

You're thinking about applying to be a judge

Is this the right job for you?

By Hon. Steven J Kleifield (Ret.)

Maybe you are thinking about applying to be a judge. Do you know what it is like to be a judge? The Consumer Attorneys Association of Los Angeles (CAALA) has a Judicial Pipeline Committee, which helps aspiring judges reach their goal. Similar mentoring programs are popping up in other forums. There is now a mentoring program for those who aspire to be on the court of appeal in the Second District.

There was no such thing when I was appointed to the Los Angeles Superior Court in 2002. There were no "So you want to be a judge" seminars in those days. While I had thought about applying for several years, I did not know how to position myself for an appointment.

Information about how to *become* a judge is now readily available, but what is it like to be a judge? Would this be the right job for you?

Can you mentally transition from advocate to judge?

Some attorneys represent plaintiffs; some represent defendants; some represent both. In any event, if you have been involved in litigation, you have acted as an advocate.

You must have been in practice for at least 10 years to be a judge. Does acting as an advocate day after day for many years affect your thinking? I think it does. When you attend a CAOC convention, for example, is the conversation equivalent to what you might hear at a Southern California Defense Counsel convention? Do you think it would be equivalent to what you might hear at an Association of Business Trial Lawyers convention?

Of course not. The nature of the work changes the way you think. It is not that you develop a bias that would keep you from being fair. You just develop a way of thinking about cases that helps you best represent your clients. If you are a plaintiff's attorney, you think, "How would I put a case together that would put my client in the most favorable light? How would I argue the case to a jury that would maximize the plaintiff's recovery? What arguments would I make to the court to distinguish case law that may be an impediment to a recovery?"

As the years pass, you become accustomed to viewing the world through a particular lens. How often have you heard of an "independent medical examination" referred to as a "defense medical examination"? Maybe you have said it yourself. You may view the corporate defendant as a bastion of greed, discrimination, and harassment. Your opponent may view the corporation as a provider of goods and services that immensely improve the quality of life for thousands or millions of people.

If you are going to take the oath of office, you must be prepared to abandon your old ways. You do not become a "blank slate," of course, but you must be open to hearing both sides in a way you didn't before. You cannot be dismissive of an argument just because it is being made by one side or the other.

You must follow the law, even if it pains you to do so. If a strong case with a sympathetic plaintiff is filed one day after the statute of limitations has run, you must be willing to dismiss it. Can you do that?

Are you willing to limit the exercise of your First Amendment rights?

The judiciary is governed by canons of ethics, and you will need to get accustomed to following them. You will need to think differently and act differently.

When he retired, Judge David Rothman wrote a book on judicial ethics that is an indispensable resource. It is a weighty tome, as thick as a textbook. I do not know how he did it. The California Judges Association sends a copy of the book and annual updates to all judges.

Judges must always maintain the integrity of the court, and practice fairness and discipline in both their professional and personal life. The public needs to have confidence that their matters will be handled competently and fairly. Every time you are on the bench you will be scrutinized, and you must be careful about everything you say. You must be careful what you say in public settings. As the *Miranda* warnings state, anything you say can and will be used against you.

A judge's First Amendment right to free speech is restricted. As a lawyer, you no doubt spend a lot of time discussing cases with friends and colleagues. As a judge, the only people you can do that with are your judicial colleagues. When you run into a lawyer at a bar association meeting you can no longer discuss cases that are pending before you or any other court. You also cannot express political opinions in public. You even must be careful about expressing political opinions in smaller settings, as something you say can be disseminated to a large community in minutes.

You are probably active on social media. While some use of social media may be feasible, judges need to be extremely cautious. Today's posting is tomorrow's grounds for disqualification from hearing a case. It may be best to avoid social media altogether. Judges have a duty to refrain from conduct that would potentially be disqualifying.

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Another thing judges need to be careful about is receiving and giving gifts and contributions. Can you attend a dinner hosted by your old law firm? Can your staff accept a basket of cookies from an attorney thanking them for being friendly and helpful? Do you have to report the gift to the California Fair Political Practices Commission? Can you attend political events? These are the types of questions a judge will encounter. The answers are often not obvious.

The Commission on Judicial Performance (CJP) is the official body that oversees compliance with the ethical rules. You should know that there are non-judges on the panel as well as judges. They can issue discipline ranging from private admonishments to removal from the bench. You are a judge 24 hours a day, and you must conduct yourself like one.

