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# Creating a Well-Being Movement in the Utah Legal Community

Report and Recommendations from **The Utah Task Force on Lawyer and Judge Well-Being**

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February 2019



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## Table of Contents

Introduction: A Call to Action	3
The Utah Task Force on Lawyer and Judge Well-Being	5
The Problem	6
What is Well-Being?	7
The Case for Well-Being	8
How Do We Begin?	9
Recommendations for Judges	10
Recommendations for Lawyer and Legal Employers	11
Recommendations for Regulators	12
Recommendations for the Utah State Bar	14
Recommendations for Law Schools	15
Next Steps	18
Conclusion	19
Appendix A	20

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## Introduction: A Call to Action

The National Task Force on Lawyer Well-Being sounded a wake-up call in 2017 with its report titled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” The Report drew upon a 2016 study of nearly 13,000 practicing lawyers commissioned by the American Bar Association and the Hazelden Betty Ford Foundation. The Report’s message is clear: too many lawyers are struggling. The 2016 Study found that a high rate of lawyers experience some level of problem drinking, depression, and anxiety.<sup>1</sup>

While most lawyers may not have a mental health or substance abuse disorder, that does not mean they are flourishing. The Report notes that many lawyers struggle with stress, work addiction, and sleep deprivation.<sup>2</sup> And “[m]any lawyers experience a ‘profound ambivalence’ about their work . . . .”<sup>3</sup> Job dissatisfaction and attrition are challenges for lawyers and legal employers alike.

These problems start early. While law students generally begin law school with “high life satisfaction and strong mental health measures,”<sup>4</sup> this changes for the worse within the first year. “Law students are among the most dissatisfied, demoralized, and depressed of any graduate student population.”<sup>5</sup>

These problems are compounded by the tendency of lawyers and law students to avoid seeking help.

The National Task Force’s report focused on five central themes:

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<sup>1</sup> THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 7 (Aug. 2017) [hereinafter THE PATH TO LAWYER WELL-BEING] (citing Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016)).

<sup>2</sup> *Id.* The Study found that 21–36% of lawyers are problem drinkers, 28% struggle with depression, and 19% experience anxiety. See Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016).

<sup>3</sup> *Id.* (citing Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225, 225 (2011); Lawrence S. Krieger & Kennon M. Sheldon, Ph.D., *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 554 (2015)).

<sup>4</sup> *Id.* at 35.

<sup>5</sup> *Id.* (citing Abigail A. Patthoff, *This Is Your Brain on Law School: The Impacts of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015)).

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(1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in the legal profession;

(2) eliminating the stigma associated with help-seeking behaviors;

(3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence;

(4) educating lawyers, judges, law schools, and law students on lawyer well-being issues; and

(5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The National Task Force issued a call to action, challenging leaders in the legal profession to "get serious" about the well-being of lawyers. The Utah Supreme Court and the Utah State Bar have accepted the challenge. Together, we have established the Utah Task Force on Lawyer and Judge Well-Being to create a well-being movement in the Utah legal community.

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## Task Force Chairs

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Justice Paige Petersen  
Dickson Burton

## Chief Staff

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Kim Free, PhD

## Staff Attorney

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Elizabeth Wright

## Committee Members

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Wendy Archibald  
Barbara Dickey  
Robert Denny  
Cathy Dupont  
Dr. Valerie Hale  
Hon. Kim Hornak  
Elizabeth Hruby- Mills  
Kelsey Knudson  
Medura Millard  
Morse Newbold  
James Sorenson  
Cara Tangero

Hon. Brent
Martha Cassie Brooke
Andrew Chris

## Consultants

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Rick Schwermer.  
John Baldwin

# The Utah Task Force on Lawyer and Judge Well-Being

Our Mission: Creating a well-being movement in the Utah legal community.

