

Improving Mental Health and Well-Being Requires Strategic Vision and Long-Term Commitment: Are Law Firms Up to the Task?

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I. INTRODUCTION



Looking back over the hundreds of talks and lectures I have given about mental health and well-being in the legal profession over the last dozen or so years, a common building block you will find in each is a discussion of why the topic is important, what the current statistics tell us about the state of health in law, and why the audience should care. As an organizational tool, the content lays the foundation for what typically follows, specifically a discussion of what firms, lawyers, and clients can do to improve their situation. At a more global level, however, the message has always been more about awareness and advocacy, to alert members of the

profession about the depth of our challenges and persuade them that the need for change is real and the ability to affect that change is within their grasp. As we move into 2024, the unwelcome news is that there are many audiences for whom that core, basic message is still essential. The good news is that there are far fewer of them than in years past, as more law firms have come to realize that the health of their people cannot be put on the back burner any longer.

II. A RED LIGHT IS FLASHING

Outside the legal profession, mental health in America is getting worse, not better, even as we now move beyond the pandemic that greatly accelerated society's mental health tailspin.¹ In 2024, we are more depressed, anxious, addicted, lonely, and suicidal than we have ever been, and for many white-collar workers, a heavy workload, a stressful job, and long hours top the list of obstacles they say are getting in the way of improving their well-being. As a result, 60% percent of employees, 64% of managers, and 75% of C-suite leaders say they are seriously considering quitting for a job that would better support their well-being.² Not surprisingly, nearly 70% of workers who report decreased mental health also report decreased levels of engagement, with 43% of Millennials saying their level of engagement has decreased in the last six months, compared to 38% of Gen Xers and 34% of Baby Boomers.³

¹ See Jamie Ducharme, *America Has Reached Peak Therapy. Why Is Our Mental Health Getting Worse?*, Time, Aug. 28, 2023.

² See Colleen Bordeaux et al, *As workforce well-being dips, leaders ask: What will it take to move the needle?*, Deloitte Insights, June 20, 2023.

³ See *Survey: Mental Health Worsens for 34% of US Workers*, Conf. Bd., May 29, 2023.

Inside the legal profession, where mental health and substance abuse problems have historically outpaced that of the general population by a notable margin, challenges continue to mount both for lawyers and law students, with all available data

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suggesting that our collective well-being is still marching in the wrong direction and that attorney disengagement is a “huge problem.”⁴ Along with colleagues from the University of Minnesota Medical

School, I have published three studies on lawyer mental health over the last two years which, in addition to demonstrating an ongoing mental health crisis in law, help untangle some of the risk factors for and causes of our stress, problem drinking, and heightened levels suicidality.⁵ Suffice it to say, that despite meaningful improvements in the volume, candor, and frequency of discussions around mental health and well-being in law, we have yet to move beyond what is arguably phase one (what I call the “resource provision phase”) of a long-term project, and the results of our limited efforts are showing.

III. MOVING FROM RESOURCE PROVISION PHASE TO RISK FACTOR MODIFICATION

The question is, “why would that be?” For starters, most efforts to reduce distress within the legal profession have so far tended to target the individual, e.g., through the provision of personal stress management tools and self-care resources, as opposed to targeting the more structural and systemic precipitators of stress (i.e., time pressures, unclear expectations, workload control, and lack of feedback). Simply put, most firms and the legal profession more broadly have been better at alleviating the effects of stress than at throttling the causes. This is perhaps not surprising, and to be fair, any efforts to improve our situation needed to start somewhere. Furthermore, interventions and resources aimed at helping individuals better cope with stress are, in fact, vitally important and should remain an essential element of any firm’s efforts to improve mental health. Any retreat from that level of support would be shortsighted and disastrous at this point. This “phase one” effort will only take us so far, however, which is why it is imperative that firms take a more

⁴ See Dan Roe, *‘There’s a Lot of Backlog to Address’: Why Mental Health in the Legal Profession Is Getting Worse*, Am. Law., May 18, 2023.

⁵ See Patrick Krill, *Cracking the Code on Well-Being in Law: Applying Research and Experience to Advance an Essential but Elusive Priority*, NALP Bull., May/June 2023.

strategic and long-term approach to improving the health and well-being of their lawyers and staff. In other words, moving from the resource provision phase to risk factor modification.

