



LIVING WELL

in 2020

Published in partnership with
NH LAWYERS ASSISTANCE PROGRAM



Table of Contents

- Why Wellness for Lawyers? by Terri Harrington II
- How can law firms ensure families are supported in the workplace? III
- How can you help an impaired colleague? IV
- When is it time to retire? V
- Book Review: “The Magic Feather Effect” is an exploration into the unexplainable..... VI
- More Resources and Tools VIII

Why Wellness for Lawyers?

By Terri Harrington, Esq., Executive Director,
New Hampshire Lawyers Assistance Program



**To be an effective lawyer, one must be a healthy lawyer.
Stress may be part of the job, but stress should not be a way of life.**

Every practicing lawyer understands that stress is part of the job. Whether the job demands the zealous representation of a notorious criminal, defending parental rights, coordinating aspects of a corporate merger, obtaining a patent on new technology or fighting to keep someone in their home because of unpaid debt, the job of a practicing lawyer is high stakes for all those involved. If stress is part of the job, why are we in the legal profession surprised when stress effects impacts the health and wellbeing of individual lawyers?

The statistics on lawyer wellbeing are surprising and overwhelming. Thirty-six percent of lawyers self-identify as problem drinkers. Twenty-eight percent of lawyers are struggling with some form of depression. (See: *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Krill, Johnson & Albert, *Journal of Addiction Medicine*, Vol. 10, No. 1 (Jan/Feb 2016)). Nineteen percent are struggling with anxiety. Although it has been an open secret for years in the legal community that alcohol and burnout are problems, few guessed at the breadth and scope of the issue.

The issue doesn't start with a license to practice law. The path to an unhealthy relationship with stress and accompanying coping mechanisms start in law school. Seventeen percent of law students struggle with depression. Fourteen percent struggle with severe anxiety. Forty-three percent of law students self-report binge drinking at least once in the prior two weeks. (See: *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, Organ, Jaffe & Bender, *Journal of Legal Education*, Vol. 66, No. 1 (Autumn 2016)). It is a reasonable conclusion that there is something about the study and the practice of law that creates then fosters an unhealthy relationship to stress.

To be an effective lawyer, one must be a healthy lawyer. Stress may be part of the job, but stress should not be a way of life. Dealing with stress in a way that enhances one's life rather than detracts from it takes frank self-assessment, resilience and hard work. The occasional drink after work that becomes a drink every night to then transform into

several each day is a downward spiral into addiction. It is not a healthy way to address stress. An addicted lawyer is not only a problem to his or her clients, but to his or her family, the community at large and to the legal profession. People trust that that lawyers are going to work to fix problems. People trust that judges are fair, impartial and engaged in the meting out of justice. If the public believes that lawyers cannot deal with addiction or mental health issues for themselves, then the public will begin to lose trust in both the legal profession and legal institutions that sustain our culture.

Attorney wellness is not a passing fad. Attorney wellness is an international movement. Society is reaching a crossroads. Mental health issues are being destigmatized in a way they never were for past generations. Addiction as a societal issue hit Americans hard with a sweeping opioid crisis that has touched virtually every community, every social service organization and every family. Lawyers must acknowledge our unique position on the continuum of wellness and take responsibility for fostering a profession that has ignored this problem and its consequences for far too long. (See: *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Krill, Johnson & Albert, *Journal of Addiction Medicine*, Vol. 10, No. 1 (Jan/Feb 2016)).

Lawyer wellbeing issues must be a priority for both legal employers and legal practitioners. The expectation that wellbeing initiatives will be a part of a healthy, productive workplace should be as commonplace as vacation days, health insurance and sick leave. Those employers without it will lose valuable talent to workplaces that have it. Encouraging rather than stigmatizing help-seeking should be as easy and commonplace as seeking help for any other serious health issue such as cancer or heart disease.

“As a profession, we have the capacity to face these challenges and create a better future for our lawyers that is sustainable. We can do so — not in spite of — but in pursuit of the highest professional standards, business practices and ethical ideals.” (See: *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, Report of the National Task Force on Lawyer Well-Being, p. 47 (August 2017)).

36%
of lawyers self-identify
as problem drinkers.

28%
of lawyers are
struggling with
some form
of depression.

19%
are struggling
with anxiety.

Editor's Note:

Welcome to the next decade!

As part of an ongoing partnership with the New Hampshire Lawyers Assistance Program, the New Hampshire Bar Association is proud to offer this special Bar News supplement that educates and engages our members in the lifelong pursuit of wellness inside —and outside— the workplace.

