Judicial Wellness:

The Ups and Downs of Sitting New York Judges

By Hon. Gerald Lebovits

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Judges are held to high standards of ethics and competence in their personal and professional lives, in which they must make hard decisions nearly every day. Litigants, lawyers, law students, the press, and other judges scrutinize their decisions. When judges are wrong, people condemn them. When judges are right, people celebrate them. Some judges are mythical and legendary. All are smart and dynamic. They're responsible, not only for the fate of litigants, but also for upholding the public good, due process, equal justice, and the federal and New York Constitutions. Being a judge is an honor and privilege beyond measure. Judicial service ranks among the highest-status jobs and the most fulfilling ways to serve our country. Judges possess accoutrements of power – court-

rooms, gavels, robes – and honorifics. Judging is indoor work with no heavy lifting.

Perhaps because it's all those things, judging is demanding. In their next lives, some judges might prefer to return as waiters. That way the customer will always be right. In this life, half a judge's customers are wrong, and the judge must look them in the eye and tell them so.

Judges must act like they know what they're doing. They must conform to an image of integrity and wisdom – the late Judge Joseph A. Wapner comes to mind – without breaking a sweat, complaining, seeking anything in return, or expecting (or wanting) a thank you. Nothing is easy about doing that day in and day out. Judging is stressful. Judges must cope with intellectual and emotional ups and downs.

Stress

Judicial responsibility comes with pressures. Struggles take a toll on judges. Judges aren't immune from anxiety, addictions, or mental illness. Stressors, or those things that cause stress, have impaired some of the most qualified, skilled, humane, and intelligent jurists. New York judges are subject to stressors specific to New York, such as budgetary deprivations that have acutely affected New York courts and presiding over enormous caseloads that always grow larger. Working as a judge in New York, a state fueled by stressors, is difficult for judges to sustain over a span of years. Judicial candidates are aware of these pressures before they take the bench. But the weight of judicial stress is impossible to appreciate until judicial service begins.

Lawyers often don't appreciate, or care about, the stresses judges face. Nor should they. Lawyers and the public are entitled to good, honest judges without worrying about how a judge's problems will affect them. The strain lawyers experience, including getting and keeping clients, are foreign to judges. But judges are subject to dynamics different from what lawyers experience. A lawyer's work is often collaborative, with clients and other lawyers. Trial judges are each stranded on their own islands. Judges must deal with heightened oversight: Their decisions are subject to appeal and to motions for leave to renew and reargue. Lawyers can complain to their clients, partners, and the judges who rule against them. To whom can judges talk about their problems? Too often the answer is no one.

Financial hardship has also caused stress. That stress is in the rear-view mirror, finally, thanks to the extraordinary efforts of so many, especially the New York State Office of Court Administration. But until recently, New York State judicial salaries failed to compensate judges adequately to assure that they'd spend their time working on their cases instead of fretting about their rent or mortgages.[8] For 13 years, until 2015, New York City Civil Court, Criminal Court, and Housing Court judges were the lowest-paid judges in America in terms of cost of living.[9] Upstate judge suffered, too. Low judicial salaries led to divorce, crippling loans, early retirement, reduced pensions, and "imped[ed] retaining qualified and experienced judges and attracting the best and brightest attorneys to the bench."[10]

To whom can judges talk about their problems? Too often the answer is no one.

Subordinates, colleagues, and lawyers rarely tell a judge about a problem the judge is having. If they did, most judges would be unwilling to unburden themselves for fear of looking weak and not in control or of being reported to the New York State Commission on Judicial Conduct (CJC), which is responsible for disciplining judges of the State's Unified Court System (but not support magistrates, court attorneys, referees, administrative law judges, or New York City Housing Court judges).[1]

The CJC's staff prosecutes judges for violating the New York Rules Governing Judicial Conduct (RGJC),[2] often called the Rules of Judicial Conduct. The CJC's commissioners adjudicate. The judge is the respondent. In 2016, eight judges were admonished, censured, or removed for violating the rules; four more retired or had expired terms while charges were pending.[3] The majority of disciplined judges are part-time town or village justices, who comprise about 60 percent of the approximately 3,150 New York State Unified Court System judges.[4] In 2015, for example, 12 of the 16 judges disciplined were town or village justices. Ten of those 12 were non-lawyer judges. About 61 percent of town and village justices are non-lawyers.[5] All other state judges are lawyers.

Judges can't confide deep, dark secrets to other judges, even judge-friends. There's competition among judges to get elected and promoted. And the RGJC might require a judge to report possible misconduct to a supervising or administrative judge or to the CJC.[6]

Many judges suffer from isolation.[7] The burden of judicial decision-making is heavy. Judges must make these decisions alone. Loneliness plagues judges who're isolated due to their position in society. After taking the bench, judges often lose contact with friends, family, and peers.

To be a judge is also to gamble with your life. One incentive of judicial service is a pension. Judges begin their judicial careers late and retire late. That makes judges, almost alone in public service, at risk of losing the Death Gamble.[11] Under New York's Retirement and Social Security Law, the beneficiaries of a judge who dies in office aren't entitled to the full pension benefits a retired judge would have received.[12] This often forces judges to retire prematurely and causes trauma for loved ones.

