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## ARTICLES

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### The Road to Judging

By Hon. J. Michelle Childs

My road to judging has been a fortunate, yet unexpected path. I began my legal career the traditional way. I clerked for law firms during the summer months of law school, then eventually I worked for a large law firm and practiced in the areas of employment and labor law, general litigation, and domestic relations. During my tenure there, I performed the typical tasks of advising clients, researching and writing documents to be filed with the various administrative agencies and courts, and handling complex legal matters. Of course, as in any firm, in addition to performing the daily tasks associated with the business of the firm, I had to formulate a marketing plan to seek opportunities to procure new clients and eventually become a partner with the firm. I found that the most enjoyable and productive way for me to meet these goals was to join and assume leadership positions within bar organizations, do community service for programs in which I had a sincere interest, and speak at seminars to develop expertise in my practice areas. These activities resulted in business referrals, highlighted the importance of networking, enhanced my legal skills, and contributed to my personal development and ability to foster meaningful relationships.

Shortly after I became partner, I received calls from the governor's office offering me a significant position within state government. Initially, I declined the offer, because, after all, I had just become the first black female in the State of South Carolina to become a partner in a large law firm. After several discussions with colleagues and mentors, I finally realized that a wonderful opportunity had been presented to me and that I could resume work with a law firm or "bill hours" at any firm. I accepted an appointment to the position of Deputy Director for the South Carolina Department of Labor, Licensing and Regulation's Division of Labor. In that position, I had responsibility for six programs: wages and child labor, occupational safety and health, occupational safety and health voluntary programs, labor-management mediation, elevators and amusement rides, and migrant labor. This position afforded me an opportunity to further develop my leadership skills, collaborate with business and industry to enhance governmental relations, and gain an appreciation for the political savvy and diplomacy necessary to succeed in any profession.

Near the conclusion of my term at the Division of Labor, I received various offers for other opportunities within the legal profession. I began contemplating my choices when I received another call from the governor's office. This time I was asked to consider an appointment as a Commissioner for the South Carolina Worker's Compensation Commission, which I graciously accepted. During my tenure with the Commission, I served in a quasi-judicial capacity and heard workers' compensation claims, ruled on evidentiary matters, wrote orders disseminating my

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findings of facts and conclusions of law, and served in an appellate capacity to review rulings of other commissioners. Then came more calls. There was soon to be an opening for a state trial judge position. I aspired to become a judge at some point in my legal career but did not expect to pursue this goal so early. But, given that these positions become available so infrequently, I decided to run in order to fare well enough to be considered for a position in the future.

South Carolina, unlike most states, elects its judges through the general assembly. While I was elated that I did not have to raise money, give speeches, or attend various civic or community functions to attain name recognition, the election process was still a daunting task. Candidates were required to file an extensive application regarding their qualifications and other credentials; attend interviews before a judicial merit selection panel, the South Carolina Bar, a citizens review panel, and sometimes individual legislators; and take an exam on evidence, criminal and civil procedure, the judicial canons, and the latest South Carolina appellate decisions. To be successful, the candidates also had to spend a substantial amount of time with legislators to “present their case” on their qualifications to become a judge, attend various caucus meetings and receptions, and garner support for their candidacy from friends and community members who were willing to call upon legislators to cast the appropriate vote. After weeks of campaigning, my fellow candidates pulled out of the race, and I was elected circuit court judge by acclamation. I learned from this experience that you have to devise and implement a personal strategy for your particular situation and adapt to the politics (which are always part of the equation) associated with the situation.

I served as a state circuit court judge for four years. In that capacity, I served as chief administrative judge for general sessions (criminal court) and business court. The state court volume of cases is immense and continually constrained by budgetary deficits. My work in that court was extremely rewarding. I always respected and honored my judicial oath and was humbly aware of the rights, liberties, and responsibilities of individuals, businesses, and governmental entities that I affected on a daily basis. Despite the tremendous caseload, I approached my job with vigor, deliberateness, and a conscious awareness that I was placed in this position to administer justice fairly and impartially to all litigants.

Then came more calls. When President Obama assumed office, a few district court judges advanced to senior status, and their seats became available. I had not considered the possibility of becoming a federal judge, because I assumed that it was a very arduous political process—and, of course, it was. One has to be nominated by the President of the United States and be confirmed by the United States Senate. After extensive vetting, two members of the United States House of Representatives submitted my name to the president for his consideration of me for the position of United States district judge. During this process, I had to fill out extensive application materials and questionnaires, submit to an FBI background check, and interview with various attorneys in the White House, the United States Department of Justice, and the American Bar Association. I was required to attend a Senate judiciary panel hearing, and then wait patiently until I was finally confirmed.

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I have enjoyed the paths along the road to judging. With each position, I have been able to build upon my strengths and meet new challenges. Each of my life's experiences and relationships have prepared and nurtured me for the next set of experiences. While navigating through each phase of my legal career, I have learned that having great mentors from a variety of backgrounds and experiences is an invaluable asset. Do not be shy about seeking out advice or direction from your mentors, particularly in areas in which they may be more knowledgeable or times when you need confidential guidance on any situation. My ability to succeed at any point in life has also been dependent on my ability to balance my home and work life and other relationships. One must remember to take the time to build and foster meaningful relationships, treasure your friendships, and value your time.