Inside, you'll learn the answers to a number of considerations that may arise as you create and cultivate wellness for yourself and your colleagues.

How can you support an impaired colleague? When should you start planning for retirement? How can law firms better support attorneys and their families? Finally, you'll gain new tips and tools for ensuring the year ahead is your best yet.

We wish you a happy and healthy 2020!

~ Anna Berry, Editor of Publications, NH Bar Association

Family leave



How can law firms ensure families — and caregivers — are supported in the workplace?

By Kathie Ragsdale

While the governor and legislature continue to spar over plans to establish paid family and medical leave in New Hampshire, many law firms in the state say they've had their own paid family leave policies or practices in place for years that go further than what's required by the decades-old Family and Medical Leave Act.

And many offer wellness programs that go beyond legal requirements — everything from flexible hours to in-house yoga classes to visits by an ice cream truck to promote esprit de corps.

"Currently, I think most larger firms provide more than any law requires, and that is driven by individual firm cultures, economics, and talent acquisition and retention interests, more than the need to comply with a particular law," says David W. McGrath, president and managing partner at Sheehan Phinney Bass & Green, which is in the middle of a comprehensive review of its paid leave policy.

Federal law requires that employers with 50 or more workers provide up to 12 weeks of unpaid, job-protected leave per year, and state law allows a woman to take a leave of absence for "the period of temporary physical disability resulting from pregnancy, childbirth or related medical conditions," but the current debate in New Hampshire centers around *paid* leave.

In May, Republican Gov. Chris Sununu vetoed a Democratic plan for paid family and medical leave — one which would have required employers to pass on 0.5 percent of weekly wages to the Department of Employment Security.

Under the plan, employees would receive up to 12 weeks of time off for births, adoptions, health emergencies or family illness at 60 percent of wages. Employers could provide alternative plans with equivalent coverage.

In October, Sununu supported a Republican bill to create a voluntary family leave insurance program which would offer credits against the Business Enterprise Tax as a means of encouraging companies to offer it. It would allow employees to earn up to six weeks of paid leave per year for births, adoptions or family illness, but not for personal medical problems.

It is expected to go before the Senate in 2020. However, Democrats already rejected an earlier version of the plan. In the meantime, the Governor signed a December 9 Executive Order that could allow eligible state workers to bring infants into the workplace up to the age of six months.

Wellbeing Includes Families

While the legislative debate continues, many New Hampshire law firms continue to offer their own versions of family leave, whether by formal policy or longstanding practice.

"The ABA (American Bar Association) is really focused on health and well-being now because it's such a demanding profession in the context of maternity leave, pregnancy and stress," says Cathleen Schmidt, executive director and CEO of the state's largest law firm, McLane Middleton. "We work closely with every one of our colleagues and customize to their needs."

McLane Middleton's parental leave policy grants birthing mothers 12 weeks of leave at full pay, including eight weeks of disability and four weeks for "bonding time," according to Schmidt. Non-primary parents can take up to four paid weeks any time within the year after a child's birth.

The firm also supports new mothers who choose to participate in an online "mindful return" program, communicating with other new parents about transitioning back to work.

McLane Middleton's adoption assistance program, just introduced in 2017, offers 12 weeks of paid leave for the primary caregiver and four for the non-primary. It also provides a maximum of \$5,000 to offset adoption costs for things like application fees, home studies and court costs.

Upon their return, new mothers are expected to work 60 percent of their usual billable hours the first month, 80 percent the second and 100 percent the third, all at full pay, according to Schmidt.

But even that guideline is flexible. When one new mother found it difficult to work full-time three months after returning to work, Schmidt says, her hours and pay were adjusted to accommodate her.

"If this helps us recruit a few more good attorneys, I'm all for that," says Schmidt.

