

HELPING JUDGES IN DISTRESS



by ISAAH M. ZIMMERMAN

Judges come from the ranks of lawyers, and lawyers, as a group, are reliably estimated to include a steady minority of 15 to 18 percent¹ who suffer from problems with substance abuse and related disorders. Programs designed to help lawyers in distress have been established throughout the United States, as well as in Canada, Ireland, and the United Kingdom. These programs have a fine record of outreach and help, and are now an accepted part of intra-professional responsibility. However, the sections of these programs that are also meant to help judges have not attracted the level of requests for service that would be reasonable to expect. What are the reasons for the low use of these widely available services, and what can be done about it?

My own experience as a clinical psychologist, in a metropolitan area adjacent to four states, who has seen a significant number of judges over the past 30 years confirms that

Judges are subject to a wide range of physical and emotional problems and stresses but often don't get the help they need. A "wellness initiative" in the courts could help overcome the unique barriers they face in obtaining assistance.

judges do indeed seek help with a whole variety of personal and family problems. But they do so outside the available bar programs. When asked why, they cite the need for strict privacy and confidentiality. They are willing to pay a premium in fees, and to not utilize their health insurance coverage.

Can there be a broader and less expensive way for judges to get help when they need it?

Range of problems

Let us review the situations in which most judges privately seek help.

Health and medical. Medical and surgical care often involves dealing with the disruption of family routines and responsibilities. The illness of children, spouses, and

1. Idaho Lawyer Assistance Program, Idaho State Bar and Idaho Law Foundation, Inc., *SURVIVAL GUIDE FOR LAWYERS*, (2000).

aging parents can entail arranging for home care, clinic visits, physical therapy appointments, and other collateral arrangements. Whether under a direct or master calendar, most judges have to work out backup for an already overloaded docket. Welfare clients sometimes have the help of medical social workers—judges do not. Between the presiding judge, calendar clerk, and court administrator, something is usually arranged. But the emotional toll on the judge and family is rarely addressed.² Most judges live in dread of these situations, because, ultimately, the caseload balloons and must be handled by extended hours on the bench and work at home. A chronic, long-term illness in the family places the judge in an indefinitely prolonged caregiver role. For all of the foregoing, the services of a health counselor or social worker would be most appropriate.

Mental health. Judges are subject to a normal spectrum of psychological issues, including depression, anxiety, and mid-life crises. These can underlie a reduction in productivity, tardiness in opinion writing, clashes within the judicial administration and hierarchy, and intemperate and inappropriate behavior on or off the bench. Psychiatric treatment still carries stigma in our society. Despite a more widespread acceptance of mental health diagnosis and treatment, psychiatric care is still not reimbursed on a par with medical and surgical care. CEOs, high officials, political leaders, and judges

shun the suggestion of possible mental illness, diminished capacity of judgment, and the charge of malinger- ing to evade misconduct charges. As a result, judges either put off seeking treatment until symptoms can no longer be denied, or obtain medication from their general practitioner. When they do seek psychological care, they employ safeguards such as seeing a practitioner out of their area, requesting telephone sessions, and asking the psychiatrist to schedule them away from the session of any local lawyer or newspaper.

All this freights their psychotherapy with unfortunate burdens, and some quit counseling before they should. Group psychotherapy, a very effective modality of care, is virtually closed to them, as well as to other public figures, since confidentiality cannot be assured, and membership in a group cannot be totally selective. Group therapy for couples, another effective mode of marital help, is likewise unavailable to judges for the same reasons.

Substance abuse and addiction. Though a subset of psychiatric conditions, the prevalence and publicized nature of addictions in the legal professions warrant a separate listing. However, this is often referred to as a “dual-diagnostic”³ area because concomitant psychological and medical conditions are usually involved. Alcohol abuse and addiction is the most frequent category. It can profoundly affect temperament and behavior on and off the bench, the quality of collegial relations, and caseload productivity. It can also affect staff morale and efficiency. Clerks and staff often cover for a judge who has such a problem. This creates enormous stress for everyone.

When media attention focuses on a judge in such circumstances, harsh

reactions issue from legislators and op-ed writers, with negative reflections on the entire court and judiciary. Clearly this problem area has wide repercussions of public shaming.⁴ The treatment of alcohol disorders requires a combination of in-patient care, medication, individual and group psychotherapy, family counseling, and long-term group follow-up. These are the most important factors in preventing relapse. Where judges are concerned, group treatment for alcohol disorder with lawyers or a mixed population is not an option, except in the rarest of cases where hardy souls have “gone public” and braved public humiliation or recall.

