

## Commission on the Well-Being of the Legal Profession

### Minutes – December 7, 2018

**Present:** Chief Justice Reiber, Dean Tom McHenry, Laura Wilson and Teri Corsones were present. Josh Simonds participated by phone.

Chief Justice Reiber began the meeting at 1:20 p.m. The agenda includes two primary discussion points: review of the draft state action plan outline and review of the draft LAP business plan.

**Draft State Action Plan Outline:** Teri prepared a draft state action plan outline, based on the committee reports submitted to date and associated resources. Laura indicated that the Legal Employers Committee Report was nearly complete, and was being circulated among committee members for final edits. She anticipated it would be available within the week. Josh indicated that he would also submit the Lawyers Assistance Program Committee Report within the next week. Dean McHenry provided the final draft of the Law School Committee Report.

Mike Kennedy was not able to attend the meeting, but had sent an e-mail that the Professional Responsibility Board will meet on December 10, and the agenda includes reviewing two proposed rule changes: one to add a comment to make clear that the duty of competence includes wellness, and the second to permit Vermont Bar Counsel to refer disciplinary complaints to the Lawyers Assistance Program.

Dean McHenry suggested drawing a distinction between the concept of “well-being” and “wellness” in the state action plan. It’s his understanding that the term “well-being” typically encompasses a more holistic perspective that could include mental health and addiction issues, and the term “wellness” typically encompasses physical health issues. He suggested a definition of each be included in the plan. He also recommended that the recommendations be termed aspirational in nature, versus obligatory. Laura suggested that the plan also make clear that addictions could include “addiction to work”.

Chief Justice Reiber will prepare the introductory sections of the plan. Teri will prepare a draft of the plan based on the outline, and will incorporate the Legal Employers Committee and Lawyers Assistance Program Committee Reports into the draft plan when they’re submitted next week. A draft of the state action plan will be circulated among Commissioners and the various stakeholder committees on December 17, with comments due by the end of December 21. The deadline for submitting the state action plan to the Vermont Supreme Court is December 31, 2018.

**Draft LAP Business Plan:** The draft business plan that Josh submitted at the October 30, 2018 Commission meeting includes a funding component based primarily on lawyer license fees. ALPS has also generously offered to provide “seed monies” of \$5,000 - \$10,000 during the first two years of a funded LAP. According to the Judges Committee, there is also the possibility of applying for a small grant through the U.S. Federal Courts to support a funded LAP.

Members discussed different considerations regarding lawyer license fees as the primary funding mechanism for a LAP. It appears that lawyer license fees are typically the primary funding mechanism for LAP programs nation-wide. For example, the Committee on Lawyer Well-Being of the Supreme Court of Virginia recently completed its report. Acknowledging that its report recommends additional costs to

the legal profession, the Committee nonetheless noted: “Our collective judgment is that the immediate benefit to individual members of the profession and the prophylactic benefit to the profession and the public of education, training, and prevention, including intervention for impaired legal professionals, substantially outweigh the slight cost associated with the establishment and funding of the following proposals. We believe that they are fundamental to competent and professional legal services, and will be accepted as core responsibilities attendant to the privilege of practicing law.”

The current annual lawyer license fee for active attorneys in Virginia is \$250. The Virginia Report recommends that the Virginia Supreme Court seek a budget amendment by the Governor in his mid-biennial submission for FY20 to permit such funds to be collected in a sum sufficient to initiate the comprehensive program that the Report details. (The comprehensive program recommended in Virginia has a projected budget of \$775,000.) The current “Lawyers Helping Lawyers” program in Virginia is termed “severely under-funded with a budget of only \$275,000.” The Virginia Report cites with approval the North Carolina LAP, which has a budget of \$750,000, funded through annual lawyer license fees of \$325 per member, with \$25-26 per member expended annually on the NC LAP.

The biennial lawyer license fees in Vermont for active attorneys are \$420 (or \$210 per year). The projected budget proposes a \$25 per year or \$50 biennial increase for active attorneys, a \$15 per year or \$30 biennial increase for inactive attorneys and a \$5 per year or \$10 biennial increase for pro bono licensed attorneys. Members also discussed the possibility of a graduated increase, based on years of practice, or possibly based on income level. There appears to be wide-spread support for the concept of a funded LAP in Vermont, especially given the number of attorney suicides in recent years. Members are sensitive to the fact, however, that any increase in lawyer license fees could be burdensome to a number of active lawyers.

Chief Justice Reiber asked that the state action plan also include the “un-funded alternative” that Mike Kennedy described during the October 30 meeting, as a basis of comparison. Josh asked that Mike address any conflict of issue issues that may arise with the un-funded alternative. Teri will follow up with Mike in that regard.

The meeting adjourned at 2:45 p.m. Members will next review the draft action plan and communicate via e-mail according to the timeline detailed above, versus meeting in person.

Respectfully submitted,

Teri Corsones