

# SURVIVING BENCH STRESS

Alexis Resnick, Karen A. Myatt, and Priscilla V. Marotta

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The article presents a discussion of judicial stress, along with proposed solutions. The authors gathered information on the topic of judicial stress from judges via a survey and attendance at two Association of Family and Conciliation Courts (AFCC) conventions. Some of the daily stressors endorsed by judges included endless caseloads, severe time limitations, social isolation, lack of privacy, and the weight of deciding the fates of others. It is important for our judges to be provided with ways of relieving and preventing burnout and stress. Proposed bench stress solutions include incorporating the Psychologist Advocate Program into the judicial system and creating specific guidelines for judges to take sabbaticals, which will serve to enhance our judicial system and the entire community.

**Keywords:** *Bench stress; judicial stress; strategies; solutions; judges; burnout; occupational stress; psychology*

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The public perception of a judge is one of high status and service to the community. For many attorneys, appointment or election to judgeship may be the pinnacle of their careers and affords opportunity to make a difference. The transition from lawyer to judge, though, may be overwhelming and stressful. Once sworn into office, judges face endless caseloads, social isolation, and heightened public scrutiny.<sup>1</sup> Judges are expected to act properly and to maintain a certain demeanor. The public not only expects respectable conduct in the courtroom, but also outside in the real world. Thus, judges may feel a great deal of pressure to uphold an ideal image. Furthermore, their position of power allows them to decide the fate of others, which can be a tremendous burden on their conscience. Judges have to live with their decisions—right or wrong, good or bad. Additionally, when making decisions, judges must remain impartial. Consequently, a judge may feel restless when judging a case where parties act in opposition to his or her belief system.<sup>2</sup> Other stressors may stem from the various people in the courtroom: the parties, the lawyers, the jurors, the press, and the public. For instance, a judge may feel uneasy if a litigant is bothersome, stressed, or unprepared. At the same time, a judge may become stressed due to the added awareness of the public's high standards for their performance in the courtroom. "Bench stress," which may be problematic, can be lessened and effectively managed.<sup>3</sup>

## THE PUBLIC MICROSCOPE

Judges, along with other public figures such as politicians and celebrities, are placed under a public microscope. Two of the authors attended the 2007 Association of Family and Conciliation Courts (AFCC) convention in Washington, D.C. and had the opportunity to interact with judges nationally and internationally. During these discussions, all of the judges indicated that elected judges, as opposed to those appointed to their posts, are in the more difficult judicial position.<sup>4</sup> Elected judges, who face the pressure of reelection, are more vulnerable to media attacks that may damage their chances of reelection. One of the authors also attended the 2008 AFCC convention in Vancouver, where the judges focused on stress created by the issue of constant evaluation. One judge expressed, "I am under the scrutiny of the press and the public constantly. I answer to the chief judge, my supervising judge, and the head of the department. It is likely that any mistake I make will end up on

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the Internet or on YouTube.” Other judges shared this opinion. For example, the authors gathered information from judges in Broward and Miami-Dade counties via a survey, which was comprised of over thirty questions. Seven judges, who have served on the bench from around three to seventeen years, responded to the survey. A consistent finding was that all of the judges believe that they are held to a higher standard of conduct in the community than most citizens. One Miami circuit judge, who wishes to remain anonymous, stated, “I’m always careful, always on guard, whether I’m on the bench or off . . . Even at the grocery store, in blue jeans, I’m still a Judge.” Judges’ larger-than-life image coupled with their powerfulness in society leads to a public fascination with their lives.

With the public examining their every move, judicial figures face a loss of privacy. They strive to live up to the public’s high standards for them. Under constant spotlight and various vocational stressors, some judges have found it difficult to uphold their Code of Judicial Conduct. Across the various divisions of Broward County, there have been several highly publicized incidents that have reflected unfavorably on the prestige and status of judges. These public incidents ranged from smoking marijuana,<sup>5</sup> to divisive statements about a defendant’s courtroom attire,<sup>6</sup> to making inappropriate racist comments,<sup>7</sup> to allegations of accepting gifts.<sup>8</sup> These were judges who clearly, under the “bench stress” that they experience, made poor judgments. Judges, who need to be of sound mind to properly perform their functions, face stress that needs to be understood and addressed.<sup>9</sup> To reduce the prevalence of these offenses, policies that alleviate judicial stress should be implemented.

