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August 17, 2021

Advisory Committee on Rules  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, NH 03301

RE: Deferred Discipline Rule Proposed  
by the NH Judicial Conduct Committee to be added  
to Supreme Court Rule 40

Members of the Advisory Committee on Rules:

On behalf of the Judicial Conduct Committee, I have enclosed herewith for your consideration a Deferred Discipline Rule proposed by the Judicial Conduct Committee to be added to Supreme Court Rule 40.

The genesis of this proposal arose this spring following an article appearing in May 17, 2021 issue of the *New Hampshire Bar News* entitled, "Stress and Resiliency in the New Hampshire Judiciary". This article referenced a 2020 Study by *The Professional Lawyer* on "Stress and Resiliency in the United States Judiciary".

The Judicial Conduct Committee took particular interest in *Appendix C* of that study which includes a copy of the ABA Model Rule as well as the rules of a number of states regarding diversion and deferred discipline agreements. Copies of "Stress and Resiliency in the New Hampshire Judiciary", "Stress and Resiliency in the United States Judiciary" and the appendices to this study are also enclosed herewith.

The Judicial Conduct Committee consulted with both Cindy Gray, Director of the Center for Judicial Ethics at the National Center for State Courts, and Jill O'Neill, Executive Director of the New Hampshire Lawyers Assistance Program (NH LAP) in drafting its proposed Deferred Discipline Rule both of whom also favor the adoption of such agreements in appropriate judicial disciplinary matters.

On behalf of the Judicial Conduct Committee, I thank you for your time and consideration.

Yours truly,

/s/ Robert T. Mittelholzer

Robert T. Mittelholzer

RTM

Enc.: Proposed Deferred Discipline Rule

*Stress and Resiliency in the New Hampshire Judiciary*

*Stress and Resiliency in the United States Judiciary (w/appendices)*

cc: Mary E. Collins, Chair  
Attorney Jaye L. Rancourt, Vice Chair  
The Honorable James H. Leary  
The Honorable Neals-Erik William Delker  
The Honorable Susan B. Carbon  
Stephen R. L'Heureux  
Thomas R. Eaton  
W. Michael Scanlon, Esq.  
Larry Gilpin

## **Proposed Deferred Discipline Rule for New Hampshire to be added to New Hampshire Supreme Court Rule 40**

### Deferral of Impairment Cases.

- A. If the Committee finds during the course of an investigation that (1) there is probable cause to believe that misconduct, as specified in the report, occurred; and (2) that any misconduct was the result of substance misuse or mental health disorder; and (3) that the conduct is not so serious in nature as to warrant formal discipline by the Supreme Court, the Committee and the judge may agree that the judge undergo confidential evaluation under the supervision of the New Hampshire Lawyers Assistance Program (“NH LAP”). Should the evaluation reveal the existence of a condition for which treatment is appropriate, the Committee may thereafter defer resolution of the report or complaint. A deferred resolution would require the judge participate in professional treatment, counseling, after-care, and/or other assistance program recommended in the evaluation and subject to supervision by NH LAP and any other conditions established by the Committee.

A deferral agreement must include the contemplated resolution of the report or complaint if the judge successfully complies with the terms of the agreement. At the end of the deferral period the judge would bear the burden to demonstrate that he or she has successfully complied with the terms of the deferral. Upon successful completion of the deferral agreement, the report would be resolved upon the terms set forth in the deferral agreement. If the judge does not successfully complete the terms of the deferral, the Committee may proceed upon the original report or complaint. The Committee may also initiate an inquiry or complaint based on any new rule violations which may have occurred during the deferral period.

Every deferral agreement shall be reduced to writing, shall provide for periodic reporting by NH LAP to the Committee regarding the judge’s compliance or noncompliance, and shall be signed by the judge and the Chair of the Committee. A copy of the agreement will be given to the judge; the original shall be maintained in the Committee’s file.

- B. All statements made by or for a judge in the course of discussions or negotiations with the Committee regarding referral to NH LAP or in the course of his or her involvement in or assessment supervised by NH LAP, including statements made in connection with any evaluation, treatment, counseling, or after-care, shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.
  
- C. Notwithstanding any other provisions of Rule 40(3) to the contrary, if the Committee resolves a report or complaint by way of a deferral agreement, the Committee may enter a protective order pursuant to Rule 40(3)(g) sealing any parts of the record that would otherwise be public.



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## Stress and Resiliency in the New Hampshire Judiciary



May 17, 2021

By Scott Merrill

One in five judges surveyed in the United States meet at least one of the criteria for depressive disorder, according to a 2020 report titled Stress and Resiliency in the U.S. Judiciary.

The National Judicial Stress and Resiliency Survey, the largest of its type ever conducted, was designed by the ABA Commission on Lawyer Assistance Programs. Out of 18,000 judges nationwide, more than 1000 judges participated in the survey which took place amidst the covid-19 pandemic.

Some of the top sources of stress for judges, according to the report that appeared in the Journal of the Professional Lawyer last year, include: the importance and impact of decisions, a heavy docket of cases, unprepared attorneys, and public ignorance of the courts.

In New Hampshire there are five courts that have jurisdiction over a wide variety of cases: The New Hampshire Supreme Court, the Superior Court, the Circuit Court Probate Division, the Circuit Court District Division and the Circuit Court Family Division.

## A New Hampshire Judicial Administrator's Perspective on Stress

Administrative Judge for the Circuit Court of New Hampshire, David King, said the stress and resiliency report reflects issues that are very similar to the ones the circuit court deals with every day.

"When I look on page 10 of the study where it speaks about sources of stress, they're describing the circuit court to a T," he said.

Judge King manages the largest section of the New Hampshire court system overseeing 31 judges and 375 non-judicial employees. As an administrator he has had to work on the fly over the past year, monitoring exposures to coronavirus, making decisions about which courtrooms need to be closed and what cases to reschedule.



*Hon. David King, Administrative Judge,  
Circuit Court of New Hampshire*

"For me it's not the search warrants or DVs, it's, 'we just found out that the husband of so and so in one of the courts just tested positive and do we need to clean the courthouse in the morning?' Or a judge called and someone in their family has tested positive," Judge King said.

Still, he said he considers himself lucky compared with judges conducting hearings during the pandemic.

"I have more of an ability to close my eyes for a second between issues than those judges who are on the phone all day long. I can tell you from my regular communications with our bench, the amount of stress on the circuit court over the past 13 months is unprecedented. We've never seen anything like this before."

The nature of cases that pass through the circuit court and the decisions judges make can be inherently stressful, Judge King said. This is because many cases involve domestic violence, child abuse and neglect, as well as guardianship and custody issues.

"These types of cases need attention whether we're in the midst of a pandemic or not. They all need to be handled in a timely fashion, but many judges have been working in isolation, oftentimes in the courtroom, doing telephonic hearings all day long."

While the importance of decision making for judges (79.2%) was the number one source of stress in the 2020 Stress and Resiliency report, the number two source was heavy dockets (73.2%).

The circuit court in New Hampshire is authorized to have 45 full time judges but they currently have only 31.

"When you add that to the influx of cases, which hasn't slowed down, it's a recipe for burnout, it's grueling," King said. "We've got about 14,000 cases right now that need to be scheduled for trial in the circuit court and 3500 criminal cases scheduled around the state. That sounds like a huge number but we had 55,000 criminal cases filed in 2020."

## Isolation for Judges can be Part of the Job

For Judge Susan Carbon, who serves on judicial conduct committee and the 9th circuit Family Division, in Manchester, life as a judge has been busy over the past year.

"There has been no let up. This myth that things were quiet during Covid is one of the biggest myths I've heard," Judge Carbon said, citing in-person and Webex hearings that have continued to take place. And this, she added, is coupled with the momentous decisions and responsibilities, as well as the persona that judges must maintain for the public.

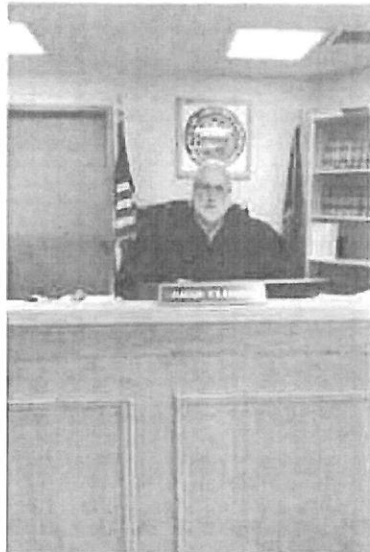


*Hon. Susan Carbon: 9th Circuit Family Division, in Manchester*

"As a judge you're taking an oath to give every single case 110 percent. You can't come into court and say, 'geez I'm tired.' You may be tired but the people you're serving don't deserve that and if that's your delivery you shouldn't be on the bench."

Carbon said she doesn't experience the isolation spoken about by some judges in the stress and resiliency report because she has been in court houses with multiple judges. But she acknowledged this can be a real problem for those on the bench in courthouses with only one judge.

"Being in these courthouses I'm in is enormously helpful. You have peers who can relate, or if there's a conflict we can swap cases," Judge Carbon said. "One judge court houses can be difficult though in terms of isolation."



*Hon. John Yazinski: NH Circuit Court Sullivan County*

Judge John Yazinski, a circuit court judge in Sullivan County since 2001, said every judge experiences isolation in various ways.

"Sometimes it's self-imposed, and sometimes it's one of the practical aspects of the job," he said. "It's particularly difficult in a small county like Sullivan where there's almost nowhere you can go that you don't bump into someone you know or who has been in court in front of you. It requires a self-imposition of stepping back."

This constant awareness of one's public persona is part of being a judge, Carbon explained.

"You have to still remember you're representing the court wherever you go. If

I go for a run and I'm hot and sweaty I'm not going to run in to the grocery store like others might."

And there are awkward encounters with former litigants in public places.

"I've had litigants come to me in the produce section thanking me about cases, whatever it may be, involving their children, saying, 'you really helped me with my adoption' or I've

gone to restaurants where I've had unhappy litigants in marital cases give me the dagger, and I still need to be mindful that this isn't the place to discuss these things."

Judge Carbon mentioned a stalking encounter that led her to install an alarm at her home some years ago and another experience at a restaurant that she referred to as "very inappropriate."

"These things haven't happened in a long time, but it's always a possibility."

Judge Yazinski said he and his wife haven't accepted an invitation to a holiday party or get together for years because of the conflicts such gatherings may create.

"Particularly with hearing family cases there's always someone who knows someone, and people don't always realize that judges can't talk about cases that are in front of them."

Judge Jennifer Lemire, who has a case docket of intricate divorce and parenting cases, said isolation was an issue for her early in her career.

"You find in those smaller courts that when you don't have colleagues to run things by or just chat with or grab lunch with when you have time, it can really affect your psyche."

## The Number One Source of Stress: Making Decisions, Getting it Right

The number one source of stress that judges reported in the survey (79.3 percent) was the importance of the decisions they make in court.

Family court, Judge Carbon said, is "probably the most stressful docket in the state."

This is due to the high stakes that come with the decisions judges make regarding parental rights.

"There's nothing more important than your kids, and when you're the one making those decisions that are going to impact children in a profound way... I labor over those decisions because I know the consequences are so enormous."

New Hampshire Supreme Court Justice, Gary Hicks, said getting decisions right presents a substantial pressure for judges.

"You've got to get it right, that's the pressure," he said. "It's a cultural thing for us. We took an oath to be right all the time. It's hard to think we could be right all the time, but that's still the goal."

Judge Yazinski described the decision-making process in court as the most stressful part of his job.

"It's easy to divide property because people can replace property, but it's difficult to make a decision that will have a lifelong impact on the people in front of you, as the article points out," he said.

Echoing Judge Carbon, the hardest decisions, he said, involve children, particularly abused and



*Hon. Gary Hicks: New Hampshire Supreme Court*

neglected children.

“Those decisions weigh on you because if you get it wrong a child can be injured. Any judge who has done a lot of abuse and neglect cases will have made a mistake and will get the call in the middle of the night to find out the child you returned is in the hospital because a parent has injured them. Those are the ones that can haunt.”

One of the stressors Judge Lemire hears about often, she says, are overburdened dockets, as well as neglect cases that require judges to see graphic evidence of substantial physical abuse and neglect.

“That can be difficult. And terminating the parental rights is a decision that is never made lightly. I liken it to a criminal case where the standard is beyond reasonable doubt.”

## Respecting Difference, Recognizing Bias

One part of the study that made Judge Yazinski reflect, he says, was a section that described judges at the end of the day making harsher, more biased decisions, than at the beginning of the day.

“If you’re required, as we are, to hear 10 or 12 half hour cases, and to have to act on all the emergencies that come in, and get orders out from three weeks before, by the end of day you’re absolutely exhausted. I reflected when I read that and I thought to myself, ‘am I conscious that this might happen, and do I make an effort to make sure it doesn’t happen?’”

One of things that Yazinski became involved in during a time of particularly high stress was mindfulness and meditation.

“If you learn mindfulness, as the article suggests, and which many judges have adopted, you do take a step back. For me, when I feel the urge to get angry there’s the immediate reaction to simply concentrate on the breath.”

Yazinski keeps a saying on his bench from Victor Frankl, the Austrian psychiatrist, philosopher, and Holocaust survivor, that stares him in the face each day during hearings.

The saying reads: “Between every stimulus and response there is a space and in that space is our power to choose our response and, in our response, lies our growth and our freedom.”

“I really try to live in that space and I’m not perfect,” Judge Yazinski says. “The struggle is that judges aren’t expected to have or show emotions, but we’re human beings affected by things just like anyone else. We have good days and bad days, but on the bench it’s a struggle on a bad day not to show it’s a bad day and I certainly haven’t perfected the art of it, but at least I can recognize it.”

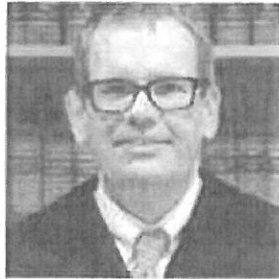
Judge Lemire said she keeps her ego in check by recognizing she is there to help those who come before her, and to not simply “wield authority and power.”

“A lot of those who come through our doors don’t have attorneys. It’s important that we recognize that we’re here to help them with whatever the issue is and to not simply wield authority and power,” she said. “Your patience can be tried by some difficult litigants or attorneys, or lack of evidence, or a busy docket. We have to be careful to remind ourselves that we’re here to help people. Sometimes you feel like a counselor.”

Judge Carbon teaches about implicit bias through trainings she does for the New Hampshire chapter of Court Appointed Special Advocates (CASA), a national association in the United States that supports and promotes court-appointed advocates for abused or neglected children.

While rare, she says she has known of judges who are disrespectful to people by holding expectations that exceed what is reasonable, demanding that people do something because it pleases their fancy, or those who even flaunt their position by wearing their robes in public.

"I am very, very privileged, and I'm in a position that holds high public status. It would be very easy to abuse this position and I've seen judges do it all too often," she said. "The law is always your framework but you need to listen and learn and realize that no two cases are the same. When working with people whose backgrounds are different from your own you have to be very mindful that you aren't superimposing your values on other people. I train classes to be mindful of this."



*Hon. William Delker: Hillsborough County  
Superior Court*

Hillsborough County Superior Court Judge William Delker said he enjoys the decision-making process but noted that some decisions are very challenging.

"I enjoy that part of it because it's like a hunt for the right answer. One can look at the law and feel confident that the decision is based on principles of law," he said. "Decisions about bail and sentencing, however, are incredibly challenging because there's no obvious right or wrong answer and we're often operating on incomplete information. In some cases it can be a matter of life and death, or a person's liberty, and those are monumental decisions."

Sentencing considerations are another area that Judge Delker finds difficult.

"In New Hampshire the guidelines are so amorphous that you don't have many guideposts to tell you what's right and wrong, and each case has to be decided on its own merit," he said.

Fighting the temptation to send people to jail because it's the easy thing to do has been something Judge Delker says he is always aware of. Even when he has a defendant with a bad record there may be "some glimmer of hope."

One case that stands out to him involves a woman he has worked with for three years trying to come up with creative solutions to her situation.

"This person who has been in front of me for three years is just a different person since I first sentenced her," he said. "And it was not an easy decision to make based on her background at the time."

## Staying Busy and Finding Balance with Exercise, Friends, and Family

All of the New Hampshire judges interviewed about the stress and resiliency report cited keeping busy, spending time with family and friends, as well as exercise, as the most important sources of well-being in their lives.

Judge Lemire said she took up cycling with her husband and is looking forward to resuming a yearly trip with her family.

For Judge Delker, who says he doesn't typically stress out, staying busy is, itself, a source of wellbeing.

"I...like working," Judge Delker said, joking that he's probably not a good person to talk about work-life balance because, "I don't really have one."

"Unless I'm doing one of my hobbies, I feel like work is fulfilling to me and I work best when I'm busy. I have periods when things are less busy, particularly over the past year we haven't been doing jury trials. But I thrive best in that environment."

Judge Delker, who also teaches law school students, described the sedentary nature of being a judge as one of the aspects of his job that requires him to exercise. He goes to the gym three or four times a week and has a host of projects around his house that help him maintain balance.

"This job is so sedentary. I literally sit, get up, sit, and walk across the hall, and sit again. And that's my job. I need to exercise," he said.

Justice Hicks says the one thing he has learned over the years regarding how to stay mentally healthy is the need to take time off.

"I'm not very good at it, but all judges need to take time off. It's contrary to our nature when there are cases to be decided and work to be done but we need to do it. I find that after three or four days when I'm away I can breathe normally and it's refreshing."

Justice Hicks has trips to Vermont planned for the summer where he will be able to spend time with his grandchildren, who, he says, he learns a great deal from.

"If I'm with my grandkids I shut everything off because they demand everything. I have learned a lot from them," he says. "Is a week enough, no. But that's the most that most of us ever take. I would say the key is to be aware and not let the pressure sneak up on you. Don't take a vacation too late."

While Judge King says some judges are "getting burnt out" due to heavy caseloads and other concerns relating to the pandemic, there is hope in the air.

"People can see the light at the end of the tunnel. We can see that by late May or June we'll be able to go back to some semblance of normal."

As for the importance of reports like the stress and resiliency survey?

Judge Carbon says it has taken her years to understand she can only do her best and that she is not in control over every aspect of the lives of people in front her.

"Surveys like the Stress and Resiliency report express what judges feel but don't take the time to put into words. If you're not addressing the stress you risk not being on your game with every single case."



