National Association for Public Defense

10 Principles for Creating Sustainability in Public Defense

Introduction

Serving in public defense is an important job with an enormous amount of responsibility. Public defense is a profession that requires teamwork amongst leaders, lawyers, administrative professionals, core staff, administrators, sentencing advocates, mitigation specialists, social workers, investigators, and all other members of the defense team. Working with clients whose lives sit in the balance can be personally and professionally challenging, and that challenge is exacerbated when the systems operate against our clients' liberty interests or separate them from their families. The emotional toll of feeling responsible for system challenges that impact our clients[1] is real and can have a tremendous impact on defense team members, sometimes resulting in compassion fatigue and burnout.[2]

Organizations that view employees "as an asset to be nurtured and developed" are more likely to have employees that feel valued.[3] The primary reason for creating a work environment that fosters the overall well-being of public defenders and team members is to better serve clients.[4] In light of the historical and present day inequities in the system, anything less than high level representation can hurt clients and their families. High level defense of clients requires complex, creative thinking, intense focus, emotional regulation, and perspective taking, all of which suffer if well-being is compromised.[5] Studies show that employees who feel emotionally supported are more effective, more satisfied in the workplace, more likely to stay engaged at the office and in the work, and are in a better position to consistently fulfill the mission of the office.[6] On the other hand, employees who are not emotionally supported are more likely to experience stress, vicarious trauma, moral injury, and burnout.[7]

Admittedly, there is a dynamic tension between what public defenders need to support their own well-being and the effort required to provide optimal defense for clients.[8] Sometimes, individual defense team members will be less focused on their own well-being in favor of client needs. Other times, individuals may be more focused on their own well-being, potentially at the expense of client interests. A team that aligns with values of well-being will better adapt to and balance such episodic strains.[9] It is important to hold equally, without judgment, both sides of the dialectic that defenders are doing their best to navigate competing demands at any given moment, but that they also have the capacity to do better.

Public defenders need to start from a strong base of overall wellness to best represent their clients under what are frequently challenging circumstances.[10] Employee wellness is multi-layered, and best practices toward sustainability can be woven into organization operations, policies, procedures, training, supervision, atmosphere, and interpersonal interactions.

The end goal is to increase not only individual resilience, but community resilience of the office, which creates sustainability.[11] When individual well-being is addressed, we can better support the well-being of our colleagues and teams. Only then can we become a community that is adaptable and sustainable and that provides the level of representation our clients deserve.

Definitions

Culture: The "character and personality of your organization…the sum of its values, traditions, beliefs, interactions, behaviors, and attitudes."[12]

Health: "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[13]

Healthy Office Culture: "A healthy workplace is one in which all organizational members collaborate to continually improve processes to protect and promote member well-being and organizational success. All seek alignment of organizational and member goals and needs so that they can grow and thrive together."[14]

Moral Injury: "Moral injury is the damage done to one's conscience or moral compass when that person perpetrates, witnesses, or fails to prevent acts that transgress one's own moral beliefs, values, or ethical codes of conduct."[15]

Public Defender Team: All staff at a public defender office.

Self-Care: "Self-care is a broad term that encompasses just about anything you to do be good to yourself. In a nutshell, it's about being as kind to yourself as you would be to others. It's partly about knowing when your resources are running low, and stepping back to replenish them rather than letting them all drain away."[16]

Sustainability: "[O]rganizations cannot be sustainable without protecting the safety, health, and welfare of their most vital resource: workers. Sustainability is not just about what is done, but how it gets done. It is a mindset that requires leadership; not settling for second best in any aspect of operations; setting and achieving goals beyond regulatory compliance."[17]

Wellness: "Wellness is an active process through which people become aware of, and make choices toward, a more successful existence."[18]

Well-being: "[A] continuous process whereby [individuals] seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others."[19] Well-being includes our individual health, happiness, and quality of life. In a public defender office, this extends to the collective health, happiness, and quality of life in our organization.

Principles

Principle 1: Clients are best served by interdisciplinary teams that strive for well-being.

High level representation and effective team competency and contribution require clarity of thinking, the ability for rational choice-making, and the ability to retain and marshal information necessary for a client's defense. This level of competence is less attainable when a team member is unwell, whether physically, socially, emotionally or spiritually.[20] In the same way one would not conduct a court hearing or client interview or case investigation when sick with the flu or inebriated, it is best to also ensure our psychological wellness is not similarly diminished and negatively impacting competent representation.[21]

A best practice to ensure this Principle and the Model Rules of Professional Conduct are met, is to follow the Principles of this document.

