Liking, Linking, and Tweeting: Mental Health, Mentoring, and Professional Responsibility in the Age of Social Media

Introduction

Since early 2020, the world has grappled with how to address the Covid-19 pandemic. Although governmental leaders have now largely lifted restrictions on activities, at the height of the pandemic, the governors of at least forty-two U.S. states issued executive orders[1] requiring residents to only leave their homes to engage in "essential" activities.[2] The act of staying home as much as possible came to be known as "social distancing."[3] "Social distancing" is also referred to as "physical distancing" because it is aimed at limiting physical contact and includes, for example, staying at least six (6) feet apart from other individuals and not shaking hands.[4] In an effort to curtail the spread of Covid-19, many aspects of daily life that would have previously entailed at least some amount of face-to-face interaction moved to remote forms of communications. These changes have impacted all aspects of our society, including the legal community. Most U.S. law schools moved their classes online for an extended period of time, law firms turned to holding meetings remotely, and courts increased telephonic and other forms of remote hearings and proceedings.

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[1] Arit John, *These Eight States Haven't Issued Stay-At-Home Orders to Fight the Coronavirus Outbreak,* LA Times (April 22, 2020, 4:14 PM), https://www.latimes.com/politics/story/2020-04-22/states-without-coronavirus-stay-at-home-order.

[2] The definition of "essential" activities varies from state to state. For example, in Florida, "essential" activities include attending church services and engaging in recreational activities, such as swimming. Office of Governor Ron DeSantis, Executive Order #2020-91 re: Essential Services and Activities During COVID-19 Emergency (April 1, 2020). In California, essential activities are more limited and include activities such as obtaining food, helping a family member, obtaining healthcare, or going to a job that is deemed essential. Office of Governor Gavin Newsom, Executive Order N-33-20 https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf (March 19, 2020).

[3] Johns Hopkins Medicine, *Coronavirus, Social and Physical Distancing and Self-Quarantine*, (July 15, 2020), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine.

[4] Centers for Disease Control and Prevention, *Social Distancing: Keep a Safe Distance to Slow the Spread* (July 6, 2020), https://stacks.cdc.gov/view/cdc/90522.

It should come as no surprise that interactions through social media and other forms of technology mediated communications ("TMC") have grown dramatically over the last two decades.[5] Even before the Covid-19 pandemic pushed many of us into using methods of remote communication, advances in technology and the way we use that technology had already impacted human communications and interaction in numerous ways. In addition to changing the medium of communication —an in-person meeting becomes a meeting by Zoom or perhaps just an email exchange—communicating through some form of technology, rather than face-to-face, have impacted the substance and quality of those communications, e.g., a smile emoji in a text replaces a smile you might give in a face-to-face discussion.

There are, of course, benefits that come from the use of TMC. Still, studies suggest that it is not without negative consequences. Some studies support the idea that, in addition to changing the processes by which we communicate, our increased reliance on TMC is also changing *us*. Among other things, some studies show a correlation between increased use of TMC and increased rates of mental health challenges, such as loneliness, depression, and anxiety.[6]

Legal professionals in the U.S. suffer with mental health problems at much higher rates than the general population.[7] This problem is especially acute for younger and newer attorneys. As such, any correlation between increased reliance on TMC and increased loneliness, depression, and anxiety is particularly problematic for the legal community. In addition to the personal toll that such mental health challenges take on the individual attorneys who are experiencing these problems, poor mental health can undoubtedly threaten an attorney's ability to uphold the standards of professionalism and ethics that the attorney is expected to meet. Given

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[5] *See infra*, Part I.
[6] *See infra*, Part II.B.
[7] *See infra*, Part II.A.

that extensive reliance on TMC may result in negative impacts on the mental health of its users, law schools, individual lawyers, and the broader legal community should take action to monitor and mitigate these potential harms. The need to address this problem has become particularly important in the current climate, as law firms, judges, and other leaders in the profession continue to grapple with determining what work environments and communications will look like going forward in the legal profession now that governmental bodies have lifted Covid-19 related restrictions on in-person interactions.

This Article explores the potential correlation between our ever-increasing reliance on TMC and increased rates of loneliness, depression, and anxiety. It examines the problem in the context of the legal profession, focusing particularly on the resulting potential impairment of the lawyer's ability to maintain and establish relationships. It reflects on the potential impact of that impairment on a vital component of professional development – mentorship.[8] Then, drawing on lessons learned from Social Presence Theory, the Article offers proposals aimed at mitigating the potential negative effects of extensive reliance on TMC.

This Article unfolds as follows. Part I discusses the increase in reliance on TMC over the last two decades. Part II discusses the status of mental health among legal professionals. It then presents findings from studies that show a correlation between increased reliance on TMC and increased mental health challenges, such as loneliness, depression, and anxiety. Part III describes the effects of these mental health challenges in the workplace. It first presents effects in the workplace generally. It then focuses specifically on the effects that these mental health

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[8] Although the ability to maintain positive relationships is important for other vital components of legal practice — such as client advocacy and client counseling — this article will focus on mentorship because it is particularly important in the beginning stages of a lawyer's career and can provide a foundation for the knowledge and skill that are critical to a successful and fulfilling career. *See infra* Part IV. Moreover, as noted, new and younger attorneys tend to suffer from mental health and substance abuse challenges at rates that are higher than older and more experienced attorneys. *Infra* Part II.

challenges may have on the ability of the person suffering with these challenges to maintain and build relationships. Part IV addresses attorney competence in the context of impaired relationships, analyzing the potential impact of impaired relationships on mentorship and the possible resulting risk of deteriorating professional development and workplace satisfaction. Finally, Part V presents Social Presence Theory. Drawing on lessons learned from Social Presence Theory, it then presents proposals for targeting the negative impact that extensive reliance on TMC may have on the mental health of the lawyers and future lawyers who are utilizing them.

I. The Rise of Social Media and Other Forms of TMC

A. The Growing Prevalence of TMC

The means by which individuals in the United States communicate with each other has changed drastically in the last two decades. Although people used to be limited to communicating in person or through letters and landline telephones, smartphones and the internet have opened new ways to interact. These new ways of communicating are, in some instances, replacing the old.[9] Observers have described these changes as a "revolution" and as the "most striking cultural and social changes in the U.S. in recent decades."[10]

In 2021, a Pew Research survey revealed that 85% of adults in the United States own a smartphone.[11] This number increased from just 35% in 2011, a mere ten (10) years earlier.[12] In addition to owning smartphones, adults in the United States own a variety of other devices. In fact, more than three-quarters of adults in the United States own a desktop or laptop computer.[13]

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[9] *See*, *e.g*., Frank Newport, *The New Era of Communication Among Americans*, GALLUP NEWS (NOV. 10, 2014) HTTPS://NEWS.GALLUP.COM/POLL/179288/NEW-ERA-COMMUNICATION-AMERICANS.ASPX.

[10] *Id*.

[11] Pew Rsch Ctr., *Mobile Fact Sheet* (April 7, 2021), https://pewresearch.org/internet/fact-sheet/. [hereinafter Pew April 7, 2021, Mobile Fact Sheet]. An even higher number of U.S. adults, 97%, own cellphones. *Id*.

[12] *Id*.

[13] *Id*.

Of the various forms of TMC that are now available in the United States, texting is the most popular form of communication for adults under age fifty.[14] In fact, one survey showed that more than two-thirds of respondents who were age eighteen to twenty-nine and almost half of all respondents age thirty to forty reported that they engaged in texting "a lot" on the day prior to taking the survey.[15] Moreover, American teenagers specifically prefer texting over talking in person. When researchers asked teens in a 2018 study to identify their favorite way to communicate with friends, 35% chose texting, with only 32% choosing in-person communication.[16] Only six years earlier, 49% of teens surveyed preferred in-person communication.[17]

More than eight in ten adults in the United States — 81% — report that they go online daily.[18] Of that number, 28% report that they go online almost constantly and 45% report that they go online several times a day.[19] The number of people interacting through social media[20] has grown dramatically since 2005. The Pew Research Center reports that, in 2005, only 5% of adults in the United States used at least one form of social media platform.[21] By 2021, however, 72% of adults report using at least one form of social media platform.[22] The use of social media is most prevalent among adults ages eighteen to twenty-nine, with 84% of American adults who

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[14] Newport, *supra* note9.

[15] *Id.*

[16] Victoria Rideout and Michael B. Robb, *Social Media, Social Life, Teens Reveal Their Experiences*, COMMON SENSE MEDIA, 12 (2018) https://www.commonsensemedia.org/sites/default/files/uploads/research/2018_cs_socialmediasociallife_fullreport-final-release_2_lowres.pdf.

[17] *Id.*

[18] Andrew Perrin & Sara Atske, Pew Rsch Ctr., *About Three-In-Ten U.S. Adults Say They Are 'Almost Constantly' Online,* (March 26, 2021), https://www.pewresearch.org/short-reads/2021/03/26/about-three-in-ten-u-s-adults-say-they-are-almost-constantly-online/.

[19] *Id.*

[20] Social media platforms are, "[w]ebsites and applications that enable users to create and share content or to participate in social networking." *Social Media,* English Oxford Living Dictionaries, https://en.oxforddictionaries.com/definition/social_media (last visited March 13, 2020).

[21] Pew April 7, 2021, Fact Sheet, *supra* note 11.

[22] Pew April 7, 2021, Fact Sheet, *supra* note 11.

fall in this age group using at least one social media platform.[23]   Of teens in the United States

who are ages thirteen through seventeen, 16% percent choose social media as their preferred

method of communication.[24]   In addition, many adults in the United States who use at least one

social media platform use that platform daily.[25]

Smartphones and the internet have transformed the way individuals connect and interact with

one another. These data reveal the rapid and expansive adoption of the use of TMC in the United

States. In turn, the expeditious and widespread turn to the use of TMC underscores the need to

understand how these changes may impact both interpersonal relationships and individual

wellbeing.

        B.   The Practice of Law and TMC

Lawyers use a variety of methods when communicating with clients, colleagues,

opposing counsel and others in their practices. Although lawyers have increasingly relied on

various forms of TMC in recent years, that reliance increased dramatically during the Covid-19

pandemic.[26]   In late 2020, the American Bar Association ("ABA") conducted a survey of more

than 4,200 of its members (the "2020 Practice Forward Survey"). This survey focused on two

topics: "(a) the transformation of law practice during the pandemic, and (b) the anticipated

changes in law practice that our post-pandemic world will bring."[27]

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[23] *Id.* Interestingly, the percentage is down from 90% in 2019. *Id.*
[24] Rideout & Robb, *supra* note 18.
[25] Pew April 7, 2021, Fact Sheet*, supra* note 11.
[26] Stephanie A. Scharf & Roberta D. Liebenberg, Am. Bar Ass'n., *Practicing Law in the Pandemic and Moving Forward*, 2 (2021), https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf [hereinafter 2020 Practice Forward Survey].
[27] *Id.* at 3.

Fifty-four percent (54%) of respondents reported that they were working from home close to 100% of the time.[28]   Another 25% of respondents reported working from home 25-75% of the time. Only 22% of respondents reported working from home almost never.[29]   As a result, it is not surprising that more than 90% of lawyers reported spending more time on video or conference calls because of the pandemic.[30]   Notably, during this time of reduced face-to-face interaction, almost half of all survey respondents (49%) reported increased feelings of disengagement from their firm as compared to the year before the pandemic.[31] In addition, 40% of respondents reported increased stress about work and 46% reported an increase in feelings of being overwhelmed with all they have to do.[32]   Further, just over half of respondents reported feeling an increased inability to separate work from home life, and 43% reported increased feelings of finding it difficult to take time off from work.[33]

Several respondents expressed concerns about the possible negative impact that working remotely may have on their career. More than half of respondents reported worrying about a salary reduction and 47% of respondents reported being worried about getting furloughed or losing their job.[34]   In addition, more than one in four respondents worried about the impact on their career advancement,[35] while 13% of respondents were very concerned that their employer

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[28] *Id.* at 14. During the Covid-19 pandemic, most state and federal court proceedings moved to videoconferencing or even telephonic format, with some courts continuing to hold some proceedings over videoconferencing platforms. Of course, it was this shift that made it possible for lawyers who litigate to do much of their work remotely.

[29] *Id.*

[30] *Id.* at 15. The use of videoconferencing and other forms of TMC have raised ethical concerns for attorneys, specifically with respect to issues pertaining to confidentiality, privacy, security, technical competence, and the proper supervision of junior lawyers. Ellen Rosen, *The Zoom Boom: How Videoconferencing Tools are Changing the Legal Profession,* Am. Bar Ass'n. (Jun. 3, 2020), https://www.americanbar.org/groups/journal/articles/2020/the-zoom-boom-how-videoconferencing-tools-are-changing-the-lega/.

[31] 2020 Practice Forward Survey, *supra* note 26 at 16-17.

[32] 2020 Practice Forward Survey, *supra* note 26 at 16-17.

[33] 2020 Practice Forward Survey, *supra* note 26 at 16-17.

[34] 2020 Practice Forward Survey, *supra* note 26 at 19.

[35] 2020 Practice Forward Survey, *supra* note 26 at 36.

would view working remotely as a lack of commitment to the job.[36]   These concerns were higher for women respondents, with 22% of women respondents reporting being very concerned that their employer would view working remotely as a lack of commitment to the job and 11% reporting being very concerned that working remotely would create a risk of being put on furlough or losing their job.[37]

Although survey respondents expressed some negative effects from working remotely, many respondents expressed a desire to continue to have the flexibility to work remotely, at least part of the time.[38] In fact, only 23% of respondents preferred working four to five days a week in the office,[39] while more than half of all respondents either preferred to work one day a week or rarely in the office or wanted the flexibility to set their own schedule each week.[40]

C.   Moving Beyond the Pandemic

As the number and severity of Covid-19 infections declined, law firms have grappled with how best to structure their practices. Many attorneys view remote or hybrid work as the "new normal."[41] Law firms have taken differing approaches to the question of whether and to what extent to require attorneys to work in the office.[42] Still, one point of consensus seems to be clear: law firm leaders recognize that the shift to remote and hybrid practice has had a significant impact on the lawyers who practiced during this time, both in terms of their experiences and their expectations going forward, and that impact cannot be ignored.

