

MOVING TOWARDS PROFESSIONAL EXCELLENCE: THE MERGER OF ETHICS AND WELL-BEING

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ABPP

I. INTRODUCTION

There is no doubt in 2024 that the ongoing high stress levels, mental health concerns and chronic health problems in American society are lingering well beyond the COVID-19 outbreak. It is so easy to go down the rabbit holes online and never reach an ending point in reading and listening via video and podcasts.

We live in an increasingly hurried, frenzied, and distracted age, with non-stop noise and inputs coming in 24/7 if we let them. Overwhelm is a common complaint.

The day to day practice of law requires time - time for the development and discernment of informed professional judgment. The need for speed and the need to think and analyze don't mesh well. Add in the nonstop emails and texts from clients and opposing counsel, the meetings and court appearances, the billing pressures, and the time demands of all that needs to be done in all the cases, and we can easily understand why so many of us feel so stressed. Chronic stress without the ability to rejuvenate and recuperate leads to burnout. Burnout leads to both physical and mental health decline and greater potential for ethical violations.

The question is—what choices can we each make in order to develop and then exhibit in our day to day actions those qualities of being a “trusted advisor” in our ‘Noble Profession?’ What choices can we make to feel energized, enthusiastic, motivated, calm and clear? How do we each act to improve the quality of legal services provided to the public?

II. EVERYDAY STRESSORS

Being under chronic and never-ending stress and demands from repeatedly long workdays leads to diminished ability to make good complex decisions, which is at the heart of what we all do every day. I'm no doctor but it's pretty simple to see the science in action.

We talk about the stress that our clients are under and can clearly see it. When it comes to ourselves, it is a little harder to be self-aware. Over time, lack of adequate time for rest combined with ongoing high stress levels begins to lead to cognitive decline.

The practice of law is not easy, and it never has been. "The law is a jealous mistress" is a quote we have all heard many times. The time demands are intense and can be never-ending if we let them. This is NORMAL. We need to expect and accept this. If we let it, those time demands will rob us of our health, our well-being and the rest of our life outside of the office.

Many of us are first-borns. Many of us are the Straight A students and the high achievers. Many of us are perfectionists and strive to be "winners." These are the demands we place on ourselves. I want to encourage us all to engage in enough rest and self-care so that we can provide excellent advice and service to our clients, and act with professionalism under fire. It is a life-long challenge and journey we take together, helping each other along the way.

III. ETHICS RULES USUALLY MENTIONED IN RELATION TO ATTORNEY WELL-BEING

We have learned over many years of CLEs that lawyer "impairment" is linked to ethical breaches and resulting disciplinary actions. Studies estimate that somewhere between 40% to 75% of disciplinary actions involve practitioners who are either chemically dependent or mentally ill. Lest you think that doesn't cover you, think again. "Impairment" is not just having a substance abuse disorder, nor is "mentally ill" limited to some official diagnosis out of the DSM-

5 Manual (the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition)). Being “impaired” one day when you make some mistake can also simply mean being super-tired, super frazzled, and super-anxious. Listen to this guy and see if it sounds familiar:

Stress went on too long in my own life as a litigator. I had, indeed, entered the realm of anxiety. For me, this anxiety felt like I had a coffee pot brewing twenty-four/seven in my stomach. I became hypervigilant, each of the files on my desk felt like ticking timebombs about to go off. Over time, the litigation mountain became harder to climb as the anxiety persisted over a period of years. Dan Lukasik, Lawyers with Depression (www.lawyerswithdepression.com)

Once we start to reach levels of burnout, then the simple things become difficult. Returning a phone call is filled with so much dread that you simply cannot force yourself to do it. Writing a brief that you could normally crank out with ease feels impossible. No matter how much you intellectually **know** you need to communicate with a client or opposing counsel, you just can’t make yourself do it right now, and then the time ticks away. No amount of trying to motivate yourself will work. This is when those ethical rules start to rear their heads in real life: Communication. Competence. Diligence.

