

# A WELLNESS GUIDE FOR JUDGES OF THE NINTH CIRCUIT COURTS



Revised July 2015



## A MESSAGE FROM THE CHIEF CIRCUIT JUDGE

The Circuit is committed to helping judges perform their duties to the best of their abilities. With that goal in mind, the Circuit provides resources and support to judges who may be facing temporary or permanent impairments.



*Chief Judge,  
Sidney R. Thomas*

This Guide, prepared by the Circuit's Wellness Committee and now in its fourth iteration, provides a framework for offering assistance and resources to colleagues who may be struggling or may need guidance in identifying available resources.

Please review the information in the pages that follow. We encourage you to follow these guidelines if you become aware of a colleague who needs help, or you need help.

Sidney R. Thomas  
Chief Judge  
Ninth Circuit

July 2015

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# I INTRODUCTION

It is the mission of the Wellness Committee to devise, maintain and improve programs and resources that address issues of both judicial wellness and disability. In fulfillment of its mission, the Wellness Committee developed this guide in the hope that it would provide some guidance to chief judges in identifying and managing judicial disability issues as they arise.



*Chief Judge Phyllis  
J. Hamilton, Chair,  
Wellness Committee*

Although chief judges share a unique responsibility for addressing judicial disabilities in their districts, past experience with this guide has demonstrated its usefulness to judges other than chief judges and it has long been available to all judges on the Wellness Website. Indeed, the Wellness Website is and has been accessible to the federal judiciary nationwide via the Ninth Circuit Intranet and the J-Net for several years. In recognition of its expanded use, we have updated the guide and changed its name.

Our ability to address issues of judicial disability is an important factor in preserving the independence of the judiciary and public confidence in our courts. As human beings, we are all subject to health problems and conditions which may at some time impair our ability to fulfill our judicial duties. We all have a responsibility to learn how to deal with this sensitive subject if and when it arises in our own lives or in the life of a colleague. The Wellness Committee hopes you will find this guide useful and that you will offer your suggestions for its improvement.

Phyllis J. Hamilton  
Chief District Judge, Northern District of California  
Chair, Wellness Committee

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Wellness issues often reveal themselves in altered behavior, observed most frequently by those closest to the individual.

### **A. Is there a problem?**

1. Early warning signs include: tardiness, uncharacteristic behavior, unexplained absences, excessive forgetfulness; sleeping on the bench; failure of judicial temperament; unusual difficulty reaching decisions.
2. Expressions of concern and information can come from colleagues, secretaries, law clerks, lawyers, family members.

### **B. What are the possible causes?**

1. Physical, mental, or emotional impairment. These are bound to be interrelated in effect but may have a predominant origin. The origin, in turn, may suggest different remedial actions. For example, the warning signs of addiction and encroaching senility may look similar to the concerned observer but the available remedies are likely to be very different.
2. Have simple explanations been explored? For example, has the judge changed medications recently? Has the judge experienced some recent trauma, e.g., death of a spouse or child; a life-threatening event?



Upon having or receiving information about a judge's inability to perform his or her duties, your first step should be to evaluate the behavior which prompted the concern and the source of the information.

### **A. The Behavior**

Is the behavior out of character for the judge in question? One observer's assessment of "irascibility" may be another observer's "proof of mental illness." Does the behavior at issue require immediate intervention? Does the behavior at issue justify only a heightened awareness and observation to determine whether it is merely an aberration rather than a symptom of a continuing problem that will need to be addressed if confirmed?

### **B. The Source**

The universe of persons in a position to observe a judge's behavior is limited: colleague, secretary, law clerk, lawyer, litigant, friend, family member. Reporting questionable conduct by a judge to any person in a position to act on the information is a sensitive issue. It requires taking affirmative action outside of normal channels. Reports from litigants and lawyers may be prompted by dissatisfaction with how the judge has handled a particular case. Virtually everyone in a position to make a credible report will have personal loyalties to the judge which work against disclosure and open evaluation. Although colleagues, friends and family members rarely sit in on court proceedings, any behavior they observe that is sufficient to raise a question is likely to have a component that comes out on the bench.

