



ADDRESSING DISABILITY AND PROMOTING WELLNESS IN THE FEDERAL COURTS

by Richard Carlton

The Ninth Circuit's Wellness Committee provides resources for judges that help promote their health and well-being.

The clerk had started to notice that, at times, the esteemed judge whom she had served for years wasn't tracking or retaining information as easily as he used to. Occasionally forgetful in court, he had begun to ask for pieces of information that had already been presented. He now needed more help from his staff to stay on top of details. The judge's forgetfulness and occasional lack of mental clarity was alarming and seemed to be getting progressively worse. The clerk also worried about the amount of time it was taking him to produce decisions. What should the clerk do? What were her responsibilities in this situation? Who could she call for advice?

The number of programs in place to assist impaired legal professionals has roughly tripled during the past 20 years. Nearly every state now has an assistance program for lawyers experiencing personal problems that often impact professional conduct, particularly substance abuse. While many of these programs also extend services to judges, few court systems have established assistance programs specifically for judicial officers. One program exists at the federal level, the Ninth Circuit's Private Assistance Line Service (PALS), begun in 2001 by the Office of the Circuit Executive upon the recommendation of the

Judicial Disability Task Force of the Judicial Council of the Ninth Circuit. Now under the direction of the Ninth Circuit Wellness Committee, PALS focuses upon the common problems that negatively impact judicial performance. Although designed to effectively respond to judicial disability and to promote health and well-being for all Ninth Circuit judges, in practice much of the focus is on the special needs of senior judges.

Reliance on senior judges

In subtle and some not so subtle ways, the federal judiciary has become increasingly dependent upon judges over age 65 to handle a rapidly growing caseload. As was reported in a Ninth Circuit task force report:

...the judiciary needs these judges to continue working, because the number of authorized judicial officers has not kept pace with increasing case loads. There also are many judicial vacancies, some of which have existed for several years. Hence, unlike any other professional model that the task force could find, the federal judiciary encourages, and is dependent on, men and women over the age of 65 to handle its crushing caseloads. (*Final Report of the Judicial Disability Task Force of the Ninth Circuit Judicial Council, May 2000*)

Few federal judges choose to retire when they become eligible, even though most would continue to receive their full salary. Instead, the majority take what is called “senior status,” wherein they retain every aspect of their office but have the option to carry a smaller caseload. An analysis of the 556 Article III judges nationwide who were eligible to retire in 1999 revealed that 65 remained active (full caseloads), 442 took senior status, and only 49 chose to retire. As a consequence, the average age on the federal bench is nearing 70 and is considerably higher than in most state courts. This fact has a profound impact upon the frequency of age-related problems that arise in this population of judicial officers.

The Disability Task Force

The Judicial Council of the Ninth Circuit recognized that the health of its judiciary merited special attention. For this reason, committees of the Judicial Council began studying the important connection between health and judicial performance. In 1999, then-Chief Judge Procter Hug, Jr. appointed the Task Force on Judicial Disability to consider formal and informal methods of addressing judicial disabilities. The ambitious mission of the task force was to:

- Review and recommend any necessary changes to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 372 (c), and the Ninth Circuit’s Misconduct and Disability Rules;
- Make recommendations regarding informal disciplinary and intervention procedures;
- Draft informal intervention guidelines;
- Study existing formal and informal disability procedures in other jurisdictions;
- Create a “disability handbook” for judges;
- Develop an Employee Assistance Program (EAP) for judges;
- Develop a circuit-wide resource list for judges; and
- Publicize existing formal and informal disability procedures to all judges.

As the first federal circuit and one of the first judicial agencies to undertake the task of improving judicial disability procedures, the task force did not have models from other circuits or agencies upon which to rely for guidance. Chaired by the late District Judge Judith N. Keep (see *Pioneering Work in Judicial Wellness*, page ____), this group of experienced circuit, district, bankruptcy, and magistrate judges extensively researched issues of judicial disability and possible ways to address these growing concerns. They studied programs in place within the legal and medical professions and private industry, both in this country and Canada. The task force met with experts on a variety of physical and mental disabilities, including dementia, substance abuse, depression,

stress, and various physical maladies common in older adults. They also met with directors of professional assistance programs designed for lawyers, judges, and physicians, and heard from judges who had personal experience with physical disabilities and substance abuse.

In addition, Judge Keep solicited comments from the chief district judges and chief bankruptcy judges of the Ninth Circuit’s 15 judicial districts, asking them to describe problems their courts had experienced with judicial disability and to advise the task force what assistance would be most useful to them in addressing such issues.

