

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**FEBRUARY 22, 2021**

**RESOLUTION**

RESOLVED, That the American Bar Association encourages federal, state, local, territorial, and tribal courts, bar associations, legal employers, and law schools to develop, assemble, disseminate, promote, and to collaborate to make resources accessible that advance well-being in the entire legal profession, including but not limited to, educational programming, mental health providers, screening, employee assistance programs, referrals to community support groups and state and local lawyer assistance programs; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal courts, bar associations, legal employers, and law schools to adopt policies that encourage lawyers, judges, and law students to seek out these resources, taking into account the barriers of stigma, retribution, actual or perceived confidentiality challenges, and other negative effects on the reputation of legal professionals.



## REPORT

This resolution encourages bar associations, legal employers, courts, and law schools to create and distribute policies and resources aimed at advancing well-being in the legal profession, and to promote the use of these policies and resources.

Legal professionals struggle with anxiety, depression, suicidal thoughts, and substance use at a rate of three times that of the general population.<sup>1</sup> Mental health conditions and substance use disorders lead to dysfunction in the private lives of legal professionals and can contribute to grievances and the betrayal of trust the public puts in the legal profession. It is imperative that each lawyer, judge, and law student know how to access care for any condition that may impair their ability to practice law and feel supported and encouraged to seek such help without fear that their reputation will be harmed.

In Spring 2020, the rapid transmission of the novel coronavirus, also known as the severe acute respiratory syndrome coronavirus 2 (COVID-19), prompted a global pandemic.<sup>2</sup> Within weeks, countries around the globe witnessed exponential growth in the number of COVID-19 cases.<sup>3</sup> Many legal employers downsized, recalibrated, and shifted their employees to working remotely.<sup>4</sup> While the global nature of the pandemic meant that everyone was and continues to be affected in some way, individuals with mental health conditions and substance use disorders may respond more strongly to the stress associated with the infectious disease outbreak.<sup>5</sup> In addition to job pressures, public health responses, like social distancing, can make people feel isolated and lonely, and have the potential to increase stress and anxiety.<sup>6</sup> The pandemic is likely to exacerbate existing mental health conditions among members of the legal profession.

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<sup>1</sup> See Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46 (2016).

<sup>2</sup> On January 21, 2020, the Centers for Disease Control and Prevention announced the first confirmed case of the coronavirus in the United States. *First Travel-related Case of 2019 Novel Coronavirus Detected in United States [Press Release]*, CENTERS FOR DISEASE CONTROL & PREVENTION (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

<sup>3</sup> See Pam Belluck & Noah Weiland, *C.D.C. Officials Warn of Coronavirus Outbreaks in the U.S.*, N.Y. TIMES (Mar. 9, 2020), <https://www.nytimes.com/2020/02/25/health/coronavirus-us.html>.

<sup>4</sup> Liane Jackson, *Female Lawyers Face Unique Challenges during the COVID-19 Pandemic*, A.B.A. J. (Oct. 1, 2020, 2:50 AM), [https://www.abajournal.com/magazine/article/female-lawyers-face-pandemic-challenges?utm\\_source=salesforce\\_290430&utm\\_medium=email&utm\\_campaign=weekly\\_email&utm\\_medium=email&utm\\_source=salesforce\\_290430&sc\\_sid=03864749&utm\\_campaign=&utm\\_content=&additional4=&additional5=&sfmc\\_j=290430&sfmc\\_s=47583814&sfmc\\_l=1527&sfmc\\_jb=208&sfmc\\_mid=100027443&sfmc\\_u=8806622](https://www.abajournal.com/magazine/article/female-lawyers-face-pandemic-challenges?utm_source=salesforce_290430&utm_medium=email&utm_campaign=weekly_email&utm_medium=email&utm_source=salesforce_290430&sc_sid=03864749&utm_campaign=&utm_content=&additional4=&additional5=&sfmc_j=290430&sfmc_s=47583814&sfmc_l=1527&sfmc_jb=208&sfmc_mid=100027443&sfmc_u=8806622).

<sup>5</sup> *Pandemics Can Be Stressful*, CENTERS FOR DISEASE CONTROL & PREVENTION (Dec. 11, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fmanaging-stress-anxiety.html](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fmanaging-stress-anxiety.html).

