Anne M. Brafford
Chairperson, Attorney Well-Being Committee
Law Practice Division, American Bar Association
ambrafford@gmail.com
310.367.6782

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Ms. Christina Plum
Chairperson
Standing Committee on Continuing Legal Education
MCLE Model Rule Review Project
christina@christinaplum.com
scocle@americanbar.org

The following comments represent the position of the American Bar Association's Law Practice Division on the current draft of the ABA Model Rule for Minimum Continuing Legal Education (MCLE). Thank you for the opportunity to provide our input on this important issue.

Many U.S. lawyers find themselves in a profession drained of civility and compassion and plagued by chronic stress, poor self-care, high rates of depression, and rampant alcohol abuse. These psychological conditions affect not only lawyers' subjective sense of wellbeing, they impair professional effectiveness. For example, it's estimated that 40-70% of disciplinary and malpractice proceedings stem from lawyers' stress-related mental illness, substance abuse, or both (Benjamin, 2008).

Although the legal profession has known for years that many of its practitioners are languishing, far too little has been done to address it. The reasons why the profession's response has been marginal may vary from a lack of understanding of the causes and consequences of psychological distress, a lack of education about how these problems might be addressed, or the lack of a sense of responsibility for lawyer well-being since no Rule of Professional Responsibility explicitly endorses it. While there is no "well-being" Rule, the ABA's Model Rule of Professional Responsibility 1.1 requires lawyers to "provide competent representation." Section 4(A) of the draft Model MCLE Rule aligns with this, stating that the "primary objective" of CLE programming "must be to increase the attendee's professional competence and skills as a lawyer, and to improve the quality of legal services rendered to the public." As discussed below, significant scientific research shows that unhealthy lawyers suffer impairment of the very skills they need to provide high-quality, competent representation: judgment, critical thinking, and

reasoning, to name a few. Lawyer well-being is at least as important to competent representation (if not more so) as topics like practice efficiency and technology proficiency, which are topics that the Model Rule expressly endorses. (See Section 1(H), 1(P).)

What we propose as a meaningful step to address the chronic problem of lawyers' psychological distress is **to revise the ABA Model MCLE Rule to more clearly say that state CLE programs should require lawyer wellness training and identify subjects that fall under that umbrella.** Too many state bars do not include wellness-related topics among the subjects that earn CLE credit, or they interpret their wellness provisions narrowly or inconsistently to exclude many topics relevant to lawyers' effectiveness.

The Need to Prioritize Lawyer Well-Being

A recent study of nearly 13,000 practicing lawyers found that 21% qualify as problem drinkers and 28 % experienced some level of depression (Krill, Johnson, & Albert, 2016). In February 2016, the YourABA website staff interviewed two of the study's co-authors, Patrick Krill, a lawyer and substance abuse counselor, and Linda Albert, a representative of the ABA's Commission on Lawyer Assistance Programs (COLAP). Both agreed that, to meaningfully reduce lawyer distress, all corners of the legal profession will need to commit to bring about a cultural shift that makes lawyer health and wellness a priority. They agreed that the profession behaves as if the establishment of Lawyer Assistance Programs—a necessary but not sufficient step toward a solution—has satisfied any responsibility that the bar might have for promoting lawyer wellness. In their view, a full systematic approach that prioritizes wellness is necessary.

Also in February 2016, the ABA adopted the ABA Model Regulatory Objectives for the Provision of Legal Services (Resolution 105). The primary goal of the Objectives was to provide guidance for state courts in preparing regulatory frameworks for "non-traditional" legal service providers (e.g., legal service firms operating under alternative business structures that might include non-lawyers). At COLAP's urging, the concept of provider "wellness" was incorporated into the Objectives. Specifically, the final version of Objective "I" recommends remedies and disciplinary proceedings stemming from provider negligence and misconduct and also the "advancement of appropriate preventive or wellness programs." As to the added language about wellness programs, the Report stated: "Such programs not only help improve service as well as providers' well-being, but they also assist providers in avoiding actions that could lead to civil claims or disciplinary matters." (See ABA Proposed Resolution 105 and Report, p. 4).