Principle 2: Sustainability of the public defender office is a goal all staff actively strive toward.

The sustainability of an office is a collective responsibility of all those in an organization.[22] A public defender office cannot be sustainable if staff members are not well.[23] Empowering and engaging staff in creating a healthy environment that prioritizes wellness through building community, effective communication, transparency and space for dialogue and well-being is the goal of sustainability efforts. Those goals can best be met through the participation of all staff.

Principle 3: Leadership and supervisors model wellness and set standards for sustainability.

Agency leadership and supervisors have a responsibility to create and model a culture of wellness.[24] They promote and integrate wellness discussions and considerations into recruiting, on-boarding, and continuing education and training. Self-care and wellness practices for all staff are normalized as routine actions to promote well-being.[25] Expected activities necessary to maintain resilient workplaces and workforces include, but are not necessarily limited to, the use of personal, vacation, sick, family, parental leave, employee assistance programs and other wellness options, without judgment. Performance evaluations seek to identify and address barriers staff experience in implementing wellness practices.[26] Barriers to seeking help are removed and destigmatized.[27] Leadership and supervisors recognize that wellness practices are flexible and that individuals may approach wellness practices differently.

Principle 4: Staff promote workplace values that align with a healthy work culture.

A healthy office culture depends on individual alignment with the stated purpose, mission, and values of the organization. Office leadership, with input from staff, establish intrinsic workplace values, with a goal of creating a healthy work culture and sense of belonging on staff.[28] Behaviors detrimental to the agreed upon values of the organization are actively and timely addressed and discouraged.[29]

Leadership foster a team-oriented environment where staff share responsibilities within the office. Leadership encourage constructive feedback and welcome difficult conversations about inclusion, well-being, and operations that are necessary to maintain the values of the organization.

Principle 5: Leadership and staff actively seek to uphold principles of equity and inclusion while striving to create a welcoming environment for all.

Representation matters, and true representation is by equity and inclusion of a diverse workforce. A best practice for ensuring this is the creation of diversity, equity, and inclusion (DEI) initiatives in offices that do not yet have them, and full support of existing DEI initiatives.[30] DEI initiatives exist to encourage difficult conversations, educate staff, and combat racism and trauma.[31]

Principle 6: The office normalizes and prepares for workplace absences.

Employees need time off.[32] They may need to address their own health, care for a family member, take a well-earned break from work, or adjust their schedule to accommodate a change in life circumstance.[33] A workload recess leave policy would facilitate unpaid leaves of absence, sick leave or family and medical leave, paid time off (vacation), flexible time off, and flexible work assignments.[34] The policy and procedures will depend on many factors, including office size, budget, and structure, but will ensure all employees are eligible to request a recess and that the office has a clear procedure for assigning coverage to ensure no interruption of legal services for clients and no unnecessary strain on other staff.

Principle 7: The office creates time and space for individuals to reflect on positive and negative work experiences in a supportive environment.

Staff is given time and space for work-related debriefing with colleagues, which may be built into standard meetings.[35] The office nurtures a culture of affirmation and celebrates the client-centered successes of colleagues. The definition of success within an office is defined more broadly than a "legal win," and includes more nuanced victories toward justice.

People are encouraged to have and share the feelings they are having, no matter what they are. Healthy conflicts and timely crucial conversations amongst staff is normalized. Grieving, sadness, and feelings of loss related to working in the fight for justice is normalized. Staff is educated about diversity of experiences related to coping with loss. Supervisors are trained to identify signs of burnout, moral injury, and secondary trauma.

When an employee suffers a traumatic work or personal event, supervisors perform meaningful check-ins with that employee.[36] Leadership and supervisors support taking time off after significant work events if needed. Leadership and supervisors raise awareness and promote employee assistance programs and make efforts to normalize

requests for help. Leadership and supervisors provide timely, meaningful, and consistent feedback on work performance, which has been shown to increase well-being.[37]

Principle 8: The physical atmosphere of the workplace is designed with wellness in mind.

The built environment influences wellness and job performance.[38] While a purpose-built office is often not an option, intentional use of space and design elements (i.e., how public and private areas interact, lighting, windows, acoustics, temperature, etc.) can have a significant impact on occupants' well-being and productivity.[39] Both staff and clients benefit from spaces designed with the mission and values of the office in mind and that reinforce self-care and wellness.

