

A woman with short blonde hair, wearing a blue blazer and a white scarf with black polka dots, is shown in profile, looking thoughtfully to the right. She is holding a pen to her chin. The background is a blurred office environment with shelves and papers. A solid orange horizontal bar is at the bottom of the image.

Risk, Resilience & Regulation: The Nexus Between Client Protection & Attorney Well-Being



Today's Speakers

Aria Eee, Executive
Director & General
Counsel, Maine Board
of Bar Overseers

Tracy Kepler, Director
of LPL Risk Control,
CNA Insurance

Disclaimer



This presentation is legal guidance. It should not be considered legal advice.



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This presentation is offered for educational and informational uses only.

A photograph of a stage set. In the foreground, a red upholstered chair with a wooden frame is positioned on the left. Above it, a track of stage lights is visible, with one light illuminated. To the right, heavy, light-colored curtains hang. The background is dark and out of focus. The text "Set The Stage: The Data" is overlaid in white on the left side of the image.

Set The Stage: The Data

ABA/Hazelden- Betty Ford/Krill Study (2016 pre-pandemic)

Problematic Drinking*

- 6.4% of entire U.S. population
- **21%** of *all licensed attorneys/judges*
- **32%** of all attorneys *under 30 yrs. old*

* Problematic drinking defined as "hazardous, possible dependence"

https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx





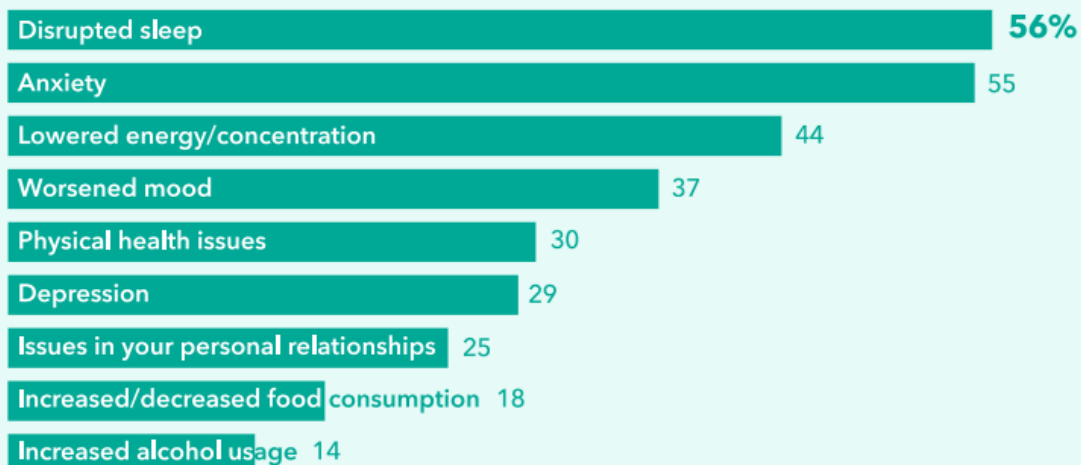
ABA/Hazelden- Betty
Ford/Krill Study (2016)
(pre-pandemic)

Depression, Anxiety and Stress Scale

- Depression – **28%** of all attorneys/judges (7-9% GP)
- Stress – **23%** of all attorneys
- Anxiety – **19%** of all attorneys
- Higher rates among younger lawyers/judges

Mental Health By The Numbers

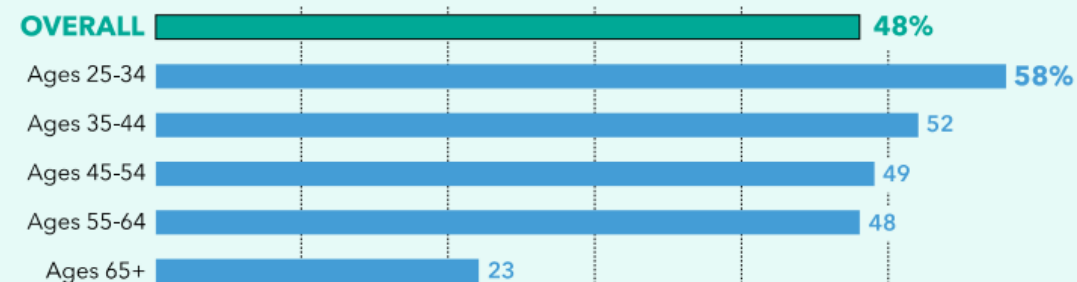
Which of These Have You Experienced This Year?



Source: 2024 Attorney Well-Being Survey

Attorneys Feel Burned Out Almost Half the Time

In Q3 and Q4 of 2023, what percentage of the time did you feel burned out?



