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Putting Your Own Oxygen Mask on First: An Approach to Judicial Wellness

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Your Body on the Bench (Card): Taking Refuge

This is a proactive practice; it is a way to prepare for difficult moments on the bench with sincerity and commitment.

In the original old French, ***refuge*** means "shelter or protection, assistance in distress." It is a "place to flee back to." These are emotionally laden concepts, but so also is the work of judging. Owing to the nature of the job, judges often feel tense and on edge. At times they may feel stuck or despairing. These are real forms of distress with physiological, mental, and emotional impacts.

There are also ways to mitigate this distress. One of these is the practice of taking refuge. This practice reminds us that **we do not have to be reactive or dissociative to feel safe**; sometimes we simply need to shift our perception. Taking refuge is not about fleeing but about *returning* to *ourselves*. It is the intentional practice of recognizing when we're being pulled away from ourselves–the hard interactions, the demanding pace of work, the expectations we have for this role–and then coming back.

To begin, we first need to ask: **In what, or whom, do I take refuge?** This is not an intuitive question for many of us. Sometimes we have to come at it indirectly.

> What *sound* gives me a sense of safety and ease?
> What *memory* calms me?
> What *smell* makes me feel at home?

Maybe for you it's the laughter of your oldest friend. It could be the feel of your cat, a holiday ritual, or the smell of a family member's cooking. Give yourself time.

Here are some of the "refuges" judges have shared with me over the years:

> *I take refuge in the memory of my mother.*
> *I take refuge in my dog.*
> *I take refuge at the creek near my house.*
> *I take refuge in my book club.*
> *I take refuge in my most trusted mentor.*
> *I take refuge in roller derby.*
> *I take refuge in my family.*

This bench card is a product of Berkeley Judicial Institute's Wellbeing Initiative and was created by Michele Statz, PhD.

I take refuge on my farm.
I take refuge in my morning prayers on the beach.
I take refuge in my daily run.
I take refuge in photography.
I take refuge in this mantra, this sacred verse…

What is *your* refuge? Really think about this question. Meditate on it. Ask yourself on your way to work, when you're eating lunch. Then, **find a way to symbolize this refuge**. Tape up a photo of your dog on the bench. Tie the lace from an old running shoe around your wrist. Put some stones from the creek in your pocket. It may feel awkward, but these are tangible ways to remind you again and again to shift your perception–to focus not on the source of distress but on what brings you back to yourself.

Look at that photo and take a deep breath. Feel the stones in your hand and take a deep breath. Recall the smell of incense and take a deep breath. You do not have to flee, you do not have to shut down the part of you that feels. You simply have to remember what is most real in you–what is most sustaining and life-giving. This is your refuge. Take a deep breath and come back to the present moment, grounded, safe, and sure.

WELL-BEING CHECK-IN

A 60-Second Self-Assessment for your day

How am I showing up right now? Think about the last 24–48 hours and check one response for each area.

🟢 CENTERED – Balanced, effective, and like myself

🟡 STRETCHED – Demands are higher than usual, but I am coping

🔴 STRAINED – Stress is noticeably affecting me

Area	**Centered**	**Stretched**	**Strained**
Mental Focus	☐	☐	☐
Emotional Capacity	☐	☐	☐
Impact of Difficult Cases	☐	☐	☐
Physical Well-Being	☐	☐	☐
Connectedness to others	☐	☐	☐
Perception of my day	☐	☐	☐
Awareness around my triggers	☐	☐	☐

Scoring: Centered=0 | Stretched=1 | Strained=2
Total Score: _____

🟢 CENTERED (0–3)

Maintain healthy routines, take breaks, stay connected, and notice what is working.

🟡 STRETCHED (4–8)

Choose 1–2 reset strategies: walk, hydrate, breathe, connect with a colleague, review priorities, or schedule recovery time.

🔴 STRAINED (9–14)

Pause when possible, seek support, reduce discretionary commitments, engage in recovery activities, and consider professional support if signs persist.

Reflection Question: What is one action that would move me one step toward Centered today?

SA-8. Secondary Traumatic Stress Scale

The following is a list of statements made by persons who have been impacted by their work with traumatized clients. Read each statement then indicate how frequently the statement was true for you in the past **seven (7) days** by circling the corresponding number next to the statement.

