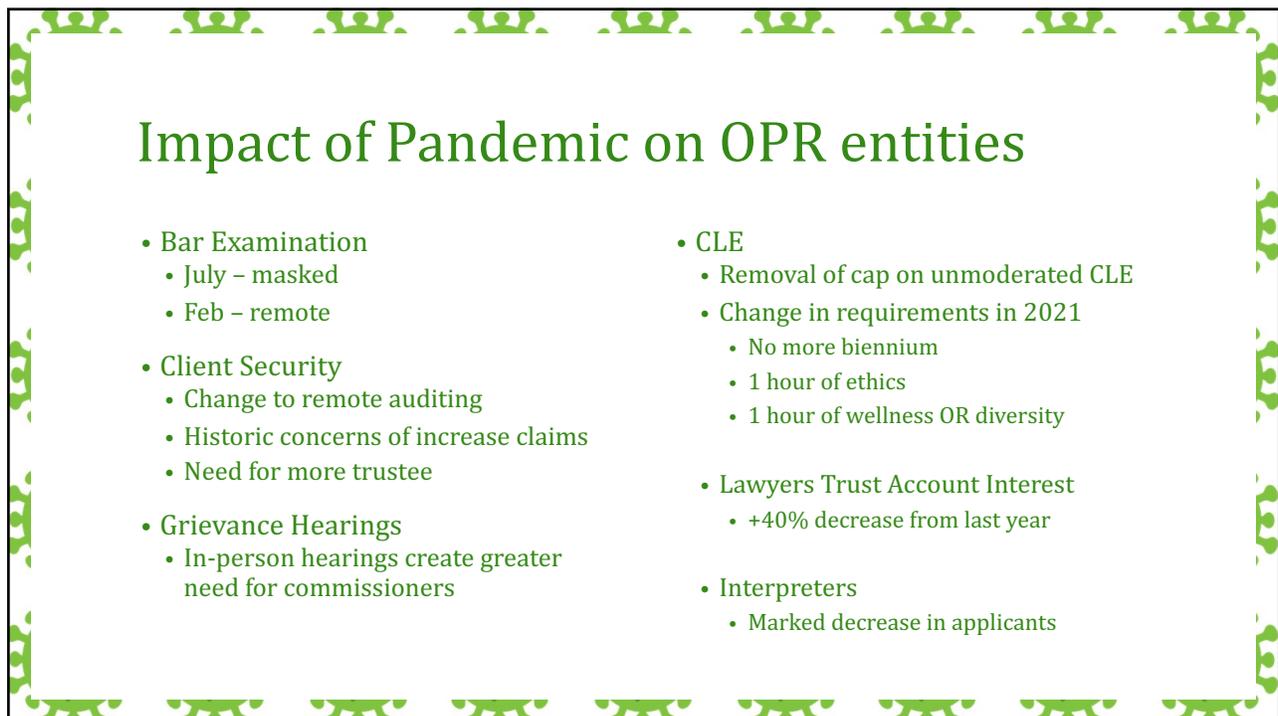




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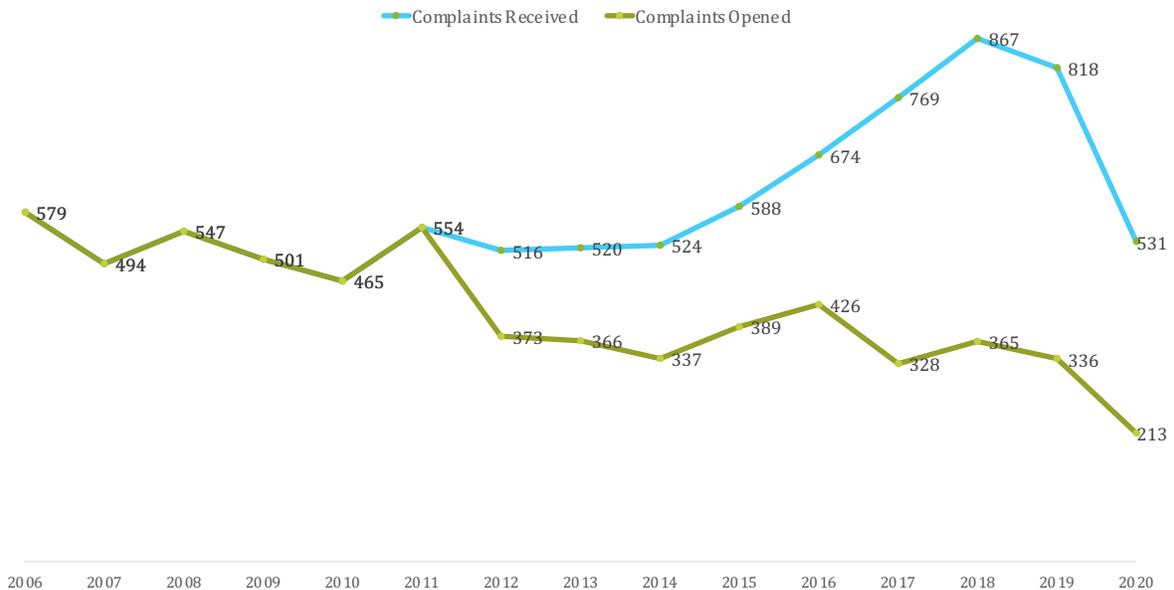
Overall pattern at ADB:

- <3-month investigative backlog.
- Minimal prosecution backlog.
- Fewer complaints overall (this is consistent with national trends and is very notable for 2020).
