



JUDGE ADVISORY PANEL

of the

New York State Lawyer Assistance Trust

FINAL REPORT

Hon. John C. Rowley, *Chair*
Judge Advisory Panel

Michael A. Cooper, *Chair*
New York State Lawyer Assistance Trust

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Hon. David S. Gideon
Hon. Marguerite A. Grays
Hon. Robert G.M. Keating
Hon. Tanya R. Kennedy
Hon. Sarah L. Krauss
Hon. Anthony Marano
Hon. George D. Marlow
Hon. James A.W. McLeod
Hon. John B. Nesbitt
Hon. John M. Owens
Hon. Sheryl L. Parker
Hon. Karen K. Peters
Hon. A. Gail Prudenti
Hon. Vincent J. Reilly, Jr.
Hon. Sharon S. Townsend
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Acknowledgements

The Judge Advisory Panel was created in 2006 at the behest of the New York State Lawyer Assistance Trust (“LAT,” or the “Trust”), a court system initiative bringing resources and awareness to the problems of alcoholism, substance abuse and mental health concerns among members of the legal profession. David Pfalzgraf, Esq., then LAT Chair, provided valuable inspiration for the project and guidance to the effort.

Chief Judge Judith S. Kaye welcomed the request to create the Panel, appointed its members, and enthusiastically received the Interim Report as well as informal updates on the Panel’s progress. She enlisted Chief Administrative Judge Ann Pfau in the project. Judge Pfau and her Special Counsel Anthony Galvao gave generously of their time to share their insights. Judge Pfau helped guide the efforts of Panel Chair John C. Rowley and addictions professional/staff liaison Paul J. Curtin. She encouraged them to reach out to District Administrative Judges and others to learn from their experiences and assist in developing strategies to address these complex issues. Many Administrative Judges across the State met with Judge Rowley and Mr. Curtin to share their ideas and their wisdom.

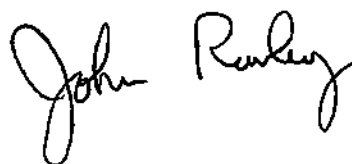
We also wish to thank the guests who accepted invitations to address the Panel and to answer its many questions. Then Dean of the Judicial Institute Robert G.M. Keating assisted the Panel’s efforts both as a member and by making his staff available to, and supporting, efforts to make presentations at the Judicial Institute and the Summer Judicial Seminars. The Hon. Juanita Bing-Newton succeeded Judge Keating as Dean of the Judicial Institute and immediately embraced our focus on judicial health and wellness. Judge Bing-Newton and Vice-Dean and Panel member Hon. Sharon Townsend made these topics a focus of the 2009 Summer Judicial Seminars.

In 2008, Michael A. Cooper became LAT Chair, and he has been a strong supporter and reliable guide for the Panel. Chair Cooper attended Panel meetings and hosted several at his law firm’s offices.

This project was held together by the hard work, persistence, and dedication of the remarkable Barbara F. Smith, the LAT Director. Her assistant, Susan L. McDougall, made all of the travel arrangements for the Panel members and handled a variety of other administrative tasks with good humor.

New York’s lawyer assistance professionals have generously shared their time and experience with the Panel. Patricia Spataro, the New York State Bar Association’s Lawyer Assistance Program (LAP) Director, and Eileen C. Travis, the NYC Bar’s LAP Director, helped to initiate this project, have responded to all requests for help and guidance, and demonstrate daily their commitment to assisting lawyers and judges suffering from addiction and/or mental health disorders.

Finally, this project and this report have been inspired by ideas generated by Paul J. Curtin, who serves as an Outreach Coordinator in the Fourth Department for the NYSBA LAP and operates a private alcohol dependence treatment center. Mr. Curtin's work led us to fundamentally redirect efforts from focusing solely on the judge in distress to focusing on the health of the entire judicial community. This new direction holds the promise of strengthening the connections between judges and enhancing the likelihood that judges who need help will receive it.



Hon. John C. Rowley, Panel Chair



NYLAT JUDGE ADVISORY PANEL members included, L-R (seated) Hon. Thomas VanStrydonck; Hon. John Rowley (Chair); Hon. Sharon Townsend; David R. Pfalzgraf (NYLAT Chair); (standing) Barbara Smith (NYLAT Director); Hon. Marguerite Grays; Hon. Sheryl Parker; Paul Curtin (NYSBA LAP Staff); Hon. Charles McFaul; Hon. Karen Peters; Hon. John Owens, Hon. A. Gail Prudenti, Hon. Tanya Kennedy; Hon. David Gideon; Eileen Travis, NYC LAP Director; Hon. Vincent Reilly, and Hon. Sallie Krauss. Absent when the photograph was taken were Hon. Ernest Cavallo, Hon. Robert Keating; Hon. Anthony Marano; Hon. George Marlow, Hon. James McLeod; Hon. John Nesbitt and Patricia Spataro, NYSBA LAP Director. [Summer, 2007]

Executive Summary

“Ratifying the Will to Care”

The New York State Lawyer Assistance Trust requested the creation of this Panel with the expectation that its members -- all judges -- might bring new insights and ideas to the challenges of assisting judges affected by alcoholism, other substance addictions or mental health problems. The LAT believed that judges are best situated to offer strategies to impart greater knowledge and understanding of these maladies to other judges so that they, in turn, would be more likely to offer support and assistance to their colleagues and impaired attorneys.

Programs dedicated to assist attorneys in distress, commonly referred to as Lawyer Assistance Programs (LAPs), exist in every state in the country. Their successes are evidenced by the number of attorneys that seek or accept help, the numerous statutory and regulatory changes achieved to protect lawyers willing to address their problems, and the growing recognition that these addictions and mental health diseases are treatable. LAPs have also worked to reach out to judges, with some success. However, the unique challenges of a judge’s position pose different obstacles than work with lawyers. As a result, affected judges in New York State – and across the country – may avoid addressing their untreated alcoholism, addictions, or mental health problems both to their detriment and potentially to the detriment of the public that they serve.

To correct this deficit, the Panel recommends that a professionally-staffed Judicial Assistance Program be available to provide confidential assistance for judges in distress. It is the Panel’s unanimous opinion that such a Program must be entirely separate from the Office of Court Administration, and judges who avail themselves of services must be provided with confidentiality, whether by court rule, by statute, or by both. We are convinced that to succeed the Judicial Assistance Program must be independent from the court system both in perception and in practice. It is imperative that judges have confidence that judges who seek help will be provided with confidential, reliable, and effective assistance. All judges need to know that disciplinary action will not be taken against judges who seek help prior to a breach of their ethical obligations. In addition, judges who accept treatment need to know that they are supported by their colleagues.

However, a focus solely on judges in distress would ignore the majority of judges who may benefit from support for the isolation and stress inherent in their work. Building on lessons learned from the New York State Lawyer Assistance Programs, the Panel here recommends a broad approach to judicial assistance. Rather than focusing solely on judges in distress with the hope that they will ask for help, the Panel concludes that a focus on the health of all judges would be more effective. This approach may be seen as a preventive measure. In addition to education and awareness programs, the Panel recommends a new focus on fostering connections between judges, thereby enhancing their sense of community. Judges who feel connected with their colleagues have lower levels of stress, feel less isolated and, we believe, will be more likely to insist that their peers seek help when needed. To spearhead this effort, the Panel recommends

that a new program – the Judicial Life Program – be created within the Judicial Institute. This program would be responsible for fostering the welfare of all judges through programming within the Judicial Institute.

Finally, the Panel recommends that the Office of Court Administration formally authorize persons to carry on the work that Panel Chair John Rowley and Paul Curtin have been doing on behalf of judges over the last two years, including work with the Lawyer Assistance Programs to meet the needs of judges, work with the Judicial Institute on Wellness Initiatives, and personal outreach to judges in distress. In this regard, Judge Rowley and Mr. Curtin have been meeting regularly with supervisory and administrative judges at the suggestion of Chief Administrative Judge Pfau to provide a confidential sounding board for responding to problematic situations involving judges. Establishing positions with leadership responsibilities on behalf of judges to build on successes, to lead the effort to carry out the recommendations herein, and signal the Office of Court Administration's commitment to the well-being of judges is vital to the success of this effort.

We cannot afford to wait any longer to address these challenges directly and effectively. It is time to ratify the “will to care.”

Background

A. Formation of the Judge Advisory Panel

In December 2006, at the Trust's request, Chief Judge Judith S. Kaye named an Advisory Panel to assist the Trust's efforts to bring outreach and help on lawyer assistance-related matters to the judges of New York State. (The Trust, formed in 2001, works to bring resources and awareness to the prevention and treatment of alcohol and substance abuse and mental health issues among members of the legal profession, as well as advocating for related policy changes. [See, www.nylat.org])

In naming the Panel, Chief Judge Kaye noted that the judge initiative had two purposes – one, to educate judges about the signs and symptoms of substance abuse and mental health problems in the lawyers who appear before them, and about resources available to help. The other purpose was to reach judges who may themselves be experiencing a problem and feel they have nowhere to turn. She said,

“Initially, the work of the panel would have two goals – developing plans to provide education and assistance, particularly for judges. We need to identify the best way to deliver the message to judges regarding the signs and symptoms of the problems and the availability of resources for help. Beyond that, we hope to instill and ratify the will to care.”

Hon. John C. Rowley (Tompkins County Court), then a Trustee of the Trust, was named to serve as Chair of the Advisory Panel. Judge Rowley brought the perspective of service as the

Chair of the LAT's Strategic Planning Committee and Secretary to the New York State Bar Association's Lawyer Assistance Committee. In addition, Judge Rowley is in recovery from alcoholism and drug addiction and has lectured widely on this topic as well as on vicarious trauma, depression and wellness.

The members of the Panel are: Hon. Earnest J. Cavallo, Civil Court of the City of New York; Hon. David S. Gideon, Town Justice, Town of DeWitt; Hon. Marguerite A. Grays, Supreme Court, Queens County; Hon. Robert G.M. Keating, Dean, NYS Judicial Institute, *ex officio*; Hon. Tanya R. Kennedy, Civil Court of the City of New York; Hon. Sarah L. Krauss, Family Court, Brooklyn; Hon. Anthony Marano, Administrative Judge, Tenth Judicial District; Hon. George D. Marlow, Associate Justice, Appellate Division, First Department; Hon. James A.W. McLeod, Buffalo City Court; Hon. John B. Nesbitt, Wayne County Court; Hon. John M. Owens, Supreme Court, Monroe County; Hon. Sheryl L. Parker, Criminal Court of the City of New York; Hon. Karen K. Peters, Associate Justice, Appellate Division, Third Department; Hon. A. Gail Prudenti, Presiding Justice, Appellate Division, Second Department; Hon. Vincent J. Reilly, Jr., Supreme Court, Fourth Judicial District; Hon. Sharon S. Townsend, Supreme Court, Eighth Judicial District; and Hon. Thomas M. VanStrydonck, Supreme Court, Seventh Judicial District.

B. The Bellacosa Commission

The work of the Judge Advisory Panel was guided and inspired by the Commission on Alcoholism and Substance Abuse in the Legal Profession, also known as the "Bellacosa Commission" [after its Chair, then Court of Appeals Associate Justice Joseph Bellacosa], whose Action Plan issued in December 2000 fostered the creation of the Trust. The Plan described a two-pronged effort by the Trust to enhance outreach and work for policy changes, as appropriate.