NOTE: "Client" is used to indicate persons with whom you have been engaged in a helping relationship. You may substitute another noun that better represents your work such as consumer, patient, recipient, etc.

	0	1	2	3	4
	Never	Rarely	Occasionally	Often	Very Often
1. I felt emotionally numb					
2. My heart started pounding when I thought about my work with clients					
3. It seemed as if I was reliving the trauma(s) experienced by my client(s)					
4. I had trouble sleeping					
5. I felt discouraged about the future					
6. Reminders of my work with clients upset me					
7. I had little interest in being around others					
8. I felt jumpy					
9. I was less active than usual.					
10. I thought about my work with clients when I didn't intend to					
11. I had trouble concentrating					
12. I avoided people, places, or things that reminded me of my work with clients					
13. I had disturbing dreams about my work with clients					
14. I wanted to avoid working with some clients					
15. I was easily annoyed					
16. I expected something bad to happen					
17. I noticed gaps in my memory about client sessions					

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Scoring Instructions

For each subscale below, add your scores for the items listed. Add the three scores in the right hand column for a total score.

Subscale	Items	Score
Intrusion	2 3 6 10 13	
Avoidance	1 5 7 9 12 14 17	
Arousal	4 8 11 15 16	
	Total	

Score Interpretation[18]

Little or No STS	Mild STS	Moderate STS	High STS	Severe STS
27 or less	28-37	38-43	44-48	49+

PROFESSIONAL QUALITY OF LIFE SCALE (PROQOL)

Compassion Satisfaction and Fatigue (ProQOL) Version 5 (2009)

When you *[help]* people you have direct contact with their lives. As you may have found, your compassion for those you *[help]* can affect you in positive and negative ways. Below are some-questions about your experiences, both positive and negative, as a *[helper]*. Consider each of the following questions about you and your current work situation. Select the number that honestly reflects how frequently you experienced these things in the *last 30 days*.

1=Never 2=Rarely 3=Sometimes 4=Often 5=Very Often

_____ 1. I am happy.
_____ 2. I am preoccupied with more than one person I *[help]*.
_____ 3. I get satisfaction from being able to *[help]* people.
_____ 4. I feel connected to others.
_____ 5. I jump or am startled by unexpected sounds.
_____ 6. I feel invigorated after working with those I *[help]*.
_____ 7. I find it difficult to separate my personal life from my life as a *[helper]*.
_____ 8. I am not as productive at work because I am losing sleep over traumatic experiences of a person I *[help]*.
_____ 9. I think that I might have been affected by the traumatic stress of those I *[help]*.
_____ 10. I feel trapped by my job as a *[helper]*.
_____ 11. Because of my *[helping]*, I have felt "on edge" about various things.
_____ 12. I like my work as a *[helper]*.
_____ 13. I feel depressed because of the traumatic experiences of the people I *[help]*.
_____ 14. I feel as though I am experiencing the trauma of someone I have *[helped]*.
_____ 15. I have beliefs that sustain me.
_____ 16. I am pleased with how I am able to keep up with *[helping]* techniques and protocols.
_____ 17. I am the person I always wanted to be.
_____ 18. My work makes me feel satisfied.
_____ 19. I feel worn out because of my work as a *[helper]*.
_____ 20. I have happy thoughts and feelings about those I *[help]* and how I could help them.
_____ 21. I feel overwhelmed because my case [work] load seems endless.
_____ 22. I believe I can make a difference through my work.
_____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I *[help]*.
_____ 24. I am proud of what I can do to *[help]*.
_____ 25. As a result of my *[helping]*, I have intrusive, frightening thoughts.
_____ 26. I feel "bogged down" by the system.
_____ 27. I have thoughts that I am a "success" as a *[helper]*.
_____ 28. I can't recall important parts of my work with trauma victims.
_____ 29. I am a very caring person.
_____ 30. I am happy that I chose to do this work.

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What is my score and what does it mean?

In this section, you will score your test and then you can compare your score to the interpretation below.

Scoring

1. Be certain you respond to all items.
2. Go to items 1, 4, 15, 17 and 29 and reverse your score. For example, if you scored the item 1, write a 5 beside it. We ask you to reverse these scores because we have learned that the test works better if you reverse these scores.