The words judges use to render decisions are another source of stress. Judges must walk a fine line between writing too much and too little. An increasing trend would hold judges accountable for opinion writing that amounts to "intemperate conduct in court."[13] Judges are legitimized by their words, and "their words deserve respect only when those who utter them are ethical."[14] Judges fear that after years of service they'll say or write something that in a microsecond might destroy otherwise stellar careers.

The high-stakes nature of exercising discretion to decide a case is taxing. All judges must decide the fate of litigants.[15] Except when they have some discretion, judges must render decisions, not according to their beliefs, but according to the law. Judges inevitably render decisions that contradict their values.

Because judges are subject to public opinion, they must behave cautiously on and off the bench. A judge's behavior, professionally and socially, is always under the microscope. They must avoid the appearance of impropriety.[16] Under the Code of Conduct for United States Judges and New York's RGJC, judges must always maintain an image of judicial propriety: Judges must make sure they don't "lend the prestige of judicial office to

advance their [personal] interests."[17] Outside the courtroom, judges must conduct their extra-judicial activities so as not to "cast reasonable doubt on the judge's capacity to act impartially as a judge [,] . . . detract from the dignity of judicial office[,] . . . or . . . interfere with the proper performance of judicial duties."[18] A momentary lapse in judgment, even in the form of "[j]okes and offhand remarks,"[19] can have catastrophic effects on a judge's career.

Although stress may lead some judges to say wrong things, judges often believe themselves forced to say nothing at all and just take it on the chin. Although judges are entitled judiciously and temperately to rebuke wayward litigants and lawyers, judges often decline to confront anyone in the courtroom. Whether out of concern of being scolded in the press, disciplined by the CJC, or condemned by bar associations, judges sometimes feel forced to allow others to get away with egregious behavior.

Women judges, especially, are no strangers to dealing with egregious behavior. They face "disrespect in the courtroom and professional settings."[20] Some lawyers and litigants reject women judges: "[E]fforts to remove female judges from a variety of cases [arise] simply because they are women."[21] This lack of acceptance isn't limited to attorneys and litigants. It extends to the judiciary itself – colleagues.[22] Federal and state judges are predominantly male.[23]

Women judges' isolation is greater than that of their male counterparts.[24] In a study of 500 U.S. judges, 73 percent of female judges reported incidents of compassion fatigue and symptoms of depression versus 54 percent of males.[25] Among new judges, women experience higher levels of stress than men; "women continue to have primary family responsibilities [and] they are more often conflicted with role conflicts."[26] Women judges must also consider family planning and maternity leave. They must deal with balancing their careers and families in ways male judges will never experience.[27] They must deal with the same stresses male judges do while facing gender bias and warding off gender-based attacks.

All judges experience feelings that they're under attack. Outside the courtroom, judges are subject to criticism, public assaults on their character, and threats. One popular way to confront judges is anonymously, on the internet. Blog posts, social-media networks, judge-rating websites, and media websites give the public a forum to talk and rant about judges. Information published online is often false. Judges are often portrayed in an unsavory and inaccurate way. Removing this information from the internet is nearly impossible. The right to have content removed, or taken down, is mainly reserved for copyright holders under the Digital Millennium Copyright Act.[28] The First Amendment strongly protects information posted on the internet, and search engines like Google refuse removal requests unless accompanied by a court order.[29] In an age when Googling someone is the first thing people do after meeting someone, having a negative web footprint is embarrassing, especially for judges, who are constantly being Googled.

Thanks largely to the internet, threats against judges are on the rise, as evidenced by many news reports detailing electronic threats sent to members of the judiciary.[30] Threats cause extreme distress for judges. According to U.S. District Judge and Chair of the Judicial Conference Committee on Judicial Security Nancy Atlas, "[t]he Internet and social media are having a profound impact on judges' personal security."[31]

Blog posts and social-media platforms have unified disgruntled litigants. This has led to a new age of "online mob threat."[32] Public figures like judges are subject to and expect threats because of the visibility of their roles. Judges give up anonymity when they take the bench. But with disgruntled litigants and critics joining forces like never before, the stress and effects it can have on members of the judiciary are higher than ever.

Aggrieved parties also use the court system to go after judges. The right to pro se representation is important, as is the courts' obligation to give the unrepresented access to justice. Too often, though, pro se litigants use courtrooms as "battlegrounds to satisfy private, legally unredressable vendettas."[33] Some file false and frivolous claims to harass judges. These claims include Uniform Commercial Code (UCC) liens against judges for alleged financial harm arising from court rulings. In 2014, the New York Legislature made this behavior punishable as a Class E felony under Penal Law § 175.35.

Sometimes pro se litigants won't simply appeal a judge's decision. They'll sue the judge. Pro se litigants don't always know how to handle unfavorable decisions. Some seek revenge. Fortunately, the State Attorney General's Office does a fine job defending judges sued by aggrieved litigants.[34]

Because judges must never respond to threats or disparaging accusations, judges suffer in silence. Not responding to public comments leads to internalized stress in which stress manifests in the form of physical conditions or illnesses that impair a judge's well-being. Bar associations and the Communications Office of the New York State Unified Court System are left to stand up for the judge's skills and character and for the judiciary's dignity when a judge is unfairly assailed in the press or by elected officials.[35]

Aggression against judges isn't reserved to litigants and lawyers. Our highest-ranking officials have called into question the judiciary's aptitude and neutrality. The President of the United States recently referred to a federal judge as a "so-called judge" and labeled one of his rulings ridiculous.[36] Nothing good can come of it when the nation's leader assaults the judiciary's independence, integrity, and competence.