Are you willing to wade into unfamiliar territory?

Chances are that you primarily handle civil cases in the Superior Court. While you will have transferable skills, you will most likely begin your judicial career doing something totally different than what you do now. You will have an opportunity to communicate your preferences to court leadership. Your preferences, however, are less important than the current needs of the court.

There are several divisions of the court, based on both subject matter and geography. You could be sent to any one of them, depending on where there are vacancies. There *will* be vacancies; the governor does not make an appointment until a seat is open. It is not uncommon to have 25 or so vacancies at any one time. You will go where you are needed. While the court usually tries to take your preference into account, you may be assigned to a courthouse that is a long way from your home.

The various divisions include civil, criminal, family, probate, juvenile dependency and delinquency, mental health, traffic, and appellate (hearing appeals from limited criminal and civil cases). Included within civil are small claims, unlawful detainer, limited civil, complex, trial courts, long-cause trial courts, and general civil. The odds are good that you will have little or no experience in the subject matter in the courtroom to which you are assigned.

Most likely there will be a steep learning curve. There certainly was for me. My first assignment was a criminal arraignment and post-conviction court at the Airport Courthouse in the West District of LA Superior Court. I spent a few days sitting with a commissioner assigned there (who was later appointed to the bench and became a prominent judge). My only experience in criminal at the time was a first-year law school course and one arraignment as a lawyer, where I asked for a continuance and "waived time!"

How do you deal with that? First, "hit the books." I spent a lot of my spare time reading about criminal law and procedure. I also read the criminal cases in the advance sheets. Second, talk to your colleagues. I found my fellow bench officers to be very generous with their time and advice. Most of them would tell me that if I had a question that required a quick response, they would get off the bench and take my call. Invariably they would do just that. I made it a point to do the same.

While I fully expected to stay in the West District, within six weeks I received a call from the presiding judge that I was being transferred to the Huntington Park courthouse in the Southeast District. This was a former municipal court courthouse, with a total of five courtrooms. My transfer was based on the needs of the court – there was a budget crisis, and I was needed to replace a retired judge who was sitting on assignment. I was thrown into the world of misdemeanor trials and felony preliminary hearings.

I quickly learned the basics of criminal law and procedure. I had colleagues in the courthouse who had more experience than me (about six months' worth!) who shared with me the wisdom of their experience. Even the attorneys were helpful. I found the expression "the criminal attorneys are more civil than the civil attorneys" to be true! I later transferred to the East Los Angeles courthouse, after which I was moved to the Foltz courthouse downtown. I spent a total of seven years in criminal and presided over approximately 85 jury trials to verdict, and conducted about 2,000 preliminary hearings.

I then switched to a civil assignment at the Stanley Mosk courthouse. In my first year I did nothing but limited civil trials. Limited civil cases are cases with $25,000 or less at stake. You may ask, "How can you enjoy trying cases with so little at stake?" What I learned is that while that amount of money may not be worth litigating over to you or me, it was very important to the litigants. Why should one case be more "important" than another where the money means a lot to the litigant?

Included within the limited civil inventory were unlawful detainer cases, commonly known by the public as "eviction" cases. I tried 24 unlawful detainer jury trials to verdict and numerous court trials in that one year. I learned that unlawful detainer cases are not easy cases but extremely important to landlords and tenants.

Some judges decide to remain in a subject matter that is different than the one in which they practiced. For example, some judges with a civil background decide to stay in criminal. Others may decide to stay in family law, or juvenile dependency or delinquency. I understand that. I became a judge because I wanted to do something different, not to keep doing the same thing I had been doing for 22 years. But there did come a time when I decided to move back to civil, even though I enjoyed the challenge of hearing other types of cases.

In the LA Superior Courts, every year each judge receives a questionnaire asking for assignment preferences, with

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respect to both subject area and location. While the supervising judges of the various divisions and locations make their recommendations, the final decision rests with the presiding judge of the court. The assignments for the new year are typically made after Thanksgiving. Reassignments are also made during the year as needed.

Accept the fact that some judges will seem to advance to what are considered more desirable assignments more quickly than others. There can be many reasons for this of which you are not aware.

If you get a general civil assignment, are you willing to put in the work?