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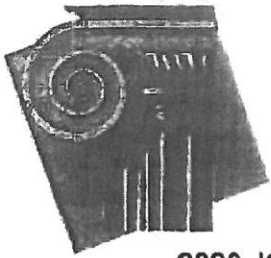
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**Stress and Resiliency in the U.S. Judiciary**

*David Swenson, Ph.D. L.P.; Joan Bibelhausen, J.D.;  
Bree Buchanan, M.S.F, J.D.; Hon. David Shaheed &  
Katheryn Yetter, J.D.*

2020 JOURNAL OF  
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# Stress and Resiliency in the U.S. Judiciary

David Swenson, Ph.D. L.P.; Joan Bibelhausen, J.D.; Bree Buchanan, M.S.F,  
J.D.; Hon. David Shaheed & Katheryn Yetter, J.D.<sup>1</sup>

## Author's note

In the months since this research was conducted, judges and the judicial system have been subjected to stress and tests of their resiliency like never before. We are facing a global pandemic, social change, economic challenges, the stress of a national election, and the impact of western wildfires, hurricanes, and other natural disasters. Judges are engaged in the reconciliation of these issues from every perspective and in every way and there is no doubt it is having an impact.<sup>2</sup> It is our intention in this article to demonstrate the critical importance of resiliency to members of our judiciary and to our system of justice and to offer methods for engaging in those practices. We stand by these recommendations and suggest that they are, and will continue to be, absolutely essential as our judges play a pivotal role in our nation's recovery.

## Introduction

Judges in the United States work at many different levels of the government and are often seen as the pinnacle of power and authority in the legal profession. Despite this envied status, the daily challenges of the position are stressful and have an adverse effect on a judge's health and well-being.<sup>3</sup> While some would argue that these challenges are part of the job, the judiciary, legal community, and public in general would be remiss not to recognize the strain that they create. In the 2017 Report of the National Task Force on Lawyer Well-Being, entitled, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (hereinafter "the National Task Force Report"),<sup>4</sup> these unique challenges were summarized:

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1. For author biographies and acknowledgement of others who contributed to the paper, see Appendix A1-3.

2. An informal poll was conducted during a presentation to approximately 200 judges. 88% indicated higher stress, 79% increased anxiety, and 47% a higher feeling of depression or hopelessness than before that state's Stay at Home order. Attendees were asked about their level of avoidance or substitution behaviors (including drinking or food). For 37% it had increased, it was the same for half, and lower for 12%.

3. Alexis Resnick, Karen A. Myatt & Priscilla V. Marotta, *Surviving Judicial Stress*, 49 FAM. CT. REV. 620, 611 (2011).

4. American Bar Association, National Task Force on Lawyer Well-Being, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* (2017) [hereinafter National Task Force Report].

Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily. Some report lying awake at night worrying about making the right decision or the consequences of that decision. Other judges face the stress of presiding over criminal cases with horrifying underlying facts (citations omitted).<sup>5</sup>

The National Task Force Report describes the systemic isolation so acutely experienced by jurists after taking the bench,<sup>6</sup> a condition that deprives them of the essential support and consolation of their colleagues. “Judges cannot take off the robe in everyday interactions outside the courthouse, which is a hallmark of their elevated status in society but also a reality that can contribute to social isolation.”<sup>7</sup>

Recognizing these unique challenges of the American judiciary, the National Task Force called upon judges—and the entities that regulate, support, and educate them—to consider systemic changes that would bolster well-being, resilience, and stress-hardiness. Noting the absence of a thorough, large-scale national survey of judges (comparable to national surveys of lawyers<sup>8</sup> and law students<sup>9</sup>), the National Task Force Report called for a “broad-based survey of the judiciary to determine the state of well-being and the prevalence of issues directly related to judicial fitness.”<sup>10</sup>

The National Judicial Stress and Resiliency Survey, the largest of its type ever conducted, was designed to answer this call.<sup>11</sup> It was undertaken to identify: (1) stressors unique to the judiciary, (2) how those stressors affect individual judges, and (3) strategies that judges have used to mitigate these stressors. The results serve as the context for recommendations made to the multiple stakeholders who comprise, regulate, and support the U.S. judicial system.

## Literature Review

In 2016, two major studies were published that documented the dismal state of well-being among U.S. lawyers—*The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*; hereinafter “Lawyer Study”—and law students—*Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Abuse and*

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5. *Id.* at 22.

6. Isaiah Zimmerman, *Helping Judges in Distress*, 90 JUDICATURE 10, 13 (2006), as cited in the National Task Report, *supra* note 4, at 22.

7. *Id.*

8. Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46 (2016).

9. Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

10. See National Task Force Report, *supra* note 4, at 23.

11. See Appendix B, Judicial Stress & Resiliency Survey Questions.

*Mental Health Concerns*; hereinafter “Law Student Study.”<sup>12</sup> The impact of these two studies on the legal profession has been extensive, serving as the impetus for the National Task Force Report and the inspiration for this study. Both surveys were preceded by various controlled and localized research efforts that were relied upon to support and assist lawyers and law students for decades.<sup>13</sup>

To date, while research on the well-being of judges has been limited in size and geographic representation, it has served as the basis of initiatives through judicial organizations and Lawyers and Judges Assistance Programs (hereinafter LAPs). In response to the National Task Force Report recommendation to conduct a national survey of judges, the American Bar Association Commission on Lawyer Assistance Programs (CoLAP) Judicial Assistance Committee recruited members from national judicial organizations to carry out this initiative. The working group<sup>14</sup> included representatives from The National Judicial College, the ABA Judicial Division, and the National Center for State Court’s Center for Judicial Ethics.

The working group designed a survey to complement—but not mirror—the surveys conducted in the Lawyer Study and the Law Student Study, one that would focus on sources of stress, its effects on judges (including alcohol use and indications of mental health issues), and how judges manage that stress and use resiliency practices. Unlike the Lawyer Study and the Law Student Study published in 2016 that examined stress generally, the National Judicial Stress and Resiliency Survey items were designed to highlight the specific experiences of judges and the judicial setting.

Earlier U.S. surveys of judges focused on secondary and vicarious trauma, burnout, and other stressors.

For example, a 2018 survey of judges conducted by The National Judicial College sought information on the “pain points” of being a new judge.<sup>15</sup> The survey results revealed that these challenges were divided roughly into two categories: those related to one’s comfort level in this new role and those related to the body of knowledge a judge must have. By and large, new judges struggle with

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12. See generally Krill et al., *supra* note 8; Organ et al., *supra* note 9.

13. See generally W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUP. MED. 1079 (1990); G. A. Benjamin, E.J. Darling & B. Sales, *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers*, 13 INT. J. L. PSYCHIATRY 233 (1990); C. Beck, B. Sales & G. A. Benjamin, *Lawyer Distress: Alcohol-related Problems and other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. L. HEALTH 1 (1996); G. A. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986); K. M. Sheldon & L. S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004).

14. See Appendix A.3, Judicial Assistance & Research Joint Initiative Working Group Roster [hereinafter Working Group Roster].

15. Katheryn L. Yetter, REPORT FROM THE CORE COURSE CURRICULUM DEVELOPMENT PROJECT AND THE JUDICIAL NEEDS ASSESSMENT SURVEY 4 (Feb. 8, 2018) (unpublished report, on file with The National Judicial College).

their new judicial *identity*: the isolation that comes with being a judge, the fear of appearing incompetent, and the difference between what the judge thought they would be doing and the realities of the job. To address these challenges, the NJC embedded (and recommends that states embed) topics into their new judge orientations such as judicial wellness, including stress management and addressing burnout, understanding bias, coping with the isolation that comes from cutting ties with social circles and friends, and vicarious trauma.

Prior research has frequently addressed secondary trauma as a significant source of judicial stress. Secondary trauma concerns the impact of exposure to the testimonies, photographs, and other evidence, and demeanor of victims and behavior of perpetrators. The National Judicial College's *Judicial Edge* includes a "Question of the Month" and in the October 2017 edition, judges were asked "[h]ave you suffered secondary traumatic stress from being a judge?"<sup>16</sup> Of those who replied, 45% responded in the affirmative. Notably, one commenter suggested that greater recognition of the symptoms of secondary traumatic stress would lead to a larger percentage of judges who identified as having experienced the condition.

Decision-making, too, can be a cause of stress for judges and has been connected to secondary trauma.<sup>17</sup> For example, judges tasked with determining which parent should have custody of the parties' child or children know their decision will have life-altering effects on family members and, often, judges continue to be troubled by the weight of that decision due to its profound significance.

Burnout,<sup>18</sup> another condition affecting judges which has been studied, "is a psychological syndrome emerging as a prolonged response to chronic interpersonal stressors on the job," one that manifests as "an overwhelming exhaustion, feelings of cynicism and detachment from the job, and a sense of ineffectiveness and lack of accomplishment."<sup>19</sup> Such fatigue is also related to absenteeism. In

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16. *Nearly half of all judges have suffered from this condition*, THE NATIONAL JUDICIAL COLLEGE (Oct. 20, 2017), <https://www.judges.org/nearly-half-judges-suffered-condition>. See also P. G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1 (2003); Charles P. Edwards & Monica K. Miller, *An Assessment of Judges' Self-Reported Experiences of Secondary Traumatic Stress*, 70 JUV. & FAM. CT. J. 7 (2019).

17. David M. Flores, Monica K. Miller, Jared Chamberlain, James Richardson & Brian Borenstein, *Judges' Perspective on Stress and Safety in the Courtroom: An Exploratory Study*, 45 COURT REV. 76, 78 (2002).

18. Burnout in judges has been studied in a very limited context, typically involving small survey size or restricted scope or location. See generally J. Chamberlain & M. K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCH. & LAW 214 (2009).

19. See generally CHRISTINA MASLACH ET AL., *MASLACH BURNOUT INVENTORY MANUAL* (Mind Garden, Inc., 4th ed. 2016).



a study published in *Judicature*, it was reported that more than 25% of judges reported missing ten or more days of work due to stress.<sup>20</sup>

The effects of fatigue on judgment and mood cannot be understated. In a study of 1,112 decisions by parole board judges in Israel over a ten-month period, the effects of managing a full docket of cases became evident over the course of one day of hearings. In the morning, judges' decisions tended to be more favorable toward the parolee, but steadily declined until lunch break. After lunch, the favorability was again very high but declined until mid-afternoon break. Following the break, it was again high and declined until closing. This pattern was present in cases involving determinations of release or change in parole terms regardless of the seriousness of the crimes.<sup>21</sup>

Most recently, a 2018 survey of 221 judges from two states who attended a state judicial education seminar demonstrated the extent to which the judiciary is impacted by stress.<sup>22</sup> The survey measured overall stress experienced within the last year; health (both mental and physical) and job satisfaction and job efficacy.<sup>23</sup> Of the participants, 82% stated that they were in good mental health and 76% rated their physical health as good.<sup>24</sup> However, nearly one-half of the judges (48%) reported having experienced stress during the year and acknowledged that it has impacted their mental health.<sup>25</sup>

Internationally, 150 Australian judges and magistrates were surveyed regarding stress, burnout, secondary traumatic stress, and substance use.<sup>26</sup> Significant and concerning levels were found for each of these conditions, though the level of depression was lower than that for lawyers. While distress was elevated, those surveyed felt they were more satisfied in their work as judges than they had been as attorneys.

## Methodology

### Procedures

The National Judicial Stress and Resiliency Survey design and instrument were formulated by an interdisciplinary working group of judges, attorneys, and a forensic psychologist.<sup>27</sup> The group met online for more than a year, reviewing

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20. Monica K. Miller, Charles P. Edwards, Jenny Reichart & Brian H. Bornstein, *An Examination of Outcomes Predicted by Model of Judicial Stress*, 102, No. 3 *JUDICATURE* 51 (2018).

21. Shai Danziger, Jonathan Levav, & Leora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 *PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES* 6889 (2011).

22. See Maslach et al., *supra* note 19.

23. *Id.*

24. *Id.* at 55.

25. *Id.* at 55–56.

26. Carly Schrever, Carol Hulbert & Tania Sourdin, *The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing*, 28 *J. JUDIC. ADMIN.* 141 (2019).

27. See Working Group Roster, *supra* note 14.

literature on judicial stress, examining previous surveys, holding discussions, and conferring with judicial bodies. Prior to distribution, the survey was submitted to an institutional review board for approval.<sup>28</sup> The survey was then tested for feedback and revision in one state (Idaho) and one major metropolitan area (Indianapolis) through each jurisdiction's judicial administration. The final revised survey was placed in a secure online survey platform and email invitations to participate were distributed through The National Judicial College. Each state's Lawyer Assistance Program was asked to send the survey to their chief justice for distribution of the survey site link. Respondents were asked to complete the survey within two weeks, but a delay in distribution in some states allowed four weeks for return. Participants completed survey items on sources of stress, effects of stress, alcohol use, resiliency, and stress management practices. Responses were anonymous and IP addresses, demographic information, and geo-location were not requested to ensure anonymity.

### Participants

There are an estimated 18,000 judges across the United States. Our data is based on 1,034 judges who completed and returned the survey. The participation rate could not be calculated due to state associations controlling the number of people receiving invitations. Demographics of those returning the survey are shown in Table 1. Men (56.5%) and women (42.8%) were fairly equal and very similar to the results of the 2016 Lawyer Study (53.5% and 46.5% respectively). Other gender identification categories were considered, but not used because the percentage indicating other genders on the lawyer survey was very small and too small for meaningful statistical analysis or comparison. Age was categorized in five ranges, starting at 30 and ending at 70 and above in intervals of ten years. The most common age range reporting was 60–69 (38.5%), followed by 50–59 (35.3%). The majority of Respondents identified as Caucasian/White (84.3%), with about 5% identifying as Hispanic or African American; Native American, Asian, Pacific Islander/Hawaiian, and Multicultural were less than 2%. Judicial respondents were more diverse than in the Lawyer Study (91.3% Caucasian/White, 2.6% Latino, 2.5% Black/African American, and 4.6% identifying as Native American, Asian, Pacific Islander/Hawaiian, Multicultural, and Other).

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28. An Institutional Review Board (IRB) reviews research proposals to ensure protection of the welfare, rights, and privacy of human subjects. Protection of Human Subjects, 46 C.F.R., Part A (2018). The University of St. Scholastica served as the IRB for this study.

Table 1. Demographic Data

## Gender

| Rank | %    | Category |
|------|------|----------|
| 1    | 56.5 | Male     |
| 2    | 42.8 | Female   |

## Age (chronological order)

| Rank | %    | Category   |
|------|------|------------|
| 5    | 3.0  | 30-39      |
| 3    | 16.7 | 40-49      |
| 2    | 35.3 | 50-59      |
| 1    | 38.5 | 60-69      |
| 4    | 6.4  | 70 or more |

## Ethnicity

| Rank | %    | Category                  |
|------|------|---------------------------|
| 1    | 84.3 | Caucasian/White           |
| 2    | 5.2  | Hispanic                  |
| 3    | 4.9  | African-American          |
| 4    | 1.4  | Native American           |
| 5    | 1.4  | Multiracial               |
| 6    | 1.4  | Asian                     |
| 7    | 1.2  | Other                     |
| 8    | .5   | Hawaiian/Pacific Islander |

Table 2 shows that state court judges were most represented (78.6%), followed distantly by local (10.1%) and administrative (8%). Federal, tribal, and military courts were about 2% or less, and the small numbers prevented a more detailed analysis. About a third identified as a chief, administrative, or presiding judge, and just over 90% were active, full time judges. Seventy-five percent of respondents presided over trials or hearings; 19.8% over both appeals and trials/hearings; and 5.2% appeals only. About 30% were involved in problem-solving, healing-to-wellness, therapeutic, or restorative courts, while 69.7% did not have this focus. Geographical areas over which they presided were relatively similar, with rural and mixed at 28.8% and 24.4% respectively; metropolitan, large metropolitan, and suburban at 15-16%; and frontier at .7%. Respondents reported a wide range of years on the bench, from 1-50 years, with an average of 11.4 years.

Table 2. Judicial Demographics

**Court Jurisdiction**

| Rank | %    | Category       |
|------|------|----------------|
| 1    | 78.6 | State          |
| 2    | 10.1 | Local          |
| 3    | 8.0  | Administrative |
| 4    | 2.1  | Federal        |
| 5    | 1.1  | Tribal         |
| 6    | .2   | Military       |

**Type of Judicial Assignment: Chief, presiding or administrative judge?**

| Rank | %    | Category |
|------|------|----------|
| 1    | 65.6 | No       |
| 2    | 34.4 | Yes      |

**Active Status**

| Rank | %    | Category                                                               |
|------|------|------------------------------------------------------------------------|
| 1    | 91.3 | Active, full-time                                                      |
| 2    | 8.7  | Other (part-time, retired sitting by designation, senior judge status) |

**Judicial Position**

| Rank | %    | Category                         |
|------|------|----------------------------------|
| 1    | 70.5 | Trials or hearings               |
| 2    | 19.8 | Both appeals and trials/hearings |
| 3    | 5.2  | appeals                          |

**Specialization of Court: Problem-solving, healing-to-wellness, therapeutic, or restorative justice court**

| Rank | %    | Category                 |
|------|------|--------------------------|
| 1    | 69.7 | No (not in such a court) |
| 2    | 30.3 | Yes                      |

**Presiding Geographical Area**

| Rank | %    | Category                 |
|------|------|--------------------------|
| 1    | 28.8 | Rural                    |
| 2    | 24.4 | Mixed                    |
| 3    | 15.5 | Metropolitan             |
| 4    | 15.8 | Large metropolitan (>1m) |
| 5    | 14.9 | Suburban                 |
| 6    | .7   | Frontier                 |

**Years on the Bench:** Very wide range from new judges to 50 years, and a mean of 11.4 years

### The Survey Instrument

The National Judicial Stress and Resiliency Survey has four scales: Sources of Stress Scale, Effects of Stress Scale, Stress Management and Resiliency Scale, and Alcohol Use Scale. The first three scales were based on similar items from other surveys and examples of statements in the literature but were revised and customized to the judicial experience. The Alcohol Use Scale is a widely used standardized scale for identifying level of alcohol use. The AUDIT scale on alcohol use was used without revision. The Sources of Stress Scale and Effects of Stress Scale were rated by participants along a five-point Likert scale of agreement, ranging from "Not at all, Slightly, Moderately, Very much, Extremely." The Stress Management and Resiliency Scale also used a five-point Likert format from "Would never use, Rarely use, A few times a month, Several times a week, Nearly daily."

**Sources of Stress Scale.** There are many scales that measure stress and its effects, but few have been designed with specific questions regarding court-specific stress factors. The literature and several previous surveys were examined, and items were revised to reflect unique judicial context and stressors. A total of thirty-seven items were used in this scale and reflected such areas as workload, safety and security, interpersonal stress, trauma exposure, staffing issues, ethical concerns, and court procedures. Because this scale was developed specifically for this survey, it does not have correlations with other scales for validity. However, it is based on other validated surveys and published literature. *Cronbach's alpha* is a measure of internal consistency or how closely related items are in a scale. A .60 is the lowest acceptable threshold for this measure and the alpha for this scale was categorized as "very high," .93.

**Effects of Stress Scale.** This scale was constructed based on judicial surveys in the literature, conversations with judges, and common stress items adapted to the judicial context. The thirty-four items in this scale reflected the effects of stress on general well-being, cognitive performance (inattention, decisions, intrusive thoughts), emotional performance (anxiety, depression), professional and family relationships, and attitude toward the judicial role. Like the first scale, this scale is newly developed and did not have comparisons with other scales other than sharing content validity. The Cronbach alpha for this scale was also a "very high," .95.