Concerning initiatives for judges the Action Plan (see, page 18-20) stated:

"The Commission's goal with respect to the judiciary is twofold. First, judges should be able to recognize and address any alcohol and substance dependency problems that they or their colleagues face. Further, judges should be able to recognize and assist lawyers who appear before them with any alcohol or substance dependency manifestations.

"Education for judges should include the following concepts:

- a. the judge's obligation with respect to the Code of Judicial Conduct and Part 100 of the Rules of the Chief Administrator of the Courts to uphold the integrity and independence of the Judiciary (§100.1) and to avoid the impropriety and the appearance of impropriety in all judicial activities (§100.2);

- b. the judges' professional obligation as attorneys to maintain the integrity and competence of the profession, performing in accordance with the Ethical Considerations of the Lawyer's Code of Professional Responsibility (EC1-1 and EC 1-2); and a warning of the prohibitions set forth under Disciplinary Rule 1-102;
- c. the potential for stress among legal professionals as engendered by the challenges and demands of the professional environment:
 - stress management and conflict management principles designed to emphasize the importance of balancing personal and professional priorities and challenges;
 - LAP information; resources to support and guide intervention efforts, treatment and rehabilitation;
 - Relevant EAP and social services, support resources and organizations serving professionals challenged by stress, alcohol and substance dependency problems;
- d. The judicial role and obligation when faced with a judge's or an attorney's misbehavior which may be the result of alcohol or substance dependency; and
- e. An explanation of the success of the LAPs in protecting the confidentiality of information communicated to LAPs (Judiciary Law§499), along with an advisory regarding the exceptions to the otherwise mandatory disclosure rules regarding violations of the disciplinary rules (Professional Responsibility DR 1-102, 1-103)."

Regarding the issue of judicial discipline, the Bellacosa Commission recommended the following:

“C. Changes in Lawyer Regulation Policies and Procedures...

“2. Diversion to Treatment and Monitoring In Judicial Conduct Proceedings

The Commission recommends that the Commission on Judicial Conduct consider the adoption of a comparable policy¹ to permit that agency to divert to treatment

¹ Comparable to “Diversion to Monitoring” for an attorney claiming disability due to alcohol or other substance dependency, upon a finding that the alleged misconduct, if proven, would not result in the disbarment or suspension of the attorney from the practice of law; and the alleged misconduct is sufficiently related to an alcohol or substance dependency problem on the part of the attorney; and the diversion is in the best interests of the public, the legal profession, and the attorney. [Action Plan, p. 20]

and monitoring less serious instances of judicial misconduct which are attributable to instances of alcohol or substance dependency.”

In the Panel’s view, these recommendations remain as valid today as they were nine years ago. In fact, this report can be seen in part as an action plan for implementing the recommendations of the Bellacosa Commission as it pertains to judges.

Section One: Review of Judicial Assistance Efforts in Other States and Nationally

Before proceeding to address the challenges facing judges in New York State, the Panel sought out and obtained information about similar efforts in other states and by the American Bar Association.

A. Review of Judicial Assistance Outreach Efforts in Other States

Many LAPs across the country have made specific provision to assist judges in distress. [See, a summary at Attachment A.] These efforts have sometimes included creation of a “Judicial Assistance Program” operated by the LAP. Often, separate telephone numbers and brochures are distributed so that judges know they are contacting a program for judges specifically. Other strategies have included the creation of peer-to-peer groups which match up recovering judges with judges seeking help.

In the most recent “Survey of Lawyer Assistance Programs” prepared by the American Bar Association’s Commission on Lawyer Assistance Programs [CoLAP] and published in 2002, all but four states indicated that their Lawyer Assistance Program [LAP] served judges.² A 2008 review of LAP websites indicates that four other states indicate that their LAPs specifically serve lawyers or members of the bar, but judges are not mentioned.³ No state reports having a Judges Assistance Program separate from their Lawyer Assistance Program⁴, and several incorporate “Judge” in their LAP’s name.

Two States – Washington and Illinois -- have developed extensive informational and training efforts for their judge assistance services, which may serve as good examples for the New York effort.

² According to the survey, the four states that did not provide services for judges are Iowa, Kansas, Oklahoma and Vermont [three of those – Iowa, Kansas and Vermont are voluntary bar states; Oklahoma is a unified bar state.]

³ Those four were North Dakota, Rhode Island, South Dakota and Wyoming [all are unified bar states].

⁴ See the reference to Virginia program under development, below.

Washington

By Washington court rule DRJ 14, confidential communications between a judicial officer and peer counselors and the Judicial Assistance Committee of the Judges' Associations or the Lawyer Assistance Program of the Washington State Bar Association (WSBA) are privileged against disclosure without the consent of the judicial officer to the same extent and subject to the same conditions as confidential communications between a client and a psychologist.

Since 2004, WSBA's LAP has developed and conducted two specific peer counselor trainings for Judges Assistance Peer Counselors. Aspects of the training course dealt with empathic listening skills, signs and symptoms of impairments and various possible physical ailments that might cause those symptoms; a sampling of articles on such topics as traumatic stress disorder, isolation, stress, aging, addictions and brain science, and life balance. Hypotheticals were discussed, and a flow chart of referrals with the LAP system explained.

Illinois

The Illinois LAP also has developed a handbook with best practices for their judge-volunteers to utilize. Chapters address such topics as the LAP and confidentiality; the services available; the nature of addiction, and other issues affecting family and colleagues; mental health problems; interventions; peer assistance, support groups, etc.

Illinois LAP also developed an informational brochure addressing such topics as when judge assistance would be appropriate, how to help a colleague or a lawyer in distress who appears before the judge, and the various roles a judge may play.

Both handbooks and the brochure would serve as valuable resources in developing similar core training and outreach for New York judges.

Virginia

The Virginia Supreme Court, at the time of this writing, is considering the establishment of a Wellness Program -- a Judicial Assistance Program. It would be an entity separate from the Lawyer Assistance Program already established, but details are not yet available.

B. The ABA Effort

While many judges have received help through State LAPs, there is a general sense among LAP directors that there remains a substantial unmet need among judges. Some of these LAP directors called on the American Bar Association CoLAP to study this problem.

In 2006, the American Bar Association launched the "Judicial Assistance Initiative" with a three--year goal of developing "a comprehensive national program that will effectively assist judges who may be depressed, chemically dependent, or have other mental health conditions that

impair judicial performance.” (Not coincidentally, Panel Member Hon. Sallie Krauss now serves as the Chair of this initiative, and Panel Chair Hon. John C. Rowley chairs the Networking Working Group). The judges and LAP Directors constituting the Initiative members spent considerable time thinking about the factors that both contribute to judicial distress and inhibit efforts to address the problem, including:

- (1) Isolation - the inherent isolation of the job – due to the necessity of maintaining a distance from lawyer friends and others; inhibitions against seeking help within the judge community; and the nature of the job itself.
- (2) Expectations - public expectations including that judges will always be fair, impartial, and strong.
- (3) Gaps in education - lack of knowledge/information about the problems of addiction, mental health and judicial impairment, including how to respond to these problems in a colleague.
- (4) Denial - institutional denial which protects the institution and isolates the judge. The judge’s “family” is often the judge’s staff that can inadvertently enable the judge in an effort to “protect” him or her from the consequences of questionable behavior.
- (5) Rules – the lack of alternatives to discipline in court rules can make it difficult to help affected judges.
- (6) Appointed and elected positions - it is extremely difficult to intervene on judges who are appointed or who run for popular election. Few are willing to intervene with these judges, particularly judges who are elected themselves, until the problem becomes so great that either a treatment intervention is obviously necessary or the judge’s conduct has become such an interference in his/her work life that a report to the Judicial Disciplinary Board becomes necessary.
- (7) Delays in referrals - most LAP directors report that by the time a judge in distress is referred to them, the judge is often very sick. Most administrative judges or other supervisory personnel will refer a judge in distress only when there is no other alternative – when the problem has become so acute that the Court does not know what else to do and has no procedures in place to help. The referral to a LAP is a “last resort” rather than a first resource.

The ABA’s Judicial Assistance Initiative is continuing to study these issues and is developing new strategies to address them. A report is anticipated by the end of 2009.

C. Assistance Efforts in New York State

The Panel has been guided by the experience of the assistance efforts for lawyers in distress in New York State. Lawyer Assistance Programs in New York⁵ have roots with lawyers in recovery from alcoholism helping other lawyers to achieve and maintain sobriety. Based on the program of Alcoholics Anonymous whose 12th step encourages members to “carry the message” to alcoholics who are still drinking, sober lawyers reach out to lawyers in need of sobriety and recovery. They view this activity as an essential part of their own recovery rather than a professional obligation.

The mandate of the New York LAPs has grown over time. What started out as a program to address lawyer alcoholism has expanded to include other drugs and to encompass mental health concerns, such as depression, stress and anxiety. Lately, the New York LAP programs have begun to focus on stress reduction and wellness. This comprehensive approach recognizes and addresses the issues that are presented by individuals who have sought LAP services.

Through the years, the New York LAPs have provided services for judges who have individually sought help or who were referred to the LAPs. As with an impaired attorney referral, LAP professionals have performed or secured assessments for the judges and made appropriate referrals for treatment. Nevertheless, the number of judges seeking LAP assistance is very low. We believe that the barriers outlined in this Report explain the low utilization of these resources.

Section Two: The Judge Advisory Panel

A. Preliminary Work

The members of the Judge Advisory Panel first met April 26, 2007 in New York City to discuss the responsibilities related to their charge. Initially, the discussion focused on the existing barriers that make it difficult for judges and lawyers to seek help for their own problems with alcohol or other drugs.

Panel members were aware that most alcoholics and/or addicts characteristically deny having the disease and rarely seek help unless compelled to do so. In addition to denial, a variety of special circumstances affecting judges compound the substantial barriers that also hinder attorneys and other professionals from seeking substance abuse treatment. For example, most

⁵ This effort began when small groups of lawyers in recovery joined together informally to help lawyers in their community. Eventually they became recognized by their local Bar Associations under titles such as “Lawyers Helping Lawyers” and “Lawyers Concerned for Lawyers” Committees. In 1979, they coalesced as a committee of the New York State Bar Association called the Committee on Lawyer Alcoholism and Drug Abuse, which later became a Standing Committee. Through the grassroots efforts of these volunteers, NYSBA hired a full-time staff director in 1990. Later, the New York City Bar Association created its own LAP with a full-time staff director. More recently, the Nassau County Bar Association has supported a part-time LAP staff member.

professionals continue to fear, and sometimes suffer, negative consequences of disclosure that they have sought professional help of this kind.

Nonetheless, there are particular barriers to seeking help that affect judges more than lawyers or most other professionals. For example, as appointed or elected public officials, judges feel a special vulnerability surrounding disclosure for fear that it will be used against them in future elections or during a re-appointment process. Also, a judge's elevated status within the community can contribute to an aura of invincibility that can reinforce a judge's resistance to seeking needed help.

The Panel discussed some of the barriers that prevent fellow judges from insisting that their judicial colleagues in distress seek help. In fact, the Panel's list of barriers to judges seeking help for their problems closely matched the list compiled by the ABA's Judicial Assistance Initiative. In many instances, judges, like other people, cite the excuse that it is either not their business or that they cannot be sure what the nature of their colleague's problems really are. Panel members considered what proof would be needed before a report or complaint would be advisable or required.

Certainly the very human desire not to "cause problems" for another judge — much less to make a report to the Commission on Judicial Conduct — plays a role in judges remaining silent in the face of known cases of impairment. Panel members noted that the lack of an alternative to a Judicial Conduct Commission complaint inhibits colleagues from acting. The lack of (or perceived lack of) confidential help for judges and the lack of confidentiality for the reporting judges also contribute to inaction.