<sup>6</sup> *Id.*

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## **The ABA's On-Going Commitment to Promoting Well-Being<sup>7</sup>**

The ABA has targeted efforts to assist members of the legal profession by focusing on mental health wellness. The ABA Commission on Lawyer Assistance Programs (CoLAP) was created in 1988 to “assure that every judge, lawyer and law student has access to support and assistance when confronting alcoholism, substance use disorders or mental health issues so that lawyers are able to recover, families are preserved and clients and other members of the public are protected.”<sup>8</sup> CoLAP works tirelessly toward this mission, including developing and offering various well-being resources<sup>9</sup>; yet many legal professionals who need help or know of colleagues who need help do not access the generous resources available through state and national bar associations and lawyer assistance programs due to stigma, shame, and fear.

Between 2016 and 2020, CoLAP conducted several research studies on the well-being of lawyers, law students, and judges. CoLAP's studies, in partnership with Hazelden Betty Ford Foundation, University of St. Thomas School of Law, and The College of Saint Scholastica, demonstrated that lawyers, law students, and judges respectively suffer from elevated rates of depression, anxiety, and stress reactions that are sometimes compounded by substance use disorders and mental health issues.

According to the 2016 national study of attorneys, 20.6% of respondents struggled with problematic drinking.<sup>10</sup> Younger respondents reported significantly higher frequencies of drinking and higher quantities of alcohol were reported. The results of this research indicated that 61.1% of the respondents struggled with anxiety, 45.7% struggled with depression, and 11.5% of the respondents reported suicidal thoughts at some point in their career.<sup>11</sup> The 2016 study found two barriers to seeking help that were identified for

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<sup>7</sup> The Report of the National Task Force on Lawyer Well-Being defines well-being as “a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.” ABA NATIONAL TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE, 9 (2017), *available at* <https://lawyerwellbeing.net/>. See also RESOLUTION 105, A.B.A. WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION REPORT TO THE HOUSE OF DELEGATES (Feb. 2018), [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_2018\\_hod\\_midyear\\_105.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2018_hod_midyear_105.pdf) (urging legal stakeholders to adopt the recommendations outlined in the National Task Force Report).

<sup>8</sup> ABA COMMISSION ON LAWYER ASSISTANCE PROGRAMS MISSION STATEMENT, [https://www.americanbar.org/groups/lawyer\\_assistance/about\\_us/](https://www.americanbar.org/groups/lawyer_assistance/about_us/).

<sup>9</sup> As an example, a compendium of well-being resources, including a curated list of Mental Health Resources for the Legal Profession; a ABA Well-Being Toolkit; a Well-Being Template for Legal Employers; a Substance Use and Mental Health Toolkit for Law Students; and a Directory of State and Local Lawyer Assistance Programs can be found at the Commission on Lawyer Assistance Programs website. COMMISSION ON LAWYER ASSISTANCE PROGRAMS, [https://www.americanbar.org/groups/lawyer\\_assistance/](https://www.americanbar.org/groups/lawyer_assistance/) (last visited Jan. 19, 2021).

<sup>10</sup> See Krill et al., *supra* note 1, at 48.

<sup>11</sup> *Id.* at 50.

respondents— not wanting others to find out they needed help (25.7%), and concerns regarding privacy and confidentiality (23.4%).<sup>12</sup>

Research conducted in the same year showed similar results with regard to law students.<sup>13</sup> Approximately, one quarter to one-third of respondents of the law student survey reported frequent binge drinking or misuse of drugs, and/or reported mental health challenges.<sup>14</sup> Moreover, the results indicated that significant majorities of those law students most in need of help were reluctant to seek it.<sup>15</sup>

The recently published report on the Commission's National Judicial Stress and Resiliency Survey revealed that 20% of respondents struggle with depression, 23% of respondents struggle with anxiety and 2% have experienced suicidal thoughts.<sup>16</sup> 9.5% of respondents reported problematic alcohol use.<sup>17</sup>

In 2017, the ABA Board of Governors, at the request of Hilarie Bass, Past President of the ABA, created the ABA Working Group to Advance Well-Being in the Legal Profession. The Working Group's goal was to address the troubling rates of alcohol and other substance use disorders, as well as mental health issues among lawyers. The Working Group was in existence from 2017 through 2019. One of the Working Group's key deliverables was the ABA Well-Being Campaign.<sup>18</sup> The primary vehicle for the Campaign is the Pledge which describes a seven-point framework for legal employers to adopt and prioritize to encourage attorneys and staff to improve their physical, mental, and emotional well-being.<sup>19</sup> In the two years since its launch, the Pledge has 195 signatories. CoLAP continues to provide support for the ABA's commitment to promote well-being in the legal profession, including administering the ABA Pledge Campaign and developing resources to assist pledge signatories in fulfilling their commitment to the Pledge.

