

The Continued Challenges to Attorney Wellbeing

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with commentary from *The Honorable Marcus Floyd, General Sessions Court Judge, Division VII*



I. Preface from The Honorable Marcus Floyd — “We have to do better.”

I lived the grind, and I loved it. The 3:30 a.m. phone call from a client that you just have to take, because it could be the difference in you winning or losing

a case. Going from one courtroom to the next and then back again during negotiations, trying to get the best outcome for your client. Going into the office on Sundays to get a head start on the week. As a former public defender, I lived the grind. But I was not the only one living the grind in the Floyd household. My wife handled complex civil litigation at the state and federal level for more than a decade. At times, she would pull all-nighters one day after the next to make sure that her briefs struck the perfect chord for the court (and of course they did). But practicing law that way is not sustainable. Just because it is the way that we have always done it, doesn't make it right.

As a modern lawyer, you're always on the clock. You get an alert about some innocuous filing in the middle of the night and, even though it wasn't an emergency, it feels like an emergency. We don't have separate spheres like past generations of attorneys, so we have to establish healthy personal boundaries for ourselves. The courts and law firms also have an obligation to establish more reasonable expectations, as well. Our profession's historical glorification of overwork is harmful to both individual attorneys and their families. "It's good to be busy" or "whew, I'm barely treading water" are mainstay greetings

and have been traditionally seen as signs of a successful practice. But we have to move away from that type of mentality. The courts and law firms have a huge role to play in improving this area. We have to prioritize the mental, physical, and emotional well-being of ourselves and those around us. We have to do better.

II. Attorney Wellbeing Faces Continued Challenges.

In today's world, we're always connected. While this has served us well in our law practices by allowing remote depositions, video-conferenced motion practice, and a work-from-anywhere environment, this remarkably increased connectivity has unfortunately created more challenges to attorney wellbeing. At a minimum, alcohol intake has increased; the CDC recently released a study that age-adjusted, alcohol-induced deaths among the general population increased 26% from 2019 to 2020.¹ Of course, this data coincides with the COVID-19 pandemic, which added additional stressors and challenges to our lives—and especially to the practice of law. And among attorneys, alcohol abuse is approximately 10% higher than the general population.² With these added challenges, the only logical conclusion is that anxiety among attorneys has likewise increased, too.

The increased connectivity in our lives and law practices has created additional challenges to attorney wellbeing, including the pros and cons of constant connectivity and the difficulties associated with parenting while practicing law in a world where we're so constantly connected. In this article, we've banded together to: (1) address these challenges; (2) offer best practices concerning how to cope with those challenges; and (3) continue to raise awareness among attorneys that mental health matters.

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III. Technological Advances in Law Practice that May Assist in Wellbeing.

— By Henry Queener

Technology may well be both friend and foe. And at the heart of all the technology affecting the practice of law is connectivity. When I first started practicing law, it required my physical presence—at the computer and in my office, my physical presence at the expert's deposition, or my physical presence in the courtroom. Now, with the help of my laptop, internet connectivity, and cloud/file-sharing services, I can work from anywhere. For instance, an app on my cell phone fully integrates me into the office phone system, so I can take calls forwarded from the receptionist from anywhere. The danger becomes that I can work constantly, so although I'm physically present with family and friends, I'm emotionally absent. This doesn't have to be the case. And frankly, we must flip the script on technology to make it both work for us and improve our quality of life.

My firm has offices across three states and in three time zones, and this has helped teach me that we don't all have to be on the same work schedule. The end of the traditional workday in one office in the eastern time zone is the middle of the afternoon in the mountain time zone. But this doesn't stop personnel working on projects and matters across all offices. We start email threads that bounce back-and-forth. We all access the same client files in our cloud. We all work different schedules. Being willing to allow everybody to work different schedules is the power of the technology. Indeed, it is this portion of technology that can be our friend. You don't have to work through family time—you can work around family time. You can work until 2 o'clock in the afternoon, and then, pick up the kids from school, take the kids to the after-school activities, and get the kids home. Then, you log back in and finish the work 'day' in the evening after the kids go to bed (or are at least their rooms). But this approach to work is a team effort—intra-office, inter-office, and across offices.

Too, though, you have to afford opposing counsel the grace of not demanding that your phone call

be returned within 20 minutes. You cannot engage in the shenanigans of artificially creating scheduling conundrums or a scheduling squeeze as a litigation tactic. In short, just be a good lawyer, make good arguments, and fully develop the facts. Being difficult to work with, creating scheduling problems, being last minute, and demanding immediate responsiveness from opposing counsel are not the hallmarks of an effective litigator. We have to work together across offices to create an overall better environment for the practice of law and mental wellbeing.