Source: Bloomberg Law Workload & Hours Survey (Q3-Q4)

Mental Health By The Numbers

Challenges in 2024

**Trouble focusing
on work tasks** **48%**

Inability to "disconnect"
from work **45**

Sadness/anxiety/fear
about world events **38**

Feelings of inadequacy/
Imposter syndrome **35**

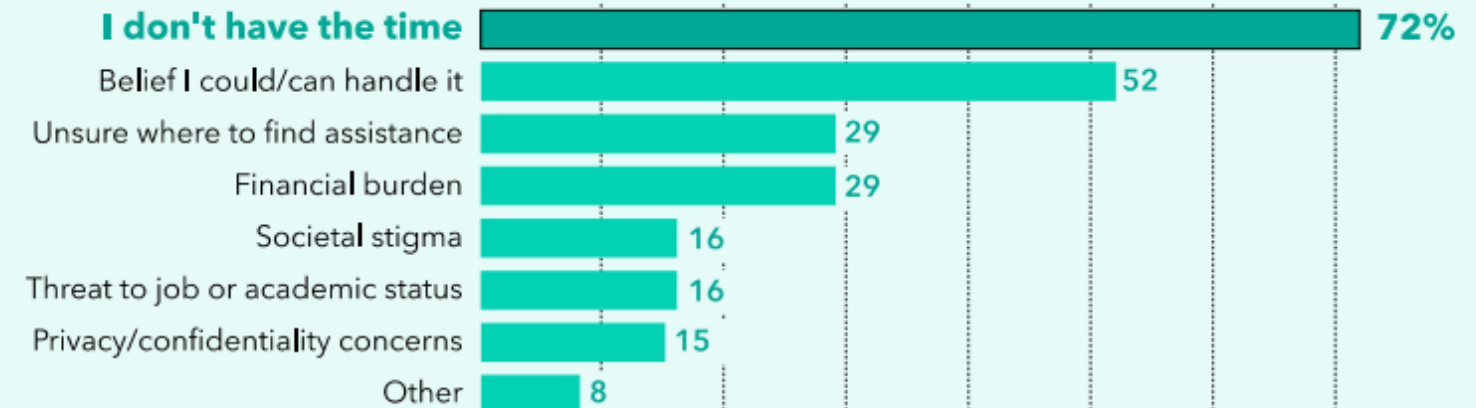
Unmanageable workload **32**

Feeling a lack of meaning
or purpose in life **31**

Loneliness or isolation **26**

Source: 2024 Attorney Well-Being Survey

Why Have You Delayed / Why Are You Delaying Seeking Treatment for Mental Health?



Source: 2024 Attorney Well-Being Survey

Mental Health By The Numbers

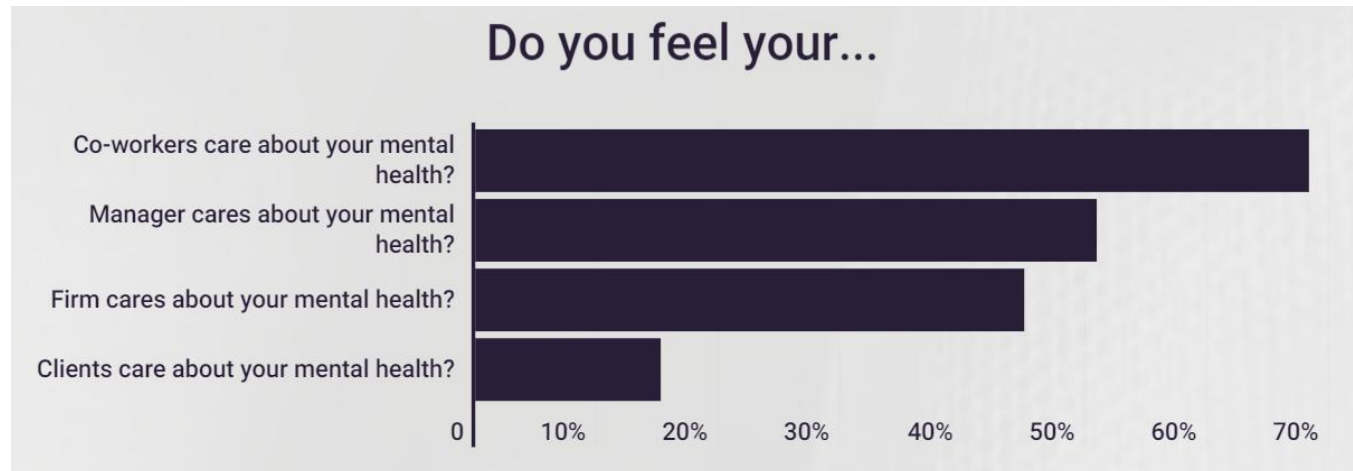
- More than 60% felt overwhelmed, irritable and exhausted or struggled to concentrate
- 78% feel the profession has had a negative impact on their mental health
- More than 76% of lawyers blamed their work environment for these problems
 - 68% cited billable hour pressures
 - 67% cited the inability to disconnect
 - 54% cited lack of sleep
- Only 36% use all their vacation time



Mental Health By The Numbers

Most Recent Data – ALM/Law.Com 2023 & 2024 Survey: *Going in the Wrong Direction*

- Nearly 50% felt mental health problems & substance use are at a crisis level in the legal industry



- <https://www.law.com/americanlawyer/2024/05/17/mental-health-by-the-numbers-the-2024-survey-infographic/>



Stress, Drink, Leave

GENDER-SPECIFIC RISK
FACTORS FOR MENTAL HEALTH
PROBLEMS AND ATTRITION
AMONG LICENSED ATTORNEYS

Mental Health Gender Disparity: Women Lawyers Suffer Disproportionately

Alcohol Use:

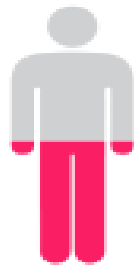
A significantly greater proportion of women compared to men engaged in:

55.9%

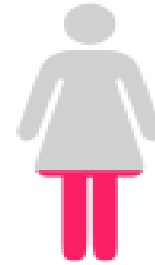


Risky Drinking

46.4%

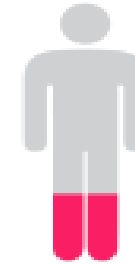


34.0%



High-risk/Hazardous Drinking

25.4%

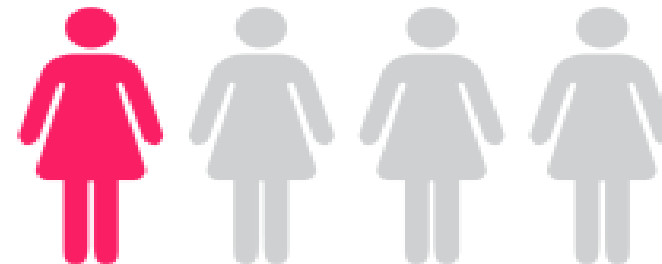


Mental Health:

1 in 4

women contemplating leaving legal profession due to mental health concerns.

17% of men report the same thoughts.



Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk

- 2,000 practicing lawyers in DC & CA
- The research found:
 - Lawyers 2x as likely as the general population to contemplate suicide
 - Perceived stress was the number one predictor of suicidality
 - Lonely lawyers were nearly 3x more likely to contemplate suicide, and those who are highly overcommitted to work more than 2x as likely
 - Male lawyers were 2x as likely to contemplate suicide, a notable difference from the general population where women experience higher levels of suicidal ideation. Prior mental health diagnosis also increased the risk of suicidal ideation.
 - The profile of a lawyer with the highest risk for suicide: a lonely or socially isolated male who has a high level of unmanageable stress, is overly committed to their work, and may have a history of mental health problems. *Healthcare* (2023): <https://www.mdpi.com/2227-9032/11/4/536>

Why Are Legal Professionals at High Risk of Mental Health & Substance Use Disorders?

- Conflict driven and adversarial profession (you see some of the worst of humanity)
- You need to be emotionally detached to get through your caseload
- Perfectionism
- Excessive self-reliance

These traits are great for a successful career but not so great for mental health.

Why Are Legal Professionals at High Risk of Mental Health & Substance Use Disorders?

- High expectations and accountability
- Lack of work-life balance
- High stress level
- High stress levels & work-weeks >50 hrs. are consistent predictors of SUD's and their severity.
- 67% of attorneys/judges work more than 40 hours/week.
- Inherent pessimism





THE CONSPIRACY OF SILENCE

- Lawyers are trained to deal with and solve problems. Thus, it is most difficult for the lawyer to seek help since by doing so he/she feels he/she is admitting failure.
- Complicating this problem further is the tendency of the lawyer's peers to indulge in a conspiracy of silence (enabling) and lighten the normal stresses of our profession.
- Concerns that receiving help may impact future election/reputation in the community.

Dealing with *DENIAL*

- DENIAL = "don't even (sic) now I am lying"
- The most potent barrier
- Psychological defense mechanism
- Rationalize and minimize behavior
- Honestly believe they are under control
- I'm not one of "them" mentality



Attorney Impairment

Impairments Identified for Lawyers Disciplined in 2024 By Practice Setting

<i>Practice Setting</i>	<i>Solo Firm</i>	<i>Firm 2-10</i>	<i>Firm 11-25</i>	<i>Firm 26+</i>	<i>Gov't/Judicial</i>	<i>In-House Corporate</i>	<i>Academia</i>	<i>Other (e.g. CCH, ABA)</i>	<i>Not Engaged in Practice</i>	<i>Total</i>
20 Lawyers* with Impairments	12	4		1	1			1	1	20
<i>Impairment</i>										
Substances:										
Alcohol	5	2						1	1	9
Cocaine	1									1
Cannabis	1				1					2
Amphetamine									1	1
Heroin/Opioids	3									3
Other Substance					1			1		2
Mental Illness:										
Depression	7	2		1	1			1		12
Anxiety Disorder				1						1
Bipolar								1		
Schizophrenia	1									1
Personality Disorder										
Gambling										
Sexual Disorder		1								1
Cognitive Decline	1									1
Other	1	1			1			1		4

* Ten (50%) lawyers had more than one identified impairment.



IARDC 2024 Annual Report -

<https://www.iardc.org/Files/AnnualReports/AnnualReport2024.pdf>

Behavioral Impact and Risk of Misconduct

-
- Mental health and substance use issues can impair judgment, increase impulsivity, and reduce ethical decision-making capacity.
 - These impairments may lead to professional misconduct, including theft, fraud, or neglect of client matters.



Disciplinary Statistics Relevant to Impairment Issues

- When untreated, the lawyer's capacity to practice law is almost always impacted
- Studies show that **25-30%** of lawyers facing disciplinary charges suffer from some type of addiction or mental illness
- Many other attorneys belong in this category but are not listed because they default in the disciplinary proceeding or lose their licenses without ever appearing or answering





Lawyers who do not appropriately address their personal issues can harm the judicial system, destroy their own careers, and sometimes even lose their lives.

YOU MATTER!

- What to do?
 - Identifying signs in others & ourselves
 - Approaching the lawyer

WHAT
SHOULD
I DO





To Call LCL for someone else...or Not to Call...