Notably, the Report stated that the purpose of regulatory objectives differed from the purpose of the ABA's Model Rules of Professional Conduct—which, according to the Report, contained the legal profession's "core values." Noticeably absent from the Model Rules' statement of "core values," however, is any reference to lawyer "wellness." Instead, they refer to a duty of "competence," which has been interpreted to contain some element of wellness.

The express reference to wellness should be expanded beyond the Model Regulatory Objectives. A future step that the ABA should take to signal its support of an expanded set of core values is to adopt a Model Rule of Professional Responsibility that explicitly endorses the importance of lawyer well-being. The time to take more assertive action to raise lawyer well-

being is now. The profession is changing rapidly and requires energetic, resilient, innovative lawyers to keep up (e.g., MacEwen, 2013; Susskind, 2013). Further, as law school applications continue to decline sharply (as much as 30-40% since 2011), the profession also needs a face lift to alter its image as a bastion of toxic cultures that breed ill health. It is time for the legal profession to craft a new vision for itself that embraces a broader set of core values than currently prevails.

Until that change is made, we propose here that wellness should be the topic of a stronger statement in the Model MCLE Rule relating to the competency of counsel. As discussed below, an existing and growing body of scientific research shows clear connections between wellness and lawyer effectiveness. If wellness is not more clearly endorsed by an ABA Rule, State Bars are less likely to take it seriously. If wellness topics do not qualify for CLE credit, attorneys are less likely to carve out time to educate themselves about its causes and consequences.

State CLE Program Inconsistencies

While many state CLE programs grant credit for topics related to depression, anxiety, and substance abuse, they are inconsistent and often authorize only a narrow set of topics.

For example, Arizona appears to have one of the broader rules, which covers prevention of substance abuse as well as "stress." Specifically, it requires CLE activity for "professional responsibility" which is defined to include "substance abuse, including causes, prevention, detection and treatment alternatives" and "stress management" (A. R. S. Sup. Ct. Rules, Rule 45(a)(2)). South Carolina's Rule 408(a)(2) includes a similar provision that requires one hour of education every three years on the topics of "substance abuse, mental health issues or stress management and the legal profession." The Rule is interpreted broadly to allow a variety of wellness-related topics.

New York's CLE rule (§1500.2(c)) defines "ethics and professionalism" to include "substance abuse control" but not other wellness-related competencies.

California authorizes credit for programs related to the "detection of substance abuse, mental illness or other mental or physical issue that impairs a member's ability to perform legal services with competence." It interprets this rule to *exclude* training related to prevention or treatment of any impairment. In short, California lawyers can earn credit only for repeatedly educating themselves on how to detect mental health issues and substance abuse. A website that provides guidance on interpretation of the rule expressly excludes from coverage "meditation or other forms of stress management." An official responsible for reviewing credit requests in California rejected a program on the benefits of mindfulness, stating that the rule was adopted to prevent credit for "things like yoga and golf." The underlying assumption appears to be that mind-body strategies and physical activity are mere fluff or have trivial associations with well-being and the competent practice of law.

States may be adopting and interpreting their CLE rules based on misinformation about causes, preventative factors, and consequences of mental health conditions that influence lawyers' effectiveness. Further, as the current draft of the ABA MCLE Rule recognizes, a

significant obstacle for improving lawyer well-being is the stigmatization of mental health issues. This favors CLE rules that broadly define wellness topics that may earn credit rather than restricting credit only to topics that explicitly address "depression" and "suicide." Further, California's rule and others like it that deny CLE credit for programs related to prevention and treatment do not align with the systematic approach needed to prioritize lawyer health.

Evidence of Lawyer Ill Health and Contributing Factors

Below is a summary of evidence relating to the state of lawyer mental health as well as contributing factors and consequences. It highlights the breadth of factors that can undermine (and contribute to) well-being and lawyer effectiveness. The clear implication is that systematic efforts are needed to address these issues.