**Alcohol Use Disorders Identification Test (AUDIT).** The AUDIT is a widely used screening tool for identifying levels of alcohol use.<sup>29</sup> It consists of ten self-report items that identify the frequency and amount of consumption, and the consequences of problematic use. It has a well-established validity and reliability across many different populations and was used for comparison in the Lawyer Study.

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29. Thomas F. Babor, John C. Higgins- Biddle, J.B.Biddle, J.B. Saunders & Maristela G. Monteiro, *Audit: The Alcohol Use Disorders Identification Test: Guidelines For Use In Primary Health Care*, WORLD HEALTH ORGANIZATION (2001). [https://apps.who.int/iris/bitstream/handle/10665/67205/WHO\\_MSD\\_MSB\\_01.6a.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/67205/WHO_MSD_MSB_01.6a.pdf?sequence=1).

**Stress Management and Resiliency Scale.** This scale was a collection of diverse practices that are commonly reported in stress studies relating to how people manage stress. The twenty-four questions covered items on physical methods (e.g., exercise, relaxation), mental methods (e.g., meditation, mindfulness), recreation (e.g., hobbies), health practices (e.g., sleep, nutrition), social support (e.g., close friends and colleagues) community involvement (e.g., service), and professional development (e.g., new skills, continuing education). In addition to asking which they currently use, participants were also asked for each item, the extent to which they would like to increase their use of that method. The discrepancy between current use and desired use was also a measure of interest and potential area for resiliency and health education.

## Results

### Sources of Stress

Survey participants acknowledged a wide array of stressors that affected them. Their responses were rank-ordered in percent frequency of endorsement (see Table 3). The most frequent items were related to importance/impact of decisions (79.7%) and heavy docket of cases (73.2%). A cluster of situations involving frustration followed, including unprepared attorneys (67.6%), self-represented litigants (62.5%), dealing repeatedly with the same parties without addressing the underlying issues (58.1%), and a lack of public awareness about the courts (55.5%). Other items reaching about 50% or more endorsement were long hours of work without a break (53.5%), hearing contentious family law issues (50.3%), isolation in judicial service (50.3%), and insufficient staff support (49.5%). Other issues below 50% are still important and should be considered when determining goals for discussion and improvement.

An important cluster to consider is self-represented litigants (62.5%) and hearing contentious family law issues (50.3%). The National Center for State Courts (NCSC), among others, acknowledges that self-represented litigants are a growing challenge for civil and criminal court judges and have recommended various innovations to relieve the challenge for judges and court administrators.<sup>30</sup> Lawyers and courts in most jurisdictions are adjusting to the fact that the self-represented are the primary litigants in family court.<sup>31</sup> Therefore, it is not surprising that these two stressors ranked in the top ten as numbers “4” and “8.”

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30. NATIONAL CENTER FOR STATE COURTS SELF-REPRESENTATION RESOURCE GUIDE, <https://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx> (last visited Aug. 6, 2020.)

31. Annette T. Burns, *A Practical Guide For Attorneys Opposing Self-Represented Litigants in Family Court*, ASSOCIATION OF FAMILY AND CONCILIATION COURTS (July 2017), <https://www.afccnet.org/Portals/0/Guide%20for%20Attorneys%20SRLs.pdf>.

Table 3. Sources of Stress

| Rank | %    | Item                                                                      | Item # |
|------|------|---------------------------------------------------------------------------|--------|
| 1    | 79.7 | Importance/impact of decisions                                            | 5      |
| 2    | 73.2 | Heavy docket of cases                                                     | 1      |
| 3    | 67.6 | Unprepared attorneys                                                      | 12     |
| 4    | 62.5 | Self-represented litigants                                                | 11     |
| 5    | 58.1 | Dealing repeatedly with same parties without addressing underlying issues | 30     |
| 6    | 55.5 | Public ignorance of the courts                                            | 23     |
| 7    | 53.5 | Long hours of work without a break                                        | 3      |
| 8    | 50.3 | Hearing contentious family law issues                                     | 29     |
| 9    | 50.3 | Isolation in judicial service                                             | 18     |
| 10   | 49.5 | Insufficient staff support                                                | 4      |
| 11   | 48.5 | Increased incivility & lack of professionalism by counsel                 | 36     |
| 12   | 47.9 | Unable to hear as many cases as needed                                    | 2      |
| 13   | 29.7 | Cases involving severe trauma/horror                                      | 16     |
| 14   | 47.3 | Inadequate compensation structure                                         | 25     |
| 15   | 41.6 | Running for office/re-election                                            | 26     |
| 16   | 41.4 | Courthouse security concerns                                              | 28     |
| 17   | 37.2 | Increased use of electronic media                                         | 21     |
| 18   | 37.1 | Concern for personal or family safety                                     | 6      |
| 19   | 35.9 | Staffing cuts and turnover                                                | 19     |
| 20   | 35.7 | High profile cases                                                        | 32     |
| 21   | 35.4 | Inadequate courthouse & courtroom facilities                              | 34     |
| 22   | 32.2 | Complex scientific or ethical issues                                      | 10     |
| 23   | 31.8 | Lack of appreciation of my efforts; being passed over                     | 24     |
| 24   | 30.7 | Lack of privacy and pressure to maintain public image                     | 39     |
| 25   | 29.7 | Responsible to/for other judges in administration of the court            | 27     |
| 26   | 29.7 | Prominent social issues                                                   | 15     |
| 27   | 28.8 | Staff anxiety about the future                                            | 20     |
| 28   | 28.5 | Insufficient training in court technology systems                         | 37     |
| 29   | 22.0 | Political pressures                                                       | 14     |
| 30   | 21.1 | Needs and protection of jurors                                            | 22     |
| 31   | 20.8 | Media monitoring and reporting                                            | 13     |



| Rank | %    | Item                                                          | Item # |
|------|------|---------------------------------------------------------------|--------|
| 32   | 20.2 | Adversarial relationships with other judges                   | 7      |
| 33   | 19.6 | Insufficient training in judicial responsibilities            | 38     |
| 34   | 19.6 | Social media attacks                                          | 31     |
| 35   | 16.7 | Conflicts among my staff                                      | 8      |
| 36   | 11.1 | Pressure to raise funds for jurisdiction through fines & fees | 35     |
| 37   | 10.3 | Concern about impaired colleagues                             | 9      |

### Effects of Stress

Judges also rated the effects of stress on their lives in important areas such as health, including fatigue and low energy (38.8%), sleep disturbance (36%), and disturbed attention and concentration (32.3%). These effects are often related because sleep deficits underlie fatigue and often reduce awareness, concentration, and attention. The effects of fatigue on judgment and mood cannot be overstated.<sup>32</sup>

Depression and anxiety are also commonly related to stress. Survey items reflecting depression in respondents included: not having initiative (22.9%), preoccupation with negative thoughts (20%), work is no longer meaningful (17.8%), can't wait for the day's work to end (16.7%), depressed mood (15.3%), nothing to look forward to (12.6%), feel increasingly numb to pleas of urgency (11.2%), and care little about trial outcomes (6.9%). Each of these criteria is concerning. The finding that over one in five judges meet at least one criteria for depressive disorder deserves our full attention. Although not directly comparable, the Lawyer Study identified 28% of respondents as meeting criteria for mild to severe depression during the past week. 8.4% reported symptoms that were severe or extremely severe.

Depression is a predictor for suicide and just over two percent of the judges responding reported experiencing thoughts of self-injury or suicide. This item is very troubling. While it is one of the lowest frequencies in this particular survey, it still reflects that twenty-two participating judges experienced thoughts of self-harm *over the past twelve months*. In comparison, the Lawyer Study found that 11.5% of lawyer respondents reported suicidal thoughts *over their careers*, and the Law Student Survey reported that 6% of its respondents reported the same feelings *in the previous twelve months*. Isolation, reputation, and the impact of exposure to trauma may all contribute to a judge finding it difficult to reach out for help. The authors believe that judges would benefit from increased suicide awareness.

Judges who endorsed experiencing anxiety were not as numerous as depression but were still significant. These included: increased health concern (27.6%), feelings of apprehension or anxiety (23%), having intrusive thoughts of traumatic images of people or evidence (19%), finding it difficult to ask a respected colleague for a critique of work (13.3%), experiencing breathing difficulties (7.4%), and being worried about panicking or losing control (4.6%). While each of these is

32. See Danziger, Levav, & Avnaim-Pesso, *supra* note 21.



significant, feelings of apprehension and experiencing intrusive thoughts deserve particular attention. Eighteen percent (18%) of those responding to the Lawyer Study met criteria for a mild to extremely severe anxiety disorder, whereas only 5.6% of the responding judges reported severe or extremely severe symptoms. Twenty-three percent (23%) of judges responding to the survey met criteria for stress at a level that could be debilitating.

As with previous studies of differential effects of stress on gender, men and women report slightly different effects of stress ("Stress and Gender"). Gender is related to how people respond to stress.<sup>33</sup> Female judges were more inclined than their male colleagues to report one or more symptoms of stress (73% vs. 54%), such as sleep disturbances, intolerance of others, physical complaints, depression and sense of isolation. Female judges also more often acknowledged the severity of these stresses, sometimes about twice the rate of men. For example, 11.5% of female judges reported stress interfering with concentration, while male judges reported a rate of 5.5% of such interference.

Female judges scored higher than male judges on internalizing factors (somatic symptoms, over-eating, sleep difficulties, sadness, loss of appetite, feelings of helplessness or hopelessness, anxiety, depression, fatigue and stress) versus externalizing factors (anger, frustration, intolerance of others, cynicism and irritability). This distinction between internalizing and externalizing based on gender is consistent with other studies on gender and stress for various populations.<sup>34</sup>

Table 4. The Effects of Stress

| Rank | %    | Item                                                                   | Item # |
|------|------|------------------------------------------------------------------------|--------|
| 1    | 38.8 | Fatigue and low energy after hearing several cases in a row            | 15     |
| 2    | 36   | Sleep disturbance (insufficient sleep, awakenings, daytime drowsiness) | 14     |
| 3    | 32.3 | Interference with attention and concentration; tend to be distracted   | 1      |
| 4    | 30.8 | Ruminate or worry about cases after they are decided                   | 2      |
| 5    | 27.6 | Increased health concerns (high blood pressure, etc.)                  | 33     |
| 6    | 23   | Feelings of apprehension or anxiety                                    | 16     |
| 7    | 22.9 | Not having the initiative to do things I used to do                    | 6      |
| 8    | 22.3 | Have little time for my family                                         | 29     |
| 9    | 21.8 | Physical discomfort such as headaches, stomach upset, etc.             | 13     |
| 10   | 21.3 | Irritable, short tempered, sarcastic                                   | 9      |
| 11   | 21   | Irritable over little things                                           | 18     |

33. Sara Rosenfield & Dena Smith, *Gender And Mental Health: Do Men And Women Have Different Amounts or Types of Problems?*, A HANDBOOK FOR THE STUDY OF MENTAL HEALTH 256 (2012).

34. *Stress and Gender, Stress in America*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2011), <https://www.apa.org/news/press/releases/stress/2011/gender>.

| Rank | %    | Item                                                                     | Item # |
|------|------|--------------------------------------------------------------------------|--------|
| 12   | 20.3 | I consider leaving the bench                                             | 28     |
| 13   | 20   | Preoccupation with negative thoughts; few positive thoughts              | 4      |
| 14   | 19   | Intrusive thoughts of traumatic images of people or evidence             | 3      |
| 15   | 17.8 | Felt my work is no longer meaningful                                     | 7      |
| 16   | 16.7 | Can't wait for the day's work to end                                     | 22     |
| 17   | 16.7 | Feel impatient when colleagues are delayed                               | 23     |
| 18   | 15.4 | Delay in responding to phone calls or emails                             | 19     |
| 19   | 15.3 | Depressed mood                                                           | 17     |
| 20   | 14.6 | Intolerant of anything that kept me from getting to what I was doing     | 12     |
| 21   | 13.3 | I find it difficult to ask a respected colleague for critique of my work | 25     |
| 22   | 12.6 | Felt as though I have nothing to look forward to                         | 8      |
| 23   | 11.2 | My response to pleas of urgency are increasingly numb                    | 27     |
| 24   | 10.9 | Feel out of touch with current legal issues and innovations              | 21     |
| 25   | 10.3 | Used more alcohol than I should                                          | 31     |
| 26   | 9.7  | More arguments or conflicts with family members                          | 30     |
| 27   | 8.2  | Contributed to marital difficulties                                      | 34     |
| 28   | 7.4  | Difficulty breathing, excessively rapid breathing, breathless...         | 5      |
| 29   | 6.9  | Care little about the outcome of most trials                             | 20     |
| 30   | 6.2  | I tend to forget appointments or other plans                             | 26     |
| 32   | 4.6  | Worried that I might panic and lose control                              | 11     |
| 33   | 3.5  | Smoking or other uses of tobacco products                                | 32     |
| 34   | 2.2  | Had thoughts of injuring myself or suicide                               | 10     |

### Alcohol Use

The AUDIT (Alcohol Use Disorders Identification Test) is a widely used ten-item self-report screening scale for assessing levels of alcohol use. Table 5 shows that 1026 respondents completed the AUDIT. 929 or 90.5% of respondents were rated in the "lower risk" range, while 97 or 9.5% scored in what is considered a higher range. More specifically, for the higher risk range, 81 (7.9%) were at "increasing risk," 11 (1.1%) were at "higher risk," and 5 (.5%) were rated at "possible dependence." It is possible that alcohol use is underreported because it is a sensitive issue for some people who do not wish to divulge their use or do not believe it is a problem.<sup>35</sup>

35. John C. Higgins-Biddle & Thomas F. Babor, *A Review of the Alcohol Use Disorders Identification Test (AUDIT), AUDIT-C, and USAUDIT for Screening in the United States: Past Issues and Future Directions*, AM. J. DRUG ALC. ABUSE (2018).

The level of problematic alcohol use for judges in the past year (9.5% in 2019) is lower than that for lawyers (20.6%), also in the year preceding their responses to the survey.<sup>36</sup> Both rates are higher than that for the general population of adults over 25 years of age in the past year (6.6% in 2018).<sup>37</sup>

The Centers for Disease Control has long recommended that moderate alcohol drinking not exceed one drink a day for women and two drinks a day for men.<sup>38</sup> More recent research suggests that the upper limit for men should be reduced to one drink a day as well.<sup>39</sup> The judicial survey revealed that the majority of judges who consume alcohol are not daily drinkers, and two-thirds of those who do consume alcohol will consume one or two drinks. Of the more than 1,000 judges who took the survey, however, 20 individuals indicated that they did have six or more drinks at a time daily, almost daily, or weekly. A very small handful experienced interference with their daily lives due to drinking, whether it was failing to meet their own or others' expectations, needing a first drink in the morning to get going, blackouts, or feeling guilt or remorse around drinking.

In comparison, the Lawyer Study revealed that 32% of lawyers age 30 and under engaged in problematic use of alcohol.<sup>40</sup> More than 14% of lawyers between the age of 61 and 70 and 16.2% of lawyers between the age of 51 and 60 met the criteria for problematic use. It may be that lawyers with the highest levels of problematic alcohol use and other distress leave the profession. On the other hand, because lawyers become judges later in their legal career, it could be that younger lawyers with problematic drinking issues changed their behavior because they recognized and faced a problem or that they knew they will face scrutiny. Another reason for the disparity may be that judges responding to this survey are more determined to mask and deny problematic use because of the potential impact. Regardless of the reasons for the disparity, a rate of 9.5% problematic alcohol use for judges is concerning.

**Table 5. AUDIT Risk Levels**

| Risk Level          | Frequency | Percent |
|---------------------|-----------|---------|
| Lower risk          | 929       | 90.5    |
| Increasing risk     | 81        | 7.9     |
| Higher risk         | 11        | 1.1     |
| Possible dependence | 5         | .5      |

36. See Organ et al., *supra* note 9.

37. U.S. DEPT. OF HEALTH & HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, RESULTS FROM THE 2019 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, TABLE 5.5B, <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2018R2/NSDUHDefTabsSect5pe2018.htm> (last visited Aug. 6, 2020).

38. *Dietary Guidelines for Alcohol*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/alcohol/fact-sheets/moderate-drinking.htm> (last visited Aug. 6, 2020).

39. Angela M. Wood et al., *Risk Thresholds for Alcohol Consumption: Combined Analysis of Individual-Participant Data For Current Drinkers In 83 Prospective Studies*, 291 THE LANCET 1455 (2018).

40. See Krill et al., *supra* note 8.

A recent article in the *Journal of Judicial Administration* reported that a study (using the AUDIT) of 152 Australian judges from five courts showed that one third of the judges responding to the survey used alcohol at a "problematic level."<sup>41</sup> The Law Student Study, of over 3,300 law students, reported that about one quarter were at risk of alcoholism.<sup>42</sup> There are many factors that result in variable reporting and underreporting: different survey questions, different levels of career development and position, and different cultures.

Problematic drinking can externally manifest in the same manner as stress, for example hostile behavior, frequent absences, as well as inappropriate behavior and mood. Regardless of etymology, such behavior impacts judicial responsibilities and reflects poorly on the judiciary which can result in loss of confidence by litigants and the public. When such conduct is reported to state judicial conduct commissions or supreme courts, judges may face disciplinary actions that can include removal from the bench.<sup>43</sup> This makes educating judges about the importance of maintaining wellness, well-being, and stress management skills even more critical.

### **Stress Management and Resiliency Activities**

The Current Activity Scale presents a list of activities for stress management and resiliency that are currently practiced from "a few times a month" to "nearly daily" (see Table 6). These frequencies are compared to Interested Activities that reflect an interest in these activities, but no current participation by the responding judge. The difference between the frequencies for each item suggests an opportunity for judges to engage in these stress management activities, and an opportunity for judicial educators to develop programs and resources to support judicial performance. For example, mindfulness was a current activity endorsed by 36%, however, 81% of the judges were interested in it. This suggests that the 45% gap may reflect a potential for further training in this highly effective resiliency skill. "Maybe" and "Yes" answers are merged for this analysis. Rank is based on current activity.

The most frequently endorsed method of stress management and resiliency promotion by judges is some form of physical exercise (82.3%). This choice is consistent with the general literature on its effectiveness in reducing stress in general, and for anxiety and depression, improving sleep, and promoting resilience to stress.<sup>44</sup> A common counterpart to the invigoration of exercise is relaxation that reduces anxiety and muscular tension. The variety of relaxation methods available are quite broad and include: relaxed movement and stretching (e.g., yoga, t'ai chi) (51.3%), meditation and mindfulness (35.9%), spiritual and faith practices (49.3%), reading (77.3%), and quiet hobbies and pastimes (73%). Sleep hygiene (e.g., healthy sleep practices) was identified by 66% of respondents, and good nutrition by 88.7% as a practice used to cope with stress. A cluster of social and relationship activities generally was rated highly: diverse friends outside the field

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41. See Schrever, et al., *supra* note 26.