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[36] 2020 Practice Forward Survey, *supra* note 26 at 36.
[37] 2020 Practice Forward Survey, *supra* note 26 at 36.
[38] 2020 Practice Forward Survey, *supra* note 26 at 38.
[39] 2020 Practice Forward Survey, *supra* note 26 at 38.
[40] 2020 Practice Forward Survey, *supra* note 26 at 38.
[41] Thomson Reuters, *Motivating Lawyers to Participate in Law Firms Return to Office Policies* (Apr. 27, 2022), https://legal.thomsonreuters.com/blog/motivating-lawyers-to-participate-in-law-firms-return-to-office-policies/.
[42] Emma Cueto, *Law Firms Still Struggle To Devise Remote Work Policies*, Law 360, December 7, 2022, https://www.law360.com/pulse/articles/1555375/law-firms-still-struggle-to-devise-remote-work-policies.

The ABA again surveyed its members in mid-2022 (the "2022 Practice Forward Survey"). The 2022 Practice Forward Survey served as a follow up to the ABA's 2020 Practice Forward Survey.[43] Researchers focused this second survey on identifying how attorneys were practicing more than two years into the pandemic and what they are now seeking in their careers and from their employers.[44]

Many law firms continue to permit lawyers to choose to work remotely for at least a portion of the time. In fact, 87% of respondents reported that their workplace continues to allow lawyers to work remotely.[45] Of those respondents who reported being permitted to work from home, some 30% reported that they work from home close to 100% of the time.[46] Further, an additional 21% of respondents reported that they work from home 50% to 75% of the time.[47]

Women and people of color remain concerned about potential negative career consequences with working from home.[48] For example, 27% of female respondents reported concerns about not being viewed as committed by their employer if they work from home, while only 13% of male respondents reported this same concern.[49] Similarly, 21% of female respondents reported being concerned about being overlooked for meaningful assignments, compared to only 12% of male respondents.[50] Further, 18% of female respondents reported being concerned about receiving less favorable reviews, compared to only 7% of male

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[43] Stephanie A. Scharf & Roberta D. Liebenberg, Am. Bar Ass'n, *Where Does the Legal Profession go From Here?*, 2 https://www.americanbar.org/content/dam/aba/administrative/law-practice-division/practice-forward/2022-practice-forward-report.pdf [hereinafter 2022 Practice Forward Survey].

[44] *Id.*

[45] *Id.* at 10.

[46] *Id*. at 11.

[47] *Id*.

[48] *Id*. at 17. Note that these concerns exist, even though most respondents report no negative impact on the quality or quantity of their work because of working remotely. *Id*. In fact, some respondents report an increase in the quality and quantity of their work because of working remotely. *Id*.

[49] *Id*. at 14.

[50] *Id*.

respondents who reported this concern.[51]   These results show a significantly greater level of concern among women lawyers.

Persons of color also reported higher levels of concerns about potential negative career consequences from working remotely, as compared to white respondents. Twenty-two percent (22%) of respondents who are persons of color reported being concerned about not being viewed as committed to their firm as a result of working remotely, while only 18% of white respondents reported this same concern.[52]   In addition, 21% of respondents who are persons of color reported being concerned about being overlooked for meaningful job assignments, compared to only 15% of white respondents who reported this concern.[53]   Further, 18% of respondents who are persons of color reported being concerned about receiving a lower review, compared to only 11% of white respondents.[54]

Despite having concerns about negative career consequences, just over half of respondents reported that working remotely had no impact on their mental health and one in four respondents reported that working remotely or in a hybrid model was beneficial to their mental health.[55]   In addition, 27% of respondents reported that working remotely or in a hybrid model *decreased* their stress levels,[56] while half of respondents reported experiencing no impact on their stress levels.[57] Still, approximately one in six respondents reported feeling that hybrid or remote work negatively affected their mental health.[58]   In addition, almost one in four respondents (23%) reported feeling that hybrid or remote work increased their stress levels.[59]

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[51] *Id.*
[52] *Id.* at 15.
[53] *Id.*
[54] *Id.*
[55] *Id.* at 18.
[56] *Id.*
[57] *Id.*
[58] *Id.* at 18.
[59] *Id.* at 19.

Despite any reported potential or actual negative consequences, many respondents continued to report a desire to continue working remotely, at least some of the time.[60] The desire to continue to work from home is particularly important to newer lawyers.[61] In fact, 44% of respondents who have been practicing ten years or less would leave their job for greater ability to work remotely.[62] Similarly, 35% of respondents who have been practicing between eleven and twenty years would leave their jobs for greater ability to work remotely.[63] For respondents who have been practicing thirty-one to forty years however, only 19% reported they would leave their job for a job that offers greater ability to work remotely.[64]

Flexibility in work schedules is more important for female respondents as compared to male respondents, with 54% of female respondents reporting that the ability to work remotely on the schedule she chooses is either a very or extremely important factor in deciding whether to change jobs.[65] Only 31% of male respondents took this same position.[66]

While respondents report an ardent desire to continue working remotely or in a hybrid model, the survey responses also make it clear that many lawyers want, and even need, organized interaction with their colleagues. In fact, a significant percentage of respondents believe that hybrid or remote work has had a negative impact on their workplace relationships. Almost half of all respondents —49%— reported feeling that hybrid or remote work decreased the quality of their relationships with their colleagues.[67] Further, although many respondents do not believe that working remotely or in a hybrid model has had a negative impact on their mental health or

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[60] *Id*. at 16.
[61] *Id*.
[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] *Id*. at 25.
[66] *Id*.
[67] *Id*.

stress levels, 42% reported feeling that hybrid or remote work increased their feelings of isolation[68] and more than one in four respondents expressed a desire for their employer to provide wellness and mental health resources.[69]

Many respondents want their law firms to require some in-office time and one-on-one interactions. Specifically, one in four respondents stated a desire that their employers designate in-office days for in-person meetings and trainings.[70] Similarly, more than one in four respondents expressed a desire to receive regular check-in calls from group leaders about how they are doing,[71] and 19% indicated that they would like their employer to hold virtual social events for lawyers and staff to get together and keep people engaged.[72]

Although many lawyers, particularly newer attorneys, hope to continue working remotely at least part of the time, law firm leaders have expressed a desire for their firm lawyers to return to the office.[73] Some leaders believe that in-person work will preserve firm culture and promote collaboration[74]. They also believe that returning to the office will aid in training new associates.[75] In an effort to bring lawyers back into the office, law firms around the world have enacted policies requiring or incentivizing employees to work in-person at the office for at least some portion of the workweek.[76] The structure of these policies vary greatly, with some of them

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[68] *Id.*

[69] *Id.* at 26.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] Ruiqi Chen, W*hy Law Firms Take Differing Paths on Office Returns: Explained,* Bloomberg L., (Nov. 10, 2021, 5:00 AM) https://www.bloomberglaw.com/product/blaw/bloomberglawnews/true/BNA%200000017cb887db00affcbbaf748c0 001?bna_news_filter=true.

[74] Meghan Tribe, *Ropes & Gray Latest Firm to Move to Four Days a Week In-Office*, Bloomberg L., (July 27, 2023, 3:57 PM CDT)

[75] *Id.*

[76] *Id.*; Chinekwu Osakwe & Sara Merken, *Large law firms set reopening dates as pandemic plans shift*, Reuters (Feb. 16, 2022, 8:51 PM), https://www.reuters.com/legal/legalindustry/large-law-firms-set-reopening-dates-pandemic-plans-shift-2022-02-17/; Joanne Harris, *Law firms in the era of remote working*, INT'L BAR ASS'N (July 26, 2022), https://www.ibanet.org/Law-firms-in-the-era-of-remote-working (this trend of three days in-office per

requiring attorneys to be in the office on certain days of the week and others not having a stated requirement at all.[77]   In addition to being unsure about how to structure their remote work policies, enforcing these policies has also proven to be challenging.[78]

Of course, in constructing and implementing their workplace policies, law firms must balance various, and sometimes conflicting, concerns. Ultimately, they should balance the perceived and actual benefits of bringing lawyers back into the office with the reality of continuously developing variants of COVID-19 and with the expressed desires of many lawyers to retain flexibility in their schedules.[79]

II.   Mental Health and Reliance on TMC

Because lawyers suffer from mental health challenges at higher rates than the general population, any significant change in the experience of practicing law should be analyzed to consider what impact, if any, such changes may have on the mental health of lawyers. This section of the Article first details the pervasive and pernicious problem of mental health distress among members of the legal profession. It then discusses the potential impact of increased reliance on TMC on the mental health of its users.

A.   Mental Health and the Legal Profession - How bad is the problem?

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week is also the trend in law firms around the world, not just in the U.S.); *see also*, Sarah Merken, *Law firm leasing dips amid industry's revamped office plans*, Reuters (May 4, 2022, 5:41 PM), https://www.reuters.com/legal/legalindustry/law-firm-leasing-dips-amid-industrys-revamped-office-plans-2022-05-04/.

[77] Cueto, *supra* note 42.

[78] Joe Patrice, *Biglaw Firm's Three-Day Office Workweek Descending Into Paranoid Surveillance*, Above the Law (October 19, 2022 AT 12:42 PM), HTTPS://ABOVETHELAW.COM/2022/10/BIGLAW-FIRMS-THREE-DAY-OFFICE-WORKWEEK-DESCENDING-INTO-PARANOID-SURVEILLANCE/.

[79] Ruiqi Chen & Jasmine Ye Han, *Big Law Agrees: Give Attorneys Flexibility as Offices Reopen*, Bloomberg L. (Nov. 10, 2021, 5:01 AM), https://www.bloomberglaw.com/product/blaw/bloomberglawnews/true/X1EAQEKG000000?bna_news_filter=true#jcite.

It is well documented that many lawyers experience mental health distress. One study observed that "[l]evels of depression, anxiety, and stress among attorneys were significant."[80] Although lawyers as a whole struggle with mental health challenges, such problems are particularly prevalent among law students and younger attorneys. Law students and attorneys under the age of thirty are among those most likely to suffer from anxiety, depression, and other mental health challenges.[81]

Depression is pervasive in the legal profession. A 2016 study conducted by the American Bar Association and the Hazelden Betty Ford Foundation (the "ABA Mental Health Study") found that 28% of attorneys experience depression.[82] That percentage is much higher than the percentage of the general U.S. population experiencing depression.[83] One study found that, "[w]hereas only 3 to 9 percent of individuals in Western industrialized countries suffer from depression by late spring of the first year of law school, 32 percent of the students were depressed."[84]

Attorneys also face challenges with anxiety and stress. The ABA Mental Health Study found that 19% of attorneys experience symptoms of anxiety.[85] Experiencing anxiety, however, is not limited to attorneys. An estimated 19.1% of all adults in the United States experience

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[80] Patrick R. Krill, *et al.*, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. OF ADDICTION MED. 46 (2016).

[81] *Id.*

[82] *Id.*

[83] Debra J. Brody, *et al.*, Nat'l Ctr. for Health Stat., *Prevalence of Depression Among Adults Aged 20 and Over: United States, 2013-2016,* (Feb. 2018), https://cdc.gov/nchs/data/databriefs/db303.pdf. A study from 1990 found that, "[w]hereas only 3 to 9 percent of individuals in Western industrialized countries suffer from depression by late spring of the first year of law school, 32 percent of the students were depressed." G.A. Benjamin, *et al.* T*he prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers*, 13 INT. J. LAW PSYCHIATRY 233, 234 (1990).

[84] G. A. Benjamin, et al., *The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers,* 13 INT J LAW PSYCHIATRY 233, 234 (1990).

[85] Krill, *supra* note 85.

some form of anxiety each year.[86]   The ABA Mental Health Study found that almost one in four

lawyers experience symptoms of stress.[87]   Moreover, one recent survey revealed that many

adults in the United Stated believe they experience stress that is higher than a level they would

consider "healthy."[88]   The study explained that, "Although Americans believe a healthy stress

level is on average 3.8 (on a scale of 1 to 10, where 1 is "little or no stress" and 10 is "a great

deal of stress"), the average stress level they report experiencing during the past month is 4.9."[89]

Reported levels of stress are highest for younger generations.   "Gen Z adults report the highest

average stress level (5.8), followed by Gen Xers (5.5) and Millennials (5.4); Boomers and older

adults have significantly lower average stress levels comparatively (4.2 for Boomers and 3.0 for

older adults)."[90] Stress and anxiety is thus undoubtedly a significant problem for individuals in

the United States.

This data showcases the prevalence of mental health distress within the legal profession,

particularly among law students and younger attorneys. The alarming pervasiveness of mental

health distress among lawyers underscores the need to carefully consider how changes to the

practice of law may impact the mental health of lawyers.

B.   Mental Wellbeing and TMC

The various forms of TMC have created many ways for us to interact and connect, bringing

with them a host of potential and actual questions and challenges.   One perhaps unexpected

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[86] Harvard Medical School, *National Comorbidity Survey (NCS)* (2007)
https://www.hcp.med.harvard.edu/ncs/ftpdir/NCS-R_12-month_Prevalence_Estimate.pdf.
[87] Krill, *supra* note 78.
[88] Am. Psych. Ass'n, *Stress in America Survey 2019*, 7 (2019),
https://www.apa.org/news/press/releases/stress/2019/stress-america-2019.pdf.
[89] *Id.*
[90] *Id.*

challenge relates to the impact that the use of TMC may have on the mental health of the user.[91]

Several studies suggest a correlation between increased reliance on TMC and increased loneliness, depression, and anxiety.[92] This part of the Article will discuss some of these studies, focusing on concerns regarding cognitive overload and social isolation as a framework for understanding this correlation.