Depression & Suicide. As noted above, a national study of practicing lawyers found high rates of psychological distress, including some level of depression (28%) and elevated levels of anxiety (19%), and stress (23%) (Krill et al., 2016). Lawyers also were asked to report health-related conditions that they had experienced at any time during their legal career. The most common mental health conditions reported were anxiety (61.1%) and depression (45.7%). By comparison, major depression impacts about 7% of the general population. Depression is strongly associated with suicide, which accounts for 56-87% of suicide cases (Rihmer & Gonda, 2016). In the Krill et al. (2016) study, 11.5% of participants reported suicidal thinking at some point in their careers. Suicide ranks among the leading causes of premature death among lawyers (Mauney, n.d.). As recent as January 2014, news media reported that Kentucky has had 15 known lawyer suicides since 2010; Oklahoma had one a month in 2004; and South Carolina lost six lawyers within 18 months before July 2008 (Flores & Arce, 2014).

As noted above, the majority of malpractice and disciplinary matters involve mental health conditions, substance abuse, or both. This data is enough for many to acknowledge that depression can harm lawyers' professional competence. This conclusion is confirmed by science. It is well-established that depression impairs social and work functioning (Synder, 2013; Rock et al., 2014). Cognitive impairment is estimated to occur in about two-thirds of depressed individuals (Rock et al., 2014). Cognitive impairment is so common that the diagnostic manual for mental disorders now defines depression to include "diminished ability to think or concentrate, or indecisiveness" (Snyder, 2013).

Recent large-scale reviews of depression-related studies have found that major depression is associated with impaired higher-level cognitive processing involved in executive function, including impaired memory, attention, and problem-solving. Impaired executive function harms, among other things, the ability to make decisions and evaluate risks, plan for the future, prioritize and sequence actions, and cope with new situations (Rock et al., 2014; Snyder, 2013). In other words, depression impairs the ability to navigate nearly all parts of lawyers' daily lives. Further, some type of cognitive impairment persists in up to 60% of individuals with depression even after mood symptoms have diminished (Rock et al., 2014). This raises the risk that individuals believe that they have recovered (because their mood has improved) and therefore are less vigilant about potential cognitive impairments. It also militates strongly in favor of preventative programs to stave off depression entirely.

Alcohol Abuse. Alcohol abuse harms professional competency even outside of episodes of intoxication. In fact, "[c]ognitive impairment is a core feature of chronic alcoholism" (Smeraldi et al., 2015). Up to 80% of people who abuse alcohol experience mild to severe cognitive impairment. Deficits are particularly severe in executive functions, especially in problem-solving, abstraction, planning, organizing, and working memory—core features of competent lawyering.

As noted above, alcohol abuse is prevalent among lawyers. Krill and colleagues' (2016) found that about 21% of practicing lawyers abused alcohol compared to about 12% of a comparable population. Those at highest risk were younger men, earlier in their careers working for private law firms. This is consistent with other research finding that men are more at risk for alcohol abuse in response to workplace stressors (Crum, Muntaner, Eaton, & Anthony, 1995). For example, one study found that men in high strain jobs characterized by high psychological demands and low autonomy were 27 times more likely to abuse alcohol. No appreciable risk of alcohol abuse was found for women in the same job categories, even though the study found that those job characteristics were equally distressing to women. They hypothesized that women might react differently to the same stressors, such as by becoming depressed.

Further, lawyers are apprehensive about getting help for alcohol abuse. In the study by Krill and colleagues, among lawyers who ever had sought help for substance abuse, the two top obstacles they named for doing so were not wanting others to find out that they needed help and concerns regarding privacy or confidentiality.

Stress. Workplace stress significantly increases the risk of depression, anxiety, burnout, alcohol abuse, and other illnesses that can affect lawyers' competence to practice (Frone, 1999; Hammen, 2005; Joyce et al., 2016; Leignel, Schuster, Hoertel, Poulain, & Limosin, 2014; Wang, 2005). In a 2004 study of North Carolina lawyers, more than half had elevated levels of perceived stress, and this was the highest predictor of depression of all factors in the study (Howerton, 2004). Stress also is associated with cognitive decline, including impaired attention, concentration, memory, and problem-solving (McEwan & Sapolsky, 1995; Schwabe & Wolfe, 1995; Shapiro, Astin, Bishop, & Cordova, 2005). Stress harms one's ability to establish strong relationships with clients and is associated with relational conflict, which can further undermine lawyers' ability to competently represent and interact with clients.