- Is this really any of my business?
- I want to help but I don't want to get involved.
- Will I harm his/her or the firm's reputation?
- Must I report him or her to Discipline?
- I already tried to help and it didn't work.
- Let's wait and see. Maybe it will get better.
- I really don't have time for someone else's problems.
- What if I am wrong?
- I don't want to lose a friend...

BUT....WHAT IF YOUR CALL SAVES A LIFE???

To Call LCL for self...or Not to Call....

I'm ok. I can work this out for myself.

I'm not like a "real" alcoholic anyway.

I want help but I don't want anyone to know.

Will I be reported to the Disciplinary Board?

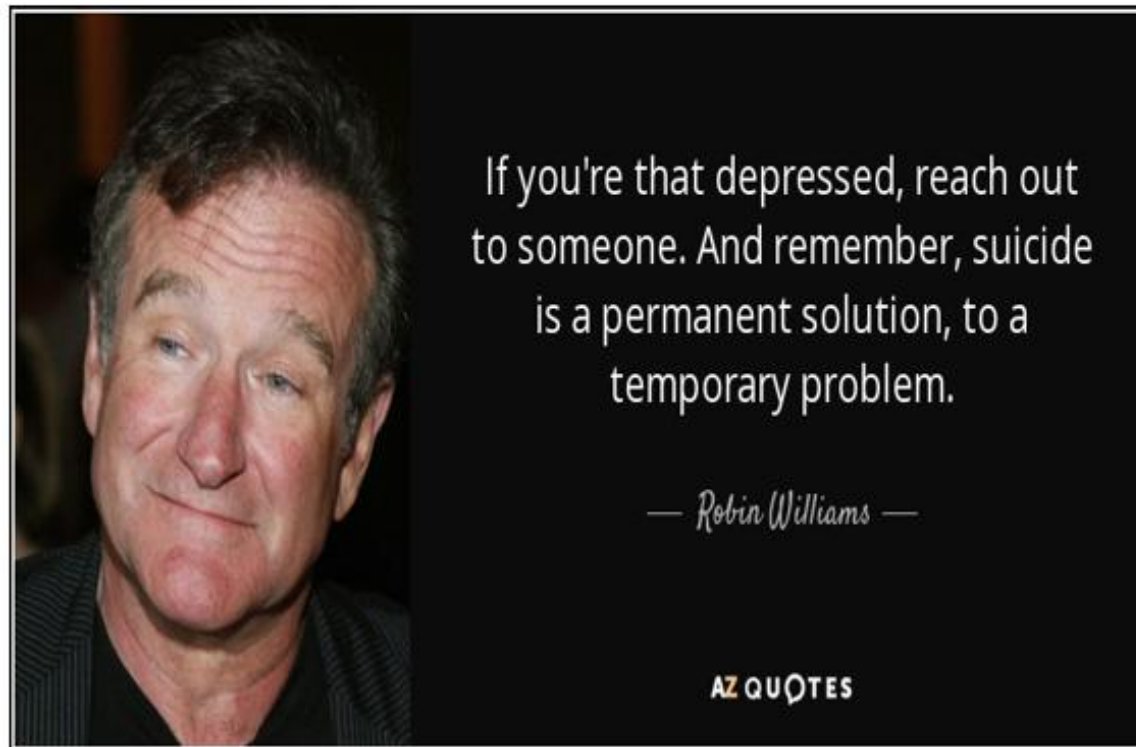
I already tried to get help and it didn't work.

I don't have the money to pay for treatment.

What will people say about me if I ask for help ?

It's no use – nobody will understand – I give up!

"I can THINK my way out of this."



Watch for Changes from Baseline

- Everyone has a baseline for personality traits
- Warning signs are always relative to the person's baseline
- Follow the MAP*
 - Mood or attitude changes
 - Apppearance or physical changes
 - Productivity - Changes in/quality of work

What to Do: Approaching the Lawyer

- Remember that it is usually a process
 - Impaired attorneys initially resist attempts to discuss concerns
- Gather information, consult resources, contact local LAP and take action
- Approach the lawyer - LAP can help you
 - Partner with people the lawyer trusts & who have witnessed the behaviors of concern
 - Approach the lawyer as a respectful, concerned colleague (think how you would feel)
 - Good starters...

What to Do: Approaching the Lawyer

- Aim to get the lawyer to talk
- Review the lawyer's strengths & accomplishments
- Provide kindness, dignity and privacy
- Suggest assessment with a professional & have name(s) handy
- Offer to stay involved
- Remember this is a process



What to Do: Approaching the Lawyer

DO:

- Be direct & specific
- Be respectful
- Suggest alternatives
- Suggest potential consequences of inaction
- Be non-judgmental
- Let them know that you care
- Turn off technology & find a private place

DON'T:

- Diagnose & laundry list
- Threaten
- Ignore the situation
- Do nothing



Steps for the Supervisory Lawyer

- Rule 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 RPC.
- Rule 5.3(a): Similar for nonlawyer assistance
- Rule 8.3(a): Do I have a duty to report?