Be willing to do depositions by video conference. This helps create flexibility in everyone's work schedules. It also frees up more time by taking the travel time out of the equation for everyone to use that free time, either to work on other things or be present with family and friends. At the start of the pandemic, my office undertook a substantial case that was going to require depositions in Memphis, Tennessee; Fort Worth, Texas; and several cities in California. Both defense counsel, who was in Washington D.C., and I were very apprehensive at the thought of doing a deposition by video conference, so we started with a relatively minor witness and gave it a try. Even with the document-intensive case we were undertaking, the videoconferencing platform worked wonderfully. We proceeded to do all the depositions by video conference, and the amount of time, as well as case expenses, that were saved were significant.

Moreover, when it comes to motion practice, I would encourage the courts of Tennessee to do as their sister courts have done in Kentucky and continue to be very amenable to participation in motion days by video conference. If it's just a simple motion, let's simply save all the travel time. Technology is neither friend nor foe; it is a tool for us. It is connectivity. And we need to work together among offices to use this tool to give all of us the flexibility to work around our lives with friends and family. But in fairness, I still go into the office to free myself from the distractions of the house to get good work done.



IV. Technology, Though, May Also Negatively Impact Our Wellbeing, So Be Careful.

— *By Emily Alcorn*

While these technological advances have the ability to make our working lives exponentially simpler, they may quickly lead to technology overload. Not only can attorneys be accessed anywhere and anytime by clients, co-workers, or opposing counsel, we are permanently online—by way of e-mail, ZOOM, Instagram, Netflix, and LinkedIn, just to name a few. How many of us would have to honestly admit that one of these, or similar, smartphone apps is the last thing that your eyes see before bed and the first thing you reach for in the morning? I can say with certainty it is the case for me. It probably comes as no surprise that an increasing body of research indicates that being perpetually connected may be adding to the mental health burden we face.

Being connected to the internet is certainly not a new concept, but even just a few years ago, it required a conscious decision to sit at a computer and log in. Those days are gone. As I write these few paragraphs, my phone has buzzed with text messages, e-mails (both personal and professional), a Ring camera alert, an Amazon delivery notification, an Instagram “like,” a notification from my children’s daycare, and an Uber Eats coupon, reminding me that it’s probably time for lunch. Connectedness is the default. Now, for a moment of peace or productivity, our smartphones offer us a “do not disturb” mode or options to “silence notifications.” Sure, it makes our lives more convenient, but it’s also all-consuming. And even though we know that our phones are designed to be addictive,³ we know that increased social media use leads to mental health decline,⁴ and we know that the constant distractions affect our productivity; what do we do about it?

In 2018, German researchers⁵ analyzed this idea of being “permanently online and permanently connected”—not just *being* online but also *thinking* about being online. A term they coined “online vigilance.” According to these researchers, online vigilance encompasses broadly three behavioral dimensions:

1. Saliency—the degree to which you stay cognitively connected to your online sphere; 2. Reactibility—your inclination to immediately respond to and prioritize online cues (*i.e.*, text messages, social media comments, e-mails, etc.) over the demands of your real-world environment; and 3. Monitoring—actively entering your online sphere and “checking” your threads, messages, feeds, etc., so you stay in the loop.

Not surprisingly, in a study published in 2020, many of these same researchers found a positive correlation between higher levels of online vigilance and perceived stress.⁶ In other words, being constantly connected is stressing us out! While each person maintains, and is comfortable with, some varying level of online vigilance, an internal check of your own online vigilance may help reveal some of your own motivations, priorities, and expectations of others—both personally and professionally. I certainly don’t claim to have this all figured out, but I think being intentional with our own habits is the first step. In an ever-evolving attempt to balance a career I genuinely enjoy, three small children, and a husband whom I treasure, here are some things I try to consider:

- *Are my cognitive resources depleted by my online world such that my real life gets the short end of the stick?*

For me, block scheduling has worked well. At work, I set aside a certain amount of time to work on one project, allowing no interruptions—no Facebook notifications, no e-mails from my boss (to the extent that is possible), no text messages from my family (same), no jumping to another project—just focus. Allowing myself to clear my mind and just work allows me to be more productive and more centered. I have found I get things done in a shorter amount of time, and typically, the quality of my work is better. At home, if I want to focus on my family, I simply have to put my phone away. I have found that it’s too tough for me to balance it any other way.

