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## Solving for Law Firm Inclusion: The Necessity of Lawyer Well-Being

Katrina Lee

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# Solving for Law Firm Inclusion: The Necessity of Lawyer Well-Being

*Katrina Lee\**

## ABSTRACT

*Chances are, in a room of one hundred law firm partners in the United States, at most, one Black woman would be present. Statistically, if there were a Black, Latinx, or Asian woman in that room, she would be the only one. Women of color make up only 3.79 percent of all partners, counting equity and nonequity partners. The percentage of Black women among all partners has remained solidly under one percent—0.57 percent in 2009 and 0.80 percent in 2020. And so, women of color lawyers starting at law firms inevitably enter spaces that are overwhelmingly white and male—spaces where their well-being is not understood, much less prioritized. These same spaces are also home to a significant level of stress, substance abuse, and depression, rendering the law firm business ill-equipped to be welcoming and supportive. Attrition ensues and underrepresentation continues.*

*To evolve into truly inclusive workplaces, law firms must act to embed lawyer well-being as an institutional piece of their diversity, equity, and inclusion efforts. For law firms, the “racial reckoning” and the COVID-19 pandemic of 2020–2021, with negative impacts falling disproportionately on women of color lawyers, have only complicated diversity, equity, and inclusion (DEI) and well-being challenges. This Article proposes that law firms take concrete steps to solidify a holistic, interconnected approach to well-being and inclusion. Part II will provide an overview of the state of lawyer well-being and the representation of women of color lawyers at law firms. Part III will explore the impact of the events of 2020–21 on women of color lawyers. Part IV will highlight*

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and critique recent law firm efforts on well-being and DEI. Part V will chart a path forward for law firms that treats well-being as inextricable from inclusion.

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### I. INTRODUCTION

Law firm partnerships in the United States remain overwhelmingly white and male.<sup>1</sup> Women of color make up only 3.79 percent of all partners, counting both equity and nonequity partners.<sup>2</sup> Asian women make up 1.62 percent, Latinx women 0.9 percent, and Black women 0.80 percent of all partners.<sup>3</sup> From 2009 to 2020, the percentage of Black women among all partners barely increased—0.57 percent to 0.80 percent.<sup>4</sup> So, chances are, in a room of one hundred law

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1. Ellen Milligan & Todd Gillespie, *Diversity at Elite Law Firms Is So Bad Clients Are Docking Fees*, BLOOMBERG (Oct. 25, 2021, 4:00 AM), <https://www.bloomberg.com/news/articles/2021-10-05/big-law-has-a-diversity-problem-and-corporate-clients-are-stepping-in> [<https://perma.cc/2BSC-WZF3>].

2. NAT'L ASS'N FOR L. PLACEMENT, 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS 12 (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf) [<https://perma.cc/9R3U-9BD5>] [hereinafter 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS]. The representation of women and people of color in law firms is also problematic with women comprising only 25.05 percent of partners at law firms and people of color representing 10.23 percent of partners at law firms. *Id.* This Article focuses on the representation of women of color, specifically in light of the intersectionality issues at play in their underrepresentation and the exceptionally slow, or nonexistent, progress in achieving increased representation of women of color at law firms. The argument and proposal of this Article could also be applied to a significant extent to the issues of representation of women and people of color at law firms.

3. *Id.* at 17.

4. *Id.*

firm partners in the United States, at most, only one would be a Black woman and only one would be a Latinx woman.<sup>5</sup> Statistically, if a Black, Latinx, or Asian woman were in that room, she would likely be the only one.<sup>6</sup>

And yet, diversity efforts at law firms and bar associations have been ongoing for at least the past three decades, including renewed efforts in the summer of 2020 following the police killing of George Floyd.<sup>7</sup> The past thirty years have revealed law firms to be

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5. See *id.* This scenario envisions a room of one hundred partners, inclusive of nonequity and equity partners. The NALP diversity report does not capture the percentage of women of color among equity partners. See *id.* If it did, the representation of women of color among the partnership ranks would likely look even bleaker. The 2021 *Law360* Glass Ceiling survey had these findings: Black women made up less than 1 percent of equity partners at surveyed firms; Hispanic women made up less than 1 percent of equity partners at surveyed firms; and Asian women made up just over 1 percent of equity partners at surveyed firms. Jacqueline Bell, *Law360's Glass Ceiling Report: What You Need to Know*, LAW360 (Sept. 13, 2021, 3:03 PM), <https://www.law360.com/pulse/articles/1418221?scroll=1&related=1> [<https://perma.cc/88HF-3UCE>].

6. See 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2, at 17. The isolation felt by women of color at law firms is acute. See JOYCE STERLING & LINDA CHANOW, AM. BAR ASS'N, IN THEIR OWN WORDS 17 (2021), <https://www.americanbar.org/content/dam/aba/administrative/women/intheirownwords-f-4-19-21-final.pdf> [<https://perma.cc/QP38-AM6X>]. For example, the 2021 report, *In Their Own Words*, discussed an in-house lawyer who spoke of how lonely it was to be the only Latina in her organization, and two Black women who spoke about how difficult it can be for women of color to connect with other lawyers within their organizations who have different backgrounds and experiences. *Id.*

7. See Dylan Jackson, *George Floyd's Death Ushered in a New Era of Law Firm Activism*, AM. LAW. (May 25, 2021, 5:00 AM), <https://www.law.com/americanlawyer/2021/05/25/george-floyds-death-ushered-in-a-new-era-of-law-firm-activism-and-theres-no-going-back-405-84104/> [<https://perma.cc/M8B2-AKQA>]. In 1987, the American Bar Association's Commission on Women in the Profession was created. DEBORAH L. RHODE, AM. BAR ASS'N, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 5 (2001), <https://womenlaw.law.stanford.edu/pdf/aba.unfinished.agenda.pdf> [<https://perma.cc/U6BJ-NXRB>]. In 1989, over one hundred legal employers in the Bay Area adopted goals and timetables for minority hiring and advancement. STATE BAR OF CAL., REPORT AND RECOMMENDATIONS FROM THE DIVERSITY PIPELINE TASK FORCE 10 (2006), [https://www.calbar.ca.gov/Portals/0/documents/caf/2006\\_Diversity-Pipeline-Report.pdf?ver=2017-05-19-133238-773](https://www.calbar.ca.gov/Portals/0/documents/caf/2006_Diversity-Pipeline-Report.pdf?ver=2017-05-19-133238-773) [<https://perma.cc/J434-XBSQ>]. That same year, the Multi-Cultural Women Attorney's Network, an American Bar Association (ABA) initiative, was formed. *Timeline*, ABA: COMM'N ON RACIAL & ETHNIC DIVERSITY IN THE PRO. (May 28, 2020), <https://www.americanbar.org/groups/diversity/DiversityCommission/timeline/> [<https://perma.cc/V33X-7QER>]. In the 1990s, some law firms launched diversity committees. See, e.g., STATE BAR OF CAL., *supra* note 7, at 14 (reporting that the Orrick law firm established its diversity committee in 1990); *Committees and Leadership*, SHEPPARD MULLIN, <https://www.sheppardmullin.com/diversity-leadership> [<https://perma.cc/6EVT-DCYW>] (last visited Dec. 20, 2021) (reporting that the firm established its diversity committee in the 1990s); *Diversity and Inclusion*, COZEN O'CONNOR, <https://www.cozen.com/about/diversity> [<https://perma.cc/8SVR-D4VG>] (last visited Dec. 20, 2021) (reporting that the firm established its diversity committee in the late 1990s). In 2006, the ABA issued the report *Visible Invisibility: Women of Color in Law Firms*, revealing that women of color were often stuck in dead-end

extraordinarily well-designed for the preservation of the status quo, enabling only slow, minimal progress in the representation of women of color.<sup>8</sup> The attrition rate of women of color lawyers is the highest experienced at law firms.<sup>9</sup> Significant attrition happens between entry-level and partnership.<sup>10</sup> Women of color lawyers make up more than 22 percent of law firm summer associates, but only 9.32 percent of all law firm lawyers and less than 4 percent of partners.<sup>11</sup>

Meanwhile, an unproductive cycle involving underrepresentation and well-being continues at law firms. A lack of diversity helps perpetuate and exacerbate well-being issues for lawyers in underrepresented groups, including women of color, which in turn contributes to attrition and underrepresentation.<sup>12</sup> Experiencing racial and gender bias in employment has been linked to a negative impact on health.<sup>13</sup> Predictably, the negative impacts of COVID-19 fell disproportionately on women and women of color.<sup>14</sup> Tsedale Melaku's preliminary research shows the COVID-19 pandemic, together with the "racial upheaval" of 2020, only compounded the challenges and barriers Black women lawyers face.<sup>15</sup> The link between well-being and inclusion

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assignments and had little access to client development opportunities. ABA COMM'N ON WOMEN IN THE PRO., *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 9–10 (2006), <https://www.americanbar.org/content/dam/aba/administrative/women/visibleinvisibility-execsummary.pdf> [<https://perma.cc/L23C-P7TT>]. In 2010, the ABA reported that some law firms had begun to tie employees' compensation to demonstrated commitment to diversity efforts. TUCKER B. CULBERTSON, MARC-TIZOC GONZÁLEZ & MARGARET MONTOYA, *DIVERSITY IN THE LEGAL PROFESSION: NEXT STEPS* 13 (2010), <https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/next-steps-report.pdf> [<https://perma.cc/4EL6-HD9W>].

8. *See infra* Part I.

9. STERLING & CHANOW, *supra* note 6, at 3.

10. *See Representation of Women and People of Color in U.S. Law Firms in 2020*, NAT'L ASS'N FOR L. PLACEMENT (June 2021), <https://www.nalp.org/0621research> [<https://perma.cc/63VA-2TGA>].

11. 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2, at 17, 23. And yet, the representation of women in law schools has hovered near 50 percent for more than twenty years. *See* Terry Carter, *It's Not Just a 'Guy Thing' Anymore*, 85 A.B.A. J. 18, 18 (1999) ("[W]omen this past autumn represented 46 percent of law school enrollment. . . . Women account for 47 percent of this year's first-year class."); *Women in Law (Quick Take)*, CATALYST (Aug. 26, 2021), <https://www.catalyst.org/research/women-in-law/> [<https://perma.cc/NC6X-6PAR>] (explaining that in Fall 2020, women made up 54.5 percent, and women of color nearly 20 percent, of first-year law students).

12. *See infra* Part II.

13. Ruqaiyah Yearby, *Internalized Oppression: The Impact of Gender and Racial Bias in Employment on the Health Status of Women of Color*, 49 SETON HALL L. REV. 1037, 1041–43 (2019).

14. Tsedale M. Melaku, *The Awakening: The Impact of COVID-19, Racial Upheaval, and Political Polarization on Black Women Lawyers*, 89 FORDHAM L. REV., 2519, 2527 (2021) [hereinafter *The Awakening*].

15. *Id.* at 2519.

has been acknowledged by the National Task Force on Lawyer Well-Being.<sup>16</sup> Their 2017 report discussed the negative effects of a lack of inclusivity on lawyer well-being, noting a strong association between a weak sense of belonging and depressive symptoms.<sup>17</sup> In contrast, a sense of “organizational belongingness”—“feeling personally accepted, respected, included, and supported by others—can contribute significantly to well-being.”<sup>18</sup>

At the same time, law firms have had a long-standing, pervasive lawyer well-being problem, complicating their ability to be welcoming, inclusive places.<sup>19</sup> Many lawyers are suffering.<sup>20</sup> Suicide, substance abuse, and depression have an outsized presence in the legal profession.<sup>21</sup> Relative to other professionals, lawyers suffer a higher level of depression and substance abuse.<sup>22</sup>

In light of the perfect storm of inclusion and well-being challenges, this Article proposes that law firms take substantive, structural steps to cement lawyer well-being in efforts to achieve inclusion. So far, law firms have at best acknowledged a connection between inclusion and well-being.<sup>23</sup> A law firm’s website page may

16. NAT’L TASK FORCE ON LAWYER WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 16 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [<https://perma.cc/M9AY-ZM7C>].

17. *Id.*

18. *Id.*

19. *Id.* at 7.

20. *Id.*

21. See, e.g., Katrina Lee, *The Legal Career: Knowing the Business, Thriving in Practice* 313–45 (2020) (discussing well-being as part of a holistic approach to understanding the business of law); Jarrod Reich, *Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being*, 65 *Vill. L. Rev.* 361, 367–74 (2020) (making a business case for firms to prioritize well-being: “As firms have begun to take incremental steps to promote lawyer well-being, lasting and meaningful change will further benefit firms’ collective bottom lines as it will improve: (1) performance, as clients are demanding efficiency in the way their matters are staffed and billed; (2) retention, as that creates efficiencies and the continuous relationships demanded by clients; and (3) recruitment, particularly as younger millennial and Generation Z lawyers—who prioritize mental health and well-being—enter the profession.”); *Mental Health and the Legal Profession*, *FORDHAM L. REV.* (2021), <https://fordhamlawreview.org/symposiumcategory/mental-health-and-the-legal-profession/> [<https://perma.cc/9WSZ-SWK8>] (featuring articles by authors including Tsedale M. Melaku, Meera Deo, Deborah L. Rhode).

22. Reich, *supra* note 21, at 367 (The first major studies identifying lawyer mental health and substance abuse problems were conducted thirty years ago. These studies showed “significant elevated levels of depression” and a high percentage of “problem drinkers” among lawyers, particularly as compared with both members of other professions and the general population. In the three decades since, not much has changed).

23. See *infra* Part V.

feature a banner referencing both inclusion and well-being,<sup>24</sup> or a law firm's chief diversity officer may link inclusion and well-being on a podcast.<sup>25</sup> However, law firm efforts regarding diversity, equity, and inclusion (DEI), on one hand, and lawyer well-being, on the other, have largely proceeded on separate tracks.<sup>26</sup> To achieve meaningful progress on the twin challenges of lawyer well-being and DEI, against the backdrop of a global pandemic and a national conversation on racial justice, law firms should go beyond gestures and solidify a holistic, interconnected approach to well-being and inclusion. Given law firms' stated commitments to making progress on inclusion,<sup>27</sup> they should seize this moment to embed well-being with inclusion efforts.

Part II of this Article will provide an overview of the state of lawyer well-being and the representation of women of color at law firms. Part III examines the impact of the events of 2020–2021 on women of color lawyers at law firms. Part IV will highlight recent law firm efforts on well-being and DEI. Then, Part V will chart an institutional path forward for law firms that treats well-being as inextricable from inclusion. Finally, Part VI will close with a call to law firms.