1. Constantly Connected and Cognitive Overload

Some of the anxiety that stems from our relationship with TMC is tied to their aptitude of allowing individuals to be constantly available. The ability to be constantly available may lead TMC users to believe that their attention is in constant demand and that they are not only allowed, but *expected* to be always available.[93] These feelings of an increased demand for time and attention were illustrated by the results of the 2020 Practice Forward Survey, in which, as noted above, 43% of respondents reported increased feelings of finding it difficult to take time off from work.[94] Additionally, a majority of respondents felt an increased inability to separate work from home life.[95]

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[91] Some studies also suggest that submersion in social media and other forms of technology has resulted in the atrophying of human capacities like empathy, self-reflection, and creativity. Although these findings are certainly important and worthy of discussion, they are beyond the scope of this Article.
For an interesting and informative discussion of the use of technology and its potential impact on empathy see Lauren A. Newell, *Rebooting Empathy for the Digital Generation Lawyer*, 34 OHIO ST. J. ON DISP. RESOL. 1 (2019). For a discussion on the impact of social media on civility, *see* Nancy B. Rapoport, *Training Law Students to Model Civility When Social Media Makes Civility Harder to Maintain*, _____ (2024) (citation forthcoming).

[92] *See*, *e.g.*, Elia Abi-Jaoude, *et al*, *Smartphones, Social Media Use and Youth Mental Health*, 192 CANADIAN MED. ASS'N 136 (2020)(collecting studies); J. Garret R. Sacco, *Social Media and Smartphone Usage in College Students: Associations with Perceived Relationship Quality, Depressive Cognition, Mood, and Well-Being*, U. of Del. Doctorial Dissertations (2018) http://udspace.udel.edu/handle/19716/24009; Brian A. Primack, *et al*, *Social Media Use and Perceived Social Isolation Among Young Adults in the U.S.*, 53 AM. J. PREV. MED. 1 (2017).

[93] Sara Thomée, *et al.*, *Perceived Connections Between Information and Communication Technology Use and Mental Symptoms Among Young Adults - A Qualitative Study*, 10 BMC PUB. HEALTH 1, 4; 6-7 (2010). http://www.biomedcentral.com/1471-2458/10/66.

[94] *Supra* Part II (B). In fact, a feeling that one should be constantly available may be a reality in some workplaces. Debra Cassens Weiss, *Biglaw Associate's Admonition to Be Available 24/7 With 'No Exceptions, No Excuses' Goes Viral*, ABA Journal (April 6, 2023, 9:30 CT), https://www.abajournal.com/news/article/biglaw-associates-admonition-to-be-available-24-7-with-no-exceptions-no-excuses-goes-viral.

[95] *Supra* Part II (B).

The pressure to be constantly connected, whether real or merely perceived, is correlated with increased depression, anxiety, and stress.[96] Further, in a vicious cycle, the belief that one is required to be constantly available leads to increased use of cell phones and other means of TMC.[97] That increased use of TMC—that constant connectedness and constant influx of information through technology—is taking a toll. We continually take in information from various sources or media outlets and our brain works to process that information.[98] This is called "cognitive overload," which describes the brain's response to being presented with more information than it can process.[99] Similarly, psychologists have used the term "communication overload" to describe the influx of chat, email, and other communications many of us are now expected to process throughout our day.[100] Individuals often experience feelings of guilt, resentment, and stress as a result of trying to manage a significant influx of communications and to segregate important messages from less important messages.[101] Individuals also describe feelings of mental overload, disturbed sleep, and never feeling "free" as consequences of significant use of mobile phones[102] and other forms of TMC.

Researchers have identified "technology overload" and "social media overload" as a kind of cognitive overload.[103] This type of cognitive overload may be understood as involving two elements: information overload and communication overload.[104] "Information overload" occurs

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[96] Thomée, *supra* note 91. One study found that the number of hours an employee believed their employer expected them to work was the primary predicter of the severity of depression, anxiety, and other mental health challenges experienced by the employee. M.F. Hilton et al., *The Prevalence of Psychological Distress in Employees and Associated Occupational Risk Factors,* 50 J. OCCUP. ENVIRON. MED. 746, 754 (2008).

[97] Thomée, *supra* note 91.

[98] Daniel Levitin, THE ORGANIZED MIND: THINKING STRAIGHT IN THE AGE OF INFORMATION OVERLOAD, 6-8 (2014).

[99] *Id.* at 3-4.

[100] Thomée, *supra* note 91.

[101] Thomée, *supra* note 91.

[102] Thomée, *supra* note 91 at 6.

[103] Josephine B. Schmitt, From Cognitive Overload to Digital Detox: Psychological implications of Telework During the COVID-19 Pandemic, COMPUT. IN HUM. BEHAV. 124 (2021).

[104] Lee, A. R., Son, S.M., & Kim, K.K., *Information and Communication Technology Overload and Social Networking Fatigue: A Stress Perspective*, COMPUT. IN HUM. BEHAV. 51, 55 (2016).

when an individual receives an influx of so much information that needs to be processed that it exceeds the person's ability to process it.[105] "Communication overload" occurs when an individual is inundated with a number of communication demands that exceed his or her capacity to communicate.[106] Cognitive overload has been specifically associated with extensive use of Zoom and other similar platforms. Observers coined the term "Zoom fatigue" to describe the feeling of exhaustion users experience after participating in a meeting or series of meetings throughout the day that occur over Zoom or a similar platform.[107] The platform presents images of all users at the same time, causing users to attempt to focus on verbal and nonverbal cues from multiple sources.

The inability of the human brain to process a constant onslaught of TMC results in a host of problems. Various studies have shown a connection between cognitive overload and various mental and psychological problems, including stress[108] and other mental health challenges.[109] It should be noted that, although more than half of respondents to the 2022 Practice Forward Survey reported feeling that working remotely or in a hybrid model had no impact on their mental health, it is still significant that one in six respondents believe that working in a remote or hybrid format *did* have a negative impact on mental health.[110] In addition, the responses to the 2020 Practice Forward Survey suggest that the move to remote and hybrid forms of practice may exacerbate a feeling of constant demand in the context of law practice. As noted above, when the practice of

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[105] P. Karr-Wisniewski, P., & Y. Lu When *More Is Too Much: Operationalizing Technology Overload and Exploring Its Impact On Knowledge Worker Productivity*, COMPUT. IN HUM. BEHAV. 1061, 1062 (2010).
[106] *Id.*
[107] Hadar Nesher Shoshan & Wilken Wehrt, *Understanding "Zoom fatigue": A mixed-method Approach*, 71 APPLIED PSYCH. 827, 828 (2022).
[108] M. Tarafdar, *et al.*, *The Impact of Technostress on Role Stress and Productivity*, 24 J. MGMT. INFO. SYS. 307, 313-15 (2013).
[109] W. Chen and K.H. Lee, *Sharing, Liking, Commenting, And Distressed? The Pathway Between Facebook Interaction and Psychological Distress, Cyberpsychology, Behavior, and Social Networking*, 16 CYBERPSYCHOL., BEHAV., AND SOC. NETWORKING 728, 731-32 (2013).
[110] 2022 Practice Forward Survey, *supra* note 42 at 18.

law became largely remote, more than half of respondents felt an increased inability to separate work from home life and 43% reported increased feelings of finding it difficult to take time off from work.[111]

In addition to the stress, anxiety, and exhaustion that often comes along with significant reliance on TMC, researchers are now focused on studying the problematic use of technology as "technology addiction" or "internet addiction," similar to other forms of destructive addictions.[112] Some researchers have likened sustained and extensive use of smartphones to a form of psychological dependency–not unlike other forms of addiction.[113] As with these other forms of addiction, a prominent feature of this type of dependency is the anxiety and chronic stress that arises from separation from these devices.[114]

2. "Connected" But Alone

Although we may be frequently "connected" through some form of TMC, ironically, we are often more socially isolated,[115] as reports of loneliness are at an all-time high.[116] "Loneliness" has been defined as a feeling of "sorrow resulting from the lack of interpersonal communication of good quality"[117]and the "emotional distress present due to [a] lack of connection with others."[118] The impact that TMC may have on the relationships we establish may help to explain our

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[111] Thomée, *supra* note 91 at 6.

[112] Daria J. Kuss and Olatz Lopez-Fernandez, *Internet Addiction and Problematic Internet Use: A Systematic Review of Clinical Research*, 6 WORLD J. OF PSYCHOL. 143 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4804263/pdf/WJP-6-143.pdf.

[113] Christoph Augner and Gerhard W. Hacker, *Associations Between Problematic Mobile Phone Use and Psychological Parameters in Young Adults*, 57 INT. J. PUB. HEALTH 437, 440 (2011). This study cites several other studies with similar findings. *Id.*

[114] *Id.*

[115] *Supra* Part II.B.1

[116] Dept. of Health and Hum. Serv., *Our Epidemic of Loneliness and Isolation, U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community* (2023), https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf [hereinafter Epidemic of Loneliness].

[117] Gökhan Ayazlar *et al.*, *The Effect of Loneliness In the Workplace On Organizational Commitment*, 131 PROCEDIA - SOC. AND BEHAV. SCI. 319, 320 (2014).

[118] Tore Bonsaksen *et al.*, *Loneliness and Its Association With Social Media Use During the COVID-19 Outbreak*, SOC. MEDIA + SOC'Y, July-September 2021, at 1, 1.

experience of social isolation in an ever more connected world.

First, it is the *quality* of relationships that matter, rather than their *quantity*. TMC interactions and relationships tend to be more superficial.[119]   With TMC, we are communicating with a greater quantity of people, which leaves less time for one-on-one connection. Moreover, the very nature of TMC–such as text and direct messaging–often requires us to distill our messages into their most basic form.   A conversation that may have once been a lengthy face-to-face interaction may now be distilled into acronyms, abbreviations, and emojis.

In addition to the superficiality of relationships that we establish and maintain online, submersion in TMC may also negatively affect our in-person communications. First, extensive reliance on TMC reduces the time we devote to in-person relationships.[120] Further, it lessens the attention we give to in-person communications.[121] Substantial reliance on TMC has also been shown to lessen our ability to connect and empathize with others when we do choose to have in-person communications.[122] A lack of fulfilling social relationships causes feelings of loneliness.

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[119] Professor and social scientist Dr. Arthur C. Brooks explains:

> The problem is that with these technologies, we lose dimensionality. Text messages can't convey emotion very well because we can't hear or see our interlocutors; the same goes for DMs on social media. (More often, social media is used not to communicate with one individual but to broadcast to a larger audience). These technologies are to in-person interactions what a black-and-white, pixelated version of the Mona Lisa is to the real thing: identifiable, but incapable of producing the same emotional effects.

Arthur C. Brooks, *Technology Can Make Your Relationships Shallower*, THE ATLANTIC (September 29, 2022), https://www.theatlantic.com/family/archive/2022/09/technology-happiness-communication-relationships/671586/ (discussing studies).
[120] *See infra*, Part III.B.
[121] *Epidemic of Loneliness*, *supra* note 114 at 20 ("[F]requent phone use during face-to-face interactions between parents and children, and between family and friends, increased distraction, reduced conversation quality, and lowered self-reported enjoyment of time spent together in-person") (citing studies).
Lulu Cheng, et al., *The iPhone Effect: The Quality of In-Person Social Interactions in the Presence of Mobile Devices*, 48 ENVIRONMENT AND BEHAVIOR 275 (2014).
[122] Sherry Turkle, *RECLAIMING CONVERSATION: THE POWER OF TALK IN A DIGITAL AGE*, 5-21 (2016)(discussing studies); Sherry Turkle, *ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER*, 55, 296 (2012).

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Social isolation and feelings of loneliness are associated with an increase in both physical and mental health problems. Notably, a person's "perception of being socially isolated and lonely—and not merely the objective lack of social connection—has been particularly linked to both mental and physical conditions."[124] With respect to the physical impact of social isolation, "[s]ocially isolated individuals have been found to have a higher risk of mortality in several studies."[125] In fact, social isolation as a predictor of mortality has been shown to be "similar to that of well-documented clinical risk factors" like smoking and high blood pressure.[126] Social isolation may also lead to disrupted sleep and reduced immune functions.[127] Feelings of loneliness, also described as "perceived social isolation," is also associated with dementia and a decrease in cognitive functions generally.[128] Beyond the physical toll that feelings of social isolation and loneliness may take on an individual, it has also been shown to impact an individual's mental well-being. Loneliness and social isolation have been associated with higher rates of clinically significant depression, anxiety, and suicidal ideation.[129]

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[123] Gökhan Ayazlar *et al*., *The Effect of Loneliness In the Workplace On Organizational Commitment*, 131 PROCEDIA - SOC. AND BEHAV. SCI. 319, 320 (2014).

[124] Brian A. Primack *et al*., *Social Media Use and Perceived Social Isolation Among Young Adults in the U.S,* 53 AM. J. PREV. MED., JULY 2017, AT 1, 2 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5722463/pdf/nihms886651.pdf.

[125] Pantell M, Rehkopf D et al., *Social isolation: a predictor of mortality comparable to traditional clinical risk factors,* 103 AM. J. PUB. HEALTH. 2056, 2057 (2013). https://doi.org/10.2105/AJPH.2013.301261.

[126] *Id.* at 2058.

[127] Primack, *supra* note 124.

[128] TJ Holwerda, *et al.*, *Feelings of loneliness, but not social isolation, predict dementia onset: results from the Amsterdam Study of the Elderly (AMSTEL),* 85 J. NEUROL. NEUROSURG. PSYCHIATRY 135, 138-39 (2014). https://doi.org/10.1136/jnnp-2012-302755.

[129] Beutel ME, et al*., Loneliness in the general population: Prevalence, Determinants and Relations to Mental Health,* 17 BMC PSYCHIATRY 97, 102 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5359916/pdf/12888_2017_Article_1262.pdf; Louise Hawkley & John Capitanio, Perceived Social Isolation, Evolutionary Fitness And Health Outcomes: A Lifespan Approach, 370 PHIL. TRANS. OF THE ROYAL SOC'Y B 1 (2015).