## JUDICIAL STRESSORS

In family court, the stakes are particularly high because the outcomes of judges’ decisions directly impact the future of the minor children who are subject to the litigation before them. Regardless of the rules of a jurisdiction, the charge of the judges is the same, that is, to make decisions in the children’s “best interest.” Those children may be real or a phantom to the judge in an individual case, as jurisdictions vary widely about the presence of the children in the proceedings. Some jurisdictions allow courtroom appearance, others permit the judge to engage in a direct interview in private, others allow communication through an attorney assigned to the children to advocate directly for the children’s desires, and others appoint guardians ad litem to act in the best interests of the children. Although the rules of the court may allow for these options, many judges find the involvement of children to be very controversial, and in practice, do not allow children into the controversy.

Unlike their colleagues in most other civil divisions and in the majority of criminal courts, family court judges play many roles in the matters that come before them. They act as jury, judge, and executioner. These judges do not have the benefit of sharing the responsibility of judging, which occurs in courtrooms where the judge controls process and evidence, and a jury makes decisions regarding guilt or liability. Family court judges are also charged with carrying out the consequences of their ruling, whether it is financial or custody-related. Unlike a civil or criminal court judge who handles the case, completes a trial, and moves on to the next matter, the entry of a divorce judgment is only the first step of a long relationship a family court judge may have with some of the parties before him or her. It is not uncommon for the court to handle the same case with the same parties and the same type of dispute for decades.

During the Vancouver convention, one family judge explained:

There are cases where I meet the parties when the children are infants and I’m still refereeing disputes when the children are in high school. The fighting never stops. I wonder whether what I am doing is actually effective. Sometimes I feel like I am the only one who truly cares about the kids.

As part of that convention, a group of 18 family court judges opted to attend a small breakout session to focus on the issue of the causes of “bench stress,” the effects of this stress on judges, and the ways of relieving or preventing judicial burnout. As one judge stated, discussing stress with

colleagues, “[it] is politically incorrect, I mean, it is just not done, and in any case my colleagues can offer sympathy but not any solace. They are dealing with the same issues, if not worse, everyday.”

The most conscientious of judges describe being “haunted” by the chance that they will make a wrong decision, which will have an everlasting negative effect on the parties before them and the children who will be raised by the parties before the court. One Atlantic seacoast family division judge explained, “[t]he thing that keeps me awake at night is whether or not I got it right.” The group of family court judges listed the possibility of making a wrong decision as the most stress-inducing. Some of the other daily stressors listed by this group were:

- Overloaded court dockets.
- Severe time limitations.
- Isolation; one judge explained, “I miss my family lawyer friends from law school, the same ones I grew up with in the profession.”
- Prohibition from responding to attacks; one judge described, “[n]o matter how vicious or ridiculous the allegations about me or what I did, I never get to tell my side of the story.”
- Making decisions without all the facts.
- Dealing with pro se litigants because there are no lawyers to shield judge from the parties’ antagonism and help control the proceedings.
- Hearing everyday about the destructive things people do to each other and their children and feeling powerless to do anything about it.

The judges also list as overall stressors:

- Lack of reliable security measures at the courthouse in general and in their own courtrooms.
- Threats on their lives and physical attacks on them and their colleagues.
- Lack of privacy in their personal lives and affairs.

The Vancouver participants describe the physical impact of bench stress on family court judges:

- “I am completely exhausted.”
- “Near constant fatigue.”
- Loss of energy.
- High blood pressure.
- Weight gain.
- Backaches.
- Increased risk of heart disease.
- Suppression of immune system.