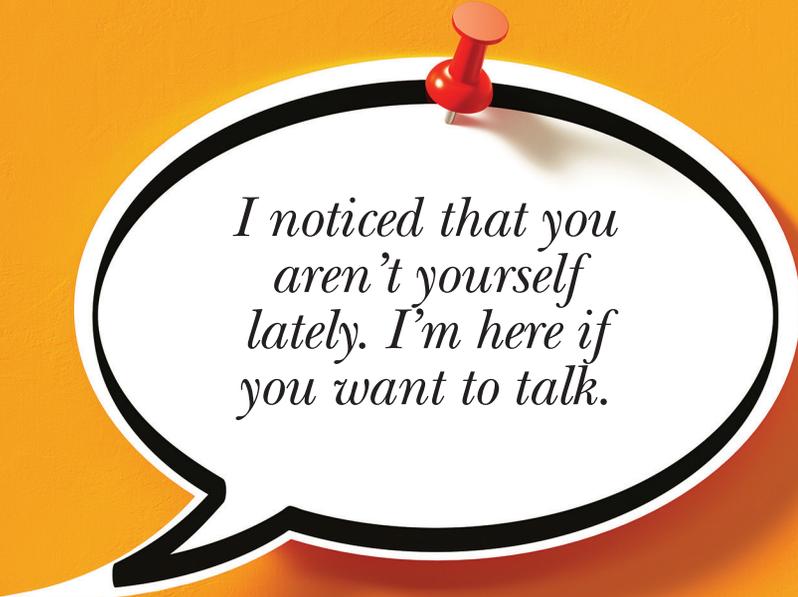
McLane Middleton also has a wellness committee that encourages employees to participate in such things as charity road races and has just added an attorney well-being committee to promote emotional well-being.

In addition, it offers free yoga, pilates and boot camp classes in the building and last summer brought in an ice cream truck for staff to enjoy while on break.

"Being a lawyer is really hard work and we try to add fun whenever we can," explains Schmidt.

(continued on page VII)

How to Help an Impaired Colleague



I noticed that you aren't yourself lately. I'm here if you want to talk.

By Terri Harrington, Esq.

“Anything human is mentionable, and anything mentionable is manageable.”

– Mr. Rogers

One of the most frequent questions I am asked as the Executive Director of the New Hampshire Lawyers Assistance Program is “What can I do to help someone I think is struggling?” This question is fraught with minefields from the ethical responsibilities it implies, to the stigma often surrounding impairment, or the fear of alienating a colleague by simply implying they need help. My answer is simple: just let them know you are there for them and are willing to listen. It’s as easy as poking your head in an office and saying “I noticed that you aren’t yourself lately. I’m here if you want to talk.”

This act of compassion is often all that is needed to signal that it is okay to ask for help when it is needed the most. Lawyers often feel that they must constantly put on a front of false bravado because of the prevailing legal culture. Weakness in the form of struggling with addiction or mental health is often perceived as a personal failing, the worst type of incompetence. Instead, these struggles need to be normalized as part of the human experience. The only way to move past them is to deal with them. As Mr. Rogers was fond of saying, “Anything human is mentionable, and anything mentionable is manageable.” It’s long past time to humanize the practice of law and the practitioners that uphold the ideals of our legal profession.

Lawyers are uniquely situated in that they must be mindful of the ethical responsibilities imposed by virtue of obtaining a license to practice law. Rule 8.3 of the New Hampshire Rules of Professional Conduct requires that lawyers maintain the integrity of the legal profession by mandating the report of professional misconduct of our colleagues. This includes reporting the misconduct of another lawyer to the licensing authority if “another lawyer committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects ...”

No one wants to report another lawyer, but it is often necessary when it is obvious to the average lay person that something is amiss. Signs of addiction, depression, anxiety, compulsive behavior and the like can be unmistakable, even when we don’t want to see them. This is exactly the time that the rule calls out for a report. Missing deadlines, routinely leaving early or arriving late, not returning calls or emails, appearing unkempt or unsteady, tearing up easily or avoiding all but the most necessary human interactions are all signs of possible impairments.

Understanding the range of potential impairments is one step in destigmatizing them. Often impairment is the result of a long struggle with stress, despair or burnout. The sooner a compassionate intervention is made, the more likely it will be that the problem does not progress to the point that reporting is mandated. Stepping in and asking if someone is okay not only is an act of human kindness, but it is a sound investment in avoiding malpractice claims, client complaints and costly legal errors.

Helping one another challenge the notion of a cold, competitive and dispassionate atmosphere in the practice of law is the surest way to transform the legal profession from one that struggles with these issues to one that is thriving despite them. “It’s not the honors and the prizes and the fancy outsides of life that ultimately nourish our souls. It’s the knowing that we can be trusted, that we never have to fear the truth, that the bedrock of our very being is good stuff.” - Fred Rogers.

I couldn’t agree more.

The New Hampshire Lawyers Assistance Program presented a one-hour CLE as part of the New Hampshire Bar Association’s “Learn and Lunch” series on October 1, 2019. This CLE is available as an archived seminar and is available for viewing through the NH Bar website at nhbar.org/nhbacle.

