



1440 G St. NW, Ste. 800
Washington, D.C., 20005

Hon. Susan J. Goldberg
First Circuit U.S. Court of Appeals
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA, 02210

March 29, 2017

Dear Circuit Executive Goldberg:

My name is Gabe Roth, and I am executive director of [Fix the Court](#), a national nonprofit organization that advocates for a more open and accountable federal judiciary.

With long-term vacancies and longer life expectancies conspiring to increase the average length of federal judicial service and, with it, the potential for cognitive impairment, I am writing to inquire if and how the First Circuit is ensuring, via specific programming, that its judges are holding their offices while operating at full mental capacity.

The 2006 Breyer Committee [report](#) on the implementation of the Judicial Conduct and Disability Act noted that “informal efforts” – i.e., those that occur outside the complaint process – “remain the principal means by which the judicial branch deals with difficult problems of judicial misconduct and disability,” including mental decline.

I am in complete agreement. And yet, more than a decade after the Committee announced its findings, the public does not have a sense of whether those recommendations have been implemented across the federal judiciary.

In fact, only two circuits to my knowledge have created outreach and intervention programs related to aging that both identify impairment and actively promote cognitive health with the goal of mitigating decline. The Ninth Circuit, with its Judicial Wellness Committee, and the Tenth Circuit, with its Judicial Health and Assistance Committee, encourage judges to undergo mental health assessments, host neurological experts for lectures and empower a judge’s friends, family or colleagues to step in if they believe there is reason for concern.

I asked AO Director Jim Duff about whether the Judicial Conference would consider creating a national Judicial Wellness Committee, either as a standalone body or as part of the Conference’s Committee on Judicial Conduct and Disability, to study this issue. [He declined](#), stating, “Each federal circuit has a judicial council that by statute formulates internal policies for its own governance.”

I am now turning to you, the circuit executives of the U.S. Courts of Appeals. Though I believe that Congress is within its powers to strengthen the Judicial Conduct and Disability Act or even create an inspector general’s office to investigate claims of mental impairment, no one, as one jurist told the Breyer Committee, wants to be in a position to “slap a formal complaint [...] on an 83-year old judge who has rendered distinguished service.” That is why the informal model adopted by the Ninth and Tenth Circuits seems most practical.

As Chief Judge Phyllis Hamilton of the Northern District of California, who chairs the Ninth Circuit's wellness committee, recently [told](#) the Associated Press, “If we wish to retain the goodwill and confidence of the public in our ability to render justice by judges who are unimpaired, we have to take steps.”

If you haven't already, I hope you consider working with your judicial councils to create a circuit-wide approach to mitigate the potential for cognitive decline among judges.

I look forward to hearing from you soon.

Sincerely,
Gabe Roth
Executive Director
Fix the Court