Stress associated with reactions to judges' rulings doesn't end with criticism. Violence plagues judges

across the country. Acts of violence against judges have resulted in the murders of judges and their loved ones. With U.S. court-targeted violence on the rise, the fear for the safety of judges and their families is real.[37] Judges are "more visible, susceptible, and vulnerable than other public figures" because of their decisions.[38] It's simple for judges to collect enemies. Judges are twice as likely to be killed when an act of "courtroom violence" is committed against them.[39] Home security is given to all federal judges but not state judges.[40] Living in fear of confrontation in the courtroom and in one's home affects the judiciary's well-being.

> Justice suffers when a judge suffers physically or mentally.

Judges have an arduous time finding relief from these threats. The law doesn't protect judges from a threat unless it's a true threat. The Second Circuit has defined a true threat as "a statement that . . . a reasonable person hearing or reading the statement and familiar with its context would understand it as a serious expression of intent to inflict an injury."[41] This leaves New York State judges without recourse to avert non-violent threats made against them and which inconvenience their lives. Limiting the scope of threats in this manner provides a loophole for disgruntled litigants and other displeased parties to launch their mayhem. The courtroom is a public forum where New York litigants in distress engage in intimidation tactics like sitting in the front row of a courtroom staring down a judge when their case isn't on the calendar.

The issue of security is as vital for judges in New York's big cities as it is for judges in New York's towns and villages, where judges are likely to encounter disaffected litigants whose cases they decided. We are grateful in New York City to our court officers, whom we call New York's Smartest.

Many threats that would go unaddressed for state judges are addressed for federal judges. The United States Marshals Service, Judicial Security Division (JSD), provides federal judges with protection from threats.[42] Federal judges benefit from offices like the Office of Protective Intelligence and the Office of Protective Operations, which conduct threat assessments and provide protective responses.[43] The Department of Public Safety, headed by the Chief of Public Safety, oversees the management of judicial threats in New York State.[44] New York judges are given a Judicial Threats phone number, but in an emergency they should call 911.

New York State judges face challenges different from those of federal judges. New York judges don't have a fraction of the resources available to the federal judiciary. Many state courthouses are beautiful and well-equipped, but too many are less so. In so many respects, our state court system has been ravaged by years of miserly budgets – and crushing caseloads, slated for reduction under Chief Judge Janet DiFiore's Excellence Initiative[45] – that have affected New York State judges' ability to render timely justice. Also, New York State judges must struggle with the anxiety surrounding reelections and reappointments. Unlike federal judges, New York State judges don't have lifetime tenure.

Further specific to the stress of New York State judges is the open-door policy that allows anyone to complain about judges to supervising and administrative judges.[46] Lawyers and litigants are given a forum to submit letters of protest against judges. Dealing with these complaints puts supervising and administrative judges in an awkward position. These grievances can be one of three types: those made by psychopathic complainers, by parties angling to get a judge to rule for them, or as legitimate concerns about judicial efficiency and temperament. What are these supervisory judges to do when they receive these letters? Do they tell their judges? Do they investigate their colleague's conduct? What do they tell the letter-writers?

Some of the biggest recipients of complaints are Family Court judges and the Supreme Court's Matrimonial Part justices. These judges are subject to bitter accusations from aggrieved husbands, wives, mothers, and fathers.

Aside from worrying about the behavior of disgruntled parties, judges must forgo activities important to them, such as supporting or opposing political candidates.[47]

The visibility of judicial service exposes judges' lives to the public. No matter how judges conduct themselves, they can't hide much or for long. Judges must file a financial disclosure statement with the Ethics Commission for the Unified Court System.[48] The statement, made public, includes judges' income, debts, investments, and assets and that of their families.[49] This disclosure comes as no surprise to those aspiring to the bench, though. Judges must uphold high standards. Turning over information about their lives is also necessary before judges are elected or appointed. The public is entitled to know about candidates and not be surprised about their past. Transparency is expected and required.

The fear of a judge's issues being exposed acts as a roadblock for judges to correct and prevent them. When judges don't address their problems and instead internalize stress, they increase the risk of negative manifestations and ultimately harm the judiciary.[50] Justice suffers when a judge suffers physically or mentally.[51]

Manifestations

Accumulating stress and suppressing emotions have damaging effects on a judge's cognitive and decision-making skills, especially for the "many difficult decisions [that] must be made quickly."[52] Stress ineffectively maintained can manifest in a judge's body, mind, and actions.

Trial judges who report high levels of stress have exhibited effects like frequently arguing, feeling easily annoyed, and having temper outbursts, trouble concentrating, making decisions, recalling simple things, sleeping, and maintaining an appetite.[53]

Judges are human. They laugh, cry, get injured, and are diagnosed with illnesses that require treatment. Yet by virtue of their positions, their work must get done. They have cases to preside over, decisions to make, deadlines to meet. Staying on top of these obligations makes judges put their well-being on the back burner. In extreme situations, judges experience depression, breakdown, and even suicidal thoughts or actions. Sometimes judges use negative coping methods like gambling, drinking, and abusing drugs to deal with these problems.[54] Negative coping is manifested in judges' exhibiting "hostile behavior, frequent absences and inappropriate behavior and moods . . . that lead to violations of the code of judicial conduct."[55] Overworked and depressed judges can be slovenly in dress, unkempt in appearance, and regularly late to court and in their decision-making.

