

MASSACHUSETTS SUPREME JUDICIAL COURT

STANDING COMMITTEE ON LAWYER WELL-BEING

*Update on the First Year
January 2020 – December 2020*

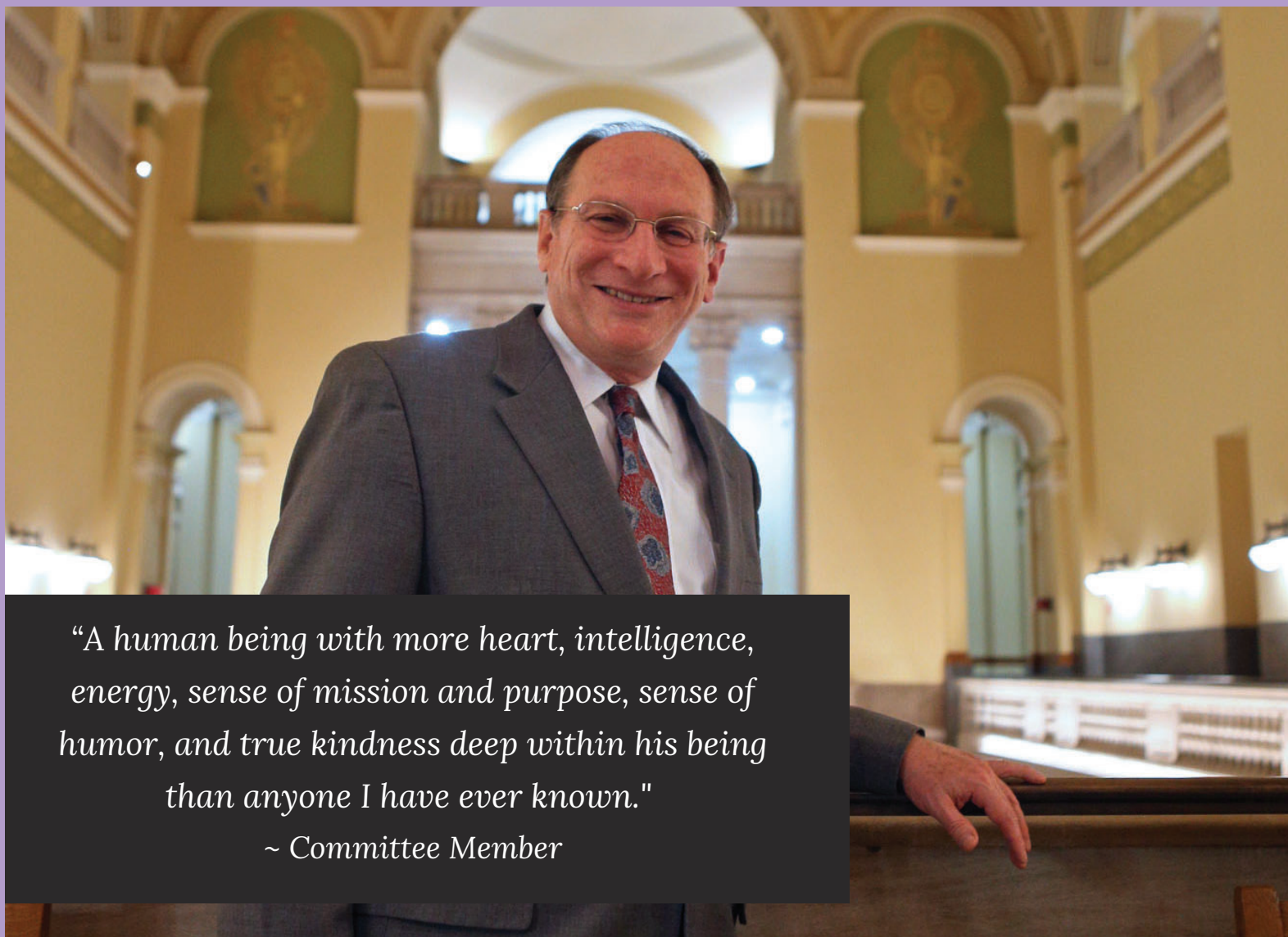
INTRODUCTION

Established in January of 2020, the Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being is charged with planning and overseeing efforts to enhance the well-being of lawyers, judges, and law students in the Commonwealth. As the Committee began its work, its goal was to implement the recommendations set out in the final Report of the original SJC Steering Committee on Lawyer Well-Being ("Report"), which was submitted to the SJC in July 2019.