The Panel's District Administrative Judges spoke from first-hand experience about their difficulties in responding to information that a judge under their supervision was demonstrating erratic behavior. They were generally aware that requests for professional assistance in addressing the problem could be obtained through the New York State Bar and New York City Bar Association's Lawyer Assistance Programs, and some reported successful interventions utilizing this resource.

However, the Administrative Judges (AJs) were also aware of the challenges this route posed. First, they reported that no guidelines exist for guiding them through these situations resulting in very uneven responses across the state and between different AJs. Issues such as the limits of an AJs authority to require an evaluation or to monitor follow-up were often raised. AJs reported problems in securing and paying for necessary in-patient or out-patient evaluations for judges in distress. In fact, the Panel found that there is no standard protocol for when such a referral is appropriate, no ready source of funds to pay for such an evaluation, and no list of facilities identified to handle these cases. Despite the availability of the Office of Court Administration's Work/Life Assistance Program [an employee assistance program], plus generous sick time allowances and insurance benefits, there has been little success in providing effective services of this kind to judges.

Some problems clearly are easier to solve than others. Panel members know it is possible to educate judges about alcoholism, drug addiction and mental health problems, and members have made recommendations about how this might be accomplished. Panel members also know that it is possible to create protocols for Administrative Judges to guide them when evaluations are required and even to identify funds to accomplish such evaluations. They also know it may be possible to create alternatives to disciplinary action for a judge in distress.

The greatest challenge the Panel identified was how to instill in all judges the confidence and desire to reach out to their colleagues in distress and insist they seek help. As Chief Judge Kaye said in her charge to the Panel, after we solve the system's problems, "we hope to instill and ratify the will to care." Pursuit of this goal led the Panel in some new directions and ultimately to see the wisdom in building and enhancing the sense of community among the judges.

While the original mandate was to address the problem of judges in distress, the Panel decided that such an approach might miss the opportunity for system-wide impact. For example, the establishment of resources for judges in distress might be viewed as marginal and outside the mainstream – meant for the "other guy." At the same time it became evident that being a judge in this State and at this particular time results in increased and unique stressors. Being a judge involves isolation that changes relationships with family and friends and limits outside activities. This happens during a time when judges faced increasing demands and decreasing resources to address them.

Drawing upon the experience of the Lawyer Assistance Programs, the Panel decided to create a focus on "judges helping judges," systematically encouraging an overlay of community building among judges at every opportunity. A continuum of possibilities emerges, all having their roots in the concept of lawyers helping lawyers – bringing together judges who are in recovery for fellowship; enabling community building as a form of stress reduction; designing educational activities that include developing connections; and sharing ideas among administrative and supervisory judges.

It is the Panel's belief that an approach that responds to the acknowledged needs of all judges would increase the program's acceptance and utilization and eventually make it easier to identify, reach out, and be of service to judges in distress.

Necessarily, the availability of a Judicial Assistance Program to be operated separate and apart from the Unified Court System complements the resources described above. The effort should involve a professional staff supported by a core of volunteer judges who are recovering from addiction, depression, etc., to provide outreach and support to judges in distress. Further specifics about these recommendations are set forth later in this report.

B. Meeting Schedule and Content

The Panel convened eight times: in 2007, on April 26, July 11, and October 23; in 2008, on January 30, April 4, July 24, and October 3; and on January 28, 2009. To develop a task plan, the Panel formed three Working Groups, Administration, Education, and Resources. A chairperson was appointed for each -- Hon. Thomas M. VanStrydonck for Administration, Hon. Sharon S. Townsend for Education, and Hon. John M. Owens for Resources. Specific goals were developed. [See, a chart of the goals at Attachment B.]

The Panel routinely began each meeting with an open discussion. The initial meetings were overshadowed by the continuing bad news related to the issue of a judicial salary increase.⁶ Knowing that this topic was a source of stress among many judges, including the judges on the Panel, Panel members usually discussed the current level of anxiety with work generally and this topic in particular. This exercise appeared to be a useful way of “lightening the load” for each member despite the fact that nothing about the workload or situation had actually changed. The relief that members felt from simply sharing burdens with peers was palpable. Reflecting on this experience led to two related insights -- first, that all judges experience some level of stress because of the nature of the work and the particularly isolating nature of it; and, second, the experience of connection is in fact an important part of stress reduction.

Invited speakers made presentations related to the Panel’s work, followed by extensive discussion. The last portion of each meeting was dedicated to reviewing the work of the Working Groups. The presenters and their topics were as follows:

October 23, 2007 William Kane, Director, New Jersey Lawyer Assistance Program

Mr. Kane discussed New Jersey’s experience with creating a specialized assistance program for judges. While he was understandably pleased with the program, he acknowledged that judges have not embraced the idea in the way that lawyers have. He cited barriers such as fear, pride, doubt, and lack of confidentiality as possible reasons judges do not reach out for help.

January 30, 2008 Chief Administrative Judge Ann Pfau

Judge Pfau addressed the Panel regarding the Panel’s interim report and her recommendations for directions to pursue. She urged the Panel to build a judicial assistance program from the ground up – in other words, to have the development of the program guided by the judges it would serve. Judge Pfau also extended an invitation to Panel Chair John C. Rowley and Paul J. Curtin to address a meeting of Administrative and Supervisory Judges on this topic.

⁶ At the time the Panel was meeting, lack of legislative action on the issue of pay raises for New York State judges was the cause of much consternation. Judges had not received even a cost-of-living adjustment in approximately eleven years, and Chief Judge Kaye had made judicial salary increases a top priority. The fight has languished for over three years and remains unresolved at the time of this writing.

*April 4, 2008 Robert Tembeckjian, Administrator and Counsel
New York State Commission on Judicial Conduct*

Mr. Tembeckjian reported on the duties of the Commission and his experiences dealing with judges in distress. While he confirmed that the Commission has very little discretion when confronted by evidence of judicial misconduct, even if attributable to substance abuse or mental illness, he saw a great opportunity for judges in distress prior to a finding of misconduct. He urged the Panel to create a judicial assistance program that would facilitate getting help to judges and forestall Commission involvement.

*July 24, 2008 Lauren DeSole, OCA Director of Human Resources, and
William Gilchrist, OCA Deputy Director for Judicial Benefits*

Ms. DeSole and Mr. Gilchrist talked about judicial benefits including the Work/Life Assistance Program. They described Work/Life as an underutilized resource for judges. A lively discussion ensued which highlighted numerous opportunities for collaboration between the NYSBA LAP, the NYC LAP, and the Work/Life Program.

*October 3, 2008 Diane Schilling, Special Counsel to the Justice Courts and
Paul Toomey, Director of the new OCA Office of Justice Court Support*

These speakers detailed several aspects of the Town and Village Court initiative that relate to the Panel's work. They agreed that judicial assistance of the kind envisioned by the Panel should be extended to the part-time town and village judges who face some similar challenges to full-time judges as well as some unique challenges.

Meetings with the invited experts generated ideas and opportunities for immediate action. Panel Chair John C. Rowley and NYSBA LAP Liaison Paul J. Curtin embarked on a series of meetings and activities that helped shape the work of the Panel. At Chief Administrative Judge Ann Pfau's recommendation, the pair met with judicial leaders across the state to gain their perspectives. This led to invitations to begin work with groups of judges as "pilot" activities. In the next section, "The Findings of the Working Groups," many of the recommendations include notations of efforts already underway.

Section Three: Findings of the Panel's Working Groups

A. Education

The New York State Judiciary is blessed with a centralized office and facility for coordination of education, the Judicial Institute. Hon. Robert Keating, then Dean of the Institute, was a member of the Panel and actively supported our efforts. Hon. Juanita Bing Newton is the new Dean of the Judicial Institute. Judge Newton has a longstanding interest in the issues of judicial education, including judicial wellness.

Education on an array of topics ranging from alcoholism, addiction and judicial stress to vicarious trauma is warranted. These presentations should be ongoing for all judges, but tailored for different audiences, including newly elected judges and their families, town and village judges, and judges regularly exposed to high levels of conflict such as family court judges. To increase effectiveness, this outreach should include presentations on a regional basis and involve judges presenting to judges. Specific examples of trainings would include:

New Judge Training

At the Panel's suggestion, presentations to two classes of newly elected or appointed judges have been made at the Judicial Institute. These sessions were characterized by a high level of peer-to-peer interaction, development of class identity and a commitment to ongoing connection and contact among the attendees. These preliminary efforts suggest that the new judge training presents a special opportunity to assist new judges in thriving in their new positions.

Problem Solving Courts

Some courts by their nature involve higher levels of stress. Examples would include domestic violence courts and sex offense courts. For the last two years, Deputy Administrative Judge Judy Harris Kluger and her staff have led a Symposium which brings together judges from New York's Problem Solving Courts. At the Panel's request, the last plenary session of the 2008 Problem Solving Courts Symposium was devoted to stress reduction and community building. Though scheduled at the end of an intensive multi-day training, it was attended by two-thirds of the registrants. The level of interaction, self-revelation and connection was remarkable.

Summer Seminars

Stress reduction and self care were the topics of the keynote speaker at the 2008 and 2009 Summer Judicial Seminars. In 2008, there were also three Evenings of Reflection and Reconnection each week. Despite problems with publicity and competition from other programs, many judges participated. Several of these judges have already arranged for Panel Representatives to meet with their colleagues as further programs are developed. In 2009, this approach was expanded to be a part of the regular day time schedule. At each of the three seminars, a two hour roundtable discussion was held for Family Court and Matrimonial Judges as a follow up to the keynote speaker. These discussions involved each judge talking about the particular stresses that affect them and their strategies for coping with this stress. Judges were also asked to suggest additional programs and topics that the Judicial Institute could offer.

Advisory Commission of Judicial Ethics

The Hon. George Marlow, Statewide Director for Judicial Ethics, served as a member of the Panel. He reported on the efforts of his organization to make presentations on ethics to judges in every county in the State at least once a year. Topics such as the ethical obligations of

judges to respond to impairment of lawyers or judges can be covered, particularly as the resources to assist these individuals continue to be developed.

B. Administration

The Administration Working Group examined places within the current structure of the Office of Court Administration where the possible impairment of judges is identified, what procedures are in place related to responding, and the ramifications for judges in distress.

District Administrative Judges and Supervisory Judges play a key role in this process. Several District Administrative Judges served on the Panel, and they guided our efforts. Through private meetings with many judges serving in this capacity across the state, it became apparent that they are often burdened with the responsibility of responding to reports of misconduct by judges, but they lack a clear protocol to respond or knowledge of the resources they might bring to the problem.

Simply talking about this burden seemed to be helpful. Again, while helping judges in distress is a primary goal of this initiative, it is the Panel's belief that making more support available to all judges will best serve the dual purposes of enhancing the chances that a judge will get the help needed, and all judges will be healthier and more closely connected with their peers.

Assistance to Administrative Judges regarding Lawyers and Judges in Distress

During the Panel's deliberations, several Administrative Judges asked for assistance intervening with judges and lawyers with possible impairments. In all cases, the person has accepted the recommendation to seek help. Through this activity, a simple, effective procedure has begun to come into focus, which could serve as a template to guide Administrative and Supervisory Judges in responding to these cases.

