

Judicial Bench Skills

1

Funded by a Grant from the Texas Court of Criminal Appeals

© Copyright 2022. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd, Suite 530, Austin, TX, 78744.

2

Resources

Deskbooks

- www.tjctc.org/tjctc-resources/Deskbooks.html

Forms, Charts, SRL Packets, Webinars, Legal Board

- www.tjctc.org/tjctc-resources.html

Texas Statutes

- statutes.capitol.texas.gov

Rules 500-510, Texas Rules of Civil Procedure

- www.txcourts.gov/rules-forms/rules-standards/

3

Roadmap For The Course

- How you are viewed as a judge
- Preparing to take the bench
- Managing your courtroom
- Tools for decision making
- Making good decisions

This is a chance to talk – judges to judges – about doing our best to bring dignity to the bench

4

How Do You Want The Public To Describe You As A Judge?



5

“Bedside Manner”

- How you walk
- What you wear
- How you handle yourself

The public will notice all of this – maybe more than the outcomes of the cases

6

How Do We Present Information About The Court To The Public?

- Is it explained in court?
- Is it on your website?
- Is a handout provided by your staff?

7



**Prepare Mentally
To Take The Bench**

8

“10 Common Mistakes New Judges Make—and How To Avoid Them”

“Judicial Edge”, The National Judicial College

See handout

9

Be Approachable

“There is nothing undignified about being a good listener, a person who explains the neutral principles they are applying, someone who treats each party equally, or someone who speaks in plain language.”

~Judge Catherine Shaffer; President, American Judges Association; Seattle

10

10 Common Mistakes New Judges Make—And How To Avoid Them

1. They shy away from making decisions

“I have been a judge for 25 years. Over the years I have noticed many new judges have a difficult time making decisions. New judges come from the community and hear cases with their community lawyers. They sometimes are afraid of ruling against community lawyers. They have a hard time coming to grips with a judge’s responsibility to decide, as opposed to not ruling and hoping the case settles if the judge drags his/her feet too long.”

Judge John Lenderman
St. Petersburg, FL

2. They accept every agreed order

“It is very, very tempting to new judges to sign off on agreed orders. For example, the parties will present agreed trial continuances, agreed protective orders that give them carte blanche to seal and redact, agreed briefing schedules, agreed expansions of page limits, plea bargains, and more. The solution to this problem is to not be afraid to say no. Trial date certainty is crucial to justice, and it can only be achieved if the court makes it clear that only good cause will warrant a continuance, and (usually) only once. Similarly, the court has an obligation to provide transparency: sealing and redaction defeats this goal. Nor does the court want to cede control of its calendar, including burying itself in long, late-filed reading, by signing off on parties’ agreement to change the court rules on briefing dates and page limits. And, of course, sentencing discretion is meaningless if the court simply signs off on plea agreements.”

Judge Catherine Shaffer
President, American Judges Association
Seattle

3. They forget to complete the record

“You have three best friends in the courtroom. They are: the record, the record, the record. Your best friends will never turn on you unless you lose your cool. The moral is, keep your cool. It is your courtroom and you get the last say. As long as you make the record, you will be fine.”

Judge Lee Sinclair
Canton, OH

4. They forget about ... other important things

“Make sure your robe is on before taking the bench (I’ve been so engaged in thought I marched right into court forgetting my robe.) If you don’t have a court reporter, always double-check to make sure the recorder is on. No one likes to recreate a record.”

Judge Lin Billings Vela
Cripple Creek, CO

5. They don’t go to judge school, and they don’t cut the cord

“I know this will seem self-serving, but many new judges do not take advantage of judicial education programs that will help them get started with the right mindset and skills. It also helps to sever the business and social links between a new judge and his/her former law firm. I remember my presiding judge telling me to get to the NJC during my first year on the bench. I attended *General Jurisdiction*. After returning, I felt better informed than ever before, and the local attorneys knew I had been through courses that would benefit everyone, including their clients. The professional distance between a new judge and those with whom a law firm connection existed is an important break, and I’ll never regret doing it through the NJC. I’m sure that all of the local lawyers appreciated knowing I was completely independent in my decision-making.”