## II. AN OVERVIEW: LAWYER WELL-BEING AND THE REPRESENTATION OF WOMEN OF COLOR AT LAW FIRMS

This Part provides an overview of the state of lawyer well-being at law firms and the representation of women of color as a prelude to Part III's examination of the impact of recent events on the experiences of women of color at firms. Law firms fall short in the areas of well-being and representation of women of color, leaving much room for progress.

### A. *Lawyer Well-Being: Pre-Pandemic to Now*

The legal profession and the people who report on and study it have long recognized the existence of lawyer well-being issues.<sup>28</sup> The

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24. See *infra* note 157 and accompanying text.

25. See, e.g., State Bar of Mich.: On Balance Podcast, *Diversity and Inclusion: How Lawyer Well-Being Promotes Inclusivity*, LEGAL TALK NETWORK (Jan. 28, 2021), <https://legaltalknetwork.com/podcasts/state-bar-michigan-on-balance/2021/01/diversity-and-inclusion-how-lawyer-wellbeing-promotes-inclusivity/> [<https://perma.cc/V59H-4GGQ>].

26. See *infra* Part II.

27. See, e.g., SHEPPARD MULLIN, *supra* note 7.

28. See, e.g., Reich, *supra* note 21, at 367. Authors of the 2017 *Path to Lawyer Well-Being* report defined lawyer well-being as a “continuous process whereby lawyers seek to thrive” in the areas of emotional health, occupational pursuits, creative or intellectual endeavors,

documentation of lawyer well-being challenges and tragedies has been ongoing for several decades.<sup>29</sup> Studies on lawyer well-being extend back at least to the 1990s.<sup>30</sup> The media has reported episodically on lawyer well-being issues for over a decade.<sup>31</sup>

In 2016, a landmark ABA study on lawyer well-being and substance abuse concluded that attorneys experience problematic drinking that is “hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher” than other professional populations.<sup>32</sup> The study found “[l]evels of depression, anxiety, and stress among attorneys” to be “significant, with 28 percent, 19 percent, and 23 percent experiencing mild or higher levels of depression, anxiety, and stress, respectively.”<sup>33</sup>

In 2017, the ABA issued the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*.<sup>34</sup> The report’s recommendations “revolve” around five steps: (1) identifying stakeholders and the role every stakeholder can play in reducing the level of toxicity in the legal profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) “[e]mphasizing that well-being is an indispensable part of a lawyer’s duty of competence,” (4) “[e]xpanding educational outreach and programming on well-being issues,” including educating lawyers, judges, and law students on these issues,<sup>35</sup> and (5) taking small, incremental steps to change how law is

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sense of spirituality or greater purpose in life, physical health, and social connections with others.” NAT’L TASK FORCE ON LAWYER WELL-BEING, *supra* note 16, at 9.

29. Reich, *supra* note 21, at 367 (providing an overview of major studies on lawyer well-being).

30. *Id.* at 367.

31. See, e.g., Sue Shellenbarger, *Even Lawyers Get the Blues: Opening Up About Depression*, WALL ST. J. (Dec. 13, 2007, 11:59 PM), <https://www.wsj.com/articles/SB119751245108525653> [<https://perma.cc/H54N-SLVR>].

32. Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 52 (2016). For that study, the ABA partnered with the Hazelden Betty Ford Foundation to study the rates of substance use and other mental health concerns among lawyers, and its findings were reported in the cited *Journal of Addiction Medicine* paper. *Id.* at 46.

33. *Id.* The mental health issues plaguing the legal profession can start in law school. See SHAILINI JANDIAL GEORGE, *THE LAW STUDENT’S GUIDE TO DOING WELL AND BEING WELL* 3 (2021) (“Although most students enter law school relatively happy, by the end of first semester, stress, anxiety, and unhappiness are prevalent, and often continue throughout law school and into their legal careers. Various groups have studied this phenomenon, to particularly unencouraging results.”).

34. NAT’L TASK FORCE ON LAWYER WELL-BEING, *supra* note 16.

35. *Id.* at 2. Some law schools have launched well-being programs and courses. For example, in Fall 2021, Professor Shailini George piloted a new course at Suffolk University Law School based on her law student wellness guide. See GEORGE, *supra* note 33; Greg Lambert, *The Geek in Review Ep. 125 – Shailini George on Law Students*



practiced and how lawyers are regulated to instill greater well-being in the profession.<sup>36</sup>

The ABA followed up on the *Path to Lawyer Well-Being Report* with its Well-Being Pledge.<sup>37</sup> By signing the Well-Being Pledge, legal employers committed to “adopt and prioritize” the ABA’s seven-point framework for improving lawyer well-being.<sup>38</sup> The framework consists of these steps: (1) provide “enhanced and robust” education to attorneys and staff on well-being issues, (2) “[d]isrupt the status quo of drinking-based events,” (3) “[d]evelop visible partnerships with outside resources” committed to addressing well-being issues in the legal profession, including lawyer assistance programs, (4) provide confidential access to well-being experts and resources, including “free, in-house, self-assessment tools,” (5) “[d]evelop proactive policies and protocols,” “including a defined back-to-work policy following treatment,” (6) “[a]ctively and consistently demonstrate that help-seeking and self-care are core cultural values, by regularly supporting programs to improve physical, mental and emotional well-being,” and (7) “[h]ighlight the adoption of this framework.”<sup>39</sup> More than one hundred law firms signed on to the pledge and publicized a commitment to well-being, with many touting the signing on their websites.<sup>40</sup>

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*Doing Well and Being Well*, 3 GEEKS & A L. BLOG (July 22, 2021), <https://www.geeklawblog.com/2021/07/the-geek-in-review-ep-125-shailini-george-on-law-students-doing-well-and-being-well.html> [https://perma.cc/7G4T-XX2H]. See generally, Jordana Alter Confino, *Where Are We on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650 (2019) (describing law school well-being programs and curricula); Katrina Lee, *A Call for Law Schools to Link the Curricular Trends of Legal Tech and Mindfulness*, 48 U. TOL. L. REV. 55, 57–68 (2016) (describing mindfulness programs and curricula in law schools).

36. NAT’L TASK FORCE ON LAWYER WELL-BEING, *supra* note 16, at 2.

37. *Stepping Towards Well-Being: A Seven-Point Framework to Reduce Substance Use Disorders and Mental Health Distress in the Legal Profession*, ABA, [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_working\\_group\\_pledge\\_and\\_campaign.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_working_group_pledge_and_campaign.pdf) [https://perma.cc/BS87-5LZ6] (last visited Sept. 19, 2021).

38. *Id.*

39. *Id.*

40. See *Well-Being in the Legal Profession*, ABA, [https://www.americanbar.org/groups/lawyer\\_assistance/well-being-in-the-legal-profession/](https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/) [https://perma.cc/GUV2-BTWH] (last visited Jan. 11, 2021).

See, e.g., *BakerHostetler Supports ABA Well-Being Pledge and Campaign*, BAKERHOSTETLER LLP (Oct. 23, 2019), <https://www.bakerlaw.com/press/bakerhostetler-supports-aba-well-being-pledge-and-campaign> [https://perma.cc/5L58-8Z9F]; *Hughes Hubbard Joins ABA’s Well-Being Pledge and Campaign*, HUGHES HUBBARD & REED LLP (2019), <https://www.hugheshubbard.com/news/hughes-hubbard-joins-abas-well-being-pledge-campaign> [https://perma.cc/F4Y6-ZL9L]; *Stoel Rives Commits to American Bar Association Well-Being Pledge*, STOEL RIVES LLP (Dec. 3, 2019), <https://www.stoel.com/events-press-releases/press-releases/2019/stoel-rives-commits-to-american-bar-association-we> [https://perma.cc/VXJ5-VZHK].

Also, acknowledging mental health and substance abuse issues in the profession, the ABA, in 2017, replaced the long-standing version of the model rule concerning minimum continuing legal education.<sup>41</sup> In a resolution adopting the new Model Rule, the ABA House of Delegates urged states to require lawyers to earn one Minimum Continuing Legal Education credit of Mental Health and Substance Use Disorders every three years.<sup>42</sup> Currently, several states, including Illinois, Nevada, and North Carolina, require that lawyers earn one MCLE credit in substance abuse or mental health as part of their continuing education requirements.<sup>43</sup>

And so, even before the COVID-19 pandemic, the legal profession was confronting pervasive well-being issues.<sup>44</sup> Pre-pandemic, researcher Patrick Krill was sounding the alarm that the legal profession's "just-make-it-happen" mentality has dire consequences.<sup>45</sup> He called for lawyers to receive training, education, and encouragement that would help them become better and more empathetic managers.<sup>46</sup> He noted that good lawyers can be bad managers without the proper training and skills development.<sup>47</sup> Krill also advised that lawyers need to be better at setting boundaries.<sup>48</sup> He criticized the "make-it-happen" approach of law firms and its impact on attorneys' well-being:

[I]t often tears through and disregards all boundaries and reasonableness, leaving someone else's weekend plans or basic human needs cast aside more thoughtlessly than wrapping paper on an eager child's gift. Self-care, already a mythical concept for many, goes out the window, displaced instead by stress, isolation, sleep deprivation, substance misuse or a litany of other less-than-ideal outcomes . . . I'm suggesting that we all need to—even just incrementally—start pushing back on the unreasonable and start reclaiming our humanity.<sup>49</sup>

Stating a similar critique, Deborah Rhode, in her 2015 book, *The Trouble with Lawyers*, explored the conditions of law firm practice and noted that the price paid for the prioritization of profit at law firms was

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41. *ABA MCLE Model Rule Implementation Resources*, ABA, <https://www.americanbar.org/events-cle/mcle/modelrule/> [<https://perma.cc/Q5WK-GMZV>] (last visited Dec. 20, 2021); ABA HOUSE OF DELEGATES, RESOLUTION 106 (2017), [https://www.americanbar.org/content/dam/aba/directories/policy/2017\\_hod\\_midyear\\_106.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf) [<https://perma.cc/MBB3-CXFU>].

42. ABA HOUSE OF DELEGATES, *supra* note 41, at 5.

43. *See MCLE Rules by Jurisdiction*, ABA, <https://www.americanbar.org/events-cle/mcle/> [<https://perma.cc/25UM-8MHZ>] (last visited Dec. 20, 2021).

44. NAT'L TASK FORCE ON LAWYER WELL-BEING, *supra* note 16, at 7.

45. Patrick Krill, "*Just-Make-It-Happen*" *Mentality Is Bad for Lawyer Well-Being*, LAW.COM (Mar. 19, 2019, 1:33 PM), <https://www.law.com/2019/03/19/just-make-it-happen-mentality-is-bad-for-lawyer-well-being/> [<https://perma.cc/KD5S-EE2L>].

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

lawyers' quality of life.<sup>50</sup> With the prioritization of profit, lawyers at law firms do not have sufficient time to care for themselves and their loved ones; about half suffer from fatigue and stress.<sup>51</sup>

The state of well-being at law firms has only worsened during the COVID-19 pandemic.<sup>52</sup> When law firms were surveyed in 2021 about challenges they faced, the most frequently referenced challenge was attorney well-being.<sup>53</sup> One legal media headline aptly read, *Pandemic Fuels Mental Health Crisis For Young Attorneys*.<sup>54</sup> Krill advised law firms that their workforce's mental health profile has "shifted significantly, and for the worse" since the start of the COVID-19 pandemic.<sup>55</sup> One-third of Americans, he warned, are "showing signs of clinical anxiety or depression, the clearest and most alarming sign yet of the psychological toll exacted by the pandemic."<sup>56</sup> Moreover, in 2020, alcohol and drug use in the United States soared.<sup>57</sup>

Lawyer surveys have borne out dire assessments and warnings about the state of lawyer well-being at law firms.<sup>58</sup> The 2021 ALM Mental Health and Substance Abuse Survey results painted a picture of a profession that is hurting and of a law firm environment that contributes to, rather than alleviates, the hurt.<sup>59</sup> In the ALM survey,

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50. DEBORAH RHODE, *THE TROUBLE WITH LAWYERS 2* (2015) [hereinafter *THE TROUBLE WITH LAWYERS*] ("The priority of profit is responsible for the escalation in billable hours . . . and the price is paid in quality of life.").

51. *See id.* at 15.

52. *See, e.g.*, Linda Ouyang, *Analysis: Law Firms Are Grappling with a Host of HR Challenges*, *BLOOMBERG L.* (July 1, 2021, 4:00 AM), <https://news.bloomberglaw.com/health-law-and-business/analysis-law-firms-are-grappling-with-a-host-of-hr-challenges> [<https://perma.cc/JNM7-QLG5>].

53. *Id.*

54. Anna Sanders, *Pandemic Fuels Mental Health Crisis for Young Attorneys*, *LAW360* (Jan. 25, 2021), <https://plus.lexis.com/api/permalink/d538beca-eb61-4458-9b2c-ed79745cd6bf?context=1530671> [<https://perma.cc/EYE6-7ULY>].

55. Patrick Krill, *The Events of 2020 Have Changed Our Collective Mental Health—and Risk—Profile*, *LAW.COM* (June 30, 2020, 11:58 AM), <https://www.law.com/2020/06/30/the-events-of-2020-have-changed-our-collective-mental-health-and-risk-profile/> [<https://perma.cc/2V6T-8KBR>].

56. *Id.*

57. *Id.*

58. Bree Buchanan & James C. Coyle, *Report from the National Task Force on Lawyer Well-Being*, *ABA* (Nov. 9, 2018), [https://www.americanbar.org/groups/lawyer\\_assistance/task\\_force\\_report/](https://www.americanbar.org/groups/lawyer_assistance/task_force_report/) [<https://perma.cc/34LS-Z53N>].

59. *The Legal Industry's Mental Health Problem Grew in 2020, Our Survey Shows*, *AM. LAW.* (May 3, 2021, 5:00 AM), <https://www.law.com/americanlawyer/2021/05/03/the-legal-industrys-mental-health-problem-grew-in-2020-our-survey-shows/> [<https://perma.cc/Q7U4-TB2K>].