Vital to this effort would be stringent rules of confidentiality, probably best codified in Rules of the Chief Judge. The guiding principle must be to appropriately balance the need to protect the confidentiality of a judge in distress with the public's right to know that judges are performing their jobs fairly and ethically.

Identification of Needs

Through meetings with Administrative Judges throughout the State, many unexpected areas of activity were suggested including outreach to judges during high profile trials, education about the effects of vicarious trauma, gender-specific support groups and educational programs, as well as periodic programs for family members. Regular meetings with Administrative Judges will further identify needs on a local basis.

Confidential Sounding Boards

Each meeting with an Administrative Judge began with the statement “We’re not here to ask you for anything. All we want to know is what we can do to help.” Administrative Judges were given the opportunity to discuss areas of concern with people who were familiar with yet apart from the traditional structure of the Judiciary. Experience has shown that the trust that is built up in these relationships will encourage an Administrative Judge to consult with a professional about actual or potential impairment issues among judges under his or her supervision.

Community Building and Group Development and Implementation of Policy

Bringing together groups of judges to discuss issues of mutual concern has been successful in reducing stress and building community. During these sessions many of the participants saw the potential for such groups to be effective in the areas of policy development and implementation. The sense of empowerment and ownership developed by bringing judges together will not only increase morale but also make for enhanced policy.

Commission on Judicial Conduct

Currently, the Commission on Judicial Conduct has no formal policies or programs to encourage judges in distress to seek help. Rather, rehabilitation efforts on the part of judges become factors considered in mitigation of ethical violations. While the outcomes of sustained complaints are prescribed by the New York State Constitution – censure, suspension or removal – there is considerable room for other treatment options prior to an ethical violation and even while a complaint is pending. Continued discussions with the Commission on Judicial Conduct are warranted.

C. Resources

The Resources Working Group endeavored to identify existing programs, initiatives, organizations, or institutions that intersected with the needs of judges and lawyers in distress. In addition to considering their effectiveness, the Working Group looked to recommend changes and/or the creation of new entities to meet the identified challenges.

Private Health Insurance

The group gathered data about the variety of health insurance plans available to New York State judges. We found that terms of specific plans vary greatly with respect to the premiums and benefits and geographic areas covered. Of course, all carry mental health benefits that provide coverage for out-patient mental health and substance abuse treatment.⁷

⁷ Benefits provided by the Empire Plan and all NYSHIP HMO’s include: in-patient mental health services (at least 30 days per calendar year); out-patient mental health services (at least 20 visits per calendar year); alcohol and substance abuse detoxification; in-patient alcohol rehabilitation (at least 30 days per

Most, if not all, of the out-patient mental health and chemical dependency coverage is “managed” with providers having to negotiate with insurance companies both the level of care and number of visits for each patient based upon the insurance companies’ definition of medical necessity. This process frequently results in only the most acute cases receiving ongoing care. In addition, in-patient coverage varies. More significantly, the addiction professionals whom the group consulted warned that it is increasingly difficult to obtain approval for in-patient substance abuse treatment particularly in the absence of a patient’s failure in out-patient treatment. This reality has a direct bearing on the “intervention” model sometimes employed for persons in distress who have declined previous suggestions to get help. In the intervention model, the interventionist typically secures an in-patient bed in advance of meeting with the person in distress and transports them directly to treatment if the offer of help is accepted. Notably, specialized in-patient programs exist for doctors and generally require a minimum of 90-day stays.

The variations in health insurance policies highlight an important unmet need for assisting judges in distress. In many cases, judges come to the attention of their peers or supervising judge through complaints about their behavior. When the level of these complaints is serious enough, some type of evaluation is warranted. Identifying providers of high quality assessments, able to respond rapidly to requests for help, is vital. Concerns to address include the cost of an in-patient assessment, the lack of standardization of out-patient assessments, the challenges of geographic access and the need to incorporate mental health and physical concerns in the process.

The Work/Life Assistance Program

A second important source of assistance to judges and their families is the Work/Life Assistance Program. Since 2001, OCA has contracted with Corporate Counseling Associates, Inc., to administer the Work/Life Assistance Program, an EAP-type (Employee Assistance Program) service available 24/7 to judges and their families. Confidential, free assistance is accessed by calling their “800” number – 1-800-833-8707. Work/Life provides information and referrals in a myriad of areas ranging from elder care resources to credit counseling to stress management.

Where a referral for on-going services or local resources is needed, the counselor fielding the call remains involved in the case until a sub-contracted resource takes over. Lauren DeSole, Director of the OCA Human Resources Office, noted that judges’ use of these services remains “regrettably low” and speculated that a lack of awareness about the availability of services contributes to the problem. In an effort to raise the visibility of the program, the Work/Life Program description on the OCA Intranet has recently been upgraded, and a direct mailing to judges was in the works. Unfortunately, the Work/Life Program Administrators were apparently

calendar year); in-patient drug rehabilitation (at least 30 days per calendar year); out-patient alcohol and drug rehabilitation (at least 60 visits per calendar year).

unaware of the resources that the New York State and New York City Bar Associations have for judges and their families.

The Panel was not in a position to evaluate the effectiveness of the Work/Life Program. The Panel did discuss a number of questions that may be useful to examine regarding this resource, including the timeliness of response to inquiries, the quality of care that is provided, how this program is perceived by judges, and the program's ability to be responsive to the need of judges. The Work/Life Assistance Program may well benefit from the additional resource of volunteer judges as part of their process.

Lawyer Assistance Programs

As previously described, lawyers and judges in New York State have access to a series of interconnected bar association-based programs offering assistance for alcoholism, addictions, and mental health problems. These programs generally include both an outreach and a clinical component and, where possible, staff treatment professionals enlist lawyers who belong to lawyer assistance committees of their local or State bar association to serve as peer support. Services are free and confidential; and those accessing services need not be bar association members.

Over the last few years, the LAPs increasingly have focused on community building among lawyers in recovery as a strategy to provide ongoing support. On the outreach front, LAP members have settled on a program template that includes CLE credits in Ethics and a meal. Typically, the lawyer presenters share their own experience with alcoholism, drug addiction or depression as part of the educational component. These presentations have now been conducted across the state and have been very successful.

Although judges are permitted to participate in all of these LAP services and presentations, the barriers cited previously limit their involvement. While the diseases of alcoholism, drug addiction, and depression manifest themselves the same in a judge as in a lawyer, judges have not utilized LAPs frequently. In any event, the LAP emphasis on community building among lawyers in recovery is well worth replicating with judges.

Town and Village Court Initiative

In November of 2006, OCA launched the "Action Plan for the Justice Courts" to provide more resources to Town and Village justices. This plan impacts the approximately 2,250 town and village judges in New York State serving in 1,250 courts in 57 counties, more than 70% of whom are not attorneys. The components of the plan include increased training, greater supervision, and additional ethics education. District Administrative Judges across the state were formally given supervisory responsibilities for the town and village justices within their district. Subsequently, most districts designated County Court Judges to provide local support.

The Panel observed that part-time town and village judges face many of the same pressures as full-time judges, including social isolation and heavy workloads. Access to mental

health and substance abuse treatment services varies widely and is dependent on the individual insurance policies of the judges. Development of specific strategies for outreach and support for town and village judges are only beginning to be addressed.

One encouraging development is the appointment of judges within each judicial district charged with providing supervision for their town and village judges. This effort presents a number of training and wellness opportunities. These supervising judges could be brought together for training and education to enhance their ability to provide supervision to the judges in their district. Again, there is a significant need for standard protocols to respond to complaints.

Section Four: Community Building Efforts and Ideas

The initial efforts of Panel members and staff liaison to reach out to judges across the State have paid dividends, and many specific ideas have already been put into practice.

A. Conference Participation

Appearances by Panel representatives at various conferences and symposia may be leading to the perception that a Judicial Assistance project is already established and available as an ongoing tool for judges. Though difficult to quantify, informal conversations at such events have resulted in numerous judges approaching Judge Rowley, Mr. Curtin and other Panel members to discuss personal matters they have been struggling with and previously were reluctant to address. These conversations have fostered good will and the commitment of judges to support a sustained program. Educational, outreach and networking efforts have been proposed for many forums including the Summer Judicial Seminars and the annual meetings of judicial associations.

B. Family Court Pilot

Starting in January 2009, New York City Family Court judges were invited to participate in discussions about improving their work environment. Paul J. Curtin and the Hon. Joseph Lauria (ret.), former Administrative Judge for New York City Family Courts, partnered on this initiative.

Generally held over the lunch hour, these sessions allowed judges to gather and discuss matters of mutual concern on an informal and personal level. The judges were able to share with each other the stresses and rewards of the job as well as tools and techniques that they found effective in reducing levels of stress and increasing job satisfaction. Sessions were held in five New York counties with mixed success. Feedback from the judges included requests for a more targeted approach -- setting goals as a group and working to achieve those goals. Concerns about confidentiality were also raised. For example, judges wondered whether information shared during these discussions was confidential. While this pilot effort did not achieve all of its goals, results suggest that some judges under a high degree of stress may find benefit in mutual support. Future efforts will build on the lessons learned here.

C. Summer Seminars and New Judge Training

The 2009 Summer Judicial Seminars included roundtable discussions among family court and matrimonial court judges. The response to these roundtables was very good. Many judges supported the idea of further wellness efforts by the Judicial Institute and made specific recommendations in this regard.

For the past two years, Judge Rowley and Paul Curtin have participated in the annual training for newly elected or appointed judges. These judges have responded very favorably to exercises designed to create bonds with other new judges that can be reinforced over time. For example, Judicial Institute staff have discussed having newly elected judges return after some time on the bench to encourage mutual support.

D. Identify, Publicize and Expand Existing Community Building Activities

One of the pleasant surprises to the Panel was the discovery of the wide range of community building and stress reducing activities already taking place within the Judiciary. Lunches, exercise classes, social activities and interaction with various Bar groups are among the activities that are happening with little fanfare or publicity. This project will be able to identify, encourage and replicate these activities and serve as a clearinghouse for information.

E. Peer Support

Currently, judges in recovery in New York State are joining together through monthly conference calls. Many have volunteered to be of assistance to other judges who reach out for help. It is the Panel's hope that for every judge who reaches out for assistance there will be a judge who has successfully addressed the same issue available to provide confidential help and support.

Section Five: Recommendations

The Judge Advisory Panel offers three recommendations:

- (1) That a Judicial Assistance Program be created separate and apart from the court system; and,
- (2) That a Judicial Life Program be formalized within the Judicial Institute; and
- (3) That the Office of Court Administration appoint persons to oversee implementation of the recommendations of this Panel.

The mission of the Judicial Assistance Program would be to operate an effective, confidential program to provide assistance to judges affected by alcoholism, other addictions, or mental health disorders; to educate judges about these issues; and to provide ongoing peer support to judges in recovery from these diseases.

The Judicial Life Program would focus on educating all judges regarding judicial health and wellness, stress and burnout, and to promote mutual support among judges. This initiative appears to be a perfect fit for the Judicial Institute and we recommend its integration there.

Appointment of individuals to lead development of these initiatives within the Office of Court Administration is imperative. In our view, the Panel's work has already stimulated a variety of beneficial changes and initiatives. However, consistent leadership is necessary if this work is to be done successfully.

A. Judicial Assistance Program

The Judicial Assistance Program would be responsible for providing substance abuse and mental health services for all judges in distress, including town and village justices. The most important guiding principles for this program must be independence from the Office of Court Administration and the Commission on Judicial Conduct, and the absolute assurance of confidentiality. The need for confidentiality has been echoed over and over again by judges on the Panel and others with whom the Panel consulted.