Depression is prevalent among lawyers. A recent study by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs reported significant levels of depression, anxiety, and stress among lawyers, "with 28%, 19%, and 23% experiencing mild or higher levels of depression, anxiety, and stress, respectively."[56] In a study of 104 professions, lawyers were found to have the highest rate of depression, "suffering at a rate four times the general population."[57] The level of depression in judges is doubtlessly high as well, given the judiciary's unique pressures and isolation. Judges might self-medicate with drugs and alcohol to mitigate the effects of depression.[58] These unhealthy habits can lead to dependencies and diseases that cause a decline in cognitive function and contribute to judicial impairment.

The effects of stress – disrupting sleep and appetite – cause weight gain.[59] In a 2012 study conducted by Harris Interactive for Careerbuilder.com, judges were found among the top four occupations most likely to report weight gain.[60] Issues with sleep, exercise, and diet combined with the sedentary lifestyle of working from the bench make judges gain weight.

Judges also suffer from compassion fatigue and burnout, not surprising given the sadness they see and the profound decisions they make. Families torn apart, catastrophic injuries, whether to send people to jail or order people treated over objection – those are a judge's bread and butter. Compassion fatigue is "a disorder that affects those who do their work well, specifically encompassing the burnout, and . . . trauma associated with those in the helping professions who encounter clients who have undergone trauma."[61] Burnout consists of "a pattern of emotional overload and subsequent emotional exhaustion."[62]

Compassion fatigue and burnout lead to "chronic health problems, poor job performance, substance abuse and other forms of self-medication, and impoverished relationships."[63] The symptoms of compassion fatigue "parallel those of posttraumatic stress disorder."[64] These symptoms are far-reaching.[65] In a study examining 105 judges representing a cross-section of U.S. urban and rural centers, 63 percent of judges reported experiencing one or more short- or long-term compassion-fatigue symptoms.[66]

One way stress might manifest itself in judges is bullying from the bench.[67] Good jurists can come across as angry. Stress can cause an occasional temper tantrum or rude behavior.[68] Bullying can be unintentional: A bad day might cause it.[69]

A form of bullying is benchslapping – public shaming in which a judge criticizes lawyers and litigants in a judicial opinion for real or imagined misbehavior. Benchslapping, which can't be appealed, might violate a judge's obligation to be courteous, dignified, patient, and respectful.

Some judges also suffer from "judge-itis," or "robe-itis": An imaginary illness that causes judges to believe they're all knowing, all powerful, and better than everyone else.[70] Often that's an unfair diagnosis: Judge-haters believe that every judge has judge-itis, that everyone who exercises judgment is judgmental, that judges lack empathy watching events in the little workshops they call their courtrooms. But it's true that once judges embark on their

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judicial careers, lawyer-colleagues begin acting more formally. Friends, neighbors, even relatives "display heightened respect and deferential behavior."[71]

Judges who experience judge-itis become overly absorbed in their professional role, lose some of their former identity, and become unable to "relate as a peer to most people."[72] The power trip of judge-itis can build up a judicial façade of infallibility that can trickle into the courtroom and the judge's personal life. New judges are especially susceptible to judge-itis. Culture shock accompanies the first months after judges are appointed or elected. Their once-private life is now public. The learning curve's steep. It's intimidating.

Suggestions

Judges should integrate stress-management techniques and activities into their lives. Tackling milder stressors head-on can prevent long-term adversities like depression and substance abuse.[73] According to the lawyers thanked in the credits to this article, here are some strategies for judges to reduce stress, promote wellness, and stay away from the CJC.

Time Outside the Courtroom

Constantly focusing on others' lives makes judges ignore their own. Many judges dedicate insufficient time to their own feelings. A "chronic disregard of one's own feelings negatively affects social, cognitive and physical wellbeing."[74] Judges must address their physical and psychological wellbeing. Judges who suppress their emotions might engage in "a repressive coping style" like substance abuse, bullying, and other undesirable practices.[75]

Time spent outside the courtroom can make for a less stressful and more productive judicial career. When judges become overwhelmed or agitated, they should get up, go for a walk, and drink water. Judges should take short coffee breaks twice a day, eat a healthful lunch every day, and enjoy the generous vacations allotted to them. Judges must decompress and spend time with loved ones, family, and friends.

For new judges, their time is no longer entirely theirs. Much of it now belongs to the public. Family and friends must share their time with the judge, and the judge must find ways to include them.

