

MORE THAN MERE LIP SERVICE: A MANSFIELD RULE FOR WELL-BEING

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INTRODUCTION

Law firms' watchword is well-being. "Never in history have organizations around the world devoted so much attention and capital to improving employee mental health and well-being. It is lamentable that these investments are not always providing a good return regarding improved outcomes."¹ In the legal arena, a 2021 report from the Institute for Well-Being in Law echoed this sentiment, determining that while 99 percent of law firms have some type of well-being program, these measures did little to nothing to address internal, structural issues that perpetuate the lack of attorney well-being.²

Law firms cannot continue to espouse a well-being ideology that "shift[s] blame from institutions to individuals."³ Unsurprisingly, fealty to the American Bar Association's well-being pledge⁴ does not eradicate the

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1. Jacqueline Brassey et al., *Addressing Employee Burnout*, MCKINSEY HEALTH INST. (May 27, 2022), <https://www.mckinsey.com/mhi/our-insights/addressing-employee-burnout-are-you-solving-the-right-problem> [perma.cc/PZM2-ZZE].

2. Katrina Lee, *Solving for Law Firm Inclusion*, 24 VAND. J. ENT. & TECH. L. 323, 348–49 (2022); *see also* Jarrod F. Reich, *Capitalizing on Healthy Lawyers*, 65 VILL. L. REV. 361, 374–75 (2020) (“[L]awyer distress is systemic.”).

3. Nicholas D. Lawson, “*To Be a Good Lawyer, One Has to Be a Healthy Lawyer*”: *Lawyer Well-Being, Discrimination, and Discretionary Systems of Discipline*, 34 GEO. J. LEGAL ETHICS 65, 102 (2021).

4. The American Bar Association’s (“ABA”) well-being pledge requires signatories to commit to providing “enhanced and robust education” on well-being topics, mental health issues, and substance abuse disorders; reducing the expectation of alcohol at firm events; supporting attorneys’ self-care practices; and enlisting addiction and mental health experts to counsel attorneys and advise on firm-wide programming. Firms must report annually the concrete steps they’ve taken to advance these objectives. *ABA Well-Being Pledge and Campaign Seven Step Framework*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lc-colap-working-group-pledge-and-campaign.pdf [perma.cc/2ATP-442Z]; Priscilla Lundin, *The ‘New Normal’ for Legal Employers*, N.Y. L.J. (Sept. 16, 2021, 12:00 PM), <https://www.law.com/newyorklawjournal/2021/09/16/the-new-normal-for-legal-employers-signing-the-aba-wellness-pledge/> [perma.cc/FQ3V-H4TX]; *see*

billable-hour pressures at the root of many lawyer-well-being problems.⁵ Rather, “[w]ell-being is a *team* sport.”⁶ To prompt meaningful, profession-wide change, firms need to do more than prescribe stress-reduction techniques and subsidize gym memberships.

Generating a list of well-being friendly firms is a start; industry-ranking company Vault introduced “wellness” in 2021 as a category for gauging the best large and midsized law firms to work for based on associate feedback.⁷ But to make real progress, firms should take a holistic, interconnected tack to well-being and inclusion, “embed[ding] lawyer well-being as an institutional piece of their DEI efforts.”⁸ Similar to how the Mansfield Rule, a diversity initiative, sets “consideration goals” to create a pipeline to legal leadership roles,⁹ a comparable standard should be established for firms to cultivate a culture of well-being.

This Essay calls for law firms to pursue a preventative, systemic approach to well-being. Part I recounts the wretched state of firms’ well-being programs, which present individual solutions to pervasive problems. Part II describes how the Mansfield Rule’s clear criteria and extensive certification process have helped firms make inroads in diversifying firm leadership. And Part III proposes a well-being analogue to the Mansfield Rule so that firms’ well-being bite matches its bark.

also Well-Being in the Legal Profession, A.B.A., https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/ [<https://perma.cc/KSW9-35HP>] (implores law firms to acknowledge that substance abuse and mental health problems plague the legal profession and urging firms to commit to “building a better future”).