70.69 percent of lawyers responded that they suffer from anxiety.<sup>60</sup> About 62 percent responded that they know colleagues who feel depressed, and about 77 percent responded that they know colleagues who have anxiety.<sup>61</sup> Critically, 75 percent felt that their work environment contributed to their anxiety, depression, and substance abuse issues, and 70 percent felt their work environment contributed to their colleagues' issues.<sup>62</sup> Seventy-six percent believed that their profession has had a negative impact on their mental health over time.<sup>63</sup> Sixty-four percent felt that they could not take an extended leave to address their mental health or substance abuse issues.<sup>64</sup>

The ALM survey revealed that the COVID-19 pandemic exacerbated the significant mental health issues previously faced by legal professionals.<sup>65</sup> (The ALM survey did not capture any race-related information.<sup>66</sup>) Seventy percent responded that the COVID-19 pandemic had made their mental health worse.<sup>67</sup> Responses were mixed regarding the reason why COVID-19 had negatively affected mental health, with the most common answer of "isolation" representing about 34 percent of responses, working remotely representing 13.82 percent of responses, and job loss representing 8.1 percent of responses.<sup>68</sup> Thus, nearly 50 percent of responses reflected a negative impact on mental health brought about by isolation or working remotely.<sup>69</sup>

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60. ALM INTEL., 2021 MENTAL HEALTH AND SUBSTANCE ABUSE SURVEY (2021), [https://docs.google.com/spreadsheets/d/1RM1w5gMI6smsSZ9HP1yPclemYDH\\_r3jm/edit#gid=509821670](https://docs.google.com/spreadsheets/d/1RM1w5gMI6smsSZ9HP1yPclemYDH_r3jm/edit#gid=509821670) [<https://perma.cc/68N4-EGFK>].

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *See id.*

66. *See id.*

67. *Id.*

68. *Id.*

69. *Id.* Reports and surveys about lawyer work during the pandemic reveal that the nature of remote work may have a mixed impact on lawyers' well-being. On one hand, some lawyers feel that they were able to recapture a healthier work-life balance due to work being remote during the pandemic. Emily Lever, *Lawyers Like Working from Home – Up to a Point*, LAW360 (Dec. 10, 2020), <https://plus.lexis.com/api/permalink/49ed261d-f8b4-41c4-99e3-a955e2dfbc44?context=1530671> [<https://perma.cc/2BN3-2ZLW>]. However, others lament that a remote work arrangement leads to "overwork" and has them feeling they are in a "semi-permanent work state." *Id.* Many lawyers have felt a sense of loneliness or disconnection from their colleagues. GENSLER RSCH. INST., U.S. WORK FROM HOME SURVEY 2020 2 (2020), <https://www.gensler.com/doc/gensler-us-work-from-home-survey-2020-briefing-1> [<https://perma.cc/CVL3-ZBUD>] ("When asked what they miss most about working from the office, three out of four legal survey respondents said 'the people.'"); Lever, *supra* ("Half of the respondents to the Gensler survey reported that working from home is lonely.") For some disabled

In a hint of positive developments, stigmatization surrounding the topic of well-being among lawyers appears to be decreasing, and a broader, more nuanced understanding of well-being is emerging.<sup>70</sup> Concepts of well-being, engagement, burnout, and similar social psychological constructs have entered mainstream discussions throughout the profession.<sup>71</sup> Relatedly, a greater understanding of factors affecting productivity has surfaced.<sup>72</sup> Some members of the

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individuals and others who find added burden in commuting, working from home helped decrease stress and made the ability to work more accessible. Lever, *supra*.

70. This trend mirrors some developments outside of the law firm realm. For example, in a move towards reducing the stigma associated with mental health challenges and treatment, and in response to law student advocacy, some states have scaled back or eliminated character and fitness inquiries into mental health illness and treatment. *See, e.g.*, Keshia Clukey, *N.Y. to Ban Mental Health Question on State Bar Application*, BLOOMBERG L. (Feb. 26, 2020), <https://news.bloomberglaw.com/us-law-week/n-y-to-ban-mental-health-question-on-state-bar-application> [<https://perma.cc/GX8L-WMUK>] (“The presence of mental health questions on the bar exam, and the stigma around mental illness, have proven to be barriers to treatment within the legal profession, according to a New York State Bar Association report.”); *Michigan Dropping Mental Health Questions for New Lawyers Entering State Bar*, THE DETROIT NEWS (Mar. 19, 2020, 6:55 PM), <https://www.detroitnews.com/story/news/local/michigan/2020/03/19/michigan-dropping-mental-health-questions-new-lawYERS-state-bar/2880457001/> [<https://perma.cc/W9JX-VCTN>] (“We should not be asking applicants to our bar unfocused questions based on generalizations and misconceptions about mental health,” said Michigan Supreme Court Chief Justice Bridget McCormack in a statement. “Questions about past diagnoses have the unintentional effect of deterring aspiring attorneys from seeking assistance. Law school is grueling. There is nothing wrong with getting help. . . . This reform helps to stop the stigma.”); Madeline Holcombe, *Law Students Say They Don’t Get Mental Health Treatment for Fear It Will Keep Them from Becoming Lawyers. Some States Are Trying to Change That*, CNN, <https://www.cnn.com/2020/02/23/health/law-school-bar-exam-mental-health-questions/index.html> [<https://perma.cc/R9XZ-T3N3>] (Feb. 29, 2020, 11:18 PM); Elle Jones, *Law Students Helped Remove Mental Health Question from N.H. Bar Exam*, CONCORD MONITOR (June 27, 2020, 5:29 PM), <https://www.concordmonitor.com/NH-Removes-Questions-on-Mental-Health-Conditions-from-Bar-Admissions-Applications-34922564> [<https://perma.cc/9E2G-T2FD>]; Monica Harkins, *Update: Supreme Court Says It Will Review Law Students’ Exam Concerns*, WTVQ, <https://www.wtvq.com/2021/03/21/uk-law-students-push-to-remove-mental-health-question-from-bar-exam-application/> [<https://perma.cc/336T-Y5WS>] (Mar. 21, 2021).

71. Stephanie A. Scharf, Roberta D. Liebenberg, Natalie M Gallagher & Destiny Peery, *Practicing Law in the Pandemic and Moving Forward: Results and Best Practices from a Nationwide Survey of the Legal Profession* 13–34 (2021), <https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf> [<https://perma.cc/AV2A-V28A>] (summarizing survey results concerning lawyers’ experiences during the COVID-19 pandemic and proposed best practices). Still, a vast majority of respondents to the 2018 ALM Mental Health and Substance Abuse survey recognized a stigma in the legal profession related to addiction to alcohol or drugs (94%) and depression (81%). Patrick Krill, *Big Law Leaders Say Stigma Comes with Addiction and Mental Health Problems*, Law.com (Sept. 24, 2018), <https://www.law.com/2018/09/24/big-law-leaders-say-stigma-comes-with-addiction-and-mental-health-problems/> [<https://perma.cc/ZJ4R-PEDC>].

72. *See* CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., 2021 REPORT ON THE STATE OF THE LEGAL MARKET 12 (2021),

profession now discuss well-being as a continuous process of seeking to thrive, not primarily as an absence of illness.<sup>73</sup> Some individuals recognize that wellness resources can help them be more effective lawyers.<sup>74</sup> A significant percentage of lawyers—34 percent—surveyed by the ABA in 2020 reported that guidance about enhancing mental health and well-being would help them in their law practice.<sup>75</sup>

In sum, even as stigmatization surrounding mental health distress and treatment appears to be in decline and as the legal profession and law firms chart a path to do better on lawyer well-being issues,<sup>76</sup> lawyers at law firms, and the firms themselves, continue to suffer from a decades-long crisis in lawyer well-being, which deepened during the COVID-19 pandemic.<sup>77</sup>

### B. Representation of Women of Color

In the past few decades, another long-standing law firm problem has been studied and acknowledged. Specifically, the scarcity of women of color in law firms, especially at the partnership levels, has been a topic of study since at least the 1990s.<sup>78</sup> Representation, which hardly ever budes, has been shared, and recommendations have been offered to ameliorate the situation.<sup>79</sup> In the 1990s, the legal profession was confronted with data showing that women of color lawyers rarely stayed in private law firm practice for a decade.<sup>80</sup> The attrition rate of women of color associates at law firms in the late 1990s was 75 percent in five years and 86 percent in eight years.<sup>81</sup> Women of color lawyers surveyed in the 1990s “described the ways in which the combination of being an

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[https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/2021\\_sotlm\\_web\\_v2.pdf](https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/2021_sotlm_web_v2.pdf) [<https://perma.cc/RX3Q-LTQM>].

73. GEORGE, *supra* note 33, at 6.

74. See, e.g., *Lawyer Wellness Guide*, HOW. UNIV. SCH. OF L. LIBR., <https://library.law.howard.edu/wellness> [<https://perma.cc/G5PX-296M>] (last visited Dec. 22, 2021).

75. SCHARF ET AL., *supra* note 71, at 42.

76. NAT’L TASK FORCE ON LAWYER WELL-BEING, *supra* note 16; *Practical Guidance: Lawyer Well-Being*, BLOOMBERG L., <https://www.bloomberglaw.com/product/health/document/XT2Q43000000>, [<https://perma.cc/PVZ3-9P6A>] (last visited Jan. 11, 2022).

77. *Lawyer Wellbeing Is Crucial to Law Firm Sustainability, Says New Acritas Report*, THOMSON REUTERS (Nov. 18, 2020), <https://www.thomsonreuters.com/en-us/posts/legal/acritas-lawyer-wellbeing-report-2020/> [<https://perma.cc/FB9U-Y8HN>].

78. ABA COMM’N ON WOMEN IN THE PRO., *supra* note 7 (discussing work done in the 1990s by the Multicultural Women Attorneys Network and the ABA Commission on Women in the Profession, in conjunction with the Commission on Racial and Ethnic Diversity and their 1994 report, *The Burdens of Both, The Privileges of Neither*).

79. *Id.* at 9–11.

80. *Id.* at 9.

81. *Id.*

attorney of color and a woman was a double negative in the legal marketplace.”<sup>82</sup> In the following decade, the representation and attrition situation did not improve.<sup>83</sup> In 2005, 81 percent of women of color associates had left their law firms within five years of being hired.<sup>84</sup> In 2004, women comprised 17 percent of law firm partners, and people of color only 4 percent of law firm partners.<sup>85</sup>

Addressing the high attrition rate and low representation of women of color in law firms, the ABA issued a report in 2006 recommending strategies to increase the number of women of color within firms, while also documenting their experiences.<sup>86</sup> The report was titled *Visible Invisibility: Women of Color in Law Firms*.<sup>87</sup> Its recommendations included “support[ing] women of color’s efforts to build internal and external support systems,” “integrat[ing] women of color into the firm’s social fabric,” and “increas[ing] awareness of issues of women of color through dialogue.”<sup>88</sup>

Fifteen years after the *Visible Invisibility* report, law firms remain predominantly white, male spaces.<sup>89</sup> Reports continue to document the low numbers of women of color at law firms and offer recommendations to remedy the situation.<sup>90</sup> Also, while the number of white women leaving firms has declined in recent years, the number of women of color leaving firms has increased.<sup>91</sup> In 2020, the ABA issued a report, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color*.<sup>92</sup>

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 11.

87. *Id.* at 7–11.

88. *Id.* at 11.

89. See 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2. While this Article focuses on women of color in law firms, the representation and lived experiences of people of color at law firms and women at law firms also merit much discussion and examination. Similarly, while this Article focuses on the representation of women of color at law firms, representation of women of color in corporate leadership is also underwhelming and has also been the focus of research. Afra Afsharipour, *Women and M&A*, 12 U.C. IRVINE L. REV. (forthcoming 2022); Capers, I. Bennett, *The Law School As a White Space*, 106 MINN. L. REV. 7, 13 (2021).

90. Allison E. Laffey & Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, ABA (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/> [<https://perma.cc/UX59-4SHR>].

91. STERLING & CHANOW, *supra* note 6, at 3.

92. DESTINY PEERY, PAULETTE BROWN & EILEEN LETTS, *LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR* (2020),

The numbers were again underwhelming: women of color comprised about 15 percent of all associates, while the percentage of women of color partners was below 4 percent.<sup>93</sup> Recommendations focused on dismantling structural barriers, ranging from adopting best practices for reducing bias in decision-making, to implementing initiatives grounded “in the complexities of [women of color’s] identities,”—rather than focused on “only one aspect at a time,” like only gender or only race and ethnicity.<sup>94</sup>

The representation of women of color in the partnership ranks is abysmally low.<sup>95</sup> While more than 45 percent of law firm associates are women, the numbers decrease precipitously at the partnership level.<sup>96</sup> Only about 21 percent of law firm equity partners are women.<sup>97</sup> Moreover, 86 percent of female equity partners are white women.<sup>98</sup> People of color account for only 8.1 percent of equity partners, with Black equity partners making up less than 2 percent, Asian/Pacific Islander equity partners about 4 percent, Hispanic/Latinx equity partners just under 3 percent, and Native American equity partners 0.14 percent, of all equity partners.<sup>99</sup> The 2021 Law360 Glass Ceiling survey findings were as follows: “Black women are less than 1% of equity partners at the surveyed firms . . . Hispanic women similarly make up less than 1% of equity partners” and “Asian women make up just over 1% of equity partners” at responding firms.<sup>100</sup> Also, as underwhelming as these numbers are, as Rhode noted, they are not precise and may understate the underrepresentation of women; law firms have not been forthcoming with their data, and definitions of equity partner can vary depending on context.<sup>101</sup> In addition, even though Asian women make up a slightly higher percentage of equity partners compared to other groups of women of color, Asian Americans

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<https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf> [<https://perma.cc/9AJA-5HKG>].

93. *Id.* at v.

94. *Id.* at 24.

95. STERLING & CHANOW, *supra* note 6, at 3 (“Existing research documents that women of color are the most dramatically underrepresented group in law firm partnerships.”).

96. NAT’L ASS’N OF WOMEN LAWS., 2020 SURVEY REPORT ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS 6, 8 (2020).

97. 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2, at 18.

98. NAT’L ASS’N OF WOMEN LAWS., *supra* note 96, at 8.

99. *Id.* at 8, 18.

100. Jacqueline Bell, *Law360’s Glass Ceiling Report: What You Need to Know*, LAW360 (Sept. 13, 2021, 3:03 PM), <https://www.law360.com/pulse/articles/1418221?scroll=1&related=1> [<https://perma.cc/WKP5-ZJ2W>].

101. Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871, 873 (2014).