Engaging in after-work, extracurricular activities can increase the brain's "plasticity and ultimately the quality of work while increasing our resilience to stressful material."[76] Physical activity, rest, relaxation, and social activity are among the most useful strategies to cope with bench-related stress.[77]

Socializing with other judges will reduce compassion fatigue, stress, and other judicial challenges. They should secure a support network of likeminded individuals who deal with similar issues. Judges should attend such events as judicial conferences, judge lunches, judge dinners, and bar association meetings. Especially important to attend are judicial-education programs offered by New York's Judicial Institute and our state's judicial associations. These programs satisfy the state's Mandatory Continuing Judicial Education (MCJE) requirements, the judicial equivalent of a lawyer's Continuing Legal Education (CLE) requirements.[78]

Outsiders can empathize with the weight judges carry, but they'll never fully appreciate it unless they take the bench themselves. Finding a judicial mentor can provide judges with insight into maintaining a healthy career. New judges who participate in a mentoring program show a statistically significant "reduction in the stress domains of role overload, role boundary, and psychological strain."[79] Experienced judges "can act as important confidants and help newer judges recognize and address their stress."[80] Older judges can pass down techniques that minimize stress.[81] Mentorships benefit not just mentored judges but their mentors as well.[82] These relationships give experienced judges an opportunity to give back to the judicial community and find satisfaction helping other judges.[83]

Community Involvement

Whether from judge-itis or because of the job's authoritative nature, judges too often feel isolated from the public. Community events foster a positive relationship between the judiciary and the public. Judges can participate in local school mock trials and law school moot competitions. Judges can teach, write, and volunteer.

Organize

Judges should create daily routines to make their lives easier. To decide cases efficiently, judges should invent shortcuts. Judges can avoid negative thoughts, anxiety, and depression when they deploy "effective control strategies . . . and [minimize] mental load."[84] Judges can lighten their workloads by delegating work to court staff. Court attorneys and law clerks will help judges research and draft opinions. So long as every word in an opinion is the judge's authentic expression, the collaborative effort of opinion writing allows judges to delegate work and still maintain control.[85]

Judges should address communications like email quickly to avoid a cluttered, unanswered inbox. When emailing, they should think twice before sending anything possibly harsh or injudicious.

Judges must learn to say no if they already have a lot on their plate.

Perfection, as we know, is the enemy of the good. Judges shouldn't overstress drafting perfect decisions. Efficiently and quickly deciding cases is a priority and a central metric to being a good judge. Don't use your decisions to teach forensic skills or to lecture on social issues. Just decide the case. And don't live in fear of getting reversed; reversals are healthy in a democracy, and judges can learn from them.[86] As long as an opinion

decides the motion or case, it needn't address every issue. Doing so seems defensive anyway.

But a judge who has made a decision should move on to the next case and not look back, wracked by what-ifs, should've said thats, guilt, and remorse.

Judges should accept their share of work. Judges greatly appreciate those colleagues who don't dump cases on them. Decide the simple things. Clear your workload by timely issuing decisions on less complicated matters. Decide motions from the bench without always issuing written opinions. Sometimes it's practical to forgo a written opinion.[87] Bench decisions often leave an insufficient explanation for the clerk's office, parties, the public, other lawyers and judges, and appellate courts. And forcing a judge to write assures a better decision, because writing is thinking at its hardest. But when appropriate, bench decisions save time and effort, and lawyers will appreciate a speedy resolution without the need to explain delays to their clients.

Judges must control lawyers. Allowing them to carry on more than necessary prevents judges from maximizing their schedules. The more lawyers talk, the less time judges have to address others in the courtroom. But don't prevent lawyers from making a record. Lawyers need to preserve their arguments for clients and for an appeal.