The mental and emotional toll was also recognized:

- “I lose patience with myself, the lawyers, and especially pro se litigants.”
- Quickness to anger.
- Loss of feeling and compassion.
- Boredom and guilt.
- Isolation.
- “I begin to reach for black and white rather than see shades of gray.”
- Preoccupation with work.
- Daydreaming.
- Lose objectivity.
- Moodiness.
- Feel depressed and anxious.

Negative “quick fixes” were acknowledged:

- Increased use of alcohol.
- Use of marijuana.

### STRESS RELIEVERS

The judges from the Vancouver conference reported that the ability to get together with similarly situated judges from outside their home jurisdictions to discuss these issues and find some solidarity among members was a top stress reliever. Research and writing in one’s area of expertise, teaching and mentoring, “[e]xercise, exercise, exercise,” developing hobbies outside law, setting boundaries, vacations, pets, attending AFCC conferences for “wine and whine” sessions, staying in touch with supportive mentors, and talking to colleagues were also listed as stress reducing. Judges need to remind themselves that they only see the worst cases, and they did not create the problems, even though it is their job to try to solve them.

### CONTROLLED EMPATHY

Judges who choose to sit in the family division are often people who consider themselves as “helpers” and the profession as one that will allow them to do something they consider morally important: to assist families in need. When considering testimony from the people who appear before them, judges must be empathetic; however, their empathy must be controlled and professional, similar to that of a psychologist. The judge must refrain from reacting to his or her emotions and stifle visceral reactions, as the court is not supposed to consider testimony or make rulings out of sympathy. Monitoring one’s own feelings and reactions comes with a price: controlled empathy is the most stressful and dangerous type of empathy.<sup>10</sup>

Controlled empathy by itself involves vigorous neurological activity.<sup>11</sup> When a helping person, such as a judge, is listening to the shocking, sad, or awful stories of another, it may appear as though he or she is calmly sitting and listening, but the activity taking place inside of the judge’s brain and body is anything but calm. Not only is the helper absorbing the shocking story, but he or she must respond to the content in a constrained manner that is geared toward helping the suffering person.<sup>12</sup>

Recent brain scan techniques have allowed scientists to study the effects of empathy on the brain. The results show that the brain reacts differently when an individual is controlling his or her empathy as opposed to when he or she is considering such stories in an unprofessional setting, such as when dealing with colleagues, friends, or one’s family.<sup>13</sup> When a person engages in automatic empathy, he or she can let out the tension freely. Both hemispheres of the brain operate to achieve balance, in a process known as homeostasis.<sup>14</sup> With the involvement of both brain hemispheres, the listener can imagine the event as if it is happening to him or her, and the listener reacts accordingly. The listener may emote in some fashion, cry, appear angry or sad, or react physically.

With controlled empathy, that process of homeostasis is interrupted. Instead of relying on both hemispheres of the brain, the listener changes the automatic process of empathy in order to remain in control; this “taking control” of an empathic response taxes the right hemisphere of the brain.<sup>15</sup> The listener must rely on his or her internal resources in order to stop the physical or emotional reactions of automatic empathy as well as continue to perceive what he or she is being told. This process of restricting one’s emotions, feelings, and reactions to hearing traumatic stories on a continuous basis can be quite distressing.

Judges enter the profession with the highest and best purpose and intentions. They expect to hear difficult stories from bewildered and disappointed people. They also expect to hear about broken families, responsibility, and blame, along with heart-wrenching testimony and situations that are hurtful and frightening to the participants and their children. Over time, the tales of violence, abuse,

neglect, ignorance, and the perpetrator-target relationship, combined with a lack of resources and lack of public support to do much for these individuals besides entering judgments and hoping for the best, takes its toll on the listener. Judicial college does nothing to prepare family court judges for this aspect of the job.