5. See Roger E. Barton, *How Law Firms Can Embrace the New Emphasis on Workplace Culture*, REUTERS (Nov. 17, 2022, 3:03 PM), <https://www.reuters.com/legal/legalindustry/how-law-firms-can-embrace-new-emphasis-workplace-culture-2022-11-17/> [perma.cc/53UY-SPAH] (“The ‘stereotypical’ law firm is one that’s competitive and cut-throat, where the billable hour is king and attorneys work long hours, running themselves into the ground for the sake of increasingly higher profit margins and fatter books of business.”); Reich, *supra* note 2, at 390–93 (characterizing firms as profit-making machines, where equity partners have achieved staggering wealth at the expense of firm lawyers’ mental health and addiction issues and recognizing that additional income, along with higher billing rates, presumes an “obligation to work longer hours . . . at the expense of lawyers’ health and personal lives”).

6. Anne M. Brafford, *Well-Being Toolkit for Lawyers and Legal Employers*, A.B.A. at 4 (Aug. 2018), https://lawyerwellbeing.net/wp-content/uploads/2020/02/Toolkit-Full_Final_July-30-2018.pdf [perma.cc/SX5Q-XAPN] [hereinafter *Well-Being Toolkit*].

7. Anne M. Brafford, *What’s Working Well in Law Firm Well-Being Programs?*, WELL-BEING WEEK IN LAW (May 2021), https://lawyerwellbeing.net/wp-content/uploads/2021/05/Well-Being-Firm-Profiles_4-2021.pdf [perma.cc/F6YM-958W] [hereinafter *What’s Working Well*].

8. See Lee, *supra* note 2, at 361–62.

9. *Mansfield Rule Overview*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-overview/> [perma.cc/ED2E-5H9F].

I. PASSING THE BUCK

The current state of well-being affairs is abysmal. The 2021 ALM Intelligence Mental Health and Substance Abuse Survey revealed that more than 70 percent of responding lawyers suffered from anxiety.¹⁰ Eschewing “hustle culture, grind culture, and toxic work environments,” a record number of employees left their jobs in 2021, a phenomenon dubbed the “Great Resignation” or “Great Reshuffling.”¹¹ Lost productivity and low morale abound.

Emblematic of firms’ well-being woes is the wholesale lack of lawyer vacations. “Attorneys are famous for not taking time off” given the pressures of constant client demands and incessant business needs.¹² To tackle this problem, about 40 percent of firms allow so-called “unlimited vacation time.”¹³ The policy looks good on paper: an “unlimited” vacation option is meant to encourage autonomy and empower lawyers to decide what amount of vacation is appropriate.¹⁴ But far from the seemingly altruistic reasons for adopting an “unlimited” vacation model, many view the shift as a cost-cutting measure in disguise, a way for firms to skirt their obligation of paying departing attorneys for accrued time off.¹⁵ And muddled expectations about what is acceptable and the “machismo around overwork”¹⁶ pressure lawyers into never taking time away.

Associates’ anxiety about availing themselves of an “unlimited” vacation policy—that employers will view them as either abusive or lazy—is borne out by the research. A 2018 Vault survey found that only 31 percent of associates used all their allotted vacation days.¹⁷ Without a fixed number

10. Lee, *supra* note 2, at 332–33.

11. Barton, *supra* note 5 (internal quotations omitted).

12. Neil Pedersen, *Reducing Stress in the Practice of Law*, ORANGE CNTY. LAW., Jan. 2020, at 31, 31 <https://www.virtualonlineeditions.com/publication/?m=15276&i=642991&view=contentsBrowser&ver=html5> [perma.cc/ZU59-KCTW]; see also Weil Gotshal, *Well-Being at Weil and Beyond*, YOUTUBE (May 27, 2021), <https://www.youtube.com/watch?v=d6dyIWuikRw> (acknowledging that lawyers operate in a “high-conflict environment” because “clients come to lawyers to solve problems”).

13. See David Lat, *Notice and Comment: Biglaw Vacation Policies*, ORIGINAL JURISDICTION (Sept. 10, 2021), <https://davidlat.substack.com/p/notice-and-comment-biglaw-vacation> [perma.cc/4S9L-VS7Z].