42. See Organ et al., *supra* note 9.

43. Cynthia Gray, *The Worst-Kept Secret in the Courthouse*, 90 JUDICATURE 30 (2006).

44. Peter Salmon, *Effects Of Physical Exercise On Anxiety, Depression And Sensitivity To Stress: A Unifying Theory*, 21 CLIN. PSYCH. REV. 33 (2001).

(73.4%), social support of trusted people (76.6%), providing personal support or confrontation of peers (54.7%), and involving staff in planning court schedules/dockets (71.4%). The one social item that stood out, at only 36.8%, was asking for peer support.

The discrepancies between the current activities and what the judges are merely interested in is considered a measure of gap in their stress management skills and what they would actually like to be able to do or do more effectively. This gap may identify helpful topics and practices for personal development and improved stress management. An early study of judicial stress revealed the first gap is a judge's ability or desire to ask for support and described the adverse effects of judicial isolation.<sup>45</sup> This study shows the same gap ranking first: asking for peer support. The current survey revealed that the second greatest gap is regarding mindfulness or mind quieting practices. Mindfulness has become a frequent topic at judicial conferences and training programs. Research shows that it may decrease some of the inherent unconscious biases in decision making,<sup>46</sup> and recover concentration and attention when distracted or overwhelmed.<sup>47</sup>

A third gap involves the reported "current activity" and "interested in" levels regarding relaxation. Stress is often manifested physically in muscular tension, such as tension headaches and postural aches and pains, and emotionally in the experience of anxiety. Extensive research over decades has shown that participating in some form of stretching and relaxation can reduce stress as well as prevent gradual build-up of tension. Sitting and relaxing, mindfulness or other meditation, yoga, Pilates, and t'ai chi can all be used to promote physical and mental relaxation.<sup>48</sup> Similarly, reading, painting, and engaging in other enjoyable hobbies provides respite from disturbing thoughts and tensions.

Based on the difference rank, the study reveals a fourth gap between practice and interest in being able to ask for personal support or confront a colleague (54.7% vs. 89.6%). This hesitancy may be related to the isolation previously noted, need for confidentiality, or avoiding the risk of adverse reaction from a colleague. Nonetheless, being able to share one's stress narrative, provide support for others, and provide constructive feedback to a peer are important values, and can be instrumental in stress reduction and resiliency promotion for oneself and others. Other gaps between current and interest in activities responses worth noting are a need for better sleep (66.4% vs. 96.9%), time for hobbies and pastimes (73% vs. 97.8%), and having friends in diverse areas outside the field (73.4% vs. 94.5%).

45. Isaiah Zimmerman, *Isolation in the Judicial Career*, 36 CT. REV. 4 (2000).

46. Jeffrey Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195 (2009).

47. Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-making Process*, 5 INT'L J. CT. ADMIN. 45 (2013).

48. See, e.g., YOGA, PILATES AND TAI CHI MAYO CLINIC HEALTH SYSTEM (last visited Aug. 6, 2020), <https://www.mayoclinichealthsystem.org/locations/lake-city/services-and-treatments/rehabilitation-therapies/sports-medicine/yoga-pilates-tai-chi>.

Table 6. Stress Management and Resiliency Activities

| Current Activity Item                        | % Active (rank) | % Interest (rank) | Difference Active/Interest | Difference rank |
|----------------------------------------------|-----------------|-------------------|----------------------------|-----------------|
| Physical exercise (walk, jog, bike, swim)    | 82.3 (2)        | 98 (2)            | 15.7                       | 12              |
| Relaxation, stretching (yoga, tai chi, etc.) | 51.3 (10)       | 89.7 (9)          | 38.4                       | 3               |
| Meditation, mindfulness, mind-quieting       | 35.9 (13)       | 81.4 (12)         | 45.5                       | 2               |
| Spiritual, faith tradition                   | 49.3 (11)       | 70.9 (13)         | 21.6                       | 8               |
| Hobbies, pastimes                            | 73 (6)          | 97.8 (3)          | 24.8                       | 6               |
| Adequate sleep, better habits                | 66.4 (8)        | 96.9 (5)          | 30.5                       | 5               |
| Balanced nutrition, better meals             | 88.7 (1)        | 99.4 (1)          | 10.7                       | 13              |
| Diverse friends outside of the field         | 73.4 (5)        | 97.4 (4)          | 24.0                       | 7               |
| Reading educational materials                | 77.3 (3)        | 94.5 (7)          | 17.2                       | 11              |
| Social support of trusted people             | 76.6 (4)        | 96.3 (6)          | 19.7                       | 10              |
| Asking for peer support                      | 36.8 (12)       | 83 (11)           | 46.2                       | 1               |
| Personally support and confront colleagues   | 54.7 (9)        | 89.6 (10)         | 34.9                       | 4               |
| Involve staff in planning, scheduling, etc.  | 71.4 (7)        | 91.6 (8)          | 20.2                       | 9               |

### Recommendations to Stakeholders

Judicial officers individually bear responsibility for their own well-being to ensure they execute their duties “impartially, competently, and diligently,” and to uphold the integrity of the judiciary.<sup>49</sup> The findings set forth above in the section regarding stress management and resilience activities, show that many judges do take affirmative steps to protect their health and build their resilience. To bring forth systemic and sustained improvement to the well-being of the judiciary as a whole, however, the burden cannot rest solely on the shoulders of individual judicial officers. Nor will this ambitious task be attained through exercise and healthy eating alone. Instead, entities charged with governance, regulation, education and support of judges must lead these efforts.

The authors of the 2017 National Task Force Report set out 44 recommendations that placed responsibility for changing the deleterious culture of the legal profession directly on leaders of the profession, particularly the seven

49. ABA MODEL CODE OF JUDICIAL CONDUCT, Canon 2 (2010).



stakeholder groups with authority to bring systemic change: judges, regulators, legal employers, law schools, bar associations, legal professional liability carriers and Lawyer Assistance Programs.<sup>50</sup> Likewise, this study's authors also offer recommendations for bolstering the well-being of the judiciary to the stakeholder groups responsible for governance, regulation, education and support of the U.S. judicial system. These groups are state supreme courts, federal court administration, judicial regulators, judicial educators, membership associations for judges, as well as judges and lawyers assistance programs. Because the judicial stress and resiliency survey gathered such extensive data regarding individual judge's sources of stress and efforts to promote their own well-being and resilience, this article also makes recommendations based on insights gained from review of these findings.

### Recommendations to Court, Tribal, and Agency Leaders

Those who serve as leaders of courts and administrative agencies in state, federal and tribal systems have the ability, pursuant to their legal authority and symbolic power, to create rules, trainings, and programs that will promote the well-being of their fellow jurists and to serve as exemplars of health and resilience. The authors encourage these leaders to use their power to institute the following:

1. Communicate and demonstrate by example that judicial well-being is a priority. Our first recommendation echoes the National Task Force Report's recommendation that, "the highest court in each state should set the tone for the importance of well-being of judges."<sup>51</sup> As the ultimate leaders of each state's legal system, justices of the highest court in the state's judiciary should maintain awareness that "they will be closely watched for signals about what is expected" when caring for one's own and each other's well-being.<sup>52</sup> By prioritizing self-care, justices set an example and send a message that well-being is a priority. Also critically important is that justices at higher levels are aware and appreciate the different challenges and stresses of judges presiding in the lower courts.
2. Convene a statewide task force on well-being in the legal profession, including the judiciary and all other stakeholders. In Appendix A of the National Task Force Report, a state action plan and checklist for convening a statewide task force is provided.<sup>53</sup> The chief justice (or their designee) is encouraged to bring together representatives of all stakeholder groups to review potential ways in which well-being can be improved, to create priorities and develop and promote implementation of an action plan.

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50. See National Task Force Report, *supra* note 4.

51. *Id.* at 22.

52. *Id.* at 13.

53. *Id.* at Appendix A.

3. Ensure the judiciary has access to well-being resources and programming, including services provided by Lawyer Assistance Programs. Through positions of authority in relation to judicial education and support organizations, as well as oversight of budgets for the state judicial system, justices are uniquely positioned to ensure the availability of well-being resources, programming, and protocols in their state. Fulfillment of this recommendation would also mean ensuring that judges and lawyers assistance programs have adequate resources to serve members of the judiciary at all levels. An excellent example of this work occurred in 2017, when the National Center for State Courts released *Elements of Judicial Excellence: A Framework to Support the Professional Development of State Trial Court Judges*.<sup>54</sup> Included in the framework were recommendations for judicial well-being and the ways in which state court leaders can structure the professional development of judges to include information on wellness and stress management. Some ideas suggested are formal mentoring and coaching programs, regular engagement with judicial colleagues, and intentional use of personal time to refresh and recharge. It may also be important to identify and reduce barriers to implementing such practices before they can be successfully introduced.
4. Ensure adequate insurance, leave policies, and retirement benefits. Judges are more likely to get the professional help and treatment they need if the cost of that assistance is paid in full or in part by insurance that does not impose onerous out-of-pocket expenses on them. This could itself add to their stress by affecting their financial security. Similarly, a paid leave policy that allows judges who need in-patient treatment for the effects of stress and/or substance use to get the help they need is necessary. Finally, in the event that a judge has a mental disability or other concern that renders the judge unable to perform judicial functions, a generous disability retirement plan that does not deprive the judge of the means to meet the expenses of treatment and other costs is crucial to encourage, not penalize, retirement.
5. Authorize caseload and staffing studies. Because heavy dockets were cited as one of the primary sources of stress, courts should study whether caseloads are fairly divided by size and type of case, and whether judgeships and staffing are adequate within and across divisions, dockets, and locations, and make any necessary adjustments. These adjustments could include strategic use of senior judges when such a resource is available. Whether there are technological solutions to some of the docketing issues judges face also should be examined. The National Center for State Courts has performed numerous studies on these issues for courts.<sup>55</sup>

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54. NATIONAL CENTER FOR STATE COURTS ELEMENTS OF JUDICIAL EXCELLENCE, <https://www.ncsc.org/topics/judicial-officers/judicial-administration/eje/elements-of-judicial-excellence> (last visited Aug. 6, 2020).

55. See, e.g., NATIONAL CENTER FOR STATE COURTS HIGH PERFORMANCE COURTS, <https://www.ncsc.org/Information-and-Resources/High-Performance-Courts.aspx> (last visited Aug. 6, 2020).



### Recommendations to Judicial Regulators

Judicial conduct commissions are charged with “preserving the integrity of the judicial system and public confidence in the system and, when necessary, safeguarding the bench and the public from those who are unfit.”<sup>56</sup> Often, charges of misconduct do not result in removal, but instead, are addressed “through informal or private dispositions such as counseling, letters of caution, private admonishments, or appearances before the commission.”<sup>57</sup> Not infrequently, a complaint stems from a judge’s conduct resulting from a behavioral health concern, such as depression, anxiety, burnout, or substance use. Conduct commissions should be able to offer interventions and resources that directly target these issues as an alternative to addressing these issues strictly as disciplinary matters. Doing so will enable the judge to remain on the bench and ensure that the above commission goals are met.

6. Commissions should implement policies that appropriately allow for a diversion or intervention program and is targeted to address the underlying behavioral health concern.<sup>58</sup> Based upon the National Task Force Report’s recommendation, judicial conduct commissions should follow those states that currently have a “Diversion Rule” for judges.<sup>59</sup> (See Appendix C for a list of states with diversion or deferred discipline agreements).
7. Judicial diversion programs should allow referral of judges to Judges and Lawyer Assistance Programs when a behavioral health condition is apparent, even though misconduct is not present, or when the misconduct is due to a mental or physical health-related issue. Such a voluntary referral would allow the jurist to receive needed services early in the development of an issue such as a substance use or mental health disorder, rather than waiting until misconduct manifests. A Lawyer Assistance Program<sup>60</sup> exists in each state, with 90% providing services to judges.<sup>61</sup> Typically, LAPs provide assistance to members of the legal profession who are experiencing issues related to substance use and mental health disorders, as well

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56. Cynthia Gray, *A Study of State Judicial Discipline Sanctions*, NATIONAL CENTER FOR STATE COURTS (2002), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0026/18881/study-of-state-judicial-discipline-sanctions.pdf](https://www.ncsc.org/__data/assets/pdf_file/0026/18881/study-of-state-judicial-discipline-sanctions.pdf).

57. *Id.* at 6.

58. A deferred discipline agreement is appropriate only when the alleged misconduct is minor, that is, it does not reflect on the judge’s fitness for office, and when the underlying cause of the misconduct can be addressed through a treatment or rehabilitation program. See Rule 6 cmt., ABA MODEL RULES FOR JUDICIAL DISCIPLINARY ENFORCEMENT. For an overview of how judicial conduct commissions across the country consider rehabilitation and mitigation in discipline cases involving substance use and mental health issues, see Gray, *supra* note 56.

59. See National Task Force Report, *supra* note 4, at 23.

60. A Directory of Lawyer Assistance Programs can be found at *Directory of Lawyer Assistance Programs*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/lawyer\\_assistance/resources/lap\\_programs\\_by\\_state/](https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/) (last visited Aug. 4, 2020).

61. AMERICAN BAR ASSOCIATION, COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS 6 (2014), [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lis\\_colap\\_2014\\_comprehensive\\_survey\\_of\\_laps.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_2014_comprehensive_survey_of_laps.pdf) (last visited Aug. 4, 2020).

as prevention-based well-being programming. The overwhelming majority of LAPs provide diagnostic assessments, interventions, and referrals to behavioral health specialists. A majority offer direct services, such as counseling and peer support. In response to a 2014 survey, LAPs indicated that 9% of their referrals came from disciplinary agencies.<sup>62</sup> As such, many programs would welcome the opportunity to work with their judicial conduct commission to provide support to referred judges.

8. Judicial regulators should educate themselves about mental health and substance use issues, including burnout and secondary trauma. Judicial conduct commissions are advised to consult with experts in behavioral health. These experts may include psychiatrists, mental health therapists, physicians who specialize in the intervention and treatment of substance use disorders, as well as professional staff of their state's LAPs.

### Recommendations to Judicial Educators

National and state judicial education organizations should routinely include program topics on the potential behavioral health challenges that judges face, as well as resilience-enhancing, evidence-based strategies that will help judges in their efforts to endure the inevitable stressors of their career.<sup>63</sup> Increasingly, judicial educators are doing just that. For example, The National Judicial College presents an annual course on mindfulness-based stress reduction and on the state level, the North Carolina Judicial College developed a Special Topic Seminar on mental health that provided information related to judicial mental health with sessions on vicarious trauma, mindfulness, and resilience.<sup>64</sup>

9. Regularly offer presentations on judicial impairment (including risk factors such as vicarious or secondary trauma) and well-being topics and involve LAPs in their development and delivery.<sup>65</sup> Increasingly, members of the judicial community are developing an expertise in these areas

62. *Id.* at 16.

63. A list of judicial educators organized by state can be found at *Judicial Education Programs—Judicial Administration State Links*, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/Topics/Judicial-Officers/Judicial-Administration/State-Links.aspx?cat=Judicial%20Education%20Programs> (last visited Aug. 4, 2020).

64. "Core Skills for Judges" Webinar Series: *Mindfulness*, THE NATIONAL JUDICIAL COLLEGE, <https://www.judges.org/courses/core-skills-for-judges-webinar-series-mindfulness/> (last accessed Oct. 19, 2020); *Special Topic Seminar: Mental Health Agenda*, UNIVERSITY OF NORTH CAROLINA SCHOOL OF GOVERNMENT, April 1-3, 2019, <https://www.sog.unc.edu/courses/course-materials/special-topic-seminar-mental-health-agenda-april-2019> (last visited Oct. 19, 2020).

65. Gender disparities in reactions to the stress effects of vicarious trauma have also been found. An earlier study that evaluated vicarious trauma in 105 juvenile and family court judges showed significant differences between the male and female judges. The average age of the judges was 51 years, and 54.3% were male and 45.7% were female. In describing their work, "... judges are increasingly exposed to graphic medical evidence, tapes of 911 calls, photographs and videotapes of

and could serve as speakers. Alternatively, LAPs routinely provide CLE programming and will have judicial members who volunteer or serve on their governing boards who could speak at no cost.<sup>66</sup> Topics for instruction could include for example: stress and resiliency, burnout and its effects on engagement, identification and intervention of common mental health and substance use disorders, and secondary or vicarious trauma.<sup>67</sup>

10. Especially for new judges, provide information about these topics and LAPs in courses and all materials (print and online). Although it varies among states, new judges are typically required to complete a significant number of educational hours at the beginning of their careers. These “new judges schools” should include programming that will adequately educate the new judicial officers on the array of behavioral health issues they may encounter in themselves, or their colleagues, over the course of their career on the bench. Judicial educators should also review their websites and online offerings for all jurists to ensure the on-demand availability of programming, resources, and articles.<sup>68</sup>
11. During judicial conferences, offer experiential well-being programs, such as judicial roundtables or other small group sessions. Judicial educators can take concrete steps towards breaking down some of the isolation experienced by jurists simply by creating space within their programs for building connections among attendees. Numerous jurisdictions have found success with judicial roundtables, a practice taken from the medical profession. These interactive sessions can reduce isolation, allow for sharing of common experiences and normalize some of the stress responses experienced by participant jurists.<sup>69</sup> For example, the protocol lists “Decision Fatigue,” “Everyone Has an Opinion About Your Opinion,” and “Judicial Decision-making” as sample topics for the event. The New Mexico

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injuries, and victim impact statements, victim’s testimony at trial and sentencing, and statements of family members.” See *supra* note 16. See also Rosenfield & Smith, *supra* note 33.

66. An example of scholarship by LAPs on behavioral health topics affecting the judiciary can be found at Anne Chambers, *Judges and Compassion Fatigue: What Is It and What to Do About It*, THE MISSOURI BAR, [https://mobar.org/site/content/Articles/Well\\_Being/Judges\\_and\\_Compassion\\_Fatigue\\_What\\_Is\\_It\\_and\\_What\\_to\\_Do\\_About\\_It.aspx](https://mobar.org/site/content/Articles/Well_Being/Judges_and_Compassion_Fatigue_What_Is_It_and_What_to_Do_About_It.aspx) (last visited Aug. 6, 2020).

67. See National Task Force Report, *supra* note 4, at 23.

68. As an example, a compendium of resources on judicial impairment, stress and well-being topics can be found at the National Center for State Courts website, NATIONAL CENTER FOR STATE COURTS, <https://cdm16501.contentdm.oclc.org/digital/collection/judicial/id/525> (last viewed Aug. 4, 2020).

69. A detailed protocol with many practical tips for hosting roundtables developed by the Judicial Assistance Initiative of the American Bar Association Commission on Lawyer Assistance Programs is an available resource. See *Judicial Roundtables*, [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ls\\_colap\\_Judicial\\_Roundtable\\_Protocols.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_Judicial_Roundtable_Protocols.pdf) (last accessed Aug. 4, 2020).

Lawyers and Judges Assistance Program developed a “how to” video in 2019<sup>70</sup> for hosting a judicial roundtable as well as a sample agenda for a roundtable session which can be found in Appendix D.