NM RPC 16-501

D. Responsibility for reporting impairment. A partner in a law firm and any lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall take prompt action to address any concern that a lawyer in the law firm is exhibiting signs of a severe impairment of the lawyer's cognitive function. Such action may include, but is not limited to

- (1) making a confidential report to or otherwise seeking assistance from the New Mexico Judges and Lawyers Assistance Program;**
- (2) reporting the matter to the Office of Disciplinary Counsel to consider disability inactive status proceedings under Rule 17-208 NMRA and/or the appointment of an inventorying attorney under Rule 17-213 NMRA;**
or
- (3) speaking with the lawyer and encouraging the lawyer to seek appropriate medical care and/or testing.**

This obligation also applies to observations made by a lawyer with direct supervisory authority over a subordinate lawyer. A report made under this paragraph shall be treated as confidential and handled in accordance with the confidentiality rules, policies, and procedures of the agency, entity, or program to whom the report has been made.

- *N.M. R. Prof'l. Cond. 16-501*



Impairment in the Firm: Duties of Partner or Supervisory Lawyer

- ABA Formal Opinion 03-429 (2003)
 - “The firm’s paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer’s impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.”
 - VA LEO 1886 (2016)
 - D.C. LEO 377 (2019)
 - Address the obligation to take precautionary measures before misconduct occurs
- 

Impaired Lawyers' Responsibilities

- Seek Assistance through LAP or treatment provider
- Duty of Competence – Rule 1.1
- Withdrawal/Termination of Representation – Rule 1.16 (a)(2)



Changes Around the Country



VERMONT

- Rule 1.1, Comment [9]
- A lawyer's ***mental, emotional, and physical well-being*** may impact the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law. See also Rule 1.16(a)(2).



VIRGINIA

- Rule 1.1 Comment [7]
- A lawyer's ***mental, emotional, and physical well-being*** impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law. See *also* Rule 1.16(a)(2).

Changes Around the Country

CALIFORNIA

Rule 1.1 (b)

For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) ***mental, emotional, and physical ability reasonably*** necessary for the performance of such service.



UTAH

- Rule 1.1, Comment [9]
- “Lawyers should be aware that their ***mental, emotional, and physical well-being*** may impact their ability to represent clients and, as such, is an important aspect of maintaining competence to practice law and compliance with the standards of professionalism and civility.



Lawyers Assistance Programs

- Broad Brush Approach
- Judges, Lawyers & Law Students
- Free Information & Resources
- Services are **CONFIDENTIAL**, free, non-judgmental & non-disciplinary
- Directory of LAPs:
https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/

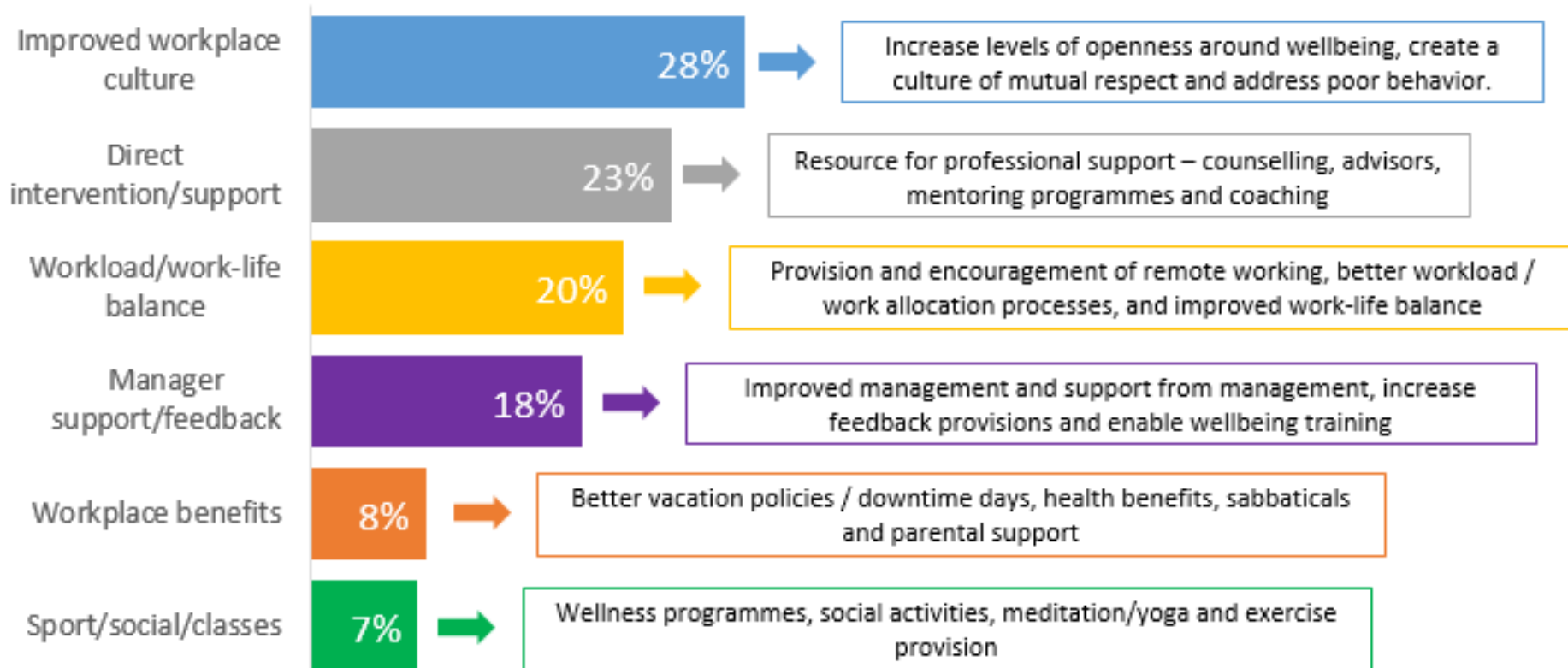


What Can The Firm Do?