You Wrote	Change to
1	5
2	4
3	3
4	2
5	1

To find your score on **Compassion Satisfaction**, add your scores on questions 3, 6, 12, 16, 18, 20, 22, 24, 27, 30.

The sum of my Compassion Satisfaction questions was	So My Score Equals	My Level of Compassion Satisfaction
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High

To find your score on **Burnout**, add your scores questions 1, 4, 8, 10, 15, 17, 19, 21, 26 and 29. Find your score on the table below.

The sum of my Burnout questions	So My Score Equals	My Level of Burnout
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High

To find your score on **Secondary Traumatic Stress**, add your scores on questions 2, 5, 7, 9, 11, 13, 14, 23, 25, 28. Find your score on the table below.

The sum of my Secondary Traumatic Stress questions	So My Score Equals	My Level of Secondary Traumatic Stress
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High

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YOUR SCORES ON THE PROQOL: PROFESSIONAL QUALITY OF LIFE SCREENING

Based on your responses, your personal scores are below. If you have any concerns, you should discuss them with a physical or mental health care professional.

Compassion Satisfaction _____

Compassion satisfaction is about the pleasure you derive from being able to do your work well. For example, you may feel like it is a pleasure to help others through your work. You may feel positively about your colleagues or your ability to contribute to the work setting or even the greater good of society. Higher scores on this scale represent a greater satisfaction related to your ability to be an effective caregiver in your job.

The average score is 50 (SD 10; alpha scale reliability .88). About 25% of people score higher than 57 and about 25% of people score below 43. If you are in the higher range, you probably derive a good deal of professional satisfaction from your position. If your scores are below 40, you may either find problems with your job, or there may be some other reason—for example, you might derive your satisfaction from activities other than your job.

Burnout_____

Most people have an intuitive idea of what burnout is. From the research perspective, burnout is one of the elements of compassion fatigue. It is associated with feelings of hopelessness and difficulties in dealing with work or in doing your job effectively. These negative feelings usually have a gradual onset. They can reflect the feeling that your efforts make no difference, or they can be associated with a very high workload or a non-supportive work environment. Higher scores on this scale mean that you are at higher risk for burnout.

The average score on the burnout scale is 50 (SD 10; alpha scale reliability .75). About 25% of people score above 57 and about 25% of people score below 43. If your score is below 18, this probably reflects positive feelings about your ability to be effective in your work. If you score above 57 you may wish to think about what at work makes you feel like you are not effective in your position. Your score may reflect your mood; perhaps you were having a "bad day" or are in need of some time off. If the high score persists or if it is reflective of other worries, it may be a cause for concern.

Secondary Traumatic Stress_____

The second component of Compassion Fatigue (CF) is secondary traumatic stress (STS). It is about your work-related, secondary exposure to extremely or traumatically stressful events. Developing problems due to exposure to other's trauma is somewhat rare but does happen to many people who care for those who have experienced extremely or traumatically stressful events. For example, you may repeatedly hear stories about the traumatic things that happen to other people, commonly called Vicarious Traumatization. You may see or provide treatment to people who have experienced horrific events. If your work puts you directly in the path of danger, due to your work as a soldier or civilian working in military medicine personnel, this is not secondary exposure; your exposure is primary. However, if you are exposed to others' traumatic events as a result of your work, such as providing care to casualties or for those in a military medical rehabilitation facility, this is secondary exposure. The symptoms of STS are usually rapid in onset and associated with a particular event. They may include being afraid, having difficulty sleeping, having images of the upsetting event pop into your mind, or avoiding things that remind you of the event.

The average score on this scale is 50 (SD 10; alpha scale reliability .81). About 25% of people score below 43 and about 25% of people score above 57. If your score is above 57, you may want to take some time to think about what at work may be frightening to you or if there is some other reason for the elevated score. While higher scores do not mean that you do have a problem, they are an indication that you may want to examine how you feel about your work and your work environment. You may wish to discuss this with your supervisor, a colleague, or a health care professional.