- Quick case-processing for dismissals (<120 days on average).
- More education and prevention (35+ CLE presentations in 2019, ~20 virtual presentations in 2020).
- Paperless as of 1/1/2020!



3

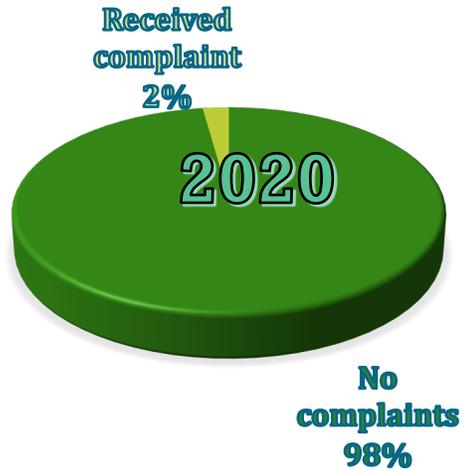
Complaints Received and Opened



4

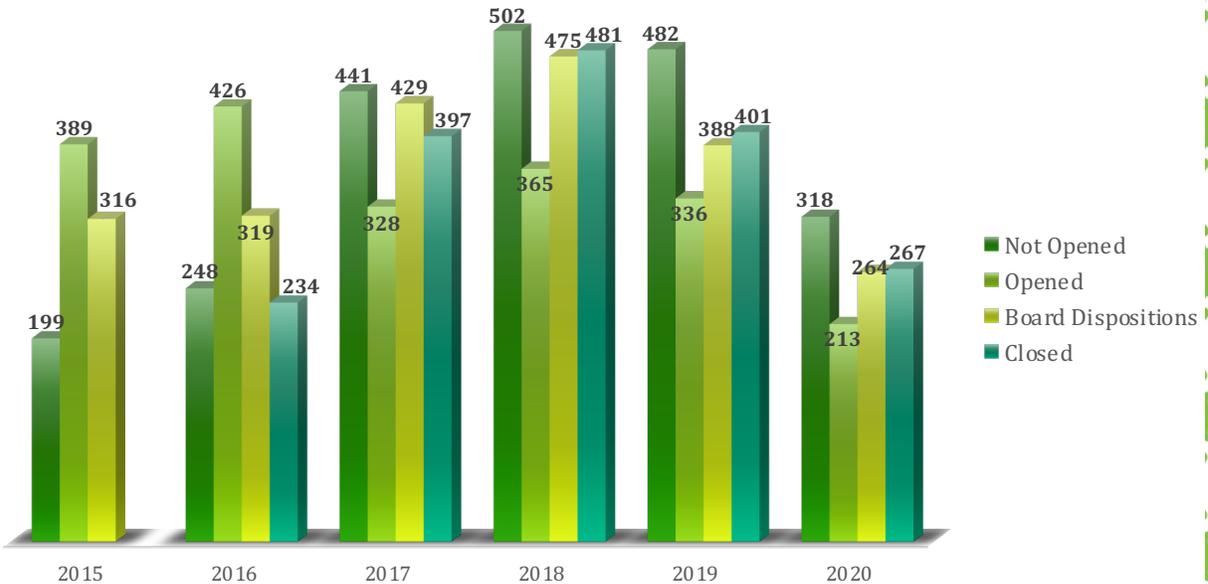
How many respondents?