“have the highest ratio of associates to partners (in law firms) of any racial or ethnic group,” meaning their rate of promotion to partner lags behind other racial and ethnic groups.<sup>102</sup>

Especially in light of attrition issues from associate to partner level, associate pipeline numbers alone are not promising.<sup>103</sup> Of all law firm associates, 26.48 percent are people of color.<sup>104</sup> Women make up 47.45 percent, while women of color make up 15.17 percent of all associates.<sup>105</sup> White women make up about 67 percent of women associates.<sup>106</sup>

Women of color lawyers’ presence in law firms is so scarce that gathering data on them is extremely challenging.<sup>107</sup> When the ABA sought data about the experiences of women of color in law practice for more than twenty years, not enough data was available.<sup>108</sup> Law firms did not have a sufficient number of women of color equity partners to “collect data that is statistically significant.”<sup>109</sup> As a result, the data gatherers sounded an alarm for the urgent need to address the representation of women of color in large law firms:

There is one statistic, however, that has not changed over the course of the past 20 years: women of color represent approximately 2 percent of all equity partners at large law firms. That 2020 statistic combined with anecdotal information collected in the study is cause for sufficient alarm as is the mere fact that there were not enough women of color to conduct a fulsome analysis.<sup>110</sup>

Before 2020, law firms should have been alarmed about their experiences and scarcity of women of color.<sup>111</sup> Unfortunately, with the events of 2020–2021, the collective situation for women of color at law firms has only worsened.<sup>112</sup>

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102. Eric Chung, Samuel Dong, Xiaonan April Hu, Christine Kwon & Goodwin Liu, *A Portrait of Asian Americans in the Law*, YALE L. SCH. 17 (July 18, 2017), [https://static1.squarespace.com/static/59556778e58c62c7db3f84/t/596cf0638419c2e5a0dc5766/1500311662008/170716\\_PortraitProject\\_SinglePages.pdf](https://static1.squarespace.com/static/59556778e58c62c7db3f84/t/596cf0638419c2e5a0dc5766/1500311662008/170716_PortraitProject_SinglePages.pdf) [<https://perma.cc/Y2VB-84AM>].

103. Compare ABA COMM’N ON WOMEN IN THE PRO., *supra* note 7, at 9 (finding that 81 percent of women of color leave their law firm within five years of being hired), with 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2, at 20 (finding that women of color comprise 15.17 percent of associates).

104. 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS, *supra* note 2, at 12.

105. *Id.*

106. NAT’L ASS’N OF WOMEN LAWS., *supra* note 96, at 6.

107. PEERY ET AL., *supra* note 92, at iii.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 20.

112. STERLING & CHANOW, *supra* note 6, at 3.

### III. IMPACT OF EVENTS IN 2020–2021 ON WOMEN OF COLOR LAWYERS

At law firms, the negative impact of the major events of 2020–2021 fell disproportionately on women lawyers, and especially women of color lawyers.

In 2020–2021, all law firms and their lawyers faced the challenge of the COVID-19 pandemic and an increased focus on racial justice issues.<sup>113</sup> Like in many other industries, law firms experienced an immediate business impact from the COVID-19 pandemic.<sup>114</sup> Law firms shut down their offices abruptly in March 2020, and most firm employees began working remotely.<sup>115</sup> Law firms put in place cost-cutting measures, including furloughs.<sup>116</sup> In addition, summer associate programs were shortened and largely conducted virtually.<sup>117</sup>

Meanwhile, across the United States, calls for racial justice permeated national conversation.<sup>118</sup> In March 2020, two police officers killed a Black woman named Breonna Taylor during a raid on her

113. See, e.g., CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 2 (“To say that the past year has been an extraordinary one for the legal market would be a gross understatement. The combined effects of a global pandemic, a serious economic downturn, social activism, and political uncertainty in the United States and elsewhere clearly make 2020 a year for the record books.”).

114. See, e.g., *id.* (“[2020] was a year in which law firms experienced unprecedented disruptions in their operations and were forced to adapt rapidly to dramatic market changes.”); Daniel S. Wittenberg, *The Pandemic’s Dramatic Effect on the Business of Law*, ABA (Oct. 28, 2020), <https://www.americanbar.org/groups/litigation/publications/litigation-news/business-litigation/the-pandemics-dramatic-effect-the-business-law/> [https://perma.cc/RPX7-PD2W] (“COVID-19 has had a massive impact on the legal industry . . . [L]aw firms have rolled out various cost-cutting measures, including layoffs, pay cuts, furloughs, and shortened summer programs.”); *Clio’s COVID-19 Impact Research Briefing: June 17*, CLIO, <https://www.clio.com/resources/legal-trends/covid-impact/briefing-june-17/> [https://perma.cc/7H6H-A4MB] (last visited Dec. 18, 2021) (“As many as 75 percent of law firms predict that circumstances around the coronavirus will have longer-term impacts on their businesses even after the pandemic comes to a close.”).

115. See *Law Firms Go Remote: Updates on Law Firm Closures During the Coronavirus Crisis*, LAW.COM (Mar. 20, 2020, 6:00 PM), <https://www.law.com/international-edition/2020/03/20/big-law-goes-remote-updates-on-law-firm-closures-during-the-coronavirus-crisis-378-136977/?srlreturn=20211118112255> [https://perma.cc/LDR8-GRXJ] (reporting that many large law firms were requiring, encouraging, or urging their employees to work from home as of March 20, 2020).

116. See Wittenberg, *supra* note 114.

117. See Roy Strom, *Automation, Bingo, Zoom: Inside a Virtual Big Law Summer Program*, BLOOMBERG L. (June 4, 2020, 4:41 AM), <https://news.bloomberglaw.com/business-and-practice/automation-bingo-zoom-inside-a-virtual-big-law-summer-program> [https://perma.cc/N98Z-WJ88] (discussing Wilson Sonsini’s virtual summer associate program); Meghan Tribe, *Long, Uncertain Season Lies Ahead for Big Law Summer Associates*, BLOOMBERG L. (June 1, 2020, 5:00 AM), <https://news.bloomberglaw.com/us-law-week/long-uncertain-season-lies-ahead-for-big-law-summer-associates> [https://perma.cc/4PHK-7JWX] (“The coronavirus outbreak has forced many firms to shift to shortened, virtual programs or cancel them altogether.”).

118. *The Awakening*, *supra* note 14, at 2520.

apartment; the two police officers were not charged in connection with her death.<sup>119</sup> On May 25, 2020, a police officer killed a Black man named George Floyd—with the killing captured on camera. (Unlike the officers involved in Breonna Taylor’s death, the police officer who killed Floyd was convicted and sentenced.<sup>120</sup>) Taylor and Floyd’s killings by police sparked nationwide protests calling for racial justice.<sup>121</sup>

Also, during the COVID-19 pandemic, racially motivated violence against people of Asian descent in the United States rose sharply amidst fearmongering rhetoric labeling COVID-19 as the “China virus.”<sup>122</sup> In March 2021, a white male shot and killed eight people in Atlanta; six of the eight murdered were Asian American women.<sup>123</sup> Between March 19, 2020 and February 28, 2021, the Stop

119. *2 Officers Shot in Louisville Protests over Breonna Taylor Charging Decision*, N.Y. TIMES, <https://www.nytimes.com/2020/09/23/us/breonna-taylor-decision-verdict.html> [<https://perma.cc/W8P2-FB4L>] (Apr. 16, 2021).

120. See Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Nov. 1, 2021), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/U3CH-RBML>]; Emma Bowman, *Minneapolis Reacts to Chauvin Sentence with Fury and Hope*, NPR (June 25, 2021, 8:01 PM), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/06/25/1010384150/minneapolis-reacts-to-chauvin-sentence-with-fury-and-hope> [<https://perma.cc/6LHL-DVML>].

121. See, e.g., Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/9GMN-JEN7>] (“The recent Black Lives Matter protests peaked on June 6, when half a million people turned out in nearly 550 places across the United States. Four recent polls . . . suggest that about 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and others in recent weeks.”). Also, the Say Her Name campaign, created by Kimberlé Crenshaw in 2014 and viewed as part of the Black Lives Matter movement, gained increased attention following Taylor’s death. See Mary Louise Kelly & Heidi Glenn, *Say Her Name: How the Fight for Racial Justice Can Be More Inclusive of Black Women*, NPR (July 7, 2020, 6:59 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/07/888498009/say-her-name-how-the-fight-for-racial-justice-can-be-more-inclusive-of-black-woman> [<https://perma.cc/WBB8-QCW3>]; *Breonna Taylor: Protestors Call on People to ‘Say Her Name’*, BBC (June 7, 2020), <https://www.bbc.com/news/world-us-canada-52956167> [<https://perma.cc/4RMN-SAZJ>].

122. See CTR. FOR THE STUDY OF HATE & EXTREMISM, FACT SHEET: ANTI-ASIAN PREJUDICE MARCH 2020 1 (2021), <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%203.2.21.pdf> [<https://perma.cc/29EE-V5Q7>] (“Anti-Asian hate crime in 16 of America’s largest cities increased 149% in 2020.”); Kimmy Yam, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (March 9, 2021, 2:37 PM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264> [<https://perma.cc/U73U-GCTX>]; Jae C. Hong/*The Associated Press, More than 9,000 Anti-Asian Hate Incidents Have Been Reported Since the Pandemic Began*, NPR (Aug. 12, 2021 6:02 PM), <https://www.npr.org/2021/08/12/1027236499/anti-asian-hate-crimes-assaults-pandemic-incidents-aapi> [<https://perma.cc/24JQ-8M3S>].

123. Giulia McDonnell, Nieto del Rio & Edgar Sandoval, *Women of Asian Descent Were 6 of the 8 Victims in Atlanta Shootings*, N.Y. TIMES (July 27, 2021),

AAPI Hate reporting center received reports of 3,795 hate incidents, including verbal harassment, shunning, physical assault, being coughed or spit upon, civil rights violations, and online harassment.<sup>124</sup> Preliminary data showed a 149 percent increase in anti-Asian hate crime in sixteen of America's largest cities in 2020.<sup>125</sup> Even so, the reporting center cautioned that the reported hate incidents represented only a fraction of the events that actually occurred.<sup>126</sup>

The story of how these events of 2020–2021—the COVID-19 pandemic and the “racial reckoning” in the United States—impacted women lawyers, and, in particular, women of color lawyers, is still unfolding.<sup>127</sup> So far, research reveals that the negative impacts have fallen disproportionately on women and women of color.<sup>128</sup> Although the transition to remote work has affected all lawyers, it has had a disproportionate impact on women lawyers with children and lawyers of color.<sup>129</sup> With the COVID-19 pandemic, lawyers of color have (1) even higher levels of stress about work, (2) are more likely to think the day never ends, (3) have greater difficulty taking time off from work, (4) feel overwhelmed with all the things they have to do, (5) feel it is hard to keep work and home separate, and (6) find work disrupted by family and household obligations.<sup>130</sup> The 2021 ALM survey on lawyer well-being revealed a gender disparity in responses.<sup>131</sup> Over one-third of respondents (37 percent) thought that wellness resources are “very important” or “extremely important,” with women lawyers significantly more likely to rate wellness resources as “very important” or “extremely important.”<sup>132</sup>

If women lawyers feel a comparatively greater need for more wellness resources, and lawyers of color experience higher stresses at work, the outlook for the intersectional impact on women of color is bleak. Systemic racism, systemic gendered racism, and systemic sexism

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<https://www.nytimes.com/2021/03/17/us/asian-women-victims-atlanta-shootings.html>  
[<https://perma.cc/UW32-T3VJ>].

124. RUSSELL JEUNG, AGGIE YELLOW HORSE, TARA POPOVIC & RICHARD LIM, STOP AAPI HATE NATIONAL REPORT 1 (2021), <https://secureserv-ercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf> [<https://perma.cc/G3Y2-6AXF>].

125. CTR. FOR THE STUDY OF HATE & EXTREMISM, *supra* note 122.

126. JEUNG ET AL., *supra* note 124.

127. *The Awakening*, *supra* note 14, at 2519.

128. *Id.*

129. SCHARF ET AL., *supra* note 71, at v. For this study, the ABA surveyed more than four thousand lawyers in September and October 2020. *Id.* at 6.

130. *Id.* at 18.

131. ALM INTEL., *supra* note 60.

132. *Id.*

reliably persist in large law firms.<sup>133</sup> Before the COVID-19 pandemic, Tsedale Melaku reminded that it is “hard and uncomfortable to talk about what *real* diversity entails.”<sup>134</sup> Women and people of color in large organizations, including law firms, often have to “figure it out on their own.”<sup>135</sup> Law firms have a hyper-competitive culture that favors individualistic environments over collegiality and leads to isolation—a problem that especially harms women of color.<sup>136</sup> This isolation can exact an even greater toll when a woman of color must consider whether or not to ask for a fair share of origination or increased compensation.<sup>137</sup> When someone says to a woman or person of color, “You don’t look like a lawyer,” they are communicating “the idea that the norms of success, ability, and competence are tied to looking a certain way—usually white and male.”<sup>138</sup> Minority professionals, including Black professionals, may feel they have to act cautiously to avoid upsetting the majority group’s sensibilities.<sup>139</sup> “Put simply, they can be visibly black, but don’t want to be perceived as stereotypically black.”<sup>140</sup>

Systemic gendered racism has given rise to a pattern of invisible, heavy burdens on the lived experiences of people of color and women, and, in particular, women of color lawyers at law firms.<sup>141</sup> Melaku’s research previously illuminated the impact of systemic gendered racism at law firms on the lived experiences of Black women lawyers.<sup>142</sup> She described the “invisible labor” performed by Black women lawyers in “negotiat[ing] the ongoing meaning of their institutional role and presence,” and also the “inclusion tax” paid by them in the form of “time,

133. Katrina Lee, *Discrimination as Anti-Ethical: Achieving Systemic Change in Large Law Firms*, 98 DENV. L. REV. 581, 581 (2021) [hereinafter *Discrimination as Anti-Ethical*]. A significant income gap between women and men at law firms persists, and the pay gap is wider for women of color. STERLING & CHANOW, *supra* note 6, at 8. Women of color lawyers have described being used as window dressing on client pitches without receiving credit. *Id.* at 12.

134. Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer”*, HARV. BUS. REV. (Aug. 7, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer> [https://perma.cc/26WQ-Y2FB] [hereinafter *You Don’t Look Like a Lawyer*].

135. *Id.*

136. STERLING & CHANOW, *supra* note 6, at iii.

137. *Id.* at 14.

138. *You Don’t Look Like a Lawyer*, *supra* note 134.

139. Adia Harvey Wingfield, *Being Black—but Not Too Black—in the Workplace*, ATLANTIC (Oct. 14, 2015), <https://www.theatlantic.com/business/archive/2015/10/beingblack-work/409990/> [https://perma.cc/YBG9-5YBB].

