

Practical Tips for New Judges Making the Transition to the Bench

By Judge Douglas S. Lavine

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Congratulations! You have been appointed to the bench. I can assure you that you will find your new job to be enormously gratifying and challenging. You will have a rare opportunity to use your legal and personal skills, honed by the practice of law, to serve the community. I can honestly say that I have enjoyed going to work on all but a few days of the nearly sixteen years I have been on the bench. Almost all of my judge friends feel the same way.

With your new position comes a significant passage. You are beginning something exciting, but you are also ending an important phase of your life. You will be moving out of your previous comfort zone, one in which you may have had a high degree of control over your daily life and significant confidence in your abilities. In your new milieu, it is likely that almost everyone you deal with—other judges, lawyers, court staff—will initially understand the way the system operates better than you. It will take time to adapt to your new surroundings in what one writer has called the “neutral zone”—a time of reorientation to new circumstances and surroundings.¹ Be patient with yourself. In a relatively short period of time, you will emerge, like the proverbial butterfly from the cocoon, relaxed and confident, ready to fly.

Everyone will call you “Your Honor,” doors will be held open, and lawyers will laugh at your jokes—even when they are not funny. *Especially* when they are not funny. You will carry an elevated status in your community, particularly in the legal world you inhabit. People will view you differently, and you will view yourself differently. You will be held to higher, more exacting standards. Everyone will stand when you enter the courtroom. I have a colleague who recalled the first time she headed out onto the bench. Everyone stood. She reflexively turned around, asking herself, “Whom are they standing for?” From now on, they will be standing for *you*. This is heady stuff and can result in a severe attack of early onset robitis, a dreaded disease sometimes afflicting new judges which I will discuss later.

It takes some time to adjust. Presumably, mentors, colleagues, and others you trust will offer advice. Like everyone who came before you, you will need to find your own way. No matter the advice you receive from other judges, every decision you make will be your own. It will become part of your judicial DNA. I wish you the best in ruling on the myriad issues you will confront over the years, issues often critical in the lives of the people who come before you and in the communities in which you live.

I do not claim to have any sage advice when it comes to the art of judging. But in more than fifteen years on the bench—thirteen as a trial judge, and almost three on the Connecticut Appellate Court—I have learned a few things about how to deal with recurring issues, some on the bench and many off, that you are sure to encounter. I claim to speak for no one but myself and underscore that the points raised here are based on my own experiences and observations, and sometimes, mistakes. As a judicial colleague, I hope these nuts-and-bolts suggestions will help you successfully cope with some of the mundane issues that you will face in your new role.

Dealing with Friends

Some people will take your new status in stride. But others, including people you have known your whole life, may act differently. Some acquaintances might be a bit standoffish or appear to be slightly intimidated. Others will tease you about having all the answers. Dealing with lawyer friends and colleagues—people you used to practice with or against—will present special challenges, especially when faced with issues of recusal or disqualification. It is important to be familiar with professional requirements relating to these issues. I recommend speaking to experienced judges with a good sense of local practices and mores before making recusal or disqualification decisions. Of course, judges have a duty *not* to remove themselves from a case merely because a motion has been made. But experience teaches that even if litigants lose their cases, they can accept their disappointment if they think they have had a fair hearing. Appearances matter. Obviously every case is different, but be very careful about remaining in a case if your fairness or objectivity can be reasonably questioned. You must be the guardian of your own reputation for fairness and impartiality.