14. Elie Mystal, *Kirkland & Ellis New Vacation Policy*, ABOVE THE LAW (Dec. 2, 2008, 10:39 AM), <https://abovethelaw.com/2008/12/kirkland-ellis-new-vacation-policy-tastes-great-but-is-it-less-filling/> [perma.cc/4HML-7NNS] (announcing Kirkland & Ellis LLP’s move to “unlimited” vacation days and heralding the policy as “more clearly evidenc[ing] the importance the Firm places on associate autonomy and balanced lives”).

15. See Lat, *supra* note 13; Mystal, *supra* note 14.

16. Lat, *supra* note 13.

17. Gayle Cinquegrani, *Lawyers Need Vacations. Case Closed.*, BLOOMBERG LAW (May 25, 2018, 6:16 AM), <https://news.bloomberglaw.com/daily-labor-report/lawyers-need-vacations-case-closed> [perma.cc/7AFW-JV3Y].

of days to plan, associates fear that they're sacrificing opportunities for career advancement if they go on vacation.¹⁸ As a result, associates at firms with "unlimited" vacation policies wind up taking fewer days off because they have more guilt about going on vacation than colleagues at firms with fixed vacation days.¹⁹

Even when associates dare to take vacation, they cannot unplug. This constant accessibility, reflected in a recent tweet,²⁰ resonates with law firm lawyers:



Ashley Herd
@Managemethod



Law Firm Partner: "We can't make a decision until we hear back from the client, who's on vacation at their lake house."

Associate (using a satellite phone while hiking to their brother's wedding in the ice caves of Antarctica): "No worries, I'll be on standby."

3:39 PM · Jan 17, 2023 · 133K Views

234 Retweets 25 Quotes 2,339 Likes 45 Bookmarks

The common refrain is that, as a client services business, firm lawyers are being paid—handsomely—for their availability.²¹ But "[m]oney is a good deodorant for other problems."²² The point of vacation is to avoid burnout²³ and come back rejuvenated; lawyers' need to be constantly reachable, to never be off duty, hampers this goal.

Employers should encourage and protect vacations as an antidote to the prestige-, work-, and advancement-obsessed legal profession. In their

18. Lat, *supra* note 13.

19. *Id.*

20. Ashley Herd (@Managemethod), TWITTER (Jan. 17, 2023, 3:39 PM), <https://twitter.com/Managemethod/status/1615448853552979998?t=Y8Bzt3j0TyjWVcR2KwrSw&s=15> [perma.cc/M9S7-754U].

21. Debra Cassens Weiss, *BigLaw Associate's Admonition to Be Available 24/7 with 'No Exceptions, No Excuses' Goes Viral*, A.B.A. J. (Apr. 6, 2023, 9:30 AM), <https://www.abajournal.com/news/article/biglaw-associates-admonition-to-be-available-24-7-with-no-exceptions-no-excuses-goes-viral> [perma.cc/SS3J-UP9P] ("We are in the business of client service—you are the concierge at the Four Seasons, a waiter at Alinea. . . . At the end of the day, you're married to the firm.").

22. Daniel S. Wittenberg, *The Great Resignation and the Business of Law*, A.B.A. (May 25, 2022), <https://www.americanbar.org/groups/litigation/publications/litigation-news/business-litigation/the-great-resignation-and-business-law/> [perma.cc/PW4D-4KDB].

23. According to medical experts, burnout is a "psychological syndrome that is the result of long-term, job-specific, physical and emotional exhaustion from interpersonal stress." Sherrill W. Hayes et al., *Perceived Stress, Work-Related Burnout, and Working From Home Before and During COVID-19*, SAGE OPEN, Oct.–Dec. 2021, at 3.

study of 6,000 practicing lawyers, law professor Larry Krieger and psychology professor Kennon Sheldon found that the number of vacation days attorneys take is a strong predictor of their well-being—an even stronger predictor than income level.²⁴ What’s more, forgoing vacation time can contribute to anxiety, depression, alcoholism, and burnout.²⁵ In fact, research suggests that taking regular vacations may be “as vital to emotional and physical well-being as exercise or a healthy diet.”²⁶ Employees who take frequent vacations are less likely to be depressed, tense, or tired; have a reduced risk of heart disease; and report being more interested and productive in their work on their return.²⁷ So vacation shouldn’t be viewed as a “dirty word.” Clear vacation policies mandating days off coupled with an organizational culture that supports detachment from work will give employees the chance to recharge, ultimately improving their outlook and well-being.