## C. Marshaling Resources

1. Contact your chief judge for guidance and or direction. Once the chief judge is notified, he or she may choose to delegate some or all of these responsibilities to a response person or team chosen from among his or her judicial colleagues. Depending on the culture of the district, there may be a standby group, person or a committee which regularly handles wellness education, and wellness response. More likely, the chief judge's response will depend on the particularities of the individual case.
2. Call Richard Carlton of the Ninth Circuit's Private Assistance Line Service (1-866-ASK PALS) for assistance in evaluating the information. PALS is a confidential telephone hotline to assist judges, their families and their staffs with questions relating to a judge's physical and mental well-being. Mr. Carlton is an independent health professional with years of experience addressing the effects of personal problems on judges and their families. Mr. Carlton is available 24 hours a day, seven days a week. An email address, [pals@ce9.uscourts.gov](mailto:pals@ce9.uscourts.gov), has also been established for those judges who wish to communicate by email rather than by (or in addition to) telephone. The email message is a direct link to Richard Carlton at PALS.
3. Take steps to verify the reported information.
4. Decide whom to involve in the initial evaluation process. Confidentiality is imperative. Restrict information to those with "a need to know" only.
5. If the verified information warrants further action, decide who should conduct further investigation and potential intervention.

# IV RESPONSE

In planning how to respond to the problem, take into account all those who will be involved and affected, personally and professionally, during the process and by its outcome.

## A. Recognition of the players

1. Chief Judge – the person responsible for organizing a response to the problem.
2. Impaired Judge – The judge about whom a question has been raised may or may not be open to communication about his or her behavior. The judge may have explanations that would change any preliminary “diagnosis” made by concerned observers.
3. The Judge’s Family – The judge’s family can be a valuable source of information and an important ally in fashioning an appropriate response. The judge’s spouse, in particular, will have observed the judge’s behavior in non court-related situations. He or she will probably be aware of any medical or situational explanations for unusual and unacceptable behavior. Involving the judge’s family is a sensitive matter. Outside the public arena, impairment and health issues generally are viewed as extremely private concerns. The judge’s spouse may be reluctant to be involved in any discussion that appears disloyal. The judge’s spouse may refuse to recognize the existence of any problem.

A colleague who is a family friend may have the best chance of opening a dialogue and providing some reassurance. The goal is to help, not hurt, the judge.

4. Judicial Colleagues – When an impairment issue requires relieving a judge of some or all of his or her caseload, the burden will fall directly on his or her judicial colleagues. Redistribution of cases raises numerous administrative decisions and legal questions which should be addressed with the Clerk of Court.

Second guessing a colleague's behavior or performance is a very personal issue which may threaten the collegial atmosphere of the court. Early and continuing recognition of and education about wellness and impairment issues may help judges recognize that no one is immune to the problems posed by advancing age or impaired health.

5. Judicial Employees – A judge's secretary, judicial assistant and law clerks may be among the first to observe behavior that raises concern about the judge's ability to perform. Given their roles as personal support staff and their natural loyalties, members of the judicial staff may be reluctant to discuss their concerns with the judge or with anyone outside of chambers. They may have concerns about their own futures as well if the judge does not continue to carry a full caseload.

6. Clerk's Office – Talk to the Clerk of Court and ask for information and possible rumors that may be circulating regarding the judge in question. Reorganization or dispersal of a judge's caseload will have some impact on virtually all of the Clerk's staff and impose extra work on their already busy workloads. Those clerks who work directly with the affected judge's cases are likely to have the most

anxiety over their futures. See Section VI on p.11 on Communications and Public Relations.

7. The Legal Community – Any questionable behavior in court or at court-related functions is likely to be of grave concern to the legal community as well as to the court. The necessity to take control of communications is discussed in Section VI on Communications and Public Relations.

## **B. Developing a plan of action**

1. If the evaluation process warrants further action, the chief judge must decide how to proceed. Who will participate in the decisions involving intervention and case management? Is there a trusted colleague or confidant who can assist in approaching the affected judge? Is there someone in another court who has dealt with the same problem and can offer advice? Should a professional advisor be present? Will notes be kept? If so, by whom and for what purpose? The nature of the problem will affect how the intervention should proceed. See Section VII on p.13 on Substance Abuse and *Depression* and Section VIII on p.15 on *Aging*.