Career and organizational stressors. In mid-career, a number of judges experience a kind of pause. They know their options to re-enter law practice, government service, or academic life are waning. They have fully experienced the rewards as well as the vicissitudes of the judicial career. It is time to review: should they continue and seek another term, whether it be by appointment, election, or retention? They also ask themselves “What have I achieved? Was the financial and family sacrifice all worth it? Will it get any better in the second half of my career?”

In states where election is highly politicized and considerable campaign funds must be raised, this is not a trivial halfway point. Campaigning for a judgeship imposes extremely paradoxical judicial demands. Funds usually come from large law firms or affluent solo practitioners and political parties. Though judges are shielded by a campaign committee from the identity of donors, they generally know who they are. Judges also are pressured to present themselves, their records, and their positions on major

2. I.M. Zimmerman, *Dealing with professional stress*, 31 B. B.J. 39 (1987).

3. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 4th ed. (2000)

4. A. Morrison, *Shame and the Psychology of the Self*, in P. Stepansky and A. Goldberg, (eds.) *KOHUT'S LEGACY: CONTRIBUTIONS TO SELF PSYCHOLOGY* (Hillsdale, N.J.: The Analytic Press, 1992).

local issues in a way that telegraphs their ideological tilt. The family often is drawn into multiple evening and weekend appearances, and the judge may acquire substantial debt. Having treated judges in the throes of an election and its aftermath (successful or not), I have witnessed what can be described as a post-traumatic stress reaction that extends to the family. Will that judge consult a local therapist? Of course not.

Another area in which judges occasionally seek help is organizational and collegial conflict. This is an intensely private area of concern. The issues range from pure personality clashes with a colleague or appellate panel, to power struggles with the administrative office or the presiding judge. Gossip may appear in local bar publications, and can be quite nasty. To obtain assistance and calm guidance in these circumstances is invaluable, and discretion is absolutely essential.

Marital and family issues. When a judge experiences marital and family conflicts, the size of his or her community matters. In smaller and rural communities, judges have little or no privacy outside of their homes. A judge in a one-judge court is especially vulnerable.⁵ In larger or metropolitan jurisdictions, the media are interested in publicizing what may be occurring in the life of the judge and the court. In a divorce proceeding, judges, in my experience, tend to appease the spouse in contested custody and financial matters to minimize public scrutiny. These are severe stresses on the equanimity and working ability of the judge and his or her staff. The hidden post-traumatic consequences may continue for a considerable period.

The children of judges face challenges at school and on the playground that are remarkably similar to those of the offspring of the clergy. Often these children are held to a higher standard by teachers and coaches. Peer pressure may involve them in delinquent behavior. In the rebellious teenage years, a judge's child may engage in problem behavior to embarrass the parents.

Disputes with neighbors can be compromised. A judge may choose not to sue or dispute a problem with a neighbor over a property line or with a local contractor. The role of the family is linked to the judge's public image, especially in electoral office states. Recall that in those areas, judges often campaign with their families by their sides. Though they may deny it publicly, judges tend to feel vulnerable in publicized disputes.

The life of the unmarried judge is another area that sometimes can benefit from counseling. The single woman on the bench is often an object of outright curiosity and chatter. Who does she date? If she doesn't date, is she gay or are there other issues? Many single judges choose to socialize in some distant county or to maintain a second home where they can be more relaxed. At their primary residence, they may create a high social wall around themselves. These are matters that even collegial friendship does not easily admit to discussion, so outside supportiveness can be appropriate and sustaining.

Aging and retirement. Most federal and state judiciaries offer pre-retirement orientation concerning benefits, health insurance, and the options for senior status and part-time judicial duties, as well as the new field of "private judging" and mediation. A number of programs include information for spouses, as well as a briefing on the personal emotional transition from active, full-time judging to retired or substitute status. For the majority, these presentations are adequate and suffice.

For a number of judges, however, this presents a serious tipping point in self-image and public esteem. Though it may be scoffed at and treated as unimportant, most deeply enjoy and covet their esteemed title of judge or justice as well as their standing in the community. Into retirement their title stays with them and remains cherished. That is quite understandable. In our society, the equivalent nomination continues past retirement from public office when we address individuals as "Governor" or "Mr. or Madam Secretary,"

or "Senator," over a lifetime. Taken all together, it is extremely helpful for a retiring judge to discuss this freely and to integrate it in the transition process.

The dynamics of retirement (or entry to a new occupation) in general are well understood now. However, the specific needs of judges are not understood. The common reaction is that this appears to reflect an inflated ego as well as a certain shallowness. Because of the centrality to self esteem of the customary use of these appellations, this issue is definitely not trivial to the retiree.