The Program would be responsible for referring judges in apparent need of help to appropriate professionals for in-patient or out-patient assessments and treatment and for arranging interventions when necessary. We envision referrals coming from several sources – self referral or family referrals and referrals through administrative judges and supervisor judges. Supervising and administrative judges would benefit from ready access to consultations about judges' behaviors. The staff of the office would provide these judges with guidance about the options available in each particular circumstance. Likewise, the same support and consultation service should be made available to all judges concerned about a colleague. When appropriate, a one-on-one meeting between a representative of the Judicial Assistance Program and a judge for whom there is a concern would be held to determine if the judge were in need of assistance.

Regardless of the referral source, service providers should be identified and contracted with to provide evaluation and treatment in a consistent and coordinated manner. Professional services should be available to provide objective assessment and referral to treatment providers in special situations, *e.g.*, when impairment may be interfering with judicial duties.

The Program should assist in seeking insurance coverage for treatment and should have access to funds to pay for evaluations not covered by insurance. The Program would emphasize the importance of judges helping judges.

The Judicial Assistance Program must either be associated with the NYSBA Lawyer Assistance Program and the New York City Bar Association Lawyer Assistance Program, or work in partnership with them. The staff and volunteers associated with these organizations have tremendous experience to share and access to services that will be critically important to the success of this new initiative.

Consistent with the philosophy of “judges helping judges,” the Program should seek to provide supportive services to judges in distress who are looking for ongoing connection and support from their peers. To this end, the Program should consider developing support groups in different regions for judges affected by chemical dependency and/or mental health disorders. Activities that have been successful with attorneys in distress have included identifying peer sponsors for those in treatment or new to recovery, holding regular social activities to combat isolation and enhance mutual support, and working together on common goals.

A significant challenge for the Judicial Assistance Program will be clearly delineating the lines of communication and the protection of confidentiality. For example, different rules might apply to a situation in which a judge privately seeks help from the Judicial Assistance Program as compared to a judge who is directed to the program by an AJ as a result of complaints. These are resolvable challenges that must be resolved with clear rules. The Panel reiterates that there is no greater risk to the effectiveness of the Judicial Assistance Program than a lack of confidence in its independence and confidential nature.

B. Judicial Life Program

The Judicial Advisory Panel recommends the creation of a program dedicated to judicial wellness. This program would be responsible for a multi-disciplinary effort with the goal of assisting judges to work in healthy and productive ways.

It is the Panel’s belief that this program would be most effective if it was part of the Judicial Institute (“JI”). Judges across the state are increasingly looking to the JI as a resource in areas ranging from judicial education to policy debates. The JI is positioned perfectly to expand into the area of judicial wellness and become the leading voice in this arena for New York judges. For example, input from the program might be helpful in considering how the physical layout of courthouses can enhance or restrict judges’ opportunities to interact with other judges.

Judges attending the 2009 Summer Seminars were highly satisfied with the wellness presentations made in cooperation with the Panel’s work. Judges who were surveyed about the presentations supported more wellness programs by the JI. Many ideas were provided ranging from including family members in new judge training to regular presentations on stress relief and healthy responses to secondary trauma at the Summer Seminars.

The Panel also envisions the Judicial Life staff planning and/or supporting educational and social gatherings for judges across the state. While most judges enjoy coming together for the Summer Judicial Seminars, more frequent regional gatherings are required to support judicial wellness. Several recent events of this kind have been very well received by judges. Not only have the judges reported enjoying the opportunity to spend time with fellow judges, but these events seem to generate considerable goodwill for the court system.

C. Appoint Persons to Lead these Initiatives

The work of the Panel has demonstrated both the possibilities and challenges of enhancing the well being of judges in New York State during a period of tremendous stress on the profession. Several important partnerships have been enhanced during this process. For example, the New York State Lawyer Assistance Programs have redoubled their efforts to meet the confidential service needs of impaired judges. The Judicial Institute has initiated a new focus on judicial wellness which is already paying benefits for judges. The consultations that Judge Rowley and Paul Curtin have been holding with administrative and supervisory judges have stimulated considerable discussion and activity. However, it is the Panel's view that we are only at the beginning of a multi-pronged effort that requires dedicated leadership to maintain its early momentum.

We recommend that leadership positions be created and individuals be appointed so that the work can continue. This report should serve as a blueprint for the workplan. Recent experience with impaired judges reveals the extent of the challenges in this area alone, with issues ranging from complaints of judicial demeanor to alcohol abuse. Evaluation protocols need to be developed [including clearly-defined options for action when a judge declines an evaluation recommendation], and resources to provide in-depth evaluations must be identified. New York State Judges have access to the Work/Life program but rarely utilize it, and the program's ability to respond to these problems is not clear. Addressing these challenges should be priorities for dedicated leaders.

Section Six: Conclusion

The NYLAT Judge Advisory Panel has distilled three needs within the New York State Judiciary. An independent Judicial Assistance Program is necessary to focus on providing professional services and peer support to judges in distress. The creation of a Judicial Life Program to provide a coordinated focus on judicial wellness would enhance the experience of being a judge in New York State, emphasize prevention and education to cope with the unique stress of being a judge, and support judges as they do their work in the courtroom. Both of these efforts and the confidential outreach to administrative and supervisory judges must be coordinated by dedicated leaders.

In our view, this three-pronged approach has the best chance of providing effective support for all judges in New York and the necessary help for judges in distress. As a result of this approach, we believe that judges will be far more likely to reach out and assist judges and lawyers in distress even before their problems have escalated into more serious challenges.

It is our assessment that implementation of these recommendations should commence immediately. Our experience with Lawyer Assistance Programs and assessments of Judicial Assistance Programs from other states provides us with the knowledge and skills to create a New York State Judicial Assistance Program. Initially, we recommend that the leaders of the New York State Bar Association Lawyer Assistance Program and the New York City Bar Association Lawyer Assistance Program guide this effort. Initially, it may be most expeditious to have these

groups enhance their current efforts to provide the assistance services. Our failure to provide judicial administrators and supervisors as well as impaired judges with a confidential program of assistance may lead to more personal tragedies, embarrassing public incidents, and an erosion in public confidence in judicial institutions.

The creation of a Judicial Life Program appears well underway. It has been embraced in principle by the leadership of the Judicial Institute and significant trial efforts have already provided beneficial results. Now is the time to formalize the court system's commitment to this program with its singular focus on judicial wellness. Over time, we expect that Judicial Life staff will provide bring this important perspective to a variety of administrative initiatives.

However, without sustained leadership, these early successes are not likely to lead to long term change. The Panel recommends that leadership positions be created and individuals appointed to ensure consistent and persistent effort toward the goals articulated in this report.

Many judges and other professionals have contributed to this report and its recommendations. Their sole commitment has been to the well-being of New York State judges. Moving ahead on these recommendations will not require a significant financial commitment at this time. However, it will require the embrace and vocal support of judicial leaders. The judges of New York State deserve a demonstrable commitment from judicial leaders to foster their well being while serving the public.

Attachment A

State Assistance Programs serving judges¹		
Included in LAP Name	How Organized	How Funded
Arkansas Judges & Lawyers	Court Order	100% Court funding
Hawaii Attorneys & Judges Program	Court Rule	100% bar dues [mandatory] ²
Indiana Judges & Lawyers	Court Rule	100% Court funding
Maine Assistance Program for Lawyers & Judges	Court Rule	100% State Bar
Michigan Lawyers & Judges	State Bar program	100% bar dues [mandatory]
New Jersey Judges Assistance	State Bar Program	100% Court funding
LAP Program or Committee		
Alabama	State Bar Program	100% State Bar
Alaska	State Bar Committee	100% State Bar
Arizona	State Bar Program	95% State Bar; 5% Professional Service/Conference Fees
California "the other bar"	Nfp; Contract w/State Bar	95% State Bar, 5% donations
Colorado	Supreme Court Program	Not listed
Connecticut	Not for profit corporation	100% client security fund fee
Delaware	Not for profit corporation	Attorney registration fees & State bar grant
District of Columbia	Bar program	100% bar dues [mandatory]
Florida	Not for profit corporation	70% bar dues [mandatory]; 5% donations; 25% conference fees
Georgia	EAP contract	100% bar dues [mandatory]
Idaho	State Bar	Not listed
Illinois	Not for profit corporation	50% donations; 25% local bar foundation; 15% State Bar foundation; 5% State bar dues [voluntary] 5% prof. Liability insurer
Kentucky	Court Rule	100% State Bar Dues [mandatory]
Louisiana	State Bar program	40% State Bar; 25% professional Liability insurer; 20% Court; 15% local bar foundation
Maryland	State Bar program	50% State Bar; 50% Court
Massachusetts	Not for profit corporation	99% State Bar dues [voluntary]; 1% donations
Minnesota	Not for profit corporation	100% donations/grants
Missouri	State Bar program	75% bar dues [mandatory]; 25% prof. Liability insurer
Mississippi	State Bar program	50% state bar dues [mandatory]; 50% prof. Liability insurer
Montana	State Bar program	100% bar dues [mandatory]
Nebraska	State Bar program	100% bar dues [mandatory]
Nevada	State Bar program	100% bar dues [mandatory]
New Hampshire	Supreme Court Committee	???
New Mexico	State Bar program	100% bar dues [mandatory]
New York	NYS, NYC Bar Association programs	85% State/City Bar \$; 15% grants
North Carolina	State Bar program	100% bar dues [mandatory]

¹ As indicated on their website home page as of September 2008; supplemented by the 2002 ABA CoLAP Survey of LAPs

² For "mandatory" bar states, the bar dues may be equated with attorney registration fees in New York

LAP Program or Committee		
Ohio	Independent	50% court; 25% State bar grant; 25% Prof. Liability insurer
Oregon	Independent	100% Prof. Liability Insurer
Pennsylvania	State Bar & nfp [2]	50% disciplinary board; 50% client security fund
South Carolina	State Bar program	100% state bar
Tennessee	Supreme Court Rule	75% court funding; 25% donations
Texas	State Bar program	100% bar dues [mandatory]
Utah	Not for Profit corporation	100% State bar
Virginia	State Bar program	47% bar dues [mandatory]; 19% bar dues [voluntary]; 19% prof. Liability insurer; 10% local bar dues; 5% board of examiners
Washington	State Bar program	100% bar dues [mandatory]
West Virginia	State Bar Committee	100% bar dues [mandatory]
Wisconsin	State Bar program	100% state bar

State programs specifically serving lawyers/attorneys or members of the bar [but judges not mentioned]: Iowa, Kansas, North Dakota, Oklahoma, Rhode Island [EAP], South Dakota, Vermont, Wyoming

* * * * *

ARKANSAS

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

The Arkansas Judges and Lawyers Assistance Program (JLAP) was established by the Arkansas Supreme Court to be effective January 1, 2001. The Court appointed nine (9) committee members, including three (3) citizens who are not members of the legal profession. The members have diverse experience, knowledge and a demonstrated competence in the physical and mental health conditions that negatively affect a lawyer or judge in the practice of their profession and quality of life. The Court appoints the Chair of the Committee.

The powers and duties of the Committee are:

- o to establish Arkansas JLAP policies and procedures consistent with the purposes of the program;
- o **to oversee the management of the program to achieve the stated purposes; and,**
- o to assure the implementation of the Arkansas JLAP program in compliance with the Arkansas Supreme Court per curiam Order of December, 7, 2000.

