

Judge Paves Way For Others With Mental Health Disclosure

By **Carolyn Muyskens**

Law360 (April 28, 2023, 8:58 PM EDT) -- A state supreme court justice's rare public statement about his mental health could help destigmatize conversations about mental health amid a movement around the country to address judges' well-being.

Michigan Supreme Court Justice Richard Bernstein **announced April 18** that he was undergoing "short-term mental health treatment" and would not be present at the court's April 26 oral argument session. His statement encouraged others to seek help if they are struggling.

For the burgeoning judicial wellness movement, Justice Bernstein's openness was significant because such conversations are key to encouraging others on the bench who may be in distress to seek mental health resources, experts told Law360.

Bree Buchanan, a consultant on lawyer well-being and founding co-chair of the National Task Force on Lawyer Well-Being, applauded Justice Bernstein in an interview with Law360, noting the most effective way to reduce stigma around mental health is hearing about the experience of someone one knows or respects.

"As long as it stays secret, we can't do anything about it. The first thing we have to do is to talk about it," Buchanan said. "Judges and lawyers are so brilliant and such fabulous problem solvers. I've always believed if we can just get it to where we can talk about it, we'll figure it out."

While the legal profession has been marshaling resources for lawyers' well-being for years — and many of those initiatives apply to judges as well — research and programming targeted at the judiciary has lagged behind programs for the profession as a whole. But attention to the unique needs of judges is growing.

A few years after a pair of landmark studies on lawyers and law students, the American Bar Association published a national survey of stress in the U.S. judiciary in 2020, the largest of its kind, that found that more than one in five judges surveyed exhibited at least one of the criteria for depression, 23% met criteria for "stress at a level that could be debilitating" and 18% met criteria for a mild to severe anxiety disorder.

The judicial survey identified the top two sources of stress among judges as the "importance/impact" of decision-making and heavy caseloads.

Other common sources of judicial stress were dealing with unprepared attorneys and self-represented litigants, long hours of work, public ignorance of the courts, isolation in judicial service, hearing contentious family law issues, insufficient staff support and increased incivility in the courtroom.

Retired state and federal judge Jeremy Fogel, now executive director of the Berkeley Judicial Institute, told Law360 that mental health problems among the judiciary are clearly "more widespread than is acknowledged." Most ailing judges keep their struggles private, so Justice Bernstein's public acknowledgment stands out, Fogel said.

"I think it's actually quite courageous on his part. It's not something that happens very often," Fogel said.

Fears about how a mental health diagnosis might change how others perceive the individual with the illness are compounded for legal professionals by concerns about how such a disclosure could affect their careers or potentially prompt a complaint with a regulatory board about fitness to practice law or serve as a judge.

Molly Ranns, director of the State Bar of Michigan's Judges and Lawyers Assistance Program, told Law360 the most common barriers preventing attorneys from seeking help are a fear about others finding out and concerns regarding confidentiality and privacy.

"We know that legal professionals have statistically and significantly higher levels of mental health and substance use issues than the general population, yet at the same time they're concerned about seeking help for these issues. So it's really important that we start to generate these conversations to be able to reduce stigma so that they do feel comfortable seeking help when it's needed," Ranns said.

Stigma reduction is a big focus for Ranns, as is ensuring judges and lawyers understand that lawyers' assistance programs are completely confidential.

The reputational concerns over seeking help are heightened for judges due to their high-profile public role and, for many state judges, vulnerability to election challenges.

Buchanan of the National Task Force on Lawyer Well-Being recalled that during her days answering the phone for a national helpline for judges, small-town judges were afraid of their cars being recognized in the parking lot of the town's only therapist.

Heidi Alexander, director of the Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being and president-elect of the Institute for Well-Being in Law, told Law360 that stigma about mental health remains "a huge, huge problem everywhere, and certainly among judges," and statements like Justice Bernstein's "signal that it's OK to get help."

But judges don't have to go public with their mental health journey like Justice Bernstein to help reduce stigma, Alexander said.

"The more judges that are willing to talk about their own challenges, even if it's just among judges, that's going to help reduce the stigma so that people can feel less isolated and can actually get the support and help that they need and think about what changes they can make to improve things," Alexander said.

The ethical rules that restrain judges from talking about pending cases can contribute to judicial isolation because jurists have few places they can be truly open about their work and talk about how the job is affecting them. Taking the robe can be isolating in multiple ways, including the social distance created by a judge's elevated status and the need to maintain a certain image outside the courtroom.

But pairing judges with other judges willing to lend an understanding ear offers a workaround.

The 2020 judicial stress survey revealed that judges are eager for this kind of peer connection. The top stress-reduction strategy judges wanted to engage in was "asking for peer support," with 83% of judges expressing interest. A close second was offering help to other judges, according to the survey.

Judge Sandra Engel, a retired state court judge who now serves as the New Mexico State Bar's judicial wellness program manager, has been organizing judicial roundtables and is launching a peer-coaching program for judges.

Programs like New Mexico's roundtables and peer coaching allow judges to reduce isolation and support one another while maintaining the confidentiality that so often prevents judges from being able to ask for help in their professional and personal lives, Engel noted.

Engel said the idea of judicial well-being is new to her state and something that was rarely, if ever, discussed when she was on the bench. Interest in her programs is developing gradually as she and

others in the judiciary introduce the conversation.

"I won't say they're clamoring for it, but they're open to it, I think. I do think the culture is shifting in our state," Judge Engel said.

State supreme courts' leadership will set the tone for the rest of the judiciary in making mental health a priority, the Massachusetts Supreme Judicial Court's Alexander said.

"I think there are a lot of judges and certainly state chief justices that are really passionate about this. I do think there's more interest. I think it's on the agenda of every single state well-being task force and lawyer assistance program," Alexander said.

--Editing by Kelly Duncan and Emily Kokoll.