

A Framework for Lawyer Well-being

BY ROBYNN MORAITES

Part of the challenge of being a self-regulating profession is that regulators must determine whether a lawyer who commits an ethical violation is a bad actor deserving discipline, someone who made an honest mistake (from trivial to egregious), or an impaired lawyer who, but for his or her impairment, would not have committed the ethical violation. For a lawyer falling into the latter category, discipline will have no deterrent effect whatsoever. The behavior will continue until the underlying ailment is treated and addressed. It is this third category with which we are concerned in this article. It is an integral part of the self-regulating function.

Lawyer well-being influences and correlates to ethical behavior, professionalism, and competence. It can be tricky to discuss lawyer well-being because there are not objective, measurable well-being standards. We are only alerted that something is amiss when a lawyer begins to have malpractice claims, ethical violations, or behaves unprofessionally enough that colleagues start to notice. It is often helpful to frame the discussion on a well-being continuum rather than to think of well-being and impairment as either/or propositions. Figure 1 illustrates the continuum.

Lawyers and judges move along this continuum over the course of a career. Where an individual falls on the continuum at a given point in time can be influenced by several factors ranging from the stress of a certain legal matter or life situation—say, the death of a close family member—to medically-based illnesses like depression or alcoholism. By the time a lawyer is committing malpractice or violating the Rules of Professional Conduct,

the lawyer has moved very far down the well-being continuum. The asterisk in Figure 1 is an indicator of where a lawyer in a cycle of impairment usually hits the regulator’s radar. Graphically illustrating this another way in Figure 2 is a slide often used in LAP’s compassion fatigue/burnout CLE presentation.

Well-being initiatives are preventative in nature. They are meant to make us aware of our circumstances so that we can intervene upon ourselves, try some new approaches to our stress management, and stay further up on the right side of that well-being continuum or at the top of the happiness/stress cliff. Once a lawyer or a judge slides past a certain point on the continuum, well-being techniques alone will not work. Whether the issue is stress, drinking, depression, or all of the above, brain chemistry has changed to the point that unhealthy or harmful neural pathways have

been established. No well-being tools are going to reverse that situation and interventional treatment is required.

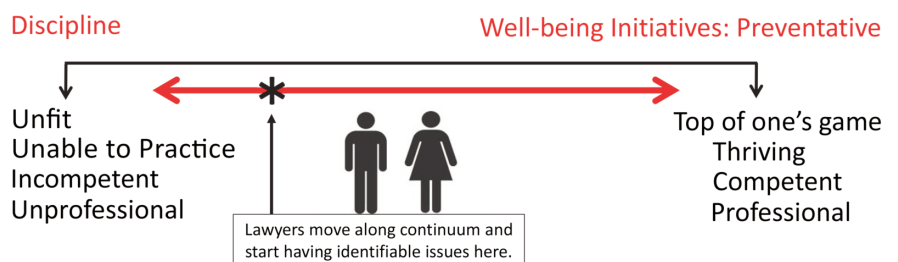
The range of interventional strategies follows the continuum as well. For example, by the time most lawyers are to the far left side of the continuum in Figure 1, they will need a higher level of care. LAP regularly refers lawyers to in-patient treatment for substance use disorders, chronic unremitting depressive disorder, untreated or unmanaged bipolar disorder, and other conditions that require greater intervention and care to get stabilized. Towards the middle of the continuum of Figure 1, LAP refers out to services like intensive out-patient groups and counseling, which can also be a step down in services once a lawyer leaves in-patient treatment. On the far right side of the continuum in Figure 1, where a lawyer is functioning well but needs some tools and strate-

Figure 1

NC LAP is clinically trained to work across the whole continuum

Treatment modalities: from highest level of care & intervention to lowest:

In-Patient Treatment....Intensive Out-Patient....Counseling....LAP Support Groups....Yoga/Mindfulness, etc.