Soon after the first Committee meeting, the COVID-19 pandemic arrived in Massachusetts, bringing with it so many new challenges for everyone, including the legal community. The need to respond to the pandemic propelled and focused the Committee's work in a swift and crucial manner. The renewed cry for racial justice and real change addressing systemic racism and oppression of underrepresented and historically excluded communities drove the Committee to prioritize diversity, equity, and inclusion ("DEI") efforts, and to ensure that all the work is viewed through a DEI lens. As highlighted in the Report, bias, prejudice, exclusion and oppression have a negative effect on the well-being of lawyers and law students from underrepresented and historically excluded populations, often causing them to leave Massachusetts or cease practicing law altogether.

As the Committee has tried to respond to these challenges in this first year, it has also moved forward to implement a series of the Report's recommendations. This one-year update provides a summary of significant activities and milestones accomplished by the Committee to-date.

IN MEMORIAM: CHIEF JUSTICE RALPH GANTS



"A human being with more heart, intelligence, energy, sense of mission and purpose, sense of humor, and true kindness deep within his being than anyone I have ever known."

~ Committee Member

Chief Justice Gants' leadership and commitment to improving lawyer well-being paved the way for the work of our Committee. As someone who was intensely driven to improve our profession and ensure the fair and equitable administration of justice, he carried a great load of responsibility. His efforts, particularly during the pandemic, can be described as nothing less than heroic.

His death raises the level of significance of the Committee's work and compels recognition of the complexities inherent in our desire as lawyers to pursue zealous advocacy and justice but also to extend that compassion and energy to our families and ourselves. As the Committee moves forward, it is driven by the ideals that Chief Justice Gants fought for and embodied, and as we continue to pursue well-being in our profession, we will strive to honor his legacy.

HISTORY OF THE COMMITTEE

01**JULY 2019**

The SJC Steering Committee on Lawyer Well-Being publishes its Report.

02**JANUARY 2020**

The SJC Standing Committee on Lawyer Well-Being is established.

03**MARCH 2020**

The Court hires its first full-time Director, **Attorney Heidi Alexander**, former Deputy Director of Massachusetts Lawyers Concerned for Lawyers.

04**NOVEMBER 2020**

Attorney Gavin Alexander, one of the original Committee members, begins a fellowship sponsored by Ropes & Gray LLP serving as the first full-time Committee Fellow supporting the work of the Committee as a whole while focusing on the intersection of well-being and DEI in the Massachusetts legal profession.

COMMITTEE MEMBERSHIP

The Committee is currently comprised of 14 members and two co-chairs, all appointed by the Court. Co-chairs are **Hon. Margot Botsford**, former Associate Justice of the SJC, and **Attorney Denise Murphy**, current President of the Massachusetts Bar Association. The 14 Committee members represent various perspectives in geography, legal practice, gender identity, sexual orientation, and racial and ethnic diversity, as well as one physician with experience in physician well-being work and services. The Committee also has an appointed group of Advisors whose members are the Executive Director of Lawyers Concerned for Lawyers, Bar Counsel, General Counsel of the Board of Bar Overseers, and the Executive Director of the Board of Bar Examiners.

Ruth L. Adeyinka, Esq.
Honorable Jennifer L. Ginsburg
Katherine Grubbs, Esq.
Stephen P. Hall, Esq.
Bethany Li, Esq.
Marc A. Moccia, Esq.
Beth R. Myers, Esq.

Dean Angela Onwuachi-Willig
Mala M. Rafik, Esq.
District Attorney Marian Ryan
Dr. Leslie Schwab, M.D.
Ruth H. Silman, Esq.
Mary Strother, Esq.
Christina M. Turgeon, Esq.

Advisors to the Committee

Joseph Berman, Esq.
Rodney Dowell, Esq.
Anna Levine, Esq.
Marilyn J. Wellington, Esq.

SUBCOMMITTEES AND WORKING GROUPS

To aid the Committee, increase awareness, diversify perspectives, and take practical steps toward implementing the recommendations in the Report, the Committee has established a number of informal subcommittees and working groups focused on the following subjects. These groups include members of the Committee as well as, in some instances, other members of the legal community. Each is tasked with developing plans and recommendations to implement different Report recommendations, as well as raising additional suggestions for well-being-related programs and services.