Judge Jess Clanton
Langley, OK

6. They forget they aren’t a trial attorney anymore

“Stepping into the advocate role is a big mistake for new judges. Another mistake is failing to understand the need to create a full record and the importance of being the “conductor” of the proceedings. Those are just some of the issues we see.”

Judge Susan L. Formaker
Los Angeles

7. They place too much faith in court-appointed experts

“Newly appointed family law judges are often afraid of making mistakes that might harm children – which is important, of course. However, before relying on expert opinions, it is important to understand whether the expert has done a thorough and sufficient job of gathering data. Too often experts seem merely like stenographers who fail to get sufficient depth/breadth in their data gathering. The experts may not have not tested or considered

multiple hypotheses before reaching conclusions. They may not have an adequate basis for their opinions or may be otherwise influenced by some type of cognitive or other bias(es). This is especially true when allegations of domestic violence exist in a case, in very high-conflict cases with children who refuse/resist contact with a parent, or in relocation cases.”

Forensic psychologist Philip M. Stahl
Queen Creek, AZ

8. They try too hard to look dignified

“I believe many new judges are so concerned about appearing dignified that they can seem very remote and even uncaring. The solution to this is to learn and apply the lessons of procedural fairness. In reality, there is nothing undignified about being a good listener, a person who explains the neutral principles they are applying, someone who treats each party equally, or someone who speaks in plain language.”

Judge Catherine Shaffer
President, American Judges Association
Seattle

9. They don't realize that...

1. “It is impossible to have equally talented and prepared attorneys on each side of every case.
2. There will be someone who will file a complaint against a judge, whether justified or not.
3. You will have no privacy. Attorneys as well as citizens expect to know where you are and what you're doing if **you aren't in the courtroom**.
4. Depending on type of judgeship, the amount of work will be unexpected. You will be placed on committees and asked to do assignments outside the description of the job.
5. There will rarely be enough time to sit and ponder the law quietly at your desk.
6. There will not be enough money to take a judicial training course outside your state. You should nonetheless volunteer to teach at Continuing Legal Ed classes. And you should know that judges are improved by taking Continuing Judicial Education courses, wherever they are held.”

Judge Cynthia L. Brewer
Canton, MS

10. They misunderstand their position

“Stay away from the phrase ‘In my court...’ It is not your court, it belongs to the people, it will always belong to the people, and you can be replaced.”

So...

“Understand that the case before you is the most important case on the planet, and treat the people before you in that manner. Treat people the way you would want a family member to be treated if they were in court. Do not have ‘**policies.**’ Have trust in your in-court staff. Listen more than speak. Do not rush your docket, no matter how busy it is. Take frequent breaks. Smile. Dress like a judge. Be humble. Be kind. Never show anger. Never assume anything before asking questions. Do not be afraid to say, ‘I do not know.’”

Judge Louis Schiff
Deerfield Beach, FL

Be Fair

- “Listen more than speak.
- Do not rush your docket, no matter how busy it is.
- Take frequent breaks.
- Be humble. Be kind. Never show anger.
- Never assume anything before asking questions.
- Do not be afraid to say, I do not know.”

~Judge Louis Schiff, Deerfield Beach FL

11

- Contempt video

12

“Understand that the case before you is the most important case on the planet and treat the people before you in that manner.”

~Judge Louis Schiff; Deerfield Beach, FL

13

“Make sure your robe is on before taking the bench...”

~Judge Lin Billings Vela; Cripple Creek, CO

14

“Stay away from the phrase ‘In my court...’ It is not your court, it belongs to the people, it will always belong to the people, and you can be replaced.”