140. *Id.*

141. *See* Lee, *supra* note 133.

142. TSEDALE M. MELAKU, *YOU DON’T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM* 16–18 (2019).

money, and mental and emotional energy, just to be allowed in white spaces.”<sup>143</sup>

Following the onset of the COVID-19 pandemic, Melaku provided a compelling preliminary account of how the pandemic and “racial upheaval” have only compounded the challenges and barriers Black women lawyers face.<sup>144</sup> With her survey of Black women lawyers, Melaku provided “some early insights into the particulars of how [Black women lawyers’] emotional, psychological, and social well-being is affected by this moment of unrest.”<sup>145</sup> Her survey revealed that the “invisible labor exerted by Black women has become even more pronounced during the COVID-19 pandemic.”<sup>146</sup> Melaku concluded that “[t]rying to negotiate remote workplace dynamics in an effort to maintain professionalism and collegial interactions have created added emotional and cognitive labor for many Black professionals.”<sup>147</sup> Melaku described the felt pressure and burden: “Preliminary findings of my online survey suggest that Black women feel unmotivated, have a sense of diminished concentration, feel the pressure to manage everything, have anxiety about keeping up appearances, and feel the burden of their invisible labor.”<sup>148</sup>

The story of the impact of COVID-19, as well as the rise in anti-Asian hate violence in the United States against Asian American lawyers—in particular, Asian American women lawyers—is still unfolding. As of this Article’s writing, more than six months have passed since the Atlanta murders of six Asian American women.<sup>149</sup> That

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143. *Id.* The 2021 ABA report, *In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession*, discussed a Black woman lawyer’s reflection about how “a need to navigate white culture” contributes to the isolation felt by women of color. STERLING & CHANOW, *supra* note 6, at 18. She explained, “It’s not our culture to be vocal about who we are, what our background is. But I’ve learned that very early on, in order for you to advance, people have to know who you are. You’ve gotta share bits and pieces of your background.” *Id.*

144. *The Awakening*, *supra* note 14, at 2519. Drawing on literature on intersectionalism, Melaku explained, “The experiences of women of color, and Black women in particular, are amplified by a system of oppression where race and gender intersect, overlap, and combine to produce simultaneous and often disadvantageous outcomes.” *Id.*; see also Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 364 (2021) (describing “intersectional battle fatigue” in the context of the legal academy: “As a result of the systemic gendered racism inherent in existing norms, Black women are silenced by intersectional microaggressions, white tears, and tokenism. They suffer intersectional battle fatigue, a consequence of having to negotiate identity in ways that result in physical, psychological, and emotional trauma.”).

145. *The Awakening*, *supra* note 14, at 2539.

146. *Id.* at 2529.

147. *Id.*

148. *Id.* at 2530.

149. McDonnell et al., *supra* note 123.

horrific event, together with the reported rise in anti-Asian hate incidents, and the video replays in the media of elderly Asian Americans being beaten and harassed on city streets, has taken an emotional and psychological toll on Asian Americans.<sup>150</sup> Asian American women lawyers have spoken up about incidents of anti-Asian hate crimes and harassment.<sup>151</sup> When out in public, many Asian Americans, feel fear and apprehension.<sup>152</sup> Thirty-two percent of Asian American adults say they have feared someone might threaten or physically attack them; this represents a higher percentage than for other racial or ethnic groups.<sup>153</sup> A substantial percentage of Asian Americans feel under attack: 81 percent of Asian American adults perceive that violence against Asian Americans is increasing.<sup>154</sup>

Before 2020, women of color were drastically underrepresented in law firms and, though data was scarce, attempts to document their experiences have revealed a group having to navigate deeply entrenched systemic gendered racism.<sup>155</sup> The events of 2020–2021, with their disproportionate impact on women and women of color,<sup>156</sup> only made that navigation even more challenging.

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150. See Katrina Lee, *An Asian American Mother's Sadness and Hope: Katrina Lee Reflects on Anti-Asian Violence*, COLUMBUS MONTHLY (Oct. 4, 2021, 9:00 AM), <https://www.columbusmonthly.com/story/lifestyle/around-town/2021/10/04/anti-asian-violence-harassment-community-katrina-lee-columbus/5914588001/> [<https://perma.cc/TKY2-CSJS>].

151. See, e.g., Vivia Chen, *A Tipping Point for Asian American Lawyers?*, BLOOMBERG L. (March 19, 2021, 9:50 AM), <https://news.bloomberglaw.com/business-and-practice/a-tipping-point-for-asian-american-lawyers> [<https://perma.cc/6RRX-U2WK>] (“I was not shocked by the rise of attacks on Asian Americans, says Paul Weiss litigation partner Jennifer Wu . . . When I was growing up in the 1980s, I remember my father hanging an air freshener on the rear view mirror that looked like an American flag, because he didn’t want us to be targeted, adding, the reality is that anti-Asian hate is not new to this country.”); Lee, *supra* note 150 (cleaned up). Before 2020, Asian American lawyers had shared about racist taunts and behaviors. See, e.g., Marc Davis, *Rise in Hate Crimes, Divisive Rhetoric Prompts Bar Groups to Act*, ABA J. (Apr. 1, 2017, 4:10 AM), [https://www.abajournal.com/magazine/article/bar\\_resists\\_hate\\_crime\\_rhetoric](https://www.abajournal.com/magazine/article/bar_resists_hate_crime_rhetoric) [<https://perma.cc/4UJH-8D76>] (Cyndie Chang, a partner at Duane Morris, shared that she was recently the victim of a racist taunt, commenting, “I’m an Asian-American female, so this is not the first time it happened to me.”).

152. Neil G. Ruiz, Khadijah Edwards & Mark Hugo Lopez, *One-Third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them Is Rising*, PEW RSCH. CTR. (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/> [<https://perma.cc/FBR2-AB3J>].

153. *Id.*

154. *Id.*

155. *The Awakening*, *supra* note 14, at 2521.

156. *Id.* at 2520.

## IV. LAW FIRM EFFORTS

Prior to 2020, many law firms publicly expressed their commitment to lawyer well-being and to increasing racial and gender representation within their organizations.<sup>157</sup> Against this backdrop, in 2020–2021, law firms launched internal well-being initiatives to address the needs of their employees during the era of COVID-19 and amidst what at least one news outlet called, a “summer of racial reckoning.”<sup>158</sup> Large law firms also issued powerful statements on

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157. *Well-Being in the Legal Profession*, ABA, [https://www.americanbar.org/groups/lawyer\\_assistance/well-being-in-the-legal-profession/](https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/) [<https://perma.cc/G5HD-UMWF>] (last visited Dec. 27, 2021). More than one hundred law firms signed the American Bar Association’s well-being pledge, pledging to support the ABA’s well-being campaign and adopt its seven-point framework for improving well-being in the legal profession, and many touted signing the pledge on their respective websites. *See, e.g.*, BAKERHOSTETLER LLP, *supra* note 40; HUGHES HUBBARD LLP, *supra* note 40; STOEL RIVES LLP, *supra* note 40. Also, dozens of law firms participated in the Mansfield Rule program during its first year. Bonnie Eslinger, *Effort to Boost Diversity in Leadership Touts Top Law Firms*, LAW360 (Aug. 20, 2018, 11:18 PM), [https://www.cov.com/-/media/files/corporate/publications/2018/08/effort\\_to\\_boost\\_diversity\\_in\\_leadership\\_touts\\_top\\_la\\_w\\_firms.pdf](https://www.cov.com/-/media/files/corporate/publications/2018/08/effort_to_boost_diversity_in_leadership_touts_top_la_w_firms.pdf) [<https://perma.cc/VRD3-Y6YX>]; *Mansfield Rule 4.0*, DIVERSITY LAB, <https://www.diversitylab.com/mansfield-rule-4-0/> [<https://perma.cc/XH9S-LTQ8>] (last visited Dec. 27, 2021) (“The goal of the Mansfield Rule is to boost the representation of diverse lawyers in law firm leadership by broadening the pool of candidates considered for these opportunities.”). In 2019, five law firms announced their collaboration on the Move the Needle Fund, a new initiative designed to test new efforts to build a more diverse and inclusive legal profession. *See, e.g.*, Stephanie Russell-Kraft, *Law Firms Pledge \$5M to Fix Legal Industry’s Diversity Problem*, BLOOMBERG L. (Sept. 18, 2019, 5:00 AM), <https://news.bloomberglaw.com/us-law-week/law-firms-pledge-5m-to-fix-legal-industrys-diversity-problem> [<https://perma.cc/K2YQ-Z3TL>]; *Orrick Is a Founding Firm in an Unprecedented Collaboration to Improve Diversity & Inclusion in Law*, ORRICK HERRINGTON & SUTCLIFFE LLP (Sept. 18, 2019), <https://www.orrick.com/en/news/2019/09/orrick-is-a-founding-firm-in-an-unprecedented-collaboration-to-improve-diversity-inclusion-in-law> [<https://perma.cc/UB7P-F4L7>]. The Move the Needle Fund, as of December 2021, featured four “founding law firms.” *Founding Law Firms & Measurable Goals*, MOVE THE NEEDLE FUND, <https://www.mtnfund2025.com/> [<https://perma.cc/8YV8-RW4W>] (last visited Dec. 27, 2021).

158. Ailsa Chang & Rachel Martin, *Summer of Racial Reckoning*, NPR (Aug. 16, 2020, 9:00 AM), <https://www.npr.org/2020/08/16/902179773/summer-of-racial-reckoning-the-match-lit> [<https://perma.cc/23EH-4E64>] (“George Floyd, Breonna Taylor and Ahmaud Arbery all became part of a rallying cry in cities and towns across the country, forcing the United States to confront the racism of its past and present.”); *see, e.g.*, Staci Zaretsky, *Biglaw Firm Offers Important New Benefit During Pandemic to Improve Well-Being*, ABOVE THE L. (July 27, 2020, 11:49AM), <https://abovethelaw.com/2020/07/biglaw-firm-offers-important-new-benefit-during-pandemic-to-improve-well-being/> [<https://perma.cc/7WW5-RMFX>] (“McDermott Will & Emery has partnered with Homethrive to offer all of the law firm’s U.S. employees fully covered family caregiver services.”); Roy Strom, *Lawyers, Big Law Firms Confront Coronavirus Anxiety*, BLOOMBERG L. (March 19, 2020, 3:51AM), <https://news.bloomberglaw.com/business-and-practice/lawyers-big-law-firms-confront-coronavirus-anxiety> [<https://perma.cc/297S-JZ7J>] (“Ropes & Gray offers an employee assistance program that provides free sessions with a counselor. The firm has developed an internal website regarding coronavirus anxiety and working remotely.”).



anti-racism, with some vowing to bring down systemic barriers to true DEI.<sup>159</sup> In 2021, law firms issued statements condemning anti-Asian

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*See generally* CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 13 (“Many firms have used the time of the pandemic to focus more attention on issues of wellness, work-life balance, and the necessity of caring for their legal and administrative staffs in terms of physical safety, mental health, and training.”).

159. *See Collaborate for Change: Standing Against Racism*, PROSKAUER ROSE LLP, <https://www.proskauer.com/diversity/collaborate-for-change> [<https://perma.cc/D6FX-8HQ4>] (last visited Dec. 27, 2021) (“Racism is a global issue that impacts society at large, but we know that change begins within our own institutions.”); Brad S. Karp, *George Floyd and the Quest for Racial Justice*, PAUL, WEISS, RIFKIN, WHARTON & GARRISON LLP (June 3, 2020), <https://www.paulweiss.com/about-the-firm/firm-news/george-floyd-and-the-quest-for-racial-justice?id=37191> [<https://perma.cc/Q9TE-MC7G>] (“We will continue to have open conversations about our different experiences, educating each other on the manifest impacts of institutional and structural racism.”); Kim Koopersmith, *Heeding the Call: Our Commitment to Racial Justice*, AKIN GUMP STRAUSS HAUER & FELD LLP, <https://www.akingump.com/en/diversity-inclusion/heeding-the-call-our-commitment-to-racial-justice.html> [<https://perma.cc/UD7Q-DNHX>] (last visited Dec. 27, 2021) (“We start by acknowledging and recognizing the most basic reality that systemic racism is a blight on our country and around the world.”); *Kirkland Pledge to Support Equality, End Injustice: A Message from Our Chairman*, KIRKLAND & ELLIS LLP (Jun. 5, 2020), <https://www.kirkland.com/marquee-stories/social-commitment/kirkland-pledge-to-support-equality-end-injustice> [<https://perma.cc/F8HU-9RJ6>] (“Internally, we will remain steadfast in our commitment to advancing diversity and inclusion in our recruiting, mentorship and sponsorship, and we remain committed to having a partnership that reflects the diversity of our society. And externally, we are working closely together to deepen and expand our efforts to do our part to fight systemic inequities.”); Andrew Levander & Henry Nassau, *Black Lives Matter*, DECHERT LLP, <https://www.dechert.com/about/diversity-and-inclusion/black-lives-matter.html> [<https://perma.cc/4X69-J3K3>] (last visited Dec. 27, 2021) (“We will continue to do this work, and to support other organizations that have dedicated themselves to cleansing our legal systems of unlawful bias. . . . And we must continue to do the hard work of challenging our own biases and assumptions—on race, as well as ethnicity, gender and sexual orientation—and holding ourselves and our Firm accountable.”); *Firm Statement on Diversity - Channeling Energy into Meaningful Action*, SHOOK, HARDY & BACON LLP (June 15, 2020), <https://www.shb.com/news/2020/06/firm-statement-of-reflection-on-diversity> [<https://perma.cc/N2CP-C9AU>] (“[N]ow more than ever we have a chance to redouble our efforts, seize the moment, and advance diversity and inclusion even more—both inside and outside the firm. . . . We believe that conscious and unconscious biases have harmed our institutions and our profession.”). Similarly, large law firms’ clients, corporations, “reacted to the nation’s broadened support for the Black Lives Matter movement in the wake of George Floyd’s death.” Veronica Root Martinez & Gina-Gail S. Fletcher, *Equality Metrics*, YALE L.J.: FORUM (June 1, 2021), <https://www.yalelawjournal.org/forum/equality-metrics> [<https://perma.cc/W8K9-3HLM>]. Professors Veronica Root Martinez and Gina-Gail S. Fletcher described the corporations’ reactions as “unusually swift” and marked by general statements of support, some accompanied by no action and others accompanied by limited action or by a large outlay of resources aimed at addressing systemic racism. *Id.*

harassment and violence.<sup>160</sup> The level of outpour of public statements on racism and racial justice from BigLaw was unprecedented.<sup>161</sup>

This Part takes stock of efforts by law firms in the areas of well-being and DEI, in the wake of the events of 2020–2021. It describes and evaluates recent law firm developments in well-being and DEI. These efforts proceed largely on separate tracks and have left undisrupted law firms’ systemic issues.