Interestingly, judges collude in maintaining an image that evokes ambivalent reactions. Most of what has been advanced above can elicit public reactions of "Poor baby! The judge needs so much support and soothing! All on a high salary, great benefits, prestige and power . . . what on earth can he need help for? Ridiculous!" As a result of society's mixed image, assistance for judges does not gather sympathy from the press, legislators, or even the majority of lawyers.

Aging presents a new set of issues. Due to the gravity and responsibility of their work, mandatory retirement terms are in place in most jurisdictions, except in the federal courts. When a sitting judge on active service begins to exhibit signs of cognitive or physical decline, it is quickly noted and guardedly discussed within the court family and bar. At the same time, ranks close around the judge, and there arises a great disinclination to question the judge's capabilities. It is easier to help judges in senior status, as most face periodic re-certification. However, an older full-time judge may suffer for a considerable period and operate marginally and in denial before help arrives. The federal circuits have issued guidelines for chief district and bankruptcy judges who may face this matter. A wellness-based judge-to-judge assistance program might help the spouse or family of the judge in question to obtain dis-

5. I.M. Zimmerman, *Isolation in the judicial career*, 36 CT. REV. 4 (2000).

creet medical and psychological guidance to deal with the massive denial and indignation often involved. The properly oriented presiding or chief judge can develop procedures for a graceful and dignified departure by a marginally functioning older judge.

Judicial culture and self-identity

Working as a psychotherapist and advisor to administrative law, state, and federal judges for many years has impressed upon me how insular

and share their opinions of sitting judges.

A profound change occurs as a lawyer becomes a judge.⁶ He or she gradually loses the empathy and collegiality of most lawyers. While the judicial career is deeply satisfying and rewarding, it also includes the accumulation of feelings of guardedness, isolation, and vulnerability, all of which are kept hidden behind the public persona.

Therefore, when placed in a

degree.

Where judges do share the life of other high officials is in their extensive visibility, as well as in the unrealistically high expectations placed on their performance. As official problem solvers and models of wisdom, they are presumed to have little need of therapy or other help, because they are expected to self-correct if troubled or overburdened.

It is not surprising that we seldom hear high officials or judges disclose that they are in any form of treatment or care, other than for totally non-perjorative medical conditions. Both groups scrupulously avoid any sign of impairment of judgment or capability.

MOST JUDGES IN MEDICAL, EMOTIONAL, FAMILY, OR CAREER DIFFICULTIES SOLDIER ON WITHOUT HELP.

the world of the judiciary really is, and how little is known about its inner culture and life circumstances. I have been impressed by how little accurate information the public and bar has about what it is like to be a judge. Fictional accounts about judges abound, but very little is to be found about the realities of judicial life. As a result, judges are distanced from the very group from which they originate.

Further, there is a widespread duality in how judges and the judicial system are perceived. On the one hand, great respect is shown to judges, and many lawyers aspire to that status despite obvious hurdles and costs. At the same time, the lawyer-judge relationship is ambivalent and burdened by formality and the strictures of the ethical code. Thus, even long-standing friends can feel a subtle inhibition in their relationship.

Figures of power and importance often inspire both envy and criticism. The media are quick to report questionable behavior or decisions. Practicing lawyers keenly observe and comment on all aspects of court life

mixed treatment or recovery group, judges, for both objective and subjective reasons, feel too vulnerable to participate. If questioned, they are not likely to offer reasons beyond the obvious: their political vulnerability and right to privacy. Rarely will a judge even agree to be interviewed for such a treatment referral. The reaction brings on the fear of loss of privacy and the specter of shame, of being found unworthy of the title and office, and of public humiliation. As a result, most judges in medical, emotional, family, or career difficulties soldier on without help, turn to other judges for advice, or seek help totally outside the system.

Being a judge at any level of court is totally unlike serving in other roles, with the possible exception of holding high public office. In this comparison, there are also significant differences. High officials can strike back in word and print if attacked. Judges normally do not. Others can endlessly explain and justify their actions and decisions. Judges do not. Others can socialize and behave with greater latitude. Most judges gradually experience an irreducible isolation and restriction in their public speech and behavior. This also extends to their families to some

Widening assistance

Existing lawyer and judge assistance programs are staffed by able and dedicated professionals and volunteers (see “Judges in lawyers’ assistance programs, page 20). Their reported results are impressive. The ideas advanced in this article are offered to increase assistance to judges and to encourage use of bar programs designed for judges. The following suggestions seek to improve the existing situation, taking into account specific facts of judicial culture and identity.

Sustained culture shift by leaders.