Bench-Bar Connections
Committee for Public Counsel Services
DEI and Well-Being
District Attorneys' Offices
Health Insurance for Small Firms and Solo Practitioners
Large Firms
Law Schools
Legal Services
Mentorship
Well-Being Service Delivery
Solo Practitioners and Small Firms
Student Loan Assistance
Well-Being Education for Massachusetts Lawyers
Western Massachusetts
Working Parents
Young Lawyers

MILESTONES

Since its formation in January of 2020, the Committee has implemented various Report recommendations and achieved a variety of milestones. Below please find a list of significant milestones categorized by the major topic areas identified in the Report.

1. Increasing Awareness of Lawyer Well-Being and the Well-Being Crisis



WEBSITE

WWW.LAWYERWELLBEINGMA.ORG



NEWSLETTER



SOCIAL MEDIA

- Launched a Committee website (www.lawyerwellbeingma.org) to provide updates and resources on lawyer well-being; established social media accounts and began disseminating updates and resources via Instagram @lawyerwellbeing
- Launched a monthly Committee newsletter to communicate with stakeholders, leaders, and legal professionals in the community, currently being received by over 800 subscribers
- Arranged for representatives of the Committee to appear in numerous public presentations and panels addressing the state of well-being in the Massachusetts legal profession and the work being done by the Committee
- Organized Reconnection Conversations for judges in the different Trial Court departments, in collaboration with the Flaschner Institute
- Worked with the SJC Standing Advisory Committee on the Rules of Professional Conduct to propose amended Rules to address lawyer well-being
- Coordinated with the BBO to include well-being resources in its bar registration notices to all attorneys
- Began designing a potential mandatory well-being program for all attorneys licensed to practice in Massachusetts

MASSACHUSETTS Lawyers Weekly

Attorney well-being takes on new level of importance

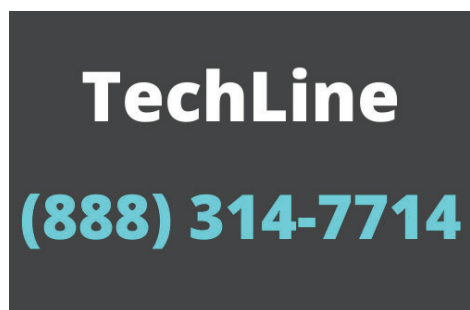
By: Heidi Alexander, Margot G. Botsford and Denise I. Murphy | August 20, 2020

"A second silent pandemic could sweep the country alongside COVID-19" was the headline of a recent FastCompany article referencing a JAMA Internal Medicine Study on the mental health consequences of COVID-19.

Data suggest that, at this moment, one-third of all adults exhibit signs of generalized anxiety disorder; one-quarter exhibit signs of major depressive disorder; between 40 and 50 percent of workers feel burned out; 60 percent of adults say they are more tired than ever before; and the use of alcohol, anti-anxiety medications, antidepressants and sleep aids are on the rise.



MAY 4-8, 2020



Path To Well-Being In Law - Episode 7: Heidi Alexander

<https://lawyerwellbeing.net/2020/12/02/path-to-well-being-in-law-episode-7-heidi-alexander/>

- Established TECHLINE, (888) 314-7714, as a direct result of COVID-19, staffed by volunteer attorneys, to assist attorneys in operating a virtual practice during the COVID-19 pandemic, including how to conduct virtual business with and in the courts
- Organized a celebration of National Lawyer Well-Being Week in collaboration with bar associations
- Published an op-ed in Massachusetts Lawyers Weekly about the importance of lawyer well-being, in addition to articles in various other publications
- Conducted a podcast interview with the Committee Director, Heidi Alexander, released by the National Task Force on Lawyer Well-Being

2. Addressing Diversity, Equity, Inclusion, and the Well-Being of Lawyers and Law Students from Underrepresented and Historically Excluded Populations