And firms would benefit, too—neglecting well-being and burnout creates organizational problems. Roughly 75 percent of associates leave their firms within five years, and replacing an associate ranges from \$200,000 to \$500,000.²⁸ This financial toll doesn’t even account for the annual costs—fiscal and psychological—from any current lawyers’ absenteeism or presenteeism.²⁹

But most companies view well-being and burnout as personal problems.³⁰ So, despite employers’ well-intentioned wellness efforts, “many concentrate on individual-level interventions³¹ that remediate symptoms” rather than prevent—and resolve—the causes of employee burnout.³² Exemplifying many top-revenue-generating law firms’ approach, one Vault top-twenty firm touts its well-being track record of providing best-in-class

24. *Well-Being Toolkit*, *supra* note 6, at 13.

25. Cinquegrani, *supra* note 17 (referencing lawyer and licensed alcohol and drug counselor Patrick R. Krill’s landmark study for the Hazelden Betty Ford Foundation and the ABA’s Commission on Lawyer Assistance Programs).

26. Pedersen, *supra* note 12, at 31.

27. *Id.*

28. Reich, *supra* note 2, at 400.

29. *Id.* at 397–98.

30. Brassey, *supra* note 1.

31. Some firms offer additional financial incentives as a salve for associates’ discontent. *See, e.g.*, Meghan Tribe, *Cravath Rolls Out Associate Bonuses, Matching Last Year’s Scale*, BLOOMBERG LAW (Nov. 29, 2022, 9:55 PM), <https://news.bloomberglaw.com/business-and-practice/cravath-rolls-out-associate-bonuses-matching-last-years-scale> [perma.cc/QE9L-W4GW] (announcing that Cravath, Swaine & Moore LLP planned to award seniority-based bonuses ranging from \$15,000 to \$105,000 and reminding readers that the firm raised first-year associate salaries to \$215,000 in January 2022, matching pay bumps from Milbank LLP and Davis Polk & Wardwell LLP). But since money—profit generation and maximization—is at the core of much of the distress and dissatisfaction within the legal profession, more money won’t alleviate firms’ well-being problems. *See* Reich, *supra* note 2, at 391–92.

32. Brassey, *supra* note 1.

health benefits, opening an on-site health center in the mothership office, and signing the ABA's well-being pledge.³³ It ballyhoos its programs on nutrition, exercise, sleep, stretching, anxiety, depression, and loneliness.³⁴ And, as part of a well-being webinar, president of Total Life Counseling Center-Dallas Dr. Jada Jackson exhorted associates and firm alumni to “un-plug . . . your professional life” and “separate your job from your everyday life and who you are.”³⁵ Another Vault top-twenty firm prides itself on its concierge and “errand-running” services so that its lawyers can “preserve personal time for the things that matter most.”³⁶ To be sure, these perks have their upsides. But these “fixes” typify the lawyer well-being movement’s “individualistic focus”³⁷ by putting the onus on associates to find—and use—the resources on offer.³⁸ “Individual skills cannot compensate for unsupportive workplace factors.”³⁹ An associate cannot go to a spin class if their schedule is full and their energy is depleted.

Law firms cannot “yoga’ [their] way out of these challenges.”⁴⁰ While the Well-Being Toolkit for Lawyers and Legal Employers the ABA rolled out in 2018 was chock-full of wellness suggestions,⁴¹ no meaningful change has come about. If a firm’s business model pressures associates to always be on call⁴² and views “billable hours as the main yardstick of success,” burn-out and turnover rates will continue to be high.⁴³ Rather, to have a lasting

33. *Well-Being at Weil and Beyond*, *supra* note 12; *Vault Law 100*, FIRSTHAND, <https://firsthand.co/best-companies-to-work-for/law/top-100-law-firms-rankings> [perma.cc/N3VU-AZKZ].