Pursuant to Supreme Court Rule 3.130(1.4) **Communication:**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Pursuant to Supreme Court Rule 3.130(1.1) **Competence:**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comments:

Thoroughness and Preparation

(5) Competent handling of a particular matter includes **inquiry** into and **analysis** of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate **preparation**. The required **attention** and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

(6) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Pursuant to Supreme Court Rule 3.130(1.3) **Diligence:**

A lawyer shall act with reasonable diligence and promptness in representing a client.

The top three client complaints, by far and across all states, are communication (lack thereof); competence (being unprepared); and diligence (not moving the case). What can we do to minimize our chances of facing these complaints and staying on top of our game? These are the very same things we can do to provide excellent legal services, to enjoy our careers for the long term and to live full lives with vitality and health.

IV. MOVING FORWARD TO THRIVING IN YOUR PRACTICE

What do YOU believe are the attributes of thriving in YOUR practice? We are each unique human beings and have different backgrounds and values. **How can we reframe our mindsets towards thriving?** Knowing your values and acting in alignment with your values creates an integrity within you and gives you a feeling of purpose.

A. What Makes a “Good” Lawyer?

Doing an internet search on what it means to be a “good” lawyer is interesting. Skills improve with practice. What does it mean to you? What attributes and behaviors help each of us improve the quality of legal services we provide to the public?

1. **Communication skills:** Articulate. Verbal and written communication skills. Oral Advocacy. Persuasiveness. Public speaking “presence.” Clear and concise. Good communication includes listening skills.
2. **Judgment:** Ability to draw reasonable and logical conclusions and assumptions from the information available. Ability to anticipate weaknesses and other points of view. Ability to make quick and

thoughtful judgment calls without sitting on the fence too long. Being courageous enough to make decisions and recommendations.

3. **Analytical and research skills:** Absorbing large amounts of information and distilling it down to what is important, manageable and necessary. Evaluation skills. Choosing the best course. Applying precedent creatively and analogizing appropriately. Developing legal strategies.
4. **People skills:** Understanding your clients and their needs. “Law is not an abstract practice. Irrelevant of how well someone does academically, at the end of the day lawyers work with people, on behalf of people and the decisions that are made affect people’s lives.” Personable. Persuasive. Able to read the room. Ability to come up with the best approach to achieve desired outcome. Empathy and compassion.
5. **Perseverance skills:** Attitude. Commitment. Passion. Drive. Liking what you do. Never, ever giving up. Courage.
6. **Creativity skills:** Problem solving. Brainstorming. Solutions-oriented. Thinking outside the box. Asking questions. Curiosity.

(www.allaboutlaw.co.uk , Article, S. Gymer, 7 Qualities Every Good Lawyer Should Have , 3/16/22) (with some personal additions)

B. What Are Workplace Competencies?

The SHRM Organization (Society of Human Resources Managers) has developed a “Body of Applied Skills and Knowledge” training that teaches desired competencies in the workplace. In the SHRM training, “success” is “knowledge + behavior” over several areas within the workplace. Included in the training are such areas as:

Leadership Cluster

Navigating the organization
Vision

Influence
Personal Integrity
Professional Integrity
Inclusive behavior
Effectiveness

Interpersonal Cluster

Relationship building
Teamwork
Negotiation
Conflict management
Communication
Delivering Messages
Listening
Exchanging information
Advocating for diversity

Business Cluster

Awareness
Analysis
Strategic alignment
Evaluating challenges
Change management
Service excellence
Consultation
Designing solutions
Decision-making

These are the types of attributes and behaviors which create lawyers who become trusted advisors to their clients, and earn reputations, developed over time, that elevate the legal system in the eyes of the community. Operating under burnout and overwhelm with too many tasks on your plate every day are ongoing issues within the profession that we can all work to change.

C. What Does Holistic Health Mean?

The American Bar Association Well-being Toolkit (2019) and National Task Force on Lawyer Well-being Report (“The Path to Lawyer Well-being: Practical Recommendations for Positive Change”)(2017) define “Lawyer Well-being” as a multi-dimensional path. Our mental abilities as lawyers, and our abilities to engage in ethical behaviors, are recognized as being integrated with and impacted by all other aspects of our lives. Under the ABA model, the Six Pillars of Lawyer Well-being are defined as Occupational, Intellectual, Spiritual, Physical, Social and Emotional.