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RESILIENCE SELF ASSESSMENT

Self Assessment of Psychological resilience, LPP Consulting, 2012

Rating scale:

1 (Almost never, 2(Sometimes), 3 (About half the time), 4 (Often), 5 (Almost always)

1	On a daily basis, how often do you keep all the agreements you make to take good care of yourself?	
2	How often do you stop and consciously think about the stressors in your life and think about your way of thinking?	
3	How often do you find that you have had just the right amount of sleep at night, such that you can reliably and enjoyably go full speed ahead all day long, without "crashing" along the way?	
4	How often do you take an average of at least 15 minutes a day to just be still and intentionally do something such as deep breathing, mediation, prayer or anything else relaxing?	
5	How often do you take an average of at least 30 minutes a day to exercise aerobically (i.e. vigorously, to the point of perspiring), such that your body feels well exercised and invigorated?	
6	How often do you spend time during an average week to engage intentionally in a "creative" practice (i.e. an activity) that falls outside of your work, e.g. a hobby?	
7	How often do you find yourself enjoying the fact that you are consistently right "at the top of your game"?	
8	How much of the time do you feel that your life is satisfactorily under your control and moving forward in a desirable, positive direction?	
	TOTAL	

How to interpret your total score:

16 or less: You should prioritise taking better care of yourself. Your resilience-readiness is low and you are vulnerable to the inevitable stresses caused by unexpected upsets and adversities.

17 – 23: You would do well to start taking better care of yourself. Your resilience-readiness is low and you are at risk of unexpected events causing you stress.

24-31: You have a reasonable measure of resilience-readiness. With good luck, you may be able to get by, and you could still build your resilience further.

32 – 36: Your resilience-readiness is likely to be solid. Others probably regard it as enviable. There is still room to take even better care of yourself.

37 – 40: You are probably in the top one percent of the population in terms of your resilience-readiness. You should try to maintain this level.

Report of Judicial Wellness Committee

The Fourth Circuit Court of Appeals has appointed a judicial wellness committee, consisting of six judges representative of all the Courts in the Circuit.[1] The Circuit has asked the committee to outline a possible wellness program for the Circuit.[2]

In this memorandum, the judicial wellness committee suggests a program to address judicial wellness.

I. Why we need a wellness program.

Good judicial health leads to good performance, and good health does not happen by accident. A structured wellness plan can guide judges to activities that maintain and improve their health, and can lead to more productive and longer careers. For this reason alone, the Circuit should adopt a wellness program.

But good health includes not only physical health, but also mental well-being. Our jobs impose stresses that, over time, debilitate judges. A wellness program will help judges deal with

[1] The members are the Honorable Maria Ellena Chavez-Ruark, MDBR, the Honorable John A. Gibney, Jr., EDVA, the Honorable Gina M. Groh, NDWVA, the Honorable Shiva V. Hodges, DSC, the Honorable Thomas D. Schroeder, MDNC, and the Honorable William B. Traxler, Jr., CIR4.

[2] The committee adopted the following mission statement:

The Fourth Circuit's wellness committee will suggest steps for the Court to help foster the physical, mental, and emotional health of the judges in the circuit. The committee will suggest the creation of a program with three primary facets:

1. promoting healthy lives for judges;
2. educating judges about physical and mental challenges they and their colleagues may face, including burnout, substance abuse, and cognitive decline; and
3. creating mechanisms to identify and address physical and psychological problems that arise among judges.

The committee will make its suggestions to the judges of the Circuit, who will in their discretion implement the program and designate personnel to carry it out.

those demands before they affect our ability to handle cases and, equally important, before they diminish our ability to lead full and satisfying lives.

The demands of the job are not the only factor influencing judicial performance. The passage of time—aging—takes its toll on judges like the rest of humanity. Although not all people age identically, eventually age affects mental ability. To some extent, good physical health can slow the intellectual effects of aging. "There is strong evidence that diet and exercise are protective factors for avoiding dementia." Francis X. Shen, *Aging Judges*, 81 Ohio State Law Journal 235, 252 (2020). But good food and long jogs do not stop the inexorable tax age imposes on the mind.

Beyond aging, intellectual impairment can arise from several other sources. For instance, physical illnesses can obviously affect the ability to work. In fact, some illnesses lead to symptoms that mimic dementia. Personal problems can also impair performance: issues in the family or elsewhere can cause outbursts in chambers or on the bench. Finally, judges are not immune to addiction or mental illness. Depression can lead to the inability to start and complete tasks. Anxiety can disrupt coherent thought. And the effects of substance abuse are unfortunately well known.