34. *Well-Being at Weil and Beyond*, *supra* note 12.

35. *Id.*

36. Skadden, Arps, Slate, Meagher & Flom LLP, *Diversity and Inclusion at Skadden*, (2022) https://www.skadden.com/-/media/files/about/diversity_and_inclusion_at_skadden.pdf [perma.cc/VL4V-EN4M]; *Vault Law 100*, FIRSTHAND, <https://firsthand.co/best-companies-to-work-for/law/top-100-law-firms-rankings> [perma.cc/N3VU-AZKZ].

37. Lawson, *supra* note 3, at 101.

38. See Brassey, *supra* note 1. While many firms track benefit usage and monitor attendance at wellness events, “[g]enerally, though, firms have not yet created formal evaluation processes to assess the quality of their programs and progress toward goals.” Anne Brafford, *Law Firm Well-Being Program Benchmarking Report*, ASPIRE, 3 (Jan. 2021), https://lawyerwellbeing.net/wp-content/uploads/2021/04/WellBeing-Benchmarking-Report_Rev-4-17-2021_clean-1.pdf [perma.cc/CTN7-JM8Z].

39. Brassey, *supra* note 1.

40. *Id.*

41. See, e.g., *Well-Being Toolkit*, *supra* note 6, at 10–13 (recommending law firms conduct a policies-and-practices audit to evaluate whether the organization adequately supports its lawyers’ well-being and outlining an eight-step action plan for legal employers to improve their well-being initiatives).

42. See Weiss, *supra* note 21 (reminding Paul Hastings LLP junior corporate associates that there are “[n]o exceptions, no excuses” for not being “online 24/7”).

43. Barton, *supra* note 5.

impact, firms need to envision systemic solutions to improving the professional culture beyond just focusing on individual tactics.⁴⁴

Treating well-being as a strategic priority is a prerequisite for success. In interviewing the top-ranked well-being firms to glean best practices, Anne Brafford, Co-Chair of the ABA Law Practice Division's Attorney Well-Being Committee, discovered that they "infuse well-being into all aspects of what the law firm does."⁴⁵ Sustained attention and support from leadership also is critical.⁴⁶ An integrative process, always "asking the wellness question," and connecting programming to a way of doing business versus a "siloeed initiative" of one-and-done webinars is key to making progress.⁴⁷ So beyond social and moral justifications, firms should emphasize well-being to better their bottom lines.

II. THE MANSFIELD RULE: FOSTERING INCLUSION AND UPLIFTING UNDERREPRESENTED LAWYERS

The Mansfield Rule has become the most ubiquitous credential evincing a law firm's commitment to inclusive promotion and hiring practices.⁴⁸ Aimed at increasing diversity within law firms' leadership ranks, the Diversity Lab debuted the Mansfield Rule and its accompanying certification process in 2017.⁴⁹ Named after Arabella Mansfield, the first woman admitted to practice law in the United States, the Mansfield Rule draws inspiration from the NFL's Rooney Rule, which requires every NFL team to interview at least one minority candidate for head coach vacancies.⁵⁰ In the legal context, the Mansfield Rule "measures whether law firms have affirmatively considered at least 30% women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles,

44. *Well-Being Toolkit*, *supra* note 6, at 5.

45. *What's Working Well*, *supra* note 7, at 3, 10.

46. *See id.* at 10 (reporting that the leaders at top-performing well-being firms actively participated in wellness programming "in visible ways" and occasionally shared their own experiences); *see also id.* at 3 (spotlighting Orrick LLP leadership's "vocalized goal" of being ranked a "best place to work" in shaping and promoting well-being initiatives).

47. *See What's Working Well*, *supra* note 7, at 11; *see also* Brassey, *supra* note 1 (commending a "whole-systems approach" to employee well-being).

48. Dan Roe, *In the Am Law 100, Mansfield Rule Participation Lags Among Most-Profitable Firms*, AM. LAW. (Oct. 20, 2022, 4:37 PM), <https://www.law.com/americanlawyer/2022/10/20/in-the-am-law-100-mansfield-rule-participation-lags-among-most-profitable-firms/?sreturn=20230029190008> [perma.cc/TL8C-NE3R].