III. Poor Mental Health and the Workplace

A. The Effects of Loneliness, Depression, and Anxiety at Work Generally

Individuals suffering from loneliness, depression, and anxiety often face challenges in the workplace. Researchers recognize employment as a marker of "functional health."[130] Functional health can be understood as "one's ability to perform daily activities required to meet basic needs, fulfill usual roles, and maintain their health and well-being."[131] Multiple studies show that unemployment is 10-15% higher for individuals who suffer from depression.[132] Studies have also shown that individuals with depression have higher rates of job turnover and lower job retention rates.[133]

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[130] Debra Lerner & Rachel Mosher Henke, *What Does Research Tell Us About Depression, Job Performance, and Work Productivity?*, 50 J. OF OCCUPATIONAL & ENV'T MED. 401, 404-405 (2008).

[131] Steven J. Skube, MD, *et al, Characterizing Functional Health Status of Surgical Patients in Clinical Notes*, AMIA Jt Summits Transl Sci Proc. 2018 May 18;2017:379-388. PMID: 29888096; PMCID: PMC5961772.. https://pubmed.ncbi.nlm.nih.gov/29888096/

[132] *Id.* at 404-405; Nady el-Guebaly et al., *Association of Mood, Anxiety, and Substance Use Disorders With Occupational Status And Disability in a Community Sample*, 58 PSYCHIATRIC SERVS. 659, 665 (2007) (noting a 13% overall unemployment rate for people with depression); Susan L. Ettner et al., *The Impact of Psychiatric Disorders on Labor Market Outcomes*, 51 INDUS. & LAB. RELS. REV. 64, 75(1997) (26% unemployment rate for women and 13% for men); L. Elinson *et al*., *Depression and the Ability to Work*, 55 PSYCHIATRIC SERVS. 29 (2004) (citing an unemployment rate of almost 50% due to asking a question to identify depression instead of conducting a diagnostic interview); David Dooley *et al., Underemployment and Depression: Longitudinal Relationships*, 41 J. HEALTH & SOC. BEHAV. 421, 432 (2000) (revealing that people with depression were 20% more likely to be unemployed); Jalpa A. Doshi, *et al*., *Depression and retirement in late middle-aged U.S. workers*, 43 HEALTH SERVS. RSCH. 693, 707 (2008) (showing that people with depression were 40% more likely to be unemployed); D. Lerner, *et al*., *Unemployment, Job Retention, and Productivity Loss among Employees with Depression*, 55 PSYCHIATRIC SERVS. 1371, 1375-76 (2004) (showing that people with depression had a 15% job loss rate).

[133] Debra Lerner, *et al*., *Unemployment, Job Retention, and Productivity Loss among Employees with Depression*, 55 PSYCHIATRIC SERVS. 1371, 1375-76 (2004); P.S. Wang *et al*., *Telephone Screening, Outreach, and Care Management for Depressed Workers and Impact on Clinical and Work Productivity Outcomes: a Randomized Controlled Trial*, 298 J. AM. MED. ASS'N 1401, 1406 (2007); Lerner & Henke, *supra* note 130.

[133] Lerner & Henke, *supra* note 130 at 405 (2008); B.G. Druss et al., *Health and Disability Costs of Depressive Illness in a Major U.S. Corporation*, 157 AM. J. PSYCHIATRY 1274 (2000); P.S. Wang et al., *Chronic Medical Conditions and Work Performance in the Health and Work Performance Questionnaire Calibration Surveys*, 45 J. OCCUPATIONAL & ENV'T MED. 1303 (2003).

Depression, loneliness, and anxiety lead to increased absences from work.[134] Depression can result in as much as 3.8 days missed from work per month.[135] Employees who suffer from depression are 1.5 times more likely to miss work as compared to employees who are not suffering from depression.[136]

In addition to impacting an individual's ability to attend work, depression, loneliness, and anxiety can have a devastating impact on an individual's ability to function in the workplace. Numerous studies indicate that people suffering from anxiety or depression have impaired job performance and productivity.[137] For example, one study found that employees with severe depression were usually less productive by approximately 8% as compared to employees who did not suffer from depression.[138] Another study found that depression significantly impaired an employee's ability to focus on tasks.[139] Depression and anxiety have also been found to reduce cognitive performance.[140] In fact, depression and anxiety are leading causes of disability in the workplace.[141]

Given the impact that depression and anxiety may have on an employee's attendance at work and the employee's ability to perform work functions, it is not surprising that these challenges also impact the likelihood that the individual will advance in her job. Studies shows

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[134] One Gallop poll found that workers in the United States who have been diagnosed with depression at some point during their lives, "miss an estimated 68 million additional days of work each year than their counterparts who have not been depressed -- resulting in an estimated cost of more than $23 billion in lost productivity annually to U.S. employers." Dan Witters, et al., *Depression Costs U.S. Workplaces $23 Billion in Absenteeism*, Gallop (Jul. 24, 2013), https://news.gallup.com/poll/163619/depression-costs-billion-absenteeism.aspx.

[135] Lerner & Henke, *supra* note 130 at 405.

[136] R.C. Kessler et al., *Depression in the Workplace: Effects on Short-Term Disability*, 18 HEALTH AFF. 163 (1999).

[137] Steve R. Erickson *et al.*, *Severity of Anxiety and Work-Related Outcomes of Patients with Anxiety Disorders*, 26 DEPRESSION & ANXIETY 1165, 1166 (2009).

[138] Lerner & Henke, *supra* note 130 at 406.

[139] Lerner & Henke, *supra* note 130 at 407; Wang, *supra* note 131.

[140] Lerner & Henke *supra* note 130 at 406-07 (2008).

[141] Sara Evans-Lacko & Martin Knapp, *Global Patterns of Workplace Productivity For People With Depression: Absenteeism And Presenteeism Costs Across Eight Diverse Countries*, 51 SOC. PSYCH. PSYCHIATRIC EPIDEMIOLOGY 1525 (2016), https://www.nih.gov/pmc/articles/PMC5101346/pdf/127_2016_Article_1278pdf.

that individuals who experience more extreme symptoms of depression and anxiety are less likely to advance on the job.[142]

B.   The Effects of Depression, Loneliness, and Anxiety on Relationships

Individuals who are suffering from mental health challenges may also struggle with establishing and maintaining relationships. Studies have shown that loneliness, depression, and anxiety have a detrimental impact on both professional[143] and personal relationships.[144]

Common symptoms of depression include sadness, hopelessness, loss of interest in activities, lower energy levels, moving and talking slower, and difficulties concentrating and remembering, all of which can affect relationships with other people.[145] Similarly, symptoms of anxiety include feeling restless, tiring easily, having difficulty concentrating,[146] and having poor social skills.[147] People with social anxiety in particular have exacerbated symptoms, notably fears of being judged and embarrassed from saying the wrong thing or stumbling over words.[148] Especially relevant to one's relationships with others, an individual's anxiety and depression may manifest as irritable and angry moods because of the distress the individual is

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[142] Erickson, *supra* note 137.

[143] Tegan Cruwys *et al*., *Depression and Social Identity: An Integrative Review*, 18 PERSONALITY & SOC. PSYCHOL. REV. 215, 216 (2014); Pradhip Sankar *et al*., *A Cross-Sectional Study on Perceived Social Functioning In Patients With Anxiety Disorders*, INT'L ARCHIVES INTEGRATED MED. 62 (Dec. 2021); Murray Stein *et al*., *Social Phobia Symptoms, Subtypes, and Severity*, 57 ARCHIVES GEN. PSYCHIATRY 1046 (2000); Joshua Lipsitz & Franklin Schneier, *Social Phobia: Epidemiology and Cost of Illness*, 18 PHARMACOECONOMICS 23, 28 (2000); John Cacioppo *et al*., *Loneliness within a nomological net: An evolutionary perspective*, 40 J. RSCH. PERSONALITY 1054 (2006).

[144] Debra Lerner *et al*., *The Clinical and Occupational Correlates of Work Productivity Loss Among Employed Patients With Depression*, 46 J. OCCUPATIONAL & ENV'T MED. S46, S53 (2004); Stein, *supra* note 143, at 1046; Hakan Ozcelik & Sigal Barsade, *Work Loneliness and Employee Performance*, 2011 ACAD. MGMT. PROCEEDINGS 1 (2011).

[145] *Depression*, NAT'L INST. MENTAL HEALTH (Feb. 2018), https://www.nimh.nih.gov/health/topics/depression.

[146] *Anxiety Disorders*, NAT'L INST. MENTAL HEALTH (Apr. 2022), https://www.nimh.nih.gov/health/topics/anxiety-disorders.

[147] Sankar, *supra* note 143, at 62.

[148] Lipsitz, *supra* note 143, at 24.

experiencing.[149] People with anxiety and depression may also misperceive social situations, thinking that neutral situations are actually negative or hostile.[150]

For depressed and lonely individuals specifically, a loss of interest in activities often results in the individual withdrawing from social situations and relationships, causing him or her to lose contact with close relationships.[151] These individuals may especially tend to avoid social situations when they believe the value of being there is low or equivalent to how burdensome they think they are to others.[152] This withdrawal from social interactions in turn maintains and continues the depression and loneliness.[153]

1. The Impact on Personal Relationships

In the context of personal relationships, individuals suffering from depression tend to have an increased risk of marital and other family conflicts.[154] In particular, individuals suffering from depression often reduce their participation in social activities and may provide their partner with less emotional support, both of which negatively impact their ability to maintain the relationship.[155] In fact, where one partner in a relationship suffers from some form of mental illness, the risk of divorce more than doubles.[156] That risk is even higher when both

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[149] Roy H. Perlis et al., *Prevalence and Clinical Correlates of Irritability in Major Depressive Disorder: A Preliminary Report From the Sequenced Treatment Alternatives to Relieve Depression Study*, 66 J. CLINICAL PSYCHIATRY 159 (2005); Todd Kashdan & R. Collins, *Social Anxiety And The Experience of Positive Emotion and Anger in Everyday Life: An Ecological Momentary Assessment Approach*, 23 ANXIETY, STRESS, & COPING 259 (2010).

[150] Cassandra Marks *et al.*, *The Relationship Between Hostile Interpretation Bias and Symptoms of Depression and Social Anxiety: a Replication Across Two Samples*, 43 J. PSYCHOPATHOLOGY & BEHAVIORAL ASSESSMENT 251, 251 (2021).

[151] Cruwys, *supra* note 143, at 216; Cacioppo, *supra* note 143, at 1067.

[152] Nicholas Allen & Paul Badcock, *The Social Risk Hypothesis of Depressed Mood: Evolutionary, Psychosocial, and Neurobiological Perspectives*, 129 PSYCH. BULLETIN 887 (2003).

[153] Cruwys, *supra* note 143, at 216; Cacioppo, *supra* note 143, at 1067.

[154] J. Davila et al., *Marital Functioning and Depressive Symptoms: Evidence For a Stress Generation Model*, 73 J. PERSONALITY & SOC. PSYCHOL. 849 (1997). Tina D. Du Rocher Schudlich *et al.*, *Relations Between Spouses' Depressive Symptoms and Marital Conflict: A Longitudinal Investigation of the Role of Conflict Resolution Styles*, 25 J. FAMILY PSYCHOL. 531, 531 (2011).

[155] Mariann Idstad *et al.*, *Mental Distress Predicts Divorce Over 16 Years: The HUNT Study*, 15 BMC PUB. HEALTH 320, 320 (2015).

[156] *Id.* at 325.

partners suffer from some form of mental illness.[157] One study found that nearly 30% of couples

who divorce have a history of mental illness in one or both partners.[158] Notably, individuals with

depression have one of the highest rates of divorce, as compared to the rates of divorce for

individuals suffering from other forms of mental illnesses.[159] Similarly, people who have

anxiety are significantly less likely to be in a "healthy and supportive" relationship than people

who are not suffering from anxiety. [160] They are two times more likely to experience problems

in their relationship, such as having regular arguments.[161]

Individuals who are suffering from loneliness, depression, or anxiety may also have more

difficulty establishing new relationships =. Among people with social anxiety, for example, 85%

have indicated that their anxiety has interfered with their personal life and relationships due to

fears of being the center of attention and interacting with other people.[162] They are more likely

to be unmarried and live alone because they avoid social situations.[163] Similarly, because people

with depression often withdraw from others, it can be difficult for them to establish new

relationships, particularly when they are concerned about being a burden on others.[164] When

people suffering with depression do attempt to reach out to others, they may not experience a

sense of acceptance and belonging, making it difficult to establish new relationships.[165] Further,

loneliness may cause an individual to feel less safe, leading to anxiety, hostility, distrust of

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[157] *Id.*

[158] *Id.*

[159] J. Breslau *et al., A Multinational Study Of Mental Disorders, Marriage, And Divorce*, 124 ACTA PSYCHIATRICA SCANDINAVICA 474, 481 (2011) (finding that mental illnesses collectively correlated with a 12% increase in divorce while depression alone is responsible for an increase of 4%).

[160] Anxiety & Depression Ass'n of Am., *Spouse or Partner*., https://adaa.org/finding-help/helping-others/spouse-or-partner (last visited Sept. 24, 2023).

[161] *Id.*

[162] Stein, *supra* note 143, at 1046; *see also,* Lipsitz, *supra* note 139, at 24-25, 28.

[163] Lipsitz, *supra* note 143, at 28.

[164] Cruwys, *supra* note 143, at 216; Allen, *supra* note 152, at 887.