A profound culture shift has to be gradually installed and promoted by the leaders—the chief justices, the chief federal circuit judges, state judicial councils, and chief judges at all levels of court. The goal would be to establish a “Wellness Initiative,” a gradual and sustained culture change in the way assistance to judges is viewed and delivered. The key message would be to assure that all judges and their close family members can get assistance for a wide range of problems in total confidentiality. This policy would be rooted in a positive wellness model that promotes preventive practices for health, positive collegiality, and early provision of help in a program specifically designed for the judicial ethos.

Confidentiality assured by court rules. The highest authority of each court system should establish by rule

6. M. Rosenberg, *CONCEIVING THE SELF* (New York: Basic Books, 1979).

that all transactions and records pertaining to a judge's referral, treatment, and follow up are considered confidential. When a health delivery system is under contract to provide evaluation and referral for treatment it would also be covered by that rule, in addition to the usual medical and psychological safeguards of confidentiality and privilege.

Recovery counseling and group treatment. Contracts with health provider networks should stipulate that care would be exercised not to place a judicial officer in a treatment or recovery or counseling group composed of mixed public, non-judge members. The judge would be included in a mixed group only after being advised that this is the treatment of choice and that confidentiality in such a group is voluntary and unenforceable. The important point here is that under current mental health practice, substance abuse and recovery require group counseling,⁷ group education, and orientation. Group methods are excellent and valid treatment modalities,⁸ but the fact remains that high officials and judges overwhelmingly elect not to participate. They choose individual care even though in many cases it may be slower, less effective, and less supportive.

There is nothing novel in proposing that "judge only" programs may work best in our society. Throughout the country and in Europe, groups exist composed exclusively for medical doctors with alcohol or alcoholism problems, for members of the clergy, or for mental health professionals.⁹ All of these address a focal issue such as addiction and are led by either members of that profession, or counselors who are knowledgeable about that group and its culture.¹⁰ Thus, modules of care solely for judges would encourage their voluntary participation, and offer the necessary understanding and privacy.

Liaison with conduct commissions. Allegations of judicial misconduct and ethical breaches should routinely be screened by a joint liaison group including Wellness Initiative committee members. Experience

with complex cases can be shared with anonymity and built up as a resource bank. Panels responsible for dealing with misconduct allegations, and the chief judges who deal with colleagues with problems, have much to learn from each other. This would be a challenging intersection of the disciplinary and health responsibilities of judicial administration. The purpose would be to assist a judge as early as possible in a potentially destructive situation, and steer him or her to appropriate care. Such joint committees should have sufficient tenure to benefit from their case-by-case experience and resolution. In many cases, knowing that impartial counseling help is available may motivate a judge to cooperate more actively in the resolution of his or her difficulties.

System-wide orientation and education. The Wellness Initiative would establish and administer an annual program (for continuing legal education credit) on the full range of help available to judges and their families. DVDs and pamphlets would be provided outlining assistance that is available and how to obtain it. Vignettes would be presented as examples of help with, for instance, common family, medical, career, and aging issues. New judges would receive a full orientation by lecture and by talks with their chief and mentor judges.

An annual report would describe the activities of the Wellness Initiative and provide objective data on patterns of use and suggestions for improvement. A panel of outside consultants representing the various areas would be helpful. A wellness website with information and links to resources should also be established and frequently updated.

Training and orientation of chief and presiding judges. Each chief judge should attend an intensive brief course on "People Management." This would include such topics as morale maintenance for court and chambers staff and positive collegial relations on a trial or appellate court. Practice sessions would demonstrate how to evaluate

reports of a possibly troubled judge and how to select alternative ways to offer help.

Volunteers. Because the appointment and tenure of chief judges varies widely among the states, experienced and temperamentally suited judges should be invited to become a corps of volunteers. They can help the chief judge when called upon and also participate in circuit-wide or state-wide education programs. Every instance of actual help provided should be studied (with appropriate anonymity) to build a knowledge base that will promote the Wellness Initiative's quality goals. A judge in difficulty does not automatically require a referral to the Employee Assistance Program network. Many can be helped by several private talks with an experienced and well-prepared colleague. Therefore, the Wellness Initiative would include the screening, selection, and training of volunteer judges who are motivated and temperamentally suited to be short-term counselors within each court.

The Lawyers Helping Lawyers programs use such volunteers from the bar very successfully and can also be a resource. They have assembled a core of recovering lawyers and judges who can be paired with a new entrant to the program to provide guidance on an ongoing basis.