My road to judging has been characterized by an appreciation of the discipline and preparation required to master the necessary skills for the task at hand; the need to be ready and competitive for all opportunities (particularly, the unexpected); the desire to conquer the challenges of any position; and the willingness to recruit and mentor others to prepare and guide them for such opportunities.

Hon. J. Michelle Childs is with the United States District Court in Greenville, South Carolina. She currently serves on the ABA Board of Governors Legal Opportunity Scholarship Committee.

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## Transitions: It's Not Our Mother's World

By Hon. Joan F. Kessler – June 1, 2011

How women manage the transitions from assumptions to reality is a skill we all develop in nearly every part of our lives—pretty much beginning when we discover that boys may not think or act the way girls do. For example, my four-year-old grandson assumes that everyone likes to dig in the dirt, play with worms, and run really fast just about everywhere. By contrast, my three-year-old granddaughter totes an eight-inch doll called “Baby” pretty much everywhere, is so anxious to “help” with anything a grown-up is doing that a dishwasher gets loaded/emptied or laundry gets folded only when she is asleep, and is fiercely independent about what she will wear and dressing herself.

Learning to accommodate the difference between personal assumptions and experienced reality can be a challenge throughout a woman's legal career. For me, it has certainly always been an interesting experience. I assumed law school would be much like college, only more detailed and more focused. The reality when I was in law school was that it was more competitive than anything I had ever experienced or could have imagined. I made the transition and got my J.D.

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degree by giving up my social life—except for part of one weekend evening after studying most of the day.

By the time I finished law school, I was married. Soon after law school, we had children. All mothers have experienced the transition from the assumed Madonna-inspired image of motherhood to the reality of acute sleep deprivation and wondering why a highly educated adult person (you) cannot figure out what a howling eight-pound bundle of humanity actually wants. But we manage. And the children grow. And many of us choose to remain active in the legal profession through it all. It is my choices within the legal profession that, for me, provided a formative sequence of transitions.

Soon after law school and a federal clerkship, I joined a medium-size firm to do the work I had discovered I loved—litigation. After approximately five years with the firm, President Jimmy Carter decided to break traditional assumptions and appoint some women as United States Attorneys. I was one of the lucky four he picked. I was thrilled with the opportunity to have a whole new direction for my legal career. I assumed that working with various agencies in the federal government—such as the ones that investigate crimes—would be much like working with the attorneys with whom I had practiced and against whom I had tried cases. The reality was that some law enforcement agency heads—many of whom were senior enough to have been my father—did not seem pleased to have a woman of my age and political background reviewing their cases and supervising decisions about what the grand jury would consider. (The U.S. Attorney position is a presidential appointment nearly always going to a member of the president's party.)

My assumptions and their reality displayed some deeply engrained stereotypes in all of us. We all had to transition to a productive working relationship. We individually moved from what might be described as cautious circling to mutual accommodation to collective cooperation. It took a lot of work to get there, but by the time I left the job, I believe the teamwork was effective, efficient, and beneficial to all concerned.

I left the federal government when the occupant of the White House changed. This time I joined a very large law firm. I was now used to being “the boss,” and I assumed I would have more authority over my work than what had turned out to be the reality. I also assumed there would be a level of personal formality and hierarchy to which I might have difficulty adapting. The reality was quite different. My colleagues were very smart, focused, and generally friendly. The atmosphere was an interesting blend of collegial and competitive. This combination, in its intensity, was a totally new experience for me. Adapting to the changing nuances of practice in a large firm was a constant learning experience. Apparently, the transition worked. Before joining this firm, I joked that I could not keep a job because I had not remained in the same job for more than five years. I assumed that would be my likely tenure there as well. The reality was that I remained a part of the firm until I retired from private practice more than 20 years later.

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Retirement from the practice of law was the most dramatic in my series of professional transitions. The first transition was when I ran against an incumbent judge for a seat on our state Court of Appeals. The intensity of the campaign, and the physical and emotional investment involved, exceeded all of my assumptions. The change from working in a large law firm to the campaign trail was like moving from a very assertive and determined business in a growth surge to being the ringmaster of a large three-ring circus. The days began early and ended late. For nearly a year, I attended any gathering I could find that would let me introduce myself to people—breakfast groups, noon lunch programs for seniors, noon lunch programs for others, church socials, political meetings, fish fries, community gatherings, and bowling alleys. During the summer, I passed out my literature and talked to people at parades, picnics, and church and community festivals. And when things were “quiet,” I was on the phone or involved in Bar Association activities. It was a frenetic time!

In the end, I narrowly won. Victory propelled me into an equally dramatic transition that, again, was personally more profound than I had imagined. If the campaign trail was my three-ring circus, the Court of Appeals was a move to a cloistered mountain retreat. My colleagues and support staff are wonderful, intelligent, and friendly people. But there is a big difference between interacting with the same half a dozen or so people each day and interacting daily with dozens of different and frequently unfamiliar people.