When Is It Time to Retire?

By Terri Harrington, Esq.

One of the most difficult life decisions can be determining the right time to retire. Here in New Hampshire, our bar is comprised overwhelmingly of small or solo practitioners with minimal or no health insurance. This fact further complicates the decision. The fact is New Hampshire is an aging bar with well over half of the membership age 55 or older. The discussion around retirement is now a pressing issue.

Because the bar has so many small and solo practitioners, there is concern that these lawyers have not adequately prepared for retirement. A solo or small firm can have difficulty with cash flow making regular retirement savings near impossible. Often financial concerns drive lawyers to continue practicing long after they wish to retire. This is a serious problem when aging impairs competency to such a degree that they really should not be practicing at all.

The standard for retirement rests entirely on competency. The best way to judge competency is with common sense. If legal errors are now frequent, if memory is no longer serving well and neither are the supports to compensate, if mood has shifted to make client or colleague interaction difficult, it is clearly time to retire. Often, the questions are in a “gray area” where a lawyer or employer is not quite sure how significant the issues are; if the problem is great enough where retirement is the only option.

The medical standard to determine cognitive impairment is to undergo a complete neuropsychological examination. This is a series of tests used to measure psychological and cognitive function relative to neuro pathways and brain structures. Essentially, these tests offer an estimate of someone’s peak level of cognitive performance. The results can point to specific cognitive diseases or disorders or extent of neurological decline or damage. These results can also rule out cognitive issues.

These tests are expensive. Only a licensed neuropsychologist or a license clinical psychologist can administer the tests and score the results. Here in New Hampshire, there is a shortage of qualified professionals, so often a referral to Massachusetts or beyond is required. The test itself costs an average of \$2,500 with initial testing often not covered by medical insurance. These combined factors often mean that these tests are beyond the financial reach of the average small or solo practitioner. Unfortunately, if competency to practice becomes a real question for legal licensing, these tests will be required if one wishes to demonstrate the requisite cognitive ability to continue with legal practice.

As for everyone, retirement, even without complications, can be daunting. The best way to prepare to retire is to cut back on the practice of law and fill that time with people, issues and activities that you enjoy. Many nonprofits would



welcome the expertise of a lawyer as a volunteer. The New Hampshire Center for Nonprofits has a list of hundreds of programs across the state will spur any interest. Mentoring a new lawyer is another way to cut on practice time but stay involved with your profession. Dog walking with a local branch of the Society for the Prevention of Cruelty to Animals, reading to children in elementary schools, coaching or reengaging in religious life are all ways to make the transition out of practice easier and more fulfilling.

The urgent issue around retirement is succession planning. Every attorney should have a running list of cases, a directive to access to them as well as a designee for any trust account. Should something happen requiring immediate retirement (such as a stroke or heart attack) creating a plan to assure your ethical obligations will be discharged in streamlined manner is essential. Too often, succession planning is ignored, and strangers are tasked with dealing with a lawyer’s clients, cases and finances.

The NHBA has free forms available to help aid in succession planning (see below). Whatever the situation, whatever the question, NHLAP is available to help by providing education, volunteer lawyers and referral sources.

The New Hampshire Lawyers Assistance Program presented a one-hour CLE entitled “When Is It Time to Retire” as part of the New Hampshire Bar Association’s “Learn and Lunch” series on October 1, 2019. This CLE is available as an archived seminar and is available for viewing through the NH Bar website at nhbar.org/nhbacle.



Law Office Back-up

What would happen to your clients if you suffered an accident or became ill and were unable to work?

The purpose of the law-office back-up project is to provide information and a means for members to designate back-up attorneys to conduct affairs on behalf of their clients in the event that they are unable to continue practicing due to unexpected death, disability or other incapacity.

While few would disagree that back-up planning is important, it is not at all uncommon for attorneys not to have a plan, in writing, to inform their clients, staff and spouse as

to what to do in the event that they are no longer able to practice law.

Filing a Law Office Back-up document with the NHBA is a simple way to ensure that your clients, partners and family know where to turn to take care of your business affairs in the event that you are unable to do so yourself.

How does the process work?