Sleep Deprivation. A 2012 study based on survey results for the National Center for Health Statistics ranked lawyers as the second most sleep-deprived occupation in the U.S.—behind only home health-aids (Weiss, 2012). In a study of associates in a large, world-wide firm, a common complaint related to high hours and little sleep, including "a quite childish competition… on who could do with less sleep than the others" (Forstenlechner & Lettice, 2008, p. 648). As with many corporate cultures (Fryer, 2006), firms use sleep deprivation as a proxy for high performance.

Dr. Charles Czeisler, one of the world's leading sleep experts, says that "encouraging a culture of sleepless machoism is worse than nonsensical; it is downright dangerous, and the antithesis of intelligent management" (Fryer, 2006, p. 1). Sleep deprivation has been linked to a

multitude of health problems that decay the mind and body, including depression, cognitive impairment, decreased concentration, and burnout (Maxon, 2013; Ferrie et al., 2011; Soderstrom et al., 2012). Cognitive impairment associated with sleep-deprivation can be profound (Fryer, 2006; Ferrie et al., 2011). For example, a study of over 5,000 people showed that too little sleep was associated with a decline over a five year-period in cognitive functioning, including reasoning, vocabulary, and global cognitive status (Ferrie et al., 2011).

Sleep deprivation also has significant short-term effects. People who average four hours of sleep per night for four or five days develop the same cognitive impairment as if they had been awake for 24 hours—which is the equivalent of being legally drunk (Fryer, 2006). Given lawyers' high risk for depression, it is worth noting evidence that sleep problems have the highest predictive value for who will develop clinical depression (Franzen & Buysse, 2008).

Burnout. Burnout is a syndrome that includes emotional exhaustion, depersonalization, and a low sense of personal accomplishment (Dyrbye & Shanafelt, 2016). "Depersonalization" manifests as a lack of empathy, loss of motivation, and cynical and negative attitudes toward clients and others (Prinz et al., 2012)—all of which can undermine professional competency. Little empirical data on the incidence of burnout in the legal profession is available, but there is a general consensus that the problem is prevalent. In the medical profession, which we can use as a guide, 30-40% of physicians meet the definition for burnout (Dyrbye & Shanefelt, 2009). Burnout is associated with an increased risk of substance abuse and suicidal thinking (Dyrbye & Shanafelt, 2016). It is highly related to depression, with one study in a professional context finding that burnout predicted depression (and not vice-versa) (Hakanen & Schaufeli, 2012).

Research conducted in the medical profession has found that burnout can seriously undermine professionalism. It can erode honesty, integrity, altruism, and self-regulation (Dyrbye & Shanafelt, 2016; Schwenk, 2015). A study of U.S. medical students found that burnout was associated with higher self-reported rates of cheating on exams, lying about clinical data, medical errors, ethical lapses, and less compassionate care. Studies also reflect that burned out physicians are more likely to provide sub-optimal care and experience more medical errors (Dyrbye & Shanafelt, 2016). The decline in quality of care is likely due in part to a decline in cognitive functioning, which is associated with burnout and depression (e.g., Deligkaris et al., 2014; Dyrbye & Shanafelt, 2016).

Pessimistic Attributional Style. A 2004 study of lawyers found that more than half had a pessimistic attributional style (Howerton, 2004). Attributional style refers to how people habitually explain to themselves why events happen (Seligman, 1990). Those with an optimistic style tend to believe that negative events are temporary and not pervasive in their lives (Forgeard & Seligman, 2012). People with a pessimistic style tend to view negative events as permanent and pervading their lives with global consequences (Seligman, Verkuil, & Kang, 2001). The pessimistic style has been linked with depression, stress, and anxiety (Kamen & Seligman, 1987), while optimism buffers against depression (Forgeard & Seligman, 2012).

