

# Diversity Inclusion

SECTION OF LITIGATION

[Home](#) > [ABA Groups](#) > [Section of Litigation](#) > [Committees](#) > [Diversity & Inclusion](#) > [Articles](#) > [2018](#) > [Lawyer Well-Being: An Uncharted Path to Increasing Diversity and Inclusion](#)

## Lawyer Well-Being: An Uncharted Path to Increasing Diversity and Inclusion

Jayne Reardon and Bree Buchanan – February 19, 2018

Historically, society's stereotypical image of the successful lawyer, like a hero in a Western movie, is a hard-charging, heavy-drinking, macho man. There is, however, an unspoken but widely known truth behind this archetype: too many of these so-called successful lawyers suffer from mental health or substance use disorders and are struggling (or even failing) to properly serve their clients. As a call to action to the legal profession, the [National Task Force on Lawyer Well-Being](#) issued a comprehensive report in August 2017 that urged all stakeholders to develop initiatives to change the unhealthy state of affairs.

The report, "[The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#)," (referred to henceforth as "the report") makes recommendations designed to ignite a movement to improve the well-being of the legal profession. Seeking to tackle dysfunctional systems from the top down, the drafters include a charge to urgently address the lack of diversity and inclusion in the profession. What does the lack of diversity and inclusion have to do with the thrust of the report's recommendations to build a legal culture premised on attorneys' well-being? We have no doubt there is a correlation between the two, if not a direct connection. After all, a profession that purports to promote the well-being of its members must, by definition, foster an environment that supports a diverse and fully inclusive workplace.

### "The Path to Lawyer Well-Being"

Two recent innovative studies, [Suffering In Silence](#) and [The Prevalence of Substance Use](#) (referred to henceforth as "the studies"), both published in 2016, galvanized leaders of several national legal organizations and led to the creation of the National Task Force on Lawyer Well-Being and its report. The studies

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- [Diversity Home](#)
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- [Audio](#)
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» [Vol. 5, No. 2](#)

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[Section of Litigation Publications](#)

[Section of Litigation Books](#)

## CLE & Events

**Mar.** [What Security Nightmares Keep Law Firm Management Up at Night](#)  
22 Web

**Mar.** [ABA Medical-Legal Guidance: Head Trauma and Brain Injury for Lawyers](#)  
27 Web

**Apr.** [Admiralty Regional Meeting 2018](#)  
06 In-Person

[More Section Events](#)

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provide the first extensive data about mental health and substance use disorders among law students and lawyers in decades. This new data suggests that prior conclusions about the scope and character of lawyer mental health and substance use disorders were either erroneous or outdated.

One in five lawyers among survey respondents self-identified as problem drinkers. Contrary to previous research that indicated problems began in later years, over a quarter of respondents reported their problem drinking began in law school. The rate of “problematic drinking” was twice that of other highly educated professionals. Twenty-eight percent of lawyers reported feelings of depression and 21 percent said they suffered from anxiety. A staggering 11.5 percent of lawyers reported having suicidal thoughts during their careers. Both studies revealed significant resistance to seeking help among law students and lawyers driven by attitudes that included: not wanting others to find out they have a problem, concerns about a negative impact on obtaining or keeping their law license, and the stigma still attached to these behavioral health disorders.

In response to the studies, representatives from the ABA Commission on Lawyers Assistance Programs, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers met at the ABA Annual Meeting in August 2016. Several other entities subsequently became involved, including committees and divisions within the ABA (for example, the Standing Committee on Professionalism), the National Conference of Chief Justices, and National Conference of Bar Examiners.

The report sets out the rationale for taking on the lack of well-being in the profession. The rationale include (1) organizational effectiveness (“it’s good for business”), (2) ethical integrity and (3) humanitarian reasons. It provides an inaugural definition of lawyer well-being, defined more broadly than the simple absence of impairment. The report instead establishes well-being as “a continuous process toward thriving across all of life’s dimensions: intellectual, spiritual, physical, social, emotional and occupational,” and exhorts all stakeholders, including judges, regulators, legal employers, law schools, bar associations, professional liability carriers, and lawyers assistance programs, to work toward this goal.

The report also lays out the five essential components of the process of building a sustainable culture of well-being: (1) identify the stakeholders to engage, (2) end the stigma around seeking help, (3) emphasize that well-being is integral to competence, (4) expand education and outreach, and (5) change the tone of the profession one-step at a time. The authors acknowledge that

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changing a culture engrained over decades or centuries will not be a quick endeavor.

### **Well-Being and Diversity & Inclusion Initiatives Are Symbiotic**

Among its many recommendations, the task force calls on all stakeholders in the profession to “Foster Collegiality and Respectful Behavior.” The report, supported by extensive reputable research, connects the fostering of collegiality and respect with well-being and calls for initiatives related to diversity and inclusion initiatives, including mentoring, as a means to achieve this goal.

The authors posit that a collegial and respectful workplace contributes to a person’s sense of connection and belonging and has a direct bearing on well-being. Noting research that shows, while worker engagement is linked to organizational success, a startling 68 percent of the workforce is not engaged, the report recommends that all stakeholders urgently prioritize diversity and inclusion by stressing that:

Regulators and bar associations can play an especially influential role in advocating for initiatives in the profession as a whole and educating on why those initiatives are important to individual and institutional well-being. Examples of relevant initiatives include: scholarships, bar exam grants for qualified applicants, law school orientation programs that highlight the importance of diversity and inclusion, CLE programs focused on diversity in the legal profession, business development symposia for women and minority-owned law firms, pipeline programming for low-income high school and college students, diversity clerkship programs for law students, studies and reports on the state of diversity within the state’s bench and bar, and diversity initiatives in law firms.