- **What is a level of communication reactivity that is reasonable and comfortable for me and what do I expect of others?**

Do I expect an immediate response from colleagues to my calls and emails? What about my reaction when friends and family don't immediately respond? Is it fair to expect an immediate reaction from others but wish for more time to respond myself? Perhaps if we collectively took a step back and gave everyone around us a bit more grace and a bit more time to get back to us, the pressure that we feel to immediately respond would lessen. I try to be upfront with clients that I may not respond to their 5:30 p.m. e-mail until the next day unless the matter is urgent. Setting those expectations upfront allows me to relieve myself of the pressure to immediately respond.

- **Don't be afraid to disconnect.**

My second child was born in February 2020. Everywhere I looked, news was scary. Doomscrolling about virus transmission, mask wearing, and lockdown protocols wasn't serving me, and frankly, I couldn't get my own thought-spiral under control. I deleted a lot of my social media apps from my phone and simply eliminated the temptation to consume. Then, towards the end of my pregnancy with my third baby, I found myself passing too much time scrolling apps, and the algorithms knew what could grab my attention. It was bringing up anxieties that were unreasonable and unnecessary. Again, I simply deleted the apps. Problem solved.

Technology advancements have improved the attorney work environment in countless ways. It's important that we do what is in our power to avoid allowing perpetual connectedness to become more of a burden than it's worth.

V. The Added Challenges of Parenting While Practicing Law Only Further Complicate Finding the Balance Needed for Wellbeing. — *By Nan Steer*

With the technological advances in law practice since COVID, which can certainly be a double-edged sword, there are still other continued challenges we

face in light of our constant connectivity. For instance, another evolving challenge to attorney well-being concerns parenting while practicing law. For me, it's hard to find the right balance between being a (hopefully) great litigator and a mindful, responsive parent. Though challenging, it's certainly not impossible to be both—even in the throes of trial preparation. It just takes a significant amount of mindfulness, including setting boundaries, and for the most part, sticking to them.

For context, I have a (now) six year old daughter, and I am fortunate to work at a firm that provides me the flexibility to volunteer at her school, take her to appointments, and essentially, do whatever is needed to ensure that I can meaningfully show up for her. For some background on me—*i.e.*, my journey as a lawyer and parent—I worked at a defense firm when my daughter was born. They were incredibly gracious to me, but when I returned to work after my maternity leave, I just couldn't do it. I was crying when I left her at the house, crying in my office, and crying when I came home. Shortly thereafter, I made the decision to resign from that firm, and instead, I worked for myself performing legal writing for other attorneys and law firms. It was a very controversial decision in my inner circle; I was told I was ruining my career. I was afraid I would never be able to find another job if I needed a change. It was a scary decision, it was hard decision, and it was the best decision I could have made for myself and my family.

A few years later, I received an email from an attorney, and his comment to me only further justified that I'd made the right call. That attorney noted:

As an aside, I admire how you have modeled your practice/career to meet the needs of your family (rather than the other way around) ... I personally think the world would be a much cooler place if we all did a bit more of that.

That statement just cannot be more accurate, and I hold tightly to the facts that: (1) my family and my career can both be important to me; (2) I can show up well for both my family and career with mindful-



ness and boundaries; and (3) I didn't ruin my career by making the decision that was best for my family. How, though? How do you balance, for instance, preparing for a trial while also helping your child with their homework? Sometimes it feels impossible, and admittedly, sometimes you can't really balance the commitments, like when you're preparing motions in limine, jury instructions, a verdict form, a pretrial brief, a proposed pretrial order, etc., nearly simultaneously. A few things help me with finding balance.

- **Preparation.**

I prefer not to practice law while always putting out fires. Of course, some fires are inevitable in litigation, but most of the time, preparation—well in advance of deadlines—helps keep those fires at bay. When I see a motion come in that requires a response in two weeks, I start within a couple of days. When my firm has a trial coming up, I typically have a draft of the jury instructions prepared a few months in advance of the filing deadline. If I'm working on an appeal, I review the record just about as soon as I know we have an appeal, even before we file a notice of appeal. In short, I do as much good work as I can as early as possible.

- **Mindfulness & Boundaries.**

When I'm at work, *I am working*, and when I'm with my daughter, *I am parenting*. Although it's certainly hard to do this and I'm far from perfect at it, I strive to be mindful of keeping those two roles separate and distinct. For instance, at work, I'm concentrating on the brief I'm drafting. And when I'm helping my daughter with her homework, I'm off my phone. I'm not checking those work emails or doomscrolling—I'm showing up for her.

- **Compassion for Yourself.**

You're going to fail at both the goals of preparation and mindfulness/boundaries, and the most important thing you can do is have compassion for yourself when you don't hit the mark. At some time or another, every lawyer finds himself or herself with a fire to put out, and every parent gets distracted by work during parenting time. That's normal, and remember, these are the goals to strive for—you're not going to be perfect at it, likely ever.