In my own work with court systems and new judge orientation, I have encouraged judges to acquire one or two "buddy judges" with whom they maintain a mutually helpful collegial dialogue and relationship. These can occur within a particular court or across jurisdictions. A buddy judge may keep up a friendly periodic con-

7. Nebraska Bar Association, MEMBER SERVICES N.L.A.P. (2005)

8. R.J. DeRubeis and P. Crits-Christoph, *Empirically Supported Individual and Group Psychological Treatments for Adult Mental Disorders*, 66 J. OF CONSULTING AND CLINICAL PSYCHOLOGY 1 (1998).

9. W.E. Piper et al, *Cohesion as a basic bond in groups*, 36 HUM. REL. 93 (1983).

10. D.J. Martin et al, *Relation of the therapeutic alliance with outcome and other variables: A meta-analytic review*, 68 J. OF CONSULTING AND CLINICAL PSYCHOLOGY 438 (2000); J.A. Gillaspay et al, *Group alliance and cohesion as predictor of drug and alcohol abuse treatment outcomes*, 12 PSYCHOTHERAPY RES. 2 (2002).

tact by email or telephone with a judge in another state or circuit. The key elements of such an important relationship require that both members of the duo (1) not have a competitive personality tendency, (2) fully respect confidentiality, (3) be reasonably available to communicate even across time zones, and (4) be a patient listener. Many such productive buddy judge relationships are best formed when new judges attend

other issue. All volunteer judges participating in the Wellness Initiative would thus be learning by experience and transmuting it into a database of help options.

Publicity and public relations. For today's media, with its focus on sensationalism, the courts are a frequent and easy target. A judge's behavior during a trial or conflicts with the bar can easily attract partially informed comment and speculation.

to their state or circuit and serve as key supporters and stake-holders as it unfolds.

Summary

To improve the use of health and collateral services by judges and their families, certain key elements should be considered in the spirit of a Wellness Initiative.

1. The range of services should be quite broad, and include mental health treatment and education, as well as help with stress management, substance abuse and addiction, family relations, physical fitness, career satisfaction, aging, and retirement, among others.

2. Due to the strictures of the judicial role and function in society, great care should be employed in the way that assistance is provided, taking into particular account the need for sensitivity, confidentiality, and privacy.

3. In accord with current best practices in the health sector, the approach best described as positive wellness should be employed. Outreach, supportiveness, and good organizational morale should characterize the network of services offered.

Judges work at the convergence of powerful demands, quite unlike those that confront other high officials. Heavy dockets, restrictions on their public speech and behavior, intense media exposure, wide public ignorance of the role of the courts, and the relative isolation of the judicial position all contribute to their unique personal and occupational stresses. The current body of knowledge and practice in positive health maintenance and psychology can inform and help judges. A Wellness Initiative program would contribute immeasurably to the quality of life of judges, their families, and coworkers. ❧

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THE WELLNESS INITIATIVE WILL ADD A COURT-WIDE SET OF ORIENTED AND PREPARED HELPERS WHO KNOW THE CULTURE AND THE WORLD OF THE COURTS

"Baby Judge" courses.

Referral networks. A system embracing a wide range of issues, and serving a prestigious and sensitive clientele, must be open and flexible.¹¹ It must be assumed that some judges will continue to search out helpers and treatment facilities in the open market of private practitioners or from religious and voluntary groups. The Wellness Initiative will add a court-wide set of oriented and prepared helpers who are judges or retired judges, and know the culture and the world of the courts. Not only will a judge have a qualified chief or presiding judge to turn to, but also a volunteer judge/counselor, or an existing group of judges he or she can join to discuss problems. The training of mentor judges would include sensitivity to problems that may arise in a new judge's career. Another part of the available network would be several telephone hotlines where a judge can ask anonymously about an ethical dilemma, a personal problem, or any

A program such as the Wellness Initiative could easily be portrayed by critics as "coddling" judges, giving them preferential health benefits, offering excuses to be off the bench, or allowing errant judges to escape censure or removal. Opponents in elections can also use some of the issues to "smear" a sitting judge. Thus, the program must be set up and guided with the advice of the court's chief press or public relations person. In some jurisdictions it might be best to launch a wellness program gradually, without fanfare or even assigning a name to it.

Funding. As regards to funding, such a program should not impose significant additional costs because it would operate within the existing employee assistance program referral contracts and bar programs and use continuing judicial education programs for its promotion and training. In some cases, grant money could be available from foundations that support health initiatives and judicial administration.

What is crucial in launching and sustaining such an initiative is the leadership at the top and a cadre of motivated judges. Together they can design a program most appropriate

11. S.S. Glazer et al. *The role of therapeutic alliance in network therapy: A family and peer-supported treatment for cocaine abuse*, 24 *SUBSTANCE ABUSE* 2 (2003).