- Hosted individual town hall meetings / listening sessions with seven distinct affinity bar associations where members shared their lived experiences of the current state of DEI as lawyers and law students in Massachusetts, and how those experiences have affected their and their colleagues' well-being
- Retained Osamudia James, Professor of Law and Associate Dean for Diversity, Equity, and Community at the University of Miami School of Law, as a DEI consultant
- Approved Gavin Alexander's transition from Committee member to full-time Fellow to focus on adding a DEI perspective to existing Committee projects, serving as a liaison between the Committee and the affinity bar populations of Massachusetts, and developing a strategic plan with short-term, medium-term and long-term projects addressing DEI and well-being, starting with preparation of (a) a DEI mission statement for the Committee (www.lawyerwellbeingma.org/dei-statement) (see Appendix I), and (b) a report summarizing the affinity bar town-hall meetings which the Committee expects to issue by February of 2021
- Implemented the new Attorney Demographic and Law Practice Survey (www.lawyerwellbeingma.org/demographics-and-law-practice-survey) to begin allowing the Committee to measure and track the diversity of the Massachusetts bar
- Hosted a town hall meeting for working lawyer parents in collaboration with the Women's Bar Association of Massachusetts and made a series of recommendations to firm managing partners in Massachusetts developed by the Committee's Working Parents Task Force

3. Working with Bar Association Leaders, Employers, and Law School Educators to Enhance Lawyer Well-Being

- Initiated and hosted regularly occurring meetings with various bar association leaders to share updates, discuss areas of collaboration, encourage well-being programs and initiatives, and provide support as needed
- Collaborated with the Massachusetts Bar Association to develop a Bar Association Well-Being Toolkit to encourage and support all regional bar associations in implementing well-being programming and initiatives, enhancing bench-bar communications, establishing and further developing mentorship programs, and taking steps to increase DEI (to be published by the MBA early 2021)
- Worked with various bar associations to encourage, develop, and assist with well-being programs and initiatives
- Established and hosted regularly occurring meetings of the Massachusetts Legal Well-Being Network, which includes private firm and public agency HR directors and personnel, lawyers, legal educators and administrators and others to share best practices, ideas, challenges and visions to improve lawyer well-being in Massachusetts
- Coordinated public agencies to offer well-being educational and other programs for attorneys and opportunities to connect over shared experiences with attorneys outside of their organizations (ex. December 2020 program on vicarious trauma for legal services attorneys, CPCS attorneys, ADAs, with over 500 registrants (also on-demand for additional viewing) (www.lawyerwellbeingma.org/the-cost-of-caring)).
- Began working to develop mid-level attorney management training programs, beginning with mid-level attorneys in legal services and public agencies
- Began developing various law school well-being toolkits for law students, faculty, staff, and administrators, including recommendations both for individual well-being and for systemic change to address aspects of the law school experience that place unnecessary burdens on all members of the law school community

MENTORSHIP PROGRAMS

www.lawyerwellbeingma.org/mentor-pilots

www.lawyerwellbeingma.org/mentorship-database

www.lawyerwellbeingma.org/news/mentorship-program-signup

- Identified and reviewed a variety of mentorship programs (one administered and piloted by the Committee and others through bar associations and other organizations), the results of which led to the initial development of a statewide mentorship program in collaboration with statewide, county, city and affinity bar associations to begin in 2021
- Began developing an easily-accessible online mentorship program clearinghouse with all available legal mentorship programs in Massachusetts
- Began working with various legal services organizations to establish mentorship programs addressing their specific needs

Participant mentees in the pilot mentorship program administered by the Committee described their experiences as validating, feeling as though they were not alone, and that they gained confidence and courage in practicing law.

STUDENT LOAN ASSISTANCE, EDUCATION, AND COACHING

→ Administered a Student Loan Assistance, Education, and Coaching Pilot Program beginning October 2020 and due to interest extending to 2021 (over 150 attorneys currently participating); early survey results demonstrate a positive impact on well-being (program evaluation and recommendations forthcoming)

**Got student loans?
Join our pilot program.**



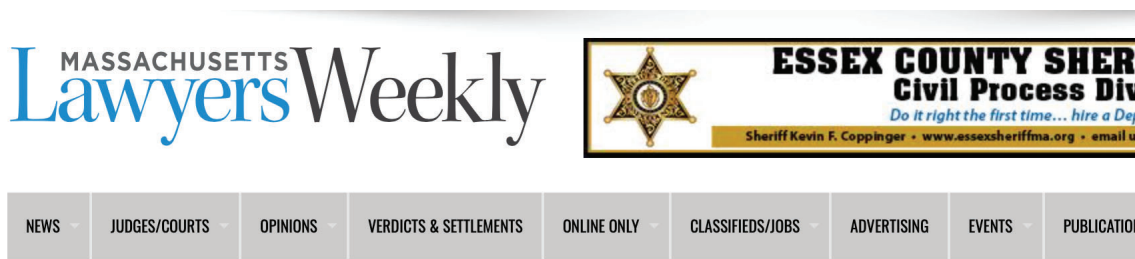
"It was great to have a community feeling as if you are not alone and there is knowledgeable support out there that can guide you. I loved this program so much that I shared as much as I could with other young lawyers and law students at my firm."