I had been active in political matters for decades; I could not do that now. I had learned to raise money for charitable and political causes; I could not do that now. I had been an advocate for a variety of issues involving women and children; I could not do that now. I had been active in a variety of bar associations for my entire legal career; now I felt uncomfortable doing that, because I sensed the lawyer deference to my judicial status (much as I had felt the need to defer to judges when I was still a lawyer) interfered with some of the work a bar association needs to do.

I have always needed frequent interaction with people other than my coworkers. It keeps me balanced with a broader perspective than the focus of my job. I searched out business and professional groups not involved in social action or politics to find the outlets I needed. I volunteered to do administrative work for a community group for young leaders in which I had previously been a member. I joined Inns of Court. I found projects in each of these groups in which I could be involved and that caused no Judicial Ethics concerns. I made new friends, almost none of whom were lawyers.

I assumed that the work of an appellate judge would be interesting. The reality is that it is stimulating beyond my expectations—well, most of the time. The practice of law at my former firm, over the years, became more and more niche-oriented. One was no longer simply a litigator; one was a litigator with a narrow substantive specialty. The Court of Appeals could not be more different. The transition to general appellate jurisdiction was initially like an advanced degree seminar. Our court is the only appeal available to all litigants as a matter of right, so we

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decide appeals involving everything from serious felonies to juvenile proceedings, from multi-million-dollar environmental clean-up cases to guardianship proceedings, not to mention a plethora of self-created litigation by incarcerated persons who would rather not be incarcerated. As a matter of intellectual stimulation, this job is exciting, interesting, and challenging. I could not be happier with the work.

In our careers, we likely will not have the same transitions, but each of us will have a career full of opportunities, challenges, and choices. Our assumptions will be challenged. Our transitions will be successful, in large part, based on how willing we are to reexamine the bases for our assumptions and adjust our actions to the reality we discover. I cannot imagine a more stimulating career path for my energetic and creative sister-colleagues.

Hon. Joan F. Kessler is a judge with the Wisconsin Court of Appeals in Milwaukee, Wisconsin. She is also former chair of the ABA Section of Individual Rights and Responsibilities.

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## The Art of Lawyering: A Delicate Balance

By Hon. Pamela J. Brown

Being a state trial court judge is exceedingly challenging but very rewarding. Each day I am called upon to decide difficult cases, maintain the dignity and decorum of the courtroom, and manage a very busy docket efficiently, all the while balancing the rights of all the litigants, victims, and witnesses. This delicate balancing act takes place in the courtroom and in the personal lives of judges and lawyers as well.

I offer the following suggestions for use inside and outside the courtroom. They are designed to help you present your case efficiently, effectively, and successfully, and at the same time, enjoy the work that you're doing.

1. Be prepared. That includes being on time, having cases that will be cited available for the court and opposing counsel, and speaking to opposing counsel before the day of trial.
2. Be succinct. Typically, your case is not the only one on the docket. Prepare in advance so that you can make your best case efficiently.
3. Be respectful to the judge, opposing counsel, witnesses, and your client. Refrain from arguing with the court after a ruling, and remember that the record is your friend.

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4. Know your case and the elements of proof that you need or defenses that you can assert.
5. Know the rules of evidence and the exceptions. Develop a short objection sheet to use at trial.
6. Use your opening statement to tell a story and paint a picture for the judge. Often, counsel will waive the opening statement, thereby missing a valuable opportunity to articulate the litigant's position to the court.
7. Don't reiterate the direct examination in your cross-examination. Limit your questions to matters that are good for your client and bad for your opponent. Arrange your questions in logical order to tell an interesting story. If you seek to impeach, make sure to lay the foundation. Most importantly, know when to stop. Give thought to what you really need and what gives you the building blocks for your closing argument. Discipline yourself at trial not to be greedy after you have met your objective. Sit down.
8. Always be candid with the court. Make sure you are accurate about your client's record or the contents of the cases you cite. Concede if there is case authority that does not support your position.
9. Realize that as a lawyer, you are constantly learning, and some of the most valuable lessons you will learn are from mistakes you make. Remember nobody is perfect. Don't forget that the judge is constantly learning as well; each case is new, and the law is constantly evolving. Use opportunities that present themselves by way of motion or argument to politely educate the court.
10. Develop a network of lawyers and judges that you can call on for assistance or for mentorship.
11. The practice of law should be a rewarding and fulfilling experience for you. Take time to regularly reflect on the oath you took as a new admittee, and remember that our profession is a noble and learned one that serves the public interest.
12. Remember to balance your professional and personal life so that each has sufficient time. While it may take planning and great effort to do so, it will make a huge difference in your life. It is easy to get wrapped up in pressures of the day, but your professional and personal lives do not have to be mutually exclusive. You can do volunteer work, such as working with the PTA at your child's school or lending assistance and leadership to a scout troop, soccer association, YWCA, Soroptimist Club, or your church, synagogue, or mosque. Often there is a

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void, and no one wants to volunteer or run for positions. Take the opportunity to step forward. With your legal training, you are able to keep a meeting moving, spot issues, and help resolve problems with reason. Candidly, there is a dual benefit in that you can focus on groups that involve your children or your personal interests while at the same time receiving the benefit of networking, client building, and, of course, goodwill. I have found that it is important to me as a judge, as it was for me as a lawyer, to have balance in my life, as much of the work I do as a judge is of a solitary nature. I supplement my work on the bench by actively working with bar associations, volunteering at schools, teaching at law schools, and assisting with pro bono clinics. For members of the legal profession, public advocacy and public service are good for the community and good for the soul.

