



NCPO 2022 Conference

The Languishing Lawyer: Workplace Wellness Issues in a Post-Pandemic World *2022 NCPO Presentation*

Languishing is a term coined by sociologist Corey Keyes to describe those who were neither depressed nor thriving. When the pandemic continued into its second year, the term became more widely used with many of us relating to the term. Studies have revealed that languishing now significantly increases the risk of suffering from depression and anxiety, later. Lawyers, who already face higher risks of anxiety and depression, can benefit from pausing as we emerge from the pandemic to take stock of our mental health. Recognizing early symptoms and taking steps to begin to thrive, again, is the best preventative measure we can take for ourselves and our practices.

This presentation will explore the impact the pandemic has had on lawyer well-being and our ethical duties of competence (1.1), diligence (1.3), and communication (1.4). We will also discuss steps individuals and firms can take to simultaneously support well-being and meet ethical obligations of supervision (5.1-5.3).

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I. What is Languishing?

Languishing is a term coined by sociologist Corey Keyes to describe those who were neither depressed nor thriving. The American Psychological Association defines languishing as “the condition of absence of mental health, characterized by ennui, apathy, listlessness, and loss of interest in life.”

Keyes divided mental health into four categories along a continuum:

Depression → Languishing → Moderate Mental Health → Flourishing

In his study¹, Keyes noted:

- The risk of a major depressive episode was
 - two times more likely among languishing than moderately mentally healthy adults
 - six times more likely among languishing than flourishing adults.
- Languishing and depression were associated with significant psychosocial impairment in terms of perceived emotional health, limitations of activities of daily living, and workdays lost or cutback.
- When languishing, we are three times more likely to cut back on work.

Languishing “can leave you in with a neutral or flat mindset”; “[i]nstead of feeling sadness, joy, anger, or enthusiasm, you simply remain in a state of ‘meh.’”²

Potential contributors to languishing include:

- Denial of basic needs
- Stress
- Social isolation
- Mismatch between values and goals

¹ Corey L M Keyes, [The Mental Health Continuum: From Languishing to Flourishing in Life](#), Journal of Health and Social Behavior, 43(2):207-22, July 2022.

² Emily Swaim, Reviewed by Joslyn Jelinek, LCSW, [Feel ‘Blah,’ but Not Exactly Depressed? You Could Be Languishing](#), Healthline.com, May 9, 2022.

II. Identifying Languishing Symptoms³

- Languishing is not a psychiatric diagnosis with specific criteria. Instead, it can be thought of as the absence of emotional, psychological, or social well-being.
- Flourishing may feel like:
 - Thriving
 - Happy, capable, and loved more often than not
 - It is possible to follow your passions
 - You enjoy deep, mutually supportive relationships
 - Even if things go wrong, you are able to bounce back and keep moving
- Languishing
 - Emotional signs can include:
 - Missing the joy, excitement, and passion you used to have
 - Life seems filled with small nuisances and long stretches of boredom
 - No particular care about the future
 - Feeling like your life is missing something but you do not know what
 - Psychological signs can include:
 - Trouble concentrating and/or lack of focus
 - Feeling like you have peaked in life and no longer have room to grow
 - Disappointment in the person you have become
 - Problems and life challenges seem to pile up so fast you can't seem to catch your breath
 - Rarely having strong opinions and, thus, often influenced by those that do
 - Social signs can include:
 - Difficulty creating close relationships with others
 - Lack of connection to any community or greater cause
 - Feel your job is pointless in the grand scheme of things
 - Belief you cannot rely on anyone other than yourself
 - **Note, you can experience languishing without reaching an extreme low.**
- Depression

³ Adapted from the following articles: Emily Swaim, Reviewed by Joslyn Jelinek, LCSW, [Feel 'Blah,' but Not Exactly Depressed? You Could Be Languishing](#), Healthline.com, May 9, 2022; Ekua Hagan, [COVID Left Us Languishing. Here's Why We Should Care](#). Psychologytoday.com. January 18, 2022; and, Adam Grant, [There's a Name for the Blah You're Feeling: It's Called Languishing](#), The New York Times, December 3, 2021.