The procedures and policies set forth in this manual are cumulative to and explanatory of the per curiam order of

December 7, 2000. In the event of conflict between these procedures and the per curiam order, the provisions of the per curiam order shall prevail.

Arkansas JLAP's program goals are:

1. To identify the impaired lawyer or judge who is practicing in the state of Arkansas;
2. To assist judges and lawyers in their personal recovery from physical or mental health **conditions that affect competent practice of their profession and their quality of life;**
3. To assist the families of judges and lawyers during their personal recovery from identified **physical or mental health conditions;**
4. To educate the legal community on identification, assessment, referral, treatment, and **community based resources available to meet the needs of affected judges and lawyers;**
5. To monitor and assist judges and lawyers while they return to the practice of law or to the **bench;**

RULES OF THE ARKANSAS JUDGES AND LAWYERS ASSISTANCE PROGRAM (ARJLAP)

. . . . Rule 5. Services.

ALAP shall provide the following services:

(A) immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, substance abuse disorder, trauma, or age and that impair their ability to practice;

(B) planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

(C) investigation, planning, and participation in interventions with members of the legal profession in need of assistance;

(D) aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physical or local peer counselor; and

(E) monitoring services under Rule 7 or under contract that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

History. Adopted January 1, 2001

JLAP Services

Assessments and Evaluations

Assessments and evaluations are provided to individuals, firms, organizations and family members who are uncertain about the extent of a problem. Assessments are generally done in one to three sessions.

Referrals

If the judge or lawyer is assessed to need additional help, JLAP has referral sources to meet the specific needs of the individual. Referral information related to alcohol abuse/addiction, drug abuse/addiction, mental health problems, physical disabilities, and issues related to aging and the specific impact on the legal profession are available. Referral options for treatment organizations, agencies, hospitals, and private practitioners is available based on the specific needs identified.

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Interventions

Interventions vary in their intensity, but can be effective in motivating a person to seek assistance. JLAP provides interventions as a group process initiated by family, friends and colleagues with the goal of presenting concrete facts about the judge, lawyer, or family member regarding their behaviors. An intervention is coordinated by a trained and experienced JLAP professional. Interventions are well planned and rehearsed to be effective. Each intervention is unique and specific to the needs of the individual situation.

Brief Motivational Services

Often a few (6-8) visits are effective to motivate a person to change behavior or seek further counseling/treatment to address their specific needs. JLAP provides free services for judges, lawyers, their family members, colleagues, or firm representatives.

Professional Monitoring Contracts

Research supports the effectiveness of contractual agreements to assist participants in achieving their goals. Individualized, professional monitoring contracts are often used to assist in the achievement of success in recovery. Monitoring contracts also provide documentation of behavioral change.

In situations where the judge's or lawyer's impairment has resulted in ethical or disciplinary violations, or at the request of a firm, JLAP has an established monitoring system to assist and document that the recovery process.

Life Coaching and Support Groups

Life coaching involves supporting judges and lawyers in discovering and creating what they most want in their lives. Based on specific needs, individual and group services are available to assist the judge, lawyer, or family member to achieve personal goals.

Educational Programs

JLAP provides speakers to educate the legal community on contemporary topics of alcohol abuse/addiction, drug abuse/addiction, mental health problems, physical disabilities, and issues related to aging. JLAP staff members, and often volunteers, speak with bar associations, law firms and legal organizations on specific topics and services provided by JLAP.

HAWAII ATTORNEYS AND JUDGES ASSISTANCE PROGRAM

<http://www.hawaiiap.com/>

Rule 16. ATTORNEYS AND JUDGES ASSISTANCE PROGRAM.

16.1. Purpose; scope.

(a) The purpose of the Attorneys and Judges Assistance Program ("AAP") is to provide immediate **and continuing assistance to attorneys who practice law in the State of Hawai'i, judges of the courts of the State of Hawai'i, and law students of the University of Hawai'i at the Richardson School of Law (law students)** who suffer from problems, disability or impairment which affect their professional performance for any reason ("impairment"), including but not limited to excessive use of alcohol or drugs ("substance abuse"), physical or mental illness, or other infirmity. Professional performance is affected when an attorney, judge, or law student is incapable of devoting the time and attention to, and providing the quality of service in, his or her law practice, judicial duties, or law studies which is necessary to protect the interest of a client, litigant, or law school career.

(b) The AAP shall consist of at least the following categories of programs.

(1) VOLUNTARY PROGRAM. A voluntary program addressing "self-referrals" entering treatment without the formal prior intervention of the AAP.

(2) INTERVENTION PROGRAM. A program primarily addressing attorneys, judges, and law students who are not "self-referrals" and who have not yet been the subject of a complaint that warrants a disciplinary petition, but whose impairment affects their professional performance and may put them at risk of disciplinary action if the impairment continues.

(c) AAP shall not provide treatment to impaired attorneys, judges, and law students but shall instead provide education and guidance concerning substance abuse, refer impaired attorneys, judges, and law students to appropriate substance abuse and/or mental health treatment providers, and provide emotional support to impaired attorneys, judges, and law students.

(Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.)

16.2. Attorneys and Judges Assistance Program Board.

(a) The Supreme Court shall appoint from nominations submitted by the Nominating Committee of **the Hawai'i Supreme Court a board to be known as the "Attorneys and Judges Assistance Program Board of the Hawai'i Supreme Court" ("Board") which shall consist of nine (9) members, one of whom shall be designated by the Board as chairperson. Six (6) members shall be attorneys licensed to practice in the State of Hawai'i and three (3) members shall be judges of the State of Hawai'i.**

(b) All members shall be appointed to staggered three-year terms; however, to maintain a board with staggered terms, initial appointments may be for less than three years. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(c) Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case, or the orderly operation of the Board, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary. Each ad hoc member shall fulfill all the responsibilities of a Board member.

(d) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these rules, including the power and duty:

(1) To take such action as shall be appropriate to effectuate the purposes of these rules.

(2) To appoint an administrator (whether an individual or a professional assistance organization) as may from time to time be required to properly perform the functions hereinafter prescribed. The administrator is hereinafter referred to as "Director." The Director shall implement and administer all of the programs under this rule.

(3) To adopt rules of procedure governing the Board and committees which are not inconsistent with these rules.

(4) To receive from the Bar the fees collected under Rule 17(d) (3) (iv); to prepare and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit; and to prepare an annual budget for the expenditure of those funds; to develop appropriate financial policies for managing all of the funds received by the Board; and to propose an annual fee as follows:

(i) submit, no later than September 15 each year, the developed budget, financial policies, and fee **structure to the Hawai'i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai'i State Bar prior to submission to the supreme court;**

(ii) to **receive written comments, if any, from the Hawai'i State Bar regarding the budget, financial policies, and fee structure;**

(iii) to **reply in a timely fashion in writing to any written comments from the Hawai'i State Bar regarding section (ii), provided the comments were received no later than October 15; and**

(iv) to submit, no later than November 1 of each year, the budget, financial policies, and annual fee **along with any and all written comments received from the Hawai'i State Bar, and any replies thereto, to the supreme court for its review and approval.**

(Added effective July 7, 1989; amended February 7, 1992, effective February 7, 1992; amended April 8, 2002, effective July 1, 2002; amended May 12, 2003, effective July 1, 2003; further amended October 16, 2007, effective December 1, 2007.)

16.3. The director.

The Director shall be a trained counselor or an attorney who is a recovering substance abuser and has not used alcohol or drugs for at least five years. A "trained counselor" shall have education, training or experience in the evaluation, counseling or management of persons who are impaired due to substance abuse or physical or mental illness. The Director shall administer the AAP and shall perform such duties as directed by the Board.

(Added effective July 7, 1989.)

16.4. Voluntary program.

(a) The Director shall administer the Voluntary Program of the AAP in accordance with policies and procedures adopted by the Board.

(b) The Director shall provide a source of evaluation and treatment for attorneys, judges, and law students who, on a strictly voluntary basis, desire to avail themselves of such services.

(c) Attorneys, judges, and law students who voluntarily seek assistance from the AAP shall be evaluated, provided education and guidance concerning substance abuse, referred to appropriate substance abuse or mental health treatment providers, and provided emotional support by attorneys and judges who are recovering substance abusers.

(Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.)

16.5. Intervention program.

(a) The Director shall establish a Lawyer Volunteer Committee. Each person appointed to the Lawyer Volunteer Committee shall be an attorney, judge or trained counselor.

(b) Intervention is defined as the process of interrupting impairment by utilizing information, confrontation, counseling and motivation techniques to facilitate entry into diagnosis, treatment and rehabilitation.

(c) The Lawyer Volunteer Committee is established as a committee to utilize intervention exclusively with attorneys, judges, and law students who are impaired to facilitate their entry into diagnosis, treatment and rehabilitation.

(d) The Director and/or Lawyer Volunteer Committee shall review all information submitted regarding potentially impaired attorneys, judges, and law students and make a determination of the appropriateness of intervention.

(Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.)

16.6. Confidentiality; privilege not to disclose.

(a) The identity of any person who provides information to the Director or Lawyer Volunteer Committee shall be confidential and shall not be subject to discovery or subpoena.

(b) All records and information maintained by the Director, the Lawyer Volunteer Committee or their agents, employees or members relating to matters that are being or have been reviewed and evaluated by the Director or Committee shall be confidential and shall not be revealed to the Board, the supreme court or any other person and shall not be subject to discovery or subpoena; provided, however, that the Director may compile and disclose to the Board statistical information, devoid of all identifying data, relating to the AAP.

(c) A participant in the AAP has a privilege to refuse to disclose and to prevent any other person from disclosing information provided to or maintained by the AAP. A "participant" shall include, but not be limited to, the Director, any employee or agent of the AAP, members of the Board, members of the Lawyers Volunteer Committee, and attorneys, judges, and law students seeking assistance under the AAP.

(Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.)

16.7. Immunity.

Notwithstanding any other provision of law or rule to the contrary, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person for providing information to the Director or Lawyer Volunteer Committee; and there shall be no monetary liability on the part of, and no cause of action for damages shall arise against any participant in the AAP for any act or proceeding undertaken or performed within the scope of Rule 16. For the purposes of this rule, the term "participant" includes employees, agents and volunteers of the AAP, and shall also be deemed to **include the officers, directors and employees of the Hawai'i State Bar Association.**

(Added effective July 7, 1989; amended February 7, 1992, effective February 7, 1992)

INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

<http://www.in.gov/judiciary/ijlap/>

Rule 31. Judges and Lawyers Assistance Program

Section 1. Establishment. The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. The Committee shall be composed of Committee members, an Executive Director, and such other persons as shall from time to time be approved by the Supreme Court and who are necessary to carry out the Committee's work.

Section 2. Purpose. The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

Section 3. Committee Members.