### A. Well-Being

In 2020, in light of the COVID-19 pandemic, law firms were focused on lawyer well-being and its relation to how and where lawyers worked.<sup>162</sup> When in-person operations shut down in March 2020, law firms quickly shifted, in a way they never had before, to online work.<sup>163</sup> This development resulted in a change in attitudes.<sup>164</sup> Most firms now acknowledge that remote assignments—though different from in-person operations—can work.<sup>165</sup> Many large law firms are allowing or encouraging attorneys to come into the office as they see fit.<sup>166</sup> While some firms are going back to “normal,” and requiring all lawyers to work in person, others are not requiring five-days-a-week attendance. Others are still offering a full-time remote option.<sup>167</sup> Many lawyers have

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160. See, e.g., *Sidley Stands Against Anti-Asian Violence*, SIDLEY AUSTIN (Mar. 19, 2021), <https://www.sidley.com/en/newslanding/newsannouncements/2021/03/firm-statement-on-anti-asian-violence> [<https://perma.cc/9LYX-8LSU>] (“These crimes, the ideas that spawned them – and discrimination of any kind – have no place in our society. We extend our sympathies to the families of the victims, and we stand in solidarity with Sidley’s Asian-American Pacific Islander professionals and staff, as well as the broader AAPI community.”); *Locke Lorde Statement Condemning Violence Against Asian American and Pacific Islander Community*, LOCKE LORD LLP (Apr. 15, 2021), <https://www.lockelord.com/newsandevents/news/2021/04/condemning-violence-against-aapi-community> [<https://perma.cc/Q6WN-D2Y9>] (“The emergence of the coronavirus has led to an increase in acts of hate and discrimination targeting the Asian American and Pacific Islander (AAPI) community. At Locke Lord, not only do we not condone these acts, we abhor them. As a Firm, we stand united with the AAPI community and reject any form of violence, racism, and discrimination in whatever form it displays itself.”); see also Patrick Smith, *Law Firms Denounce Rise in Violence, Harassment Toward Asian Americans*, LAW.COM (Mar. 19, 2021, 3:41 PM), <https://www.law.com/americanlawyer/2021/03/19/law-firms-denounce-rise-in-violence-and-harassment-toward-asian-americans/> [<https://perma.cc/82RV-DHSU>].

161. Lee, *supra* note 133, at 582–83.

162. CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 18.

163. *Id.* at 12.

164. *Id.*

165. *Id.* at 11.

166. *Law Firm Office Reopening and Work Flexibility Tracker*, LAW360 PULSE (May 25, 2021, 11:31 AM), <https://www.law360.com/pulse/articles/1387530> [<https://perma.cc/JP6P-S4R7>].

167. *Id.*

now become more adept at using office technology in their homes and have come to value remote working.<sup>168</sup> Firms have cut costs by making fundamental changes in their operations, including reducing expectations for in-person meetings, increasing the efficiency of digital connections, reducing business travel, and giving up office space.<sup>169</sup>

In addition to investing in technology, many law firms have continued during the COVID-19 pandemic to address lawyer well-being in ways consistent with the ABA's landmark 2016 study.<sup>170</sup> Some law firms increased their focus on issues of wellness and work-life balance, including paying attention to the physical safety, mental health, and training of their legal and administrative staff.<sup>171</sup> More than 50 percent of lawyers in the 2021 ALM survey acknowledged that their law firms made a larger commitment to employee mental health as a result of COVID-19.<sup>172</sup> However, only 45 percent of respondents to the 2021 ALM survey—less than half—thought that their firm took into account their well-being when making changes to the business.<sup>173</sup>

A 2021 benchmark report from the Institute for Well-Being in Law concluded that 99 percent of law firms have some type of well-being program.<sup>174</sup> For the most part, though, these programs did little or nothing to address systemic issues internally at law firms.<sup>175</sup> As of December 2020, 194 law firms, including 71 percent of the Am Law 100, had signed the ABA Well-Being Pledge.<sup>176</sup> By signing, law firms

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168. SCHARF ET AL., *supra* note 71, at 50.

169. CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 12. (“7 percent of legal professionals let go of their commercial office space after the pandemic began, and 12 percent are unsure if they will keep their commercial office space in the future. Overall, the trend has skewed more toward smaller firms, as 30 percent of firms with 10 or fewer lawyers are currently operating without commercial office space. But even among firms with more than 10 lawyers, 15 percent say they are operating without commercial office space.”); CLIO, 2020 LEGAL TRENDS REPORT 74 (2020), <https://www.clio.com/wp-content/uploads/2020/08/2020-Legal-Trends-Report.pdf> [<https://perma.cc/BR46-5YPH>].

170. See CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 13, 13 n.24; Krill et al., *supra* note 32, at 51–52.

171. CTR. ON ETHICS & THE LEGAL PRO. AT THE GEO. UNIV. L. CTR. & THOMSON REUTERS INST., *supra* note 72, at 13.

172. ALM INTEL., *supra* note 60.

173. *Id.*

174. ANNE BRAFFORD, LAW FIRM WELL-BEING PROGRAM: BENCHMARKING REPORT 1 (2021), [https://lawyerwellbeing.net/wp-content/uploads/2021/04/WellBeing-Benchmarking-Report\\_Rev-4-17-2021\\_clean-1.pdf](https://lawyerwellbeing.net/wp-content/uploads/2021/04/WellBeing-Benchmarking-Report_Rev-4-17-2021_clean-1.pdf) [<https://perma.cc/7BTW-XVNQ>].

175. *Cf. id.* at 4 (noting that, while current well-being programs are not necessarily the best programs, it is hard to determine how effective the programs are because they suffer from low participation and a lack of meaningful feedback from those who do participate).

176. *Id.* at 1; *ABA Launches Pledge Campaign to Improve Mental Health and Well-Being of Lawyers*, ABA (Sept. 10, 2018), <https://www.americanbar.org/news/abanews/aba-news->

committed to: providing enhanced and robust education to attorneys and staff on topics related to well-being, mental health, and substance use disorders; supporting self-care and help-seeking; and engaging outside well-being-related experts to advise on programming.<sup>177</sup> Education topics in the pledge include mindfulness and meditation; stress management and resilience; fostering more positivity and optimism; and nutrition, physical health, and fitness.<sup>178</sup> Consistent with the ABA Well-Being Pledge, some law firms have taken measures to reduce alcohol consumption, like developing signature mocktails named after lawyers; coordinating non-alcoholic events like ice cream socials and trivia nights; and partnering with community organizations like Habitat for Humanity and food banks for law firm activities.<sup>179</sup> But, none of these measures eradicated systemic issues like billable hour pressures and biased compensation systems which are at the root of many lawyer well-being problems.<sup>180</sup>

Most of the “work-life” benefits offered to law firm employees focus on childcare needs or online support for telework or telemedicine services, but leave out on-site and online mental health therapy and counseling.<sup>181</sup> According to the 2021 benchmark report, “work-life” benefits offered by law firms include teleworking (81 percent of surveyed law firms), emergency backup childcare (74 percent), financial counseling (51 percent), child care referral services (43 percent), concierge services (28 percent), on-site or near-site childcare (17 percent), and subsidized child care (13 percent).<sup>182</sup> Only 9 percent of law firms offer on-site counseling or behavioral health services, and 29 percent offer online or video therapy.<sup>183</sup> Eighty-eight percent of firms offer some type of telemedicine and 83 percent offer a 24-hour-nurse advice line.<sup>184</sup> Thus, support for online and on-site mental health and therapy services is present at less than a third of law firms.<sup>185</sup>

Some law firms, signaling a commitment to address well-being, have devoted resources to hiring.<sup>186</sup> Law firms have hired

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archives/2018/09/aba-launches-pledge-campaign-to-improve-mental-health-and-well-b/  
[<https://perma.cc/2CF7-5LP5>].

177. BRAFFORD, *supra* note 174, at 6.

178. *Id.*

179. *Id.* at 10.

180. RHODE, *supra* note 50, at 2; Reich, *supra* note 21, at 384–91; *Discrimination as Anti-Ethical*, *supra* note 131, at 597–98.

181. *See* BRAFFORD, *supra* note 174, at 7–9.

182. *Id.* at 7.

183. *Id.* at 8–9.

184. *Id.* at 9.

185. *Id.* at 8–9.

186. *See id.* at 2.

coordinators with various titles, like “Manager of Well-Being” (Ropes & Gray) and “Well Being and Talent Innovation Assistant” (Cleary Gottlieb).<sup>187</sup> In some instances, talent development may encompass well-being efforts.<sup>188</sup> For example, in 2021, Nixon Peabody, created a chief talent officer position, naming a partner to take on the recruiting and attorney development roles.<sup>189</sup> The partner stated that mental health would be one of the primary focuses of their work.<sup>190</sup>

A few large law firms have engaged externally on well-being issues by committing financial resources.<sup>191</sup> In 2021, five Am Law 100 firms signed on to provide financial support to the new Institute for Well-Being in Law, a nonprofit that advocates for systemic changes to address mental health in the legal profession.<sup>192</sup> This show of support for a well-being initiative signaled in a very public way the law firms’ commitment to improving lawyer well-being, in much the same way that signing the ABA Well-Being pledge did, but any positive systemic impact is unclear.<sup>193</sup>

Thus, law firms are engaging in varied efforts to address well-being internally and externally.<sup>194</sup> These well-being efforts have largely proceeded separately from their lawyer DEI efforts.<sup>195</sup> Also, the efforts primarily did not involve lowering billable hour expectations, decreasing overwork, or addressing in—a systemic way—the toll of the pandemic on women and women of color lawyers.<sup>196</sup>

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187. *Id.*

188. See Justin Wise, *Nixon Peabody’s Talent Officer Talks Maintaining Firm Culture*, LAW360 PULSE (May 27, 2021, 2:38 PM), <https://www.law360.com/pulse/articles/1388214> [<https://perma.cc/V72X-BTV2>].

189. *Id.*

190. *See id.*

191. See Dan Packel, *5 Large Law Firms Back New Institute for Well-Being in Law*, LAW.COM (Apr. 26, 2021, 5:49 PM), <https://www.law.com/americanlawyer/2021/04/26/5-large-law-firms-back-new-institute-for-well-being-in-law/> [<https://perma.cc/H75N-SKTM>].

192. *Id.*

193. See *id.*; *ABA Launches Pledge Campaign to Improve Mental Health and Well-Being of Lawyers*, *supra* note 176; Sue Reisenger, *How 2 Firms Took Action on Equality After Floyd’s Murder*, LAW360 PULSE (May 25, 2:03 PM), <https://www.law360.com/pulse/articles/1386946> [<https://perma.cc/25C9-X88Y>].

194. See generally BRAFFORD, *supra* note 174, at 5 (describing the various programs and activities law firms are offering to support lawyer well-being).

195. See, e.g., Sanders, *supra* note 54; *New ABA Survey Outlines Lawyer Stress and Post-Pandemic Best Practices*, ABA (Feb. 18, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/02/new-aba-survey-outlines-lawyer-stress-and-post-pandemic-best-pra/> [<https://perma.cc/84ZV-3F3X>] [hereinafter *New ABA Survey*].

196. See Sanders, *supra* note 54; *New ABA Survey*, *supra* note 195.

*B. Diversity, Equity, and Inclusion*

Law firm activity on DEI efforts has continued throughout the COVID-19 pandemic.<sup>197</sup> The vast majority of lawyers in both private practice and corporate settings reported, as part of the ABA survey conducted in fall 2020, either the same level of activity or increased strategies compared to the previous year.<sup>198</sup> The ABA survey asked about the following DEI strategies:

a mentorship or sponsorship program, assigning lawyers of color to significant matters, including lawyers of color in opportunities for business development, introducing lawyers of color to current clients, unconscious bias or implicit bias training, increasing the number of lawyers of color who are partners, and increasing the number of lawyers of color in leadership roles.<sup>199</sup>

Indeed, relatively few employers put their diversity and inclusion strategies on hold.<sup>200</sup> In both law firms and corporate law departments, the greatest increase in DEI efforts was around unconscious bias and implicit bias training.<sup>201</sup>

Accountability tools, or at least awareness of accountability tools, for implementing DEI strategies, though, have been lacking.<sup>202</sup> In 2021, the ABA published the results of a nationwide survey of lawyers, *Practicing Law in the Pandemic and Moving Forward: Results and Best Practices from a Nationwide Survey of the Legal Profession*, which asked how the pandemic was affecting them, as well as plans and expectations for law practice after the pandemic.<sup>203</sup> Sixty-four percent of surveyed lawyers were not aware of an accountability tool for

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197. See SCHARF ET AL., *supra* note 71, at 24–33. The words “diversity, equity, and inclusion” can have different meanings to different people and to different organizations, and in different contexts. For this Article, the reader is invited to have in mind the definitions used by the American Bar Association in their 2021 Diversity, Equity, and Inclusion Plan. ABA, MEMBER DIVERSITY, EQUITY, AND INCLUSION PLAN 3 (2021), <https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/new-bog-approved-member-dei-plan.pdf> [<https://perma.cc/5QMP-CYLX>]. In that plan, diversity is defined as: “demographic numbers and ensuring historically marginalized populations are adequately represented.” *Id.* Equity is defined as follows: “an approach that ensures everyone access to the same opportunities. Equity recognizes that advantages and barriers exist, and that, as a result, we all do not start from the same place. Equity begins by acknowledging that unequal starting place and continues to correct and address the imbalance.” *Id.* Inclusion is defined as “encompass[ing] individuals with different identities feeling and/or being valued, leveraged, and welcomed within a given setting.” *Id.*

198. SCHARF ET AL., *supra* note 71, at 26.

199. *Id.* at 24.

200. *Id.* at 26.

201. *Id.*

202. *See id.* at 27.