### VICARIOUS TRAUMA

Few judges recognize their risk of experiencing “vicarious traumatization” and “secondary traumatic stress.”<sup>16</sup> Vicarious traumatization refers to a transformation in an individual’s belief systems about his/her sense of self, others, and the world due to exposure to and engagement in traumatic information.<sup>17</sup> A similar concept, secondary traumatic stress, or compassion fatigue, resembles post-traumatic stress disorder (PTSD); however, the signs and symptoms of secondary traumatic stress have been acquired in an indirect manner.<sup>18</sup> Individuals who are exposed to trauma indirectly may re-experience the event through dissociation and intrusive images, persistently avoid feelings, thoughts, and intimacy, and experience heightened arousal (i.e. increased anxiety, anger, and irritability) that can lead to impairment in functioning.<sup>19</sup> Some other symptoms include emotional numbing, feeling fearful or overly concerned for family members, somatization, in which psychological symptoms present as physical ailments, a diminished capacity to enjoy significant activities, and feelings of incompetence.<sup>20</sup>

There is significant data reporting that repeated exposure to others’ traumatic events can result in post-traumatic stress symptoms.<sup>21</sup> It is important to note, however, that not every person exposed to trauma vicariously will develop posttraumatic symptoms. Research suggests that it is *not* the severity of the trauma but the attitude and beliefs of the survivor or the observer (i.e. perceived level of danger) that will determine risk for post-traumatic stress symptoms and PTSD.<sup>22</sup> The literature has shown that the possession of certain factors may increase the risk of developing vicarious traumatization and secondary traumatic stress. For instance, a previous trauma history, life stress in combination with prior psychological difficulties, a lack of social support, controlled empathic sensitivity to the victim’s suffering, unresolved emotional issues that relate affectively or symbolically to the suffering seen or heard, and negative coping responses (i.e. beliefs of helplessness, negative self talk, alcohol abuse, etc.) are just a few factors that may enhance one’s chances of acquiring the symptoms.<sup>23</sup> Think for a minute—day after day, judges hear heart-wrenching stories of conflict and despair. Therapists have been trained in strategies to protect themselves from vicarious traumatization—what are we doing to protect our judges?

### BENCH STRESS SOLUTIONS

Judges need not only our respect, but also our help. “Judicial friendly” assistance will combat “bench burnout.” The first solution is the Psychologist Advocate Program, which is based on a concept termed Psychological Strategic Planning proposed by coauthor Dr. Priscilla Marotta, President of the Center of Psychological Effectiveness. The Psychologist Advocate Program would allow judges to have a professional advocate to converse with in a confidential manner and would utilize the specific approach of cognitive-behavioral therapy (CBT), which can significantly reduce stress and has been proven effective through research.<sup>24</sup> Judges, protected by the Health Insurance Portability and Accountability Act (HIPAA) and guaranteed privacy, would benefit from mandated cognitive-behavioral sessions once a month. By mandating the sessions, any discomfort with seeking assistance is removed. The monthly sessions are normalized as a preventive measure to assist professionals in high stress positions. There would be no additional costs to the court system, as the insurance coverage in place for judges would cover the costs. The state psychological association would facilitate the management of the program on a pro bono basis.

In the Psychologist Advocate Program, professional licensed psychologists would be assigned to the judges at the time of their judicial assignment so that all judges would receive a psychologist advocate. A collaborative psychologist-judge team would be created. The psychologist would meet with the judge in his/her chamber once a month for a ninety-minute session. The clinical focus would be on stress management, decision-making and problem-solving strategies, management of cognitive overload, the prevention of vicarious traumatization and secondary traumatic stress, and life balance strategies. In addition to improving mental health, the proactive interventions used by the psychologist-judge team can have a positive impact on physical health. A plethora of research has been generated on the mind-body relationship. Consistent exposure to a high stress environment lowers the immune system and creates high vulnerability to disease.<sup>25</sup> Diseases that can be positively impacted by psychological intervention include: cardiac problems,<sup>26</sup> high blood pressure,<sup>27</sup> and gastrointestinal disorders.<sup>28</sup>

In the Psychologist Advocate Program, the judges would have the option of requesting a change of psychologist every six months, which builds in a flexibility to accommodate changes in the psychologist's schedule and allows judges to reassess the psychologist-judge team and change to a different psychologist, if necessary. Many times, the judges may need to transfer the professional relationship until the strongest advocacy can be achieved. For example, variables of personality, speaking style, similarity of values, and the ability to develop strong trust will need to be tested over time. Once the strong psychologist-judge team is established, the judges will have the needed level of advocacy and professional attention to avoid some of the burnout behaviors that have devastated judges in the past. Judges are valuable and dedicated public figures that deserve our best care. The creation of psychologist-judge teams will provide this optimal level of care. Our judges deserve this benefit.