Some assignments are more difficult than others. While general civil assignments are commonly sought after, they can be tough. The volume of cases continues to grow. The average case load for general civil judges at Mosk was at one time about 250-300 cases. When I retired in 2023, caseloads were commonly 700 or more. Former colleagues tell me they have grown even more.

You will have a variety of cases, many of which you have no familiarity with. While your practice may be personal injury, for example, personal injury cases will be just a part of your caseload. As a judge you have an ethical obligation to handle every case that is assigned to you, unless there are grounds for disqualification. You cannot trade cases with someone else. It is yours to handle from beginning to end.

There are lots of employment cases in the Superior Courts. These can involve wrongful termination, harassment or discrimination, and wage-and-hour claims. If you already handle these cases, congratulations. If you do not, you have a lot to learn. Employment cases usually take a lot of work. Many, if not most, employment cases result in motions for summary judgment, which are very time-consuming and often difficult.

There are also a lot of "lemon law" cases. These often have extensive discovery disputes. Very often you will have an informal discovery conference which does not resolve the matter, and you will have to read and rule on the motions.

Business contract and fraud cases can be very technical and complex. The big corporations and wealthy individuals hire very expensive and very good attorneys. You can expect a lot of litigation and weighty motions. You will also get cases involving dissolutions of partnerships, and partnership claims for damages. Such disputes can be very contentious and emotionally charged – they are often called the "family law of business cases."

Real property cases often involve partitions of property and division of assets and income generated from the property. They may involve disputes regarding the purchase and sale of the property, whether for damages or specific performance.

There are unlawful detainer cases in a general civil court. These often involve commercial properties but may also involve high-value rental properties. The tenants may file cross-complaints for breach of the lease by the landlord.

Other cases may include such subjects as malpractice (medical, legal, accounting, architectural, real estate, and other professions), elder abuse (physical or financial), fraud, negligence, unfair business practices, appropriation of trade secrets, mechanics liens, construction defects, insurance coverage and bad faith, product liability, civil rights, and Unruh Act cases, among others. I even had some tax cases.

You will have to read and rule on demurrers, motions to strike, motions for summary judgment, motions to dismiss for lack of jurisdiction or forum non conveniens, anti-SLAPP motions, and discovery motions. You will hear calendar motions, such as motions for preference in trial setting, and motions for continuances. There will be motions you never knew existed!

Many of the motions require a great deal of work just to get up to speed. *Somebody* must read those huge stacks of papers. Most parties appreciate receiving written, tentative rulings – unfortunately, there is not always time for that. I appreciated parties bringing court reporters, so I could make an oral record, but that often does not happen.

Most judges have a morning calendar, which includes case management conferences, status conferences, orders to show cause, ex parte applications, and motion hearings. These all require preparation. You cannot take forever to get through that calendar. You do not want to keep the jury waiting!

You will be the one ruling on the motions in limine, evidentiary objections, and post-trial motions, including motions to tax costs, motions for judgment notwithstanding the verdict, motions for new trial, and motions for attorney's fees. You will be the one settling the jury instructions. You are the one deciding what the judgment will say. You are the one who answers the jury's questions.

In cases where there is no right to a jury trial, or where the parties waive jury, you will need to prepare a statement of decision, which will require you to set out your factual findings and state the reasons for your decision.

Do you like to read and write? Do you find thinking about legal issues interesting? If not, you might want to think twice about a judgeship.

Is it worth it?

Definitely! Judges often say that "a bad day on the bench is better than a good day in practice." That is true, *if* you are the right kind of person. Every day, you get out of bed and go to work with the goal of dispensing justice and fairness, ensuring that due process is followed. It is up to you to uphold the rule of law. If you like the challenge of making legal decisions, it is a dream job.

You have your own courtroom and your own chambers. You are surrounded by dedicated staff. You meet a wide

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variety of colleagues over the years. With every decision you make, you are affecting lives. With every decision you make that results in an appellate opinion, you are a part of history.

The job is not for everyone. After thinking seriously about it you may want to continue what you are doing. However, if you enjoy diving into legal issues, relish taking on challenges, and want to expand your world, this job may be just the thing for you.

Hon. Steven J. Kleifield (Ret.) is currently serving as a mediator, arbitrator and referee with ADR Services, Inc. *He served for over 20 years on the Los Angeles Superior Court. Before that he was in private practice, handling cases primarily on behalf of plaintiffs. judgekleifield@adrservices.com.*


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