Through an exercise called a “behavioral health audit,” we regularly work with law firms to help them understand their strengths and weaknesses related to mental health and well-being, and to create a road map for achieving more impactful and durable results with their well-being programs. Almost universally, we find that firms are ultimately confronted with a question that is both existential and practical: Do they want their well-being program to accommodate their existing business practices and culture—to mold itself to fit those existing foundations? Or are they willing to modify, evolve, or revisit certain unhelpful aspects of their business and culture in order to achieve improved well-being? As you might expect, most firms find themselves settling for option “A,” even if there are those within the firm who sincerely want the answer to be option “B.” The primary reasons? A lack of true, firm-wide buy-in as to the importance of mental health and well-being as an organizational and operational priority, and just as limiting, a lack of practical understanding about how they could address aspects of their business and culture that are problematic for mental health without threatening their profitability and overall performance. By developing a strategic vision and making an authentic long-term commitment to supporting better mental health and well-being among their people, firms would find these are both solvable problems.

To make progress in this arena, and move toward a more effective, enduring, and sustainable well-being model that better supports their people, I would suggest firms consider three concrete steps in the near term:

A. Put Mental Health and Well-Being on the Leadership Agenda

This process begins by educating all leadership and management about the changed mental health landscape we are facing and, to the extent possible, getting everybody on the same page about the need to prioritize and focus on these issues. In a time of reduced bandwidth and resources or competing priorities, achieving consensus on this point will not necessarily be a slam dunk, even though it should be. If your firm’s executive committee or leadership team has not had mental health and well-being on a meeting agenda or retreat schedule in the last year, it is failing to discuss a critical issue clearly facing your population and absolutely affecting your business performance and risk profile in ways both large and small, now and into the future.

The leadership teams of some law firms have taken a “set it and forget it” approach to mental health and well-being by hiring a director of well-being and/or delegating responsibility for and maintenance of the firm’s efforts in this area to one person or team. This is the wrong approach, full stop, especially when the person or team responsible for the firm’s well-being efforts is not truly empowered with an adequate

and reliable budget or decision-making authority. Leaders need to be up to speed and, when possible, involved. Research has shown that the greater the involvement and perceived support from leadership, the greater participation is in workplace health promoting activities, the less perceived job stress employees report, and the healthier their behaviors are. In addition, recent research has also shown that managers have a greater influence on employee mental health than therapists or doctors, and an influence equal to that of spouses and partners.⁶ Bottom line, if leaders want healthier employees, they need to be part of the solution.

B. Leverage Analytics and Understand Your Business Case for Prioritizing Mental Health and Well-Being

Law firms are increasingly analytics-savvy and numbers-focused, capable of tracking and forecasting a wide range of variables that impact their performance and

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profitability. From billable hours to travel expenses, office attendance, market trends, and emerging competitive threats, there are few things that law firms are incapable of understanding on a numerical level. Yet

somehow, when it comes to the impact of mental health and well-being on their overall performance and financial health, most firms are willingly operating with a large blind spot. There is a compelling business case to be made for much greater prioritization and funding of well-being efforts in law firms, and thoughtful and well-supported arguments have been articulated to that effect.⁷ There seems to be a disconnect, however, when it comes to individual firms that operate as if the abstract or conceptual business case for focusing on well-being does not translate or apply to *their* business.

To overcome that disconnect, firms can start by lifting the hood and examining some basic metrics to generate a provisional snapshot of how mental health problems and a lack of well-being are currently affecting their business.⁸ Some items to look at include the number of leaves of absence over the last several years related to mental health and well-being; the percentage of the workforce utilizing firm-sponsored

⁶ See Eve Glicksman, *Report: Managers Have Bigger Impact on Employee Mental Health than Therapists*, SHRM, Feb. 15, 2023.

⁷ See Jarrod F. Reich, *Capitalizing on Healthy Lawyers*, *The Prac.*, Mar./Apr. 2020.

⁸ Any such information should, of course, be gathered and reviewed in accordance with the firm's obligations under HIPAA and other applicable privacy laws.

mental health benefits or taking psychotropic medications; the number of behavioral crises, malpractice claims, or other significant problems partially or fully attributable to mental health or substance misuse; the overall level of workforce engagement; trends around unwanted turnover; and various other data related to physical health, just for starters. By using data from your own population, some preliminary conclusions can easily be drawn. For example, according to the American Heart Association, by reviewing health insurance claims and providing blood pressure screening, you may find that close to half of your population has hypertension, which contributes to some of the most expensive clinical outcomes, including stroke, heart attack, and kidney failure.⁹ Connecting that to mental health and well-being, it is well-known that work-related stress and poor sleep (often due to work-related stress) can increase blood pressure, whereas well-managed stress and better sleep may lower blood pressure and thereby decrease costs. In addition, when people are regularly sleep-deprived, as lawyers often are, they are likely to have more negative emotional responses to stressors and are at increased risk for mental health disorders such as anxiety and depression.¹⁰ According to the American Psychiatric Association, employees with unresolved depression experience a 35% reduction in productivity, and research has also shown that depression prospectively predicts higher incidence of other, costly diseases such as cardiovascular disease, cancer, and diabetes.¹¹