A wellness program must, therefore, meet two goals: (1) encourage good health, and (2) allow courts to address psychological or cognitive impairment. Cognitive impairment can be especially insidious, because problems arise without physical symptoms. Yet these hidden problems demand a quick resolution. Unfortunately, the Judicial Conduct and Disability Act of 1980 does not provide a ready answer. The Act provides a formal mechanism to address impairment, but it is cumbersome and confrontational. Proceedings under the Act can embarrass both the judge and the judiciary. Moreover, the statute does not address all the problems that arise in judicial performance. For instance, a sudden shift in demeanor on the bench may not rise to the

level of misconduct or disability, but may be a symptom of a physical or psychological problem best addressed with an early intervention.

In addressing impairments, the judiciary faces hurdles that most professions do not need to clear. Doctors must periodically renew their credentials, and hospitals can and must examine their ability to perform topflight work. Other professions, such as pilots, have mandatory retirement ages. Federal judges, however, are appointed for terms or have lifetime tenure, without any requirement of demonstrating continued competence.

Traditionally, the judiciary deals with slipping competence informally: one or more colleagues have a confidential discussion with a judge, who considers the issues and eventually retires. This approach has generally worked well. In the proposed wellness program, the committee suggests that the Circuit continue this tradition of informally dealing with impairment problems. Proceedings under the Judicial Conduct and Disability Act should be saved for the most recalcitrant cases.

To address the two issues—maintaining good health and addressing impairment—the committee suggests a three-pronged approach, consisting of education, identification, and intervention.

II. Education.

The educational component of the wellness program will be aimed at three audiences: judges, their spouses and families, and chambers staff.

For judges, the program should obviously remind them about the value of exercise, good diet, regular breaks and vacations, and a positive social network. Equally important, it should also help them recognize problems in themselves and their colleagues.

Judges are rightfully proud of their many accomplishments. They need to remember, however, that a career-ending decline in intellect or an embarrassing professional mishap can erase the memory of those accomplishments. The wellness program should remind judges of the unpleasant fact that your memorial is often not what you did, but how you ended.

With respect to spouses and family members, the wellness program will get them to encourage (nag) judges to take steps toward good health. The program will help them recognize issues of diminished capacity and take steps to address them. It is imperative that the program's information reach spouses and family, because they most frequently seek help for impaired people. Physicians dealing with impaired mental capacity report that they are most often contacted, not by the impaired patient, but by his or her concerned family members. So the wellness program should subtly encourage them to get help for the judge.

Similarly, chambers staff see and discuss judges' problems every day. They may view unusual conduct as mere judicial eccentricity, but the eccentricity may be a symptom of something more serious. The wellness program will help staff recognize problems for what they are, and will give them a mechanism to report them as needed.

Many of the educational components of the wellness program should include, if possible, presentations in which judges talk about their own experiences. This testimonial portion is important for two reasons. First, it shows judges that they can incorporate healthy practices into their daily lives. Second, it addresses the critical issue of stigma. Many people perceive a stigma in admitting psychological problems and getting help. Having judges tell their personal stories will diminish the fear that comes with owning up to these kinds of problems.

In-person training. The program should consist of five modes of direct training for judges. Some of the following suggestions may seem redundant, but a level of redundancy is important,

not only to reach judges who miss parts of the training, but more significantly to instill the importance of wellness into judges. The five modes of training are as follows:

1. Each judicial conference should have a session relating to wellness, with professional speakers. In addition, the sessions could also feature judges in the circuit talking about either their own habits to maintain wellness or their efforts to overcome mental or physical obstacles. The wellness presentations should be in a plenary session that spouses can attend.
2. Periodic meetings of circuit, district, magistrate, and bankruptcy judges should have a session relating to wellness, with professional speakers and, if possible, with judges giving their own experiences.
3. The Circuit should consider having a conference devoted solely to wellness, again with professional speakers and, possibly, judges discussing their experiences. This could include small group breakout sessions such as those conducted at the midcareer judges conference sponsored by the FJC.
4. The Circuit should consider an introductory training for new judges in addition to baby judge school. Part of this training should include wellness speakers.
5. The Circuit should require that each new judge receive a mentor. Mentor judges would receive the training discussed below and would carry the wellness message to new judges.