12. Conduct anonymous well-being surveys at conferences and use responses to design future programs. Just as the Judicial Stress and Resiliency Survey gave rise to this discussion and its series of recommendations, state-level and even local surveys create an opportunity to identify judicial stressors particular to the jurisdiction, as well as coping strategies employed by its judicial officers. Distribution of the survey itself, and discussion of the results at some later date, also serves to highlight the issue of judicial stress and the need for systemic and individual change. To facilitate the development of localized surveys, the questions used in the Judicial Stress and Resilience Survey may serve as examples. See Appendix B.

#### **Recommendations to Judicial Membership Associations**

13. Create a judicial well-being committee and add a LAP representative as a member. A number of state judicial associations have created a wellness committee, including the Illinois Judges Association Wellness Committee (<https://www.ija.org/wellness-committee>), the New York State Bar Association’s Judicial Wellness Committee (<https://nysba.org/committees/judicial-wellness-committee/>) and the California Judges Association’s Mindfulness and Wellness Committee (<https://www.caljudges.org/CommMindful.asp>). Activities for such committees could include establishment of a facilitated mentoring program, and other programming targeted at creating communities (in-person and online) for their members. The committee could also be tasked with developing programming for conferences, serving as a resource for knowledgeable speakers and creating relevant online content. One valuable example of such a group’s work is “A Wellness Guide for Judges of the Ninth Circuit Courts” of California, a project of that jurisdiction’s Wellness Committee.<sup>71</sup> The Guide offers family members, court staff and colleagues, who are likely to observe signs of impairment, specific steps to help the judge while protecting the public, who appear in front of the judge.
14. Provide online resources regarding impairments and well-being, including self-assessments, articles, videos, and links to state LAPs’ websites. A dedicated tab that provides timely and relevant information online to judges is one way that judicial associations can support their members who are

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70. NM Lawyers and Judges Assistance Program, *Judicial Roundtable in Action*, YouTube (Nov. 13, 2019) <https://youtu.be/ae8qQkfAVzM>.

71. Judge Phyllis J. Hamilton, *A Wellness Guide for Judges of the Ninth Circuit Courts 1* (July 2015), <https://judicialstudies.duke.edu/wp-content/uploads/2019/02/A-Wellness-Guide-for-Judges-of-the-Ninth-Circuit-Courts-Ninth-Circuit-Wellness-Committee-2015.pdf>.

working to cope with stressors related to their judicial service. An excellent example can be found at the Judges Concerned for Judges of Pennsylvania website (<https://www.jcjp.org/>) which includes resources and self-assessments. Additionally, the National Center for State Courts maintains an extensive collection of resources and information in their Judicial Resource Guide which can be found at: (<https://www.ncsc.org/Topics/Judicial-Officers/Judicial-Stress/Resource-Guide.aspx>). Another resource, published in 2017, by the American Judges Association is an issue of the publication *Court Review* devoted entirely to judicial well-being. It featured articles, such as *Judges Well-Being and the Importance of Meaningful Work*.<sup>72</sup>

15. Add recovery meetings and experiential components to conferences. Increasingly, bar associations are adding wellness activities to their conference programs, such as yoga, exercise or meditation.<sup>73</sup> And for years, many have offered recovery meetings (often listed on the program as “Friends of Bill”) in the early morning or late evening hours. Judicial associations could follow suit, particularly given the significant number of responders to this survey who indicated a strong interest in learning more about physical activities and mindfulness. Judicial roundtables (see Recommendation 9, *supra*) also provide an opportunity for mutual support. Doing so also gives leaders of the association the opportunity to role model best well-being practices.
16. Offer presentation opportunities to LAPs at conferences. Frequently, judicial associations offer exhibit space to their state LAP which can be helpful in raising awareness that these resources exist for judges who are concerned for themselves or another judge, or for a possibly impaired lawyer in their courtroom. Unfortunately, experience shows that few judges are willing to be seen spending time at the LAP exhibit because of the stigma that is still associated with behavioral health impairments. To ensure that members receive the valuable information, associations should include the LAP staff and their judge volunteers in time allocated at the podium, either to present an educational session or to make announcements about the array of services they provide to the judiciary.

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72. Anne Brafford & Robert W. Rebele, *Judges' Well-Being and the Importance of Meaningful Work*, 54 CT. REV. 60 (2018). See also David Prince, *One Judge's Journey to Why—A Search for Meaning and Purpose*, 54 CT. REV. 60, 74 (2018); Scott L. Rogers, Chris McAliley & Amishi Jha, *Mindfulness Training for Judges: Mind Wandering and the Development of Cognitive Resilience*, 54 CT. REV. 60, 80 (2018); Jennie Cole-Mossman, Elizabeth Crnkovich, Lawrence Gendler & Linda Gilkerson, *Reducing Judicial Stress through Reflective Practice*, 54 CT. REV. 60, 90 (2018); Jamey Hueston & Miriam Hutchins, *The Power of Compassion in the Court: Healing on Both Sides of the Bench*, 54 CT. REV. 60, 96 (2018).

73. Marilyn Cavicchia, *The Mindful Bar Organization: A Q&A with Jeena Cho*, [https://www.americanbar.org/groups/bar\\_services/publications/bar\\_leader/2016-17/january-february/the-mindful-bar-organization-a-q-and-a-with-jeena-cho/](https://www.americanbar.org/groups/bar_services/publications/bar_leader/2016-17/january-february/the-mindful-bar-organization-a-q-and-a-with-jeena-cho/) (last visited Aug. 4, 2020.)

### Recommendations to Judges and Lawyers Assistance Programs

17. Publicize the Judicial Stress and Resiliency Survey results and offer programming to meet needs identified by survey respondents. This survey, sponsored by the ABA Commission on Lawyer Assistance Programs, offers an excellent opportunity for state lawyer assistance programs to collaborate with judicial educators and associations by bringing this information to their events in the form of presentations, announcements, and distribution of results in materials or at exhibit spaces. As areas of interest for additional training are clearly expressed in the results, LAPs have a ready guide of program offerings to develop.
18. Develop a peer support network of judges, and other avenues for peer-to-peer connection. Lawyer Assistance Programs routinely maintain a cadre of volunteer attorneys who serve as peer support for others in the profession who are struggling with behavioral health disorders, especially those new to recovery.<sup>74</sup> Some also offer networks of judges which function as peer support programs, developed for judges and staffed by volunteer judges. In the absence of such a program, LAPs should use the National Judges Helping Judges Helpline (see Recommendation 19, *infra*) as a referral resource to help local judges find a peer who can provide critical guidance and support in the early days of recovery. Examples of programs designed to assist judges include Washington's Judicial Assistance Service Program which connects callers with trained "peer counselors" who are also judges (<https://www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program>); as well as the New Jersey Judges Assistance Program (<http://judgesassistance.org/>).
19. Advocate for inclusion of court personnel in well-being educational programming and events. Court personnel are often exposed to the same stressors that detrimentally affect judges, such as exposure to graphic and traumatic evidence, high stakes decisions, distraught litigants, and unprepared lawyers. Additionally, staff for the court are often among the first to notice distress and impairment on the part of the judge, lawyers, and jurors appearing in the courtroom.
20. Reach out to new judges (especially chiefs) to educate them about Lawyer Assistance Programs' services. In the ABA Model Lawyer Assistance Program, directors are charged to "[e]stablish and maintain cooperative relationships with the state's ... courts."<sup>75</sup> As a consequence, most

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74. MODEL LAWYER ASSISTANCE PROGRAM ADOPTED BY THE ABA HOUSE OF DELEGATES FEB. 2004, APPENDIX: COMMENTARIES TO THE MODEL LAP, MODEL LAWYER ASSISTANCE PROGRAM RULES (Feb. 2004), [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lis\\_colap\\_model\\_lawyer\\_assistance\\_program.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_model_lawyer_assistance_program.pdf).

75. *Id.* at Rule 3(C)(4).



LAP programs offer support services and education to members of the judiciary.<sup>76</sup>

21. Promote and utilize the National Judges Helping Judges Helpline (800-219-6474). The ABA Commission on Lawyer Assistance Programs' Judicial Assistance Initiative created this nationwide confidential helpline to assist members of the judiciary who may be experiencing issues related to substance abuse or mental health disorders, including vicarious trauma, chronic stress, and burnout. Answered by professional staff at the Texas Lawyers' Assistance Program, this helpline matches the caller with a volunteer judge (typically in another state) who has experienced the same issue.<sup>77</sup> Referrals to professional resources (e.g., psychotherapists or treatment centers) will also be made upon request.
22. Volunteer for Supreme Court task forces or judicial well-being committees. Lawyer Assistance Programs have valuable information on the core behavioral issues that lead to impairment, maintain current knowledge of local resources for intervention and treatment, and have a corps of volunteers that stand ready to assist individuals, as well as to conduct trainings or serve as speakers. Often, LAPs have recruited members of the state's judiciary to serve as volunteers. Consequently, they are uniquely positioned to serve as a resource and support for well-being undertakings by judges. Despite their vast knowledge, unfortunately, LAPs are not always considered for inclusion when these projects are initiated. As such it may be incumbent upon LAP directors themselves to proactively offer services.

### Recommendations to Judges Individually

While all stakeholders are responsible for ensuring a judicial system that protects the well-being of its members, every jurist has a significant role to play in ensuring his or her resilience in the face of stress. Prior to making recommendations for individual judges, however, the authors first considered which of the stressors cited by responding judges can be changed and which are simply inherent to the requirements of the position.

For example, the greatest stressor—the importance and impact of decisions that jurists must make—is integral to the role of an adjudicator and cannot be changed without altering the very role itself. Likewise, there is very little that a

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76. For a directory of state, local and international lawyer assistance programs, a list of LAP services, websites, articles, and other resources, visit ABA RESOURCES FOR JUDGES, [https://www.americanbar.org/groups/lawyer\\_assistance/articles\\_and\\_info/resources\\_for\\_judges](https://www.americanbar.org/groups/lawyer_assistance/articles_and_info/resources_for_judges) (last visited Aug 4, 2020).

77. *National Helpline for Judges Helping Judges*, TEXAS BAR ASS'N, <https://www.texasbar.com/AM/Template.cfm?Section=Judges1&Template=/CM/ContentDisplay.cfm&ContentID=15865> (last visited Aug. 6, 2020).

single judge can do about heavy (tense, crowded, and lengthy) dockets, unprepared attorneys, and self-represented litigants.

However, several stressors are within the control of every judge, such as fatigue and social isolation, failing to take adequate breaks, and fostering healthy habits. The following sets out a list of evidence-based strategies that are known to promote self-care and enhance resiliency, all of which are in each individual judge's locus of control.<sup>78</sup> In describing these options, we recognize that social expectations of judges can stand in the way of beginning self-care and resilience strategies. By offering what might seem like very basic steps and recommendations, we hope to ease that path to better well-being.

**Resiliency and Stress Management.** Resiliency is the ability to rebound after a crisis or a setback. While it is often thought of as returning to a pre-stress state, increasingly, resiliency is considered as: (1) returning to a higher state of functioning due to having learned what can be done to avoid or mitigate the stress in the future, (2) building more effective coping skills, and (3) using effective interpersonal resources. Resiliency can be promoted through building more physical resistance to stress through improved sleep habits, sound nutrition, exercise, and relaxation. Mental resilience can be developed through such practices as mindfulness, reflection on experiences, sufficient sleep, positive self-talk, and beliefs that give meaning and direction and help make sense of sometimes confusing or overwhelming events. Finally, relationships with others can provide protection against stress. Relationships offer judges the ability to: share their experiences, fostering rebounding; break isolation, a key concern and connect with people who care for the judge. These practices also overlap in benefits for the body, mind, and spirit.

**Vicarious Resilience.** As much as the horrific nature of some cases can produce vicarious trauma, seeing survivors' personal strength, resourcefulness, spirit, and hope can be a source of inspiration and vicarious resilience for a judge. The idea that exposure to trauma could be both harmful and beneficial was an outgrowth of therapists working with refugees and severely traumatized clients. Recognition of personal resilience in survivors could prevent burnout in providers,<sup>79</sup> and could benefit judges as well. Crises that lead people to court can also be a pivotal point for beneficial change for many people. Many survivors have learned to utilize supports more effectively, redefine their lives and goals, and become advocates for others in crisis. Reassessing personal issues in comparison to others

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78. See National Task Force Report, *supra* note 4, at 9-10. The Report sets out six facets of well-being, based upon a definition drawn from the World Health Organization which defines mental health as, "a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community." The six facets are: occupational, Intellectual, spiritual, emotional, social and physical.

79. Megan C. Welsh, *Vicarious Traumatization and Vicarious Resilience: An Exploration of Therapists' Experiences Conducting Individual Therapy with Refugee Clients* (2014) (unpublished master's thesis, on file with the Family Health Center of Worcester, MA).



who have survived devastating personal situations can place those issues in a less imposing position for judges.<sup>80</sup>

**Exercise.** Stress has, as one of its effects, a dampening of energy and interest in physical activity. Intentional persistence in maintaining or increasing activity can help reverse this process.<sup>81</sup> If one has not been physically active, checking with a physician or exercise physiologist should occur before starting an exercise plan. Generally, exercise starts slowly and for shorter periods with low intensity activities such as walking, biking, light weightlifting, or swimming. Exercise in a group can be helpful for social interaction and support. As strength and endurance improve, exercise can progress to faster or longer practice or group sports. Monitoring heart rate can also be helpful to check excessive activity but also as feedback on progress. Exercise also improves sleep, appetite, and immune response, and is a recommended treatment for depression.

**Sleep.** Sleep difficulties in the United States are considered a public health crisis according to studies by the Centers for Disease Control and Prevention (CDC), the National Sleep Foundation, and Columbia University's Mailman School of Public Health (Goldschmidt, 2017).<sup>82</sup> Although there is some normal variability in duration of sleep, on average, people need about eight hours. Persistent disruption of the duration or quality of sleep has dramatic implications for health. Sleep deficits are related to greater susceptibility to stress, interference with awareness and concentration, poor memory, and a host of health problems including apnea, obesity, diabetes, and heart disease. A study of judicial sleepiness have resulted in judges losing their driver's license, case retrial, and retirement.<sup>83</sup> Severe snoring and potential apnea should be discussed with a physician and consideration of a sleep study to determine the cause and treatment.

The importance of sleep cannot be overestimated. During sleep new learning is consolidated and creative ideas are connected. Dreaming helps reduce the emotional intensity of experiences, deep sleep helps recover physical energy, and the waste products of the brain (associated with Alzheimer's disease) are flushed out of the brain. Less than the recommended eight hours of restful sleep a night can impair a person's judgment without the person being aware of it.

Avoiding electronic devices before bedtime can reduce the effect of their "blue screen" lighting that can interfere with production of melatonin that signals the onset of sleep. Sleeping at a regular time, having a ritual before sleep (leisure reading, bathing, etc.), turning off sources of light (that can interfere with melatonin), cool room temperature, using a sleep mask, masking sounds with a "white

80. Virgil Weibe, *Vicarious Resiliency*, CLINICAL L. PROF. BLOG (2014), [https://lawprofessors.typepad.com/clinic\\_prof/2014/04/vicarious-resiliency.html](https://lawprofessors.typepad.com/clinic_prof/2014/04/vicarious-resiliency.html) (last visited Aug 6, 2020).

81. Emma Childs & Harriet de Wit, *Regular Exercise Is Associated with Emotional Resilience to Acute Stress In Healthy Adults*, 5 FRONTIERS IN PHYSIOLOGY 161 (2014).

82. Debra Goldschmidt, *The Great American Sleep Recession* (June 23, 2017, 10:52 AM), <https://www.cnn.com/2015/02/18/health/great-sleep-recession/index.html>.

83. Ronald R. Grunstein & D. Banerjee, *The Case Of "Judge Nodd" And Other Sleeping Judges—Media, Society, And Judicial Sleepiness*, 30 SLEEP 625 (2007).

noise” source, and having a comfortable bed can also improve sleep. Mindfulness practice also can help put aside thoughts of the day.

**Mindfulness.** Judicial routine is occupied by constant thinking, examining, and judging often at the expense of reflection and mental respite from these demands. Mindfulness involves awareness without intention, comment or judgment—a deserved “time out” from deliberation.<sup>84</sup> Like physical exercise, mindfulness needs to be practiced regularly to provide benefits.

Mindfulness is simply keeping one’s awareness in the present. Depression can be thought of as the gap between the present and the disappointments or regrets of the past; anxiety as the gap between the present and the anticipated future. We react as if our memories or anticipations are real, but the past is over and the future still undetermined. A focus on the present allows a person’s thoughts and physiology to become quiet, relaxed, and enables a judge to engage feeling more centered and refreshed.

Starting mindfulness practice can be for as little as a few minutes several times a day and involve simply being aware of surroundings or paying attention to the rhythm of breathing. With practice of 10–20 minutes a day, it becomes easier to let go of intrusive thoughts and images. Quiet walks in nature are often particularly relaxing, whether actually doing it or even imagining it.

Increasingly, mindfulness is becoming recognized as a highly effective tool in managing stress. The Florida Bar Journal (April 2016) focused an entire issue on the topic.<sup>85</sup> Mindfulness research shows that it can be helpful in promoting sleep, reducing negative thoughts and rumination, improving decision making, being less emotionally reactive, reducing anxiety and depression, increasing attention and awareness, increasing immune functioning, and lowering blood pressure.

In his article titled, *Mindfulness and Judging*, Judge Jeremy D. Fogel describes how routine judicial activities can be enhanced through mindfulness. Mindfully “taking a plea” will cause the judge to carefully observe the defendant’s dress and body language; whether the defendant has friends or family members present; and the interaction between the defendant and their attorney.<sup>86</sup>

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84. Bree Buchanan, *Five Ways Judges Can Improve Wellbeing*, 101 JUDICATURE 80 (2017).

85. *Special Issue: Mindfulness*, FLA. B.J., April 2016, available at [http://digitaleditions.walworthprintgroup.com/publication/?i=293836&ver=html5#{%22issue\\_id%22:293836,%22page%22:26}](http://digitaleditions.walworthprintgroup.com/publication/?i=293836&ver=html5#{%22issue_id%22:293836,%22page%22:26}).

86. See generally Jeremy D. Fogel, *Mindfulness and Judging*, FEDERAL JUDICIAL CENTER (2016). Mindfulness exhibited by a judge can make the litigants and attorneys feel listened to, understood and respected. See also Daphne M. Davis & Jeffrey A. Hayes, *What Are the Benefits of Mindfulness*, 43 MONITOR ON PSYCHOLOGY 64 (2012). A list of mindfulness resources for judges can be found at the Federal Judicial Center. *Mindfulness and Judging: Resources for Judges*, FEDERAL JUDICIAL CENTER, <https://www.fjc.gov/content/321599/mindfulness-and-judging-resources-judges> (last visited Aug. 6, 2020).