The Line Between Public and Private Behavior

In a nutshell, it is best, under most circumstances, to act as if this line no longer exists. What I mean is this: whatever you say and do, anywhere and to anyone, can be grist for the mill if it reflects upon your fitness to dispense justice. I suggest the following approach: except, perhaps, when dealing with immediate family and friends, imagine that what you say or do will appear in your local newspaper. Much as you may try, you really cannot be a judge just during the hours you are at court, or in your chambers. You are a judge *all the time*. Let me give a few hypotheticals. (1) Every year, prior to your appointment, you have hosted a big party at which alcohol is served. In the past, if someone was stopped on the way home for a DUI, it might have been a cause for concern. Now, it could mushroom into a major career blemish. (2) In the past, you sat and smiled uncomfortably when someone told an inappropriate joke. Now, doing or saying nothing might be understood by oth-

ers to be an endorsement of the offensive attitudes expressed by the teller of the joke. (3) In the past, when someone was tailgating at high speeds you might have been tempted to slow down, or yell at them, or gesticulate. Now, taking any of these actions could lead to an allegation that you exhibited “road rage” and lack appropriate judicial temperament. (4) In the past, you might talk freely in an elevator no matter who was in it. Now, any words you utter could have an impact on a case or a juror or could be repeated in another courtroom.

The simple truth is this: the line between private and public behavior has become blurred beyond recognition now that you are a judge. As a judge, you are a public figure. Your private conduct, therefore, is of interest to the public—and the press. Therefore, you must conduct yourself with the utmost care in private matters as well as public.

Requests for Legal Advice

Here is the usual scenario. You are at a party when the friend of a friend approaches you, introduces himself, and states he knows you are a judge. He makes small talk. He says that he knows you are not allowed to give legal advice. Actually, he tells you, he is not seeking legal advice, but he has just one question, and maybe you can assist. It seems that his brother-in-law has been kicked out of the house by his spouse and he wants to go in to get his clothes and other personal belongings. Any problem? Or “a friend’s son” got caught in the school bathroom smoking marijuana and was manhandled by the school’s personnel. Can’t they sue the school? Or his elderly mother got this speeding ticket and You get the idea. As a lawyer, you have undoubtedly dealt with such questions throughout the years. But as a judge, it becomes more important still that you absolutely, positively say or do nothing that could be construed—or misconstrued—as giving legal advice. First of all, judges are prohibited from giving such advice. Secondly, it is not uncommon for laypeople to misunderstand or misinterpret legal concepts—or to hear what they want to hear. So even if you decide to be polite and give some seemingly innocuous counsel with a disclaimer, the disclaimer is likely to be ignored. The last thing you want to learn is that Joe Smith’s friend went into criminal court and told the judge that he went into the house to retrieve his belongings because “Judge Jones told me I could.” My advice? Tell the simple truth. Explain that you would like to be of assistance but that you are strictly prohibited, for professional reasons, from giving legal advice. And never, ever succumb to the temptation to do so.

Mentioning that You Are a Judge

Years ago, I worked as an assistant U.S. attorney. Often, I would be sitting next to someone on an airplane and the conversation would be relaxed and friendly until I mentioned that I was a prosecutor. Then everything stopped. I always assumed that people thought that I would initiate a tax investigation if they said the wrong thing. In your new role, people will react differently to you when they learn you are a judge. Some people will want to treat you more favorably because of your position. My advice is to resist, except in social situations where the subject arises naturally, the temptation to tell people that you are a judge unless you are asked. What that means is this. (1) If you are on a waiting list at a local restaurant, do not mention that you are a judge in the hope of getting seated before your time, and don’t permit your spouse, significant other, or partner to do so either. (2) If you are pulled over for speeding, do not disclose that you are a judge in the hope of gaining favored treatment. And do not put your judicial credentials next to your driver’s license so the officer will inevitably discover that you are a judge. (3) If your spouse has a dispute with the local mechanic because he charged more than he said he would, do not make that angry phone call claiming that, as a judge, you know what he is doing is unlawful, a violation of consumer protection laws, that you decided a case just like this, etc. (4) If your child is arrested for possession of marijuana, do not try to use your status to obtain preferential treatment for him or her. And so on. The bottom line is that the inappropriate use of your position to obtain special treatment is an abuse of power.

Charities

Some people will try to use your presence at an event or your name on a letterhead to raise funds. No matter how worthy the charity or cause, this should be resisted. Check relevant ethical rules, guidelines, and decisions to determine to what extent you can be involved in charitable events, including those with which you have had a long-time involvement.