Hon. Pamela J. Brown is a judge in the Howard County District Court in Ellicott City, Maryland. She currently serves on the Judicial Division Judges Advisory Committee on Ethics and the Standing Committee on Public Education.

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## Did I Mention the Guilt? Striving For a Work-Life Balance

By Hon. Marguerite D. Downing

If you knew me personally, you would agree I am the queen of work-life balance. Since I started my legal career over 20 years ago, I have worked as a lawyer—and now a judge—by day, while in the oft hours I have worked on a large range of extracurricular activities.

So that you understand the breadth of my community and professional service, I am a past president of Black Women Lawyers of Los Angeles, Inc. (BWL), the California Association of Black Lawyers (CABL), and California Women Lawyers (CWL). As to the former two bar associations, I continue to serve on their boards as hospitality chair and on various other committees. Service as a member of the State Bar of California Board of Governors and as an advisor to their Criminal Law Section Executive Committee, plus work on a number of American Bar Association and National Bar Association commissions, round out my professional commitments. On a community basis, I concurrently serve on the boards of the following nonprofits: the California Bar Foundation, Big Brothers Big Sisters of Los Angeles, Mental Health America of Los Angeles (MHA), and Project Return. I serve as an officer of my Links, Inc., chapter. Oh, and did I mention I have a husband and young daughter at home?

I must also say that I have loved the practice of law and am certain that it's because of this wide range of activities interwoven with the "job." In all honesty, please be warned that it has not come without sacrifice and some teeth gnashing on my part, and, probably my husband's as well. It can be challenging to balance all these activities, and with all that balancing comes some guilt.

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The guilt primarily stems from the time I am away from home and my young daughter. After 20 years of having “guilt,” I have learned to accept that it’s a constant result of trying to achieve a work-life balance, so I deal with it.

How did it all start, you might ask? Well, within a month of joining the Office of the Public Defender in Los Angeles, one of my supervisors came in the training room and told me that BWL was holding its annual retreat in Newport Beach and that I needed to go. Being nobody’s fool, I went. When your supervisor speaks, you listen, right? Another new admittee I met when we were sworn into the Bar was driving down, so I joined her.

When the committee sign-up sheets floated around the room, I found one that interested me and signed up. I haven’t looked back from that moment.

In my single days, there was little conflict between my job as an attorney and my bar work. The conflict was between which meeting I would go to out of the number that might be scheduled on any given evening. Days were spent working in court, and evenings were spent spread among various meetings and legal events. Then a position on the Big Sisters of Los Angeles Board of Directors joined my plate.

When I got married and added a ready-made family of a husband and two teenage children, I had to plan smarter. I also had to become more organized and more discriminating about what events kept me away from home. No more going to everything; I had to learn to say no. Fortunately, my spouse, when queried, would say that I had been doing all this when he met and married me, so he felt that he was on notice that this behavior might continue. And it did with some modifications. Occasionally, my new daughter and my niece would accompany me to weekend retreats, conferences, and meetings that could be reached by car. We made them “girl’s weekends.” We enjoyed the adventures and the opportunities to bond over shared experiences. And there was no guilt about being away from my family.

Then my mother suffered some medical challenges that caused her to experience anxiety when left alone. So, prior to one of my National Bar Association meetings in Miami, she suggested coming with me at the last minute. We worked it out, and she was able to join me. She enjoyed herself immensely, meeting new folks while seeing my friends that she already knew. We had a ball, and it strengthened our relationship. She continues to travel with me, and we are closer for the experience. Thanks to this constant “going,” I have had the opportunity to get to know my mother as a friend.

At work, I was just one attorney among 800 others. My extensive bar association participation earned me a reputation as a bar leader within the community and also within my office. Management in the office felt that my work in the community also served an office goal in getting individuals to understand the work of the public defenders and the societal importance of

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competent legal representation for indigent criminal defendants. Their support translated into additional time to do some of these projects during work days.

Then I gave birth to my daughter, Candace, and the pull to do anything outside of my home briefly lessened. In fact, I was on my way to an NBA conference in Houston when she arrived two-and-half months early. She kept me close to home for her first few months. Then, at five months old (with her doctor's permission), she made her debut at a BWL retreat. My travel entourage now included my mother, two teenage girls, and a baby. We had fun, and there was lots of intergenerational bonding. At eight months, Candace took her first airplane ride to San Francisco for another conference. She was and continues to be good traveler. My mother joined us then, and it's been like that ever since.

Now almost 14, Candace travels less often with me because of her school schedule. During the summer months, she will hit the road with me, and, occasionally during the school year, she will travel on the weekends. One of the benefits of this travel is that I am imparting on my daughter the same lessons that I seek to share with disadvantaged girls, i.e., that women can be a power in their own right and that our gender should not limit our goals. Another lesson is that while it is important that we work at jobs that pay, it is also important that we give back to our communities through volunteer endeavors. I think I do a better job showing her this than I ever could by telling it to her.