The Utah Task Force on Lawyer and Judge Well-Being is co-chaired by Utah Supreme Court Justice Paige Petersen and Utah State Bar President Dickson Burton. In the summer of 2018, Justice Petersen and Mr. Burton gathered stakeholders from throughout the legal community to form the Task Force. The Task Force includes representatives from the following groups, entities, and fields: judges, the Administrative Office of the Courts, the Utah State Bar, the Office of Professional Conduct, other regulators, lawyers from large and small private firms, solo practitioners, legal employers, Young Lawyers Division, Lawyers Helping Lawyers, Minority Bar Association, the University of Utah S.J. Quinney College of Law, Brigham Young University J. Reuben Clark Law School, the Department of Substance Abuse and Mental Health, the field of Applied Positive Psychology, and the Utah Psychological Association.

The Task Force was charged with the following assignment: 1) carefully review the National Task Force Report, and 2) using it as a springboard, draw upon the expertise of Task Force members to develop recommendations for each stakeholder category in the Utah legal community. We have done so, and our recommendations are included in this report.

The Task Force believes it is crucial to gather data up front in order to set a baseline for lawyer well-being in Utah. This will allow us to measure our efforts going forward to determine what is working, what isn't working, and whether we have unique challenges in Utah that we must address.

This is our call to action. We hope these recommendations will be a valuable resource for judges, lawyers, legal employers, law students, law schools, regulators, and the Bar as we create our own well-being movement in Utah.

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## The Problem<sup>6</sup>

Practicing lawyers experience high rates of mental health and substance abuse disorders, along with general job dissatisfaction, stress, and anxiety.

problem drinking - 21–36%

depression - 28%

anxiety - 19%

elevated stress - 23%

work addiction - 25%

suicide

sleep deprivation

work-life conflict

avoid seeking help

job dissatisfaction and ambivalence

attrition

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<sup>6</sup> THE PATH TO LAWYER WELL-BEING 7 (citing Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addiction Med. 46, 46 (2016)); Anne M. Brafford, *Building the Positive Law Firm: The Legal Profession at Its Best*, (Aug. 1, 2014) (Master's Thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), [https://repository.upenn.edu/mapp\\_capstone/62/](https://repository.upenn.edu/mapp_capstone/62/); Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225, 225 (2011)).

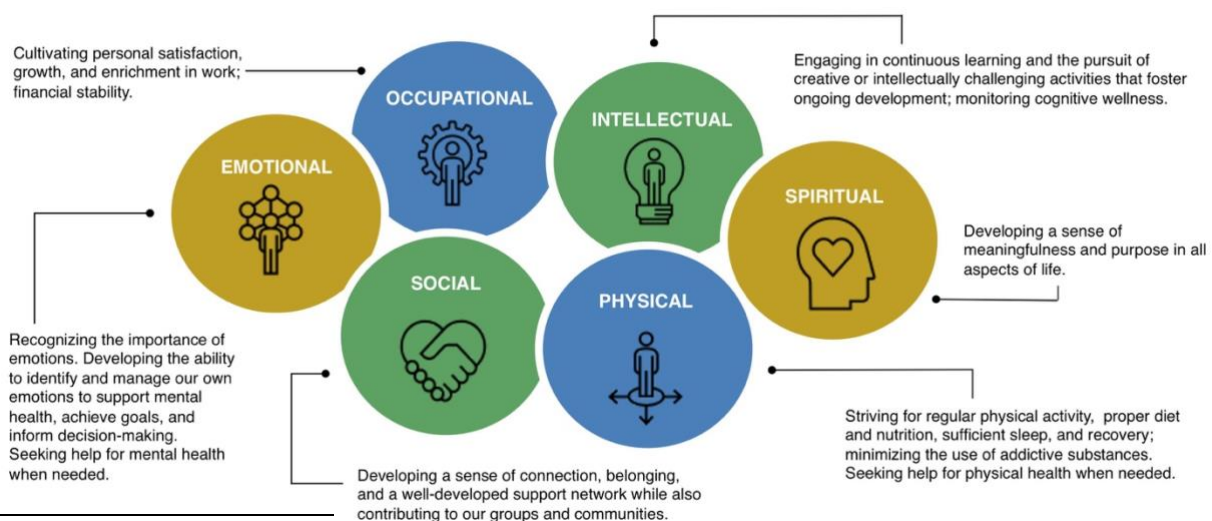
## What is Well-Being?