- 2019:
 - 401 file closures = 320 respondents
 - 336 files opened = 275 respondents
 - 140 lawyers received sanctions (including private admonitions)
- 2020:
 - 267 file closures = 217 respondents
 - 213 files opened = 183 respondents
 - 113 lawyers received sanctions (including private admonitions)
- There are ~ 9,600 active Iowa attorneys



5

ADB Complaint Processing



6

Lessons from 2020

for Iowa lawyers practicing after the COVID-19 pandemic

7

Three Steps

- Emergency response
- Ongoing Prevention
- Recovery, sustainability, and well-being



8

Vulnerabilities exposed by rapid-onset pandemic conditions in March 2020:

- Office management issues – access to needed systems and resources
 - The technology gap among lawyers
 - Overreliance on staff tech capabilities
 - Combination of paper and paperless work – what is a “file”?
 - Client communication methods (including online document transfer and Zoom)
- Staff issues – supervision, morale, illness, overlap between personal and work life
- Client issues – maintaining contact and managing expectations
- Personal issues – physical and mental health problems, addiction, STRESS, lack of future planning (both continuity of operations and \$ if beginning retirement process)

9

Rules implicated:

Rule 32:1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer; and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.

32:1.4 COMMUNICATION

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 32:1.0(e), is required by these rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

10

Rules implicated:

Rule 32:1.6 CONFIDENTIALITY

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) [permissive disclosure provisions] or required by paragraph (c) [mandatory disclosure provisions].

32:1.16 DECLINING OR TERMINATING REPRESENTATION

- (a) ...[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: ... (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client

32:5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

Comment [1] explains: "Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers ...act in a way compatible with the professional obligations of the lawyer...Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Iowa Rules of Professional Conduct if engaged in by a lawyer.

11

What's reasonable during a pandemic?

- Our rules are all about reasonableness:
 - "reasonable diligence and promptness,"
 - "reasonably consult,"
 - "reasonably informed,"
 - "reasonable requests for information,"
 - "shall explain to the extent reasonably necessary [for client] to make informed decisions"



12

What we advised:



- Make a list of EVERY ACTIVE MATTER in your caseload right now.
- For each, note at least the two “next steps” you need to take and highlight all associated deadlines.

13

And then:

- Give clients written notice of how to reach you and how you are handling client communications (one big e-mail with bcc; even texting if that’s your thing, a letter).
 - Keep copies of this written notice for your file. **It’s inevitable that some unhappy clients will use this crisis as the basis for a complaint against you.**
- Give careful thought to how and in what settings you will meet with clients (if at all). Use technology where possible, but be sure to consider privacy concerns and share those with the client. (Yes, Zoom is okay as long as you and the client agree – but be ready to consider alternate platforms if we hear more privacy worries.)
- Make your clients talk on the phone!
 - If you don’t share your cell phone number, consider a Google Voice number.
 - Remember *67 for outgoing calls if you don’t want your call to be subject to Caller ID.
- Be alert to possible changes in Court appearances and scheduling as the Court adjusts to new requirements and is faced with the inevitable illnesses that we may expect. ***Warn your clients NOW that things will move slowly but you’ll do what you can to protect them and keep them updated.***

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Create (or have your remote staff work on) a “business continuation plan”