When lawyers are experiencing ill physical or mental health, they are presumptively delivering lower-quality work and doing so less efficiently, even while meeting their billable hour obligations, which may result in client dissatisfaction with work product, excessive write-downs, and loss of future business opportunities for the firm. Stress and decreased well-being can also result in lawyers' diminished cognitive functioning, which presents other risks, such as increased likelihood of costly or even catastrophic mistakes. Conversely, in the most comprehensive study to date linking employee well-being to financial performance, new research from the University of Oxford and Harvard University has shown that companies with higher employee well-being scores outperform their counterparts in multiple traditional measures of firm performance, including company value, return on assets, and profits.¹² As firms begin to connect even some of these dots, they will find that not only would an increased focus on mental health and well-being lower costs and risk, it would also lead to a more engaged, productive, and stable workforce throughout the organization.

⁹ See *Working Too Much Could Lead to High Blood Pressure*, Am. Heart Ass'n News, Dec. 19, 2019.

¹⁰ See *How Sleep Deprivation Impacts Mental Health*, Colum. Dep't of Psychiatry, Mar. 16, 2022.

¹¹ See Ashton Tena et al., *Using Longitudinal Prescription Data to Examine the Incidence of Other Chronic Diseases Following Antidepressant Use*, 125 J. Psychiatric Rsch., 7 (2020).

¹² See Jan-Emmanuel De Neve et al., *Workplace Wellbeing and Firm Performance*, Univ. of Oxford Wellbeing Rsch. Ctr. Working Paper 2304 (May 12, 2023).

C. Manage for Tomorrow

Despite regularly making long-term investments in countless other aspects of their organization and people, including professional development, office space, technology, and overall platform and practice group enhancement, law firms have been slow to take a similar approach to the mental health and well-being of their attorneys. Part of the reason for this has to do with the structure and business model of law firms, which may rely upon a certain level of an “up or out” system that anticipates that many people will not be at the firm for the long term. Even beyond the associate ranks where such turnover is expected, the increasingly competitive and busy lateral market for law firm partners has also eroded both longevity and loyalty at law firms. This may result in the undermining of firm efforts to prioritize investments or reforms intended to support the health and well-being of our colleagues.

In addition, law firms are increasingly focused on annual profits and rankings of financial performance, both of which are highly prized and viewed as translating into more prestige, easier recruitment of top talent, and subsequently more money. Managing toward a short-term goal like annual profits without adequately considering the long-term impacts on work culture, expectations, and norms is precisely how, over time, law firms can find themselves confronted with a workforce that is increasingly unwell, disengaged, and disloyal.

There is a concept in behavioral science known as “delay discounting,” which is defined as the decrease in the subjective value of an outcome as time until its occurrence increases. In other words, the longer you must wait for something, the less value you place on it. Widely used as a measure of impulsiveness, this tendency to place less value on rewards that are delayed in time is often associated with addiction and other unhealthy, risky behaviors. When people exhibit elevated levels of delay discounting, their prioritization of short-term rewards can often lead them to forego choices and behaviors that would otherwise lead to much greater rewards over time. If that concept sounds relevant to this discussion, that is because it categorically is. Many law firms have prioritized the short-term goals of annual profits and financial performance over the long-term rewards of a healthier, more engaged, and ultimately more productive workforce that they could cultivate through an increased focus on mental health and well-being. As law firms struggle to reconcile and accommodate the career expectations, goals, and attitudes about work, that are increasingly present among younger generations of attorneys, they would be well-served to take the long view of where they would like the firm to be in five or 10 years, and how a strategic focus on well-being can help them get there in a sustainable manner.

IV. CONCLUSION

Mental health and well-being at law firms is getting worse, not better, thereby making it more important than ever for firms to take an authentic and proactive approach to the well-being of all firm personnel. This requires taking practical steps to address and mitigate the modifiable risk factors that exist within the firm's culture and business dynamics. Failing to do so in 2024 and beyond is choosing to operate without regard for the solid and continually growing body of evidence linking good mental health and well-being to notable improvements across numerous, critically important organizational outcomes and objectives. Although it can be challenging to meaningfully engage these issues, doing so successfully will provide significant long-term and sustainable benefits, including the likelihood of decreased claims related to lawyer impairment issues.