~Judge Louis Schiff; Deerfield Beach, FL

15

The Sequel: “8 More Mistakes New Judges Often Make—and How To Avoid Them”

“Judicial Edge”, The National Judicial College
See handout 2

16

8 More Mistakes New Judges Often Make—And How To Avoid Them

1. They embarrass themselves by feigning experience

“Most new judges are assigned to court divisions where the judge has no experience as a lawyer. Some have a hard time admitting to the parties and lawyers that they don’t know what they are doing. They overreact and get defensive. The lawyers know! New judges need to know that they make their lasting reputations in their first year. There is an old saying from New York: “When a new judge sneezes in Manhattan, the lawyers in Brooklyn say, ‘God Bless.’”

Judge John Lenderman
St. Petersburg, Florida

2. They make any number of errors in sentencing

Such as...

- Handing down an illegal sentence (exceeding maximum, ignoring mandatory minimum)
- Imposition of an “innovative” sentence not authorized by law
- Failure to exercise discretion at all (e.g., judge requires all cases of a type to have the same sentence without variation)
- Breaching of a plea agreement
- Failure to observe necessary procedural measures—ensuring fair disclosure of sentencing evidence including Pre-Sentencing Investigation and meaningful review of PSI by the defendant; ruling clearly on PSI redaction requests; providing opportunity for victim participation; providing opportunity for defendant’s allocution
- Clear reliance upon unreliable hearsay/inadmissible sentencing evidence in imposing sentence
- Clear reliance upon evidence of undisclosed acquitted conduct of the defendant without assuring notice and opportunity to respond
- Inadequate findings on departure from a presumptive sentence
- Concurrent/consecutive/credit complications and errors
- Failure to clearly *state the sentence!*
- Animus, bias, impermissible discriminatory basis for sentence

- Degrading, unnecessarily denigrating defendant at expense of dignity, fairness of proceeding. The message can be clearly delivered without losing decorum and dignity of justice.
- Ex Parte communications/investigation by judge re: sentence computation, correctional programming and placement options in a given case, etc.
- Basing sentence upon Judge's extensive investigation and recourse to learned treatises/journals/expert studies not adduced by parties, without notice to parties or opportunity for response or objection.
- Vindictive sentence following a defendant's appeal
- *Sua sponte* sentence reconsideration without clear basis, or on untimely basis

"How do you remedy sentencing errors? In most cases, it calls for a remand for resentencing proceeding consistent with appellate instructions. Think about the hardships to the parties and the process of reconvening a sentencing proceeding long after initial sentencing has occurred. This may cause you to take more heed of possible errors and avoid them in the first place."

Judge Walter M. Morris, Jr.
Lyndonville, Vermont

3. They succumb to Black Robe Syndrome

"Its symptoms are insidious and hard to detect. I'll never forget a longtime colleague reminding me when I was sworn in that I'm not any smarter, better looking or funnier than before I wore the robe.

Think before you speak: a closed mouth gathers no foot. Do not rule from the bench when angry or upset; a quick break is necessary to organize your thoughts. Don't think you have all the answers; you don't. Don't hesitate to ask questions of the lawyers and/or your colleagues."

Judge Lin Billings Vela
Cripple Creek, Colorado

4. They don't set status conferences

"New judges often find themselves struggling to keep complex cases on track and adjudicate cases with recurring disputes over issues such as discovery. One solution to this problem is to set status conferences on difficult cases. A conference where the court simply asks what the progress of a case is against the agreed case schedule, or sits down with disputing parties to ask why one party wants certain discovery and ask the other party why the first cannot have that

discovery, can often save many unnecessary motions from being brought. Never be afraid to set a status conference with the parties; they will come when you call them.”

Judge Catherine Shaffer
President, American Judges Association
Seattle

5. They aren't up on the latest research

“New family law judges may not be sufficiently aware of the relevant psychological literature associated with parenting time, high-conflict parents with personality-disorder traits, critical and relevant relocation-related factors, and the various forms of domestic violence. NJC courses on managing complex family law matters and on domestic violence teach novice judges about these critical issues.”