- Depression is a clinical diagnosis that is treatable with the help of mental health professionals.
- While you can feel low when languishing, many people with depression have trouble feeling happiness in any context.
- If you have had an episode of depression in the last year, a low mood may suggest returning depression, rather than languishing
- Name the Feeling and Take it Seriously
 - Take stock of the message indicators that your body and mind are offering you.
 - Psychologists find one of the best strategies for managing emotions is to name them.
 - “Not depressed” does not mean you aren’t struggling
- ***Reach out to a mental health provider, especially if you often:***
 - Feel trapped or stuck in your daily routine
 - Wish you could feel “alive” again
 - Feel deeply lonely or isolated
 - Try to avoid thinking about where you are in life or where you want to go

III. What Ethical Duties are Most Likely to Be Impacted?

Cutting back on work and lack of motivation can lead to a wide variety of issues in our practice. In this seminar, we will focus on: competence (1.1), diligence (1.3), communication (1.4), declining or terminating representation (1.16), and supervision ((5.1) and (5.3)).

A. Competence (SCR 3.130(1.1))

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

B. Diligence (SCR 3.130(1.3))

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

Supreme Court Commentary

...

(2) A lawyer's work load must be controlled so that each matter can be handled competently.

(3) Perhaps no professional shortcoming is more widely resented than procrastination. ...

C. Communication (SCR 3.130(1.4))

(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.

D. Declining or terminating representation (SCR 3.130 (1.16))

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law; or

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client; or

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or

(3) the client has used the lawyer's services to perpetrate a crime or fraud; or

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; or

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; or

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

IV. How Can Effective Supervision Minimize Impact of Languishing

Dal Bhathal with The Counsel Network, discussed the recent trend of turnover among associates:

An alarming number of exiting Associates unhappily recount their struggles to understand the work expectations, billing structure, compensation structure, reward program, mentorship program, governance model, culture, values, and goals of their former employer. Taking the opportunity to clearly outline and reinforce these fundamental concepts on an ongoing basis will alleviate potential frustrations and effectively teach Associates how to best develop their future careers.

Often, issues and circumstances that can lead to languishing can be tied to the stress of ineffective supervision. If supervisors renew their focus on supervision, they can not only meet their ethical obligations but also have a positive impact on the culture of the firm.

A. Supervision (SCR 3.130 (5.1) & (5.3))

Responsibilities of partners, managers and supervisory lawyers (SCR 3.130(5.1))

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyers violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct

at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Supreme Court Commentary

...

(3) Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary....

Responsibilities regarding nonlawyer assistants (SCR 3.130 (5.3))

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer only if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

B. What Are Associates Looking for in Law Firms

- 2022 State of the Legal Market Study, Thomson Reuters
 - <https://www.thomsonreuters.com/en-us/posts/legal/state-of-the-legal-market-2022/>
- 2022 Stay-Go Report, Thomson Reuters
 - <https://www.thomsonreuters.com/en-us/posts/legal/law-firms-stay-go-report-2022/>
- Key Takeaways
 - Mentorship is important to retaining talent
 - And so is opportunity for growth
 - Happy lawyers want to work more for the firm and their clients
 - Concern for employee well-being must be genuine and interwoven into internal policies

C. Ways Supervisors Can Support Well-Being

- Supervision
 - Set clear expectations
 - Be available for questions
 - Discuss process for assignment of cases
 - Regular check-ins with in-depth case reviews
 - Provide consistent follow-through
 - Attend court with supervisees
 - Work to maintain good relationships through coaching
 - Anita Hossain Choudhry and Mindy Zhang, [*The Best Managers Don't Fix, They Coach – Four Tools to Add to Your Toolkit*](#), First Round Review.
 - Identify CLE opportunities that meet firm and individual needs (and attend together!)
- Mentorship
 - Create and support mentorship opportunities internally
 - Create formal mentoring pairs within the office (outside of normal supervisory chain)
 - Encourage engaging in external mentorship programs through bar associations and other legal organizations
 - This may mean making room in the billable hour requirement for these opportunities
- Opportunity for Growth
 - Give constructive feedback when discussing cases
 - Encourage increasingly more difficult assignments with newer staff and associates

- Just remember to review more closely
- Allow time and space to attend professional networking and legal education events
- Have supervisees attend court, depositions, client meetings with supervisors
- **Genuine Concern for Well-Being**
 - Tackling the last three bullet points will indirectly support lawyer and nonlegal staff well-being
 - Get to know your team, their responsibilities outside of the office, and what stresses they may be facing
 - Invite regular discussions about what is working and what is not
 - Normalize taking time to recharge and asking for help