2. Interveners need to be cautioned about being sensitive to, among other things:

(i) preserving the dignity of the impaired judge;

(ii) assisting the impaired judge to recognize that his or her behavior has raised the issue;

(iii) eliciting, if possible, the cooperation of the impaired judge in finding an effective response to the concerns raised (e.g., leave of absence, retirement, reduction in caseload); and,

(iv) protecting the confidentiality of personal information as much as possible.





Understanding the severity of a judge's problem is necessary for the chief judge to determine the best strategy for caseload management.

### **A. Estimating the length and type of potential disability of a judge**

- Partial or complete, i.e., part time availability or full time absence.
- Mental or physical - even if the judge is capable of part time work, should he or she be permitted to do it?
- If there is a suggestion of mental disability or substance abuse, should that judge be handling any cases, or signing orders on matters previously argued and now under advisement?
- If a matter is under advisement when reassigned to another judge, should it be re-argued? Is it sufficient to obtain the transcript of oral argument? A transcript probably is inadequate if credibility issues are involved.

### **B. Redistribution of cases**

- Permanent reassignment of case(s) in accordance with the random method used in the district. Also, consider using visiting judges.
- Temporary "caretaking" of cases by other members of the Court.

## Redistribution of cases cont.

- Signing a non-routine order requires taking ownership of the subject of the order. One cannot hide behind “Signed by Judge X for Judge Y.”
- Is the case now proceeding under the original judge’s scheduling order or that of the caretaker judge, or a magistrate judge who presided at the Rule 16 scheduling conference or to whom the case has been referred for continuing case management purposes?
- If the caretaker judge presides over a dispositive motion or trial, should the case first be permanently reassigned, and if so, to the caretaker judge, or in accordance with the district’s random assignment procedure?
- Check local rules. In some districts, the local rule requires that a random draw be used for even temporary reassignment.
- Be aware that the conflict checking program will not be running on a case not permanently assigned to the “caretaker” judge.

The absence of a judge from the bench will be noted by colleagues, court staff and at least some members of the bar. Be prepared to respond to inquiries.

- When should judicial colleagues be told and what should they be told?
- What are counsel for litigants told by the “caretaker” judge and staff? There will inevitably be inquiries: “Why is this judge handling my case?” “When will the original judge return?” “Why is that judge out?” “Which judge will preside at trial?”
- Get the story right and keep it straight. Remember, if a judge’s cases are redistributed among several other judges, the same lawyer may be asking these questions of different judges. It reflects poorly on the district when the lawyer is told by Judge A that Judge Y is on sabbatical; and Judge B answers the inquiry by saying Judge Y is on medical leave.
- Rumor Control. There is little that can be done to quell rumors in the legal community, but recognizing the importance of candid, coordinated responses to inquiries will help reduce the chances of causing more rumors than might otherwise arise.
- Candid communications with the court family, as necessary, will also minimize the explosion of rumors and will assist ensuring that the Court does not add to the problem by disseminating conflicting information.

- Be conscious of potential morale issues. Non-judicial employees are limited in their allowable time-off. While judges are not subject to the same limitations, staff may resent extra workload they acquire by virtue of the prolonged absence of a judge. In other words, should the Clerk of the Court consider requiring the disabled judge's staff to cover the disabled judge's hearings and trials even if another judge is presiding? Likewise, judicial colleagues may come to resent the extra workload they assume.



# VII

## SUBSTANCE ABUSE AND DEPRESSION

Behavioral changes may be indicative of substance abuse, depression or other physical or emotional problems. Identifying the underlying problem is an emotionally charged process.