Work-Life Conflict. A study of a New Zealand law firm found that work-life conflict was the strongest predictor of lawyer burnout in the study (Hopkins & Gardner, 2012). By social science research standards, the correlation was quite large (r = .63). While research of lawyers'

experience is limited in this area, the medical profession has conducted a number of relevant studies. Work-life conflict has been identified as a significant factor contributing to burnout (e.g., Amoafo et al., 2015). In 2014, a majority of physicians (about 60%) reported that they were dissatisfied with their work-life balance (Shanafelt et al., 2015). Researchers found that recent work/home conflict and resolving the conflict in favor of work were strongly related to physician burnout (Dyrbye et al., 2014). The study found that physicians who reported an experience of work/home conflict in the prior three weeks were 50% more likely report to symptoms of emotional exhaustion and 20% more likely to report depersonalization.

Work Addiction. Work addiction is excessive work performed to the exclusion of meaningful relationships or neglect of physical and emotional reactions to stress (Howerton, 2004). It is associated with numerous health and relationship problems, including depression, anger, anxiety, sleep problems, burnout, and work-life conflict (Howerton, 2004; Sussman, 2012). Studies have found the prevalence of workaholism among lawyers to be 23-26% (Doerfler & Kramer, 1986; Howerton, 2004). This is more than double that of the 10% rate estimated for U.S. adults generally (Sussman, Lisha, & Griffiths, 2011).

Evidence Supporting Prevention Strategies

Below is a summary of activities and strategies that are empirically shown to prevent psychological distress or reduce its symptoms. The list is intended to highlight the broad array of science-based topics that could help boost lawyer well-being and lawyer effectiveness. It also is meant to highlight how many potentially effective strategies are being under-utilized due to lack of education; unfounded biases against many of these topics as New Age fluff; and belief systems about what the bars' responsibilities are for their lawyers.

Physical Activity. Many lawyers' failure to prioritize physical activity is harmful to their mental health and cognitive functioning. Physical exercise is associated with reduced symptoms of anxiety and low energy (Herring, Jacob, Suveg, & O'Connor, 2011). Research has shown that aerobic exercise can be as effective at improving symptoms of depression as antidepressant medication and psychotherapy (Chu, Buckworth, Kirby, & Emery, 2009). Also, it can act as a buffer to prevent depression (Hillman et al., 2008). In a review of strategies for preventing workplace depression, researchers found that interventions to increase physical activity were among the most effective (Joyce et al., 2016).

A growing body of research shows that physical exercise also improves brain functioning and cognition (Hillman et al., 2008). Physical activity, which stimulates new cell growth in the brain, can offset the negative effects of stress, which causes brain atrophy (Duman, 2005). Greater amounts of physical activity (particularly aerobic) have been associated with improvements in memory, attention, verbal learning, and speed of cognitive processing (Hillman et al., 2008). Fit people actually have bigger brains than unfit people.

Importance of recovery periods. Many law firms endorse a 24-hour/7-day work week. This relentless schedule paired with high job demands can drain lawyers' health and well-being if they do not have adequate recovery periods (Soderstrom et al., 2012; Rothbard & Patil, 2012; Fritz, Ellis, Demsky, Lin, & Guros, 2013). "Recovery" in psychological terms refers to

regeneration processes that enhance positive states (e.g., vitality, positive affect) and reduce negative states (e.g., fatigue, anger) that build up from effort and stress at work (Sonnentag, Niessen, & Neff, 2012). Sustained engagement with work—i.e., always being "on"—can lead to exhaustion and burnout (Rothbard & Patil, 2012; Soderstrom et al., 2012). People who do not fully recover are at an increased risk over time for depressive symptoms, fatigue, and energy loss (Fritz et al., 2013). By contrast, people who feel recovered report greater work engagement, job performance, willingness to help others at work, and ability to handle job demands (Fritz et al., 2013; Rothbard & Patil, 2012; Sonnentag et al., 2012).

Organizational Leadership. Management and supervisory practices significantly impact mental health. Some examples follow:

- **Effective leaders & supervisors.** Good leadership is associated with less employee depression (Perko et al., 2014) and lower rates of burnout (Corrigan et al., 2002; Hetland et al., 2007). On the other hand, the human impact of bad leadership is shocking. Many studies have found that poor-quality supervision harms followers' psychological health—it's linked to depression, anxiety, emotional exhaustion, and burnout (Lin et al., 2013; Kelloway et al., 2012). Many believe that only blatantly abusive supervisors harm others' well-being, but this is not so. Perceptions of unfairness are particularly harmful, including unfair criticism, not listening to problems, or not offering praise. Depressive episodes stemming from work can result in decreased concentration, reduced motivation, decision errors, absence, chronic disability, and suicide (Woo & Postolache, 2008).