Well-being is a broad concept. It is more than the absence of substance abuse or mental health disorders. It is “a continuous process toward thriving”<sup>7</sup> in all dimensions of life. This includes:

- **Emotional:** Recognizing the importance of emotions; developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform our decision-making; seeking help for mental health when needed.
- **Occupational:** Cultivating personal satisfaction, growth, and enrichment in our work; obtaining financial stability.
- **Intellectual:** Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.
- **Spiritual:** Developing a sense of meaning and purpose in one’s life.
- **Physical:** Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances; seeking help for physical health when needed.
- **Social:** Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

### Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



<sup>7</sup> THE PATH TO LAWYER WELL-BEING 9.

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THE PATH TO LAWYER WELL-BEING 9.



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## The Case for Well-Being

Beyond being the right thing to do, there are other important reasons to focus on well-being.

First, well-being is preventative. By proactively identifying and implementing well-being strategies, we can help reduce the chances of Utah lawyers and judges becoming unwell in the first instance.<sup>8</sup>

Second, well-being is strongly connected to ethics and professionalism. Rule 1.1 of the Utah Rules of Professional Conduct requires lawyers to provide competent representation,<sup>9</sup> which is negatively impacted when a lawyer's well-being declines. For example, alcohol abuse and major depression impair core functions necessary for competent lawyering – causing diminished memory, reduced problem-solving skills, and impaired executive function.<sup>10</sup>

Finally, well-being is good for business. People who are thriving perform better, are more likely to enjoy their careers, are less likely to leave their jobs, and have more satisfied clients.<sup>11</sup>

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<sup>8</sup> See THE PATH TO LAWYER WELL-BEING 33 (speaking to the creation and utility of preventative well-being programs).

<sup>9</sup> UTAH SUPREME COURT RULES OF PROF'L CONDUCT 1.1 (2019).

<sup>10</sup> THE PATH TO LAWYER WELL-BEING 8–9.

<sup>11</sup> *Id.* at 8.

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## How Do We Begin?

How do we start a well-being movement in the Utah legal community? To answer that question, Task Force members developed recommendations specific to the following sectors of the legal community:

- Judges
- Lawyers and Legal Employers
- Regulators
- Utah State Bar
- Law Schools

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## Recommendations for Judges

1. Communicate that well-being is a priority. We encourage judges and other leaders in the judicial branch to communicate the importance of well-being whenever possible and in multiple media. This can be done not only during presentations and speeches or in written articles, but more informally in judges' interactions with lawyers and other judges in and outside of court. We note that these efforts are already underway. At the 2018 Utah State Bar Summer Convention in Sun Valley, Idaho, Chief Justice Matthew Durrant focused on the importance of lawyer well-being in his address to the convention. And as co-chair of this Task Force, Justice Petersen has spoken about well-being to incoming law students at the University of Utah College of Law during orientation week, to judges at the 2018 annual judicial conference, to lawyers at the 2018 Utah State Bar Fall Forum, to firm leaders/managing partners at a Bar-sponsored breakfast for leaders of large law firms, and to women lawyers at the 2019 Banter With the Bench event.
2. Develop high quality training on well-being for new judge orientation, the annual judicial conference, and annual bench-level conferences. Well-being education should be integrated into new judge training in order to prepare new judges for the challenges and stressors they will face and provide them with tools to handle those challenges as effectively as possible. High quality well-being education should also be included at the judicial conference and bench-level conferences. Topic ideas can be found in Appendix B to the National Task Force Report.
3. Update policies regarding impaired judges and educate judges about those policies. The courts currently have policies and procedures for impaired judges. These policies should be reviewed and modified as necessary to reflect the current understanding of behavioral and mental health issues. These policies and procedures should be communicated to judges and presiding judges through educational materials, trainings, and bench meetings.
4. Reduce the stigma attached to substance abuse and mental health disorders and encourage help-seeking behavior. Train presiding judges to identify mental health and substance use disorders amongst judges, and eliminate the stigma associated with mental health and substance use disorders. Encourage presiding judges to convey an attitude of support. Include this role in presiding judge education.