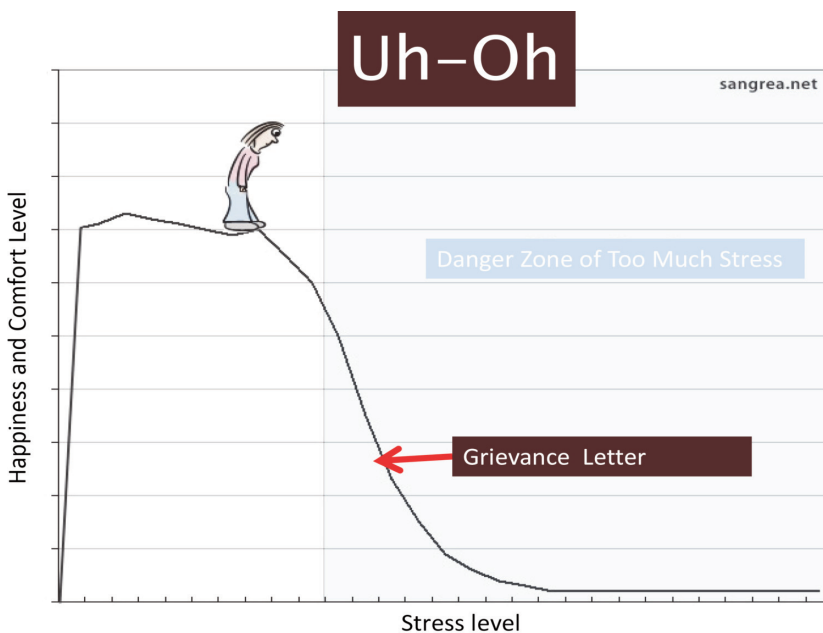


Figure 2

gies for how to better navigate life or a particular issue, LAP refers out to therapists and counselors. LAP's support groups fall somewhere from the middle of the continuum to the right. LAP is clinically trained to work across the whole continuum.

All of the well-being, preventive strategies work to keep lawyers healthy and to prevent them from sliding to the left, but if they start on the far left, they need more assistance to effectively push them to the right in Figure 1.

Let's use a cancer metaphor. Take diet, for example, or smoking. It is well established that eating habits can influence one's propensity to get cancer or to avoid it based on the processing or pesticides used in food and one's genetic predisposition. Similarly, smoking causes lung cancer in many. Of course, nothing is a guarantee, but to minimize one's chances of getting cancer, you might want to eat clean and quit smoking. Once a person has cancer, however, eating clean and stopping smoking are not going to cut it as treatment for the cancer. Cancer requires powerful interventions and treatments like surgery, focused ultrasound, immunotherapy, chemotherapy and/or radiation.

As the saying goes, an ounce of prevention is worth a pound of cure. LAP has been on the forefront of well-being messaging for years. Our electronic newsletter, *Sidebar*, is chock full of articles, tips, techniques, insights, and inspiration. Most of our CLE programs fall into this well-being category. Topics like work-life balance, compassion fatigue, mental health, and well-being during COVID, all fall into this

preventative category. How much harm has never come to pass because lawyers suddenly saw the writing on the wall in a CLE talk and headed in a new direction?

I have been giving LAP CLE talks for ten years now. I cannot tell you how many lawyers approach me to report they made direct changes in the way and manner they were practicing after seeing a CLE presentation a few years back. They are happy, resilient, and having more fun in their lives and practices. They moved further to the right on that continuum. I ran into a judge at a restaurant one night who told me after attending the LAP training on compassion fatigue at a judicial conference, he went to therapy for two years and it changed his life, both professionally and personally. So I know firsthand our prevention efforts are indeed effective. But they are not enough. They are not a substitute for the services LAP provides when lawyers and judges slide off that cliff and hit the metaphorical wall.

There is a misperception that LAP only touches a small population of the bar. Based on data beginning in the mid-1990s, we know that LAP has actively worked with +/- 15% of the bar (including judges) with less than .05% involved in any discipline or regulatory process. Despite this recent national focus on holistic lawyer well-being, the trend continues that lawyers typically do not seek assistance in the early stages of any mental health issue. So, while LAP welcomes and works with folks all along the continuum, LAP is uniquely posi-

tioned and experienced in working with those who are dealing with more severe issues that may be starting to interfere with their practices. LAP's work and its efficacy are largely hidden from view due to the strict confidential nature of the services provided. With the recent well-being focus, there is a risk that the very serious issues LAP deals with day-in and day-out and the vital regulatory purpose it serves will be minimized or overlooked.

There is also a misperception that we only help lawyers and judges with alcohol and drug problems. Some of our volunteers had a very public downfall. They are, therefore, more willing to speak at CLE and share their personal stories publicly. We have volunteers who would never speak at a CLE, and we do not ask them to. No one knows they have received help from LAP, which is as it should be. We are a confidential program, and it is their prerogative to maintain or break their own anonymity or confidentiality. Some of our volunteers who struggled with a family member with a drug or alcohol problem, or who struggled with anxiety, or compassion fatigue (having still hit the metaphorical wall before seeking help) are more than willing to help other lawyers one-on-one or to visit with law students during our law school office hours. They prefer a more private approach to their volunteer work. That suits us just fine. The point being, it is easy to see how perceptions of what we do at LAP and who we help can become distorted based on only a glimpse into the full range of services and the population with which we work.

Recovery includes well-being; not all well-being includes recovery. Many cancer survivors in remission are the cleanest eaters I know, and none of them smoke. If you want to see well-being practices being put to the test day in and day out, just take a look at our active volunteers. They are walking demonstrations of the power of these tools. But there are plenty of folks who are trying to treat their depression or alcoholism with mindfulness, yoga, or running. It won't work. We at LAP endorse all of these well-being tools, but sometimes more is needed. Just like quitting smoking won't rid one of lung cancer. But these attempts are an integral part of the process of getting ready to ask for help. As we often say, "Recovery is not for people who need it. It's for people who want it." ■

Robynn Moraites is the executive director of the NC Lawyer Assistance Program.