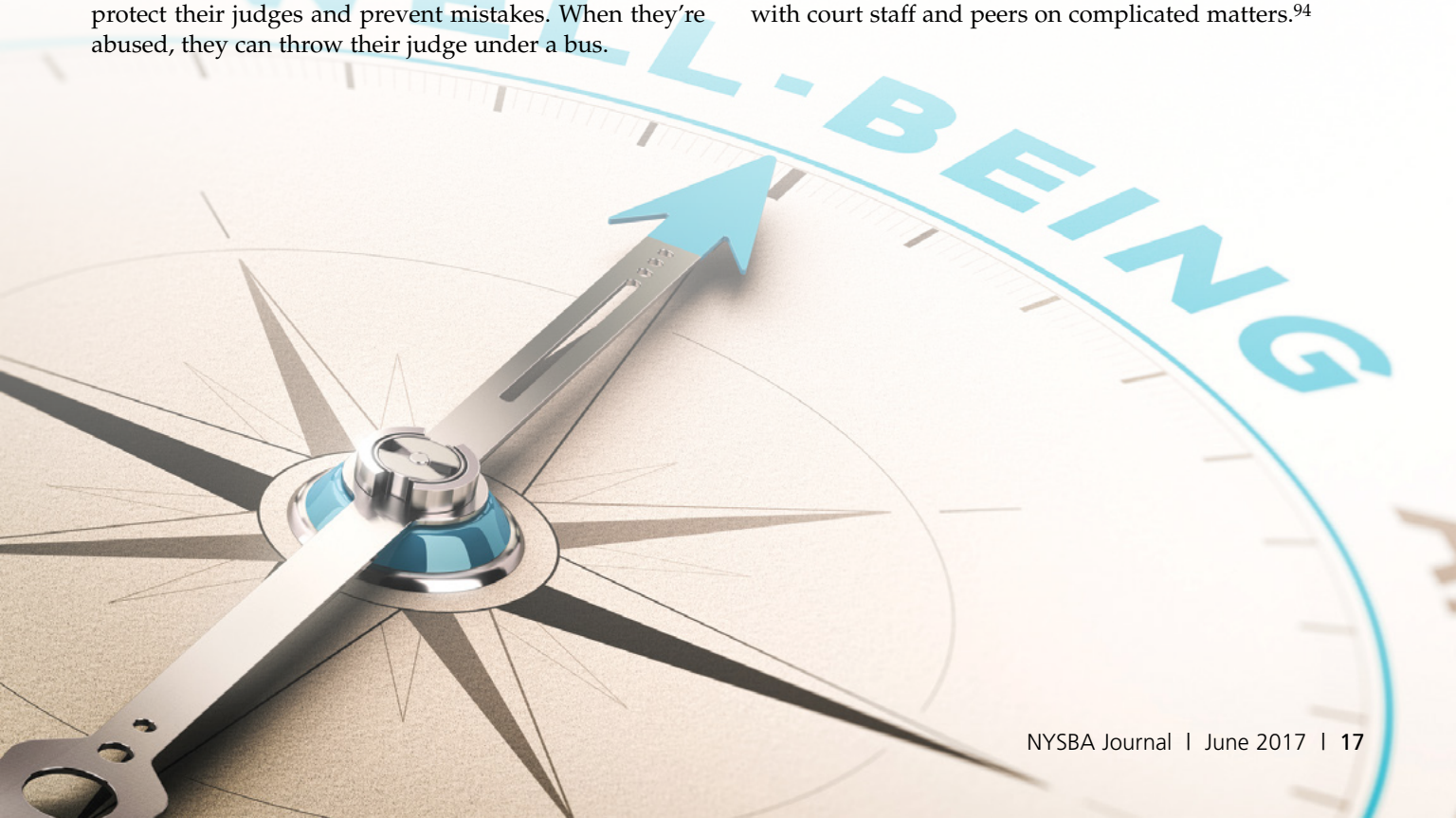
Judges must control their courtrooms. In addition to handling litigants, lawyers, and other parties, judges must manage court staff. The actions of court staff reflect on their judges.[88] Monitoring staff is important to make sure that they engage in respectful behavior and appearance. But treat them well as a team, even as family. Judges must have an open and respectful dialogue with court staff. Court officers, clerks, interpreters, and others can protect their judges and prevent mistakes. When they're abused, they can throw their judge under a bus.

Do Homework

Judges should study and adhere to ethics opinions issued by the Advisory Committee on Judicial Ethics, currently co-chaired by retired Second Department Justice George D. Marlow and Justice Margaret T. Walsh, an Albany County Family Court judge and acting Supreme Court justice.[89] Its opinions are easily accessible through the nycourts.gov website, where judges can search for specific issues. Judiciary Law Article 7-A provides that judges' actions taken in accordance with findings or recommendations from Advisory Committee opinions are presumed proper for the purpose of a CJC staff investigation.[90] Judges should also submit their own ethics questions to the Advisory Committee to clarify concerns.[91]

Adhering to the New York State Standards of Civility (NYSSC) will help judges. The NYSSC set forth "principles of civility and decorum" for judges, court personnel, and lawyers.[92] These guidelines are aspirational reminders for judges about how they should conduct themselves in court and with lawyers, parties, and witnesses. The NYSSC has seven recommendations specific to judges regarding demeanor, consideration of others, punctuality, promptness, and best efforts to ensure courtroom civility.[93]

Judges who know the law are less stressed than those who don't. It's understandable for judges to take extra time to learn new information when deciding a case. It's hard for judges to admit they don't know an area of law. The sooner they accept the need to brush up on or learn new material, the easier it'll be to decide the case and maybe figure out a way to help the litigants settle and thus bring justice to them. New judges, in particular, must do their homework, learn the material, and confer with court staff and peers on complicated matters.[94]



Avoid Controversy

Judges should avoid and rise above controversy. They must maintain courteous behavior at all times toward court staff, colleagues, litigants, and the general public. Judges should stay out of infighting between other judges and never pick fights with colleagues or supervising or administrative judges.

Opinion-writing should be all business. Avoid humor, puns, satire, embellishments, personal asides, and attacks.[95] Neither judging nor judges are funny.

Outside the courtroom, too, judges must conduct themselves as though the whole world is watching. Remember that you're a judge everywhere – from your chambers to an unfamiliar street.[98]

Don't discuss cases or decisions outside work. The repercussions can be catastrophic. You might want to share with people the important, exciting work you're doing, but doing so might violate the RGJC.[99]

The judicial image shouldn't be confused with robe-itis. Maintain a level head and avoid believing that people treat you differently "because you are especially brilliant or you are a special person."[100] Stay humble: Just because people call you Your Honor doesn't mean you shouldn't wash the dishes and discard the trash.

Don't use decisions to teach forensic skills or to lecture on social issues. Just decide the case.

Stay out of political drama. Avoid political activity unless it's for your own campaign for elected office.[96] Avoid debating religion and politics on or off the bench.

Judges may never use their status to secure preferential treatment in personal matters. Don't show your judicial identification to a police officer who has pulled you over or otherwise ever ask for special consideration.