Similarly, another initiative that the report concludes fosters inclusiveness and respectful engagement is mentoring, which can aid well-being and career progression for women and diverse professionals while also reducing lawyer isolation. Those who have participated in legal mentoring report a stronger sense of personal connection with others in the legal community, restored enthusiasm for the legal profession, and more resilience—all of which benefit both mentors and mentees.

Other report recommendations that can promote diversity and inclusion involve enhancing a lawyer’s sense of control and autonomy. For example, the recommendation to enhance lawyers’ sense of control cites studies that demonstrate that high job demands, paired with a sense of lack of control, breed depression

and other psychological disorders. The report also points to anecdotal support for the conclusion that a lack of autonomy and control over schedules is a primary reason for women of childbearing and rearing ages to leave the profession.

### **Forced Cultural Norms Lead to Exclusion**

Legal workplace cultural norms that support high levels of alcohol consumption can reinforce tendencies toward problem drinking and stigmatize—or even ostracize—those seeking help. In the legal profession, social events often center on alcohol consumption, an outdated tradition established during a time when there were few women or minorities in the workplace. Men—white men—created activities that allowed them to connect with each other, socialize, and exchange ideas. Typical activities include networking events serving alcohol, golf, and other sports outings that usually also involve the consumption of alcohol.

The report encourages legal employers, law schools, bar associations, and other stakeholders that plan social events to provide a variety of alternative non-alcoholic beverages and consider other types of activities to promote socializing and networking. Organizers of such events must strive to develop social norms under which lawyers encourage healthy means of coping with stress, discourage heavy drinking, and enable and motivate help seeking for problem alcohol or drug use.

By persisting with a norm of alcohol consumption for networking and socializing, the insiders and power brokers of the legal profession run the risk of excluding those faced with behavioral health challenges from events critical to professional advancement. Lawyers in recovery from substance use disorders are faced with either missing out on “book building” opportunities or with imperiling their hard-won sobriety. Knowledge that this culture predominates within the law acts as a deterrent to pursuing sobriety. Those of us working within the lawyers’ assistance program community can attest that law students and young lawyers often will cite their concerns about damage to their advancement if they must forgo these social events. It is not unusual for this situation to be used as reason to defer treatment for their disorder. The alcohol-dominated culture also fails to consider that individuals receiving treatment for mental health disorders (e.g., depression) are often unable to drink alcohol because of adverse interactions with medication.

A culture of aggression or dog-eat-dog litigation, another hallmark of the stereotypical successful lawyer, can also be exclusionary. Studies show that men tend to thrive in a competitive environment, whereas women tend to prefer to collaborate with their workplace colleagues. We know from personal experience that the more a female litigator is perceived as aggressive and hard-

hitting, the more likely she is to be perceived as competent and successful. At the same time, there is evidence showing that women lawyers are more frequent targets of incivility and harassment. For many women, a lack of collegiality and respect leads to a toxic culture—which is corrosive and adds additional stress.

### **Stigma Negatively Impacts Help-Seeking, Even More So for Minority Lawyers**

For all attorneys, a significant barrier to seeking help for substance use or mental health problems is the fear of negative repercussions. This perception is a direct result of the stigma and shame attached to these conditions. It persists, even though the medical community recognizes these conditions as treatable behavioral health disorders and not moral failings.

Stigma is defined as a cluster of negative attitudes and beliefs that motivate the general public to fear, reject, avoid, and discriminate, and results in exclusion, poor social support, and increased isolation. Social stigma, a bias against people with mental health and substance use concerns, is exacerbated by law firm culture that perpetuates the notion that seeking help for any behavior that might be associated with a deficiency of mental capacity or willpower is a weakness. As a result, law firms' conspiracy of silence surrounding mental health and substance use disorders serves to drive underground those who are suffering, thereby exacerbating the conditions. Minority attorneys who are dealing with a behavioral health disorders, attorneys who often already feel pressure to over perform, to overcome negative bias and prove that they "belong" at the firm or in the profession, can face a crippling double stigma.

Another inhibitor of help seeking can be a strong cultural stigma associated with engaging in counseling or other mental health interventions. Research shows that racial and ethnic minorities—as well as lesbian, gay, bisexual and transgender people—face greater barriers to getting help. Even after controlling for factors such as health insurance and socioeconomic status, ethnic minority groups still have a higher unmet mental health need than non-Hispanic whites.

For example, Asian Americans have been found to have stronger negative implicit attitudes toward mental illness than Caucasian Americans. Another study found that the cultural stereotype of the "strong black woman" promotes unflagging toughness, strength, self-reliance, and denial of self-needs, and has a distinct cultural history that is in tension with seeking help. Faith and spirituality can often complicate matters and a person's faith community may not support seeking help (outside of prayer, etc.). Some minority

groups and immigrant communities deal with a deep-seated distrust of the healthcare system.

### **Conclusion**

The corrosive culture that promulgates incivility, overwork, and alcohol consumption as a badge of honor is at the root of the profession's diversity problem. It is a Gordian knot. But lawyers are problem-solvers. By implementing the recommendations in *The Path to Lawyer Well-Being*, we are likely to not only have attorneys who are healthier and more productive, but also a profession that is more diverse and sustainable.

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