Training through publications and the internet. The program should try to reach out with written materials in as many ways as possible. The committee therefore suggests that the Circuit incorporate the following into a wellness program.

1. Website. The Court should dedicate a portion of its website to judicial wellness, or perhaps even set up a special website for judicial wellness. Depending on the content, it should be password secured. The website would contain information about maintaining wellness. It should also have a thorough discussion of impairment and the means to address it. The website could also feature webinars and educational programs, like those offered by the FJC. The programs should be available to judges, their families, and their chambers staffs.

2. Newsletter. The Circuit should have a newsletter on wellness. Judge Phyllis Hamilton has advised that we can use the Ninth Circuit's excellent newsletter. In addition to the Ninth Circuit's publication, our Circuit should have at least an annual newsletter that deals with matters specifically related to our Circuit, and with first-hand experiences of judges in the Circuit. Although most issues of the newsletters will be sent by email, at least one hard copy per year should be sent to the home of each judge, addressed to the judge and the judge's spouse. It is important to send the newsletter to the home to insure that spouses and other family members learn about wellness and impairment. The Circuit should also send the newsletter to chambers staffs to ensure that they keep issues of wellness and impairment on their minds.

3. Self-tests. Periodically, the Circuit should send self-tests to judges and their spouses. The self-tests are available on the internet, so they should not be a great expense. The self-tests are relatively simple instruments that ask questions designed to trigger awareness of poor health habits or impairment. These kinds of tests appear frequently in newspapers and on the internet. Again, the Circuit should send the tests in hard copy to the judges and spouses so that someone other than the judge sees them and can recognize problems in the early stages.

Specialized Training. The educational programs discussed above are general, and should be provided to all judges.[3] The committee recommends that the Court require three additional types of training for specific categories of judges. The mandatory training will apply to people whose job requires them to address impaired judges.

1. Chief judge training. The chief judge of each district, and the chief judges of the bankruptcy courts, should receive training—either in person or in written form—about the symptoms of impairment, how to recognize them early, and about the tools available to address them.

2. Mentor training. Before any judge is designated as a mentor for a new judge, the mentor should receive training on the importance of good health habits, the signs of physical and mental impairment, and the tools available to treat them.

3. Peer assistance partners. The committee suggests that the Circuit adopt a program of peer assistance partners. This will be discussed below. The partners will not be counselors, but will provide an ear to impaired judges and advice on how to move forward. The peer assistance partners should, of course, be trained in the symptoms and treatment of impairment. More significantly, they should receive training in intervention techniques and on active listening.

* * *

The content of educational materials and presentations. The educational materials and presentations can cover a great deal of information. Without specifying the precise contents of articles and presentations, the committee has identified some themes to cover.

[3] Given the structure of the judiciary, it is unlikely that the Circuit can make them mandatory.

In the area of maintaining wellness, the materials should cover the value of exercise, meditation, recreation, time off, and the like. They should discuss preventive medicine: the value of annual physicals, blood tests, urine screening, and other routine (but often ignored) medical tests and procedures.

The educational materials should have a special focus on the debilitating effects of judging. They should discuss isolation, burnout, overwork, and stress. They should also discuss a seldom mentioned topic: secondary trauma, the impact of constant exposure to the difficult lives of litigants and criminal victims. The materials could publicize the results of the Stress and Resiliency Survey in the 2020 Journal of the Professional Lawyer. Finally, the materials should discuss the unhealthy ways that judges unconsciously deal with the difficult parts of their jobs: emotional outbursts, procrastination, and substance abuse.

In addition, it bears repeating that the Circuit's educational presentations and written materials should address the issue of stigma. Many people refuse to get help with psychological problems and impairment because they sense a stigma from asking for assistance. There are many ways to address this issue. One effective way is to show how not dealing with problems makes them worse. An even better way is to have concrete examples of judges who have addressed problems, how they addressed the problems, and how they moved on to healthy lives.

III. Identification of problems.

Physical Issues. Rarely does any difficulty arise in identifying bodily illnesses. They are typically discovered by routine tests during medical examinations, or by the appearance of physical symptoms such as heart attacks. Once identified, judges routinely receive treatment, and few physical illnesses carry any stigma. This is a long-winded way of saying that the wellness program need not busy itself with identifying physical illnesses.