203. *See id.* at 6.

diversity and inclusion strategies in their work settings.<sup>204</sup> The authors of the ABA *Practicing Law in the Pandemic* report commented that it was “hard to say” how any organization can know when goals are being met in the absence of accountability tools.<sup>205</sup> They cautioned that organizations would be challenged in touting the success of any diversity initiative without measurement of results.”<sup>206</sup>

The ABA *Practicing Law in the Pandemic* report, separate from the discussion of well-being, concluded that legal employers have become increasingly aware of the need to act on their commitment to DEI for under-represented groups as a core value of their organizations’ culture.<sup>207</sup> Sixty percent of lawyers surveyed shared that they had conversations with colleagues about racial justice more often than a year ago, with about 37 percent reporting that such conversations were easier.<sup>208</sup> Still, 51 percent of lawyers reported that the ease of such conversations was about the same as a year ago.<sup>209</sup> Law firms reported having conversations about racial equality issues.<sup>210</sup> For example, Blank Rome’s first “open conversation” was attended by 550 people.<sup>211</sup> They talked about “events going on in the country, allyship and how to support one another.”<sup>212</sup> However, the long-term positive impact, much

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204. *Id.* at 27. The ABA survey described accountability tools as follows: (“Closely aligned with DEI strategies are ‘accountability tools’ used for assessing results of DEI initiatives. Change takes time and sustained effort. It is difficult to understand and explain the results of strategies without measuring performance over time. There is no one right measurement ‘tool’ but the absence of any tool should raise a red flag. The Survey asked participants (a) whether their firm or employer used an accountability tool to assess the results of diversity and inclusion strategies in their firm or workplace, and (b) if an accountability tool existed, did it include performance metrics?”). *Id.* The concept of accountability in business has been described and critiqued in various ways. *See, e.g.*, Hayagreeva Rao, *A Brief Essay on a Misused Word*, MCKINSEY & CO. (July 12, 2021), <https://www.mckinsey.com/business-functions/organization/our-insights/accountability-equals-account-x-ability> [<https://perma.cc/5GF4-VNA4>] (“Clearly, accountability relates to measurement and answerability based on the state of affairs of an individual. This does not mean, however, that accountability is limited to the *state of affairs* that can be measured by key performance indicators (KPIs).”) (emphasis in original); Ron Carucci, *How to Actually Encourage Employee Accountability*, HARVARD BUS. REV. (Nov. 23, 2020), <https://hbr.org/2020/11/how-to-actually-encourage-employee-accountability> [<https://perma.cc/RN7Z-CZLX>] (“Accountability processes are the formal and informal ways that leaders talk about, assess, and affirm the contributions of those they lead.”).

205. SCHARF ET AL., *supra* note 71, at 30.

206. *Id.*

207. *Id.* at 50.

208. *Id.* at 28.

209. *Id.*

210. *See* Reisenger, *supra* note 193.

211. *Id.*

212. *Id.*

less any systemic disruption, arising from these “conversations” is unclear.<sup>213</sup>

Two actions commonly taken by large law firms in 2020–2021 signal commitment to DEI goals but do little or nothing to address systemic issues. Those two actions are allotting billable hours credit to DEI-related work and donating money to organizations dedicated to civil rights and racial justice work.<sup>214</sup> Many BigLaw firms have instituted billable hours credit for diversity and inclusion work.<sup>215</sup> Baker McKenzie offered 125 billable hours credit, and Reed Smith and Hogan Lovells offered 50 billable hours credit.<sup>216</sup> Also, as part of publicly announced racial justice efforts, some law firms have given money to organizations engaging in civil rights work or serving “disadvantaged communities and communities of color.”<sup>217</sup> For example, law firms including Latham & Watkins LLP (Latham), O’Melveny & Myers LLP (O’Melveny), Morrison & Foerster LLP, and Sheppard Mullin Richter & Hampton LLP have donated tens and hundreds of thousands of dollars to organizations, including the NAACP Legal Defense and Educational Fund, Lawyers Committee for Civil Rights Under Law, and Equal Justice Initiative.<sup>218</sup> Latham launched a donation-matching program for its employees and raised \$2 million for racial justice organizations.<sup>219</sup> Morrison & Foerster’s MoFo Foundation donated approximately \$400,000 in 2021 to nonprofit organizations serving disadvantaged communities and communities of color.<sup>220</sup> O’Melveny donated \$25,000 each to the Advancement Project, Color of Change, and the NAACP Legal Defense and Educational Fund.<sup>221</sup>

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213. *Id.*

214. See Aebra Coe, *‘Not a Flash in the Pan’: BigLaw Racial Justice Aid Continues*, LAW360 PULSE (May 25, 2021, 2:03 PM), <https://www.law360.com/pulse/articles/1387709> [<https://perma.cc/TC6M-6V6D>]; Staci Zaretsky, *Top 5 Biglaw Firm Raises the Bar on Billable Diversity & Inclusion Hours*, ABOVE THE L. (Feb. 11, 2021, 11:19 AM), <https://abovethelaw.com/2021/02/top-5-biglaw-firm-raises-the-bar-on-billable-diversity-inclusion-hours/> [<https://perma.cc/GR4J-WY8D>].

215. See Zaretsky, *supra* note 214.

216. *Id.*; Kathryn Rubino, *Care About BigLaw Diversity? Well, Now You Can Bill for It*, ABOVE THE L. (Jan. 21, 2021, 12:48 PM), <https://abovethelaw.com/2021/01/care-about-biglaw-diversity-well-now-you-can-bill-for-it/> [<https://perma.cc/E5QA-ZEV9>]; Staci Zaretsky, *The First Biglaw Firm to Offer Billable Diversity Hours for All Timekeepers*, ABOVE THE L. (Jan. 29, 2021, 1:41 PM), <https://abovethelaw.com/2021/01/the-first-biglaw-firm-to-offer-billable-diversity-hours-for-all-timekeepers/> [<https://perma.cc/T3UH-DJDJ>].

217. Coe, *supra* note 214.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*



Many law firms have also hired DEI professionals, but whether or not they have the political, financial, or human resources within their firm to achieve their goals remains an open question.<sup>222</sup> Generally, these professionals have a number of goals, which can include creating programs to educate leadership on unconscious bias and its effects on traditionally marginalized groups; creating mentorship programs for diverse attorneys; examining changes to the origination credit system; and expanding recruitment to law schools with a higher percentage of diverse students.<sup>223</sup> But, in one survey of law firm DEI professionals, most had a staff of just one or two people, and no DEI professional had a staff of more than three.<sup>224</sup>

In addition to internal changes, some firms have reached outside to other firms, to clients, and to other organizations to form formal alliances surrounding DEI issues.<sup>225</sup> While these external efforts may benefit communities, they do not directly address internal systemic DEI issues.<sup>226</sup> For example, since the summer of 2020, more than 290 law firms have joined a newly formed group called the Law Firm Antiracism Alliance (LFAA).<sup>227</sup> Their “About Us” online page leads with: “Being antiracist requires work on many fronts.”<sup>228</sup> LFAA recognizes and embraces the role that law firms, particularly when acting collectively, can play to help bring about systemic change and racial equity in the

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222. Patrick Smith, *Diversity Pros Fight Unconscious Bias, Accountability and Billable Hour*, MIAMI DAILY BUS. REV. (June 1, 2021), <https://plus.lexis.com/api/permalink/98dedcd2-d5fe-4651-8d44-409b21733573?context=1530671> [<https://perma.cc/EJ3L-LDFU>] [hereinafter *Diversity Pros*].

223. *Id.*

224. *Id.* Outside of law firms, DEI professionals in the C-suite of companies also find themselves with insufficient resources to accomplish sweeping mandates. See, e.g., Chip Cutter & Lauren Weber, *Demand for Chief Diversity Officers Is High. So Is Turnover*, WALL ST. J. (July 13, 2020, 7:00 AM), <https://www.wsj.com/articles/demand-for-chief-diversity-officers-is-high-so-is-turnover-11594638000> [<https://perma.cc/XF4H-ZFWL>] (reporting that the Chief Diversity Officer (CDO) role at companies has high turnover, with CDOs leaving due to lack of resources, inadequate support from senior executives, and unrealistic expectations).

225. *Diversity Pros*, *supra* note 222; *About Us*, L. FIRM ANTIRACISM ALL., <https://www.lawfirmantiracismalliance.org/lfaa charter/dashboard/law-firm-antiracism-alliance> [<https://perma.cc/65JA-KKJJ>] (last visited Dec. 21, 2021).

226. See *About Us*, *supra* note 225. But see Kimberly Jones Merchant, *Questions for the Law Firm Antiracism Alliance from a Racial Justice Advocate*, BLOOMBERG L. (Oct. 23, 2020, 3:01 AM), <https://news.bloomberglaw.com/us-law-week/questions-for-the-law-firm-antiracism-alliance-from-a-racial-justice-advocate> [<https://perma.cc/MYS8-BYW4>] (questioning whether law firms will acknowledge and address the role they play in inequality).

227. *LFAA Alliance Firms*, L. FIRM ANTIRACISM ALL., <https://www.lawfirmantiracismalliance.org/lfaa charter/alliance-firms> [<https://perma.cc/V3SE-UM69>] (last visited Jan 11, 2022).

228. *About Us*, *supra* note 225.

law.<sup>229</sup> LFAA’s goal is simple: racial equity.<sup>230</sup> “Facilitating pro bono work is the primary mechanism by which we pursue this goal.”<sup>231</sup> Alliance Firms can access the LFAA Bulletin Board, a “virtual community allowing them to identify and volunteer for pro bono opportunities that target racial injustice in the law.”<sup>232</sup> Similarly, more than 40 law firms joined a group of Fortune 1000 companies to form the Alliance for Asian American Justice.<sup>233</sup> The Alliance has vowed to “coordinate and drive law firm pro bono resources on behalf of victims (of anti-Asian violence) to assist and support them in obtaining legal remedies.”<sup>234</sup>

One category of law firm DEI efforts comes closest to addressing systemic biases and discrimination.<sup>235</sup> A number of law firms have initiated strategic plans, task forces, or committees targeted to address compensation, promotion, or hiring.<sup>236</sup> For example, in late 2020, Littler Mendelson P.C. launched *Breaking Through: Littler’s D&I Comp Initiative*, aimed at tackling compensation disparities by doubling the number of diverse attorneys in the top quartile of the firm’s compensation system within five years.<sup>237</sup> A working group has been created to lead the initiative.<sup>238</sup> The strategies identified to help reach their goal include training programs for business development and leadership, expanding opportunities for diverse attorneys to take

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *New Initiative to Combat Anti-Asian Violence Launched by Major Law Firms and Advocacy Organizations*, ALL. FOR ASIAN AM. JUST. (April 15, 2021), <https://www.allianceaajustice.org/news/press-release> [<https://perma.cc/K8Y3-XXHW>].

234. *Id.*

235. See Isabel Bilotta, Abby Corrington, Saaïd A. Mendoza, Ivy Watson & Eden King, *How Subtle Bias Infects the Law*, 15 ANN. REV. L. & SOC. SCI. 227, 239–40 (Oct. 2019).

236. See, e.g., Aebra Coe, *BigLaw Racial Justice Efforts Continue to Build Momentum*, LAW360 (Dec. 8, 2020, 7:27 PM), <https://www.law360.com/articles/1335678/biglaw-racial-justice-efforts-continue-to-build-momentum> [<https://perma.cc/9R8L-5CAQ>] (“Stroock & Stroock & Lavan LLP recently announced that more than 30 of its partners, including many of its top leaders, are in the midst of taking an in-depth six-month course on anti-racist leadership where they are learning about bias in the workplace, as well as other aspects of racism and racial inequality in society.”); *BCLP Outlines New Inclusion and Diversity Goals*, BRYAN CAVE LEIGHTON PAISNER LLP (Dec. 8, 2020), <https://www.bclplaw.com/en-US/news-events/bclp-outlines-new-inclusion-and-diversity-goals.html> [<https://perma.cc/3VTN-EFFC>] (announcing diversity and inclusion goals for 2025 and 2030, including 35 percent global female partners by the end of 2025 and 15 percent racial/ethnic minority partners in the United State and United Kingdom by end of 2025).

237. *Littler Launches Diversity & Inclusion Compensation Initiative*, LITTLER MENDELSON P.C. (Dec. 8, 2020), <https://www.littler.com/publication-press/littler-launches-diversity-inclusion-compensation-initiative> [<https://perma.cc/3DG7-RFRL>].

238. *Id.*

leadership roles on client matters, and succession plans for existing client relationships.<sup>239</sup> In another example, Crowell & Moring LLP created a “Racial Equity Task Force” that includes their chair and executive committee.<sup>240</sup> The firm has described their task as follows: to “conduct a 360-degree review of every aspect of our firm’s operations in order to ensure that diversity and inclusion are at the forefront of everything we do.”<sup>241</sup> The task force’s work includes a “holistic review” of case assignments, promotion decisions, and other key aspects of firm operations.<sup>242</sup> The task force has been asked to “identify concrete steps” the firm can take to achieve positive change in the short term and “long-lasting change.”<sup>243</sup>

In brief, 2020 and 2021 have seen law firms sending strong public signals of their commitment to DEI goals and lawyer well-being, though the long-term and systemic impact of any of the communications, donations, conversations, new hires, and other efforts remains a very open question.<sup>244</sup> Also, generally, these efforts have been compartmentalized, with DEI on one track and lawyer well-being on another.<sup>245</sup> As Part V will describe, however, some law firms’ messaging on DEI has linked employee well-being and inclusion.

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239. *Id.*; see also Lee, *supra* note 133, at 601 (explaining that succession on client matters, without any formal processes in place, has historically happened through informal social networks within the firm, to the disadvantage of women lawyers who typically had to invest considerably more resources to originate new clients rather than gaining clients through internal mentorship or collegial networks like male partners).

240. *Diversity at Law Firms: A Renewed Focus*, COLUM. L. SCH. (Oct. 12, 2020), <https://www.law.columbia.edu/news/archive/diversity-law-firms-renewed-focus> [<https://perma.cc/2FM6-V9K2>].

241. *Id.*

242. *Id.*

243. *Id.*; see also *Baker McKenzie Forms Anti-Racism Taskforce to Build Inclusion and Equity Inside and Outside the Firm*, BAKER MCKENZIE (July 1, 2020), <https://www.bakermckenzie.com/en/newsroom/2020/07/antiracism-task-force> [<https://perma.cc/W3VR-XVBS>] (announcing the creation of an anti-racism task force to “examine the Firm’s hiring processes, work allocation systems, partner promotions and other long-standing practices with a critical eye toward rooting out bias and increasing equity and inclusion” and “work closely with the Firm’s leadership to bring about concrete change”).