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## Recommendations for Lawyers and Legal Employers

1. Educate law firms on how to form a well-being committee. We will conduct in-person meetings with a number of local law firms, yet to be determined. We will communicate why it is in a firm's interest to prioritize lawyer well-being, including that lawyers who are well balanced mentally, physically, and emotionally are more successful in their performance and better stewards of the practice of law. We will guide any interested law firm in establishing its own internal well-being committee.
2. Assist firms in establishing policies and practices to support lawyer well-being. We suggest using the Lawyer Well-Being Tool Kit as a guide when speaking to firms/partners/boards.<sup>12</sup>

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<sup>12</sup> See Appendix B of THE PATH TO LAWYER WELL-BEING.

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## Recommendations for Regulators

“Regulators” are broadly defined by the ABA as including the highest court in each state and all stakeholders who assist that court in regulating the practice of law.<sup>13</sup> This “includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.”<sup>14</sup> In Utah, “regulators” include the Utah Supreme Court, the Utah State Bar, the Office of Professional Conduct, the Committee on Ethics and Discipline of the Supreme Court, the Supreme Court’s Advisory Committee on Continuing Legal Education, the Utah State Bar’s Admissions Committee, and the Utah State Bar’s Character and Fitness Committee.

Regulators are well positioned to identify conditions that can be detrimental to well-being, and they can be instrumental in improving regulatory processes to address conditions that produce toxic professional environments.

1. Revise rules as needed to prioritize lawyer well-being. We recommend evaluating relevant rules to prioritize rehabilitation over punishment where appropriate. This would include evaluating the rules governing Lawyer Discipline and Disability and any other relevant rules and considering alternatives to discipline such as diversion programs. The ABA has recognized that to accomplish other professional objectives, the profession must first have healthy, competent lawyers.<sup>15</sup> Healthiness, competency, and contentedness stem from effective rehabilitation. Amendments that prioritize rehabilitation over punishment will promote lawyer well-being, provide a healthier, more competent bar, and will ultimately protect clients.
2. Evaluate amending the rules of professional responsibility to endorse well-being as part of a lawyer’s duty of competence. Lawyers owe a duty of competence to their clients.<sup>16</sup> “Competent” representation is defined as requiring “the legal knowledge, skill,

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<sup>13</sup> Resolution 105, AMERICAN BAR ASSOCIATION (Feb. 5, 2018), [https://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2018/house-of-delegates-resolutions/105/](https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/105/).

<sup>14</sup> THE PATH TO LAWYER WELL-BEING 25.

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

<sup>16</sup> MODEL RULES OF PROF’L CONDUCT r. 1.1 (AM. BAR ASS’N 2018), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/).

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thoroughness and preparation reasonably necessary for the representation.”<sup>17</sup> We should study amending applicable rules to include well-being as part of a lawyer’s duty of competence. In the event of such an amendment, the intention would not be for lawyers to be punished for failing to satisfy the well-being requirement. Instead, enforcement of this provision would proceed only in the case of actionable misconduct in client representation or in connection with disability proceedings.<sup>18</sup> The intent of this proposed modification is to “remind lawyers that their mental and physical health impacts clients and the administration of justice.”<sup>19</sup>

3. Expand continuing education curriculum to include well-being topics. Regulators should evaluate expanding continuing education curriculum to include well-being topics. We should consider whether this should take the form of a required well-being hour of credit per reporting period, or simply granting CLE credit for this type of programming. In 2017, the ABA proposed a new rule that would require “lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of ‘mental health and substance use disorders.’”<sup>20</sup> Topic ideas can be found in Appendix B to the National Task Force Report. We note that this effort is already underway: for example, at the 2018 Utah State Bar Fall Forum, the MCLE Board granted CLE credit for well-being-related programming, including a plenary session addressing well-being topics and a day-long track of well-being-related sessions.
  