Under the skillful guidance of Judge Keep, task force members and Ninth Circuit staff produced a ground-breaking final report, issued in May 2000. The task force’s recommendations included:

- Increasing the availability of readily accessible information for judges considering voluntary disability retirement, including preparation of a disability handbook and presentations at judicial workshops and conferences;
- Developing and presenting educational programs for judges and their spouses regarding health and wellness issues;
- Training judges, particularly chief judges, to recognize potential disability-related issues and to take appropriate action;
- Developing and promoting a private assistance line that would be professionally staffed and available for 24-hour use by judges, their families, and staffs to provide initial assessment, intervention, and referral services regarding judicial disabilities;
- Ensuring the confidentiality of all communications to and from the private assistance line (except with the express consent of the judge); and
- Creating a continuity committee to implement the recommendations adopted by the Judicial Council, if any.

In October 2000, the Ninth Circuit Judicial Disability Committee was

established to implement the recommendations of the task force. Led by Circuit Judge Susan P. Graber, the name of the group was soon changed to the Judicial Wellness Committee, a title thought to be more descriptive of its mission. In December 2000, newly elevated Chief Circuit Judge Mary M. Schroeder made the health of judicial officers a top priority and became a driving force behind the implementation of the Wellness Committee's initiatives. One of the most visible of those initiatives was establishing the Private Assistance Line Service (PALS).

PALS

The task force report identified five hallmarks of what would be a successful private assistance line for judges in the Ninth Circuit: (1) proper selection of an outside gatekeeper capable of responding to the diverse disability-related issues facing federal judges; (2) confidentiality of the assistance line; (3) independence of the assistance line from disciplinary matters, (4) acceptance by judges, particularly chief judges; and (5) adequate promotion of the line.

The Circuit began searching for a resource for delivering the services of an assistance line. After careful vetting, the Wellness Committee identified an individual (the author of this article) with sufficient depth and breadth of experience to address the wide range of concerns that would likely be presented to the program. The Private Assistance Line Service (PALS) was launched in June 2001.

PALS is a resource for immediate telephone consultation and for referrals when requested to local licensed therapists who have experience working with legal professionals. Calls are received via a toll-free number known to Ninth Circuit judges, their families, and chambers staff. PALS provides assistance to judges suffering from stress, emotional distress, alcohol and other chemical dependency, depression, bereavement from the loss of a loved

Pioneering work in judicial wellness: A Tribute to the Honorable Judith N. Keep (1944–2004)

A pioneer in dealing with judicial disabilities and health issues affecting judicial performance, United States District Judge Judith N. Keep chaired the Judicial Disability Task Force of the Judicial Council of the Ninth Circuit from 1998 to 2000. Under her able leadership, the Task Force paved the way for groundbreaking efforts to promote health and wellness among judges.

Judge Keep's legacy also extends to the role of women in the legal profession and on the federal bench. After graduating summa cum laude from the University of San Diego School of Law, Judge Keep worked as a staff attorney for Defenders, Inc. until 1973, representing indigent defendants in federal court. In 1976, she was appointed to the San Diego Municipal Court. At the time of her appointment, she was one of California's youngest municipal court judges. Judge Keep was nominated in 1980 by President Jimmy Carter to become the first woman on the United States District Court for the Southern District of California, where she served until her death. Judge Keep was also the first female chief judge of that district, a position she held from 1991 to 1998.

Judge Keep excelled in her service to the federal courts. In addition to chairing the Judicial Disability Task Force, she was chair of the Conference of Chief District Judges for the Ninth Circuit in 1977, a member of the Federal



one, serious illness or other family crisis, mental disability, physical disability, and other problems relating to the pressures of working within the federal judiciary. Due to the particular demographics of the target population (described above), the most common concerns presented are related to aging, followed by consultation and/or referrals to therapists for help with depression and anxiety disorders.

Much like the example described in the opening paragraph, the majority of calls have been from judges and court staff seeking advice about how best to approach a bench officer exhibiting signs of declining mental acuity due to age, depression, or other health problems. In particular, for chief district judges, chief

bankruptcy judges, and chief magistrate judges, the PALS program has provided a valuable source of consultation about the best way to address a colleague's troubling health status, conduct, or performance. By resolution of the Judicial Council of the Ninth Circuit, all communications and records of communications with PALS and other professional service providers are confidential and may not be disclosed for any purpose, including judicial misconduct proceedings, without the prior written consent of the judge involved.