49. Bevan Blake, *Mansfield Rule Gains Momentum Across Law Firms and Legal Departments*, AM. HEALTH L. ASS'N (Jan. 4, 2022), <https://www.americanhealthlaw.org/content-library/publications/bulletins/3169ab39-884a-4e49-9714-5386845e0aa0/mansfield-rule-gains-momentum-across-law-firms-and> [perma.cc/2EPS-8XGW].

50. *Diversity Rules: A Closer Look at Mansfield Certification*, LEGAL 500, <https://www.legal500.com/fivehundred-magazine/diversity-and-inclusion/diversity-rules-a-closer-look-at-mansfield-certification/> [perma.cc/6NNU-L5UL].

equity partner promotions, formal client pitch opportunities, and senior lateral positions.”⁵¹

The Mansfield certification process ensures visibility, accountability, and credibility.⁵² By articulating clear benchmarks, clients can evaluate—and compare—firms’ commitment to broadening the pool of historically underrepresented lawyers for leadership, advancement, and business development. So the stakes are high: compliance can make or break firms obtaining and retaining business.⁵³ It’s no wonder certifications have mushroomed from an initial thirty-five-firm group in 2017 to 165 large law firms in 2022.⁵⁴ Firms are putting their money where their mouths are.⁵⁵ And with more than 75 percent of Am Law 100 firms now Mansfield certified, adhering to Mansfield principles is now the industry standard.⁵⁶

The proof is in the pudding. The thirty-plus early-adopter law firms—those that have attained certification year-over-year since the Mansfield Rule’s launch in 2017—have outpaced non-Mansfield firms’ progress.⁵⁷ Early Mansfield Rule adherents increased the racial and ethnic diversity of their management committees by thirty times the rate of non-Mansfield Rule firms.⁵⁸ Several firms have even reached Mansfield Certification Plus

51. *An Open Letter From the 2020-2021 Mansfield Law Firms’ Chairs & Managing Partners*, DIVERSITY LAB, <https://www.diversitylab.com/mansfield-rule-4-0/> [perma.cc/36ZY-V85E].

52. *See id.*

53. *See, e.g., 45+ Legal Departments Join Mansfield Rule*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-rule-legal-department-3-0-edition/> [perma.cc/V5H2-62K2] (directing in-house legal departments to have at least 50 percent of the outside legal teams they consider for new matters be led or co-led by at least one historically underrepresented lawyer); *How In-House Teams Are Holding Law Firms Accountable on Diversity and Inclusion*, LOGIKCULL, <https://www.logikcull.com/blog/how-in-house-teams-are-holding-law-firms-accountable-on-diversity-and-inclusion> [perma.cc/A9FJ-MWDW] (detailing Discover Financial Services’ “scorecard system” to ensure its outside firms award diverse talent credit for working on Discover matters and relaying that Hewlett-Packard withholds 10 percent of invoiced fees to penalize firms that do not meet minimal diversity staffing requirements); Christine Simmons, *170 GCs Pen Open Letter to Law Firms*, AM. LAW. (Jan. 27, 2019, 3:00 PM), <https://www.law.com/americanlawyer/2019/01/27/170-gcs-pen-open-letter-to-law-firms-improve-on-diversity-or-lose-our-business/> [perma.cc/98K3-MRFG] (describing an open letter penned by more than 170 general counsel and corporate legal officers to law firms bemoaning new partner classes that “remain largely male and largely white” and vowing to “prioritize their legal spend” on firms that foster diversity and inclusion).

54. Roe, *supra* note 48; Blake, *supra* note 49.

55. *See* Simmons, *supra* note 53.

56. Roe, *supra* note 48. Notwithstanding this achievement, there is still work to be done—most of the largest and most profitable firms within the Am Law 100 still don’t participate in the Mansfield Rule. *Id.*

57. *Mansfield Rule “Early Adopters” Show Significant Diversity Growth—and Outpace Legal Industry—in Critical Leadership Roles*, DIVERSITY LAB (Apr. 15, 2021), <https://www.diversitylab.com/pilot-projects/mansfield-rule-early-adopter-firm-results/> [perma.cc/B3GQ-FT68].