Political Activities

Different considerations may apply, of course, in states in which judges are elected. But for appointed judges in places like Connecticut, the rule is simple. Political activity is strictly verboten. Avoid rallies, fund-raisers, making contributions, bumper stickers, and signs or posters on your lawn. If your spouse is involved in politics, steer clear of situations in which it appears that you yourself are engaging in political conduct.

Email

It is probable that at home you have received unsolicited email that is offensive to you. Be careful not to allow any such unsolicited material to be forwarded to your work computer. When writing email messages at work, avoid language that would embarrass you if printed in the local newspaper. Tell friends and colleagues *not* to send you jokes, articles, and pictures at work. When online at work, avoid sites or searches that could call up offensive material. Use your home computer to communicate with friends to avoid contamination of your work computer.

Work Interactions

All of your contacts with everyone in the work setting should be polite, professional, and courteous. You are a role model and should set the appropriate tone. This includes lawyers, secretaries, marshals, probation officers, the cleaning crew, family relations officers, stenographers, court reporters, members of the public, foreign visitors, school children on a class trip—virtually everyone. Court systems are huge echo chambers. Everything you say and do is grist for the mill. Rumors and anecdotes fly from court to court. If you are rude or inconsiderate, that will be known to everyone quickly. Jokes or comments that might have been appropriate in your past life, when talking to longtime associates or employees, are better left unsaid in your new role.

Discussing Cases or Opinions in Public

The scenario is a familiar one. You are out to lunch with judge friends and the discussion turns to a trial you are presiding over. You offer a few tart opinions on the performance of a lawyer or the merits of the case. Oops! You didn't notice, but in the next booth is the very lawyer you have been discussing, or the plaintiff, or a juror. The prospect of a mistrial in your first trial now dangles before you. Be very, very discreet when discussing legal matters, particularly a case, with a colleague. Talking about cases or decisions in a public setting—a restaurant, a hallway, an elevator—frequently invites disaster. Similarly, do not leave files, drafts of opinions, or anything else relating to a case lying around—in a car, at a restaurant, or anywhere.

Ruling Before You Are Ready

Your job is now to analyze arguments and make decisions. In a variety of settings, the problems requiring a decision will come at you very quickly. Nonetheless, my advice is to never rule unless you are comfortable with what you are doing. It is often said that lawyers prefer a timely decision, any decision, even if it is at odds with their positions, to being forced to wait. And there will be times when numerous factors—a heavy docket, a crowded court, the presence of people who have come from a long distance to attend a proceeding—will militate toward just ruling and moving on. I am *not* counseling timidity or indecision. But if that little internal voice that sometime speaks to you tells you that you are not ready to rule, listen to it. Take a recess. Hear more argument and think it over. Seek out advice from a senior colleague. Order additional briefs. Or just sleep on it. Very few decisions are so urgent that they cannot wait a few more hours or days.

Expressions of Personal Opinions on the Bench

During my first judicial assignment, a crusty veteran gave me two bits of advice. First, he said, always stop in the bathroom before going out onto the bench. Second, KYBMS—Keep Your Big Mouth Shut. I leave to you whether you choose to follow his first bit of advice. But over the years I have come to appreciate his blunt advice about keeping personal comments and observations to an absolute minimum. Pleasantries are okay. Occasional conversation can be alright. But always remember that we are *not* being paid to express our personal or political views on the matters of the day or share our thoughts on the pennant race, the state of the economy, or anything else. Nor are we a sort of master of ceremonies in a robe, presiding over an entertainment event. Except for court personnel, lawyers and the like, the people in the courtroom almost always do not want to be there. They are a captive audience. It is, frankly, somewhat egocentric to think otherwise and an abuse of your authority to force people to listen to opinions they would just as soon not hear.