- Consider:
 - Access to electronic and paper files
 - Remote use of telephones and voicemail
 - Safe handling of mail and deliveries
 - Access to e-mail
 - Logins for EDMS
 - Access to the office calendar
 - Protection and maintenance of trust account records
 - Access to and protection of trust account funds
 - Access to your business operating account
 - Payroll and benefits
- **A great start – Our “Attorney Self-Assessment” (click through to OPR at www.iowacourts.gov!)**

15

Consider the ethics of remote work:

- **Competence in using technology** – Iowa R. Prof’l Conduct 32:1.1 Competence – comment 8: “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”
- **Maintaining confidentiality** – Iowa R. Prof’l Conduct 31:1.6(d): “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”
- **Supervising staff while working remotely** – Iowa Rs. Prof’l Conduct 32:5.1, 5.2, and 5.3
- **Trust accounts** – Iowa R. Prof’l Conduct 32:1.15 and related trust account rules – Ensure constant oversight and monthly triple-reconciliations. People make more mistakes when stressed, and you’ll find those mistakes more quickly if you triple-reconcile (bank statement, your check register, and your individual client ledgers must match!) monthly.

16

Consider modifying your caseload:

- Iowa R. Prof'l Conduct 32:1.16 requires that you decline or withdraw from representation if "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."
- Comment [1]: "A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion."
- The need for legal services during a crisis is evident. However, you must ensure that you are physically and mentally able to take on and complete the representation.



17

Review your succession plan*

- Things we don't want to think about:
 - Quarantine, extended illness, incapacity, or death
- Things we can't stop thinking about right now:
 - Quarantine, extended illness, incapacity, or death



*and while you're at it, make (or update) your will

18

Prevention in the Age of COVID:

Emphasis on Proactive Management- Based Regulation (PMBR)

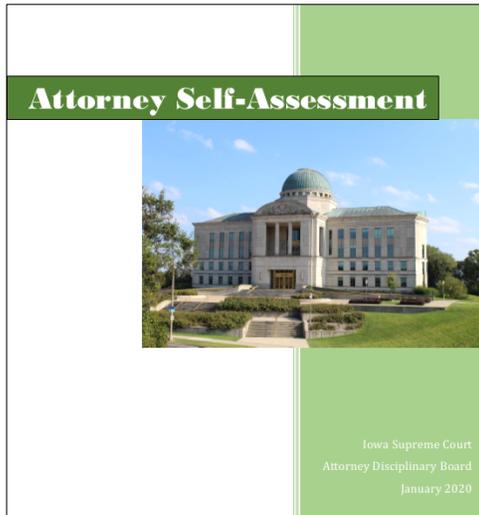
19

Reminder: What is PMBR?

- “PMBR” is a term coined by Professor Ted Schneyer to refer to a regulatory approach designed to promote ethical law practice by assisting lawyers with practice management.
- Lawyer regulatory process has been complaint driven (reactive), rather than prevention driven (proactive)
- Majority of disciplinary complaints are for “practice management” issues such as lack of communication, neglect, etc.
- Many attorneys lack training and skills necessary to identify deficiencies in their practice
- PMBR is a process to help attorneys with their professional development both by giving attorneys an opportunity to engage in self-examination and by providing resources to assist attorneys in developing workable solutions to common challenges.

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PMBR Self-Assessment



- Adapted with permission from the “Colorado Consolidated Lawyer Self-Assessment” published by the Proactive Management-based Subcommittee of the Colorado Supreme Court Office of Attorney Regulation Counsel
- Created and maintained by Attorney Disciplinary Board
- Contains 314 questions
 - Brief commentary on ethical implications
 - 100+ hyperlinked resources

21

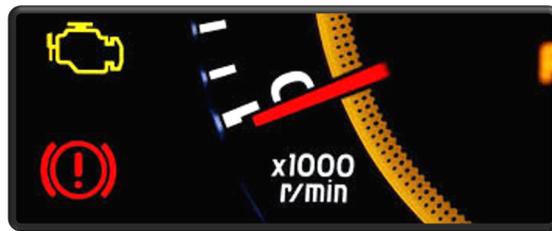
9 Areas of Self-Assessment

- Competence (45)
- Communication (31)
- Confidentiality (20)
- Conflicts of Interest (41)
- Records Management (25)
- Staff & Office Management (43)
- Financial Management (57)
- Access to Justice & Client Development (26)
- Wellness & Inclusivity (26)