In 2018, the Commission on Lawyer Assistance Programs launched a profession-wide anti-stigma campaign with the objective of de-stigmatizing mental health and substance use disorders, emphasizing the vital importance of asking for help, encouraging open discussions about these issues, and raising awareness and educating the legal

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<sup>12</sup> *Id.*

<sup>13</sup> See Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See David Swenson, Joan Bibelhausen, Bree Buchanan, David Shaheed & Katheryn Yetter, *Stress and Resiliency in the U.S. Judiciary*, 2020 J. PROF. LAW. 1, (2020).

<sup>17</sup> *Id.*

<sup>18</sup> The ABA Well-Being Campaign was launched to improve the substance use and mental health landscape of the legal profession with an emphasis on helping legal employers support a healthy work environment. See ABA Wellbeing Campaign, Powerpoint, [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_working\\_group\\_pledge\\_and\\_campaign.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_working_group_pledge_and_campaign.pdf) (last visited Jan. 14, 2021).

<sup>19</sup> ABA COMMISSION ON LAWYER ASSISTANCE PROGRAMS, WELL-BEING IN THE LEGAL PROFESSION, [https://www.americanbar.org/groups/lawyer\\_assistance/well-being-in-the-legal-profession/](https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/) (last visited Jan. 14, 2021).

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profession. As part of this effort, CoLAP produced a series of videos highlighting the personal recovery stories of members of the legal profession. The first of the series is a three-minute video titled, *Fear Not: Speaking Out to End Stigma*, featuring a diverse group of lawyers, a federal judge and two law students who talk about their challenges dealing with behavioral health issues, including depression, anxiety, alcoholism and drug addiction and their recovery.<sup>20</sup>

It is imperative that all members of the legal profession are aware of the Pledge and the many other initiatives of CoLAP and the Lawyer Assistance Programs in the states. Many resources exist to help law students, lawyers, and judges who are struggling with well-being and mental health concerns. However, these resources can only prove effective if the individuals for whom they were created are aware of their existence and feel comfortable utilizing these resources without fear of stigma or retribution.

## **ABA Practice Forward**

At the request of then ABA President Judy Perry Martinez and then President-Elect Patricia Lee Refo, the Practice Forward Coordinating Group (Practice Forward) was created by the ABA Board of Governors in Spring 2020 to leverage the power of the entire ABA by coordinating pandemic-responsive resources throughout the Association. The focus is to harness expertise to address potential long-term changes to the practice of law and the judicial system.<sup>21</sup> The essential goal is to help members through this fundamental shift so they can then better serve their clients.<sup>22</sup>

Practice Forward launched a survey of ABA members, seeking to understand the increased burden on lawyers caused by the COVID-19 pandemic and the shift to working remotely. Results of that survey indicate that all lawyers surveyed were anxious, stressed, and showing signs of burnout more so than they did a year prior to the pandemic.<sup>23</sup> Respondents reported that they were finding it harder to keep work and home life separate, were feeling overwhelmed and stressed, thought their day would never end, and are having trouble taking time off from work.<sup>24</sup> These feelings were more pronounced for women, lawyers of color, and younger lawyers, particularly those with young children.<sup>25</sup> This group also indicated that increased resources and guidance about managing mental health and well-being would be useful.<sup>26</sup>

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<sup>20</sup> To view the video *Fear Not: Speaking Out to End Stigma* and to learn more about CoLAP's Anti-Stigma Campaign, see COLAP SPEAKING OUT TO END STIGMA, [https://www.americanbar.org/groups/lawyer\\_assistance/profession\\_wide\\_anti\\_stigma\\_campaign/](https://www.americanbar.org/groups/lawyer_assistance/profession_wide_anti_stigma_campaign/) (last viewed Jan. 14, 2021).

<sup>21</sup> ABA PRACTICE FORWARD COORDINATING GROUP JURISDICTIONAL STATEMENT, [https://www.americanbar.org/content/dam/aba/administrative/office\\_president/practice\\_forward\\_entity.pdf](https://www.americanbar.org/content/dam/aba/administrative/office_president/practice_forward_entity.pdf) (last viewed Jan. 20, 2021).