What more should a firm do?

Desired improvements largely focus on cultural change and intervention,
better workload provision and increased support from management



Firm Impairment Policy & Well-Being Templates

- Addressing Impairment Concerns
- Confidentiality Provisions
- Considerations Upon determination of Impairment
 - Leave of absence
 - Referral/Treatment
 - Restriction of Work Duties
 - Review of Activity
 - Remedial Action
 - Reporting to Discipline
 - Conditional Employment
 - Consequences of Violations



What Can the Firm Do?

- Appoint a Lawyer Well-Being Committee or a Well-Being Advocate
- Assess lawyers' well-being through ongoing assessments.
- Adopt model law firm policies for handling lawyer impairment.
- Establish a confidential reporting procedure for lawyers and staff concerned about a colleague's impairment.
- Establish procedures that allow for lawyers to seek confidential help.
- Work with lawyer assistance programs to secure services for impaired lawyers.
- Actively combat social isolation and encourage interconnectivity
- Monitor for signs of work addiction and poor self-care

So.....what
can one
person do?



Five Strategies for Improving Your Well-being and Establishing Better Boundaries

Melissa G. Hunt, Rachel Marx, Courtney Lipson and Jordyn Young, No More FOMO: Limiting Social Media Decreases Loneliness and Depression, Journal of Social and Clinical Psychology, Vol. 37, Issue 10 (December 2018)



1. Boundaries: Set Limits



- Check email x times per day at designated times (and let clients and colleagues know/expect that).
- Use "away message" when on vacation or traveling for work.
- Limit Social Media to 10 minutes per platform per day, Use a timer (Hunt et. al, 2018).
- Monitor your use (use monitoring apps, check Screen Time on iPhone (VERY SCARY), etc.).
- Use Do Not Disturb/FOCUS (especially when DRIVING).

Melissa G. Hunt, Rachel Marx, Courtney Lipson and Jordyn Young, No More FOMO: Limiting Social Media Decreases Loneliness and Depression, Journal of Social and Clinical Psychology, Vol. 37, Issue 10 (December 2018).

2. Disconnect

“Workers today are ‘never turned off.’ Like our mobile phones, we only go on standby at the end of the day as we crawl into bed, exhausted. Technology was supposed to liberate us from much daily slog...in 2002 fewer than 10% checked work email outside of work, today it is 50% often before we get out of bed...”

www.theguardian.com/lifeandstyle/2015/jan/08

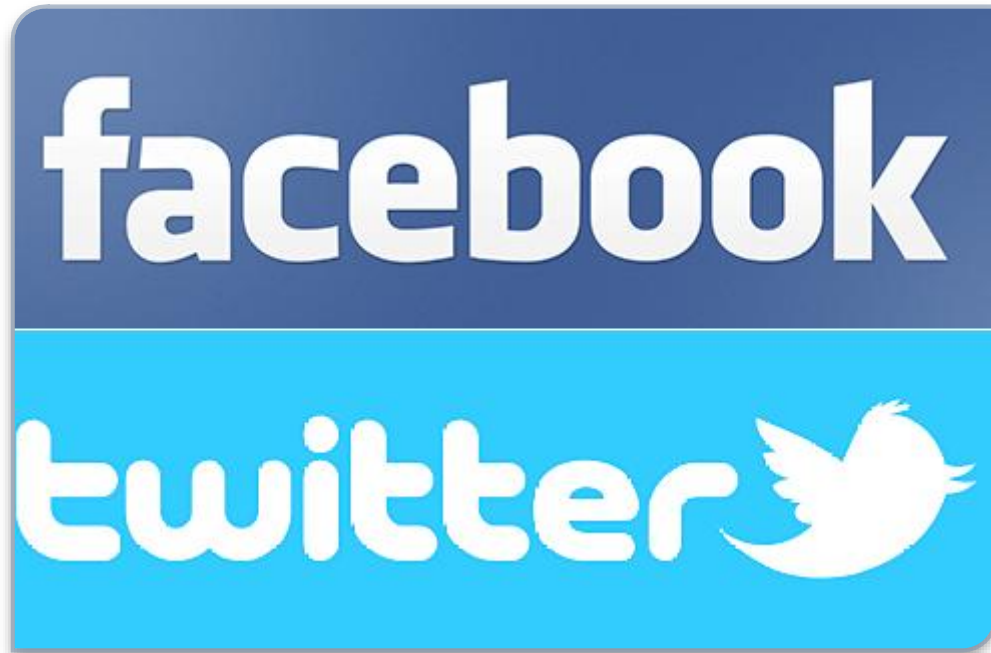




2. Disconnect

- Turn off notifications.
- Do not charge your phone beside bed.
- Do not keep phone with you during meals, exercise, or social activities.
- Read a book or magazine rather than your phone or tablet.
- Get away from your PC to do some work, take healthy breaks from the screen, and don't take the laptop with you on weekends or vacations.