- **Control**. Feeling in control of one's own work and schedule (also called decision latitude) is a well-established factor contributing to mental health. The concept of control includes two factors: skill use and decision-making authority. "High strain" occurs when workers experience high demands and low control, which can lead to depression. Lack of control is a robust predictor of depression (Woo & Postolache, 2008). This is consistent with the Crum et al. (1995) study discussed above, which found that men in jobs with high demands and low autonomy were at risk for alcohol abuse. The researchers in that study suggested possible workplace interventions to modify problematic psychosocial work environments, including redesigning jobs to provide greater exposure to learning opportunities, development of skills, and input into tasks and policies that affect them (Crum et al., 1995). In a review article evaluating strategies to prevent workplace depression, interventions designed to improve the perception of control were among the most effective (Joyce et al., 2016).

- **Social support & other psychosocial resources.** Social support is an important psychosocial resource (PR), which is a skill or trait that helps people manage stress (Taylor, 2011). In addition to social support, PRs include self-esteem, optimism, a sense of mastery, and active coping skills. Research shows that, without PRs, stress can take a significant toll on psychological well-being, stress responses, and health. Research has found that people with strong PRs have lower biological response to stress—e.g., lower heart rate, blood pressure, and cortisol levels. Social support is a particularly important PR: It's the most significant and reliable psychosocial predictor of health outcomes. Social support is defined as "the perception or reality of having people in your life who care for you and will help you in stressful times, if you need it" (Taylor, 2011, p. 66).

- In the work context, research shows that the social environment plays a key role in the development of depression. Lack of social support, social isolation, interpersonal conflict, and harassment all are risk factors for depression (Woo & Postolache, 2008).

- A large-scale study of Japanese workers found that workplace factors that were significantly positively associated with suicidal thinking were high qualitative job demands and high interpersonal conflict. Factors that were negatively associated with suicidal thinking were meaningfulness of work and high supervisor support (Otsuka, Nakata, Sakurai, & Kawahito, 2016). In a study of health care professionals, Moreau and Magneau (2012) found that supervisor support was associated with significantly less psychological distress and lower suicidal thinking.

- In the context of burnout, Sochos, Bowers, and Kinman (2012) found that perceived supervisor support had the largest (negative) association with emotional exhaustion of all factors studied. Similarly, Prins and colleagues (2007) found that the best predictor of burnout was dissatisfaction with emotional support from supervisors.

- A recent study of physicians' ratings of their direct supervisors' leadership skills found that high scores had a strong negative correlation with burnout and a positive correlation with job satisfaction (Shanafelt, et al., 2015).

- **Supervisor support for work-life balance (WLB).** Research shows that supervisors play an important role in mitigating the perception and ill-effects of work-life conflict—which (as noted above), is highly associated with burnout. In a study of physicians, Walsh (2013) found that burnout was less where doctors felt supported by management, colleagues, and a family-friendly culture. This is consistent with organizational research finding that supervisory support for WLB is among the most important factors shaping employee perceptions about an organization's support for WLB (Shockley et al., 2013).

Meditation and Other Mind-Body Practices. Research indicates that meditation can help address a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role (Walsh & Shapiro, 2010). One type of contemplative practice is mindfulness. Mindfulness is a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings.

Research has found that mindfulness can help deter rumination, improve attention, and reduce stress, depression, and anxiety (Chiesa & Serretti, 2011; Fjorback et al., 2011; Galante et al., 2012; Huffziger & Kuehner, 2009; Hofmann, Sawyer, Witt, & Oh, 2010; Levy & Wobbrock, 2012; Teper, et al., 2013; Marchand, 2012; Wolever et al., 2012; Zeidan et al., 2010). Mindfulness-based interventions also have been effectively used as part of substance abuse treatments (Chiesa & Serretti, 2013; Garland, et al., 2012; Witkiewitz et al., 2013). Yoga—another mind-body practice—has been linked to enhanced mindfulness and reductions in anxiety, fatigue, and sleep disruptions (Field, 2011; Chugh-Gupta, Baldassare, & Vrkljan, 2013).