1. Download the Law Office Backup Designation Form from the “Manage Your Practice” section of the “Resources” page at nhbar.org/resources
2. Fill out the form, print and sign the document
3. Return the form to Member Records, either by scanning and emailing the document or mailing the document to NHBA Member Records Suite 300, 2 Pillsbury St., Concord NH 03301

(continued on page VII)

An Exploration into the Unexplainable

“... [S]ince I regard science to be, as the astrophysicist Carl Sagan put it, ‘by far the most successful claim to knowledge accessible to humans’ and the best safeguard we have against our biases, I am more interested in what the surprising number of placebo researchers, neuroscientists, and psychologists studying alternative healing techniques or mind-body interactions have to say.”

— Author Melanie Warner

The Magic Feather Effect

By Melanie Warner

Scribner (2019) • Paperback • 288 pages

Reviewed by Melissa Kowalewski

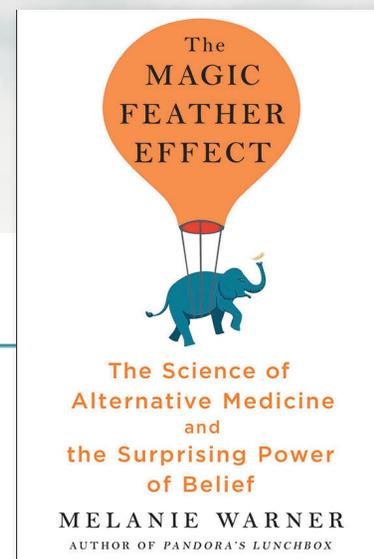
When my daughter saw that I was reading a book entitled *The Magic Feather Effect*, she immediately knew that it had something to do with Dumbo’s possession of a feather, which enabled him to use his tremendous ears to fly. And that translated to, in this book, an exploration. Specifically, Melanie Warner looks at a variety of areas of alternative medicine, from acupuncture to placebos, in the hopes of successfully exploring what both the questioners and the disciples say about their chosen area of alternative health.

What I particularly enjoyed about this book is that it isn’t an exhaustive exploration about all of the areas of alternative medicine but is only a look at what Warner believes are the methods of alternative health that are, perhaps, the most useful to the consumer. I really enjoyed the chapters on acupuncture and chiropractic medicine (one of which I’ve tried and one of which I haven’t — you guess which!) because I enjoyed learning about the history of each area of medicine. Periodically, there is some science thrown in but not a whole lot and the parts that are thrown in are not particularly dense.

Warner has a wonderful way of writing. She is straightforward in her narrative and intersperses history lessons with interviews and her own experiences. For instance, Warner discusses attending a conference on energy healing and, in the same book, discusses going to a prestigious research clinic in the hopes of figuring out how these methods of alternative medicine work. I found these experiences almost more interesting than the more scientific or historical interludes that were also interspersed throughout her work.

Warner was also very effective at layering her arguments. There were times where I questioned why she had circled back to a particular topic only to have an “a-ha” moment a bit later on.

I walked away from this book with the tools to help me evaluate different methods of alternative medicine in the hopes of finding one or more that worked for me if I wanted to dive back into this realm of healthcare.



Melissa Kowalewski

I am an attorney whose practice focuses on the areas of family law and domestic violence. I currently practice at Morneau Law in Nashua, NH. When I'm not at work, I enjoy running, spending time with my loved ones and children, spending time outdoors and reading and coaching youth soccer. I attended Wellesley College and received a Bachelor's of Arts in History. I received my degree of Juris Doctor from Syracuse University College of Law.

Family leave (continued from page III)



But she acknowledges that McLane Middleton — with 102 attorneys and 26 paralegals — may find it easier to offer generous paid leave than smaller firms might.

“If you’re a firm of two or three attorneys and one is out, it puts a little pressure on the firm,” she says.

Small-Firm Approaches to Family Leave

Nevertheless, many smaller firms do provide paid leave arrangements for employees, sometimes using creative approaches.

“As a small firm, we endeavor to provide roughly 12 weeks of leave with pay from a variety of sources,” says Jennifer Moeckel, a partner at Cook Little Rosenblatt & Manson, which has 12 lawyers. The formula includes two weeks of paid parental leave and a combination of short-term disability and vacation, sick and personal time.

“We wanted to add the two weeks because anyone who becomes a parent should be able to take that time to welcome a new child into their family and not have to use their sick or vacation or personal time,” Moeckel adds.

That paid leave is available to anyone becoming a parent, whether a mother, father or adoptive parent.

Flexible hours and the ability to work less than full-time add to the firm’s “family-friendly” atmosphere, according to Moeckel.

Wescott Law, with seven full-time attorneys, also has short-term, long-term and pregnancy leave policies.