[165] Michael Steger & Todd Kashdan, *Depression and Everyday Social Activity, Belonging, and Well-Being*, 56 J. COUNSELING PSYCHOL. 289 (2009).

others, and worse social skills.[166] These feelings and behaviors perpetuate and reinforce that

person's loneliness in an unending loop, ultimately preventing them from reaching out to

others.[167]

2.   The Impact on Professional Relationships

In the professional context specifically, depression can interfere with an employee's

ability to interact with colleagues and clients. This problem is especially pronounced in

occupations like the legal profession that involve frequent contact with other people.[168] One

study showed that, when participants were examined on how well they could communicate with

or assist others, individuals who suffered with depression performed worse than healthy

employees 35% of the time.[169] People who suffer from depression may also have more

difficulty controlling their temper at work[170] and may engage in conflicts at work more often

than people who are not experiencing depression.[171] Receiving treatment for depression has

been shown to reduce arguments and other difficulties with others at work.[172]

In addition to being more likely to experience challenges while on the job, people

suffering with depression or anxiety are more likely to be unemployed as compared to

individuals who do not suffer from these challenges.[173] As much as half of all people with

anxiety have been hindered when getting the job that they want because of their anxiety

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[166] Cacioppo, *supra* note 143, at 1067; Hawkley & Capitanio, *supra,* note 128, at 2.

[167] Cacioppo, *supra* note 143, at 1073; Hawkley & Capitanio, *supra,* note 128, at 2.

[168] Lerner & Henke, *supra* note 130, at 403.

[169] Lerner & Henke, *supra* note 130, at 406.

[170] *Id.*

[171] Jeffery L. Smith *et al., Impact of Primary Care Depression Intervention on Employment and Workplace Conflict Outcomes: Is Value Added?*, 5 J. MENTAL HEALTH POL'Y & ECON. 43, 43 (2002) (finding that enhanced treatment of depression reduces workplace conflict 10.8% more than normal depression treatment).

[172] *Id.*

[173] Ethan Moitra *et al., Occupational Impairment and Social Anxiety Disorder in a Sample of Primary Care Patients*, 130 J. AFFECTIVE DISORDERS 209 (2011) (showing that individuals who suffered with anxiety were 2.25 times more likely to be unemployed as compared to individuals who do not suffer from anxiety).

surrounding interacting with others and being the focus of attention. [174]   Moreover, one in five

people have even turned down a promotion because of their anxiety.[175]

Although loneliness may lead to depression, loneliness without depression can similarly

negatively impact an individual in the workplace. Employees who suffer from loneliness often

feel less "affective commitment" to their workplace — meaning they feel "less emotional

attachment to, identification with, and involvement in his or her organization."[176] They also tend

to feel less connected to others at work and withdraw emotionally from them, avoiding social

gatherings and other interactions.[177] From the co-worker's perspective, a colleague who is

withdrawing from others may be perceived as unapproachable.[178]   Further, an employee's

withdrawal can negatively affect work performance, especially with respect to work that requires

collaboration.[179]

IV.   Attorney Competence in the Context of Impaired Relationships

Lawyers are not impervious to the impact that poor mental health may have on their

work. Absences from work, low productivity, and impaired cognitive functions are all effects of

depression, loneliness, and anxiety that undoubtedly impact an attorney's performance in

practice. This Article, however, will focus on one effect of depression, loneliness, and anxiety

that we may not readily recognize as a threat to an attorney's basic competence, despite its

potential for a disastrous impact. More specifically, Part IV will highlight the effect that

loneliness, depression, and anxiety may have on relationships and how those impaired

relationships may impact attorney competence, emphasizing the potential impact of impaired

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[174] Stein, *supra* note 143, at 1046.
[175] Stein, *supra* note 143, at 1046.
[176] Ozcelik, *supra* note 143, at 2.
[177] Ozcelik, *supra* note 143, at 2.
[178] Ozcelik, *supra* note 143, at 2.
[179] Ozcelik, *supra* note 143, at 2.

relationships on a component of practice that can be of critical importance, particularly to new and younger attorneys – mentorship. This part of the article begins by discussing mentoring in the legal profession generally, and then it focuses on the impact that mentoring relationships may have on an attorney's professional development.

A.   Mentoring and the Legal Profession

Before the rise of law schools, lawyers were trained through formal apprenticeships.[180] In fact, law schools did not substantially replace formal apprenticeships as the preferred path to the legal profession until later in the nineteenth century.[181] As Yale legal historian John Langbein explains, "[a]pprenticeship involved learning the law the way we expect someone today to learn plumbing: in the workplace, as a practical trade. You learn plumbing by working with, observing and imitating an experienced master."[182] Today, law schools have supplanted formal apprenticeship as the preferred method for training lawyers. Still, formal, and informal mentorships,[183] which can function in many ways like apprenticeships,[184] are nonetheless a critical component of training for new attorneys.

Many law firms have internship and mentoring programs that allow new associates to learn how to practice the law "under the watchful eyes of more experienced lawyers."[185] Additionally, many law schools offer professional responsibility courses, and some state bar associations have organized mentoring programs.[186] The Louisiana State Bar Association, for

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[180] Daniel R. Coquillette & Bruce A. Kimball, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY (2015).

[181] *Id.*

[182] *Id.*

[183] William M. Sullivan *et al.*, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007); *see also* Mark F. Kightlinger, *Two and A Half Ethical Theories: Re-Examining the Foundations of the Carnegie Report*, 39 OHIO N.U. L. REV. 113, 116 (2012).

[184] Julie A. Oseid, *When Big Brother Is Watching [Out for] You: Mentoring Lawyers, Choosing a Mentor, and Sharing Ten Virtues from My Mentor*, 59 S.C. L. REV. 393, 399 (2008).

[185] Antonio Alvarado, *A Radical Proposal for Lifetime Professionalism*, 37 ST. MARY'S L. J. 1053, 1059 (2006).

[186] *State Mentoring Programs*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/resources/professionalism/mentoring/statementorin

example, has a voluntary one-year mentoring program (Transition into Practice, or TIP,

Mentoring) for lawyers recently admitted to the Bar,[187] as well as a "Spot Mentoring" on-

demand program for lawyers who are two to seven years into practice.[188] Law firms, law

schools, and bar associations across the country view mentoring as essential because of its

impact on a young attorney's substantive knowledge of the law, professional behavior, and

understanding of the business of law.[189]

Engaging in mentoring, both as a mentor and as a mentee, is an important part of an

attorney's professional obligations. The preamble to the American Bar Association's Model

Rules of Professional Conduct (the "Model Rules")[190] begins by stating, "A lawyer, as a member

of the legal profession, is a representative of clients, an officer of the legal system and a public

citizen having special responsibility for the quality of justice."[191] The preamble further states

that, "a lawyer should seek improvement of the law, access to the legal system, the

administration of justice and the quality of service rendered by the legal profession."[192] Thus,

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gprograms/ (last visited Sept. 24, 2023). For example, the Texas Young Lawyers Association offers a program called "Ten Minute Mentor," Tx. Young Law. Ass'n, *Ten Minute Mentor*, https://tyla.org/resource/ten-minute-mentor/ (last visited Sept. 24, 2023), and the Florida Bar Association offers mentoring programs and a "Mentoring with the Masters" video series to "help bridge the gap between law school and practice." Fl. Bar Young Law. Div., *Mentoring*, https://flayld.org/get-involved/mentoring/ (last visited Sept. 24, 2023).

[187] This program was mandatory for the graduating class of 2020 in place of taking the bar exam. La. State Bar Ass'n*, Transition Into Practice (TIP) Mentoring Program*, https://www.lsba.org/Mentoring/ (last visited Sept. 24, 2023).

[188] *Id.*

[189] *See infra* Part IV.B. *See also* Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 106–09 (2007); Alvarado, *supra* note185, at 1062; Oseid, *supra* note184, at 399; Ursula H. Weigold, *The Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students*, 33 PEPP. L. REV. 677, 695–96 (2006); Paul H. Burton, *What Money Can't Buy: Organic Mentoring in Law Firms*, ARIZ. ATT'Y, March 2007, at 13, 16.

[190] All fifty states of the United States, the District of Columbia, and the Northern Marina Islands have adopted rules of professional conduct based on the Model Rules. American Bar Association, Alphabetical List of Jurisdictions Adopting the Model Rules, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/ (last visited September 9, 2023).

[191] Model Rules of Prof'l Conduct Preamble (2023).

[192] *Id.*

the Model Rules begin by recognizing each attorney as an important member of a collective system of justice, each of us having responsibility for its quality.

Beyond this introductory recognition of our collective responsibility to safeguard the quality of the legal profession, the Model Rules directly address our responsibility to supervise, guide, and learn from each other. Rule 1.1, for example, provides that, "[a] lawyer shall provide competent representation to a client."[193] The required competency includes "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[194] One way that a lawyer may provide competent representation to her client is "through the association of a lawyer of established competence in the field in question."[195]

More directly, Rule 5.1 specifically addresses the relationship between supervisory lawyers and their subordinate lawyers.[196] Rule 5.1(a) requires partners in a law firm and other lawyers in the firm who hold "comparable managerial authority" to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct."[197] This obligation includes the obligation to adopt policies and procedures to "ensure that inexperienced lawyers are properly supervised."[198] Rule 5.1(b) charges lawyers who are in supervisory position over other lawyers with making "reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct."[199] In fact, a lawyer may be responsible for another lawyer's violation of the Model Rules if he ratifies the improper conduct or has managerial or supervisory authority over the

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[193] Model Rules of Prof'l Conduct R. 1.1 (2023).
[194] *Id.*
[195] *Id.* at comment 2.
[196] Model Rules of Prof'l Conduct R. 5.1 (a) (2023). Similarly, Rule 5.3 imposes on all lawyers the obligation to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Model Rules of Prof'l Conduct R. 5.3 (b) (2023).
[197] Model Rules of Prof'l Conduct R. 5.1 (a) (2023).
[198] Model Rules of Prof'l Conduct R. 5.1, Comment 2 (2023).
[199] Model Rules of Prof'l Conduct R. 5.1 (b) (2023).

other lawyer and "knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."[200] This fact "expresses a general principle of personal responsibility for acts of another."[201]

State disciplinary boards, law firms, law schools, and individual lawyers recognize mentoring relationships as an invaluable way to help attorneys develop the skills and professional judgment necessary to abide by the Model Rules. In disciplinary proceedings, for example, the fact that an attorney did not have a mentor or other attorney to which the attorney could turn for professional guidance may be considered by the disciplinary body when it decides the appropriate sanction to impose.[202] Additionally, when an attorney is found to have violated the rules of professional conduct, one corrective measure she may be required to take is establishing a relationship with a more experienced attorney who will serve as a mentor to her.[203]

B.   The Impact of Mentoring

Professors Neil Hamilton and Lisa Montpetit Brabbit examine theoretical and empirical scholarship on the functions of mentoring relationships.[204] They assert that examining the theory of, and empirical research on, mentoring relationships can help the legal profession foster professionalism.[205] From reviewing the relevant literature, they identify three functions of the mentoring relationship: (1) the career mentoring function; (2) the psychosocial mentoring

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[200] Model Rules of Prof'l Conduct R. 5.1 (c) (2023).

[201] Model Rules of Prof'l Conduct R. 5.1, Comment 4 (2023).

[202] *See*, *e.g. In re* Lapeyrouse, 352 So. 3d 59, 64 (La. 2022)(observing that the disciplinary committee had noted in mitigation that, "It appears that [the attorney] has not had the opportunity for a proper mentorship in the practice of law"); Comm. on Legal Ethics of W. Virginia State Bar v. Morton, 410 S.E.2d 279, 281 (W. Va. 1991) (noting that "communication problems of [attorney], who practices alone …. arose from a lack of training in office management skills rather than from neglect or malfeasance" and requiring attorney to enter a mentoring program).

[203] *See*, *e.g.* Matter of Disciplinary Proc. Against Selmer, 955 N.W.2d 170, 174 (Wis 2021)(requiring attorney, prior to resuming practice of law, to "identify an attorney approved by the Office of Lawyer Regulation who shall be appointed to serve as a mentor to [the attorney] and to oversee his practice of law for a period of 18 months, and who shall provide written quarterly reports to the Office of Lawyer Regulation"); *In re* Reinstatement of Wiederholt, 295 P.3d 396, 398 (Alaska 2013) (holding that an attorney's reinstatement, with the condition of a three-year period of mentoring, was reasonable and appropriate).

[204] Hamilton & Brabbit, *supra* note 189, at 105.

[205] Hamilton & Brabbit, *supra* note 189, at 105.

function; and (3) the role modeling mentoring function.[206] They then argue that a fourth

mentoring function —the professionalism mentoring function— should be seen as separate from

the role modeling function. [207] They assert that recognizing the development of professionalism

as a separate mentoring function will underscore the importance of the professionalism function

in the context of mentoring in a peer review profession, such as the legal profession.[208] They

explain that the peer review professions are "those occupations where there is an unwritten,

social contract, whereby society grants to practitioners, rights of autonomy and self regulation in

return for the profession's commitment to the principles of professionalism, including effective

peer review."[209]

Highlighting the functions of the mentoring relationship helps to emphasize the

importance of relationships in the practice of law. With respect to the career mentoring function,

Professors Hamilton and Montpetit Brabbit explain that mentorship should help the mentee

develop several skills, including networking, growing successful mentoring relationships, and

teamwork with staff and other lawyers.[210] With respect to the psychosocial mentoring function,

they explain that the mentoring relationship should enhance the mentee's sense of friendship,

with the central theme being building the mentee's self-confidence and sense of self-worth.[211]

Regarding the role modeling mentoring function, the mentoring relationship should help the

mentee develop several skills through observation of, and discussion with, the mentor.[212] These

skills include (1) obtaining and keeping clients, (2) counseling, and (3) negotiations.[213] Each of

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[206] Hamilton & Brabbit, *supra* note 189, at 107-09.
[207] Hamilton & Brabbit, *supra* note 189, at 107-09
[208] Hamilton & Brabbit, *supra* note 189, at 107-09
[209] Hamilton & Brabbit, *supra* note 189, at 107-09.
[210] Hamilton & Brabbit, *supra* note 189, at 107-08.
[211] Hamilton & Brabbit, *supra* note 189, at 108.
[212] Hamilton & Brabbit, *supra* note 189, at 109.
[213] Hamilton & Brabbit, *supra* note 189, at 109.

these skills and goals ultimately depend on the mentee's ability to successfully initiate, develop, and navigate relationships with other people – whether they be the mentor, clients, colleagues, or opposing counsel.