Contains 314 questions
 Brief commentary on ethical implications
 100+ hyperlinked resources

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Recovery and Sustainability: Well-Being



23



*"I can't remember—do I work at home or
do I live at work?"*

24

Before COVID: The Scope of the Problem

- 2016 ABA Commission on Lawyer Assistance Programs/Hazelden Betty Ford Foundation Study
 - Surveyed nearly 13,000 practicing lawyers
- 2016 Survey of Law Student Well-Being
 - Surveyed 3,300 law students
- 2020 National Judicial Stress and Resiliency Survey
 - Surveyed 1,034 judges

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2016 ABA/Hazelden Lawyer Study

Overworked Lawyers Court Health Hazards

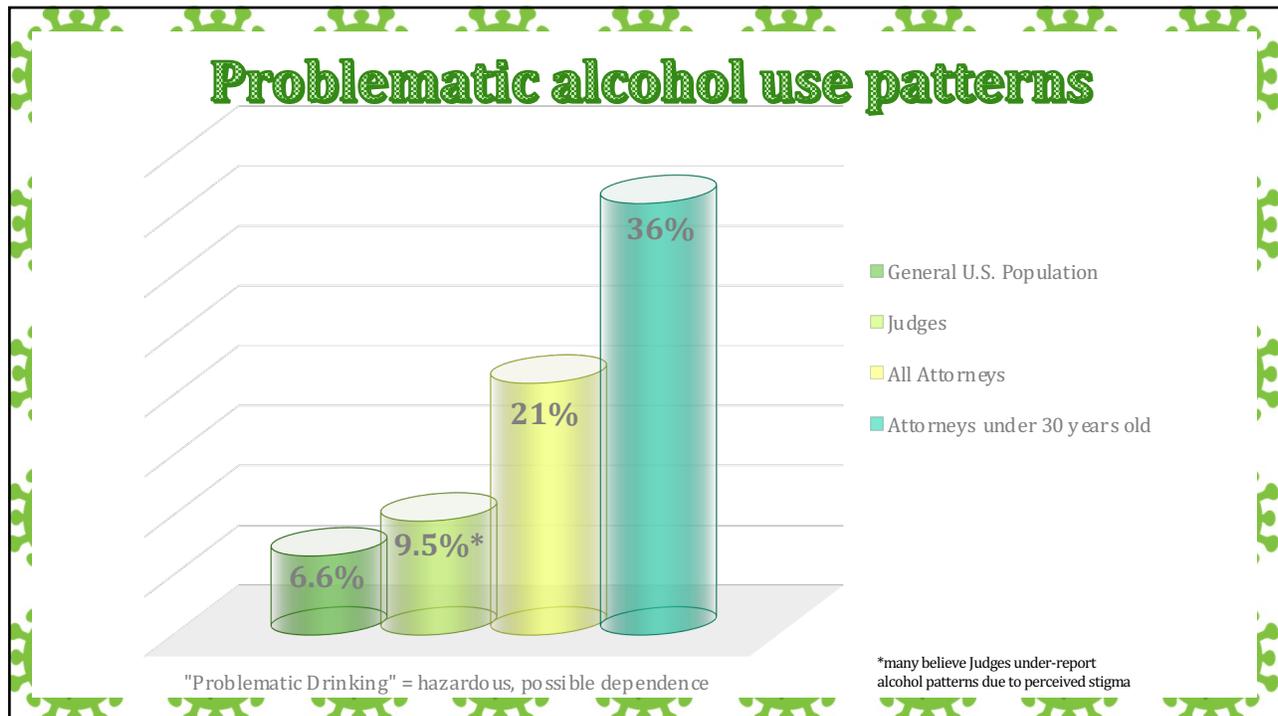
Lawyers have more alcohol disorders and mental health distress than other professionals, a study by Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs shows.



Source: Hazelden Betty Ford Foundation, survey of 15,000 attorneys in 19 states.