Philip M. Stahl
Forensic Psychologist
Queen Creek, Arizona

6. They don't know the differences between attorney and judicial rules of conduct

“Some common challenges include ex parte contact, requests for judicial letters of recommendation and support, inappropriate speaking requests, and more. It is really important that new judges read the rules of judicial conduct closely, check prior ethics opinions when a question comes up, and, most importantly, stay in touch with someone with expertise in this area. I emailed our state court administrative office's ethics liaison very often as a new judge, and she saved me from error more than once.”

Judge Catherine Shaffer
President, American Judges Association
Seattle

7. They don't watch their steps

“You will find yourself tripping over your robe when you put the garbage out.”

Judge Philip Straniere
New York City

8. They let themselves go

“New judges are often not very good at self-care, the key to being a judge with staying power. They stop exercising and reading for pleasure, skip their sleep, eat poorly, and sometimes are tempted to medicate their stress with dangerous palliatives like alcohol. I strongly suggest that judges learn as early as possible about productive strategies for managing judicial stress and secondary trauma, to avoid the risk of burnout for themselves and their staffs. Being a judge is a wonderful job, but only if your mind, body, and spirit are tended and resilient.”

Judge Catherine Shaffer
President, American Judges Association
Seattle

“Some have a hard time admitting to the parties and lawyers that they don’t know what they are doing. They overreact and get defensive. The lawyers know! New judges need to know that they make their lasting reputations in their first year.”

~Judge John Lenderman; St. Petersburg, FL

17

Know The Code of Judicial Conduct

“It is really important that new judges read the rules of judicial conduct closely, check prior ethics opinions when a question comes up, and, most importantly, stay in touch with someone with expertise in this area.”

~Judge Catherine Shaffer; President, American Judges Association; Seattle

18

My Tips For Taking The Bench

19

Prepare Factually
To Take The Bench



20

What Makes You Ready To Hear The Case?

- How is your docket set?
 - Do you have an 'evictions' docket or just hear whatever case is set?
- You need to know what **kind** of case you are about to hear

21

What Else Should You Do?

- Open the file and get familiar with the parties and the pleadings:
 - Read the petition & the answer
 - Review the traffic citation



You are not prejudging the case; you are not investigating what happened – you are putting yourself in the best spot to make a good decision

22

Ex parte video

23

What Else Should You Do 2?

- Who are the people you will be talking to?
 - Self-Represented Litigants? Lawyers?
 - In civil - is it a company or individual?
 - In criminal – do you have any young defendants?
 - You want to make extra sure young defendants understand court is serious in hopes they do not appear again
- Do your staff or the bailiff have safety concerns about a party?

24

What Else Should You Do 3?

- What are the main legal and factual issues in the case?
- Go over the elements
- Get out the code book and look at the law
- Pull out the Deskbook and review the issues

Never any shame in double checking before you take the bench



25



Why Is This Important?

26

- It lets you be more patient, because you have familiarized yourself with the parties
- It lets you start thinking in the mindset of 'debt claim' or 'speeding ticket' elements
- If you need a few minutes to look at the file in between hearings – or if a particular case file is thick – do not hesitate to take the time you need – they cannot start without you!



27

Discuss At Your Table What You Have Found Helpful Before Taking The Bench

28



You Are Prepared! Your Bailiff Announces You. You Take The Bench ...

Now what?

29

- Taking the bench video

30

How Do You Open Court?

- Does the bailiff always announce you?
- Do you welcome everyone?
- Do you explain what is on the docket for the morning?
- Do you use a script?

31

Decision Making

What makes us worry about making decisions?

32

Making a mistake

Appeal court ruling differently

Bad public opinion

Losing an election

Lack of confidence

A tough case

33

Other Factors

Memory fades

Have not determined the law

Cannot decide on the facts

Lack of time to decide

Pressure of caseload

Judicial stress

34

Study of an Israeli parole board to see how they made decisions on which prisoners to parole

Only one of the following prisoners got freedom:



“Do you suffer from Decision Fatigue?” The New York Times, August 17, 2011

35

Case A (heard at 8:50 a.m.): An Arab Israeli serving a 30-month sentence for fraud.