- (a) The Committee shall consist of fifteen (15) Committee members, all of whom shall be appointed by the Supreme Court. Members shall have experience with the problems of chemical dependency and/or mental health problems. Seven (7) members shall be practicing lawyers; five (5) shall be judges; one (1) shall be a law student enrolled in an Indiana law school at the time of appointment; two (2) members may be filled by judges, lawyers, and/or law student(s). A reasonable effort shall be made to provide geographical representation of the State.
- (b) Members shall be appointed for three-year terms. All terms shall commence on January 1 and end on December 31. Any member, who has served three (3) consecutive terms exclusive of filling out an unexpired term, shall not be reappointed to the Committee for at least three (3) consecutive years. Any vacancy on the Committee shall be filled as soon as practicable and the new member so appointed shall serve the unexpired term of the member being replaced. Any member may be removed by the Supreme Court for a good cause.
- (c) Election of Officers. The members shall elect from the membership a Chair who shall preside at all meetings, a Vice-Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the Committee's minutes, and a Treasurer who shall be responsible for keeping the Committee's records of account.
- (d) Executive Committee. The Officers shall comprise the Executive Committee, which shall have the power to conduct all necessary business that may arise between meetings of the full Committee. Three (3) Officers shall constitute a quorum. The Executive Committee shall act by a vote of a majority of the Officers. All action taken by the Executive Committee shall be reported to the full Committee at its next meeting.
- (e) Meetings. The Committee shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six Committee members may call special meetings of the Committee.
- (f) Notices. The Secretary shall send notice of each Committee meeting, which states the meeting's purpose, to all members at least five (5) business days before the meeting.
- (g) Quorum. Six (6) members shall constitute a quorum for the transaction of business. The Committee shall act by majority of the members constituting the quorum. Members may participate in meetings by telephone or other similar device.

Section 4. Powers and Duties of the Committee. In addition to the powers and duties set forth elsewhere in this Rule, the Committee shall have the power and duty to:

- (a) Adopt rules and regulations, to be known as the Judges and Lawyers Assistance Program Guidelines, for the efficient discharge of its powers and duties. The Guidelines shall become effective when approved by the Supreme Court.
- (b) Establish an office to provide administrative and financial record keeping support for the Committee.

- (c) Establish a mechanism, subject to Court approval, to arrange loans or other financial assistance to members of the bar for recovery related expenses.
- (d) Review this Rule and Guidelines from time to time and make recommendations to the Supreme Court for changes.
- (e) Publish proposed Guidelines and procedures through West Publishing Company and Res Gestae and file them with the Clerk of the Supreme and Appellate Courts.
- (f) Appoint subcommittees having such powers and duties as the Committee may determine are necessary to carry out the Committee's work; including trustees of any organization created to receive and distribute or spend grants, bequests, gifts and other monies for loans or other financial assistance to members of the bar for recovery related expenses.
- (g) Provide financial reports to the Chief Justice.
- (h) Make an annual report of its activities to the Supreme Court each year. The report shall include a statement of income and expenses for the year.
- (i) Recruit and train volunteers, as defined by the Guidelines, to assist the Committee's work with impaired members of the legal profession.
- (j) Do all other things necessary and proper to carry out its powers and duties under this Rule.

Section 5. Executive Director. With the assistance of the Committee members, the Chief Justice shall hire an Executive Director.

Section 6. Powers and Duties of the Executive Director. In addition to the powers and duties set forth in this Rule or otherwise defined by the Committee or the Supreme Court, the Executive Director shall have the power and duty to:

- (a) Administer the Committee's work.
- (b) Appoint, with approval of the Committee, such staff as may be necessary to assist the Committee to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Committee's staff and volunteers.
- (d) Assist the Committee in developing Guidelines.
- (e) Supervise the maintenance of the Committee's records.
- (f) Assist judges, courts, lawyers, law firms and law schools to identify and intervene with impaired members of the legal profession.
- (g) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

Section 7. Sources and Uses of Funds.

- (a) The Indiana Supreme Court shall periodically designate a portion of the registration fee charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Judges and Lawyers Assistance Committee. The Executive Director shall deposit such funds into an account **designated "Supreme Court Judges and Lawyers Assistance Committee Fund."**
- (b) The Supreme Court shall specifically approve the salaries to be paid out of the Judges and Lawyers Committee Fund.
- (c) Not later than May 1 of each year, the Committee shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.

Section 8. Referrals.

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.
- (d) The Committee may refer judges, lawyers, and law students to outside agencies, organizations, or individuals for assessment or treatment upon such terms authorized by the Guidelines.

Section 9. Confidentiality.

- (a) All information, including records obtained by the Committee in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana, shall be confidential, except as provided by the Program Guidelines.
- (b) Nothing in this section prevents the Committee from communicating statistical information which does not divulge the identity of an individual.
- (c) Violation of the confidentiality provisions of this rule shall be subject to disciplinary proceeding under Indiana Admission and Discipline Rules 12, 23 and 26.

Section 10. Immunity. The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

Adopted effective Oct. 14, 1997. Amended Aug. 15, 2006, effective Jan. 1, 2007.

PROGRAM GUIDELINES FOR THE INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

The Indiana Judges and Lawyers Assistance Program (JLAP), established pursuant to Indiana Admission and Discipline Rule 31, provides assistance to judges, lawyers, and law students who suffer from physical or mental disabilities resulting from disease, chemical dependency, mental health problems, or age that impair their ability to practice or serve. JLAP neither engages in punishing nor disciplining members nor does it have the power or authority to do so. These policies and procedures have been adopted by JLAP and constitute guidelines approved by the Committee.

Section 1. Definitions.

Section 2. Purpose of JLAP

Pursuant to Admis.Disc.R. 31 § 2, JLAP was established to assist impaired members in recovery; to educate the bench and bar; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system. These guidelines have been adopted with these purposes in mind. The work of JLAP is designed to be educational, confidential, and responsive to the special situations faced by impaired members of the legal profession. The JLAP committee and the executive director may take any other action required to fulfill, yet remains consistent with, the stated purpose.

Section 3. Organization.

JLAP was established pursuant to Admis.Disc.R. 31. The Committee consists of fifteen (15) members appointed by the Court: seven (7) practicing attorneys, five (5) judges, one (1) law student, and two (2) judge(s), lawyer(s), or law student(s). The director operates under the direction of the committee. The clinical director, staff and volunteers operate under the direction of the director.

Section 4. Policies

(k) JLAP designs and delivers programs to raise the awareness of the legal community about potential types of impairment and the identification, prevention and available resources for treatment and/or support. [LETTERING AS IN ORIGINAL]

(l) JLAP works toward increasing the likelihood of recovery by encouraging early identification, referral and treatment.

(m) Any person may report to the director, clinical director, or any member of the committee that a particular member of the bar needs the assistance of JLAP.

(n) JLAP encourages and welcomes contact by any means. However, the confidentiality of e-mail communications is subject to the limitations inherent in Internet transmissions.

(o) Neither JLAP, nor any representative, in their role as a volunteer, engages in the practice of law while fulfilling their JLAP responsibilities. Upon admission to inpatient or residential treatment, or with a physical disability case, JLAP may:

1. work with the participant to find friends and/or colleagues to assist with the law practice;
2. work with the relevant local and state bar association committees to assist with the practice;
3. **should no other arrangements be possible, attempt to facilitate movement of a participant's case files to the respective clients upon receipt of written permission from the participant.**

Section 5. Referral Procedures

(a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

(b) Self-Referrals and Other Referrals

. . . v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.

3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:

- i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
- ii. assistance in locating treatment resources; and
- iii. assistance in development of continuing care including support and referral to JLAP.

4) The director may **terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.**

(c) Official Referrals

1) Upon receipt of an official referral for assessment/evaluation, JLAP will:

- i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
- ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
- iii. Contact the official referral source for background information and direction, if necessary.
- iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
- v. Release information and/or the final assessment/evaluation as allowed by written release.

2) Upon receipt of an official referral for a monitoring agreement JLAP will:

- i. Determine if all appropriate signed releases/authorizations have been obtained.
- ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
- iii. Develop a monitoring agreement.
- iv. Select and provide a monitor.
- v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the **agreement to explain JLAP's role and the agreement terms and conditions.**
- vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

Section 6. Services

(a) Any member is eligible for assistance and participation in JLAP. JLAP services will be provided without charge for initial consultation, in-house assessment, referral, and peer support.

(b) Referrals for medical and/or clinical evaluations, treatment, therapy and aftercare services will be provided; engagement of, and payment for, such services is solely the responsibility of the participant.

(c) Participants entering into a monitoring agreement with JLAP due to an official referral or upon their own initiative may be charged a monthly fee pursuant to **JLAP's fee policy as approved by the Supreme Court** from time to time.

Section 7. Treatment – Medical Assistance

(a) JLAP endeavors to provide a network of therapeutic resources that includes a broad range of **health care providers, therapists, and "self-help" support groups. JLAP will maintain a statewide list of available providers.**

(b) With the written consent of the participant, JLAP may maintain contact with, and receive information from, the treatment provider. JLAP may remain involved in support during treatment, and shall endeavor to provide peer support and aftercare assistance in early recovery.

(c) In cases where it is determined the participant is not in need of inpatient or residential treatment, JLAP may provide referrals to outpatient counseling resources and self-help groups such as 12-step programs.

Section 8. Confidentiality. . . .

Section 9. Role of Program Volunteers.

JLAP will maintain a statewide network of volunteers to assist the committee in carrying out the purposes of JLAP. Volunteers fulfill the following functions: (a) Assist in investigations, assessments, interventions, monitoring and support; (b) Appear on behalf of contract participants as witnesses at the discretion of the director; (c) Attend ongoing training on topics that enhance their ability to assist impaired members of the legal profession; and (d) Disseminate information about JLAP including the offer of presentations to local and specialty bars.

Maine Assistance Program for Lawyers and Judges

<http://maine.gov/dhhs/osa/help/map.htm>

The Maine Assistance Program for Lawyers and Judges (MAP) was created by rule of the State of Maine Supreme Judicial Court in September 2002 to confidentially address the issue of lawyer or judge impairment from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma, or other infirmity that impair the ability of a lawyer or judge to practice or serve.

MAP has three purposes:

- o To protect the interests of clients and the general public from harm caused by impaired lawyers or judges.
- o To confidentially assist impaired members of the profession to begin and continue recovery; and
- o To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession.

MAP was established to prevent or alleviate problems before they jeopardize a lawyer's or judge's practice and profession as well as offering help and assistance at any time.

Our services include help for a broad range of problems and personal issues such as: Depression, Stress and Burnout, Alcohol and Drug Abuse, Marital and Family Relationships, Financial Problems, Gambling, Career Concerns, Eating Disorders, Balancing Work and Family, including elder and child care.

1. Establishment of Maine Assistance Program for Lawyers (MAP)

- A. Establishment
- B. Purpose
- C. Funding and Administration

1. MAP shall be funded from assessments made annually on members of the Bar of Maine. Every attorney required to register in accordance with the Maine Bar Rules, other than suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board of Overseers of the Bar with the registration statement on or before August 31 as required by M. Bar R. 6(a)(1).

(2) MAP shall seek to establish additional private and public sources of funding.

(3) Funding for MAP may also include gifts or bequests from any source and earnings on investments of the MAP fund.

(4) The fiscal year of MAP shall run from July 1 to June 30.

(5) MAP may retain and invest its funds which may be carried over to future fiscal years.

RULE 2. MAP COMMISSION. . . .

Michigan Lawyers and Judges Assistance Program

<http://www.michbar.org/generalinfo/ljap/>

We provide free, confidential telephone and/or personal consultations for lawyers and judges and their families, as well as employees of the State Bar. Our licensed and certified mental health and addiction professionals offer these personalized services, as well as educational seminars and consultation services for law firms, large and small. If you are a member of one of the groups described above, and you, or someone you care about are struggling with issues related to emotional/mental health, substance abuse, gambling, divorce, stress, or life stage adjustment, call us today!