Although empirical research on the impact of mentoring is somewhat limited,[214] the research that is available supports the functions of the mentoring relationship that the theoretical scholarship identifies. Mentors can be valuable to a new lawyer's learning of the law in practice.[215] The results of one survey revealed that, of the respondents who participated in a structured mentorship program as a mentee, 54% said it improved their skills as a lawyer.[216] Further, 43% said it enhanced their enjoyment of practicing law."[217] Another survey found that over 99% of participants believe that "mentoring enhances new attorney performance and helps new lawyers learn how to practice law."[218] Along with enhancing performance, having a mentor is believed to lead to higher compensation and more promotions.[219] Importantly, having a mentor is also shown to lead to higher job satisfaction.[220]

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[214] Hamilton & Brabbit, *supra* note 189, at 109.

[215] Oseid, *supra* note 184, at 399-340; Weigold, *supra* note 189, at 695-96; Burton, *supra* note 189, at 13. The Florida Bar Association's 2021 Membership Opinion Survey revealed that, of the respondents who participated in a structured mentorship program as a mentee, "54% said it improved their skills as a lawyer and 43% said it enhanced their enjoyment of practicing of law." Mark D. Killian, Fl. Bar Ass'n, Survey *Suggests Florida Lawyers Support the Concept of a Bar Mentoring Program*, (Feb. 1, 2022), https://www.floridabar.org/the-florida-bar-news/survey-suggests-florida-lawyers-support-the-concept-of-a-bar-mentoring-program/ [hereinafter 2022 Fl. Bar Survey].

[216] Fl. Bar Survey, *supra* note 215

[217] Fl. Bar Survey, *supra* note 215.

[218] Mindy Thomas Fulks, *Mentoring: Attitudes and Perceptions of New Lawyers*, E. TENN. STATE UNIV. SCH. GRADUATE STUD., 47 (May 2019).

[219] Sarah A. Hezlett & Sharon K. Gibson, *Mentoring and Human Resource Development: Where We Are and Where We Need to Go*, 7 ADVANCES DEV. HUM. RES. 446, 452 (2005); Connie R. Wanberg et al., *Mentoring Research: A Review and Dynamic Process Model*, 22 RSCH. PERS. & HUM. RES. MGMT. 39, 47 (2003); Neil Hamilton & Brabbit, *supra* note 189, at 110 (synthesizing research with meta-analyses "indicate that protégés experience increased job and career satisfaction as a result of mentoring").

[220] Wanberg, *supra* note 219, at 47.

A mentor can also assist the new lawyer with learning the business of law by teaching practice management, marketing, business development, and networking skills.[221] Further, mentors may act as facilitators, interceding on a mentee's behalf to help them progress in their career.[222] In the context of new hires at a firm, mentorship has been found to result in the mentee having higher socialization levels,[223] a greater commitment to their career and firm, and higher self-esteem.[224] Regarding socialization, mentorship specifically helps the mentee establish satisfying work relationships, learn the politics and power structures in the firm, and understand the goals and values of the firm.[225]

The ability of a mentor to help a mentee develop her understanding of professionalism is perhaps the most important function of the mentoring relationship.[226] Professionalism encompasses both legal ethics, meaning the standard of conduct lawyers are required to meet, as

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[221] Susan McDonald & Melissa Northcott, *Three Years On: Mentoring at the Department of Justice and the Public Prosecution Service of Canada*, Dep't Just. Can., 23 (Nov. 2011) (noting that mentorship "led to new career opportunities" for 48% of survey participants).

[222] *Id.*

[223] "Socialization" refers to how mentees "assimilate information necessary to perform their jobs and become functioning members of the organization," and it "is measured by one's performance proficiency and understanding of the firm's goals, values, politics, people, language, history." Georgia T. Chao et al., *Formal and Informal Mentorships: A Comparison on Mentoring Functions and Contract with Nonmentored Counterparts*, 45 Pers. Psych. 619, 626–27 (1992). One scholar defined socialization as "the process through which newly hired employees adapt to their work environments by learning the culture and values of their organizations and developing the skills needed for their new jobs." Sarah A. Hezlett, *Protégés' Learning in Mentoring Relationships: A Review of the Literature and an Exploratory Case Study*, 7 Advances Dev. Hum. Res. 505, 508 (2005) [hereinafter Hezlett, *Protégés'*].

[224] Neil Hamilton & Brabbit, *supra* note 189, at 121; Connie R. Wanberg et al., *Mentoring Research: A Review and Dynamic Process Model*, 22 Rsch. Pers. & Hum. Res. Mgmt. 39, 85–87 (2003); Hezlett, *Protégés' supra* note 223, at 508–09; McDonald & Northcott, *supra* note 221, at 24 (noting that, for 80% of survey participants, mentorship, to some extent, "[p]rovided [mentees] with motivation to excel at [their] job" and, for 70% of respondents, mentorship "[i]mproved [their] job satisfaction").

[225] Georgia T. Chao *et al.*, *Formal and Informal Mentorships: A Comparison on Mentoring Functions and Contract with Nonmentored Counterparts*, 45 Pers. Psych. 619, 628–29 (1992); McDonald & Northcott, *supra* note 221 (observing that, for 82% of respondents, mentorship, at least to some extent, "increased [mentees'] understanding of corporate culture and values").

[226] Some state bar associations include mentorship as part of their values; the Louisiana State Bar Association, for example, lists "be[ing] supportive of new members in the profession" as part of its Code of Professionalism. La. State Bar Ass'n, *Professionalism and Quality of Life*, https://www.lsba.org/Professionalism/ (last visited Sept. 24, 2023).

well as conduct to which lawyers should aspire.[227]   Mentors can demonstrate professional

behavior"[228]   Specifically, "[t]hey can model professionalism in personal interactions and

diligence in managing legal work."[229] They can also give less experienced attorneys the

opportunity "to observe the standards of experienced attorneys" as they exercise their "judgment

in difficult situations."[230] Working with and observing a mentor allows the mentee to

"internalize the principles of professionalism."[231]   Mentoring relationships are believed to be

particularly effective at helping to cultivate professionalism in young lawyers, impacting skills

such as how to handle ethical questions in practice and navigating interactions with judges,

clerks, and other lawyers.[232]

In one survey of lawyers, more than 98% of respondents indicated that "mentoring

increases civility and professionalism within the profession."[233] Mentorship allows the new

lawyer's knowledge from law school to expand past formal scholarship and embrace a

responsibility for their clients.[234] The mentor helps the mentee "develop good judgment and

good habits of the mind."[235] An attorney mentor can demonstrate to the mentee the "attitudes,

habits, and virtues that characterize good attorneys" and "expos[es] [mentees] to the moral and

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[227] . La. State Bar Ass'n, *Professionalism and Quality of Life*, https://www.lsba.org/Professionalism/ (last visited Sept. 24, 2023).

[228] Oseid, *supra* note184, at 399-400; Hamilton & Brabbit, *supra* note189, at 107-08.

[229] Ursula H. Weigold, *The Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students*, 33 Pepp. L. Rev. 677, 695 (2006).

[230] Id.

[231] Hamilton & Brabbit, *supra* note 189, at 109.

[232] State Bar of Ga. Comm. on Standards of the Pro.*, COMMITTEE REPORT AND RECOMMENDATIONS FOR A MANDATORY TRANSITION INTO LAW PRACTICE PROGRAM* 20 (2003).

[233] Mindy Thomas Fulks, *Mentoring: Attitudes and Perceptions of New Lawyers*, E. TENN. STATE UNIV. SCH. GRADUATE STUD., 47 (May 2019).

[234] William M. Sullivan et al.*, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

[235] Oseid, *supra* note 184, at 400.

ethical dimensions of law practice [by] allowing them to observe the standards of experienced attorneys."[236]

Of course, all the potential benefits that flow from a successful mentoring relationship hinge on the ability to develop a relationship in the first instance. If a new attorney's ability to develop and maintain relationships is impaired because she is suffering from depression, loneliness, or anxiety, she may miss invaluable opportunities to develop as a lawyer by learning from others. She is also deprived of the support, sponsorship, and networking opportunities that mentors often provide to their mentees.

V.   Addressing the Problem

Although the legal profession has made significant efforts to address lawyer mental health, those efforts have not focused on recognizing and addressing the potential negative effects of extensive reliance on TMC. Given our continuing and increasing reliance on TMC over the last several years, exacerbated by the Covid-19 pandemic, failing to address this specific challenge may significantly impair the legal profession's ability to address its mental health crisis and its potential impact on attorney competence. As such, this part of the Article, drawing on lessons learned from Social Presence Theory, offers some modest proposals aimed at targeting the negative impact that extensive reliance on TMC may have on lawyer mental health. This part of the Article first presents Social Presence Theory, highlighting important lessons that we may glean from the theoretical and empirical scholarship. Drawing on these lessons, it then offers some proposals aimed at mitigating the potentially negative impact of overreliance on TMC.

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[236] Weigold, *supra* note 189*,* at 695–96.

A. Social Presence Theory

Humans are believed to be motivated by a fundamental need to feel a sense of

belonging.[237] In fact, numerous studies support the belief that meaningful social interactions and

relationships are central to an individual's mental and physical wellbeing.[238] With respect to

mental health, a deficit in meaningful and positive social relationships is associated with

loneliness, depression, and anxiety.[239]

"Social presence" is important to developing and maintaining meaningful social

relationships,[240] and it is defined as an awareness that another person is a "real" person. [241]

Social presence has also been described as a sense of being "with" another person,"[242]

understanding their psychological and emotional state, and "belonging."[243] Social presence can

also be understood as the degree to which two people who are communicating with each other

experience positive interpersonal and emotional connections with each other.[244] The two core

components of social presence are intimacy and immediacy.[245] "Intimacy" refers to an

individual's feeling of being connected with the person with whom she is communicating during

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[237] Liesl M. Heinrich & Eleonora Gullone, *The Clinical Significance of Loneliness: A Literature* Review, 26 CLIN. PSYCHOL. REV., 695, 696 (2006).

[238] *Id*. at 697 (2006); Ichiro Kawachi and Lisa F. Berkman, *Social Ties and Mental Health*, 789 J. OF URBAN HEALTH 458, 459 (2001) ("[M]ost researchers now agree that social ties have a salutary effect on mental health and psychological well-being"); *see also*, Ming Hao Nguyen, *et al*, *Staying Connected While Physically Apart: Digital Communication When Face-To-Face Interactions Are Limited*, 24 NEW MEDIA & SOC'Y 1 (2021) https://journals.sagepub.com/doi/10.1177/1461444820985442 (citing studies); Amit Kumar & Nicholas Epley, It's Surprisingly Nice to Hear You: Misunderstanding the Impact of Communication Media Can Lead to Suboptimal Choices of How to Connect With Others. 150 J. of Exp. Psychol. 595 (2021).

[239] Heinrich & Gullone, *supra* note 237, at 697.

[240] Nguyen, *supra* note 238, at 3 (citing studies).

[241] Frank Biocca, Chad Harms, and Judee K. Burgoon, *Toward a More Robust Theory and Measure of Social Presence: Review and Suggested Criteria*, 12 Presence: Teleoperators and Virtual Environments 456 (Oct. 2003), https://doi.org/10.1162/105474603322761270.

[242] *Id.*

[243] Tharon W. Howard, *Creating Social Networks and Online Communities that Last* in Design to Thrive 129-30 (2010).

[244] Guoqiang Cui, Barbara Lockee, and Cuiqing Meng, *Building modern online social presence: A review of social presence theory and its instructional design implications for future trends*, 18 Educ. and Info. Techs. 661 (2012) doi:10.1007/s10639-012-9192-1.

[245] Catherine S. Oh, *et al*., *A Systematic Review of Social Presence: Definition, Antecedents, and Implications*, 5 FRONT. ROBOT. AI. 114 (Oct. 15, 2018), https://doi.org/10.3389/frobt.2018.00114.

an interaction.[246] "Immediacy" refers to the individual's feeling of closeness with that other person during the interaction.[247] Feelings of intimacy and immediacy are induced by the verbal and nonverbal cues individuals share during an interaction —such as facial expressions, vocal cues, gestures, and physical appearance.[248]

Social Presence Theory explores how social presence is influenced by the medium of communication used[249] and the degree to which the user of a given medium of communication can build a sense of social presence among the participants.[250] Mediums of communication can be ranked according to how effective they are in their ability to convey information between the participants.[251] A medium of communication that is particularly effective in conveying informational cues is said to be "rich" in social presence, while a medium of communication that is not particularly effective at conveying these cues is said to be "lean" in social presence.[252]

In evaluating the relative richness of various mediums of communication, researchers often classify these mediums temporally (focusing on *when* the interaction occurs) and spatially (focusing on *where* the interaction occurs).[253] With respect to the spatial dimension, the question is whether the people who are communicating are physically located in the same place.[254] With respect to the temporal dimension, the question is whether the communication is synchronous or

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[246] *Id.*

[247] *Id.*

[248] *Id.*

[249] Guoqiang Cui, Barbara Lockee, and Cuiqing Meng*, Building Modern Online Social Presence: A Review of Social Presence Theory and Its Instructional Design Implications For Future Trends*, 18 Educ. and Info. Techs. 661 (Mar. 11, 2012), https://link.springer.com/article/10.1007/s10639-012-9192-1.

[250] Oh, *supra* note 245.
Researchers have robustly examined, developed, and utilized Social Presence Theory in the context of designing and implementing effective online educational courses. Guoqiang Cui, Barbara Lockee, Cuiqing Meng, *Building Modern Online Social Presence: A Review of Social Presence Theory and Its Instructional Design Implications For Future Trends*, 18 Educ. and Info. Techs. 661, (Mar. 11, 2012), https://link.springer.com/article/10.1007/s10639-012-9192-1.

[251] Oh, *supra* note 245.

[252] Oh, *supra* note 245.

[253] Oh, *supra* note 245.