~ Pilot Program Participant

ELIGIBILITY FOR PUBLIC SERVICE LOAN FORGIVENESS

www.lawyerwellbeingma.org/news/letter-to-biden-transition-team

→ Drafted a letter to the U.S. Presidential Transition Team to advocate for certain private counsel eligibility for Public Service Loan Forgiveness (see Appendix II)



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Letter to Biden team: Make bar advocates eligible for student loan forgiveness

By: Kris Olson | December 15, 2020

The incoming Biden administration is likely being inundated by all manner of “asks” as it prepares to take office next month.

But the Supreme Judicial Court’s Standing Committee on Lawyer Well-Being believes its request is at once as reasonable as it is urgent: make private bar advocates every bit as eligible to have their educational loan debt forgiven as the Committee for Public Counsel Services’ staff attorneys.

In a [Dec. 10 letter to members of Biden’s education transition team](#) led by California Board of Education President Linda Darling-Hammond, the standing committee argues that the incoming secretary of education should use a “negotiated rulemaking process” to clarify that the definition of “public service” codified in the Higher Education Act is broad enough to encompass private counsel performing the same functions in representing indigent clients as CPCS staff counsel.

The letter highlights Massachusetts’ “acute shortage of attorneys to provide legal

EDITOR'S PICKS

Our best, right now.

• **Letter to Biden team: Make bar advocates eligible for student loan forgiveness**
by Kris Olson | Dec. 15

• **Trial Court to launch eDelivery of documents, notices**
by Pat Murphy | Dec. 11

• **Non-union employees can't recoup pre-'Janus' agency fees**
by Eric T. Berkman | Dec. 10

• **SJC panel floats rules on 'incivility,' attorney-client sex**
by Pat Murphy | Dec. 10

• **Judge strictly construes Prompt Payment Act**
by Kris Olson | Dec. 10

NEWS FROM MLW

Non-union employees can't recoup pre-'Janus' agency fees

4. Identifying and Understanding the Well-Being Needs of the Massachusetts Legal Community

- Spearheaded changes to SJC Rule 4:02, Periodic Registration of Attorneys, to require an Attorney Demographic and Law Practice Survey (“Survey”) as part of the annual bar registration process
- Developed, implemented and released the initial Survey
- Coordinated with the BBO and supported the anonymous submission of the Survey in the December 2020 attorney registration cycle (including by responding to many individual attorney questions and comments)
- Began working with affinity bar associations and other stakeholders to improve the Survey for the next registration cycle
- Engaged a team of researchers to 1) review the Survey in comparison with other standard demographic instruments, and 2) conduct a large-scale study and well-being needs assessment of Massachusetts lawyers (beginning January 2021)

www.lawyerwellbeingma.org/demographics-and-law-practice-survey

Attorney Demographic and Law Practice Survey

This survey contains demographic questions about you and your law practice. It should take between 5 and 10 minutes to complete. You must answer every question. If you navigate away from the survey page before you click submit, your responses will not be saved, and you will need to start over.

The purpose of the survey is to assist the [Supreme Judicial Court Standing Committee on Lawyer Well-Being](#) to better understand the makeup of the Massachusetts bar and to use the results of the survey solely to develop services and programs to aid lawyers and support diversity, equity and inclusion in the Massachusetts legal profession. We appreciate your honest answers to these questions and encourage you to answer every question substantively. Collection of complete data will help us continue to improve lawyer programs and services. For more information about the purpose of the survey, [please click here](#), and for questions related to the survey, please email demographic-survey@lawyerwellbeingma.org.

***Your responses will not be associated with your BBO Attorney account and will be de-identified to prevent your personal identity from being revealed.**

Appendix I

SJC Standing Committee on Lawyer Well-Being

Diversity, Equity and Inclusion Statement

We believe that the legal profession is strongest when its membership reflects the populations it serves. However, systemically oppressed attorneys, judges, and law students – that is, attorneys, judges, and law students from under-represented, historically excluded, and systemically oppressed populations – encounter countless barriers to entry, confront structural challenges to success, and must navigate daily micro- and macro-aggressions regarding their identities in the legal profession that are not faced by those outside these groups. Each of these barriers, challenges, and slights takes a toll on their individual and collective well-being, resulting in a hostile landscape for these practitioners in Massachusetts. The long-standing systems that have created this current hostility have done so by design, and we believe it is essential that the Massachusetts bar engage in conscious, intentional effort to dismantle them.