Psychological and Cognitive Issues. These kinds of problems do not manifest themselves in physical symptoms, and they are seldom discovered in routine medical examinations. But the Circuit can create mechanisms that help recognize and address psychological issues before serious damage occurs to the judge or the judiciary. The committee proposes seven factors involved with addressing psychological and cognitive issues.

1. The Canons require that any sign of serious impairment must be addressed in an appropriate way. Rule 4(a)(6) of the Rules for Judicial Conduct and Disability makes it misconduct for a judge to fail to report reliable information likely to constitute disability. To emphasize these obligations, the Circuit should require that all judges report facts likely to reflect disability to their chief judge. Chief judges should investigate the reports, and if they find problems, report them to the Chief Judge of the Circuit. The Circuit should emphasize that this reporting is not intended to commence a disciplinary matter, but rather to ensure that any problems are addressed promptly, and to ensure that court leaders are not taken by surprise if a problem becomes public.

2. As noted above, the Circuit should ensure that family members and chambers staff receive the educational materials discussed above. Most reports of declining mental power come, not from the person with problems, but from third parties. As noted above, it is imperative that family and staff receive information that allows them to discern cognitive disability.

3. The Circuit should establish a hotline for members of the court family to call about psychological problems of judges. The hot line should be manned by a mental health provider, who will serve as a gatekeeper. Most likely, a licensed clinical social worker can handle the job. The hotline will receive calls and refer them to an appropriate person to investigate and, if necessary, to confront the judge.

The hotline should not be available to the public. Its existence should be known only to judges, judges' families, and staff members. Any calls to the hotline should be completely confidential and should not be disclosed to the subject judge.

4. Chief judges should open lines of communication with local bar association presidents, and should meet with them annually. The chief judges should emphasize that the meetings are confidential and are an opportunity to discuss any potential problems with judges. It is, of course, difficult to get lawyers to criticize judges, but creating an avenue to talk about sensitive issues may result in the disclosure of information that the chief judge would not otherwise know.

5. The Circuit should initiate a trusted colleague program. In a trusted colleague program, a judge identifies a fellow member of the judiciary, a lawyer, or a family member who agrees to tell the judge when he or she is starting to experience a decline in performance due to either physical or cognitive issues. The Circuit should require that each judge identify a trusted colleague, and that each trusted colleague should agree to serve in that capacity. The trusted colleague would not necessarily have to report a problem to the chief judge or to other disciplinary authorities. The point of having a trusted colleague is to alert judges to problems they may not have perceived in themselves, with the hope that they would take appropriate actions.

6. The Circuit should retain on a contract basis a consulting medical professional. The consulting medical professional (CMP) should be a psychiatrist or a neuropsychologist with a doctorate degree. The CMP would serve several purposes. First, the CMP would help triage problems reported about judges; the CMP would sift out true cognitive or psychological issues from isolated bad moods or difficulties from events like a bad night's sleep. Second, the CMP

would guide the chief judges to investigate events reported to them. In some cases, the CMP could talk to a person reporting an unusual event to flesh out the important parts of the story.

7. The Circuit should pay for judges to take periodic cognitive function tests. Typically, a neuropsychologist performs a cognitive function test. The test asks the subject to perform various tasks, and measures the subject's performance against standard scores. The test measures, among other things, executive function (the efficiency of mental processes) and memory.[4] The Circuit should pay for an initial test to determine a baseline, and for follow-up tests every five years to see if an unusual decline has occurred. The results of the test will be confidential and provided by the tester only to the subject judge; the results would not go to the Circuit or any other agency. The purpose of the test is to alert the judge of looming problems, so that the judge can take appropriate action. In this respect, the wellness program should remind judges that many cognitive problems can be addressed medically to allow judges to continue to serve.

IV. Intervention in impairment cases.

How to confront a troubled judge is the most difficult aspect of dealing with psychological or cognitive problems. Intervening in the professional life of a judge is a delicate matter, requiring careful consideration of whether and how to do it. The committee does not recommend a "by-the-numbers" procedure, because each intervention differs depending on the judge involved. Regardless of the precise actions taken, the committee does suggest some tools and principles that should apply in the process.