One adjustment new judges undergo is dealing with their family and friends. They'll act differently; they'll expect undeliverable things from you. The RGJC's professional requirements offer guidance on how to behave with family and friends.[97]

Judges must be prepared to recuse themselves in accordance with the RGJC. They must be prepared to lose friends for not using judicial power for their benefit. They must be prepared to lose friends for many reasons. Or, worse, for no reason.

Uphold the Judicial Image

Judges are less on a pedestal than they are on display. People always stare at a judge on the bench. The higher judges ascend in their careers, the more exacting become the standards required of them. The appearance of judges, regardless of their skill, will dictate how the public perceives them. Keep inappropriate behavior off the bench.

Professionalism and civility come from the bench, which is seen as the face of the legal system. Don't scold or lecture people from the bench. To avoid saying the wrong words while on the bench, judges should speak one third slower and filter their thoughts. When things get stressful, take a deep yoga breath, in and out through the nose. Nasal breathing allows you to take a quick moment, catch your breath, and do so without opening your mouth for the whole courtroom to see and hear. Avoid eye contact with those in the courtroom who aren't speaking. Never go *mano a mano* with lawyers or litigants. Keep good posture on the bench. Don't eat or chew gum on the bench. Regardless what kind of day you're having, keep a serious but kind judge-like face about you.

Be Safe

Maintaining a low profile is important for judges concerned about their safety. Judges should refrain from revealing themselves unless there's a reason to do so. If someone cuts you off in traffic or picks a fight with you, don't reveal your status. Judges should forgo judicial privileges such as special judicial license plates, experts say. Though convenient, these symbols allow people to identify you as a judge.

Something I neither encourage nor discourage, but mention for information only, is that under New York Penal Law § 400.00(2)(d), certain New York judges are specially eligible to get a license to carry a concealed pistol.

Maintain a Healthy Regimen

Physical fitness, diet, and strong, supportive social networks outside work will keep mental health on track.[101] Studies have shown that "intervening psychosocial variables, such as hardiness, Type A and Type B personality styles, sense of humor, social support . . . and coping" help moderate stress.[102] Find healthy ways to cope with your stress.

Regular exercise increases a judge's ability to perform at optimal levels, think better, and build immunity to disease and illness.[103] Increasing overall health, exercise has a direct stress-busting benefit.[104] Exercise can be accomplished through competitive sports like basketball or more relaxing practices like yoga. Before beginning an exercise program, judges should take a fitness test, consult a physician, and get medical clearance.[105]

Judges with a history of physical activity are ideal candidates for high-intensity interval training (HIIT).[106] HIIT involves quick bursts of intense work periods that allow

for a full workout in 20 minutes.[107] HIIT isn't suitable for judges with a history of coronary disease, smoking, hypertension, diabetes, abnormal cholesterol levels, and obesity.[108] But all judges will benefit from a well-rounded physical activity program comprised of aerobic exercise and strength-training exercise of moderate intensity for 30 minutes, five days a week.[109] To stay engaged, alter your routine every few weeks. Enjoy your workout, not just for its stress-busting benefits, but also for the time it gives you to focus on yourself.

Exposure to stress can alter the metabolic and behavioral state of humans and have detrimental effects on diet and well-being.[110] A "true causal association [exists] between diet quality and depression."[111] As a result of heavy caseloads and the demanding nature of being a judge, judges tend to skip meals, overeat, or develop other unsavory dietary habits. These habits are an easily maintainable aspect of a judge's daily routine. Maintaining a healthy diet is crucial in controlling stress levels. Healthful eating can be a "preventi[ve] strategy" and provide a "therapeutic strategy for those with existing depression."[112]

Stress is better dealt with when people eat a variety of healthful foods.[113] Comfort food can "diminish the contribution of life stress to . . . stress-related disorders."[114] Eat at intervals during the day by having a snack containing sucrose, which assists stress relief.[115] Bring a stash of fruit, dark chocolate, and other sucrose-laden snacks to chambers.

Confront Issues

It's difficult for judges to hide impairments. Judges are visible in court and through their writing. Their decisions have an impact, and making the wrong decision will hurt people. Instead of avoiding subjects and making excuses, judges should acknowledge their symptoms.[116] Judges must have the strength, courage, and conviction to get help when they need it. Getting help is necessary to protect themselves and the public. To seek help, judges must accept that they're humans before they're judges.

Rely on Assistance Programs

Judges needn't handle bench stress on their own. Judges should seek outside assistance. New York is fortunate to have the Judges' Assistance Program (JAP) under the Lawyer Assistance Program (LAP) of the New York State Bar Association Judicial Wellness Committee. This committee, chaired by the Hon. Karen Peters, Presiding Justice, Appellate Division, Third Judicial Department, is made up of judges who assist judges with stress-related concerns.[117] The Committee formulates and recommends policies and procedures to help judges deal with prob-

Confidential Assistance for NY Judges

Hon. Karen K. Peters, Chair, NYSBA Judicial Wellness Committee

The Judicial Wellness Committee fosters a sense of community and care among the New York State Judiciary and provides confidential assistance to impaired judges. Recognizing that all judges are affected by the day-to-day stress of their responsibilities, the Committee works to foster mutual support among members and to promote the concept of judicial wellness through educational and outreach programs.