Case B (heard at 3:10 p.m.): A Jewish Israeli serving a 16-month sentence for assault.

Case C (heard at 4:25 p.m.): An Arab Israeli serving a 30-month sentence for fraud.

36

“There was a pattern to the parole board’s decisions, but it wasn’t related to the men’s ethnic backgrounds, crimes or sentences. It was all about timing ...”

“Even the wisest people won’t make good choices when they’re not rested, and their glucose is low.”

37

They Were Hungry And Tired



38

“Good decision making is not a trait of the person, in the sense that it’s always there. It’s a state that fluctuates.”

“The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts”

39

Tool To Avoid This Problem With Decision Making



The Halt Method

40

When you are about to take the bench or during a long docket, ask yourself if you are:

- **Hungry?**
- **Angry?**
- **Lonely?**
- **Tired?**



41

What To Do?

- Take a recess
- Have snacks in your office
- Drink some water
- Make a quick call to a loved one
- Think about some happy plans coming up

42

Tools for Decision Making

Make these part of your regular practice

43

Know your community

- What will the parties expect?
- Are you urban and have lots of attorneys?
- Are you rural and have mainly SRLs?
- Build in some flexibility
- This never means being less “judicial”



44

Attorneys In Your Court

- They might **not** know the JP rules in civil cases
- How do you handle them during docket calls?
 - Letting them go first
 - Set a separate docket for them earlier, so it doesn't make SRLs feel like attorneys have an advantage



45

Attorneys In Your Court 2



- Trial settings – attorneys have multiple settings all over the county, maybe all over the state
 - You needs a system:
 - A county agreement - first case set gets priority
 - If an attorney is asking for another continuance because they are set in another court that day, know that you can check with other judges – is the other case likely to be heard? Attorneys should come to you with this info, but sometimes, they do not prioritize their JP case

46

Stay Organized

- Have a way that your docket is always handled:
 - The clerk knows what information you will want
 - They know when to get your attention for an important fact
 - Have meetings after a docket to see what can be improved and make sure your staff knows their role and they have a chance to offer suggestions to improve
 - The bailiff knows exactly where you want them to stand and how you want documents handled

47

Make Sure Everyone Knows Their Role, So It Is Like A Well-Oiled Machine



It will give confidence to the public and give you the ability to focus on the issue before you

48

Stay Focused

- Listen carefully
- Take notes
- Write a timeline
- Note follow-up questions to keep interruptions at a minimum



49

Judging Credibility



- You will need this skill even when a case is not in trial
- Every time a party appears before you – they are looking for a resolution in their favor
- **Do not** let your personal feelings or bias interfere
- **Do consider** what the party wants & why they want it
 - Is it something the rules or law allows?
 - Is it fair and consistent with other decisions you have taken?

50

Would You Believe Them?

An attorney needs to reset a case

- Claims they think they will be able to settle the case
- They say this every time

A civil defendant comes in after a default

- They claim they were not served
- They were aware of the case against them

51

What To Do When You Do Not Know What To Do

- Stop and take a recess
- Continue the case. This should be done very rarely and as a last resort.
- Take a matter under advisement

52

Take Your Time And Do It Right

Do **not** rule on a motion or sign a judgment you do not understand.

You can also ask parties or attorneys to provide any statute, rule, or caselaw, that they are relying on.

53

What Happens When You Finish Court?

- Do you thank your court staff?
- Do you tell the public the court is in recess?
- Do you announce when the next docket will begin? (“We will resume court at 1:30 pm.” or “Court will be in session tomorrow morning at 9:00am.”)

54

- Coming off the bench video

55

Questions? Thank you!

Judge Maggie Sawyer
Justice of the Peace
McCulloch County
Brady, Texas

56