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[4] Cognitive function tests do not examine "crystalized intelligence." Crystalized intelligence is the result of years of experience. It is likened to wisdom. Shen, *supra*, at 249. For judges, it is the product of years of practicing law and presiding over cases. It is an invaluable asset for judges, and one that is seldom if ever tested for. But unfortunately, wisdom can be lost in cases of impairment.

1. The chief judge should supervise the effort.[5] A number of people may become involved in an intervention. In substance abuse cases, family members, friends, and colleagues often confront the person. Sometimes, a professional interventionist organizes the work. Sometimes the trusted colleague, discussed above, handles the task. The chief judge, alone or with other judges, may confront the subject judge.

Regardless of the chief judge's role in the intervention, he or she must be aware of the steps of the process. The chief judge will need to redistribute workload if the subject judge retires or enters residential treatment. In addition, the chief must require strict confidentiality of the participants.

The chief judge should make sure the subject judge is told that the intervention is not disciplinary, but that if the problem is not addressed, it is possible that the provisions of the Judicial Misconduct and Disability Act will come into play.

2. If the judge acknowledges a problem, the intervention should include information about the help available through the Administrative Office's Compensation and Retirement Services Office. The office can coordinate retirement plans and guide the judge through the incomprehensible interface of Medicare and private health insurance.

3. The Circuit should establish a group of peer assistance partners. Although not formally counsellors, the partners will be judges trained in active listening and in identifying denial and backsliding by the judge. A peer assistance partner will meet with the judge in person. The partner will be available to talk with the judge about the issues involved, and will mentor the judge through the process of addressing the difficulty. The partner will meet with the judge weekly,

[5] For district, magistrate, and bankruptcy judges, the chief judge of their court would supervise. For appellate judges, the chief judge of the Circuit would supervise.

either in person or by phone or zoom, to monitor progress. While the peer will confirm to the chief judge that he or she is meeting with the subject judge, the substance of their conversations will be confidential. The assignment of a peer assistance partner will be completely confidential.

4. The committee recommends the creation of a Circuit Chief Judge's liaison. Several years ago, the Richmond firm Hunton and Williams had a recovering alcoholic lawyer on their staff. Whenever a lawyer in the firm developed a problem, he would travel to meet the lawyer, confront (or assist in confronting) the lawyer, and identify treatment alternatives if needed. The committee recommends that the Circuit identify a liaison for the Chief Judge who can serve much the same purpose. Again, the liaison's work would not be disciplinary in nature, but rather therapeutic.

V. Confidentiality.

To the greatest extent possible, all matters relating to a judge's health should always remain confidential. Any hope of cooperation by judges is compromised if the judge feels that information about his health will be made public.

VI. Personnel and staffing.

The committee recommends that the Circuit take the following personnel steps to implement the wellness program.

1. Either hire an employee or designate a staff member to handle the educational aspects of the program: preparing a newsletter, putting together conferences, managing the webpage, etc.

2. Designate the Chief Judge of the Circuit to maintain confidential files on judges identified with possible psychological or cognitive problems.

3. Contract with a consulting medical professional.

4. Contract with a licensed clinical social worker or similar professional to operate the hotline.

5. Continue the wellness committee, or appoint a new committee, to oversee the educational portion of the wellness program.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT
JUDICIAL WELLNESS COMMITTEE

MISSION STATEMENT

In recognition of the rigors of our judicial responsibilities, we encourage our colleagues to be mindful of their own and of their colleagues' wellness and health-related needs. We are committed to providing resources and support, with respect and discretion, to meet such needs and maintain the highest level of judicial performance.

To achieve this mission, the Committee will:

Promote judicial wellness awareness in all Courts within the Circuit, providing resources, information, and education on health and disability issues at Conferences and meetings, and through electronically available resource lists.

Promote healthy judicial lifestyles and provide information and resources in support of judicial well-being.

Assist and educate judges, as requested, in their decisions regarding the advisability of seeking Senior status or retirement from the standpoints of judicial wellness and quality of life.

Make available a Consulting Medical Professional to provide confidential assessments, referrals, and guidance to self-referring judges, chief judges, and concerned colleagues or immediate family.

Provide assistance to judges and chief judges in dealing with impaired or disabled colleagues.

Work in liaison with national, circuit, and state committees exploring issues related to judicial health.