In furtherance of its purpose, the Committee, among other things, formulates and recommends policies and procedures to assist judges in dealing with treatable mental illnesses, such as addiction and depression. Through its programs and conferences, it assists judges in the identification of these impairments in themselves and others, and promotes rehabilitation in an environment of care and concern. All services are confidential and protected under § 857 of the Judiciary Law.

Judges who practice wellness are rewarded with a better quality of life, both professional and personal, and are better equipped to serve the public and achieve justice for those who appear in their courtrooms.

For confidential assistance, call **Susan M. Klemme**, Director, New York State Bar Association Lawyer Assistance Program, **1-800-255-0569**; **Paul Curtin**, Office of Court Administration Special Projects Coordinator, **315-278-0028**; or **Eileen Travis**, Director, New York City Bar Association Lawyers' Assistance Program, **212-302-5787**.

Hon. Karen K. Peters is the Presiding Justice of the Appellate Division, Third Department, and Chair of NYSBA's Judicial Wellness Committee. She previously served as counsel to the New York State Division of Alcoholism and Alcohol Abuse.

lems like alcoholism, gambling, drug abuse, stress, and depression.[118] Under Judiciary Law § 857, communications between judges and judicial assistance committees, with carefully tailored exceptions to protect the public interest, are confidential.[119] To access JAP, judges must contact a helpline. For more information, see Justice Peters's sidebar in this issue.

In addition to or instead of the New York-specific Committee helpline, judges may call the American Bar Association's national hotline for judges with mental-health and addiction problems.[120] This hotline is confidential and pairs judges with local resources and peer-support judges who've been through similar issues.

Assistance programs like JAP make it easier for judges and their families, staffs, and the public to come to terms with human imperfections. It's long gone unrecognized that judges "face the same challenges to their physical, mental and emotional health as do other members of society."[121] When not addressed, issues with physical, mental, and emotional health might result in judicial misconduct. Seeking confidential assistance helps judges avoid behavior that may lead to sanctions.

The Judicial Wellness Committee has the resources to help. According to Paul Curtin, an Office of Court Administration Special Projects Coordinator who works with the Judicial Wellness Committee, 13 judges in recovery from chemical dependence are available to travel throughout the state to assist judges with similar dependencies. The Judicial Wellness Committee also organizes 12-Step meetings.

Some want to end the confidentiality of Judicial Wellness Committee communications with judges. But the Committee is one of the few platforms judges have to get help. Take confidentiality away, and a judge needing help might have nowhere to turn.[122]

Complaints Against Judges

The CJC holds hearings in secret to protect judges from embarrassment.[123] The 11-member CJC and its staff would like to change the law regarding confidentiality of disciplinary proceedings and enact a public-proceedings law "to open the Commission's proceedings to the public."[124] Although the CJC might be better perceived if its work were more transparent, keeping proceedings confidential allows innocent judges to keep their reputations intact and prevents unfair allegations from tarnishing the judiciary as a whole.

Because of the nature of the job – in which judges are expected to portray an image of calm and control – judges are slow to seek help. Doing so signifies they're no longer calm or in control. Judges against whom complaints are filed should consult an affordable attorney right away. Judges are uniquely unqualified to address their own complaints against them. Judges should be honest with their attorneys. Just as judges are reluctant to tell others about their stresses, they'll often hide problems from their attorney.

When the CJC addresses a complaint, it might, in less serious cases of possible misconduct, consider judicial stresses as a mitigating factor. Apt stressors include having an ill child, spouse, or parent. The Commission may consider stress when it determines whether to go forward with a complaint or when it decides what type of sanction to impose on a judge. Judges too embarrassed to admit things to their lawyers and the Commission will be unable to avail themselves of all possible defenses.

Stresses may offer more than mitigation. Judges should raise all defenses they have. A judge who engages in introspection, contrition, and meaningful steps like therapy and treatment to prevent complained-of incidents might see a Commission that decides not to go forward with charges. As a former CJC commissioner recently explained, "[j]udges who can project a serious commitment to duty, a capacity not to re-offend and who admit their errors and apologize may be treated leniently and even, in a close case, avoid removal."[125]

That said, the goal of judicial discipline is not to punish judges but to protect the public.[126] The Court of Appeals in *In re Restaino* articulated a standard of behavior higher for judges than for non-judges.[127] The Court also found that stressors offer no defense to judges in serious instances of misconduct and that the gravity of proven wrongdoing is "[o]f ultimate importance" in calculating fitness.[128]

Conclusion

Judicial service isn't for the faint of heart. But for those with the stomach for it, the virtues of judicial service vastly exceed and easily justify the sacrifice necessary to be a good judge these days. Judicial service is like joining hands with our maker to bring justice for victims and peace to our neighbors. Judges have but three masters: the public, the law, and their conscience. If you must have three masters, those seem like pretty good ones.

A judicial career is privileged; it should bring joy to judges. Judges whose stresses threaten to stop them from that enjoyment should get help from the New York State Bar Association. Its wellness program can avert judicial misconduct and sanctions – and also be a life – and career-saver.

And let's hope that our Judicial Branch, our Legislative Branch, and our Executive Branch will always work together to ensure that our judges – those tasked in New York with assuring the independent and true administration of justice – have the tools to administer that justice for the public they serve. ■

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