Bloomberg Law

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27

It Begins in Law School

- 25% at risk for alcohol use disorder
- 17% depression
- 14% severe anxiety
- 23% mild/moderate anxiety
- 6% suicidal thoughts in last year

28

Judges too!

- Reported Judicial stressors are widely shared and include:
 - Import of decisions
 - Heavy docket/long hours/not enough staff support
 - Pro se litigants
 - Unprepared lawyers/incivility/lack of professionalism among counsel
 - Contentious family law litigants/dealing with the same issues over and over again
 - Judicial isolation

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Signs and effects of prolonged stress (examples from 2020 Judge survey)

- fatigue and low energy (38.8% in 2020 Judge survey)
- sleep disturbance (36%)
- disturbed attention and concentration (32.3%)
- not having initiative (22.9%)
- Preoccupation with negative thoughts (20%)
- work is no longer meaningful (17.8%)
- can't wait for the day's work to end (16.7%)
- depressed mood (15.3%)
- nothing to look forward to (12.6%)
- feel increasingly numb to pleas of urgency (11.2%)
- care little about trial outcomes (6.9%)

30

The National Task Force on Lawyer Well-Being

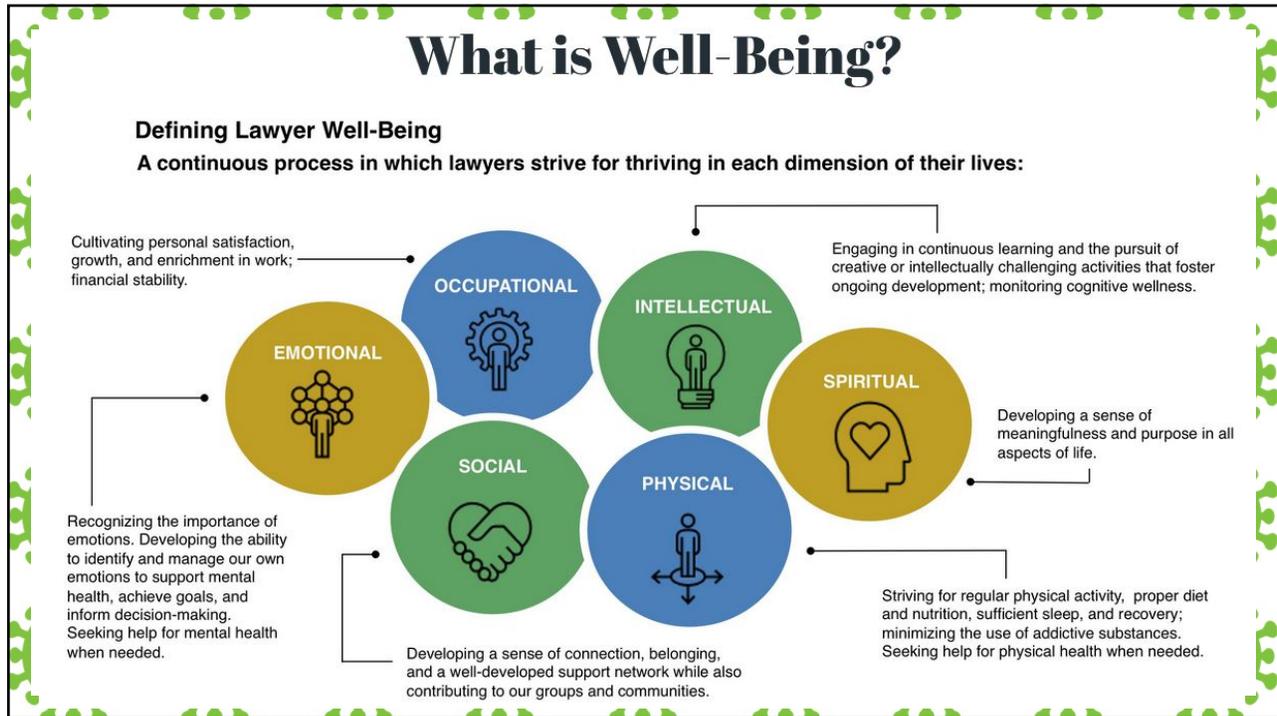
- <http://lawyerwellbeing.net/>
- August 2017 report: “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.”
- Task force members came from the following entities and groups:
 - American Bar Association (ABA) Commission on Lawyer Assistance Programs (CoLAP)
 - ABA Standing Committee on Professionalism
 - ABA Center for Professional Responsibility
 - ABA Young Lawyers Division
 - ABA Law Practice Division Attorney Wellbeing Committee
 - The National Organization of Bar Counsel (NOBC)
 - Association of Professional Responsibility Lawyers (APRL)
 - National Conference of Chief Justices
 - National Conference of Bar Examiners