The 2019 Report issued by the Massachusetts Supreme Judicial Court Steering Committee on Lawyer Well-Being highlighted the challenges faced by these professionals throughout Massachusetts, including by public lawyers, private firm lawyers, in-house counsel, and law students. Ultimately, the Report concluded that “[a] **strong and on-going commitment to enhancing diversity, equity, and inclusion in all of our practices and in all parts of the judicial branch, is crucial to our individual and collective well-being,**” and made various recommendations meant to mitigate and ultimately dismantle the systems and cultures of oppression and exclusion that have pervaded law practice in the Commonwealth for centuries.

The SJC Standing Committee on Lawyer Well-Being accordingly prioritizes diversity, equity, and inclusion. We identify three goals for our DEI work:

1. **To Focus.** The Committee’s commitment to DEI will comprehensively inform the Committee’s work, paying special attention to the additional stressors, burdens, and barriers to entry faced by systemically oppressed legal professionals, and working to address these challenges in the programs, proposals, recommendations, best practices, guides, rules, regulations and other projects developed under the Committee’s purview.
2. **To Communicate.** The Committee will collaborate with the affinity bar associations and other groups throughout the Commonwealth focused on DEI among Massachusetts lawyers, so that both (a) the Committee can efficiently seek input from these attorneys, judges and law students, and (b) these individuals and communities have a clear channel of communication to the Committee with respect to issues they are facing that affect their well-being and success.
3. **To Create Change.** The Committee will create, develop, and assist with the implementation of short-term, medium-term, and long term projects aimed at addressing both the individual and systemic elements of current legal practice that make participation, let alone success, in the legal profession harder to achieve and sustain for these legal professionals than it is for those outside these groups.

With these goals in mind, we will work hard, likely make mistakes, learn from those mistakes, and continue working to effect real, meaningful change in the profession to not only ensure that systemically oppressed legal professionals in Massachusetts receive equal treatment, but that they receive the support they need to achieve equitable access to and success in the profession, and that the barriers, challenges and slights they face every day are reduced, mitigated and, ultimately, eliminated.

Appendix II

December 10, 2020

Linda Darling-Hammond, Team Lead
Biden Education Transition Team

Via email to:

James Kvall, jkvaal@jbrpt.org

Benjamin Miller, bmiller@jbrpt.org

Sarah Winshel, swinshel@jbrpt.org

Shital Shah, sshah@jbrpt.org

Dear Ms. Darling-Hammond,

The Massachusetts Supreme Judicial Court formed the Standing Committee on Lawyer Well-Being to, among other things, address the mounting financial concerns of attorneys appointed to represent those unable to afford representation. As representatives of the Committee, we write on behalf of the undersigned to offer our thoughts on steps that could be immediately undertaken by the Biden administration to encourage private attorneys to perform public service work on behalf of the poor.

In Massachusetts, we face an acute shortage of attorneys to provide legal representation in matters in which the law requires the appointment of counsel. The Committee for Public Counsel Services (CPCS) is the Massachusetts state agency that serves those unable to afford an attorney. CPCS directly employs a number of staff attorneys; however, it relies on private lawyers to take on a substantial share of these cases in which an indigent person has a constitutional or statutory right to representation. It is increasingly difficult to draw enough private lawyers to handle such cases in light of the cost of education, student debt burdens, and inadequate pay under the state-set rates for appointed counsel.

The new Secretary of Education can take immediate action to ease student debt burdens by, under limited circumstances, allowing private counsel to participate in Public Service Loan Forgiveness. **Specifically, we urge the Secretary to clarify that the definition of “public service” codified in the Higher Education Act recognizes a public service job-function definition broader than the employer-status definition currently used and could include private bar counsel providing critical public interest law services.**

The Statute

To encourage individuals to enter and continue in full-time public service employment, Congress established a loan forgiveness program for public service employees. In 2007, the College Cost Reduction and Access Act, Pub. L. No. 110-84, 121 Stat. 784

created Public Service Loan Forgiveness (PSLF) under which the Department must “cancel the balance of interest and principal” of qualifying student loans belonging to an individual who (1) is not in default on the loans, (2) makes 120 monthly payments after October 1, 2007, on the loans, and (3) is “employed in a public service job” at the time each payment is made and at the time of forgiveness. 20 U.S.C. § 1087e(m)(1).

