

# Editorial

## A fresh look at judicial impairment

It is time to recognize that judges face the same challenges to their physical, mental, and emotional health as do other members of society, and that their unique position in society renders the provision of assistance in meeting those challenges critically important.

The problems of impairment due to alcoholism, other addictions, depression or other mental health issues, and of declining mental acuity due to age afflict people in all segments of society, including the judiciary. The administrative, social and political structure within which judges operate, however, can make it difficult to recognize and deal effectively with these problems. Public confidence in the judiciary is seriously undermined when these issues are ignored.

Rather than wait until a judge's DWI arrest or bizarre behavior makes the news, courts should have in place resources that make it as simple as possible for judges to obtain help. Policies and practices should afford sympathetic support to a judge with an addiction or disability as long as the judge, too, acknowledges the necessity of finding a remedy. Judicial collegiality needs to be redefined so that looking the other way to avoid embarrassment or confrontation is no longer accept-

able, and intervention is expected and encouraged.

Education about the availability of programs and information about other wellness issues needs to be provided in new judge education and regularly reiterated at judicial meetings in substantive sessions rather than just a five-minute reminder. Handbooks, websites, and newsletters can keep the issue from being pushed to the bottom of the agenda until the next headline. There should also be outreach to family members who may be struggling with how to obtain help for their judicial relative. Judges with supervisory authority should receive intensive training about how to intervene after receiving complaints about a judge's behavior. Staff and attorneys need to be encouraged to bring their concerns to the appropriate authorities while a confidential solution is still possible rather than to cover up a judge's behavior until there is a public scandal.

The presence of an assistance program does not eliminate the possibility of judicial discipline as the incentive that may finally force judges to commit to treatment and as the vehicle for a judge to make amends by restoring public confidence. Appropriate confidentiality rules and procedures for the conduct commissions and assistance programs will foster a cooperative relationship between the two groups that will both assist judges and protect the public.

Several times in the last few decades, courts across the country have admitted they had a problem – the appearance of gender or racial bias, for example – and applied themselves to solving it through study, education, and sustained policy and procedural change. Recent innovations to meet the challenges raised by the increasing number of pro se litigants also demonstrate the ability of courts to successfully tackle a dilemma once they choose to confront it.

As suggested by Isaiah Zimmerman in his article in this issue, the courts need to work for a culture change in which personal problems that affect judicial duties can be seen not just as potential disciplinary issues but as opportunities to get out in front and intervene before serious damage is done. Such a culture change will also remove any stigma attached to disability retirement. Courts need to ensure that all judges and their families have access to understandable information about disability and retirement benefits and that those benefits are sufficient to allow judges to plan for and con-

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sider either partial or full retirement if the effects of aging or bad health make full service no longer the best choice for both the judge and the court.

While the precise features of a wellness initiative will no doubt vary from jurisdiction to jurisdiction, the United States Court of Appeals for the Ninth Circuit has created the template for some of the work that needs to be done, creating a working group to study the relationship between health and judicial performance, to consider formal and informal methods of dealing with judicial disabilities, and to make recommendations for changes and new programs. As described in the article in this issue, by Richard Carlton, "Addressing disability and promoting wellness in the federal courts," the Ninth Circuit then implemented many of the recommendations and continues to make the topic of judicial wellness a priority.

Oddly, apparently no other federal or state court has so far followed the Ninth Circuit's lead even though the working group report was completed in 2000. It is time for other federal and state courts to begin to follow that example. The kind of sustained, comprehensive commitment necessary to lend a consistent, effective helping hand requires leadership from the top, the chief justices and justices of the state supreme courts, the chief judges of the federal circuits and districts, and federal judicial councils.

There are many challenges facing the judiciary, making it tempting to place the uncomfortable, awkward issue of judicial impairment low on the list of priorities. However, to meet the other challenges, all judges need to be acting at their fullest capacity and with the confidence that there are resources available if they need them. Any public confidence lost by the image of impaired judges will be restored by the judiciary's public commitment to fairly and effectively address the problem and provide assistance that will help judges perform their responsibilities. A working group on impaired judges, estab-

lished by AJS in 2004, will continue to address these issues. ❧