**“Laughter is good medicine.”** The use of judicial humor is controversial given the propriety of the court,<sup>87</sup> but as used here it refers to the out-of-court use of appropriate humor and especially the physiological and psychological effects of laughter. The Mayo Clinic reports that a good rolling laugh stimulates the heart, lungs, and muscles, releases the reward endorphins in the brain, and promotes lower blood pressure and relaxation afterwards.<sup>88</sup> Its subsequent positive thoughts enhance the immune system, reduce pain, and lessen anxiety and depression. Watching others laugh can also stimulate an individual’s own empathic laughter. Movies, stories, cartoons, jokes, spending time with family and friends laughing, and even just practicing an intentional deep laugh can provide these benefits.

**Stretching and Relaxing Movement.** Sitting on the bench all day for many days can extract energy, lead to postural headaches and muscle strain, and produce emotional tension. In recent years, yoga, t’ai chi, Pilates, and other stretching and movement practices have become popular and effective for tension reduction, low impact physical exercise, and mindfulness. Yoga involves relaxing and stretching postures that are graduated to a person’s fitness level. T’ai chi (pronounced “tie gee”) is a traditional Chinese exercise that involves a series of slow-motion movements based on self-defense, and are relaxing, low impact, meditative and can improve balance. Pilates is more physically active and involves low impact flexibility, muscular strength, and endurance movements. An example of this activity takes place in the 4th Court of Appeals courtroom at the Cadena-Reeves Justice Center in San Antonio, Texas, where time is set aside a few days each week to practice yoga. Judges, attorneys, court reporters, bailiffs and clerks gather to practice yoga and reduce the strain of court work.<sup>89</sup>

**Judicial Family Resilience.** The stresses that confront judges are reported in this study, but there are challenges and stresses impacting family members, too.<sup>90</sup> Our survey revealed that having less time for family, and an increase in family arguments and conflicts can be a consequence of judicial stress as well. Running for election can bring family members into public life in ways they had not intended, long work hours can place an extra burden on spouses or partners, and the isolation and emotional stress on a judge can be a source of worry to family members that further increases stress on the judge. There are several recommendations that can mitigate family stress. It is important for family members of all ages to appreciate the role of a judge. Confidentiality should be explained as well as

87. Marshall Rudolph, *Judicial Humor: A Laughing Matter?*, 41 HASTINGS L. J. 175 (1989).

88. *Stress Relief from Laughter? It’s No Joke*, MAYO CLINIC, <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress-relief/art-20044456> (last visited Aug. 6, 2020).

89. Jessica Belasco, *Yoga Classes do Justice in S. A. Courtroom*, MY SAN ANTONIO (Nov. 1, 2013, 12:38 PM), <https://www.mysanantonio.com/lifestyle/article/Yoga-classes-do-justice-in-S-A-courtroom-4947850.php>.

90. Mirelsa Modesti González, *Judicial Family Support Program A New Judge in the Family: Challenges for the Spouse and Children* (2006), <http://www.ramajudicial.pr/OSAJJ/JFP/PDF/A-new-Judge-in-the-Family.pdf>.

building awareness of the potential impact of public expression on controversial issues.<sup>91</sup> Political involvement can be simply explained and discussed how family members might be involved. Security and safety issues and coping with social pressures at school and in the community can be an unspoken concern. Discussing these issues candidly may elicit good discussion and better understanding of the stresses experienced by all. It is also important for judges to listen attentively to the feelings, perspectives, interests and concerns of family members, and spend time on family activities. Children can be invited to attend family workshops and support programs, as well as judicial conferences where they can meet members of other judges' families.

**Cultivation and Maintenance of Supportive Relationships.** Isolation is one of the most frequently reported sources of stress across many surveys of judges. Supportive relationships are a key component for building judicial resiliency. As discovered in this study, judges often feel isolated for many reasons. Having close friends outside the profession, supportive colleagues who can caringly listen to a judge's experiences, and participating in rounds where judicial stress is normalized and resiliency practices are shared, can reduce feelings of isolation. Dr. Isaiah Zimmerman, a clinical psychologist on the faculty of The National Judicial College recommended that judges maintain relationships with old and childhood friends, have a close circle of relatives with whom to have candid conversations, engage in activities and new friendships unrelated to legal activities, and mentor others.<sup>92</sup>

**Meaningfulness of Work.** The repetitive exposure to cases involving trauma and horror can challenge a judge's sense of order and meaning in the world, undermine morale, and lead to burnout. In contrast to a psychological focus on pathology, Martin Seligman, Co-Founder of "Positive Psychology," emphasizes well-being as "belonging to and of serving something that you believe is bigger than the self."<sup>93</sup> In many ways, this is a philosophical or spiritual emphasis that is often disregarded in stress management and wellness programs. It focuses on meaning, direction, and goals in life, and how those can be superordinate over the tragedies often experienced. Work is a major contributor to how one's life generates meaningfulness. Sara J. Ward & Laura A. King have identified six fruitful "pathways" to enhance meaningfulness: make people happy, connect people and contribute to others, help others identify goals and feel motivated, help others develop a sense of coherence and structure in their lives, provide financial resources that can support meaningful pursuits, and explore religious and philosophical beliefs and values that foster purpose and meaning.<sup>94</sup>

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91. Cynthia Gray, *An Ethics Guide for Judges and Their Families*, AMERICAN JUDICATURE SOCIETY (2001).

92. See Zimmerman, *supra* note 45.

93. MARTIN E. SELIGMAN, *FLOWERISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* 12 (Free Press 2011).

94. Sara J. Ward & Laura A. King, *Work and the Good Life: How Work Contributes to Meaning in Life*, 37 RESEARCH ORG. BEHAV. 59, 59-82 (2017).

### Future Research

The scope of a research project, by necessity, has limits and does not cover all aspects of an issue. However, the results of this survey demonstrate the need for additional research on judicial stress and resiliency. The following are suggestions for future inquiry.

- Representation of some demographic groups in this study were very small, thereby not lending themselves to more detailed analysis. Future research could focus more exclusively on these judges and how they experience stress and promote well-being (e.g., Native Americans, Asian, Pacific Islanders, etc.).
- Alternate gender identification as a demographic was also not identified in this study due to expected small numbers as well as sensitivity. This important issue may be useful to explore in future work.
- Since the presentation of the preliminary results of this study at the ABA CoLAP 2019 National Conference for Lawyer Assistance Programs in Austin, Texas, the important conversation about judicial stress and resiliency has expanded. It may be useful to form a collaboration or consortium of researchers on this topic across the U.S. to share methods, instruments, and data on judicial stress and wellness.
- This study revealed that there are some clear differences between men and women in judicial roles. This could be more clearly explored to identify the implications of the differences and recommendations for resiliency for each gender, and alternate genders not identified in this study.
- The use of drugs, both prescribed and illicit, and compulsive behaviors, to manage stress should be the subject of future studies. In particular, given the move towards legalization, marijuana and its effects should be studied.

### Conclusion

The National Judicial Stress and Resiliency Survey is one of the largest and most representative surveys of judges on the topic of stress and its effects to date. It has identified sources of judicial stress and their multifaceted impact on well-being and performance. The survey provides a better understanding of coping methods that judges employ. The elements necessary to be an effective judge—logical decision-making, focus, and memory—are affected by the stress and emotional depletion often experienced by many judges as this survey indicates. It is critical to judicial performance that tactics bolstering resiliency and mitigating stress are embraced by the judiciary and key stakeholders.



## Appendix A.1

### Author Biographies

**David X. Swenson PhD LP** is a Forensic Psychologist in Minnesota and Wisconsin and has been in practice for 50 years. He is also Professor and Director of the Masters of Business Administration in Rural Healthcare at the College of St. Scholastica and has been on the faculty of the medical schools at the University of Minnesota and University of Missouri. Dr. Swenson has focused his practice on stress and resiliency in the professions and consults with law enforcement, corrections, the courts, emergency services, military, and health and human services. He publishes and presents internationally on leadership, shiftwork and fatigue, burnout, and crisis intervention. He has co-authored the text, *Stress Management for Police Officers*, and presents workshops on judicial stress and resiliency with Joan Bibelhausen (Executive Director of MN CoLAP) and the other authors of this manuscript.

**Joan Bibelhausen** has served as Executive Director of Minnesota's Lawyers Concerned for Lawyers since 2005. She is an attorney and is nationally recognized for her work in the lawyer assistance and diversity and inclusion realms and has significant additional training in the areas of counseling, mental health and addiction, diversity, employment issues, and management. She has developed and presented numerous CLE and other programs throughout Minnesota and nationally, and has written on mental health and addiction, implicit bias and mental health, career and life balance and satisfaction, stress, diversity and inclusion, marketing, and other issues of concern to the legal profession. She is active in the Minnesota State Bar Association (MSBA), Hennepin and Ramsey County and American Bar Associations and Minnesota Women Lawyers, among others, and has served on the ABA Commission on Lawyer Assistance Programs (CoLAP) and its Advisory Committee. Ms. Bibelhausen represents the disability perspective on many bar-related diversity committees and initiatives, including the MSBA Diversity and Inclusion Council and has also served on the MSBA Board of Governors and Hennepin County Bar Association's Strategic Planning and Leadership Institute task forces. Ms. Bibelhausen coauthored "Reducing the Stigma—William Mitchell College of Law—Spring 2015," published in the Mitchell Hamline Law Review (Vol. 41, Issue 3), and frequently writes for Minnesota and national bar publications. She was recognized by Minnesota Lawyer with a 2017 Diversity and Inclusion Award for her work regarding implicit bias and mental health in the legal profession.

**Bree Buchanan** served as chair of the ABA Commission on Lawyer Assistance Programs (2017–2020), which works to ensure assistance is readily



available for those in the legal community experiencing issues related to substance use or mental health issues. Ms. Buchanan also is founding co-chair of the National Task Force on Lawyer Well-Being and is a co-author of its groundbreaking 2017 report, *The Path to Well-Being: Practical Recommendations for Positive Change*. Her tenure as Director of the Texas Lawyers' Assistance Program (2013–2018) followed a two-decade legal career which included positions as a family law litigator, lobbyist, and law professor. Ms. Buchanan currently is Senior Advisor with Krill Strategies, LLC, providing consultation on issues related to lawyer well-being and impairment for legal employers.

**Honorable David Shaheed (Ret.)** became the judge in Marion Superior Court, Civil Court 1 in August 2007. Prior to this assignment, Shaheed presided over Marion Superior Court, Criminal Court 14, the Drug Treatment Diversion Court and Reentry Court. He served on the Court Alcohol and Drug Programs Advisory Committee (CADPAC) and was former Chair of the Problem-Solving Courts Committee for the Judicial Conference of Indiana. In addition to serving on the Judges and Lawyers Assistance Program (JLAP) in Indiana, Judge Shaheed is a former member of the American Bar Association Commission on Lawyer Assistance Programs and co-Chair of the Judicial Assistance Initiative for CoLAP.

**Katheryn Yetter** has served as the Academic Director of The National Judicial College (NJC) since 2012. She joined the NJC faculty in 2013. Before joining the NJC, Ms. Yetter was senior attorney for the National Council of Juvenile and Family Court Judges where she managed the day-to-day operations of more than \$1M in federally grant-funded projects. Ms. Yetter has authored several bench tools and other publications that improve court processes and functions, including "A Judicial Guide to Child Safety in Custody Cases," the first national comprehensive tool for judicial decision making in custody and visitation cases. She also has written curricula and given presentations on behalf of the National Center for State Courts, the California Administrative Office of Courts, the Oregon Judicial Department, the Nevada Bar Association, the Battered Women's Justice Project, and Futures Without Violence, among others. Ms. Yetter is a member of the Oregon State Bar and the American Bar Association and is a graduate of Willamette University College of Law and the University of Oregon.



## Appendix A.2

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In addition, the authors would like to thank all of the members of the ABA Commission on Lawyer Assistance Programs and its Advisory Committee for their leadership and support as well as our partners in this research project: The National Judicial College, The National Center for State Courts, and the ABA Judicial Division. We also are grateful to the ABA staff who assisted us, especially Terri Gronkiewicz, Sara Smith, Mary McDermott, and Natalia Vera for their support, dedicated efforts, and valuable research and editorial assistance.



## Appendix A.3

### ABA Commission on Lawyer Assistance Programs Judicial Assistance & Research Joint Initiative Working Group 2018–2020 Members

|                                                                                                      |                                                                                                         |
|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Hon. David Shaheed (Ret.), Chair<br>ABA CoLAP Commissioner<br>Indianapolis, IN                       | Hon. Ernestine Gray<br>Senior Judge<br>Orleans Parish Juvenile Court<br>Louisiana                       |
| Larry C. Hunter, Vice-Chair<br>ABA CoLAP Commissioner<br>Boise, ID                                   | Natalie A. Knowlton<br>Director of Special Projects<br>IAALS<br>University of Denver                    |
| Hon. Benes Z. Aldana (Ret.)<br>President & Chief Executive Officer<br>The National Judicial College  | Martha Knudson<br>Executive Director<br>Utah State Bar Well-Being Committee<br>For the Legal Profession |
| Joan Bibelhausen, JD<br>Executive Director<br>MN Lawyers Concerned for Lawyers<br>St. Paul, MN       | Patrick Krill<br>Krill Strategies, LLC<br>CoLAP Advisory Committee                                      |
| Bree Buchanan, MSF, JD<br>Krill Strategies, LLC<br>ABA CoLAP Chair                                   | Jeffrey R. Kuester<br>Taylor English Duma LLP<br>CoLAP Advisory Committee                               |
| Hon. William C. Carpenter, Jr.<br>Superior Court of Delaware<br>ABA CoLAP Commissioner               | Hon. Elizabeth Lang-Miers (Ret.)<br>Partner & Director of Attorney<br>Development Locke Lord LLP        |
| Hon. Shaun R. Floerke<br>St. Louis County-Duluth Courthouse<br>Sixth Judicial District<br>Duluth, MN | Hon. Justice Paige Petersen<br>Utah Supreme Court<br>ABA CoLAP Commissioner                             |
| Cynthia Gray<br>Director<br>Center for Judicial Ethics<br>National Center for State Courts           | David X. Swenson, PhD LP<br>Forensic Psychologist<br>The College of St. Scholastica                     |

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Sara Smith  
Research & Policy Analyst

## Appendix B

### Judicial Stress and Resiliency Survey (2019)

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#### **Purpose of the Survey\***

This anonymous and confidential survey is designed to describe the experiences of US judges related to judicial stress and resiliency. It will identify general and unique sources of stress by judicial setting and the impact of stress on aspects of well-being. The survey will also identify how coping mechanisms, including resiliency practices, are employed to deal with stress. The results will help clarify areas for support and services, implications for stress management and resiliency skills, and serve as context for considering changes in early professional development and continuing education. This study has been approved by an Institutional Review Board.

#### **Instructions**

This survey is one of the most comprehensive surveys to date regarding judicial stress and will take about 20 minutes to complete—please take the time to participate in this important study. You will be asked about some general demographic information, your rating of sources of stress, the effects of stress, alcohol use, and coping and resiliency practices.

Please click the button that best describes your response to the questions. If you do not want to answer a question you can skip it. You can discontinue at any time. Partial responses will automatically be saved, and you may resume taking the survey where you left off, *only if* you return to the survey on the same computer and on the same browser and you have not cleared your browser cookies. Participation in this survey is completely voluntary. Please take this survey only once if you receive it from multiple sources.

Your answers will be held in strict confidentiality and will be used only for the purposes of this study. The survey will not ask for any personally identifiable

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\*The survey is a project of the ABA Commission on Lawyer Assistance Programs (CoLAP) and Professor David Swenson through The College of St. Scholastica. Representatives from the following organizations assisted CoLAP and Professor Swenson in developing the survey and are serving in an advisory capacity on this project: The National Judicial College, The National Center for State Courts, IAALS, the Institute for the Advancement of the American Legal System and the Judicial Division of the American Bar Association.

information, and all data will be de-identified including IP addresses and location data. There is no way to identify you from your responses. Data will be reported only in the aggregate.

By clicking "Begin Survey" below, you agree to participate in this survey.

1. My court type is (Please check one):
  - a. Federal
  - b. State
  - c. Local
  - d. Administrative
  - e. Tribal
  - f. Military
2. I preside over (please check one):
  - a. Appeals
  - b. Trials or hearings
  - c. Both appeals and hearings
3. I am in a problem-solving, healing-to-wellness, therapeutic, or restorative justice court:
  - a. Yes
  - b. No
4. Position:
  - a. Elected
  - b. Appointed
  - c. Both
5. Gender
  - a. Female
  - b. Male
  - c. Other
6. My ethnicity is:
  - a. African American
  - b. Asian
  - c. Caucasian/White
  - d. Hawaiian/Pacific Islander
  - e. Multiracial
  - f. Native American
  - g. Other
7. Over which type of geographic area do you preside:
  - a. Frontier
  - b. Rural
  - c. Suburban
  - d. Metropolitan
  - e. Large metropolitan (over 1 million)
  - f. Mixed

- 8. Age:
  - a. 29 or less
  - b. 30-39
  - c. 40-49
  - d. 50-59
  - e. 60-69
  - f. 70 or more
- 9. Years on the bench (enter number) \_\_\_\_\_
- 10. Are you a Chief, Presiding, or Administrative Judge?
  - a. Yes
  - b. No
- 11. Is your position:
  - a. Active, full time
  - b. Other, including part-time, retired sitting by designation, and senior judge status
- 12. On average, how many hours do you work in a typical week? \_\_\_\_\_  
(enter number)

**Part 1. Sources of Judicial Stress.** Judicial stress is one of the least researched but most influential series of events judges can experience that can affect their health, thinking and performance. This survey is designed to provide more information on judicial stress so that education and more effective stress management methods can be available.

Please rate the degree to which each of the following have caused you stress over the past 12 months using the following response scale:

|            |          |            |           |           |    |
|------------|----------|------------|-----------|-----------|----|
| Not at all | Slightly | Moderately | Very much | Extremely | NA |
|------------|----------|------------|-----------|-----------|----|

- 13. Heavy docket of cases
- 14. Unable to hear as many cases as needed
- 15. Long work hours without a break
- 16. Insufficient staff support
- 17. Importance/impact of decisions
- 18. Concern for personal or family safety
- 19. Adversarial relationships with other judges
- 20. Conflicts among my staff
- 21. Concern about impaired colleagues
- 22. Complex scientific or ethical issues
- 23. Self-represented litigants
- 24. Unprepared attorneys
- 25. Media monitoring & reporting
- 26. Political pressures
- 27. Prominent social issues

28. Cases involving severe trauma/horror
29. Need to maintain confidentiality
30. Isolation in judicial service
31. Staffing cuts and turnover
32. Staff anxiety about the future
33. Increased use of electronic media
34. Needs and protection of jurors
35. Public ignorance of the Courts
36. Lack of appreciation of my efforts; being passed over
37. Inadequate compensation structure
38. Running for office/re-election
39. Responsible to/for other judges in administration of the court
40. Courthouse security concerns
41. Hearing contentious family law issues
42. Dealing repeatedly with same parties without adequate ways of addressing underlying issues (for example, opioid abuse)
43. Social media attacks
44. High profile cases
45. Being reversed on appeal
46. Inadequate courthouse and courtroom facilities
47. Pressure to raise funds for jurisdiction through fines and fees
48. Increased incivility and lack of professionalism by counsel
49. Insufficient training in court technology systems
50. Insufficient training in judicial responsibilities
51. Lack of privacy and pressure to maintain public image

**Part 2. Effects of Stress.** Stress can produce a variety of symptoms that can affect thinking, interactions, health and performance.