Promoting wellness

In addition to promoting the use of PALS as a resource, the Judicial Wellness Committee also promotes health and wellness through presen-

Court Study Committee from 1988 to 1990, a member of the Ninth Circuit Judicial Council from 1994 to 2002, and a member of the Judicial Conference of the United States from 1999 to 2000. “Judge Keep was deeply loved and respected by her judicial colleagues. It is no surprise that colleagues selected her as their representative to the Judicial Conference of the United States, the prestigious governing body for federal judges, which is chaired by the Chief Justice of the United States,” said District Judge Margaret McKeown.

The Honorable J. Clifford Wallace, a former chief judge of the Ninth Circuit, said of Judy Keep, “I will remember her smile, her infectious laugh, her dedication to the court—but most I will remember her willingness to stand bravely against the odds and, with a superbly positive attitude to do her best, a remarkable example for all to emulate.”

One of Judge Keep’s most endearing qualities was the humanity that she radiated. According to Judge Mary Schroeder, Chief Judge of the Ninth Circuit, “Judy instantly bonded with everyone. All she had to do was smile...she always radiated the spirit unique to her, a spirit that came with being the most alert, the most curious, the brightest and the most beautiful person in any group.”

Judge Procter Hug, Jr., former chief judge of the Ninth Circuit, and current Chief Judge Schroeder had enough confidence in Judge Keep to assign a most challenging project to her. Judge Keep was asked to examine what to do for federal judges when they become dysfunctional or disabled, described by Judge Schroeder as “a subject that up to that time had been taboo.” Responding to the task with her customary keen interest and calm leadership, Judge Keep assembled a task force, set up interviews with experts, and talked to judges, their families, and their staffs.

“Known as the Keep Commission, its report was a milestone, and its findings revolutionary. Yet once Judy expressed them, they appeared obvious: Judges are human, often isolated and don’t want to lose control. They get sick and they need help like everyone else,” Judge Schroeder said.

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included segments by experts on making the most of one’s senior years and a panel of judges who have successfully made the transition from active to senior status.

Cultural change

Traditionally, conversations about aging-related health issues, retirement as an option, and preparing for retirement have been rare in federal courthouses where most judges expected to spend the remainder of their healthy lives. With the encouragement of its current chair, Chief District Judge Philip M. Pro, the Wellness Committee has begun to advocate for change in the culture of the federal court system by promoting open and frank discussions of the health issues associated with aging and the options available to judges experiencing or preparing for age-related limitations.

The support of Chief Judge Schroeder has been extremely valuable in this undertaking. With Judge Schroeder’s encouragement, the committee has continued an ongoing dialog with the Conference of Chief District Judges, the Conference of Chief Bankruptcy Judges, and the Magistrate Judges Executive Board, encouraging them to engage the judges of their districts in frank discussions about these important issues. (*Editor’s note:* For a more detailed discussion of the cultural changes needed to assist judges, see “Helping judges in distress,” by Isaiah Zimmerman, page ____.)

While the Ninth Circuit’s Wellness Committee is still relatively young in comparison to other more-established activities of the federal court system, it has made significant progress in addressing the health and aging issues experienced by a significant segment of the federal judiciary. ❧

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tations at various meetings of the Ninth Circuit. The Committee also instituted a wellness newsletter, “Courting Good Health,” which has been distributed to all Ninth Circuit judges and clerks quarterly since 2003. PALS has a regular column in the newsletter, providing an opportunity to address a wide range of wellness topics and to further promote the program. Geared toward the Circuit’s target age demographic, columns have included:

- “A Positive Look at Retirement”
- “Coping with Loss and Grief”
- “The Challenge of Providing and Supervising Care for Ailing Loved Ones”
- “Depression in the Legal Profession”
- “PALS: Your Resource”

The Wellness Committee also planned wellness segments for the last three annual Ninth Circuit Judicial Conferences. These conferences bring together judges, their spouses, and many attorneys who practice regularly in the federal courts. The presentations have dealt with such topics as “toxic” lifestyles, sleep and sleep disorders, and maintaining memory and mental acuity, and have given rise to similar programs at many of the district level meetings within the circuit. The committee has also organized three innovative pre-retirement planning programs for Article III judges approaching eligibility for senior status, and magistrate and bankruptcy judges eligible for retirement. In addition to benefit and estate planning matters, these programs have