The statute enumerates more than a dozen public service job-functions, including public interest law services, and defines a public service job as encompassing a series of specified professions, as well as specific categories of employer (government and 501(c)(3) nonprofits). Thus, the language of the statute clearly contemplates these public service job-functions being performed by borrowers not employed by government or nonprofit employers and is broad enough to cover private attorneys performing public interest law services.

The Regulations

In October 2008, the Department imposed a regulatory requirement narrowly interpreting the statutory language “employed in a public service job,” 20 U.S.C. § 1087e(m)(1)(B), as requiring an eligible borrower to be “hired and paid by a public service organization,” 34 C.F.R. § 685.219(b). Under this interpretation, a borrower’s eligibility for the PSLF Program is not determined by the public interest nature of his or her job responsibilities, but by whether his or her employer qualifies as a “public service organization.”

Under the regulation, “public service organization” includes any government organization, not-for-profit organization classified under Section 501(c)(3) of the Internal Revenue Code, or not-for-profit private organization that is not classified under Section 501(c)(3) so long as it “provides public services” and does not engage in certain disqualifying activities. 34 C.F.R. § 685.219(b). The qualifying “public services” include, among others, “public interest law services.”

Although the tax status of an employer is a restriction not included in the Higher Education Act, the regulations define a “public service organization” as a class of employer that excludes any “business organized for profit,” even where a worker performs a public service job identified in the statute. The regulation’s exclusion of private attorneys who provide public interest law services is inconsistent with the PSLF statute.

Application to CPCS Staff Attorneys vs. Private Bar Counsel

In Massachusetts, the Committee for Public Counsel Services (CPCS) provides legal representation for those unable to afford an attorney in criminal, delinquency, youthful offender, child welfare, mental health, registry cases, as well as related appeals and post-conviction matters. Representation is provided by a combination of approximately 450 staff attorneys and 2,800 private attorneys trained and certified to accept appointments. CPCS provides support for and supervision of the private attorneys within all divisions with training, mentoring and litigation support.

CPCS is certified as a qualified public service employer by the Department and as such, staff attorneys employed full-time by CPCS are permitted to benefit from PSLF; however, private bar counsel engaged in the same work are not recognized as eligible for loan forgiveness, despite clearly providing “public interest law services” and performing a “public service job” as identified in both the statute and its implementing regulations. 20 U.S.C. § 1087e(m); 34 C.F.R. § 685.219.

Private bar counsel are not directly employed by CPCS, a qualifying employer; however, they provide the same public services for the same needy populations as the CPCS staff attorneys and are working under the supervision a CPCS, a qualifying employer. CPCS relies on private bar counsel to provide these services, without them the Commonwealth of Massachusetts could not provide legal assistance in matters in which the law requires the appointment of counsel.

Request for Rewritten Regulations

For these reasons, we request that the Secretary pursue a negotiated rule making process on Public Service Loan Forgiveness to redefine qualifying public service employment more broadly. The resulting regulations should allow workers performing a statutory public service function full-time, such as public interest law services, under the direction of a qualified public service employer, such as CPCS, to participate in Public Service Loan Forgiveness.

We hope that the administration will take these steps and we stand ready to work with you to support whatever measures are necessary to accomplish this worthy goal.

Sincerely,

Honorable Margot Botsford (ret.) and Denise Murphy, Chairs
Supreme Judicial Court Standing Committee on Lawyer Well-Being

Anthony Benedetti, Chief Counsel
Committee for Public Counsel Services

Denise Murphy, President
Massachusetts Bar Association

Thomas Wilson, President
Hampden County Bar Association

Lisa Lippiello, President
Hampshire County Bar Association

Angela Onwuachi-Willig, Dean
Boston University School of Law

James Hackney, Dean
Northeastern University School of Law

Andrew Perlman, Dean
Suffolk University School of Law

Eric Mitnick, Dean
University of Massachusetts School of Law

Sudha Setty, Dean
Western New England University School of Law

Len Zandrow, Executive Director
Justice Bridge Legal Center