I am still working on saying no. In fact, sometimes before I leave for conferences, my husband chants with me the word "no" just to get me in practice, in the hopes that I will use the word and not volunteer for every project asked of me.

Now, when I accept projects, I agree to limited duty. I will agree to handle a specific aspect of an entire project. For example, I might agree to do the invitation design for an event, and, once the invitations are completed, my service is done. Another example is my work as hospitality chair for both BWL and CABL—positions I've held for almost a decade. My job is to provide congratulatory cards, notes, and sympathy cards to our members. When each new administration asks me to continue to serve in this capacity, it is with the proviso that I am not expected to attend the meetings. I handle my job and submit my report, but I don't generally come to meetings. That way I stay connected, but my responsibilities don't take me away from home. And sometimes, I even show up at a meeting to deliver my report in person.

Now, when I chair an event or a committee, I open my home. Since meetings are at home, there is less interruption in my daughter's routine. If she needs me, she will just come in, say hello, and let me know what she needs. It also ensures that I am home to say good night when she goes to bed.



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When I got appointed to the bench in August 2007, I left the Public Defender's office after 18 years. I had only had one employer my entire legal career. Part of the reason for the lack of movement was that I had an employer who was supportive of my activities. Also, I was willing to trade the financial benefits of firm life and billable hours for an 8 to 5 job that left time for my family and bar activities. I believe the opportunity to augment my career with outside activities also smoothed out some of rough periods when I thought about getting a new job.

Now, as a judge, the challenge is greater. I finally gave up some of my lawyer-focused activities, because I added comparable judicial activities and organizations. I have even added judicial teaching to my repertoire. As judges, we are responsible to ensure that cases are handled in a timely matter, so, in balancing my work and outside activities, I always make handling my calendar and caseload a priority.

A couple of nights a month, you will find me in chambers at 8:00 p.m., trying to get ahead of the little piles that form when I am not paying attention. But, as much as I loved being a lawyer, being a judge is so much more rewarding. I still find more than enough to keep my after-work hours full. Did I mention the guilt?

Hon. Marguerite D. Downing is a judge with the Los Angeles Superior Court in Monterey Park, California. She also serves on the Executive Committee of the ABA Judicial Division's National Conference of State Trial Judges.

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## Top Tips for Litigators

By Hon. Susan N. Burke

In January 2008, I was in Cairo, Egypt, meeting with a small group of women who had just become some of the first women ever to be appointed to serve on the Egyptian judiciary. They wanted to know what it was like to be a woman judge in the United States. They shared with me stories of their male colleagues refusing to even sit on the bench with them. The Egyptian judges sat on multiple-judge panels, so collegiality was of utmost importance.

In contrast, when I became a judge in 2005, 27 of my 61 fellow judges were women. The chief judge of the district court was a woman. The chief justice of the State Supreme Court was a woman. At one point, four of the seven Minnesota Supreme Court justices were women.

Our experiences were so different that I did not feel that I was able to offer much useful information to my Egyptian friends. I do believe, however, that I can share some tips that may be useful in your practice here in the United States.

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### **Get Along with Opposing Counsel**

I am always impressed when counsel can work out disputes between themselves without involving me. By the time a dispute gets to me, it is really hard for me to tell who is at fault. I recognize that one side is probably more at fault than the other, but I am much more interested in getting the case tried than I am about figuring out why the attorneys are not getting along. It may be easier said than done, but do what you can to work with opposing counsel in a professional manner, no matter how difficult they are.

### **Do Not Get Emotional**

Rarely do I find emotion persuasive. Hyperbole never works. It is important to me that everyone who appears before me is treated with respect and has a fair opportunity to be heard. When people behave unprofessionally toward others, I have to intervene. That can distract me from following your argument.

### **Address Your Weaknesses Openly**

It is important to me that people feel that I heard and understood their argument and that they understand why I ruled the way I did. To accomplish this, I have to address the parties' arguments and explain why I was persuaded by one and not the other.

You should recognize that the judge will have to consider and address your opponent's strongest points. Helping the judge figure out how to do that may be more persuasive than simply repeating your strongest arguments.

If you are getting pointed questions during oral argument, do not be defensive. Many times, the judge is leaning toward ruling in your favor, but is looking for help addressing your opponent's point.

I see many lawyers who either will not or cannot open their minds to see the case from their opponent's perspective. You should realize that the judge is going to look at the case from your point of view and from your opposing party's point of view. The judge will not be biased or emotionally attached to either side. You should do that too and then be prepared to explain why your side wins.

### **Argue the Law and Principles of Fairness**

As a judge, I feel very bound to follow the law. I also feel very strongly about being fair. Being consistent is usually a part of being fair. There are a surprising number of cases where the law is not clear and the judge has to figure out what should happen in the absence of guiding law. If the law is clear, tell me. If it is not, tell me why you should win. Appeal to my natural "judge" urge to be fair, and tell me why the law should be extended or developed your way.



