeping or sleeping too much, and difficulty concentrating. People who are depressed experience feelings of sadness, tearfulness, emptiness, or hopelessness. They may exhibit angry outbursts, irritability, or frustration, even over small matters. They often lose interest in activities or hobbies that ordinarily would give them pleasure. They may have a reduced appetite and weight loss or, conversely, increased cravings for food

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decline. Worse, up to 80 percent of substance abusers suffer cognitive impairment. (See Carolien J.W.H. Bruijnen et al., [Prevalence of Cognitive Impairment in Patients with Substance Use Disorder](#), 38 DRUG ALCOHOL REV. 435 (2019).) The capacity of those with physical health issues is likewise diminished if only because their physical stamina and concentration are impacted by pain or even by the extra effort they must invest in the activities of daily living.

In short, when it comes to obtaining appropriate care for ourselves, a lot of us are failing. But why should lawyer wellness matter to us as a profession? The answer seems obvious: healthier workers are more productive. The absence of wellness—in whatever form—is damnably distracting. Moreover, lawyer wellness correlates directly with the bottom line. The financial well-being of an organization is at stake when its employees' well-being is in question. A compelling and ever-growing body of evidence tells us that attorneys' well-being, engagement, and positive work practices not only lead to higher levels of performance, productivity, profitability, and employee loyalty but also boost revenue, client satisfaction, and client loyalty. (See Jarrod F. Reich, [Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being](#), 65 VILL. L. REV. 361, 408–10 (2020).) “[P]ositive affect can improve not only skills important for effective lawyering (such as sociability, altruism, and conflict resolution) but physical health as well.” (*Id.* at 410, citing Sonja Lyubomirsky et al., [The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?](#), 131 PSY. BULL. 803, 840 (2005).)

We shouldn't permit the challenges we face as lawyers to overwhelm our appreciation of the positive aspects of law practice. Our work is intellectually stimulating. If our work goes well and helps to solve our clients' problems, we experience some personal satisfaction. If our workplace permits it, we work together on complex issues (although, of course, the COVID-19 pandemic and its permanent repercussions, such as remote work, have lessened collegiality and the sense of purpose derived from undertaking personally meaningful group work). These, too, have an impact on well-being and performance. Indeed, well-being and good mental health are not the mere absence of mental illness and distress. They involve choosing to remain positive, committing to engagement, affirmative development of our strengths, and attending to our relationships inside and outside of our workplace.

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twice-yearly dental checkups and annual physicals and trips to the eye doctor. Develop a habit of physical activity and stick to it. Eat properly and frequently. The rules are simple. They don't take much effort to understand. But they may take a Herculean effort to follow. We are never taught about self-care. It's time to learn.

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