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An Urgent Call to Action...

- “The current state of lawyers’ health cannot support a profession dedicated to client service and dependent on the public trust.”
- The report included concrete, specific recommendations for the following groups of “stakeholders” whose participation was deemed essential for meaningful change:
 - Judges
 - Regulators
 - Legal Employers
 - Law Schools
 - Bar Associations
 - Lawyers’ Professional Liability Carriers
 - Lawyers’ Assistance Programs

32



33

Why ADB is involved:

Well-Being as Part of Professional Responsibility

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**The Path to Lawyer Well-Being: Practical
Recommendations for Positive Change**
***The Report of The National Task Force on
Lawyer Well-being (2017)***

- “Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible.”
- We must “[t]ransform the profession’s perception of regulators from police to partner.”
- We are already taking some of the recommended actions for regulators:
 - Centralized intake and tracking complaints through case-management system (to identify struggling lawyers before their practices fall apart)
 - Deferral of discipline in certain cases
 - Focusing on prevention and proactive management-based programming to minimize risk and allow attorneys to feel more in control.
 - Recognizing that obtaining treatment for substance abuse and mental health conditions is a sign of strength and should be considered as a mitigating factor in disciplinary cases.

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Ground rules for ADB and the Iowa LAP

- Separate entities; separate funding.
- We cannot share information with one another without lawyer permission.
- We agree about “the woeful state of lawyer well-being.”
- We work together within the constraints of our respective confidentiality obligations.
 - Many lawyers give us permission to talk or collaborate on deferrals of discipline.

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Action Items for All Stakeholders:

- Acknowledge the Problems and Take Responsibility
- Leaders Should Demonstrate a Personal Commitment to Well-Being
- **Facilitate, Destigmatize, and Encourage Help-Seeking Behaviors**
- Foster Collegiality and Respectful Engagement Throughout the Profession
 - Promote Diversity & Inclusivity
 - Create Meaningful Mentoring and Sponsorship Programs
- Enhance Lawyers' Sense of Control
- **Guide and Support the Transition of Older Lawyers**
- **Use Monitoring to Support Recovery from Substance Use Disorders**

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Action Items for Regulators:

- Adopt Regulatory Objectives that Prioritize Lawyer Well-Being
- Expand CLE to Include Well-Being Topics
- Implement Proactive Management-Based Programs (PMBP/PMBR) that Include Lawyer Well-Being Components
- Adopt a Centralized Grievance [Complaint] Intake System to Promptly Identify Well-Being Concerns
- Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information from Regulators to Lawyer Assistance Programs
- Adopt Diversion or Deferral Programs and Other Alternatives to Discipline

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Our Court is involved

- ADB requested and was given a “liaison Justice” for attorney well-being: Justice Tom Waterman.
- Our Court is actively working with ADB on probation and other disciplinary approaches to help struggling lawyers remain in practice with appropriate safeguards for the public.
- ADB will propose a rule change allowing ADB to disclose concerns about lawyers directly to the Lawyer Assistance Program (one-way disclosure ONLY).

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Iowa Lawyer Assistance Program

- Funded primarily with fees paid to support disciplinary system
- Confidential assistance to Iowa lawyers
 - Not just drug/alcohol problems—also mental health issues, compassion fatigue, and stress concerns
 - **No reporting to Attorney Disciplinary Board**
- Contact:
 - Hugh Grady, Director
 - Tel. (800) 243-1533
 - <http://www.iowalap.org>



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