Attending to the aspects of the office that maximize occupant wellness can also impact inclusivity and productivity goals.[40] Considerations for organizations designing or reworking their space to improve wellness might include, but are not limited to, the following:

- Ventilation and allergen mitigation to accommodate employees with service animals
- Wall color
- Lighting color (yellow- vs. blue-toned), source (overhead and eye level)[41]
- Noise mitigation, to the extent possible[42]
- A quiet area or Wellness Room that offers a restful place to address stressors
- A Mother's Room properly equipped with a refrigerator and sink so breastfeeding mothers have privacy and their basic needs met
- Space for staff to highlight milestones, accomplishments, reflections and to recognize their colleagues' contributions, with consideration given to maintaining client boundaries

Principle 9: Training programs regularly encompass a sustainability component.

Where feasible, agencies provide opportunities and consistent invitations for staff to participate in well-being and self-care training.[43] Training Directors establish orientation practices that set new staff up for success, engagement, and well-being. Mentorship is a way to ensure employee well-being is being monitored.[44] Self-care and wellness are principles incorporated into all training programs. Training programs model self-care by providing regular breaks and offering time for reflection.

All staff are trained annually around communication and interpersonal health, teamwork, compassion fatigue/moral injury, and creating self-care/wellness culture.

Principle 10: Leadership creates clear policies and expectations that properly balance the health and well-being of staff with the interests of clients.

There are times when the interests of clients and the interests of staff may not align. Leadership seeks input from staff when creating policies or guidelines to address this tension and provides transparency in decision-making. Leadership ensures staff are clearly and timely made aware of expectations, even during extreme or changing circumstances. Office internal operating procedures and policies leave little room for ambiguity in terms of job duties, roles, best practices, and expectations. New office policies are developed and adopted only after staff has a meaningful opportunity to provide input. Disagreements over policies and expectations are addressed timely by leadership and supervisors.

Leadership proactively engages with outside stakeholders in order to advance the office's missions and values. Within the system, leadership consistently prioritizes the commitment to clients over efficient, cost-effective, or convenient practices for courts or corrections.

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[6] *Workplace Performance,* p. 71. ("Employee job satisfaction was found to be positively associated with workplace financial performance, labour productivity and the quality of output and service.").

[7] *Toll of Trauma, (*"Lawyers need to know that what they're feeling is real . . . and that it's something they can discuss – that they don't have to feel embarrassed or ashamed for feeling this way. That's a step in the right direction.")

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[10] *The Stress of Injustice,* p. 16. ("Increasingly limited resources within a constantly expanding penal system also creates structural stress, most often manifested in public defender caseloads. With the exception of some appellate and capital defense attorneys, the relentless stream of cases and the little time that the sheer volume leaves for investigation, consultation with clients, and trial preparation created significant stress for our participants. Chronic underfunding was reflected in the insufficient numbers of attorneys in the office, high office turnover, relatively low salaries, and simply making ends meet."

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[18] *The Six Dimensions of Wellness*, National Wellness Institute. Located at: https://nationalwellness.org/resources/six-dimensions-of-wellness/.

[19] *ABA National Task Force,* p. 9.

[20] *ABA National Task Force,* p. 8. ("Troubled lawyers can struggle with even minimum competence.")

[21] *ABA National Task Force,* p. 9. "Lawyer well-being is part of a lawyer's ethical duty of competence." Model Rules of Professional Conduct are instructive: "Rule 1.1 of the ABA's Model Rules of Professional Conduct requires lawyers to 'provide competent representation.' Rule 1.3 requires diligence in client representation, and Rules 4.1 through 4.4 regulate working with people other than clients. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline. Yet this does not allow for realization of the aspirational goal articulated in the Preamble to the ABA's Model Rules of Professional Conduct, which calls lawyers to 'strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.'" *ABA National Task Force,* p. 8.

[22] *ABA Well-Being Toolkit*, p. 8 ("A healthy workplace is one in which all organizational members collaborate to continually improve processes to protect and promote member well-being and organizational success.")

[23] *Toxic Workplaces & Employee Wellness Go Hand in Hand.* (2020). ("An organization is only as healthy as its employees.") Located at: https://blog.rewardian.com/toxic-workplaces-employee-wellness-go-hand-in-hand?hs_amp=true

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[35] *Culture as a Structural Problem,* p. 1792. ("In addition not the emotional support and motivation that a group structure provides, defenders also benefit from working together in communities because their ability to learn form one another and pool their combined intellectual resources raises the level of representation that each of them is able to provide.")

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