“It seems reasonable to us to provide this because we’re

looking out for the overall well-being of our staff and attorneys,” says Allison Ambrose, managing partner. “It doesn’t end up being a hardship because attorneys are usually good about planning in advance and being responsible.”

Adds Kathrine Lacey, assistant managing director, “We have a really long-term staff and we pride ourselves on that.”

Wescott’s short-term disability policy provides two-thirds pay for 30 days of absence and applies to both maternity and paternity leave.

Ambrose notes that employee wellness is a high priority at the firm, so it offers things like group yoga classes, motivational speakers and flexible schedules to encourage family time.

The firm is also in the process of creating a break room to encourage employees to eat away from their desks in a sociable setting.

Learning from the Past to Support a New Generation

Wadleigh, Starr & Peters, with 32 lawyers, does not have a formal written policy on family leave, but it does have a longstanding practice.

“It began with me,” says Kathleen C. Peahl, managing partner. “I was the first female attorney here to get pregnant, go out on leave and come back to work, in 1990. There was no policy so we sort of developed a practice the firm was willing to support for me and we have followed that practice ever since.”

The unwritten practice allows attorneys to take paid leave for 12 weeks. Staff can use sick leave and “whatever period of disability leave they need,” Peahl says.

As with many firms, flexibility is the order of the day when it comes to individual cases. A male attorney whose wife delivered premature twins “took as much time as he needed” and sometimes worked remotely so he could be with his family, she adds.

Wadleigh, Starr & Peters also provides benefits like gym memberships through its health care provider, offers some lunchtime mindfulness sessions and fields a team for charity races.

Adjustable hours and the ability to work remotely have been offered since Peahl had her first child in 1990.

A flexible work schedule, she says, helps strengthen “the balance of family and work life that we are strong supporters of.”



Law Office Back-up (continued from page V)

Once the document is received, the Member Records Coordinator will attach the PDF to your member record. Upon appropriate notification the PDF will be made available to listed designees upon their request.

If peace of mind is not enough to convince you to update your member record with this useful document, consider this:

The ABA Standing Committee on Ethics and Professional Responsibility’s Formal Opinion 92-369 on Disposition of Deceased Sole Practitioners’ Client Files and Property (December 7, 1992) recommends planning for death:

“To fulfill the obligation to protect client files and property, a lawyer should prepare a plan providing for the maintenance and protection of those client interests in the event of the lawyer’s death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify clients of their lawyer’s death.”

In addition, if you are a solo-practitioner, your insurance may require you to name a back-up attorney. This form goes further in that you not only name the attorney but also provide important information for that attorney to access necessary records and files.

“This is not only for situations where the attorney passes on, it is for any reason an attorney cannot practice without sufficient warning to make provision for their clients.”

— Lanea Witkus, former Sullivan County Governor, NHBA Board of Governors.

Tech-Savvy Resources

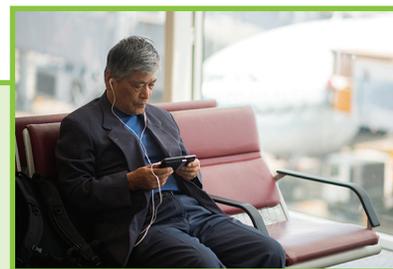
Apps

10% Happier: Meditation
Calm – Meditate, Sleep, Relax
Headspace: Meditation & Mindfulness
Insight Timer
Meditation Studio
Simply Being Guided Meditation
Mindfulness – Take a break
The Mindfulness App
Meditation for everyone



Podcasts

Buddhist Geeks
Hidden Brain
The Happy Lawyer Project
Shelley Gawith, Functional Nutrition
10% Happier with *Dan Harris*
The Lawyer Stress Solution
with *Kara Loewentheil*
The Lawyerist Podcast
The Less Doing Podcast with *Ari Meisel*
Metta Hour Podcast with *Sharon Salzberg*
Mindfulness+ with *Thomas McConkie*
On Being with *Krista Tippett*
Oprah's SuperSoul Conversations
Reboot Your Law Practice



Websites

New Hampshire Bar Association
<https://www.nhbar.org/resources/>
New Hampshire Lawyers Assistance Program
<http://www.lapnh.org>
ABA Commission on Lawyer Assistance Programs
https://www.americanbar.org/groups/lawyer_assistance/
National Alliance on Mental Illness New Hampshire
www.naminh.org
Granite State News Collaborative —
Granite Solutions series on behavioral health
<https://www.collaborativenh.org/news/>

*“Give your stress
wings
and let it
fly away.”*



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