[254] Oh, *supra* note 245.

asynchronous.[255] Face-to-face communications, for example, are synchronous and require physical proximity. Conversely, e-mail is asynchronous and does not require the people who are communicating to be physically together. Video conferencing falls in the middle ground between face-to-face communications and email communications. Video conferencing is synchronous, but it does not require the participants to be physically together.

Observers may also evaluate the effectiveness of a given medium of communication according to its ability to convey greater amounts of information in different forms.[256] Face-to-face communication is the "richest form of communication."[257] This type of communication conveys information via both audio and visual means, permitting the user to recognize sometimes subtle cues, such as posture and hand gestures. Videoconferencing, although believed to be less rich than face-to-face communication, is richer in social presence than communication by telephone, because the telephone lacks the ability to convey visual information. Similarly, e-mail is a richer medium of communication than a letter, because e-mail can include attachments of multimedia content and the sender can convey the message more quickly.

Richer methods of communicating are better at creating social presence among the participants as compared to methods of communication that are more lean.[258] Face-to-face interactions are best suited to creating social presence, offering both intimacy and immediacy and offering both visual and nonvisual cues.[259] Just as other communication methods have

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[255] Oh, *supra* note 245.

[256] Alan R. Dennis, Robert M. Fuller, and Joseph S. Valacich, *Media, Tasks, and Communication Processes: A Theory of Media Synchronicity*, 32 MIS Q. 575, 576-77 (2008).

[257] Chun M Tang and Adrian Bradshaw, *Instant messaging or face-to-face? How choice of communication medium affects team collaboration environments*, 17 E-Learning and Digital Media 111, 114 (2020) https://doi.org/10.1177/2042753019899724.

[258] *Id*. at 77.

[259] *Id*.

differing levels of richness in terms of their ability to effectively communicate information among participants, these other mediums of communication, however, can also facilitate social presence, although to differing degrees. The degree to which other mediums of communication are able to replicate the intimacy and immediacy we experience in face-to-face interactions will correlate with its ability to generate a sense of social presence among the participants.[260] The more similar a given mode of communication is to face-to-face communications, the greater its ability to generate social presence will be.[261]

More recent scholarship has focused on the ability of the user of a given medium of communication to make choices that impact the ability of that medium of communication to convey a sense of social presence. By making intentional choices aimed at making the communications active, interactive, and stimulating, these scholars argue that the user can proactively *cultivate* social presence among the participants.[262] Meeting platforms such as Zoom help to illustrate this point. Zoom offers a variety of features that allow the host of the meeting to decide whether and to what extent to make the meeting interactive. For example, the host can decide whether to permit participants to participate via audio or may choose to only permit them to communicate via the chat function.[263] The host may further restrict chat communications so that participants may only communicate with the host.[264] Alternatively, the host may allow

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[260] *Id.*

[261] *Id.*

[262] Guoqiang Cui, Barbara Lockee, and Cuiqing Meng, *Building Modern Online Social Presence: A Review of Social Presence Theory and Its Instructional Design Implications for Future Trends*, 18 Educ. and Info. Techs. 661 (Mar. 11, 2012), https://link.springer.com/article/10.1007/s10639-012-9192-1; Ulrike Schultze and Jo Ann M. Brooks, *An Interactional View of Social Presence: Making The Virtual Other "Real,"* 29 Info Sys. J. 707, 709-710 (2019).

[263] Zoom Support, Muting/Unmuting Participants in a Meeting https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0066716 (last visited Jan. 20, 2024).

[264] Zoom Support, Enabling or Disabling In-Meeting Chat, https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0060343 (last visited Jan. 20, 2024).

participants to communicate with everyone in the meeting.[265] A corollary to this assertion is that it is critical for the user of a given medium of communication to be knowledgeable of the various features of any medium of communication and skilled at using them.[266]

The level of social presence that is needed in a given situation will depend on a variety of factors.[267] Text-based media, a medium of communication with low social presence, is often adequate for simple, task-focused communications, particularly when the communication is among participants who are familiar with one another.[268] Conversely, communications undertaken for the purpose of addressing complex or collaborative tasks are better handled by using mediums with a higher level of richness.[269] Similarly, communications undertaken for the purpose of building or maintaining relationships are better handled through mediums of communications that have a higher capacity for conveying social presence.[270]

A higher level of social presence is preferable for building new relationships.[271] As such, face-to-face interactions are the most effective option for establishing new relationships.[272] A lower level of social presence, however, may be adequate for helping to maintain already established relationships, particularly when face-to-face interactions are not feasible.[273] This result is perhaps explained in part because individuals who have a shared history "are expected

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[265] Id.

[266] Guoqiang Cui, Barbara Lockee, and Cuiqing Meng, *Building Modern Online Social Presence: A Review of Social Presence Theory and Its Instructional Design Implications for Future Trends*, 18 Educ. and Info. Techs. 661 (Mar. 11, 2012), https://link.springer.com/article/10.1007/s10639-012-9192-1.

[267] Oh, *supra* note 245.

[268] Alan R. Dennis, Robert M. Fuller, and Joseph S. Valacich, *Media, Tasks, and Communication Processes: A Theory of Media Synchronicity*, 32 MIS Q. 575, 575-76 (2008).

[269] Oh, *supra* note 245.

[270] Alan R. Dennis, Robert M. Fuller, and Joseph S. Valacich, *Media, Tasks, and Communication Processes: A Theory of Media Synchronicity*, 32 MIS Q. 575, 575-76 (2008).

[271] Fabio Calefato, Filippo Lanubile, *Communication Media Selection for Remote Interaction of Ad Hoc Groups*, 78 Advances in Computers 271, 275 (December 2010) (individuals "without a history of previous collaborations …. do not share any experience and thus, have not established a level of common ground (i.e., shared understanding) sufficient for communicating effectively over lean media").

[272] Nguyen, *supra* note 238, at 3 (citing studies).

[273] Oh, *supra* note 245., at 4.

to communicate more effectively over impoverished media, using their shared experiences to compensate for the media leanness."[274]   Even when maintaining relationships that already exist, research suggests that face-to-face interactions should not be completely replaced with TMC.[275]

In addition to the positive impact that social presence and the resulting social connections have on an individual's mental health, social presence has been shown to be beneficial to both one-on-one interpersonal dynamics and in group settings.[276]   Studies support that social presence contributes to generating feelings of loyalty and trust.[277]   It also causes individuals to be more engaged in the exchange, thereby stimulating cognitive functioning.[278]   In group settings, social presence creates a sense of belonging.[279]   It also improves collaboration and team performance.[280]   Conversely, a lower sense of social presence is associated with increased

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[274] Fabio Calefato and Filippo Lanubile, *Communication Media Selection for Remote Interaction of Ad Hoc Groups*, 78 Advances in Computers 271, 275 (December 2010) (individuals "without a history of previous collaborations …. do not share any experience and thus, have not established a level of common ground (i.e., shared understanding) sufficient for communicating effectively over lean media").

[275]Shelia R Cotten, *et al.*, *Impact of Internet Use on Loneliness and Contact with Others Among Older Adults: Cross-Sectional Analysis*, 15 J. MED. INTERNET RES. e39 (2013) (observing that "[e]ven when Internet use helps create or maintain relationships, the effects may not fully replicate what has been lost" and discussing studies), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3636305/#ref21.

[276] Researchers have robustly examined and utilized Social Presence Theory in the context of designing and implementing effective online educational courses. Guoqiang Cui, Barbara Lockee, and Cuiqing Meng, B*uilding Modern Online Social Presence: A Review of Social Presence Theory and Its Instructional Design Implications For Future Trends*, 18 EDUC. AND INFO. TECHS. 661 (2013), https://link.springer.com/article/10.1007/s10639-012-9192-1. Researchers have also examined the theory in online commerce and other contexts. *See e.g.,* Baozhou Lu, Weiguo Fan, and Mi Zhou, *Social Presence, Trust, and Social Commerce Purchase Intention: An Empirical Research*, 56 COMPUT. IN HUMAN BEHAV. 225 (2016), https://www.sciencedirect.com/science/article/pii/S0747563215302715).

[277]Lankton, N. K., McKnight, D. H., & Tripp, J., *Technology, Humanness, and Trust: Rethinking Trust in Technology,* 16 J. OF THE AIS 880 (2015); Lowry, P. B., Zhang, D., Zhou, L., & Fu, X., *Effects Of Culture, Social Presence, and Group Composition on Trust in Technology-Supported Decision-Making Groups,* 20 INFO. SYS. J. 297, 307 (2010), doi:10.1111/j.1365-2575.2009.00334.x

[278] Jamie Costley, *The Relationship Between Social Presence and Cognitive Load*, 16 INTERACTIVE TECH. AND SMART EDUC., 172, 180-82 (2019), https://www.researchgate.net/publication/332310640_The_relationship_between_social_presence_and_cognitive_load.

[279] Tharon W. Howard, Design to Thrive 129-30 (2010).

[280] Miranda, S. M., & Saunders, C. S., *The Social Construction of Meaning: An Alternative Perspective on Information Sharing,* 14 INFO. SYS. RES. 87 (2003).

isolation[281] and conflict.[282] Lower social presence is also associated with increased difficulties among participant in arriving at mutually agreeable decisions.[283]

Finally, interacting through TMC may sometimes be preferable to interacting in person.. First, there might be circumstances in which lower (or less rich) social presence might be preferable.[284] For example, if a person is simply not liked by another person or people tend to have a negative reaction to a person, reducing the sense of social presence (*i.e.*, dialing back the sense that the person is "there") may be beneficial. Similarly, if a person finds social engagement challenging, moderating the extent to which the individual is required to engage in communications that are rich in social presence might benefit the individual.[285] Although TMC may sometimes be preferable and although there are recognized benefits,, TMC should not be used as a complete substitution for in-person communications.[286]

B.   Proposals for Action

Drawing on the lessons highlighted above, this part of the Article proposes specific actions that actors in the legal community may take to help mitigate the potential negative impact

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[281] Sia, C.-H., Tan, B. C. Y., & Wei, K. K., *Group Polarization and Computer Mediated Communication: Effects of Communication Cues, Social Presence, and Anonymity,* 13 INFO. SYS. RES. 70, 73-74 (2002).

[282] Kiesler, S. J., Zubrow, D., Moses, A. M., & Geller, V., *Affect in Computer-Mediated Communication*, 1 HUMAN COMM. INTERACTION 77 (1985).

[283] Sia, C.-H., Tan, B. C. Y., & Wei, K. K., *Group Polarization and Computer Mediated Communication: Effects of Communication Cues, Social Presence, and Anonymity*, 13 Info. Sys. Res. 70, 73 (2002); Ulrike Schultze, Jo Ann M. Brooks, *An Interactional View of Social Presence: Making the Virtual Other "Real,"* 29 Info Sys. J. 707, 708 (2019).

[284] Oh, *supra* note 245, at 26.

[285] Oh, *supra* note 245, at 25.

[286] Cotten, *supra* note 275, at e39 ("Even when Internet use helps create or maintain relationships, the effects may not fully replicate what has been lost"); Galit Nimrod, *The Fun Culture in Seniors' Online Communities*, 51 THE GERONTOLOGIST 226, 235 (2011), https://academic.oup.com/gerontologist/article/51/2/226/592580. (Finding that online relationships created through online gaming platforms "were quite superficial" and that, "[s]uch relations cannot replace real relationships and/or significantly help seniors who suffer from loneliness").

of increased reliance on TMC on the mental health of its users. Both institutional actors and

individuals can, and should, implement these proposals.

> 1. Raise Awareness of the Issue

Having awareness of a potential problem empowers individuals to take action to attempt

to mitigate or avoid the problem.[287] As such, the first proposal is simply that law schools, law

firms, and state bar associations should call attention to the importance of social connectedness

and the potential mental health risks associated with increased and extensive reliance on TMC.

Several law schools have already implemented programs aimed at raising awareness of

the substance abuse problems and mental health challenges faced by so many in the legal

profession.[288] Law schools that have these programs could modify them to include a frank and

clear discussion of the concerns surrounding the potential negative impact of extensive reliance

on TMC. Alternatively, or in addition, law schools could develop and offer stand-alone

programs, focused solely on the importance of social connectedness and the potential mental

health risks associated with TMC. Law schools could offer these programs as a component of

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[287] *See*, *e.g.*, Phillip Marksberry, *et al.*, *Problem Solving For Managers: A Mathematical Investigation of Toyota's 8-Step Process*, 22 J. OF MFG. TECH. MGMT., 837, at 837-852. https://doi.org/10.1108/17410381111160924 (discussing an 8-Step problem solving process that begins with identifying the problem).

[288] *See,* e.g., Stetson Law, *Alcoholic Beverages and Illegal Drugs,* https://stetson.edu/law/policies/home/media/acoholic-beverages-and-illegal-drugs-pdf.pdf (last visited Jul. 24 2023); Cincinnati College of Law, *Alcohol and Drug Use Policy,* https://law.uc.edu/student-life/student-handbook/alcohol-drug-use-policy.html (last visited on Jul. 24 2023); Yale Law School, *Alcohol & Other Drugs,* https://law.yale.edu/student-life/health-wellness/mental-health-resources/alcohol-other-drugs (last visited Jul. 24 2023).

their student orientation schedules,[289] as a program offered during the semester,[290] and even as a component to a course on professionalism.[291]

Similarly, state bar associations and law firms could offer continuing legal education programs focused on this topic. As of the fall of 2021, only eleven state bar associations required attorneys to obtain continuing legal education requirements on the topic of mental health and substance abuse.[292]   For those bar associations that already require attorneys to obtain training on the topic of mental health, providers of programs focused on this topic could modify their currently existing continuing legal education programs to include a discussion of the potential risks to mental health posed by extensive reliance on TMC. Alternatively, providers could offer new programming focused exclusively on this problem.