V. Tips for Addressing Feelings of Languishing⁴

- **Reach out to a mental health professional!**
 - KYLAP
 - www.kylap.com or 502-226-9373
 - Kentucky Psychological Association
 - <https://www.kpa.org/psychological-services-locator-landing>
- Hire a life coach
 - Gain insight and skill to articulate values and goals and ensure they are in alignment
- Increase physical activity
 - Start where you are and set small, achievable goals to build confidence and momentum.
 - Five-minute walk in the sunshine at lunch
 - YouTube video of chair yoga exercises
 - Listen to your smart watch prompts to stand and stretch each hour
- Try box breathing (or another breathing technique...or meditation)
 - [Why Navy Seals Use Box Breathing](#)
- Give yourself Uninterrupted Time
 - Since languishing is often characterized by lack of focus, you will need to implement strategies for minimizing distractions. (*See time-blocking tips, below*)
 - This can fuel an increase in production which can have a positive impact.

⁴ Adapted from the following articles: Ekua Hagan, *COVID Left Us Languishing. Here's Why We Should Care*. Psychologytoday.com. January 18, 2022; and, Adam Grant, *There's a Name for the Blah You're Feeling: It's Called Languishing*, The New York Times, December 3, 2021.

- Studies have shown the best predictor of well-being during the early pandemic was the ability to become more immersed in their projects.
- Focus on a small goal that reconnects you to your joy
 - Carve out daily time to focus on a challenge that matters to you.
 - This can be as simple as completing a wordle or other small challenge that brings you joy.
- Practice Effective Mental Health Hygiene
 - Small tweaks can be powerful in changing the trajectory of your emotional health. Choose one of the following, for example, and take small steps toward achieving. Make it relatively easy to accomplish then add a second small action; continue to do so every few days.
 - Physical exercise
 - Fresh air
 - Consuming sufficient protein and rich nutrients
 - Sleep
 - Relational belonging
- Identify The Best Sources of the Three Rs: Refreshment, Rest, Reward
 - See [COVID Left Us Languishing. Here's Why We Should Care](#) for tips on identifying your route to the Three Rs.

VI. Additional Tips:

A. Use Your Calendar to Manage Workload Effectively

The duty of diligence requires management of one's workload so each matter can be handled competently. (SCR 3.130 (1.3), comments 2 and 3)

[A great article from Attorney@Work](#) by [Jay Harrington](#) discusses the what, how, and when of "time curation". We hit the highlights, below, but the full article is worth the quick read!⁵

- What: List Building
 - Keep the list system simple. Otherwise, it becomes overly complicated and cumbersome that we don't utilize the tools.
 - Work from two connected lists:

⁵ <https://www.attorneyatwork.com/time-management-for-lawyers/>

- Instead of allowing the open spaces to dictate when there is free time to tackle work (drafting, researching, etc.), actively block out time in the calendar for tasks during the most productive time of day, at least a few times a week.
- Other than court mandated appearances, you can and should control your calendar; do not allow others to control your time. Taking control of your time allows you to control productivity and prevent getting stuck at the office in the evenings on a daily basis because that is the only time no one is around to interrupt.

B. Managing Workload Also Requires Ensuring You Have Time to Supervise

Managing or supervisory attorneys have a duty to ensure associates and nonlawyer assistants are in compliance with the Rules of Professional Conduct. (SCR 3.130 (5.1) & (5.3)). This requires carving out time to routinely discuss matters, including the steps taken, the proposed strategy, and how the associates or nonlawyer assistants are meeting their ethical obligations. If managing partners are overwhelmed with their own caseload, this supervision often is the first piece to fall off the radar.

C. Calendar Discussions with Clients Every 30 Days—At Least

While looking at the calendar, go ahead and place a reminder to reach out to the client every 30 days. This reinforces the practice of regular communication with the client. It also prompts regular review of the file and can, at times, serve as a reminder that a task must be completed. (*For example, records previously requested arrived since the last client update and need to be reviewed.*)

Of course, if the client is one that needs more regular communication, then give it. If a significant case development occurs, do not wait thirty days to advise. Some communications must occur immediately.

We hope these materials have helped you name symptoms you may have felt at some time and provided some tools for overcoming languishing. For questions, please feel free to reach out to us at any time on www.lmick.com or at 502-568-6100! Also, for mental health resources and support, please contact KYLAP at www.kylap.com or 502-226-9373.