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Blues Club – When Things Go South

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Mental Health Is Not A Luxury – It Is The Gateway To The Successful Practice Of Law

“Mental health” and “work-life balance” may feel like clickbait whenever you come across those terms, but these conditions are vital ingredients to the successful practice of law. So vital, in fact, that the American Bar Association’s model rules state that a lawyer must decline or withdraw from representing a client if their physical or mental condition prevents them from doing so competently. ABA Model Rule 1.16.

The Iowa Supreme Court observed within the past decade: “There is very little case law interpreting this rule (e.g., Iowa’s version of Model Rule 1.16(a)(2)) or its predecessor, DR 2-110(B)(3).” *Iowa Supreme Court Att’y Disciplinary Board v. Cunningham*, 812 N.W.2d 541, 548 (Iowa 2012). Nonetheless, the rule and its forerunner under the Model Code have been applied in both regulatory and civil settings. Although the focus with both has been on withdrawal, the rule has also been applied when work should have been declined.

In the regulatory setting, the Rule, in keeping with its text, has been applied to both physical and mental conditions. See, e.g., *State ex rel. Oklahoma Bar Ass’n v. Southern (Southern)*, 15 P.3d 1 (Okla. 2000) (physical illness); *Cincinnati Bar Association v. Brown*, 678 N.E.2d 513 (Ohio 1997) (mental condition). Professional “burn out” has been cited when the result of such a condition is inability to manage client work. See, e.g., *In re Loew*, 642 P.2d 1171 (Or. 1982); see also *In re Loew*, 661 P.2d 922 (Or. 1983); *In re Loew*, 676 P.2d 294 (Or. 1984). When discipline under state variants of Rule 1.16(a)(2) is imposed, it is almost invariably coupled with other charges, most frequently violations of Rules 1.1, Competence, and 1.3, Diligence.

Stress, Overload, and Resilience

According to *Combatting Stress in the Legal Profession: the ‘New Normal’* by Helen Pamely (January 5, 2022), the relationship between stress and performance can be measured on a bell curve. When stress goes beyond the peak of the bell curve, we suffer from stress-hormone overload, and performance suffers. Sustaining an overload for a long time creates imbalances in our nervous system, leaving us more vulnerable to illness.

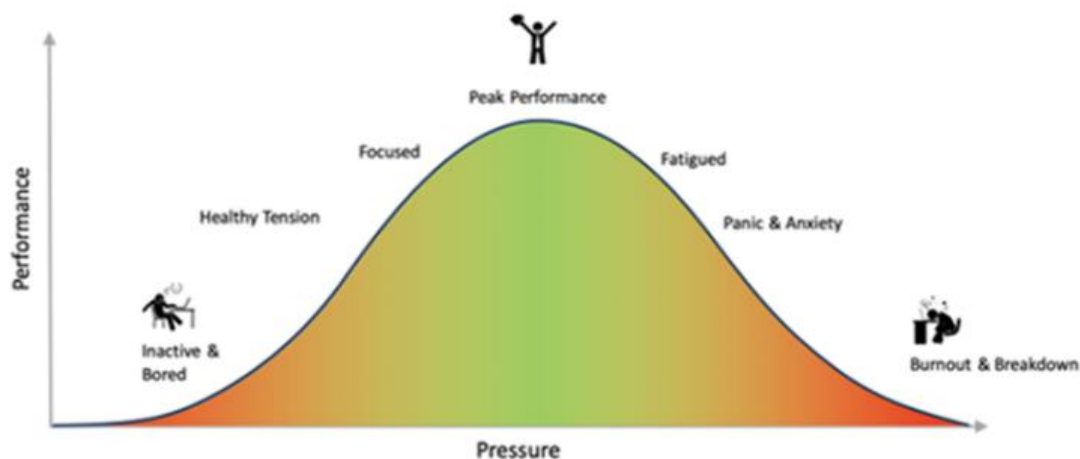


Image from Combatting Stress in the Legal Profession: the ‘New Normal’, Helen Pamely, January 5, 2022.

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At the heart of every lawyer's thinking style is a mastery over one's reactions, emotions, and responses. The world of law might be constructed with statutes, clauses, and precedents, but it operates in the realm of human emotions and challenges. And this is where resilience comes in. Resilience represents the capacity to recover quickly from difficulties, a form of mental and emotional toughness.

Creating a Resilient Office Culture

Office culture is not something that employees *are*, it is something that they *do*.

While identifying needs is the first step in creating a resilient office culture, translating it into actionable strategies is where the real challenge lies. This transition involves a two-fold approach: instilling values and implementing systems.

Values: Law firm goals need to move beyond profit metrics. Celebrating resilience as a core firm value is pivotal. This means recognizing and applauding not just the lawyers who win cases but also those who showcase emotional intelligence, take conscious breaks to rejuvenate, and actively seek and provide mentorship.

Systems: Resilience cannot be left to chance or individual work. Structured programs, regular workshops, and resilience metrics should be integral to a firm's operational strategy. This can include mental health days or even resilience report cards that assess and provide feedback. Office Leadership must foster open dialogues, share their personal stories of navigating stress, and, most importantly, be receptive to feedback. When a junior associate sees a senior partner practicing mindfulness or openly discussing mental health, it shatters stereotypes and paves the way for genuine cultural change.

Global Context

In a global context, German employees serve as an example of those required to contribute to a statutory health insurance system, which includes coverage for mental health issues. This provides comprehensive support for individuals facing such challenges. Should an employee encounter mental health difficulty, they have a range of options available for care and support:

- Diagnosis and Treatment
- Therapy Options (e.g. Psychotherapy and Medication)
- Sick Leave (up to six weeks full salary by employer, then around 70% from health insurance).
- Rehabilitation Programs (Reintegration into Workplace).
- Preventive Measures (e.g. Employer Initiatives and additional Health Insurance support)

In addition, across Europe and particularly in Germany, further benefits are being discussed to enhance employee well-being. One such proposal is the introduction of a four-day workweek, aiming to improve work-life balance and overall mental health. This ongoing discussion reflects a broader movement toward rethinking traditional work structures and prioritizing the well-being of employees