A growing body of research links mindfulness to a host of competencies that enhance lawyer effectiveness, including increased focus (Mrazek et al., 2013), working memory (Jha et al., 2010), critical cognitive skills (Mrazek et al., 2013; Jha, 2010; Zeidan, 2010), concentration

(Levy & Wobbrock, 2012; Zeidan et al., 2014), reduced burnout (Cohen-Katz et al., 2005), ethical decision-making (Shapiro et al., 2012; Ruedy & Schweizer, 2010), and rational decision-making (Kirk et al., 2011).

Reflecting the growing interest in the benefits of mindfulness in the legal profession, a symposium on the topic was published by the Journal of Legal Education in Spring 2012. Leonard Riskin's (2012) article explained the benefits of mindfulness meditation to law students, lawyers, and clients. Multiple law school have been incorporating mindfulness and other contemplative practices into its curriculum and programming for some time. Some offer courses on these topics and have sponsored events for law students and other legal professionals.

Resilience. Some research suggests that lawyers may have natural tendencies that impede resilience (e.g., MacEwen, 2013). This includes their tendency toward a pessimistic attributional style (Howerton, 2004; Satterfield, et al., 1997), which weakens resilience (Satterfield et al., 1997; Seligman et al., 2001; Seligman, 2002). "Resilience" is "the ability to persist in the face of challenges and to bounce back from adversity" (Reivich, Seligman, & McBride, 2011, p. 25). There is growing evidence that resilience training can be effective at reducing workplace depression (Joyce et al., 2016).

Further evidence of the effectiveness of resilience training is the U.S. Army's Master Resilience Training ("MRT"), which was designed to try to bolster soldier well-being and performance and curb the growing epidemic of mental illness (Reivich et al., 2011). The MRT is an intervention based on cognitive-behavioral therapy ("CBT") techniques and other strategies to enhance psychological fitness (Harms, Herian, Krasikova, Vanhove, & Lester, 2013). Results of the MRT have been promising, providing evidence that training helps reduce soldiers' odds of developing mental health issues (Harms et al., 2013). Also notable is a meta-analysis of various interventions in work organizations to reduce burnout, which found that many CBT-based interventions were effective (Awa, Plaumann, & Walter, 2010).

Cognitive Reframing. Resilience interventions often incorporate cognitive reframing techniques based on CBT (e.g., Reivich et al., 2011), which also rely on mindfulness. Cognitive reframing is a tool to help individuals constructively respond to adversity (e.g., losing a case, disappointing a partner or client). One method for teaching cognitive reframing is the "ABC" model, which teaches that one's automatic *B*elief about an *A*dversity (and not the adversity itself) is what typically causes negative psychological *C*onsequences (Reivich & Shatte, 2002). The ABC model is used in the U.S. Army's MRT (Reivich et al., 2011). It also is being used at Stanford Law School to help students manage the stress of law school (Fenner, 2015).

Coping Styles & Stress Mindsets. Coping style describes how people respond to real or perceived threats (Ross & Altmaier, 1994). Coping can be active and problem-focused or passive and emotion focused. An active coping style has been identified as a personal resource associated with resilience and optimism (Mache et al., 2014). Passive or avoidant coping styles have been identified as a risk factor for depression and burnout (e.g., Schaufeli, 2007; Tattersall, Bennett, & Pugh, 1999; Tyssen & Vaglum, 2002). Research reflects that coping styles are amenable to change through interventions (Ross & Altmaier, 1994), as are mindsets about stress that influence coping self-efficacy (Crum, Salovey, & Achor, 2013).

Proposed Revision

Based on the above, we recommend revising the Model MCLE Rule to more clearly encompass a full range of detection, prevention, and treatment programs aimed at lawyer well-being. The current Model Rule requires lawyers to earn CLE credit in the "areas" of "Ethics and Professionalism" and "Mental Health and Substance Use Disorders." (See Section 3(A)(2)(a)-(b)). The term "Mental Health Disorder" is not defined, and no guidance is provided about what subjects should qualify for credit.