New Jersey Judges' Assistance Program

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

The purpose of the New Jersey Judges' Assistance Program is to provide assistance to members of the judiciary with personal, emotional, behavioral, substance, gambling and other personal problems that affect well-being and professional performance. Judges' Assistance provides free, confidential, professional assistance with these and other issues to you or a judge you know. The Program is funded by judges and all members of the Bar. Services for judges include help for a broad range of problems and personal issues such as: Depression, Stress and Burnout, Alcohol and Drug Abuse, Marital and Family Relationships, Gambling, Career Concerns, Eating Disorders, Balancing Work and Family

[Help starts with one phone call.](#) **The New Jersey Judges' Assistance Program shares the experience of** The New Jersey Lawyers Assistance Program, which has a proven 10 year record of helping New Jersey judges, lawyers, law students and law graduates - confidentially and free of charge. We are in a firsthand position to confirm what research studies show: addiction is highly treatable. Similarly, depression, anxiety, marital and family problems, career issues and other personal difficulties can be successfully managed and overcome.

[We can help, but only if you contact us.](#) When you know a member of the bench who may be having trouble, call for a private consultation. **Judges' Assistance is always confidential, so you need never be**

concerned that by contacting us, your call has the potential to do harm. In fact, your call may be career, or even life saving. Whether the judge you are concerned about seeks help or not, you are assured that **Judges' Assistance will help you better understand the problem. We will provide an assessment of the situation and assist you, your colleague, friend or loved one in getting whatever help may be needed.**

Washington State Lawyers Assistance Program

<http://www.wsba.org/lawyers/services/lap.htm>

The Lawyers Assistance Program (LAP) services promote the health and well-being of WSBA members and include education, referrals, and direct confidential mental health and addictions counseling. We offer services to Washington State judges, lawyers, and third-year law students. We do not provide legal advice or give lawyer referrals. [Click here](#) if you are a member of the public seeking legal advice or you need to find a lawyer.

What does the LAP offer?

LAP offers confidential ([APR 19](#)) counseling services for stress and time management issues, work/life balance, mental/emotional issues, career development, addictive behaviors, family situations, and health-related problems. Services include educational programs, assessment, referral, short-term or long-term counseling, follow-up, and training. LAP's professional staff is qualified to identify, assess, treat and refer lawyers in need of services. The extended staff includes LAP-trained peer counselors—lawyers who are available to support their colleagues through the challenges of the practice of law.

Call toll free! 800-945-WSBA (9722), ext. 8268

How do I receive assistance? Call us directly at 206-727-8268, or 800-945-9722, ext. 8268. Most lawyers self-refer to LAP. All calls and referrals are kept strictly confidential as required by [APR 19](#).

Who are the counselors?

Professional Staff— Licensed psychotherapists qualified to identify, assess, treat, and refer lawyers in need of services.

Peer Counselors— Lawyers who are available to support their colleagues through the challenges and rewards of the practice of law. The personal lives and professional experiences of these volunteer peer counselors motivate them to assist and serve as confidants. They spend hundreds of hours a year offering empathy and encouragement.

What is the cost? Initial assessment and peer counseling are free. Ongoing counseling is based on a sliding fee scale.

Is it confidential? [Under APR 19](#), confidential communications between a lawyer-client and staff or peer counselors of the Lawyers Assistance Program shall be privileged against disclosure without the consent of the lawyer-client to the same extent and subject to the same conditions as confidential communications between a client and psychologists.

Presentations LAP's staff and peer counselors are available to give presentations at your office or local bar meetings. Topics include management of work/life balance, communication skills, education about healthy lifestyle choices, stress management, secondary post-traumatic stress issues, substance abuse and other addictive behaviors, depression, grief, and loss. For information, call 206.727.8268.

Referrals Made to LAP by Family, Friends, and Clients of Distressed Lawyers

While LAP does not directly serve the person seeking help for a troubled lawyer, the principle of CONFIDENTIALITY applies to anyone who cares enough to risk employing the LAP's intervention or assistance.

Congratulations if you've had the courage to seek help for another person who happens to be a lawyer!

LAP also works with third parties—judges, law partners, and coworkers—who are concerned about a particular lawyer's ability to practice.

If you have an issue you would like to discuss, please call us *in confidence* at: **206-727-8268**.

TEXT FROM A BROCHURE OF THE ILLINOIS LAP

CONFIDENTIAL ASSISTANCE for ILLINOIS JUDGES

When A Judge Needs Assistance

LAP can provide confidential help

Has an Impaired Lawyer Appeared Before You?

Judges are in a position to help

Concerned About A Judicial Colleague?

LAP can help you help them

LAP Needs Your Help

Judges play a critical role in LAP services

CONFIDENTIAL ASSISTANCE for ILLINOIS JUDGES

Like all members of the legal profession, judges sometimes face problems -- stress, depression, balancing **work and family, alcohol or drug abuse, and compulsive behaviors**. But a judge's problem is more likely to go unnoticed and untreated because of the very nature of the judge's role in the legal system. Judges work in isolation, often shielding their problems from colleagues and associates. They are frequently reluctant to seek help because of fear, denial, embarrassment—even hopelessness. Above all, they are concerned about their problems becoming known and negatively impacting their status and reputation. **Lawyers' Assistance Program responds to judges who call for help with complete confidentiality and discretion.** Services include referral to professionals and treatment programs, peer support from judges who are LAP volunteers, and facilitated support groups.

When A Judge Needs Assistance

LAP can provide confidential help

Judges are often in the best position to see problems or impairment in their colleagues on the bench. Lawyers are reluctant to initiate judicial intervention for fear of retaliation by the impaired judge or alienation of other judges. Judges can help other judges most effectively with the support of trained LAP volunteer judges who understand the issues and are genuinely concerned about helping their judicial colleagues. When alcohol or drug dependency causes impairment, a peer intervention team of volunteer judges will meet with concerned individuals, educate them on the intervention process, and effectively intervene on the impaired judge with the goal of getting the judge to treatment. Intervention can interrupt the harmful, progressive, and destructive effects of chemical dependency. It is also highly effective with compulsive gambling. The intervention process is always conducted with respect and concern. Helping a colleague is the honorable thing to do.

Concerned About A Judicial Colleague?

LAP can help you help them

Judges are in a unique position to recognize impairment in the lawyers who appear before them. Sharing your concerns with other judges about the behavior of an attorney can help spot someone who needs

help. Most warning signs, such as changes in personality and job performance, are key indicators that something is wrong. A perceptive, understanding, but assertive judge can cut through the denial, enabling, and indifference and reach the impaired attorney as no one else can. LAP is always available to provide assistance when a judge expresses concern about an attorney. Services include referral to professionals and treatment, peer support from trained volunteers who have successfully confronted the same problem, and planned intervention to assist the attorney who may not realize he/she needs help. LAP also has twelve-step meetings and facilitated support groups that address early addiction recovery and depression.

Has an Impaired Lawyer Appeared Before You?

Judges are in a position to help

Judges play a critical role as trained LAP volunteers. One reason the peer intervention is so successful is that at least one judge serves on every intervention team – and, when a judge is the subject of concern, three judges participate on the team. Judges make an important difference in the outcome. While many judges have participated in our volunteer training and have become experienced intervenors, LAP needs more judges in all regions of the State. There is no requirement that a judge volunteer be in recovery. All that is required is that the judge cares and wants to help. Helping members of the legal community as a LAP volunteer can be meaningful and personally rewarding. If you are interested in becoming one of our judge volunteers, contact the Chicago or Alton offices for information about the next volunteer training event.

LAP Needs Your Help

Judges play a critical role in LAP services

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CONFIDENTIALITY IS THE CORNERSTONE

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Illinois Lawyers' Assistance Program Our mission• to protect clients from impaired lawyers and judges,
• to help lawyers, judges, and law students get assistance for alcohol dependency, drug addiction, and mental health problems• to educate the legal community about these issues

Attachment B

Preliminary Working Group Goals/Tasks for Discussion

EDUCATION [S. Townsend, Chair]	
Audience	Topics/Tasks:
Judicial Institute <i>[recognize different audiences have different needs]</i>	<p>Include Mental Health expert co-presenting with Judges Assistance Program staff varying the focus from year to year - alcoholism, gambling, depression, vicarious stress, etc.; promote disease concept, identification & treatment, range of impact; the real risks of substance use & abuse as well as the consequences of untreated stress in their work and personal lives; techniques of intervention; training for volunteer judges to help in crisis situations; include peer sharing</p> <p>Tasks: (a) identify what specific type of presentation they might be most open to, <i>i.e.</i>, a fellow judge, a LAP professional, a psychiatrist or other treatment specialist; a video, or a combination and in what combination; (b) identify what specific materials would be used for distribution as part of the program, as well as any on-going distributions in order to keep the information fresh in their minds</p>
New Judges	Signs and symptoms of addiction, depression, mental health issues, stress, and burnout; promote disease concept; identification & treatment, range of impact
Administrative Judges	annual program for his/her judges relating to peer assistance as well as assistance for members of the bar;
Identify other audiences/opportunities	Contact planners, set topic of mutual interest
LAT/LAP conference?	Highlight topic of choice; special event to announce the final report of the Panel, including education and training programs to the judiciary
Internet	Develop a website for the JAP; build a library of useful information

ADMINISTRATION [T. VanStrydonck, Chair]	
Goal	Task
Develop information/handbook	Identify treatment providers that OCA insurance will cover; Encourage a protocol for Administrative Judges when a judge in their district is impaired; A "how to manual" for administrative judges regarding identification and intervention; develop a Policy statement regarding what's acceptable <i>i.e.</i> Is it ok to drink during the day? Is being treated for mental illness an automatic disqualifier? Can one be sent for an evaluation without prejudice?
develop a friendly non-threatening administrative policy	to overcome the fear of career ending consequences
Establish a Judges Assistance Program entity	Find funding to support the program; recruit/retain staff; develop policies & procedures
Review Court rules and administrative directives	relating to illness of judges and make recommendations for change; recommend that treatment be available as an alternative to censure, suspension or removal of judges by the Judicial Conduct Commission in appropriate cases; what resources are available to supervising and administrative judges to address performance related problems that appear to be due to dependency or other illness/what authority to act do they have; develop an informal or formal referral mechanism with the Commission on Judicial Conduct, possibly a professional assessment step to determine eligibility for diversion alternatives to discipline

NYLAT Judge Advisory Panel Meeting
 July 11, 2007

RESOURCES [J. Owens, Chair]	
Identify	Judges willing to be a support network for other judge and as sponsors; establish and train a Judges Helping Judges statewide committee; to provide local legitimacy, role modeling, case finding, educational programs;
	Treatment providers and facilities, including private treatment professionals that have expertise/experience in treating judges for treatment of substance abuse and mental health problems; What are the sources of payment (Insurance?) What facilities outside of NYS provide dedicated services for judges
Develop	a full time Judges Assistance Program person to be available to all judges throughout the state
Obtain	Up to date research and statistical information on advances in treatment protocols from state and federal agencies-OASAS (NYS Office of Alcohol & Substance Abuse Services), NIDA (Nat'l Institutes of Drug Abuse), NIAAA (Nat'l Institutes of Alcohol and Alcohol Abuse), SAMHSA (Substance Abuse and Mental Health Services Administration) and NIMH (Nat'l Institutes of Mental Health).
Develop	Training for Judges serving as the support network for others, periodic conference calls among judges in recovery established
Organize	Quarterly dinners or evenings of reflection in each department with an annual statewide get together
Sponsor/network judges	Training for judges serving as the support network for others periodic, conference calls among judges in recovery established
Socializing	Quarterly dinners or evenings of reflection in each department with an annual statewide get together

NEW YORK STATE LAWYER ASSISTANCE TRUST