Humor on the Bench or in Written Opinions

Off the bench, a lively and irreverent sense of humor can be charming. I used to think I was funny until my now-twenty-two-year-old daughter somewhere back in the eighth grade or so stopped laughing at my jokes and just sighed. But on the bench, or in written opinions, joke-telling runs the risk of detracting from the solemnity of the proceedings, being boorish, and veering off into abusiveness. A joke—particularly at someone's expense—may earn you snickers from some observers, but what seems funny to you will be deeply offensive to someone else. Criminal defendants, litigants in a divorce, plaintiffs in a malpractice case, and others forced into court, see nothing at all humorous about their situation. Never forget that for most people, a court case represents a traumatic event and frequently involves matters of the utmost importance in their lives. Even when you are acting with the best of intentions or trying to lessen the tension in the courtroom, attempts at humor are almost always likely to be misunderstood. My advice? Avoid the laugh lines; think it, but don't say it. The same applies to written opinions. Jokes, or opinions in verse, may seem clever when written, but they are not likely to seem funny to the people on the receiving end whose cases you are deciding.

Treating Everyone with Courtesy and Respect

You should strive to treat everyone—underline *everyone*—with patience, courtesy, and respect. This includes the corporation president and the convicted felon, the elderly alcoholic and the star athlete, the pro se litigant and the top flight lawyer. You speak for the community, so at times, you will be required to make harsh decisions—particularly when sentencing defendants convicted of serious crimes. But even as you voice the community's concerns, there is never a reason to treat any-

one with disrespect or deprive a person of inherent human dignity or make him or her the butt of jokes or derogatory remarks. Your job is to set the appropriate tone of dignity and fairness in the courtroom and to apply the rules fairly to everyone.

Dealing with the Media

How do you deal with the media? With extreme care. This is particularly the case if you receive a call asking you to comment on a pending matter. In most, if not all, jurisdictions, judges are prohibited from commenting on a pending case. In many jurisdictions, the judicial branch will have designated a person to handle calls and manage press relations. If you are uncomfortable returning reporters' calls, you can delegate that job to someone else. However, as a former reporter who covered legal matters, I can attest to the fact that often reporters are working under tight deadlines. Therefore, even if you cannot or do not wish to comment, the courteous thing to do is to return the call personally or to direct someone else to do it so that the reporter is informed that you cannot, or will not, comment.

Robitis

We turn now to the dreaded disease, robitis. Robitis is defined as a condition that befalls a judge when he or she dons a robe which causes the judge to assume a self-important, arrogant attitude. In your years in practice, you have undoubtedly practiced before judges with this dreaded affliction. Robitis can be fatal to a judge's career. Friends and colleagues will probably be reticent to tell you if you have come down with it. Figure out a way to have someone—perhaps a mentor or more experienced colleague who you respect—close the door and tell you if you are showing symptoms of the disease. Comments from lawyers and jurors, if you have access to them, can be helpful. If you see a recurring theme emerging in these comments, resist the human urge to resent them and ignore them. Also try to step outside of yourself—mentally—on occasion, look dispassionately down at your own behavior, and ask yourself if you like what you see. Your work is important; take it seriously. Try not to take yourself too seriously. A touch of humility goes a long way. So does a willingness to acknowledge that you have made a mistake or misunderstood an argument or would like to be educated on a point of law.

Ethical Concerns

You must be the guardian of your own integrity and reputation. Friends and family may ask you to do things not understanding that a different set of rules applies to you. My wife still makes fun of me when we are walking our dogs because I refuse to walk over a small patch of waterfront property near our home that has a "No Trespassing" sign posted. Explain to your family in emphatic terms that you are now living under a set of rules that is different from other people's and that you need to be scrupulous in ways that others may find excessive. Periodically review the Code of Judicial Conduct. When in doubt about the propriety of conduct, check with a senior colleague or a designated person in your judicial branch. Keep your ethical antennae up. Never do anything if you have qualms about its propriety.

A Final Comment

Again, congratulations to you. I guarantee that you will love being a judge. It is an honor and a privilege to be appointed or elected a judge. It is also a great responsibility. I wish you the best. I hope these suggestions are helpful to you as begin this exciting passage.

Endnote

1. WILLIAM BRIDGES, *TRANSITIONS: MAKING SENSE OF LIFE'S CHANGES* (1980).