4. Re-evaluate bar application inquiries about mental health history. There is controversy regarding whether bar admission agencies should eliminate inquiries about applicants’ mental health as part of fitness evaluations for licensure. Some argue that those inquiries discourage people in need of help from seeking it. Others contend that this information is necessary to evaluate the risk applicants might pose to the public. In 2015, the ABA adopted a resolution that such inquiries should be more narrowly focused “on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.”<sup>21</sup> We recommend evaluating current admission inquiries to ensure they closely focus on such conduct or behavior rather than more general diagnosis or treatment history, as appropriate.

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

<sup>18</sup> THE PATH TO LAWYER WELL-BEING 26.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (citing RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017)).

<sup>21</sup> AM. BAR ASS’N RESOL. 102 (August 2015).

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## Recommendations for the Utah State Bar

In addition to the recommendations for regulators that may involve the Bar, the following recommendations are specific to the Utah State Bar.

1. Sponsor a study to determine Utah lawyers' well-being baseline. Commission a scientific study of Utah lawyers to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. The study will be confidential and scientifically valid. Because there will be a financial cost to this, we recommend coordinating with similar studies of law students, if possible, to share costs.
2. Create a framework for future studies at regular intervals. These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges Utah lawyers continue to face. This information will ensure that we continue to improve our efforts to increase lawyer well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of law students, if possible, to share costs.
3. Sponsor high-quality CLE programming on well-being-related topics. Develop and gather existing educational programming on well-being-related topics. Bar leadership should adopt a goal of providing at least one well-being-related educational opportunity at the Spring and Summer Conventions and the Fall Forum, and at other Bar-sponsored events where appropriate and possible. As noted above, these efforts have already begun: the 2018 Fall Forum included a plenary session addressing well-being and a day-long track of sessions filled with well-being-related topics. These sessions were full and well-received. The Bar has planned additional well-being-related programming for its 2019 events and conventions.
4. Consider creating "best practice" model policies. The National Task Force recommends that state bar associations develop "best practice" model policies for legal employers in areas that affect well-being, such as: responding to lawyers in distress, responding to lawyers with substance abuse problems, diversity and inclusion, mentoring, work-life balance, etc.<sup>22</sup> We should assess whether any such policies are already being developed

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<sup>22</sup> THE PATH TO LAWYER WELL-BEING 41.

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(for example, by the Utah Center for Legal Inclusion), and if not, whether this is something the Bar would want to undertake.



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## Recommendations for Law Schools

Both law schools are committed to improving the culture of legal education and the law school experience, which currently can be detrimental to students' mental, emotional, and physical health. This is a lofty goal that will require commitment from faculty, students, and employers. Such change will not happen overnight. But by taking incremental steps, we can begin a process of cultural transformation that will lead to a healthier law school environment over time.

1. Sponsor a study to determine first-year law students' well-being baseline. Commission a scientific study of Utah law students to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. We recommend an initial study be administered to incoming students as early as possible. The study will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of lawyers, if possible, to share costs.
2. Create a framework for future surveys at regular intervals. Future studies should be repeated at set intervals (for example, at the end of 1L, 2L, and 3L years). These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges law students at the University of Utah and Brigham Young University continue to face. This information will ensure that we continue to improve our efforts to increase law student well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of lawyers, if possible, to share costs.
3. Continue current efforts. Both law schools have already implemented some strategies to promote student welfare.