3. Manage the Apps.



- **Delete Facebook, Twitter, Instagram from your phone.**
- **Install wellness, mindfulness, usage, and other healthy apps.**

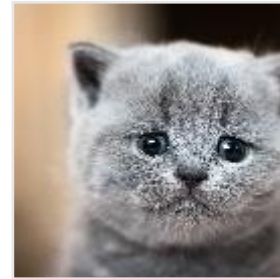
How ENRICHING are the APPS we are using?

(MomentApp, Holesh)



HAPPY

- Relaxation
- Exercise
- Weather
- Reading
- Education
- Health
- **9 min/day/app**



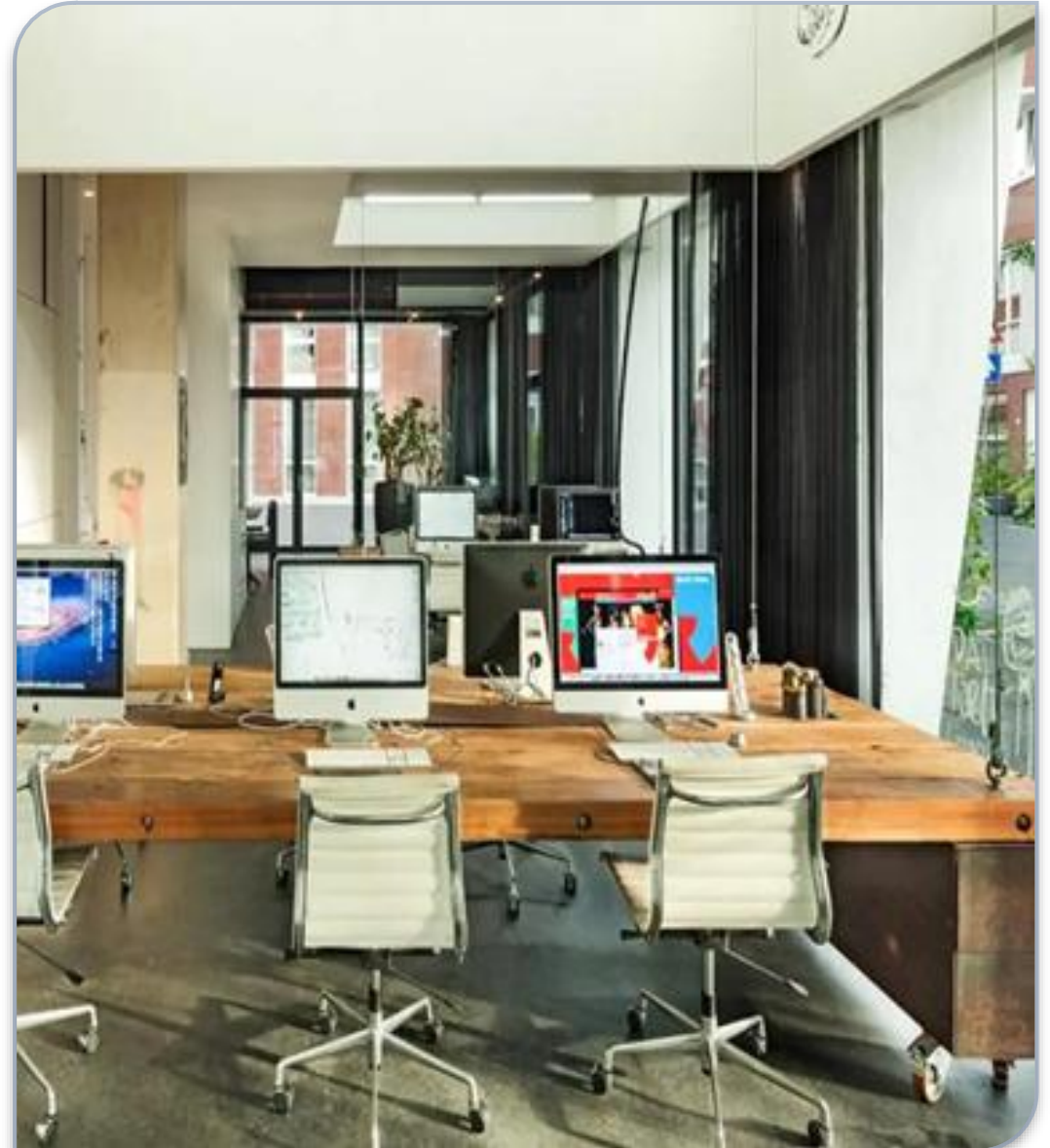
UNHAPPY

- Web Browsing
- News
- Entertainment
- Gaming
- Social Networking
- Dating
- **27 min/day/app**

The APPS that make us UNHAPPY LACK STOPPING CUES..... (TedTalk, Adam Alter, 2017)

We can follow stopping cues from Helder groen (a Dutch design firm)...

At 6 pm daily, the desks rise to the ceiling and 4 days of the week, the office turns into a Yoga Studio!





4. Unfollow the Unhealthy.

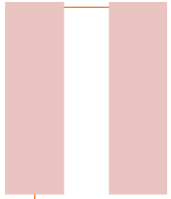
- Unfollow friends on Facebook that are hateful, hurtful, or distressing.
- Compare YOU to YOU!
- Stop checking what is trending in the news: it's mostly bad.
- Follow uplifting people and resources, we are what we read. The most important voice you will ever hear is YOUR OWN.