These tips may seem simple, but in the heat of battle, it is easy get caught up in the fight and forget the basics. I hope these reminders contribute, if even in a small way, to your continued success and professional happiness.

Hon. Susan N. Burke is a judge for the Hennepin County District Court in Minneapolis, Minnesota. She currently serves as a council member for the ABA Government and Public Sector Lawyers Division.

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## Administrative Law Judging: This Much I Know

By Hon. Joan Davenport

The “seasoned” Administrative Law Judge (ALJ) knows that there are essentials to judging that include good writing skills and analytical skills. But there is more to being a well-rounded ALJ that we may have forgotten because we may presume that we are good writers with well-developed analytical skills based on our years of experience. Below are some other essentials to evolving as an ALJ—a role you may currently hold or may wish to pursue in the future.

### Writing and Analytical Skills

The ability to write well is crucial. Decisions must be clear and concise, outlining the key Findings of Fact and Conclusions of Law. An ALJ must analyze all issues relevant to the case, carefully separating the wheat from the chaff by focusing on the information that is most relevant and material to the issue(s) and separating the immaterial and other extraneous information. Also key to writing a solid decision that will withstand appellate review is a well-developed understanding of the applicable law or regulation.

### Courtesy on the Bench

The most important thing to know about conducting a hearing is to be respectful toward all parties and to keep control of the order of the hearing. There is a presumption that ALJs, after many years of adjudicating, have achieved the balance of fairness and patience—especially as it pertains to the pro se litigant—and we must strive to maintain that fairness and patience. We are most often the beginning of access to justice for litigants. That access includes, but is not limited to, our response(s) to litigants as they state their story. There is no room for abrasiveness and rudeness from the bench because, even if our decisions are fair, the adversely affected litigant may not think so; the litigant will remember if he or she was treated unfairly or rudely during the hearing.

### Biases and Judicial Profiling

As a colleague reminded me, we all have biases. My response was, I agree. However, a party who appears before us whose livelihood or ability to feed his or her family during a tough period does not want to suffer from our biases, which are often covert. A recent Harvard University

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study reveals that most fair-minded persons judge according to the merits of a situation. However, there are some who judge according to unconscious stereotypes and attitudes. Those stereotypes and attitudes have found a place on the bench, and they go beyond race and gender to encompass economics, appearances, articulation, and other sensory-type prejudices. To ensure equal access to justice, ALJs must strive to recognize and overcome bias, ensuring that bias does not interfere with our decision-making.

### **Professional Courtesies**

Our responsibilities as ALJs extend beyond our time on the bench. The way we interact with peers, colleagues, and support staff says a lot about our professionalism. We are responsible for being courteous to one another and embracing one another's strengths and weaknesses. We must make sure support staff members are well-informed about the types of cases that they handle so that they are comfortable with explaining the process to customers and are comfortable asking judges questions. Communication is a key element of courteousness. I must borrow from Justice Thomas Masuku During of Swaziland, who said the following:

The attributes that stand out for mention regarding professionalism include honesty, integrity, competence, civility, courtesy, respect, patience, diligence, punctuality, protection of others against unjust or improper attacks or criticism . . . [I]t is imperative that we refrain from uttering disparaging personal sarcastic remarks, criticisms or demeaning statements about our colleagues on the Bench. Whatever our differences may be or how old or deep-seated they may be, we should remember that at the end of the day we are Brethren serving the same Master, namely justice. We are not called to like and glorify our colleagues on the Bench but we owe them respect, courtesy and civility in all our dealings with them, publicly or even privately.

### **Training**

Being a successful and well-rounded ALJ requires help from others who have more experience and knowledge. This can be achieved through professional development and training. Our challenge as ALJs is to be able to write and analyze well. We must also know laws and regulations. We must be committed to professional development and attend training from various professional organizations dedicated to ALJs. Here again, this training assists with our ongoing access to justice campaign.

### **Judicial Independence**

Any judge, including a member of the administrative judiciary, must have and be committed to further developing a keen sense of responsibility to being independent of any external influences or internal biases or prejudices that could cause a judge to act or rule on the basis of anything other than the law and the evidentiary record in each case.

### **Judicial Competence**

Any judge, including a member of the administrative judiciary, must have and be committed to maintaining competence in (1) the law, (2) relevant ethical standards, and (3) appropriate

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procedural and case management principles necessary to assuring (a) fairness to all parties, (b) appropriate thoroughness and efficiency in conducting proceedings and issuing decisions, and (c) public faith in the legal system.

Becoming an administrative law judge requires more than knowledge of a substantive area of the law. If you are able to develop the skills discussed above, you will be far on your way to becoming an effective and efficient administrative law judge.

Hon. Joan Davenport is an administrative law judge with the D.C. Office of Administrative Hearings in Washington, D.C. She also serves on the ABA Judicial Division Lawyers Conference Executive Committee.

Note from the Editor: This article represents the views of the writer only and does not reflect the views of the District of Columbia Office of Administrative Hearings.