- Occasional alcohol abuse is typically after hours, and is unlikely to be observed in the courthouse. Alcohol and other substance dependence is a progressive disease of the brain that typically leads to declining attentiveness and a reduction in work productivity. More progressed cases exhibit pronounced changes in behavior and appearance.
- In this population, the most common substance problem is prescription drug abuse. The consequences of overuse or misuse are rarely obvious to the user of the substance. In order to self-justify using prescription drugs in the face of adverse consequences, individuals develop an amazing capacity for self-deception (commonly referred to as “denial”).
- Both substance abuse and depression often are exhibited in the workplace as dramatic changes in mood, behavior, and/or energy level, both on and off the bench.
- The same set of symptoms that might be suggestive of depression or substance abuse can also be indicative of other physical or emotional problems. It is best to avoid attempting to diagnose the problem and leave that step to a physician or mental health professional.
- These are emotionally charged and highly sensitive issues to address, especially with someone accustomed to freedom from close scrutiny from colleagues.

- It is best when these subtle, and sometimes not so subtle changes are brought to the judge's attention by a trusted colleague or confidant. When possible, family members should be brought into the process as important allies. In the courthouse, a judge can try to hide impaired abilities or emotional problems behind the formality of the judicial robe; at home, there is nothing to hide behind. On the other hand, a spouse is often just as frightened and threatened, and in just as much denial as the judge.
- In more extreme cases, or when the judge is in denial, a group intervention is likely to be more effective. Even for skilled debaters, denial or deflection is more difficult to accomplish when opposing a group.
- Focusing on reduced work productivity as the primary courthouse concern can sometimes make these discussions less emotionally charged.



# VIII AGING

Problems associated with aging are the most difficult to address, often requiring help from family and trusted colleagues.

- The most common problems are increasing forgetfulness and declining mental acuity. On the bench, this is often manifest in an inability to track or retain details and a tendency to repeat requests for information that has already been presented. This can lead to a dramatic slowdown in the time to reach decisions.
- Staff are often the first to notice these problems. In the beginning, staff may likely try to compensate for and cover-up the problem. They can also become allies in addressing or managing the problem.
- No subject is more difficult to talk about than aging issues because of the permanence of the problems. Unlike depression and substance abuse, declining productivity related to aging is often not treatable or reversible. Involving the family is vitally important whenever possible. Again, involving a trusted colleague or confidant in the process or discussion is also very important.
- Confusion and reduced mental acuity can also be symptoms of a treatable physical problem. A complete physical examination by a physician and sometimes a neurological work-up are recommended.

# IX

## EDUCATION AND RESOURCES

### Aging

*The 36-Hour Day: A Family Guide to Caring for Persons With Alzheimer Disease, Related Dementing Illnesses, and Memory Loss in Later Life*, by Nancy L. Mace and Peter V. Rabins

*Living in the Labyrinth: A Personal Journey Through the Maze of Alzheimer's*, by Diana Friel McGowin

### Alcohol and Substance Addiction

*Alcohol and the Addictive Brain*, by Kenneth Blum, Ph.D.

*Drug, Brains, and Behavior: The Science of Addiction*, National Institute on Drug Abuse. <http://www.drugabuse.gov/scienceofaddiction>

- Robert J. Seerden, a retired justice of the Texas Court of Appeals. (Alcohol addiction)
- Sheila M. Murphy, a retired Cook County, Illinois, circuit court judge (Alcohol addiction).

### Wellness, General

- Wellness Web Site: <http://wellness.circ9.dcn>
- American Bar Association  
[http://americanbar.org/groups/lawyer\\_assistance.html](http://americanbar.org/groups/lawyer_assistance.html)
- ABA Commission on Lawyers Assistance Programs  
Hon. Sarah L. Krauss, Chair (Brooklyn, NY)
- American Judicature Society (AJS) Working Group on Impaired Judges  
Dr. Diane Cowdrey, Director, Utah Judicial Institute  
Robert P. Cummins, Cummins & Cronin, LLC, Chicago  
Gordon L. Doerfer, Associate Justice, Massachusetts Appeals Court  
Larry Hammond, Osborn Maledon, Phoenix  
John K. Konenkamp, Associate Justice, Supreme Court of South Dakota  
Hunter H. Patrick, Wyoming District Court  
Steven Scheckman, Special Counsel, Judiciary Commission of Louisiana