"Ethics and Professionalism" programming is defined to encompass standards of professional conduct as well as civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law and those encountered during the legal practice (See Section 1(D)). Comment 4 to Section 3 recognizes that states often give professionalism credit for programs related to mental health and substance abuse. It recommends stand-alone provisions on these topics, in part, because lawyers will shy away from them otherwise due to the stigma of mental health issues. The Comment states that, "All Jurisdictions are encouraged to promote the development of those specialty programs in order to reach as many lawyers as possible." We recommend that the ABA not only encourage such programming in a Comment but to do so via a revision to the Model Rule itself.

We recommend that Section 3(A)(2)(b) be modified to replace "Mental Health and Substance Use Disorders" with "Health, Wellness, and Substance Abuse." We recommend that this latter phrase be defined in Section 1 as follows:

> "Health, Wellness, and Substance Abuse Programming" means CLE programming that provides education on the prevention, detection, and treatment of health and wellness-related conditions that are associated with lawyers' ability to competently carry out their responsibilities to the multiple stakeholders of the legal profession, including clients, other lawyers, courts, witnesses, and unrepresented parties. Topics that fall within the definition include, for example, stress, burnout, depression, anxiety, and substance abuse. [**P1**-CLE programming under this topic may allot up to 20% of the program's time for practicing any skills that may be taught during the educational component of the program.] [**P2**-Providers seeking approval of CLE credit for programming on these topics should submit a summary of 150-250 words identifying the empirical evidence that supports their proposal.]

Parenthetical 1 proposes optional language that limits time practicing skills to 20% of the program. We suggest that a Note be included explaining that this language is offered to address some state's concerns that, for example, a local yoga class would qualify for CLE credit. We believe that the proposed definition without the parenthetical language is sufficient, but offer this additional language to further bolster the point.

Parenthetical 2 offers additional optional language. For states that require pre-approval for programming to earn CLE credit, we recommend adding the proposed language that requires CLE providers to articulate the empirical evidence that supports their proposal. This optional language is intended to address reasonable concerns that wellness-related programming should

not devolve into self-help platitudes about well-being. It also will prevent legitimate and well-founded CLE programming proposals from being denied based on unfounded biases that some might have against wellness-related subjects. The intent is not for state CLE commissions to evaluate the validity of the proffered scientific evidence. It is simply a check that adds some accountability on the CLE provider and some basis for evaluating whether the program appears to be science-based and legitimately linked to professional competency.

Conclusion

It's time for the legal profession to take meaningful action to improve attorney wellness—which is directly tied to lawyer competence. The medical profession—which already has taken action to prioritize practitioner wellness—can provide guidance. Hundreds of studies have been conducted on physician wellness-related issues, including depression, burnout, engagement, suicidal thinking, and their effect on professionalism and patient care. Bi-annually, the American Medical Association (AMA) co-sponsors an International Conference on Physician Health. The September 2016 conference was held in Boston with the theme, "Increasing Joy in Medicine." The conference included 70 presentations, workshops, and plenary speaker sessions and nearly 70 poster presentations on a wide variety of well-being topics over a three-day period (See AMA website). The Accreditation Council for Graduate Medical Education (ACGME) requires teaching hospitals to implement Institutional Well-Being Plans for residents and physicians. It has identified physician wellness as a "high priority" and, in November 2015, hosted the first National Symposium on Physician Well-Being (Nasca, 2016). Our proposal to revise the MCLE Model Rule is a comparatively modest step to begin signaling that the ABA prioritizes lawyer wellness.

In 1945, John Williams Davis, an American politician and lawyer, said: "True, we [lawyers] build no bridges. We raise no towers. We construct no engines….[But] we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state" (Davis, 1946). This view of law as a noble profession largely has been lost in the cacophony about the ills of the profession. It is time for lawyers to stop turning a blind eye to the stark statistics about the profession's poor well-being. It is time to start rebuilding the profession's reputation as a calling in which lawyers of the present and future can flourish.

Sincerely,

/S/

Anne M. Brafford
Chairperson, Attorney Well-Being Committee
American Bar Association, Law Practice Division

ATTORNEY WELL-BEING COMMITTEE

(Any of the references cited in this paper are available upon request.)