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## Carry the Profession Forward by Being Prepared

By Christine M. Ho

I was fortunate enough to speak with Judge Patricia Fawsett, a senior judge in the United States District Court for the Middle District of Florida, and General Magistrate Linh Ison for Domestic Relations and Mental Health in the Ninth Judicial Circuit Court in and for Orange County, Florida. First of all, I would like to thank Judge Fawsett and Magistrate Ison for taking the time to speak with me. These two very accomplished women shared with me their experiences and litigation tips for practitioners, especially women litigators.

Judge Fawsett received her J.D. from the University of Florida in 1973. From 1973 until 1986, she was in private practice at Akerman Senterfitt, focusing primarily on commercial litigation. She was nominated to the federal bench by President Ronald Reagan in 1986 and was confirmed by the Senate that same year. Judge Fawsett served as the chief judge for the Middle District from 2003 until 2008. In August 2008, she took senior status and still presides in the Middle District.

Magistrate Ison obtained her bachelor's degree from Florida State University in 1992. After working in the private sector for a couple of years, Magistrate Ison received her J.D., as well as her M.B.A., from Stetson University in 1998. In 2006, Magistrate Ison was appointed as the General Magistrate for Osceola County Domestic Relations, Dependency, and Mental Health by the Honorable Belvin Perry Jr., the Chief Judge for the Ninth Judicial Circuit in and for Orange and Osceola Counties, Florida. Today, she acts as the General Magistrate for Domestic Relations and Mental Health, but works from Orange County.

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I spoke with Judge Fawsett about her experience as one of the first women commercial litigators in Orlando. She recounted a story typical of the time when it was unusual to see a woman attorney in court. While she was sitting in the hallway waiting for a hearing in Daytona Beach, the judge on her case came out of his hearing room and asked her to wait. After returning to his hearing room, he came back out with another male judge. Pointing to Judge Fawsett, he stated, “Wait, wait, see, there she is—a woman litigator!” Judge Fawsett noted that during that time, it was unusual for a woman to want to work outside of the home and to actually enjoy litigation. She further stated that she had to work exceptionally hard as one of the first women commercial litigators in Orlando, but that as long as she was prepared, she was able to be an effective advocate for her clients.

Judge Fawsett stated that when she was in private practice, it was a “period of adjustment” for the men in the legal profession. As Judge Fawsett recalled, she attended a litigation seminar in which she was the only women litigator in attendance. When the instructor spoke about how the male attorneys should dress, she raised her hand and asked what she should wear. The instructor admitted that he had dreaded the possibility that she would ask him such a question and stated that he had no idea what women litigators should wear. Such an answer demonstrates the lack of guidance as to even basic matters and just how much has changed in the legal profession today.

In contrast to the litigation seminar instructor befuddled by Judge Fawsett, Magistrate Ison had a great deal to share on the issue of women litigators’ dress. Magistrate Ison noted that she has seen many women litigators who did not dress appropriately for court, donning casual dresses or short skirts with open-toe shoes. She advised, “A woman litigator has to dress appropriately. It is all a part of the presentation. It is not just your arguments but it is also how you project to the court.” Magistrate Ison recounted one occasion in which a woman litigator appeared before her, wearing capri pants and sandals. Although the woman later apologized to her, Magistrate Ison found her dress to be quite inappropriate, and it made a lasting impression on her.

Wardrobe, however, is only one part of projecting a professional and positive image in court. Judge Fawsett noted that a woman litigator cannot appear too aggressive before jurors. On the other hand, Magistrate Ison found some women attorneys to be too quiet and soft-spoken when appearing before her. Magistrate Ison stated that a woman litigator should project her voice so that everyone can hear her. Moreover, projecting one’s voice shows confidence.

Both Magistrate Ison and Judge Fawsett agreed that regardless of sex, all litigators need to be prepared. As Judge Fawsett emphasized, “It’s a matter of preparation, commitment and ability across the board, regardless of gender.”

Magistrate Ison stated that litigators who were organized with their case law and ready with copies for her and opposing counsel impressed her. On the other end of the spectrum, Judge Fawsett found that some litigators commonly make the mistake of not thoroughly researching the



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case law cited in their written submissions. She noted that litigators should be aware if a case has been reversed and should not rely merely on case headnotes.

Finally, Judge Fawsett noted that today's legal profession is quite different from her days in private practice. Women litigators now regularly appear before her, and many jurors have commented to her after a case is finished on the efficacy of these women attorneys. Judge Fawsett stated that the women litigators appearing before her were bright and articulate and that they "carry the profession forward."

I learned from my interviews with Judge Fawsett and Magistrate Ison that the legal profession has had to adapt to the ever-increasing presence of women litigators, but one thing remains constant—all litigators should be prepared.

Christine M. Ho is an associate with Litchford & Christopher Professional Association in Orlando, Florida.

### NEWS & DEVELOPMENTS

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## Adding Women to a Team Increases Its Intelligence

A recent study by the Harvard Business Review found that a group's collective intelligence increases when the group includes women. The study gave subjects aged 18 to 60 standard intelligence tests and assigned them randomly to teams. Each team was asked to complete several tasks—including brainstorming, decision making, and visual puzzles—and to solve one complex problem. Teams were given intelligence scores based on their performance. The study found that teams with more women tended to fall above the average while teams with more men tended to fall below it. The study also found that there is little correlation between a group's collective intelligence and the IQs of its individual members. Thus, although the teams that had members with higher IQs did not earn much higher scores, those that had more women did. The authors of the study attributed the findings to the importance of having individuals with high social sensitivity in a group; many studies have shown that women tend to score higher on tests of social sensitivity than men. The study also concluded that facts such as group satisfaction, group cohesion, and group motivation were not correlated with collective intelligence.