## **Wellness, General cont.**

- AJS Working Group on Impaired Judges, cont.
  - Annette J. Scieszinski, Judge, Monroe County Courthouse, Albia, Iowa
  - David J. Waxse, Magistrate Judge, Kansas City, Kansas
  - Seana Willing, Executive Director, Texas State Commission on Judicial Conduct
  - Warren Wolfson, Justice, State of Illinois Appellate Court

*Depression: Feeling Good: The New Mood Therapy*, by David D. Burns, MD

- Richard P. Carlton, MPH
  - Acting Director
  - Lawyer Assistance Program
  - State Bar of California
  - (415) 538-2355
  - pals@ce9.uscourts.gov

*A Time to Heal*, by Timmen Cermak, MD

*Lawyer, Know Thyself*, by Susan Swaim Diacoff

*Bi-Polar Disorder: An Unquiet Mind*, by Kay R. Jamison, MD

*The Judge's Journal*, A Quarterly of the Judicial Division, American Bar Association, Fall 2006, Vol. 45, No. 4 quarterly publication.

*Judicature*, The Journal of the American Judicature Society, July-August 2006, Vol. 90, No. 1 bimonthly publication

- Programs by State:

State Bar of Arizona Judges Assistance  
Located under Member Assistance Program ("MAP")  
[http://www.azbar.org/professionaldevelopment/  
map/judgesassistance](http://www.azbar.org/professionaldevelopment/map/judgesassistance)

State Bar of California Lawyer Assistance Program  
[http://calbar.ca.gov/Attorneys/MemberServices/  
LawyerAssistanceProgram.aspx](http://calbar.ca.gov/Attorneys/MemberServices/LawyerAssistanceProgram.aspx)

Hawaii Attorneys and Judges Assistance Program  
<http://www.hawaiiap.net/>

## Wellness, General cont.

### -Programs by State, cont.

State Bar of Montana Lawyer Assistance Program

<http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=47>

State Bar of Nevada

Lawyers Concerned for Lawyers Program, listed under Member Services, Support Groups

<http://www.nvbar.org/lcl>

Oregon Attorney Assistance Program (OAAP)

<http://www.oaap.org/>

Washington State Bar Association Judges Assistance Program

<http://www.wsba.org/Resources-and-Services/>

[Lawyers-Assistance-Program/Judges-Assistance-Program](http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program/Judges-Assistance-Program)

### - Federal Judiciary Resources

Article III judges may receive out-patient medical attention and or examinations for space-available care on a reimbursable basis at the following medical facilities in the National Capital region:

#### Facility

Walter Reed National Military Medical Center

on the campus of the National Naval Medical Center in Bethesda, MD

Malcolm Grow Medical Center

at Andrews Air Force Base, MD

Fort Belvoir Community Hospital, VA

#### Limited Appointment Locations:

Andrew Rader Army Health Clinic

Ft. Myer/Ft. McNair Military

Community, VA

**Wellness, General cont.**

Limited Appointment Locations continued:

Coast Guard Headquarters (Clinic)  
Base National Capital Region  
Washington, D.C.

Joint Base Anacostia–Bolling  
579th Medical Group  
Joint Base Anacostia–Bolling, D.C.

*Why Zebras Don't Get Ulcers (An Updated Guide to Stress, Stress-Related Diseases, and Coping)*, by Robert M. Sapolsky

- Wellness Committee

Hon. Michelle Hamilton Burns	(602) 322-7610
Hon. William C. Canby, Jr.	(602) 322-7300
Richard Carlton, PALS Counselor	(415) 538-2355
Hon. Dana L. Christensen	(406) 542-7286
Hon. Helen W. Gillmor	(808) 541-3502
Hon. Phyllis J. Hamilton (Chair)	(510) 637-1291
Mr. Lance S. Wilson	(702) 464-5455
Circuit Executive Staff:	
Tina Eve Brier	(415) 355-8910



**Office of the Circuit Executive**

P.O. Box 193939, San Francisco, CA 94119-3939

Ph: (415) 355-8900, Fax: (415) 355-8901

<http://www.ca9.uscourts.gov>