The previously mentioned survey revealed important information supporting the need for psychological support from judicial stress. For instance, one notable finding was the recommendation that no new judge should be assigned to family and child cases. The responding judges who have worked in the family division said that the assignments in this division were particularly stressful. When asked about stress, the Honorable Ronald J. Rothschild, a circuit court judge from Broward County with experience in various divisions of the court, including the family division, said, "there are no days that I am stress free; it's always a matter of degree." Further, Judge Rothschild indicated that the caseload, coupled with time pressures, caused the most job-related stress. Other judges who responded to the survey were in agreement that the caseload volume was taxing. In a Florida Bar News article featuring Chief Judge William Roby of the 19<sup>th</sup> Judicial Circuit, Judge Roby stated,

Our family judges are working in their offices from 8 a.m. to 8 p.m. on many days, and are taking vast amounts of paperwork home at night and on weekends to complete. These work habits, workloads, and type of stressful cases are an unhealthy combination for any person, especially people who are under tremendous stress from hearing extremely emotional cases.<sup>29</sup>

Given the data that Florida faces an increasing caseload, as cases in Florida have increased four percent from last year, along with the fact that Florida is well below the national average in judges per 100,000 population, as Florida has 4.5 judges per 100,000 population and the national average is 7.3, it comes as no surprise that Florida judges are feeling stressed.<sup>30</sup>

Another finding of the survey was that even though the court system provides support in the form of educational and training opportunities, many of the judges indicated that emotional support comes mainly from family and friends. As far as emotional support from the court system goes, a Broward County family court judge stated, "we have marginal support, basically we are on our own." In regards to the educational and training opportunities, the judges appeared to agree that the judicial training provided to new judges is sufficient; however, there were some suggestions for training in mental health issues, high conflict cases, and higher-level decision-making skills.

The second key bench stress solution is that judges should also have the option to take a judicial sabbatical, meaning a period of leave time that is spent pursuing other interests.<sup>31</sup> Sabbaticals, which are available to teachers, businesses, law firms, and the government, may

improve efficiency and productivity; enhance creativity and reflective powers; provide the opportunity for educational development and professional and personal growth; reduce stress; improve morale; attract a greater number of highly qualified individuals to the bench; decrease attrition (with its attendant costs); and put judges more in touch with the communities whose interests they serve.<sup>32</sup>

Of course, there would be certain criteria judges would have to meet to qualify for a sabbatical leave. For instance, the state would have to decide on a specific number of years of required prior judicial service before allowing a judge to take a sabbatical. Furthermore, the state must specify the length of the sabbatical and must figure out how much compensation to allot to the judges on sabbatical leave. There must also be guidelines as to who will take over the judge's caseloads and what the judge will be allowed to pursue during the sabbatical. There are many issues to be considered; however, once these concerns are addressed, the justice system and society will benefit from the newly revitalized judges.

The responses from the survey that the judges completed revealed that a sabbatical anywhere from a couple of weeks to six months would be helpful. Additionally, the judges recommended spending a sabbatical: attending the National Judicial College or an equivalent institution, working with relief organizations, writing and teaching at the university level, exchanging positions with judges in other states to experience regional differences and issues, and traveling. Granting sabbatical leaves for judges will be an effective solution to the bench stress problem.

Judges, who experience a great deal throughout their day of work, may feel strained at some point. The two bench stress solutions of incorporating the Psychologist Advocate Program into the judicial system and creating specific guidelines for judges to take sabbaticals will enhance our judicial system and the entire community. Judges would ultimately have the opportunity to feel mentally refreshed, leading to productivity, satisfaction, and "bench well-being."

## NOTES

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