A copy of an interview with the authors of the study can be found [here](#).

—Patricia C. O'Prey, Richards Kibbe & Orbe LLP, New York, NY

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## Alliance for Board Diversity Releases Disappointing Census Results

The impression that women and minorities continue to be substantially underrepresented on corporate boards was confirmed with the release of the 2010 [Alliance for Board Diversity Census](#) (ABD). The ABD comprises five organizations—Catalyst, the Executive Leadership Council, the Hispanic Association on Corporate Responsibility, Leadership for Asian Pacifics, Inc., and the Prout Group, Inc.

Among *Fortune* 100 companies, the data compiled not only reflects stagnation in some areas, but also reveals decreases in the representation of certain minorities on corporate boards. For example, women gained 16 board seats between 2004 and 2010; however, their increase was only 1.1 percentage points. Further, during the same period, African American men lost 42 board seats while white men gained 32 seats. Overall, the number of boards with 30 percent or less representation of woman and minorities has increased from 59 to 65 among *Fortune* 100 companies in the past six years.

Unfortunately, the situation is worse when the group is expanded to include boards of *Fortune* 500 companies. 2010 was the first time *Fortune* 500 companies were included in the census and the ABD concluded that “*Fortune* 500 boards are less diverse than *Fortune* 100 boards.” For example, approximately one-half of *Fortune* 500 company boards have 20 percent or less representation of women and minorities. In contrast, the census also highlighted companies with 40 percent or more seats held by women and minorities, including top-ranking Avon Products (63.6 percent), Target and PepsiCo (58.3 percent), Aetna (53.8 percent), and Staples (50 percent).

In the letter from the ABD accompanying the census, the ABD predicts that “[u]nless this troubling trend is reversed and U.S. companies begin to reflect their shareholders, markets, and employees, they will fail to reach maximum potential as leaders in the global economy.”

—*Sabrina C. Beavens, Iurillo & Associates, P.A., Portsmouth, NH, and St. Petersburg, FL.*



## WORDS OF WISDOM

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### **What Is the Biggest Change You've Seen in the Courtroom, and What Changes Do You Anticipate in the Future?**

#### **Technological Advances**

Technological advances have greatly impacted the presentation of cases in court. Virtually no case is tried where the jury does not see exhibits on a computer screen, and few oral arguments are unaccompanied by PowerPoint slides. If a lawyer does not present evidence visually, she risks losing visual learners, and that is virtually the entire Generation X. On the other hand, overuse of technology can be a distraction and can divert jurors from overall case themes.

I expect that over time, technological advances will further impact court proceedings. Testimony from remote locations may be permitted. More cases will likely be televised, and, in that context, we need to do all we can to minimize posturing for the camera by witnesses and lawyers while protecting witness and juror confidentiality. Journalists covering trials will likely be blogging more detail than traditional news coverage has allowed. This enhanced attention to court proceedings can skew assessments of our justice system, depending upon the quality of the lawyering, judging, and reporting. Increased coverage makes it harder to find an untainted jury in a high-profile case, and safeguards are required to discourage jurors from inappropriate use of technology that may expose them to excluded evidence, or the public to secret deliberations.

Hon. Barbara M.G. Lynn is a judge with the United States District Court in Dallas, Texas. She is former chair of the ABA Section of Litigation, honorary cochair of the Judicial Intern Opportunity Program, and former chair of the Judicial Division.

#### **More Pro Se Representation**

Although I am a relatively new judge, the biggest change that I have observed in the courtroom is the increase in pro se representation, which I would attribute to the economic crisis and rising unemployment rates. The mortgage crisis has also resulted in more homeowners challenging foreclosure actions by their lenders on a pro se basis. While it is typical for business litigation to increase during stressful economic times, the recent trend that I am observing is that more and more people are choosing to represent themselves. Legal service organizations increasingly are overwhelmed and declining representation of otherwise qualified individuals due to organizational financial constraints. The costs of legal services have increased overwhelmingly during economic booms in the late 90s, and, as a result, have isolated average Americans who are faced with legal disputes. The increase in pro se representation reminds jurists that the courts should be accessible to all individuals. As a judge, it is sobering to be reminded that access to



## Woman Advocate

FROM THE SECTION OF LITIGATION WOMAN ADVOCATE COMMITTEE

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justice must remain fair, equitable, and open. It is an honor daily to serve and interact with pro se and represented litigants and uphold the concept of equal justice under the law.

Hon. Tiffany M. Williams is a New Jersey Administrative Law Judge in Trenton, New Jersey. She also serves as cochair of the Section of Litigation's Pro Bono & Public Interest Committee.

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ABA Section of Litigation Woman Advocate Committee

<http://apps.americanbar.org/litigation/committees/womanadvocate/home.html>

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