To be sure, the roles of lawyer and parent come with their own, separate challenges, and especially given our constant connectivity, finding the right balance between being both a dedicated attorney and a devoted parent is hard, to put it lightly. The best thing I did in my career was make the decision that was best for my family, and it would be a much cooler place if we all strived to do that.

VI. TLAP and Your Mental Health: When to Ask For Help.

— **By Buddy Stockwell,
TLAP Executive Director**

The discussions above about self-care, boundaries, managing technology, and well-being practices reflect a very positive sea of change in our profession. In just in the last five years, mental health stigma has also waned considerably. Lawyers have been empowered to speak candidly and openly about how the pressures of the practice can negatively impact their happiness and health. The "jury is in," so to speak, and the verdict is clear: it is time to fully embrace and institutionalize better self-care, wellness, and well-being in our legal profession.

Self-care practices like good sleep hygiene, meditation, exercise, mindfulness, yoga, and work/life balance can help reduce the odds of developing a serious mental health issue over the long haul. But the fact remains that a significant number of lawyers will still suffer from illnesses such as Depression, Alcoholism, Drug Addiction, etc. Often, such issues cannot be managed effectively without professional clinical help. When an actual mental health illness enters the picture, self-care alone is often not enough, and that is when TLAP becomes an extremely valuable resource.

TLAP stays very busy day-to-day, rendering professional clinical support to lawyers, judges, and law students. Even more, 80% of TLAP's case load is comprised of totally confidential cases that have no disciplinary involvement whatsoever. Also notably, TLAP has evolved clinically to address a major shift in mental health challenges in the profession. At its inception in 1999, TLAP was primarily focused on

rendering help in alcoholism (and other drug use) cases, but now, those cases are actually the smallest percentage of TLAP's caseload.

Last year, only 33% of TLAP's intake calls involved alcohol and/or drug use issues, while 67% pertained to other types of mental health issues, such as depression, anxiety, compassion fatigue, financial distress, productivity issues, cognitive impairment and dementia, eating disorders, other compulsive behaviors, etc. In short, TLAP has kept pace as the profession's mental health needs shifted, and TLAP is now a totally comprehensive, professional clinical support provider ready to render totally confidential, and specialized, clinical support for any type of mental health issue.

I am very hopeful and excited about the evolving culture of wellness and well-being in the profession. Young lawyers now have the advantage of a "green light" to openly embrace and promote self-care practices as the new norm for generations to come. They can also help eliminate the stigma of reaching out for mental health help when it is needed. No one is immune from developing a mental health issue.

Whatever the future brings, one thing is certain: when a lawyer, judge, or law student is suffering from a mental health issue that outstrips the tools of self-care, TLAP will be always be here and be ready to provide confidential, highly specialized, professional clinical support. Call us at (615) 741-3238, email us at tlap@tncourts.gov, or visit us on the web at www.tlap.org. All communications are confidential as a matter of law.

VII. Parting Thoughts on these Continued Challenges.

As technological advances continue, these connectivity challenges will undoubtedly persist in our profession. Coupled with the challenges associated with parenting while practicing law, the need for mindfulness and wellbeing in our profession remains. We really have to do better, and the path to doing so begins with openly talking about these problems within our profession. That's what we've worked to do here, and we're all hopeful that this article will help someone struggling with these challenges. In the ever-changing landscape of the legal world, one thing remains true: it would be a much cooler place if we all prioritized our mental health and wellbeing.

¹ Spencer, M., et al. (2022), *Alcohol-induced Death Rates in the United States, 2019–2020*, <available at <https://www.cdc.gov/nchs/data/databriefs/db448.pdf>> (last accessed September 22, 2023).

² Krill PR, Johnson R, and Albert L (2016), "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys." *J. Addict Med.*, Vol. 10, No. 1 (January/February 2016).

³ Haynes, T. (2018), *Dopamine, Smartphones & You: A battle for your time*, <available at <https://sitn.hms.harvard.edu/flash/2018/dopamine-smartphones-battle-time/>> (last accessed September 22, 2023).

⁴ Pantic, I. (2014), *Online Social Networking and Mental Health*, <available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4183915/>> (last accessed September 22, 2023).

⁵ Reinecke, L., et al. (2018), *Permanently online and permanently connected: Development and validation of the Online Vigilance Scale* <available at <https://doi.org/10.1371/journal.pone.0205384>> (last accessed September 22, 2023).

⁶ Freytag, A., et al. (2020), *Permanently Online—Always Stressed Out? The Effects of Permanent Connectedness on Stress Experiences*, *Human Communication Research*, Volume 47, Issue 2, April 2021 <available at <https://doi.org/10.1093/hcr/hqaa014>> (last accessed September 22, 2023).