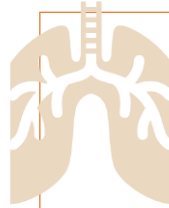
5. Schedule Self-Care Time.

- 4% of your life is 1 hour per day, make that the minimum for self-care.
- Use your calendar and other technology to remind you to unplug.
- By scheduling events that are away from screens, it can free you from technology.

UTILIZE QUICK STRESS-BUSTERS



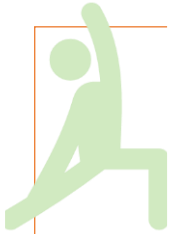
Pause. Lean back, literally. Give your eyes a rest for a couple minutes.



Take three deep breaths and imagine your muscles relaxing from head to toe.



Be mindful. Focus on the immediate present. Enjoy the moment.



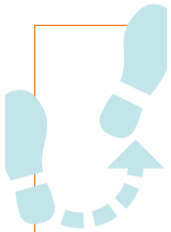
Stretch. Walk around your office or go outside.



Turn your cell phone off (YES - OFF) and go outside for 5 minutes and notice that GRASS is really GREEN!



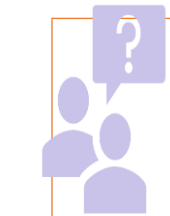
Maintain a sense of humor about yourself (and others).



Vary your routine (work/exercise). Don't get trapped in a rut.



Prioritize at work and home and manage your time effectively. NOT to-do Lists.



ASK FOR/ ACCEPT SUPPORT/ HELP. Talk it out with someone you trust.



Do a five-minute guided or breathing meditation (Insight Timer/CALM/Peloton).

CONSISTENT stress reduction occurs with 10 minutes of meditation.

<https://www.meditationlifeskills.com/guided-meditation-for-stress-and-anxiety/>



MORE QUICK STRESS-BUSTERS

- Unplug from social media occasionally
- Exercise. Movement is medicine. 3/7 LCL employees have Tread Desks
- Connect with nature (20 min = decrease in cortisol levels)
- Eat a healthy-ish diet (mindfully)
- Cultivate a positive attitude/gratitude list/handwrite a note to a friend. 25% increase in happiness level short list/10 weeks. <https://judicialstudies.duke.edu/wp-content/uploads/2018/01/JUDICATURE101.4-buchanan.pdf>
- Sleep 7-9 hours/night when possible.
- New PERSPECTICLES: You don't **HAVE** to; you **GET** to!
- Lunch breaks, during the day, not in front of a screen (avoid shoveling food in our mouths in front of screens)
- Mental health days planned throughout the year in January
- Fill your life with experiences over material things (hedonic adaptation)
- Screen breaks (personally and professionally)
- No phones at the dinner table

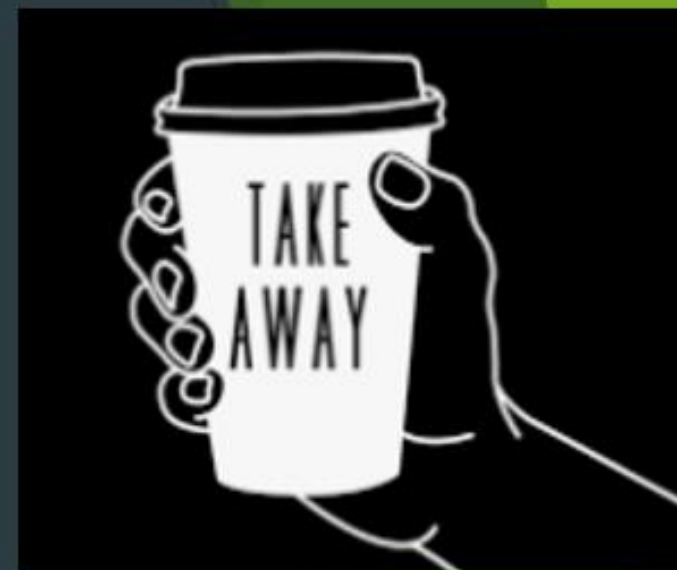
Nine Steps for Beating Burnout

1. Do not isolate!
2. Declutter (office space, home, drawers, & desk)!
3. Take a *real* vacation (and put your 'away email reply" on)!
4. Connect to a greater life purpose/volunteer!
5. Gratitude lists/journal/jar!
6. Understand perfectionism vs. excellence
7. Create new experiences and cultivate new skills.
8. Treat yourself like a good friend who needs a break (compassion, grace, empathy).
9. **REMEMBER – DON'T OVERDO IT! BE REALISTIC !! We all live ONE DAY AT A TIME!**



Key Take Aways

- *Ahhh...Youth*: Younger, less experienced lawyers working in small firms or bar associations have higher levels of distress symptoms than their more seasoned and experienced peers.
- *Smash the Stigma*: Lawyers don't seek help for their behavioral health problems because they fear someone will find out and it will discredit them and possibly affect their license.
- *HELP is Not a Four Letter Word*: Look for signs in yourself and others and don't be afraid to start that conversation with a colleague.
- *Culture Shift*: Make having a culture of well-being a priority in your firm or practice setting





Questions?