**Please rate the degree to which each of the following have affected you over the past 12 months:**

52. Interference with attention and concentration; tend to be distracted
53. Ruminates or worry about cases after they are decided
54. Intrusive recall of traumatic images of people or evidence
55. Preoccupation with negative thoughts; few positive thoughts
56. Difficulty breathing, excessively rapid breathing, breathless in the absence of physical exertion
57. Not having the initiative to do things like I should or used to
58. Felt my work is no longer as meaningful
59. Felt as though I have nothing to look forward to
60. Irritable, short tempered, sarcastic
61. Had thoughts of injuring myself or suicide
62. Was worried that I might panic and lose control
63. Become intolerant of anything that kept me from getting on with what I was doing



64. Physical discomfort such as headaches, stomach upset, muscle aches, etc.
65. Sleep disturbance (e.g. insufficient sleep, awakenings, daytime drowsiness, etc.)
66. Fatigue and low energy after hearing several cases in a row
67. Feelings of apprehension or anxiety
68. Depressed mood
69. Irritable over little things
70. Delay in responding to phone calls or emails
71. Feel out of touch with current legal issues and innovations
72. Can't wait for the day's work to end
73. Feel impatient when colleagues are delayed
74. Feel cynical about the effectiveness of the Court
75. I find it difficult to ask a respected colleague for critique of my work
76. I tend to forget appointments or other plans
77. My response to pleas of urgency are increasingly numb
78. I consider leaving the bench
79. Have little time for my family
80. More arguments or conflicts with family members
81. Used more alcohol than I should
82. Smoking or other use of tobacco products
83. Increase in health concerns: high blood pressure, headaches, digestion problems, diabetes, etc.
84. Contributed to marital difficulties

**Part 3. Alcohol Use (AUDIT Scale).** Because alcohol use can affect your health and can interfere with certain medications and treatments, it is important that we ask some questions about your use of alcohol. Your answers will remain confidential so please be honest.

85. How often do you have a drink containing alcohol?
  - a. Never
  - b. Monthly or less
  - c. 2–4 times a month
  - d. 2–3 times a week
  - e. 4 or more times a week
86. How many drinks containing alcohol do you have on a typical day when you are drinking?
  - a. NA
  - b. 1–2
  - c. 3–4
  - d. 5–6
  - e. 7–9
  - f. 10 or more

87. How often do you have six or more drinks on one occasion?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily
88. How often during the last year have you found that you were not able to stop drinking once you had started?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily
89. How often during the last year have you failed to do what was normally expected of you because of drinking?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily
90. How often during the last year have you needed a first drink in the morning to get yourself going after a heavy drinking session?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily
91. How often during the last year have you had a feeling of guilt or remorse after drinking?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily
92. How often during the last year have you been unable to remember what happened because of your drinking?
- Never
  - Less than monthly
  - Monthly
  - Weekly
  - Daily or almost daily

- 93. Have you or someone else been injured because of your drinking?
  - a. No
  - b. Yes, but not in the last year
  - c. Yes, during the last year
- 94. Has a relative, friend, doctor, or other health care worker been concerned about your drinking or suggested you cut back?
  - a. No
  - b. Yes, but not in the last year
  - c. Yes, during the last year

**Part 4. Stress Management and Resiliency.** There are many activities that have been shown to reduce stress and increase resiliency.

**Please rate the extent to which you currently do each activity using the following scale:**

|           |            |                     |                      |              |
|-----------|------------|---------------------|----------------------|--------------|
| Never use | Rarely use | A few times a month | Several times a week | Nearly daily |
|-----------|------------|---------------------|----------------------|--------------|

- 95. Physical exercise (e.g., walking, jogging, biking, swimming, treadmill, etc.)
- 96. Physical relaxation/stretching methods (e.g., yoga, tai chi, tensing and relaxing muscle groups, sitting and relaxing)
- 97. Meditation, mindfulness, or other mind-quieting method
- 98. Participation in spiritual or faith tradition
- 99. Interesting hobbies, crafts, or pastimes outside of the judicial world
- 100. Ensure adequate sleep (about 8 hours) through better habits (e.g., noise reduction, earlier sleep schedule, pre-sleep rituals, etc.)
- 101. Balanced nutrition, regular meals, healthy eating habits
- 102. Interact with diverse friends outside the field
- 103. Reading educational materials
- 104. Interact with a social support of trusted people
- 105. Asking for peer support
- 106. Personally support and confront colleagues
- 107. Involving staff in planning, scheduling and feedback

**Of that same list of activities, which are you interested in doing? Rate the previous items 95–107 using the following scale:**

|    |       |     |
|----|-------|-----|
| No | Maybe | Yes |
|----|-------|-----|

**In the past year, have you done any of the following? No Yes**

- 108. Rotate to less stressful calendars
- 109. Attending professional development programs & workshops
- 110. Involvement in early professional development efforts such as New Judge programs, law school curricula, etc.
- 111. Learning new technology for scheduling, case management, etc.

112. Learning self-defense skills and security procedures
113. Writing and publication other than judicial opinions/decisions
114. Taking a sabbatical
115. Identifying issues for staff meetings and discuss different ways of handling them
116. Volunteering in community projects or services
117. Promote changes in legal education
118. Reach out to your Lawyer Assistance Program for support or assistance

## Appendix C

### Diversion and Deferred Discipline Agreements ABA Model Rule and States' Rules

#### ABA MODEL RULES FOR JUDICIAL DISCIPLINARY ENFORCEMENT (1995)

[https://www.americanbar.org/groups/professional\\_responsibility/model\\_rules\\_judicial\\_disciplinary\\_enforcement/contents/](https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/contents/)

#### Terminology

*Deferred Discipline Agreement:* a confidential agreement between the judge and an investigative panel of the commission for the judge to undergo treatment, participate in education programs or take other corrective action. It is only available as a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges

#### Section II, Rule 6: Grounds for Discipline; Sanctions Imposed; Deferred Discipline

Rule 6 (B). Sanctions. These sanctions may be imposed upon a respondent who has committed misconduct:

(7) Deferred discipline agreement.

#### Section III. Disciplinary Proceedings, Rule 17. Screening and Investigation Disposition after Full Investigation.

(1) Upon the conclusion of a full investigation, disciplinary counsel may recommend to the investigative panel:

(b) private admonition or deferred discipline agreement;

(2) If the investigative panel finds that there is reasonable cause to believe the judge committed misconduct,

(a) it may propose a private admonition or deferred discipline agreement to the respondent and if the respondent consents, it shall admonish the respondent or implement the deferred disciplinary agreement; in addition, it may assess costs against the respondent as a condition of the private admonition or deferred disciplinary agreement.

**Comment:**

A deferred disciplinary agreement may be entered into only with the consent of the judge. The agreement sets forth conditions imposed by the investigatory panel with which the judge must comply in order to avoid the reinstatement of disciplinary proceedings. The agreement must be in writing. A deferred discipline agreement does not constitute a finding that misconduct was committed. It is appropriate only when the alleged misconduct is minor, that is, it does not reflect on the judge's fitness for office, and when the underlying cause of the misconduct can be addressed through a treatment or rehabilitation program. Upon successful completion of the program the complaint will be dismissed. If the judge fails to complete the program, the investigative panel may proceed to determine whether to dismiss the complaint against the judge, impose a private admonition with the consent of the judge or direct disciplinary counsel to file formal charges or a petition for transfer to incapacity inactive status.

## STATES WITH DIVERSION OR DEFERRED DISCIPLINE AGREEMENTS

### ALABAMA

<https://judicial.alabama.gov/docs/library/rules/jic16.pdf>

#### **Rules of Procedure of Judicial Inquiry Commission, Rule 16. Deferral of impairment cases.**

A. If the commission finds during the course of an investigation that there is cause to believe that any misconduct specified in the complaint was the result of alcohol, drug, or substance abuse, addiction, or a mental or emotional disorder, the commission and the judge may agree that the judge undergo confidential evaluation through the Alabama Lawyers Assistance Program ("ALAP"). Should the evaluation reveal the existence of a condition for which treatment through ALAP is appropriate, the commission may thereafter enter into a diversion agreement with the judge under which resolution of the complaint is deferred upon the condition that the judge participate in the professional treatment, counseling, after-care, and/or other assistance program recommended in the ALAP evaluation.

Every diversion agreement shall be reduced to writing, shall provide for periodic reporting by ALAP to the commission regarding the judge's compliance or noncompliance, and shall be signed by the judge and the chairman of the commission. A copy of the agreement will be given to the judge; the original shall be maintained in the commission's file. Upon the judge's satisfactory completion of the agreed treatment, counseling, or other assistance program, the commission may dismiss the complaint or take other appropriate action. If the commission finds the judge is noncompliant with treatment or has otherwise failed to successfully complete the agreed program, the commission may reopen the deferred matter.

B. All statements made by or for a judge in the course of discussions or negotiations with the commission regarding referral to ALAP or in the course of his or her involvement in or assessment by ALAP, including statements made in connection with any evaluation, treatment, counseling, or after-care, shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

## COLORADO

<http://www.coloradojudicialdiscipline.com/PDF/Colo.%20RJD%20Revisions%205%202%2017.pdf>

### Colorado Rules of Civil Procedure: Chapter 24, Colorado Rules of Judicial Discipline

#### Rule 35. Dispositions

(c) Diversion Plan. Direct the Judge to follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or docket management, which may be accompanied by the deferral of final disciplinary proceedings;

#### Rule 36. Sanctions

(f) Diversion or Deferred Discipline. Require compliance with a diversion plan or deferred discipline plan;

## GEORGIA

[https://img1.wsimg.com/blobby/go/d72953e9-9d0a-4693-87a4-cedcc5933b8d/downloads/Final%20Rules%20of%20the%20JQC%20\(Updated%2010-25-18\).pdf?ver=1587062734453](https://img1.wsimg.com/blobby/go/d72953e9-9d0a-4693-87a4-cedcc5933b8d/downloads/Final%20Rules%20of%20the%20JQC%20(Updated%2010-25-18).pdf?ver=1587062734453)

### Rules of the Judicial Qualifications Commission of Georgia

#### Terminology

*Deferred Discipline Agreement* means a confidential agreement between a judge and the Investigative Panel for the judge to undergo treatment, participate in education programs, or take other corrective action. It is only available as a response to misconduct that can be addressed through treatment, education, or a rehabilitation program.

#### Rule 6. Grounds for Discipline; Sanctions; Felony Indictment or Conviction

B. Sanctions. The following sanctions may be imposed upon a respondent who has committed such misconduct:

(7) deferred discipline agreement;

#### Commentary

[5] A deferred discipline agreement is a confidential agreement between the judge and the Investigative Panel for the judge to undergo treatment, participate in education programs, or take other corrective action. It is only available as a response to misconduct that can be addressed through treatment, education, or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges.

**INDIANA**

[https://www.in.gov/judiciary/rules/ad\\_dis/index.html#\\_Toc25321552](https://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc25321552)

**Indiana Rules of the Court. Rule 25. Judicial Disciplinary Proceedings****II. Application and Definitions.**

"Deferred Resolution"—A confidential agreement between the Commission and a judicial officer entered into prior to the filing of formal proceedings which defers the resolution of a complaint for a specific period of time upon condition that the judicial officer take appropriate specified corrective action.

**E. Consideration of Complaint**

- (2) The Commission shall make such initial inquiry as is necessary to determine if the complaint is founded and within the jurisdiction of the Commission. The Commission may also conduct further inquiry, begin an investigation, agree to a deferred resolution, or issue a private caution. If the final disposition is by deferred resolution or private caution, the judicial officer shall have had the opportunity to respond to the allegations in writing and the complainant shall be notified that appropriate action was taken without specifying the nature of the disposition.
- (5) If the investigation does not disclose probable cause to warrant further proceedings, the Commission may dismiss the complaint with a finding that no misconduct occurred, may conduct further investigation, or may issue a deferred resolution or private caution, and the judicial officer shall be so notified. Where a deferred resolution or private caution is imposed, the judicial officer shall have had an opportunity to respond in writing to the allegations.
- (7) If, upon the conclusion of a full investigation, the Commission does not find probable cause to believe that misconduct has occurred, the Commission shall dismiss the complaint. If the Commission determines the existence of probable cause, the Commission may vote that one or more of the following is appropriate:
  - (b) deferred resolution or private caution.

**LOUISIANA**

<http://www.lasc.org/rules/supreme/RuleXXIII.asp>

**Louisiana Supreme Court RULE XXIII. THE JUDICIARY COMMISSION****Section 31. Deferred Recommendation of Discipline Agreement.**

After a notice of hearing has been filed, the Commission may enter into a Deferred Recommendation of Discipline Agreement (DRDA) with the respondent judge. A DRDA must contain the following provisions and may contain such other provisions as the Commission deems appropriate:

- (a) The judge must admit to some or all of the ethical violations alleged in the notice of hearing, agree to a private admonishment for such conduct, and agree to take specified remedial steps during the term of the DRDA to address any harm caused by the judge's conduct and to prevent a recurrence of such conduct. The



judge must also consent to having the Commission recommend a specified type of discipline to this Court if the Commission determines by clear and convincing evidence, after a hearing before a hearing officer or the Commission, as decided by the Commission, that the judge did not comply with the terms and conditions of the DRDA.

(b) The Commission must agree to defer making a recommendation of discipline to this Court during the term of the DRDA provided its terms and conditions are complied with. If the Commission makes a recommendation of discipline in a case in which a DRDA has been executed, this Court is not bound to impose the type of discipline referenced in the DRDA and may impose any discipline authorized by the Louisiana Constitution, or no discipline at all.

Before a hearing has been held on the allegations contained in a notice of hearing, the respondent judge may request, or the judge and the Special Counsel may jointly request, a DRDA within the time specified for such requests in the case management order. The request may be submitted in the form of a pleading or by letter to the Commission, in care of Commission Counsel, with a copy to the Special Counsel, and shall include a detailed statement of the terms and conditions of the proposed DRDA. If the Special Counsel has not joined in the request, the request shall also contain a statement as to the Special Counsel's position on the request, if known to the judge. Unless the request was made jointly by the judge and the Office of Special Counsel, the Commission shall grant the Office of Special Counsel an opportunity to respond to the request.

After a hearing has been held on the allegations contained in a notice of hearing and the judge has appeared before the Commission for further proceedings in accordance with Section 29(f) of this rule, the Commission may, in its discretion, propose to the judge that the case be resolved with a DRDA.

In deciding whether to grant a DRDA, the Commission may consider any factors it deems appropriate, including but not limited to the following:

- (1) The nature and seriousness of the misconduct;
- (2) The respondent judge's length of service on the bench;
- (3) The nature of the procedures or steps the judge has taken, or proposes to take, to correct the problem and avoid a recurrence of it;
- (4) Whether the misconduct was private or public;
- (5) Whether the judge received any private benefit as the result of engaging in the ethical misconduct; and
- (6) Whether the judge has previous proven misconduct.

The fact that a DRDA has been executed and the contents of the DRDA shall remain confidential unless the judge fails to comply with the terms and conditions of the DRDA, in which case the DRDA shall become a public record upon the matter being lodged with this Court. If the conditions of the DRDA are satisfied by the judge and the DRDA expires according to its terms, the underlying conduct and the fact that an admonishment was given pursuant to a DRDA may be referenced in another matter involving the judge in accordance with Section 3(e) of this rule.

## MARYLAND

[https://govt.westlaw.com/mdc/Document/N611378207D1211E984578F0C75DBCB32?vieviewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N611378207D1211E984578F0C75DBCB32?vieviewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

**Maryland Rules, Title 18. Judges and Judicial Appointees, Chapter 400, Judicial Disabilities and Discipline, Division 4. Disposition Other than Filing of Charges**

**RULE 18-426. Conditional Diversion Agreement**

(a) When Appropriate. The Commission and the judge may enter into a conditional diversion agreement if, after an investigation by Investigative Counsel:

(1) the Commission concludes (A) that any alleged sanctionable conduct was not so serious, offensive, or repeated as to justify the filing of charges or, if charges already had been filed, the imposition of any immediate discipline, and (B) that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational or therapeutic programs, issue an apology to the complainant, or take other specific corrective or remedial action; and

(2) the judge, in the agreement, (A) agrees to the specified conditions, (B) waives the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals, (C) agrees that the conditional diversion agreement may be revoked for noncompliance in accordance with the provisions of section (b) of this Rule, and (D) agrees that the agreement may be admitted in any subsequent disciplinary proceeding against the judge to the extent that it is relevant to the allegations at issue or the sanction that may be imposed.

**Committee Note:** A conditional diversion agreement may be the most appropriate response to the situation set forth in subsection (a)(1) where any sanctionable conduct was predominantly the product of the judge's impairment, as it can provide a meaningful opportunity for remedial assistance to the judge who, by consenting to the agreement, recognizes it is needed, as well as protection of the public. The judge is free, of course, to reject an offer of a conditional diversion agreement, in which event the Commission may deal with any sanctionable conduct in other ways.

(b) Compliance. The Commission shall direct Investigative Counsel or some other person to monitor compliance with the conditions of the agreement and may direct the judge to document compliance. The monitor shall give written notice to the judge of the nature of any alleged failure to comply with a condition of the agreement. If, after affording the judge at least 15 days to respond to the notice, the Commission finds that the judge has failed to satisfy a material condition of the agreement, the Commission may revoke the agreement and proceed with any other disposition authorized by these Rules. If, upon request of the judge, a monitor other than Investigative Counsel is appointed, all reasonable expenses of the monitor shall be assessed against the judge.

(c) Not a Form of Discipline. A conditional diversion agreement under this section does not constitute discipline or a finding that sanctionable conduct was committed.

(d) Notice to Complainant; Confidentiality. The Commission shall notify the complainant that the complaint has resulted in an agreement with the judge for corrective or remedial action. Except as permitted in Rule 18-407, the terms of the agreement shall remain confidential and not be disclosed to the complainant or any other person unless the judge consents, in writing, to the disclosure.

(e) Termination of Proceedings. Until the conditions of the agreement have been fully satisfied, the complaint remains open. Upon notification by Investigative Counsel that the judge has satisfied all conditions of the agreement, the Commission shall terminate the proceedings.

## MINNESOTA

[https://www.revisor.mn.gov/court\\_rules/rule.php?name=prstan-1\\_d](https://www.revisor.mn.gov/court_rules/rule.php?name=prstan-1_d)

### Rules of Board on Judicial Standards

**Definitions.** "Deferred Disposition Agreement" is an agreement between the judge and the board for the judge to undergo treatment, participate in education programs, or take other corrective action, based upon misconduct or disability that can be addressed through treatment or a rehabilitation program.