<sup>22</sup> See *id.*

<sup>23</sup> Stephanie Scharf & Roberta Liebenberg, *Emerging From The Pandemic Into The Future Of Law Practice: A National Survey Of The Legal Profession*, A.B.A. (forthcoming February 2021).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

**Crucial Need for ABA Policy on Well-Being**

The Practice Forward survey revealed that the pandemic has resulted in an increase in substance use and other mental health concerns which has had a devastating impact on those in the legal profession.<sup>27</sup> Stress and its effects impact lawyers, law students, and judges. Stigma, shame, and fear loom large in people's minds as obstacles to seeking help for mental health conditions. When the stress of practicing law, studying for the bar examination, or sitting on the bench begins to overwhelm some individuals, they may turn to unhealthy coping strategies that can exacerbate an existing mental health condition or create a new one.

Courts should make resources accessible for court personnel; bar associations should make resources accessible for personnel and attorneys; legal employers should make resources accessible for their personnel and attorneys; and law schools should make resources accessible for their personnel and law students.

Adoption of this resolution will (1) elevate awareness of lawyers, law students, and judges of the special mental health challenges legal practitioners face and the increased burden due to the COVID-19 pandemic; (2) highlight the availability of resources to help; and (3) encourage members of the legal profession to overcome any barriers and let their needs be known to someone in a position to help.

Respectfully Submitted,

Laura Farber and William Bay  
Co-Chairs, ABA Coordinating Group on Practice Forward

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<sup>27</sup> *Id.*

## GENERAL INFORMATION FORM

Submitting Entity: ABA Coordinating Group on Practice Forward

Submitted By: Laura Farber and Bill Bay

1. Summary of Resolution(s).

This resolution encourages bar associations, legal employers, courts, legal employers, and law schools to create and distribute policies and resources aimed at advancing well-being in the legal profession, and to promote the use of these policies and resources.

2. Approval by Submitting Entity.

Approved by the ABA Coordinating Committee on Practice Forward on January 7, 2021.

3. Has this or a similar resolution been submitted to the House or Board previously?

Resolution 105 adopted in February 2018 may be considered as having similar objectives. Resolution 105 supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students; and urges all federal, state, local, territorial, and tribal courts, bar associations, lawyer regulatory entities, institutions of legal education, lawyer assistance programs, professional liability carriers, law firms, and other entities employing lawyers to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This resolution is supportive of Resolution 105 adopted in February 2018 (see #3 above). Also relevant are: 1) ABA Goal 1, which has an objective of providing programs and services which promote members' professional growth and quality of life; and 2) ABA Goal II, which includes promoting competence, ethical conduct, and professionalism; and 3) ABA Goal III regarding eliminating bias and enhancing diversity.

5. If this is a late report, what urgency exists which requires action at this meeting?

We are in a pandemic and mental wellness is crucial. The results of the ABA Practice Survey were not received until after the deadline to submit timely resolutions.

6. Status of Legislation (if applicable).

N/A



7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

After adoption, the ABA Coordinating Group on Practice Forward will work with federal, state, local, territorial, and tribal courts, bar associations, legal employers, law schools, and other ABA entities to determine the most effective way to advocate for this Resolution.

8. Cost to the Association (both indirect and direct costs).

No known costs.

9. Disclosure of Interest.

None.

10. Referrals.

Young Lawyers Division  
Law Student Division  
Judicial Division  
Center for Professional Responsibility  
Commission on Disability Rights  
Commission on Hispanic Legal Rights and Responsibilities  
Commission on Racial & Ethnic Diversity in the Profession  
Commission on Sexual Orientation and Gender Identity  
Commission on Women in the Profession  
Council of Racial & Ethnic Diversity in the Educational Pipeline  
Health Law Section

11. Name and Contact Information (Prior to the Meeting).

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12. Name and Contact Information (Who will present the Resolution with Report to the House?)

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**EXECUTIVE SUMMARY**1. Summary of the Resolution

This resolution encourages federal, state, local, territorial, and tribal courts bar associations, legal employers, and law schools to create and distribute policies and resources aimed at advancing well-being in the legal profession, and to promote the use of these policies and resources.

2. Summary of the issue that the Resolution addresses.

To encourage creation and distribution of policies and resources aimed at advancing well-being in the legal profession by courts, bar associations, legal employers, and law schools, as well as to promote utilization of these resources by members of the legal profession without stigma.

3. Please explain how the proposed policy position will address the issue.

This policy will (1) elevate awareness of lawyers, law students, and judges of the special mental health challenges legal practitioners face and the increased burden due to the COVID-19 pandemic; (2) highlight the availability of help; and (3) encourage members of the legal profession to overcome any barriers and let their needs be known to someone in a position to help.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

No opposition is known at this time.