58. *Id.*

status, indicating that the firms have achieved at least 30 percent underrepresented lawyers in leadership positions.⁵⁹ Championing the Mansfield Rule has given firms' DEI endeavors teeth.

III. PROPOSED CRITERIA FOR ENSURING LAWYER WELL-BEING

Building on the success of the Mansfield Rule, law firms should include well-being as an extension of their DEI efforts. Expanding the Mansfield Rule to encompass well-being goes hand in glove with Diversity Lab's mission of enhancing diversity in law firms.⁶⁰ A lack of diversity perpetuates and exacerbates well-being issues for lawyers in underrepresented groups, which, in turn, contributes to attrition and underrepresentation.⁶¹ A uniform set of criteria addressing law firms' structural and systemic concerns would signal to firms' current lawyers that their employers take well-being seriously. Embracing a well-being-focused Mansfield Rule would be a powerful recruiting tool as well.

Fashioning a well-being counterpart to the Mansfield Rule would also guide in-house counsel when deciding which outside firms to retain. Because in-house counsel seek to avoid turnover costs and losing institutional knowledge, there is a business case for prioritizing and promoting well-being.⁶² For instance, multinational conglomerate 3M asks law firms to specify actions they have taken to advance well-being among their lawyers.⁶³ Along these lines, in-house legal departments can exert their influence, bringing long-needed change and consistency to law firms' well-being efforts. "In-house attorneys are the client, and as clients [they]'re the ones that can facilitate change because [they] hold the purse strings."⁶⁴ Firms risk losing business and talent if they fail to implement effective, ground-level reforms.

By outlining metrics for firms to aspire to, a well-being Mansfield Rule equivalent would ensure transparency and accountability to boost firms' commitments to well-being. At a bare minimum, creating a dedicated well-being position shows lawyers that a firm genuinely cares about well-being

59. *An Open Letter from the 2021-2022 Mansfield 5.0 Certified Law Firm Leaders*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-rule-5-0-certified-firms/> [perma.cc/QC3U-EF6Y].

60. *Mansfield Rule Overview*, *supra* note 9.

61. Lee, *supra* note 2, at 326.

62. See Maria Dinzeo et al., *I'm Aghast': Viral Paul Hastings Presentation Garners Strong In-House Reaction*, CORP. COUNSEL ONLINE (Apr. 7, 2023, 7:34 AM), <https://www.law.com/corpcounsel/2023/04/07/im-aghast-viral-paul-hastings-presentation-garners-strong-in-house-reaction/> [perma.cc/X5Y7-593H] (quoting Matt Margolis, head of community at Lawtrades: "[E]conomically it doesn't favor me at all if a relationship deteriorates because the associate I'm using burns out and leaves the practice of law, or God forbid, something happens that affects their health").

63. Reich, *supra* note 2, at 414.

64. Dinzeo, *supra* note 62.

issues.⁶⁵ Professor Katrina Lee goes a step further, advocating for law firm partners to allocate a set percentage of partnership profits to fund well-being initiatives.⁶⁶

But to go beyond a check-the-box exercise, firms need to transform law firm culture by allowing their lawyers time away from work. Taking a page from Orrick LLP’s playbook,⁶⁷ firms can devise an “unplug policy” granting attorneys forty hours of billable credit to take at least one full week of true time off.⁶⁸ Another Orrick-proven strategy is to design a “focused Fridays” and limited weekend emails program to dissuade scheduling nonessential internal Friday meetings and sending non-client-related emails on weekends.⁶⁹ Carving out—and protecting—time for lawyers to disengage from work is essential.