244. See *supra* Part IV.

245. See *id.*

## V. A HOPEFUL PATH: WELL-BEING AND INCLUSION

And so, law firms have engaged in well-being and DEI efforts separately, with efforts usually proceeding on different tracks and through different law firm leaders.<sup>246</sup> Moreover, law firm engagement on well-being and on DEI has, by and large, not been designed to disrupt systemic bias and discrimination.<sup>247</sup> Not surprisingly, those DEI efforts have yet to produce much meaningful progress in the representation and advancement of women of color lawyers in law firms.<sup>248</sup> In a recent hopeful trend, however, law firms have increasingly acknowledged a link between lawyer well-being and inclusion.<sup>249</sup> Law firms committed to improving on the inclusion and representation of women of color lawyers should move beyond performative acknowledgment and work towards institutional change that embeds well-being with inclusion efforts.<sup>250</sup> Doing so would be consistent with studies on the connection between well-being and inclusivity.<sup>251</sup>

In the era of COVID-19, law firms have more often emphasized a connection between well-being and inclusion.<sup>252</sup> In a 2021 podcast, for example, a Director of Diversity and Inclusion at Foley & Lardner noted that when lawyers are not well, they will not be in an optimal position to be inclusive.<sup>253</sup> In another example, in a 2020 essay, an associate discussed how law firms can support minority attorneys through mental health initiatives.<sup>254</sup> Biglaw firm Seyfarth Shaw LLP touted its participation in The Belonging Project, noting that well-being challenges posed by COVID-19 threaten “progress” on the DEI front: “[O]ngoing changes have the potential to impact individuals’ health and wellness, anxiety, safety, and professional development . . . The

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246. *See id.*

247. *See id.*

248. *See* STERLING & CHANOW, *supra* note 6, at 3.

249. *See, e.g.*, State Bar of Mich.: On Balance Podcast, *supra* note 25, at 2:58.

250. *See* STERLING & CHANOW, *supra* note 6, at 3.

251. *See* Wendell Cockshaw, Ian Shochet & Patricia Obst, *General Belongingness, Workplace Belongingness, and Depressive Symptoms*, 23 J. CMTY. & APPLIED SOC. PSYCH. 240, 240 (2013).

252. Scharf et al., *supra* note 71, at 2.

253. *See* State Bar of Michigan: On Balance Podcast, *supra* note 25, at 5:01.

254. Patricia Silva, *Mental Health Efforts Will Support Diversity in Legal Industry*, LAW360 (June 9, 2020, 10:09 PM), <https://www.law360.com/articles/1278451/mental-health-efforts-will-support-diversity-in-legal-industry> [<https://perma.cc/7GGM-GAMB>] (“Society’s general avoidance and even stigma of discussing mental health struggles is especially profound for people of racial and ethnic minorities, and minority attorneys are no exception. Law firms and in-house departments can change the narrative by making mental health a priority for all attorneys and making efforts to even the playing field.”).

COVID-19 pandemic . . . threatens the institutional progress towards more inclusive and diverse workplaces, including the legal industry.”<sup>255</sup> Paul Hastings LLP, on a page titled “Building an Inclusive Culture,” publicizes their “PH Balanced” programming focused “on family and parental topics, work/life integration, mindfulness, mental health, stress management, and wellness.”<sup>256</sup> Skadden, Arps, Slate, Meagher & Flom LLP’s (Skadden) Diversity, Equity, and Inclusion brochure devotes a full page to referencing well-being-related programs and policies, including their remote work guidelines and parental leave policies.<sup>257</sup> Also, some professionals involved in lawyer training or consulting on diversity or well-being have referenced a connection between diversity and inclusion, on one hand, and well-being, on the other.<sup>258</sup>

A focus on the link between well-being and inclusion is backed up by research.<sup>259</sup> The 2017 Path to Lawyer Well-Being report found that a sense of belonging is a significant contributor to lawyer well-being and a lack of inclusivity is associated with depression.<sup>260</sup> A

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255. *The Belonging Project*, SEYFARTH SHAW LLP, <https://www.seyfarth.com/the-belonging-project.html> [<https://perma.cc/7YBL-2HEM>] (last visited Sept. 25, 2021) (describing the project as “a national effort to support and build community among diverse law students, attorneys, and their allies to combat the impact of COVID-19 on diversity in the profession.”).

256. *Building an Inclusive Culture*, PAUL HASTINGS LLP, <https://csr.paulhastings.com/inclusive-leadership/> [<https://perma.cc/MBS7-Y9BV>] (last visited Sept. 25, 2021); *see also Inclusion*, CLIFFORD CHANCE, [https://www.cliffordchance.com/about\\_us/inclusion-and-diversity/wellbeing.html](https://www.cliffordchance.com/about_us/inclusion-and-diversity/wellbeing.html) [<https://perma.cc/FS79-9TSV>] (last visited Sept. 25, 2021) (Clifford Chance states on its website that “everyone is entitled to the same equality of opportunity and experience” and that “[e]ach of us can face a range of personal, work and societal pressures that can impact our mental health and wellbeing.”).

257. *Diversity, Equity, and Inclusion at Skadden*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (2021), [https://www.skadden.com/-/media/files/about/diversity\\_and\\_inclusion\\_at\\_skadden.pdf](https://www.skadden.com/-/media/files/about/diversity_and_inclusion_at_skadden.pdf) [<https://perma.cc/G5UM-YE9B>].

258. *See, e.g.*, ANNE BRAFFORD, ENABLING LAWYER WELL-BEING THROUGH DIVERSITY AND INCLUSION (2020), [https://lawyerwellbeing.net/wp-content/uploads/2020/04/Braffprd\\_Diversity-and-Wellbeing.pdf](https://lawyerwellbeing.net/wp-content/uploads/2020/04/Braffprd_Diversity-and-Wellbeing.pdf) [<https://perma.cc/8ZDR-7KRE>] (discussing “corrosive effects of lack of inclusion”); PATTY POWELL, *The Link Between Well-Being and Inclusion*, COLO. LAW. (June 2020), <https://cl.cobar.org/departments/the-link-between-well-being-and-inclusion/> [<https://perma.cc/LS2W-RBWP>] (“Perhaps the key to effectively addressing diversity and inclusion in the legal profession is hiding in plain sight. If leaders of legal organizations focus on creating more inclusive work environments, the overall well-being of individual employees and the organization will be enhanced. The reverse is also true. Organizations that promote the professional well-being of their workers naturally feel more inclusive.”).

259. Jayne Reardon & Bree Buchanan, *Lawyer Well-Being: An Uncharted Path to Increasing Diversity and Inclusion*, ABA (Feb. 19, 2018), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2018/winter2018-lawyer-well-being-alcoholism-self-help/> [<https://perma.cc/R44L-GJ7Q>].

260. NAT’L TASK FORCE ON LAW. WELL-BEING, *supra* note 16, at 15–16.

study conducted at a global company in the United Kingdom resulted in a finding about well-being and inclusiveness: “[W]ellbeing and openness to change are strongly linked to diversity and inclusiveness behaviours [sic] the more inclusive a person is, the better their wellbeing, and the more open they are to change, including change in the workplace.”<sup>261</sup> The researchers found that someone with “high inclusiveness”—with inclusiveness measured by inclusive behaviors that included proactively building new relationships at work and speaking up against stereotyping—was about four times more likely than someone with low inclusiveness to have “high wellbeing” and was very unlikely to have low well-being.<sup>262</sup>

Those at the forefront of the well-being in law movement have recognized the strong connection between diversity and inclusion, on one hand, and lawyer well-being, on the other.<sup>263</sup> The Institute for Well-Being in Law now has a DEI policy that prioritizes DEI and identifies goals for their DEI work.<sup>264</sup> In the policy, the Institute, emphasizing the additional “stressors” and “burdens” faced by “historically underrepresented legal professionals,” identifies the goal of addressing elements of legal practice that make participation and success more challenging for those legal professionals.<sup>265</sup>

For three decades, law firms have engaged in numerous diversity initiatives, set up diversity committees, and hired DEI directors.<sup>266</sup> But, their omission in failing to prioritize lawyer well-being internally and to directly address the systemic issues that underlie negative impacts of bias and discrimination on health have proven to

261. NATHANIEL CHARLTON, KAREN PINE & BEN FLETCHER, DIVERSITY AND INCLUSIVENESS, WELLBEING AND OPENNESS TO CHANGE: THE EFFECTS OF A DO SOMETHING DIFFERENT PROGRAMME IN A GLOBAL ORGANISATION 1 (2016), <https://dsd.me/business/wp-content/uploads/sites/12/2016/08/Diversity-and-inclusiveness-white-paper-1.pdf> [<https://perma.cc/Q79V-2VR2>].

262. Ben Fletcher, *Diversity and Inclusiveness Is Good for Your Well-Being*, PSYCH. TODAY (Sept. 18, 2016) (citing CHARLTON ET AL., *supra* note 261), <https://www.psychologytoday.com/us/blog/do-something-different/201609/diversity-and-inclusiveness-is-good-your-well-being> [<https://perma.cc/NT3U-L94D>].

263. See Anne Brafford, *The Thriving Lawyer*, ABA (July/Aug. 2020), [https://www.americanbar.org/groups/law\\_practice/publications/law\\_practice\\_magazine/2020/ja2020/ttl/](https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2020/ja2020/ttl/) [<https://perma.cc/Q57P-MBE2>].

264. *Diversity, Equity, and Inclusion Policy*, INST. FOR WELL-BEING IN L., <https://lawyerwellbeing.net/diversity-equity-and-inclusion-policy/> [<https://perma.cc/7BK2-PVFZ>] (last visited Oct. 9, 2021).

265. *Id.*

266. See, e.g., *Diversity, Equity & Inclusion Committee*, MILBANK LLP, <https://www.milbank.com/en/about-us/diversity/diversity.html> [<https://perma.cc/8PRX-8EQF>] (last visited Jan. 11, 2022).

be the undoing of their efforts, however well-meaning.<sup>267</sup> Only tiny, incremental progress has been achieved in the representation of women of color at law firms.<sup>268</sup> Challenges presented by discriminatory law firm institutional structures, compounded by COVID-19 and the “racial reckoning” of 2020 in the United States, have had a disproportionate and profound impact on women of color.<sup>269</sup> Paulette Brown, former ABA President, now a BigLaw Chief Diversity Officer, and co-author of the ABA “Left Out, Left Behind” study, has said that law firms need to view diversity as more than the “flavor of the month,” and they need to make diversity central to who they are.<sup>270</sup> She urged law firms to “figure out the root of the problem.”<sup>271</sup> Destiny Peery, author of the 2020 National Association of Women Lawyers survey report on promotion and retention of women in law firms, concluded that law firms continue to prefer activities that merely signal a commitment to diversity.<sup>272</sup>

Law firms committed to advancing, hiring, and being inclusive of women of color and other underrepresented groups should take concrete institutional steps that ensure well-being and DEI are linked efforts. Depending on how much work a firm has done on this front, those steps might include these actions:

1. Mandate collaborations between the group, person, or department focused on diversity and inclusion and the group, person, or department focused on lawyer well-being to enhance law firm programming.
2. Create a position at the law firm devoted to addressing the well-being needs of lawyers who are women of color.
3. Embed well-being efforts in DEI committee or department work to ensure that well-being efforts do not proceed separately from the work of the DEI work.
4. Include in law firm partnership agreements an allocation of a set percentage of partnership profits to law firm well-being initiatives.
5. Regularly gather data on lawyer well-being in a way that allows for identification of any disproportionate or different

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267. See *supra* Part III.

268. See *supra* Part II.

269. See *supra* Part III.

270. Aebra Coe, *Black Leaders Call Out Diversity ‘Excuses’ Law Firms Make*, LAW360 (July 7, 2020, 6:53 PM), <https://www.law360.com/articles/1289757/black-leaders-call-out-diversity-excuses-law-firms-make> [<https://perma.cc/YU6P-8J5K>].

271. *Id.*

272. NAT’L ASS’N OF WOMEN LAWS., *supra* note 96, at 4.

impact on historically underrepresented groups, including women, women of color, Black women, Latinx women, and Asian women.

6. Study lawyer evaluation, compensation-setting, and promotion processes for well-being implications, and make institutional changes called for by the study results.
7. Collaborate with other firms to redefine and create diversity pipeline programs at the K–12, university, and law school levels so they have a primary emphasis on well-being.

Law firms have it within their grasp to take these steps. They have done much that does not disrupt their prioritization of hours and profit.<sup>273</sup> But they have also made unprecedented and uncharacteristic announcements and taken actions that signal a commitment to achieving true progress on DEI.<sup>274</sup> By solidly embedding lawyer well-being with DEI efforts, law firms will come closer to addressing the root issues complicating law firm inclusion efforts.

## VI. CONCLUSION

Imagine again that room of one hundred partners in the United States. Chances are, a significant number of them have suffered or are suffering from mental health distress caused or exacerbated by the pressures of law firm practice.<sup>275</sup> Chances are, if there is a Black, Latinx, or Asian woman partner in that room, she is the only one. Being the only one in the room can be hard.<sup>276</sup> Nothing about that room suggests that substantial progress can be made in the representation, retention, and inclusion of women of color lawyers in large law firms.

Law firms have spoken up in unprecedented ways about systemic racism in and outside of their organizations.<sup>277</sup> Virtually all have initiated some action on well-being issues.<sup>278</sup> Law firms should now move past shallow acknowledgments of a link between well-being

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273. See, e.g., Rubino, *supra* note 216.

274. See *supra* Part IV.

275. See Rachel Makinson, *How Can We Improve Mental Health in the Legal Sector?*, *LAW. MONTHLY* (June 18, 2021), <https://www.lawyer-monthly.com/2021/06/how-can-we-improve-mental-health-in-the-legal-sector/> [<https://perma.cc/99MW-GPEP>].

276. See *STERLING & CHANOW supra* note 6, at 17 (detailing the conscious effort that a woman of color lawyer, who constantly is the only woman of color in the room, must make to not let that derail her from accomplishing her goals).

277. See *LFAA Alliance Firms, supra* note 227.

278. See *generally Well-Being in the Legal Profession, supra* note 40 (describing the ABA Well-Being Campaign and listing the 204 participating law firms).



and inclusion and act to embed lawyer well-being as an institutional piece of their DEI efforts. Only then can they directly and more fully address the intersectional challenges experienced by women of color lawyers. In the process, firms will be better positioned to evolve into more welcoming, supportive, and inclusive workplaces. Until then, long-term constructive progress on DEI at law firms will almost certainly continue to be elusive.