The National Wellness Institute (NWI) (nationalwellness.org) also adopts a multi-dimensional model. “Applying a multidimensional wellness approach that considers the WHOLE PERSON can be useful in nearly every human endeavor.” This makes total common sense. We can’t be one person in the office and then be another person outside of work. Maybe we can try, but it is inauthentic and will never last. As described by NWI, the “holistic model” explains:

- How one can develop and direct self-awareness, self-regulation, curiosity, and motivation.
- How one can develop their belief systems, identify their values, and create a strong worldview.
- How one benefits from regular physical activity, nutrition, strength, vitality, and self-care.
- How one can enrich life through work and recognize its connectedness to living and playing.
- How one can use creativity and stimulating mental activities to share their gifts with others.
- How one can enhance their environment by building better living spaces and social networks
- How one can positively contribute to their environment and engage in their community.

These are important questions that we each need to be asking ourselves, in our lives as a whole and as part of our ethical obligations. Declining mental capacity is associated with impaired executive functions, including memory loss, attention deficits, and diminished problem-solving. Making good

decisions, appropriately evaluating risks, planning for the future, prioritizing and sequencing actions, and coping with new situations are core features of competent and diligent lawyering.

V. CONCLUSION

The words “Communication. Competence. Diligence” sound simple and easy to understand. That is not always the case and there are so many nuances in daily life. The “practice” of law is just that — a daily showing up and trying to do your best. Some days we feel exhausted, overwhelmed and burned out—and worse. Seek help when needed and have your own trusted “board of directors” you can talk with about your up and down struggles.

There are many free resources available that are directed specifically for attorneys. The Lawyers with Depression website has many resources available, as does KYLAP, American Bar Association Well-being Toolkit, and IWIL (Institute for Well-being in Law). There are untold number of resources towards general physical and mental health, leading to prevention of cognitive decline. As attorneys, we need to protect and support our brains and our minds.

The American College of Lifestyle Medicine (lifestylemedicine.org) describes six pillars of lifestyle medicine. These are nutrition, physical activity, stress management, restorative sleep, social connection and avoiding risky substances. The National Wellness Institute (NWI) (nationalwellness.org) materials define “wellness” as “a conscious, self-directed and evolving process of achieving one’s full potential” which is “positive, affirming, and contributes to living a long and healthy life.”

We can no longer pretend we are just a big smart brain sitting on top of something called a body that we don’t listen to and don’t care that much about because our minds are so important and we live up in our minds all day every day. We know that the science does not support this fantasy. We need to eat nourishing foods, drink more water, and move. If I can break my Diet Coke addiction, so can you.

We need to sleep. Real, deep sleep every night. The brain drains out toxins overnight. Follow all the Sleep Etiquette tips. Bragging about ‘how little sleep I need’ and ‘how much I get done without so much sleep’ is not a merit badge. Filing electronic pleadings at 1 AM is not something to be proud of.

Any journey towards positive change begins with a baby step and breaking the inertia of old habits. What habits may have once served you but no longer align with your current aspirations for yourself? What baby step will you commit to taking?

We are members of a service profession, and we help people who need our guidance, experience and wisdom. Wisdom develops only over time and only from living in the school of hard knocks, so we need attorneys who can stay in the game for the long haul, and that means taking better care of ourselves along the way.

We are people who fight for the rights of others. Warriors train and Warriors take excellent care of themselves. When Warriors are hurt, they seek out expert assistance to get better. We can’t be at our best if we aren’t doing all that we can to take really good care of ourselves - physically, mentally, emotionally, spiritually. We know the things to do and yet we all struggle—and that’s ok. Try again tomorrow. Talk to someone. Take time away from work and do something you love. Sit alone outside and in silence, without your phone.

All the little things add up over time. Keep practicing! Your brain will thank you with its cognitive excellence for years to come. Your future self and your future clients thank you too.