Other features of a Mansfield Rule well-being regime could include:

- Flagging when associates work excessive hours several months in a row
- Awarding billing credit for well-being work akin to how firms treat—and value—pro bono participation
- Setting a minimum expectation of how much vacation lawyers should take
- Mandating lawyers take at least one consecutive week of leave
- Displaying a notice like the Microsoft Outlook “send tomorrow during working hours” banner on emails to prompt lawyers to consider whether they need to send an early morning or late-night email
- Encouraging email signatures that acknowledge different time zones and working patterns

65. See *What’s Working Well*, *supra* note 7, at 3, 10; see also Reich, *supra* note 2, at 418 (“[F]irms that prioritize lawyer health and well-being will be attractive both to lateral lawyers who seek better balance as well as to younger and future lawyers who prioritize their own well-being.”).

66. Lee, *supra* note 2, at 360.

67. Orrick’s well-being policies have helped the firm attract—and retain—associates. See *Fortune 100 Best Companies to Work for 2022*, FORTUNE, <https://fortune.com/ranking/best-companies/2022/search/> [perma.cc/V8J4-LMBK] (listing Orrick as the thirteenth best company to work for, the highest-ranked law firm); *Orrick, Herrington & Sutcliffe LLP: 2022 Vault Law Firm Diversity Survey*, 7, <https://media2.vault.com/14347674/orrick-dei-2022-ready-for-web.pdf> [perma.cc/GX72-Q3PX] (hyping Orrick’s associate retention rate, seven points better than the industry average associate retention rate); *Update on Associate Attrition*, NALP FOUND. (Apr. 26, 2022), <https://www.nalpfoundation.org/news/nalp-foundation-releases-update-on-associate-attrition-for-calendar-year-2021> [perma.cc/7SKF-92BK] (showing a historic average associate attrition rate of 26 percent based on 2021 data collected from 125 participating firms in the United States and Canada).

68. *What’s Working Well*, *supra* note 7, at 4; see also Kathryn Rubino, *Biglaw Firm Plans to Let Associates Bill for Being on Vacation*, ABOVE THE LAW (Jan. 24, 2023, 6:48 PM), <https://abovethelaw.com/2023/01/bryan-cave-leighton-paisner-billable-vacation/> [perma.cc/GNQ8-J84R] (publicizing Bryan Cave Leighton Paisner LLP’s new “time-off bonus” policy where attorneys can bill a vacation to the firm if they hit certain targets).

69. *What’s Working Well*, *supra* note 7, at 4.

A robust certification and enforcement mechanism is vital to ensure that firms don't just cherry-pick from the list of criteria. Diversity Lab's rigorous procedures guarantee that firms adhere to the Mansfield Rule in its entirety.⁷⁰ Becoming a Mansfield-certified firm requires concerted, sustained effort, and the commitment to certifying annually keeps firms from backsliding.⁷¹ So folding well-being guidelines into Diversity Lab's existing Mansfield Rule certification process provides an elegant solution, leveraging its expertise and existing relationships with law firms.

CONCLUSION

Lawyers are craving change on the well-being front. In legal recruiter Major, Lindsey & Africa's 2022 Law Firm Culture Survey about desired firm attributes, nearly 40 percent of respondents wanted more done to promote attorney well-being and work-life balance.⁷² "Supporting associates, rather than throwing them into the maelstrom to sink or swim, is the least law firms could do to develop and retain talent that is increasingly unwilling to put up with the old way of doing things."⁷³ Particularly for Gen Z lawyers, it's about furthering sustainable work, enabling lawyers "to have a sense of control . . . , flexibility, and sufficient time for daily recovery."⁷⁴

Subscribing to a well-being-oriented Mansfield Rule—delineating measurable standards geared to combatting the ritual overwork endemic to law firms—would ensure that firms' well-being offerings are no longer "band-aid[s] over a bullet wound."⁷⁵

70. Simmons, *supra* note 53.

71. *Id.*

72. Barton, *supra* note 5.

73. Lisa Shuchman, *The Global Lawyer: Is Mental Health the New Law Firm Metric?*, LAW.COM (June 7, 2021, 3:45 PM), <https://www.law.com/international-edition/2021/06/07/the-global-lawyer-is-mental-health-the-new-law-firm-metric/?slreturn=20220931095632> [perma.cc/95SH-PT52].

74. See Brassey, *supra* note 1.

75. Reich, *supra* note 2, at 405.