The strategies they have in common include:

- disseminating information about University and community resources (Wellness Center; Counseling Center; OEO; Title IX Office; Center for Sexual Assault; etc.);
- working with Career Services to provide more information to students about non-law firm and other non-traditional employment opportunities; and

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- actively encouraging employers to focus on critical professional skills that are not reflected in grades.

Additional strategies at the University of Utah College of Law include:

- mindfulness/meditation sessions (Mindful Mondays);
- a new spring upper-division course titled Mindful Lawyering taught by professor Cliff Rosky (students will complete pre- and post-course empirically validated assessments that will measure stress, well-being, and mindfulness. Professor Rosky is willing to share his findings with the committee);
- mandatory stress management sessions for first-year students; and
- therapy dogs during exams.

Additional strategies at Brigham Young University Law include:

- leadership training – communicating to students that a law degree is a leadership degree through a variety of leadership courses and newly created leadership fellowships;
  - professional identity formation – based on Neil Hamilton’s book “Road Map,” first-year curriculum includes weekly classes on the development of twenty professional competencies. Five of those competencies are reflected in students’ grade point averages. Other competencies include trustworthiness, good judgment, problem solving, work ethic, and interpersonal and organizational skills;
  - training all faculty and employees on this approach;
  - hiring a counselor charged, in part, with developing a more robust well-being program; and
  - instituting a Wednesday Forum, which focuses on innovative changes in legal practice that broaden the range of career alternatives for students.
4. Create a new student organization to promote student well-being and/or a student well-being committee. The group would: a) sponsor well-being-related activities that would be student-led and student-driven; b) sponsor a series of presentations on student well-being (stress management, physical health, resiliency training) by either the student well-

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being group or by the law school; and c) coordinate with the Student Counseling Center to have an on-site counselor for a portion of the week (subject to budgetary approval).

5. Continue developing peer-to-peer mentoring programs. Both schools have mentoring programs that pair incoming first-year students with either second or third-year students. The law schools will continue to train the mentors to focus on more than academic success. Mentors can provide encouragement and perspective to first-year students, with emphasis on mental and emotional well-being. Further, mentors can help detect when a student is struggling, and assist in getting help.
6. Educate professors on well-being issues specific to law students. Topics relevant to law students can be found in Appendix E of the National Task Force Report.

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## Next Steps

These recommendations are intended to start a well-being movement in Utah. But we must do more than begin. We aim to lay a foundation that will support well-being efforts in the long term. We recommend the following two steps to transition into implementing the recommendations we have set forth.

1. Establish a permanent committee. The Task Force is a temporary group of experts formed to make recommendations on how Utah can start its own well-being movement. We now need to implement those recommendations, gather data about whether they are working, and then adapt and improve based on the evidence we collect. This is a long-term endeavor. To do this, the Utah State Bar will establish a permanent Well-Being Committee for the Legal Profession (WCLP).
2. Determine whether we need a paid director for the Committee. The work load for this committee may be too much to rely entirely upon volunteers. Questions to consider include: do we need a paid director; who should employ the director; what are the responsibilities of this position; and is this a full or part-time job?



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## Conclusion

Elevating the well-being of the members of our legal community is a big task. We must be innovative. And we must be willing to gather data and assess our efforts critically, so that we can continuously improve.

As with any endeavor of such magnitude, it begins with a single step. These recommendations represent our first steps toward a well-being movement in Utah. We hope these recommendations will create a path toward greater well-being for all the members of our legal community.

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## Appendix A

### Implementation Plan Timeline:

#### 2019

- Jan–May Release report and prepare action plans for permanent committee
- June Distribute study to gather local baseline data
- July “Kick-off” Action Plan (new FY’20) Summer Bar Conference, Park City, Utah

#### 2020

- June Distribute local study to compare data

#### 2023

- June Distribute local study to compare data/revisit work