### Rule 6 (f) Disposition after Investigation.

[https://www.revisor.mn.gov/court\\_rules/pr/subtype/stan/id/6/](https://www.revisor.mn.gov/court_rules/pr/subtype/stan/id/6/)

(1) Upon conclusion of an investigation or determination by another agency or court, the executive secretary may recommend disposition to the board.

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

(i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion.

## NEVADA

<https://www.leg.state.nv.us/NRS/NRS-001.html#NRS001Sec468>

### Chapter 1, Commission on Judicial Discipline, Proceedings Concerning Disciplinary Action, Forfeiture of Office or Removal from Office.

#### NRS 1.468, Deferral of Formal Disciplinary Action

1. "Except as otherwise provided in subsections 2 and 3, if the Commission reasonably believes that a judge has committed an act or engaged in a behavior that would be addressed most appropriately through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the judge to undergo the rehabilitation, treatment, education or minor corrective action".

2. The Commission may not enter into an agreement with a judge to defer formal disciplinary proceedings if the Commission has determined, pursuant to NRS 1.467, that there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge pursuant to NRS 1.4653.

3. The Commission may enter into an agreement with a judge to defer formal disciplinary proceedings only in response to misconduct that is minor in nature.

4. A deferred discipline agreement entered into pursuant to this section must be in writing and must specify the conduct that resulted in the agreement. A judge who enters into such an agreement must agree:

(a) To the specified rehabilitation, treatment, education or minor corrective action;

(b) To waive the right to a hearing before the Commission; and

(c) That the agreement will not be protected by confidentiality for the purpose of any subsequent disciplinary proceedings against the judge,

and the agreement must indicate that the judge agreed to the terms set forth in paragraphs (a), (b) and (c). Such an agreement must expressly authorize the Commission to revoke the agreement and proceed with any other disposition of the complaint or formal statement of charges authorized by NRS 1.467 if the Commission finds that the judge has failed to comply with a condition of the agreement.

5. The Executive Director of the Commission shall monitor the compliance of the judge with the agreement. The Commission may require the judge to document his or her compliance with the agreement. The Commission shall give the judge written notice of any alleged failure to comply with any condition of the agreement and shall allow the judge not less than 15 days to respond.

6. If the judge complies in a satisfactory manner with the conditions imposed in the agreement, the Commission may dismiss the complaint or take any other appropriate action.

## NEW YORK

<http://www.scjc.state.ny.us/Legal.Authorities/NYSCJC.PolicyManual.Dec2017.pdf>

### **New York State Commission on Judicial Conduct—Policy Manual (December 2017)**

This Policy Manual concerns the internal management of the Commission. The policies herein complement the Commission's responsibilities and procedures as set forth in Article 6, Section 22, of the Constitution, Article 2-A of the Judiciary Law, and 22 NYCRR Part 7000.

#### **SECTION 3: FORMAL WRITTEN COMPLAINTS**

3.13 Deferred Discipline. In appropriate cases, the Administrator and the respondent judge may jointly propose and the Commission may approve deferring a disciplinary determination for a reasonable time, to permit the judge to complete a rehabilitation program or supplemental judicial education and training program.

## NORTH DAKOTA

<https://www.ndcourts.gov/legal-resources/rules/rjudconductcomm/terms>

### **Rules of the Judicial Conduct Commission**

**Terms.** "Deferred discipline agreement" means a confidential agreement between the judge and the commission for the judge to undergo treatment,

participate in education programs, or take other corrective action that is only available as a response to minor misconduct that can be addressed through treatment or a rehabilitation program.

**RULE 8. Sanctions Imposed; Deferred Discipline Agreement**

Sanctions. These sanctions may be imposed upon a respondent who has committed misconduct:

G. deferred discipline agreement.

**RULE 10. Filing of Complaints, Screening, and Investigation**

D. Disposition after Investigation.

(1) Upon the conclusion of an investigation, disciplinary counsel may recommend to the commission:

(b) admonition or deferred discipline agreement

**PENNSYLVANIA**

<http://judicialconductboardofpa.org/judicial-conduct-board-rules-of-procedure/>

**Judicial Conduct Board Rules of Procedure**

**Chapter 10. Rule 35: Intervention**

During the course of an investigation, upon the good faith belief that the alleged misconduct was caused by mental illness, drug dependency, addiction to alcohol, or temporary mental infirmity, the Board shall take one or more of the following actions:

(2) request that the judicial officer seek appropriate treatment;

(4) upon application of the judicial officer, the Board may approve an appropriate treatment program.

**CHAPTER 11. Special Procedures for Cases Involving Substance Abuse**

The Judicial Conduct Board recognizes that the judiciary, like the general population, includes individuals impaired by substance abuse. Because judges exercise a unique public trust, the Judicial Conduct Board, in devising its rehabilitative diversion procedure, desires to encourage affected members of the judiciary to seek help at the earliest possible moment so as to ensure maximum protection against misconduct resulting from their impairment. The Board seeks to achieve this objective through a realistic plan to mitigate the harmful consequences of substance abuse to the judiciary and the public. The primary function of this Policy is the rehabilitation of the judge; a secondary modality is the prompt disposition of substance abuse related complaints, obviating costly and time consuming investigations, hearings and related proceedings.

**Rule 36: Petition for Rehabilitative Diversion**

A. When the Board finds probable cause to investigate a Complaint alleging misconduct involving a substance abuse, the Board may notify the Judicial Officer of its investigation and provide the Judicial Officer with an opportunity to petition the Board for permission to enter a rehabilitative diversion program acceptable to the Board prior to the filing of formal charges with the Court of Judicial Discipline.

B. Such petition shall be filed with the Board promptly. Absent Board approval, a petition shall not be considered if filed after the Judicial Officer's response to the Board's Notice of Full Investigation.

C. The petition for rehabilitative diversion shall contain

(1) the Judicial Officer's verified statement that he/she desires to participate in a qualified treatment program;

(2) a release giving Board Counsel access of all information and records bearing on the rehabilitative program, including information concerning the applicant's past substance abuse and treatment, as well as the proposed rehabilitative program;

(3) a stipulation as to facts which are agreed to by the Judicial Officer and Board Counsel relevant to the formal charges; and agreement of the admissibility of such stipulation in any future proceeding before the Court of Judicial Discipline;

(4) a waiver by the Judicial Officer of the right to file pre-trial motions based on grounds then known to the applicant unless specifically modified as exceptions to the waiver; and

(5) the Judicial Officer's consent to submit to testing for drug or alcohol consumption during any probationary period later imposed.

**Rule 38: Diversion Procedure**

A. When a Judicial Officer enters a rehabilitation diversion program pursuant to this Chapter, the Board may defer filing formal charges with the Court of Judicial Discipline for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer consents in writing to the release of treatment information and records relating to his or her participation in the program.

B. When a Judicial Officer satisfactorily completes an approved inpatient rehabilitation program, the Board shall continue the matter for a twelve (12) month probationary period, which may be conditioned on the Officer's continued participation in a recommended recovery program.

D. If the Board determines that the applicant Judicial Officer has abandoned the recovery program, or has violated the terms in any substantial way, the Board may direct the filing of charges before the Court of Judicial Discipline, or take such other action as may be appropriate in the circumstances.

**SOUTH CAROLINA**

<https://www.sccourts.org/courtReg/index.cfm>

**South Carolina Appellate Court Rules, Rule 502. Rules for Judicial Disciplinary Enforcement**

**Rule 2. Terminology**

(g) **Deferred Discipline Agreement:** a confidential agreement between the judge and an investigative panel of the Commission for the judge to undergo treatment, participate in education programs or take other corrective action. It is only available as a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges.



**Rule 4. Organization and Authority of the Commission**

(e) **Powers and Duties of the Commission.** (2) In addition to the duties assigned to Commission counsel in Rule 6, the Commission may delegate to Commission counsel the duty and authority to:

(E) monitor judges for compliance with conditions of discipline and deferred discipline and refer judges who fail to comply to disciplinary counsel for contempt proceedings; and,

(f) **Powers and Duties of Investigative Panel.** An investigative panel shall have the duty and authority to:

(1) review the recommendations of disciplinary counsel after investigation and either issue a letter of caution, issue notice of intent to impose a confidential admonition, enter into a deferred discipline agreement, consider an agreement for discipline by consent, authorize formal charges, refer the matter to another agency, or dismiss the complaint;

**Rule 19 - Screening and Investigation**

(B) If the investigative panel finds that there is reasonable cause to believe the judge committed misconduct for which the imposition of a sanction is warranted, it may accept an agreement for discipline by consent pursuant to Rule 21; it may execute a deferred discipline agreement; it may admonish the judge pursuant to the provisions of Rule 19(d)(5); or, it may direct disciplinary counsel to file formal charges.

**SOUTH DAKOTA**

[https://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=16-1A-A](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=16-1A-A)

**S.D. Codified Laws, Appendix to Title 16-1A, Rules of Procedure of the Judicial Qualifications Commission****I. General Provisions, 1. Definitions**

(9) "Deferred Discipline Agreement" is a confidential agreement between the judge and the commission for the judge to undergo treatment, participate in education programs or take other corrective action.

**III. JUDICIAL DISCIPLINE**

4. **Decisions on Complaints.** The commission shall by mail, or at a meeting which may be in person, by telephone, or video conference, or at a meeting called especially for that purpose, act upon the information before it in one of the following manners, to-wit: (7) Enter into a Deferred Discipline Agreement.

20. **Deferred Discipline Agreement.** If it is determined after an investigation by the commission that the complaint is meritorious, but that formal disciplinary proceedings are not warranted, the commission and the judge may agree in writing to hold the proceedings in abeyance for a definite period, and may enter into a Deferred Discipline Agreement, provided the judge throughout the period complies with specified reasonable conditions. If such an agreement is entered into, complainant shall be notified that the matter is being held in temporary abeyance, but that it

remains under active consideration by the commission. Upon satisfactory compliance, the commission may thereafter dismiss the proceedings and notify the complainant and such other persons as the commission deems appropriate.

#### TENNESSEE

<https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRlZWQtOGJjNC00YzQ1MmZlNzc2YWYKAfBvZENhdGFsb2e9zYpNUjTRaIWVfyrur9ud&crld=ac49304f-dbbb-4ca7-ab9d-c51334e4c49e&prid=cb05199c-d39b-4e16-b408-2d9569fa2a7a>

#### **Tennessee Code Annotated §17-5-301. Powers of board—Disciplinary counsel**

(f) (1) The board has the power to impose any, or any combination, of the following:

(D) Entry into a deferred discipline agreement;

(g) For purposes of this part, the following definitions apply:

(1) "Deferred discipline agreement" means a response to misconduct that is minor and can be addressed through treatment, training, or a rehabilitation program under which the judge agrees with the recommendation of the investigative panel of the board to undergo evaluation or treatment, or both; participate in educational programs; or take any other corrective action. Any other disciplinary sanction arising from the same conduct is suspended during the term of a deferred discipline agreement, and no further sanction may be imposed upon the successful completion of the deferred disciplinary agreement by the judge. The disciplinary counsel may proceed with other appropriate action upon a judge's failure to comply with the disciplinary agreement.

#### VERMONT

[https://www.vermontjudiciary.org/sites/default/files/documents/RulesforDisciplinaryControlofJudges\\_May2011.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/RulesforDisciplinaryControlofJudges_May2011.pdf)

#### **Rules of Supreme Court for Disciplinary Control of Judges**

##### **Rule 1. DEFINITIONS**

(7) "Deferred discipline agreement" means a confidential agreement between the judge and the Board setting forth conditions for the judge to undergo treatment, counseling, education, or other corrective action. It is available only as a response to misconduct that does not require prosecution and sanctions and that can be addressed through nondisciplinary means.

##### **Rule 8. ALTERNATIVES TO A FORMAL COMPLAINT**

(3) Deferred discipline agreement. The Board may propose a deferred discipline agreement in any case in which it believes a violation has occurred but (a) the conduct is not a serious violation, and (b) the conduct did not appear to cause significant harm to any person, and (c) the judge admits the violation, and (d) there is no evidence of a pattern of similar violations by the judge, and (e) it appears to the Board that the conduct at issue is not likely to be repeated by the judge. Such an agreement may also be entered into if the Board considers it important to avoid future violations (for example, by assuring that substance abuse treatment



or counseling is obtained) even when the current violation might not otherwise merit a Formal Complaint. Deferred discipline may not be imposed except by agreement. The agreement may impose terms and conditions as an alternative to discipline. Such terms and conditions may include, but are not limited to, education, psychological counseling, substance abuse programs, monitoring or review by the Administrative Judge or other suitable person, and—with the concurrence of the Administrative Judge—limitations on the performance of judicial duties. The Board may direct the Administrative Judge to monitor compliance with the conditions of the agreement, and may direct the judge to document compliance. The Board shall inform the Administrative Judge and the complainant that the complaint has resulted in a deferred discipline agreement, but unless the judge consents in writing, shall not inform the complainant of the terms of the agreement. If such an agreement is entered into after the filing of a Formal Complaint, the fact that a deferred discipline agreement has been entered into shall be made public, although the terms thereof shall remain confidential except when disclosure is permitted pursuant to Rules 6.(8), 6.(9), or 6.(27), above. In addition, such agreements may be reviewed and considered by the Board if relevant to determining whether to proceed on any future complaint filed with the Board, or what sanction to impose in any future proceeding before the Board. Copies of all deferred discipline agreements, once signed by the Board and the judge, shall be provided to the Supreme Court. Upon successful completion of all terms or conditions, the complaint will be dismissed. Subject to the disclosure provisions of Rule 6, the deferred discipline agreement shall remain confidential upon dismissal. A judge's failure to comply with a material term or condition of the agreement, without just cause, may result in the revocation of the agreement and further disciplinary action authorized by these rules, and may constitute an independent basis for discipline separate from the underlying complaint. If the judge does not consent to enter into a deferred discipline agreement, the Board may pursue any other action authorized by these rules.

## WISCONSIN

<https://www.wicourts.gov/courts/committees/judicialcommission/jcadmincode.htm>

### **Wisconsin Administrative Code - Judicial Commission**

**JC 4.08 Commission finding.** Following the conclusion of proceedings under s. JC 4.07, the commission shall do any of the following:

(5) Find that any misconduct or disability specified in the allegation is caused by a mental or physical condition for which treatment is appropriate and, with the agreement of the judge or court commissioner, hold open the allegation until the judge or court commissioner completes an appropriate treatment program. Upon successful completion of the program and demonstration that the conduct is unlikely to be repeated, the allegation shall be dismissed. Otherwise, a finding shall be made under sub. (6) or (7).

**WYOMING**

<https://judicialconduct.wyo.gov/establishment-of-commission/commission-rules>

**Rules Governing the Commission on Judicial Conduct and Ethics****Rule 7. Powers and duties of investigatory panel.**

(g) If after investigation, the investigatory panel finds reasonable cause to support a finding that the judge engaged in judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability, and before referral to an adjudicatory panel, the investigatory panel may issue a letter of correction, enter a deferred disciplinary agreement, issue a stipulated private censure, or formal proceedings may be instituted and the matter will be referred to the adjudicatory panel.

**Rule 8. Powers and duties of adjudicatory panel.**

(d) Following a hearing, the adjudicatory panel shall make findings and adjudications concerning allegations of judicial misconduct, criminal misconduct, civil misconduct and disability, and:

(2) where proven by clear and convincing evidence, shall make an adjudication and submit findings to the disciplinary panel for disposition which may include, but is not limited to, temporary discipline or interim suspension as provided in these rules, letters requiring remedial action, issuing or recommending deferred discipline agreements, or stipulated private censure.

## Appendix D

### SAMPLE Judicial Roundtable Breakout Session Agenda<sup>1</sup>

#### Moderators of Roundtables:

- Judge
- EAP Director
- Attorney Life Coach
- Lawyers Assistance Program Chair and Attorney
- Lawyers Assistance Program Director

#### Purpose/Goal

- Provide opportunity to NM Magistrate Judges on the benefit of listening and sharing experiences with like-minded professionals in an effort to release tension, gain connection, and understand new ways to manage the stress and isolation of the job. The dialogue consists of the judge's real experience in his/her professional role.
- Small group conversations are **CONFIDENTIAL!**

#### Process

- Everybody will take a turn in answering a question posed by the group moderator.
- All answers are correct, they are your experience.
- Listen to your colleagues and share/add to the discussion when ready.
- Moderator will keep the group moving forward and act as a guide.
- Moderator will keep time and wrap up session at the end.

#### Guidelines for group discussion

- Share from your perspective, "I" and "me" statements preferred.
- Keep sharing to approximately 3–5 minutes, so that everyone has a voice.
- We cannot "fix" anybody. Learning comes from sharing our story.
- Please refrain from using offensive language.
- **What is shared in the group, stays in the group!**

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1. Taken from the New Mexico Magistrate Judges Conference 2019. Provided by Pamela Moore, Judges and Lawyers Assistance Program Director, State Bar of New Mexico.

**Questions**

- How do people closest to you know when you are feeling stressed, overwhelmed, or overburdened?
- Some judges report feelings of isolation and loneliness. Do you experience this, and do you feel that anyone besides a judicial colleague can understand this type of isolation?
- Do you feel undervalued and overworked? With whom can you discuss this?
- Closing Question: How was this Roundtable experience for you?

## Appendix E

### Judicial Organizations and Resources

The National Judicial College, <https://www.judges.org/>

National Center for State Courts, <https://www.ncsc.org/>

ABA Commission on Lawyer Assistance Programs—Resources for Judges, [https://www.americanbar.org/groups/lawyer\\_assistance/articles\\_and\\_info/resources\\_for\\_judges/](https://www.americanbar.org/groups/lawyer_assistance/articles_and_info/resources_for_judges/)

ABA Judicial Division, <https://www.americanbar.org/groups/judicial/>

American Judges Association, <http://aja.ncsc.dni.us/>

National Council of Juvenile and Family Court Judges, <https://www.ncjfcj.org/>

Judicial Family Institute, <http://www.judicialfamilyinstitute.org/>

*Judicature*, the scholarly journal about the judiciary, <https://judicature.duke.edu/>

National Judges Association, <http://nationaljudgesassociation.org/>

National Association of the Administrative Law Judiciary, <https://www.naalj.org/>

National Association of Hearing Officials, <https://www.naho.org/>

National Association of Women Judges, <https://www.nawj.org/>

National American Indian Court Judges Association, <https://www.naicja.org/>

Tribal Judicial Institute, <https://law.und.edu/npilc/tji/>

Justice Management Institute, <http://www.jmijustice.org/>

Center for Court Innovation, <https://www.courtinnovation.org/>

Colorado's Judicial Wellbeing website, <https://judicialwellbeing.colorado.gov/>

Pennsylvania Judges Concerned for Judges, <https://www.jcjp.org/>

National Helpline for Judges Helping Judges (1-800-219-6474)