Law firms often offer orientation sessions for their new attorneys.[293] These law firms could include in their orientation sessions a discussion of the importance of social connectedness

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[289] *See, e.g.*, Atlanta's John Marshall Law School, *Orientation Schedule*, www.johnmarshall.edu/futurestudents/admissions-aid/accepted-students/orientation (last visited Jul 24. 2023); Vanderbilt Law School, *VLS Orientation,* https://law.vanderbilt.edu/prospective-students/admitted-students/welcome-enterings-jds/orientation/JD_Orientation_Schedule_2023.pdf (last visited Jul. 24 2023); University of Georgia School of Law, *New Student Orientation,* https://law.uga.edu/sites/default/files/uploaded-files/DRAFT%20JD%20%26%20LLM%20Schedule%208.8.2022.pdf (last visited Jul. 24 2023); Emory Law, *Fall 2023: JD Welcome Week,* https://law.emory.edu/admissions/admitted-stiidents-resources/welcome-week/index.html (last visited Jul. 24 2023); University of Pittsburgh, *Incoming Student Orientation*, https://law.pitt.edu/student-resources/incoming-student-orientation (last visited Jul. 24 2023); LSU Law, *Schedule for LSU Law Class of 2021 Orientation,* https://law.lsu.edu/news/2018/08/08/schedule-for-lsu-class-of-2021-orientation (last visited Jul. 24 2023).

[290] *See, e.g.*, Stetson Law, *Student Health, and Wellness Week,* https://stetson.edu/law/campus-life/healthandwellnessweek.php (last visited Jul. 24, 2023); Catherine Anillo, *Wellness Week Supports Students' Well-Being; One of Many Wellness Resources Offered,* University of Miami School of Law, https://news.miami.edu/law/stories/2021/10/wellness-week-supports-students-well-being-one-of-many-wellness-resources-offered.html (last visited Jul. 24, 2023).

[291]*See, e.g.*, Kristen Hardy, *Legal Writing I,* University of Florida Levin College of Law (Fall 2021), https://www.law.ufl.edu/law/wp-content/uploads/KH-Syllabus-Fall-2021-Working-Draft.v4.pdf.

[292] During the fall of 2021, the author, along with the assistance of Ms. Julia Hine, surveyed the continuing legal education requirements for the bar associations in each of the fifty states, the District of Columbia, and all territories of the United States. This information is on file with the author.

[293] *See,* e.g., Husch Blackwell, *Professional Development*, https://www.huschblackwell.com/careers/professional-development (last visited Jul. 25 2023); Winston & Strawn LLP, *New Partner Orientation Inspires Vision, Provides Tools for Career Success*, https://www.winston.com/en/careers-winston/new-partner-orientation-inspires-vision-provides-tools-for.html (last visited Jul. 25 2023); Debevoise & Plimpton, *Professional Development*, https://www.debevoise.com/careers/professional-development (last visited Jul. 25 2023); Kirkland & Ellis, *Your*

and the mental health risk posed by extensive reliance on TMC. Additionally, law firms often offer in-house continuing legal education sessions.[294] These firms could offer continuing legal education sessions covering this topic. Finally, as law firms announce their plans and policies surrounding remote work going forward, they could (and should) offer information regarding the potential risk to mental health posed by extensive reliance on TMC and the importance of social connectedness.[295]

Along with helping their attorneys understand and perhaps mitigate the problem, focusing on mental health and relationship building may communicate to the attorneys in the firm that the organization cares about the mental health of the firm's employees which, in turn, can make the attorneys who are experiencing mental health challenges more willing to seek help.[296] Firm leadership can communicate to the firm's attorneys that they are valued as human beings, and not merely for their ability to produce work-product, and this in itself can have a positive impact on the attorneys' mental health and workplace satisfaction.[297]

Guide to Kirkland, https://www.kirkland.com/-/media/careers/your-guide-to-kirkland-1.pdf?rev=48aa9ceacfe44629987d56ac8d8afb90 (last visited Jul. 25 2023).

[294] *See,* e.g., Husch Blackwell, *Professional Development*, https://www.huschblackwell.com/careers/professional-development (last visited Jul. 25 2023); Debevoise & Plimpton, *Professional Development*, https://www.debevoise.com/careers/professional-development (last visited Jul. 25 2023); Kirkland & Ellis, *Your Guide to Kirkland,* https://www.kirkland.com/-/media/careers/your-guide-to-kirkland-1.pdf?rev=48aa9ceacfe44629987d56ac8d8afb90 (last visited Jul. 25 2023); Kilpatrick Townsend, *Professional Development,* https://www.kilpatricktownsend.com/en/Careers/Professiona-Staff (last visited Jul. 25 2023).

[295] The firm of Davis Polk recently announced that it would impose a requirement that attorneys work from the office four days a week, beginning in the fall of 2023. Sara Merken, *Law Firm Davis Polk Adopts Four-Day Office Work-Week, Joining Skadden,* Reuters (Jun. 7, 2023), https://www.reuters.com/legal/litigation/law-firm-davis-polk-adopts-4-day-office-work-week-joining-skadden-2023-06-07/. In announcing this policy, firm management stated that the primary driver behind the policy, "is a desire to provide all members of our community with best-in-class professional development opportunities …. these opportunities derive, in the first instance, from our collective presence in the office and, for our firm, simply cannot be cultivated as effectively in a remote environment." Matt Perez, *Davis Polk Mandating In-Office Work 4 Days A Week*, Law 360 (Jun. 7, 2023), https://www.law360.com/articles/1686336/davis-polk-mandating-in-office-work-4-days-a-week.

[296] Mind Share Partners, 2021 Mental Health at Work Report 18 https://www.mindsharepartners.org/mentalhealthatworkreport-2021-dl ("The greatest obstacles that kept respondents from more proactively taking care of their mental health were culture factors, like leaders not promoting it and mental health not being talked about at work") (last visited July 21, 2023).

[297] Patrick R. Krill, et al, *People, Professionals, and Profit Centers: The Connection between Lawyer Well-Being and Employer Values*, 12 BEHAV. SCI. 177 (Jun. 3, 2022) ("Lawyers who work in environments that value

2.   Adopt Written Policies that Specify "Off" Time

Leaders in the legal profession should squarely address the ability, and pressure, we now have to be constantly available. As discussed above, studies show a correlation between extensive use of TMC and harm to the user's mental health in the form of cognitive overload[298] and increased feelings of loneliness, depression, and anxiety.[299] In addition, however, the mere perception that one is expected to be constantly available is harmful to the individual's mental health.[300] The feeling of constant demands on our time and the inability to separate work time from home time has only been exacerbated by remote work during the pandemic.[301]   Because there are essentially no limits to our ability to be available at any moment of the day or night, the leaders of the legal profession should adopt clear policies addressing this issue.

Establishing a schedule for checking email and text messages[302] and for working hours versus nonworking hours when working from home can help alleviate the stress of feeling the need to be constantly available.[303] As part of its practical skills training for its students, law schools should introduce law students to the practice of clearly separating the time they are working from personal time and setting a routine schedule for reading and sending emails and other school related communications. Similarly, law firms should adopt written policies that clearly identify routine working hours. These policies should make it clear that attorneys are not, as a routine matter, expected to work during nonworking hours. These policies should state

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professionalism, skill, and humanity over productivity and availability are in better health and experience lower levels of stress than their counterparts in other work environments").

[298] *Supra* part II (B)(1).

[299] *Supra* part II (B)(1).

[300] *Supra* part II (B)(1).

[301] *Supra* part II (B)(1).

[302] Kostadin Kushle & Elizabeth W. Dunn, *Checking Email Less Frequently Reduces Stress*, 43 COMPUT. IN HUMAN BEHAV. 220, 226 (2015).

[303] *Id*.

expressly that, barring an emergency,[304] reading and sending email communications and other

work-related communications should occur only during designated working hours.

3. Take Care in Selecting the Mode of Communication

As discussed above, certain modes of communication are better suited for certain tasks.[305]

The most expedient medium of communication is not always the best means of communicating

for every situation. When an attorney is considering which medium of communication to use,

the attorney should carefully consider which medium of communication is the best fit for the

task at hand. Both firm leaders, who may be planning firm-wide communications, and

individual attorneys, who may simply be deciding how to best communicate with a colleague

about work on a new matter, should take this approach in making the decision. In deciding

whether to use a given medium of communication for a given task, the potential user should

consider both the "social presence of the medium" and the "social presence required by the

task."[306] The effectiveness of a given medium of communication may also be impacted by the

perceptions of that medium of communication that are held by the potential users.[307] Because a

user's perceptions of the medium can influence the user's experience of social presence when

communicating through that medium, the attorney who is selecting the medium of

communication should consider this factor when deciding how to structure the communication.

How to best match the task at hand with the medium of communication and the intended

participants in the communication should be part of any training on how to best utilize various

mediums of communication.[308]

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[304] Notifications can be set so that the devise delivers urgent messages and messages from specifically identified individuals even when the user has set notifications to silent.

[305] *Supra* part V (B)(2).

[306] John Short, et al., *THE SOCIAL PSYCHOLOGY OF TELECOMMUNICATIONS*, 75 (1976).

[307] James J Cummings & Erin E Wertz, *Capturing Social Presence: Concept Explication Through an Empirical Analysis of Social Presence Measures*, 28 J. OF COMPUTER-MEDIATED COMM., 1, 2 (2023), https://academic.oup.com/jcmc/article/28/1/zmac027/6839981.

[308] *Infra* part V (B)(4).

4. Provide Training for Various Modes of Communications

As highlighted above, a given medium of communication may have features that will enhance its ability to increase social presence among its users.[309] For example, the Zoom platform permits the host of a Zoom meeting to create "breakout rooms."[310] With the breakout room tool, the host can divide a large group of participants into multiple small groups, thereby allowing those participants to discuss a given topic in a smaller group setting.[311] The smaller group setting may increase the intimacy of the interaction. An increase in the intimacy of the interaction should, in turn, increase the sense of social presence. Similarly, the Zoom platform includes a polling tool that allows the host to poll participants on a given topic or series of topics.[312] This tool may increase the interactive nature of the experience which should increase the sense of social presence among the participants. Of course, these tools are only effective if the user of the platform has the knowledge and skill necessary to use them. As such, it is important for law firms and state bar associations to provide lawyers with training in using the various modes of communication that are available.

The Model Rules specifically identify competency with technology as a component of overall legal competence.[313] In addition, some state bar associations require attorneys to obtain continuing legal education aimed explicitly at education on the use of technology.[314] Law firms

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[309] *Supra* Part V.B.3.

[310] Zoom Support, Enabling Meeting Breakout Rooms, https://support.zoom.us/hc/en-us/articles/206476093-Enabling-meeting-breakout-rooms (last visited July 21, 2023).

[311] *Id.*

[312] Zoom Support, Enabling Polling for Meetings, https://support.zoom.us/hc/en-us/articles/4412324684685-Enabling-polling-for-meetings (last visited July 21, 2023).

[313] Comment 8 to Rule 1.1, "Competence," provides, " To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." Am. Bar Ass'n, *Rule 1.1 Competence – Comment,* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/.

[314] *See*, *e.g.,* the North Carolina continuing legal education requirements. NC State Bar Ass'n., *.1518 Continuing Legal Education Program,* https://www.ncbar.gov/for-lawyers/governing-rules-of-the-state-bar/1518-continuing-

should ensure their attorneys are well-trained in the use of various modes of communication so they are able to take full advantage of the features of each tool, allowing the user to enhance the sense of connection between the individuals who are communicating. Law schools could introduce these tools to students as part of the schools' skills training courses.[315]

5. Create Opportunities for In-person Interaction

Before the pandemic, in-person meetings were a central component to the practice of law, given that many aspects of being a lawyer involves being in a room with and engaging with other parties.[316] Although the amount and extent of in-person communications may have changed, Social Presence Theory,[317] as well as the results of the ABA Practice Forward Surveys[318] tell us that in-person communications should not be completely eliminated.

As noted above, TMC cannot completely replicate the connection we have in face-to-face communications.[319] In addition, the Practice Forward Surveys show that many attorneys want some amount of planned in-person interaction.[320] As such, law firms should create opportunities for regular face-to-face interactions among firm attorneys and other employees. Further, because simply having electronic devices likes smartphones in the room can distract people and reduce their cognitive capacity,[321] law firm leaders should structure some of these face-to-face interactions so that they are completely technology free.

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legal-education-program/; Florida continuing legal education requirement. Florida State Bar, *Chapter 6. Legal Specialization and Education Programs,* 59 (Jun. 2023), https://www-media.floridabar.org/uploads/2023/06/Ch-6.pdf.

[315] Many law schools offer a course on law practice technology. *See*, e.g., LAW 5622 - Law Practice Technology, offered at the Paul M. Hebert Law Center of Louisiana State University. Clinics also often introduce students to the use of technology in practice.

[316] Kerry N. Jardine, *How Law Firms Can Be—and Stay—Effective During The COVID-19 Crisis*, AM. BAR ASS'N J., Jan. 11, 2021, https://www.americanbar.org/groups/journal/articles/2021/how-law-firms-can-beand-stayeffective-during-the-covid-19-crisis/.

[317] *Supra* Part V (A).

[318] *Supra* Part II (B)(1).

[319] *Supra* Part V (A).

[320] *Supra* part II (B)(1).

[321] Adrian F. Ward, *et al*., Brain Drain: The Mere Presence of One's Own Smartphone Reduces Available Cognitive Capacity, 2 J. OF THE ASS'N FOR CONSUMER RESCH. 137, 146 (2017)

Conclusion

The proliferation of the use of TMC has had a significant impact on the way the users of those tools interact with each other. Additionally, however, it has impacted the users themselves. Utilizing technology for communications is certainly not without benefits and working remotely can be appealing for many reasons. Still, we should not overlook the possible negative impact of these changes, particularly as they relate to the mental health of attorneys. With intentional choice and careful planning, law schools, individual lawyers, and the broader legal community can take advantage of the benefits of TMC while taking steps to mitigate potential harms.

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https://www.journals.uchicago.edu/doi/epdf/10.1086/691462 ("The results of experiment 1 indicate that the mere presence of participants' own smartphones impaired their performance on tasks that are sensitive to the availability of limited-capacity attentional resources").