

# Hot Potato

By Tish Vincent

One stressful aspect of legal education for law students is the grading curve.<sup>1</sup> In a class of 200 students, only 20 graduate in the top 10 percent of their class. Those 20 can look forward to interviewing with firms and having a chance at becoming associates.

Law school deans point out that law firms expect schools to use the grading curve to identify the best students for hiring purposes. Some deans suggest that if firms used a different metric for the selection process, the grading system would change.

When discussing the grading curve with managing partners at law firms, they mention the number of graduates competing for limited positions. They explain that they must have a reliable mechanism that allows them to attract and keep strong legal talent. They point the finger at law schools for creating a surplus of individuals seeking work.

Discussing this concern with law school deans or managing partners can seem like a game of hot potato. As soon as the issue is raised, the person holding the potato is looking to hand it to someone else. Both sides influence the process, and no one knows how to fix it.

*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*,<sup>2</sup> a 2017 report produced by the National Task Force on Lawyer Well-Being, included the following recommendations for bar associations and legal employers.

## Recommendations for legal employers

- Establish organizational infrastructure to promote well-being.
  - Form a lawyer well-being committee.
  - Assess lawyers' well-being.
- Establish policies and practices to support lawyer well-being.

- Monitor for signs of work addiction and poor self-care.
- Actively combat social isolation and encourage interconnectivity.
- Provide training and education on well-being, including during new lawyer orientation.
  - Emphasize a service-centered mission.
  - Create standards, align incentives, and give feedback.<sup>3</sup>

## Recommendations for bar associations

- Encourage education on well-being topics in association with lawyer assistance programs.
  - Sponsor high-quality CLE programming on well-being-related topics.
  - Create educational materials to support individual well-being and “best practices” for legal organizations.
  - Train staff to be aware of lawyer assistance program resources and refer members.
- Sponsor empirical research on lawyer well-being as part of annual member surveys.
- Launch a lawyer well-being committee.
- Serve as an example of best practices relating to lawyer well-being at bar association events.<sup>4</sup>

These recommendations are intended to disrupt the legal culture. The task force envisions a future very different from the

present—one populated by lawyers who know about wellness, know how to achieve and maintain it, and are committed to valuing it for their colleagues and employees. This future legal culture will have a much higher emotional IQ.

Legal employers need policies and procedures that encourage their employees to tend to their wellness. These policies must address how to intervene when an employee needs professional help to address a personal behavioral health problem. To that end, the New York State Bar Association has developed a model law firm policy,<sup>5</sup> and the American Bar Association has proposed its own model law firm policy and is actively working on improving it and encouraging firms to adopt it.<sup>6</sup>

Employers are encouraged to establish a lawyer well-being committee to keep the conversation about wellness going while studying the stresses of the work environment and developing methods to address them. If this idea was adopted, one committee member would serve as a representative to explain the employer's policies and procedures and assist employees who are in need.<sup>7</sup> More information about the above and other ideal characteristics can be found in *The Path to Lawyer Well-Being* report.

The task force also recommends that bar associations establish well-being committees. This is not to be confused with lawyers' assistance programs, which address all

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these issues. A well-being committee is envisioned as a consortium of stakeholders in the state that focuses on these important issues independently.<sup>8</sup>

Bar associations are organized differently from state to state, but all share the important goal of encouraging the professionalism of their members and are in a unique position to focus on promoting both professional and personal growth. They encourage their members to participate in pro bono initiatives and to stay committed to access to justice for everyone. The nation's bar associations have a responsibility to emphasize that all attorneys need to tend to their physical and mental health to stay fit to practice.

What if law firms and law schools were committed to producing well-educated, practice-ready graduates who were also physically and emotionally healthy? What metrics would the firms look to when hiring? What metrics would the schools use to evaluate students? What if the legal profession used something like Match Day in medicine?<sup>9</sup> The medical field requires employers to create residencies for new graduates to become practice ready. In advance of Match Day, the training programs rank the applicants and the applicants rank the training programs. On Match Day, students find out where they will train and the programs learn who will be part of their staff. Medical deans and professors personally assist students without matches to ensure everyone gets placed.<sup>10</sup>

The National Task Force on Lawyer Well-Being report raises provocative issues. Lawyers need to read the report, discuss it, and ask how we can contribute to improving our culture and well-being. The State Bar of Michigan is dedicated to the well-being of

its members and has engaged in important work to chart a course for the future of the law. The SBM 21st Century Practice Task Force envisioned a plan that addresses the challenges described in this article.<sup>11</sup> Some excellent ideas were developed that are worth exploring.

Earlier this year, the State Bar launched a podcast exploring the interplay between practice management and lawyer wellness for thriving law practices. The conversations about self-care, law firm efforts to encourage lawyer wellness, and law practice management will continue in the coming months.<sup>12</sup>

Read the SBM 21st Century Practice Task Force recommendations. Listen to a few of the podcasts. Recognize the efforts your bar association is making to bring this important topic to your attention.

As legal employers become more supportive of the well-being of their employees, all stakeholders will benefit. ■

*Tish Vincent is the program administrator for the State Bar of Michigan Lawyers and Judges Assistance Program.*

### ENDNOTES

1. E.g., see Macaulay, *Why the F? Understanding the 1L Grading Curve*, BarBri (March 14, 2017) <<https://lawpreview.barbri.com/understanding-1l-grading-curve/>>. All websites cited in this article were accessed June 12, 2018.
2. Buchanan & Coyle, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, ABA (August 2017) <<https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>>.
3. *Id.* pp 31–34.
4. *Id.* pp 41–42.
5. New York State Bar Ass'n, *New York State Bar Association Lawyer Assistance Committee Model Policy* (April 2010) <[https://www.nassaubar.org/UserFiles/Model\\_Policy.pdf](https://www.nassaubar.org/UserFiles/Model_Policy.pdf)>.

6. ABA Commission on Impaired Attorneys Standing Committee on Lawyer Competence, *Report to the House of Delegates: Recommendation to Adopt Model Law Firm/Legal Department Personnel Impairment Policy and Guidelines* (August 1990) <[https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lc\\_colap\\_model\\_law\\_firm\\_personnel\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lc_colap_model_law_firm_personnel_authcheckdam.pdf)>.
7. *The Path to Lawyer Well-Being*, p 31.
8. *The Path to Lawyer Well-Being*, p 42.
9. Bachert & Hsu, *Match Day 2017: Largest One Yet—Residency slots up 3.3% from 2016*, MedPage Today (March 17, 2017) <<https://www.medpagetoday.com/hospitalbasedmedicine/graduatemedicaleducation/63926>> and Gray, *Match Day, when medical student futures are decided*, UW News (March 21, 2014).
10. See generally NRMP, *Intro to Main Residency Match* <<http://www.nrmp.org/>>.
11. SBM 21st Century Practice Task Force, *Envisioning a New Future Today* (July 2016), pp 8–21 <[https://www.michbar.org/file/future/21c\\_WorkProduct.pdf](https://www.michbar.org/file/future/21c_WorkProduct.pdf)>.
12. E.g., see SBM: On Balance Podcast, *Wellness Resources for Lawyers: Featured Guest Patrick Krill* <<https://www.michbar.org/pmrc/podcast>>.

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