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Being a Partner: Not All Glitz and Glamour

By Deidrie Buchanan – February 14, 2012

When I started my legal career five years ago, my primary goal was to become a partner one day. At that time, the idea of being a partner to me seemed to be all glitz and glamour—you come to work when you want to, you are your own boss, you make a lot of money, and you make the rules. But, having had the opportunity to manage a book of business and ultimately become a partner after five years of being a lawyer, I can say that I have learned that being a partner is not all glitz and glamour. To put it bluntly, being a partner often means stress and stress, combined with more stress. Similarly, the road to becoming a partner is definitely not an easy one.

As a young lawyer, I initially had the mentality that, whatever it meant to be a partner, I could figure it out on my own. That, perhaps, is one of the biggest mistakes a lawyer can make when trying to become a partner. While young lawyers tend to be very zealous and like the idea of remaining independent, to become a partner, you have to learn how to be dependent on others to a certain extent. It is simply an error to think that you can become a partner on your own, without the assistance of anyone. I eventually learned that the road to becoming a partner is not one that you can walk with blinders on, blocking out the people around you. You definitely need mentorship. Even if a firm does not have a formal mentoring program, it is incumbent on you as a young lawyer to try and learn from the current leadership at the firm. More often than not, partners in a firm each bring a different set of skills to the table. You should make it your focus to take a little from each partner. That is definitely part of the key to becoming a partner.

In the past five years, I often asked myself what exactly I needed to do to become a partner. While law school provided me with the analytical skills to become a “good lawyer,” I ultimately knew that “being a good lawyer” was not enough to become a partner. To be a partner, it is not enough to simply be a good writer and a good oral advocate. You need to be innovative; you have to think like an entrepreneur—your main focus at all times should be growth. The bottom line is that stagnation does not lead to a successful business. Therefore, you must always be focused on building your client base, which means remaining in tune with the changing needs of existing clients while identifying how you can serve the needs of potential clients. Importantly, partners must be able to expand a firm’s client base. In addition, a partner must also be a good leader with a sense of direction. Moreover, a partner must have great interpersonal skills.

Once you become a partner, your mental focus, in essence, has to be transitioned from being about your personal ambitions to being about the overall success of the firm. To have a successful business, you simply cannot be selfish. Your mentality cannot be focused around your own ambition and wishes. Being a partner often means putting your own personal needs and

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desires on the back bench for the well-being of the firm. While employees have the luxury of working somewhat standard hours, partners are always on the clock. While you may not physically be in the office, you cannot simply tune out from work. You are responsible for what is occurring, even if you are not physically there. In contrast, as an employee, you have the ability to pass the baton and say something is “out of your pay grade.” That luxury, however, no longer applies as a partner. You have to deal with the difficult and unpleasant situations.

At the beginning of my legal career, I mistakenly believed that being a partner would mean that I was only accountable to myself. I have learned, however, that that is definitely a misconception. Unfortunately, being your own boss does not mean being accountable to only yourself. Being a partner comes with a great deal of accountability—accountability that you were previously able to escape when you were just an employee. Your accountability is to the other partners with whom you share the partnership and to the employees of the business. As a partner, you are responsible for ensuring that there is cash flow to meet the needs of your employees while also ensuring that all bills are paid. However, as a partner, your goal cannot simply be to cover overhead expenses and salaries for a month. Rather, you have to have a vision to ensure that profits are sustained.

When considering all the downsides to being a partner, it’s natural to wonder why anyone would ever aspire to become a partner. After looking beyond the glitz and glamour of the position and examining all of the negative aspects of becoming a partner, I still wanted to be a partner at Powers, McNalis, Torres, Teebagy, Luongo. While the realities of being a partner may sound dismal, the rewards that come from it far outweigh the negatives. A firm, no matter the size, is ultimately a team. When you like a team, not only do you want to stay on the team, you want to find ways to make your team competitive with other teams. You care about the overall success of the team. That is precisely why I wanted to become a partner, despite the negative aspects of the position. I wanted to contribute to the growth and overall success of a firm where I naturally enjoyed working, while having the opportunity to participate in making decisions regarding the firm’s direction.

While achieving the status of partner is indeed an achievement, I do not view this as the top of the mountain for me. Rather, it is the beginning of another chapter in my professional career. Prior to becoming a partner, my primary focus was on how I could make myself more profitable. Now, my professional development is focused on what I can do to make the firm more profitable. In sum, my professional goals have been redefined to achieve overall profitability in the firm, rather than personal success. A sense of accountability, ownership, and responsibility, along with a focus on growing the business, is what being a partner is all about. Realizing that early in your career as an associate and a young partner is critical to becoming a successful and valuable partner in a law firm.

**Keywords:** litigation, minority trial lawyer, legal profession, partners, profitability

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Lessons from a Bean Counter

By Ed Romero – February 14, 2012

While they may never be the protagonists in a John Grisham novel, attorneys who oversee the litigation budget serve their clients well. These bean counters, as they are euphemistically called, ensure that the ship of justice does not run aground before a client gets its day in court. As unexciting as the job may seem, the role of the attorney bean counter is integral to the business of law. These are some of the lessons learned by one of them.

1. Establish the Scope of the Representation

There are few economies of scale in litigation. A small case is often marginally less costly to litigate than a larger one, and the difference in cost turns not on the amount of damages, but on the number of parties in the case and the amount and type of issues presented. Because of this, it is essential for the lawyer to establish the duties to be undertaken on behalf of a client before the representation begins. Is the lawyer to handle the matter through trial? Through trial and appeal? If through appeal, is it appeal that is a matter of right or through petition for review or certiorari to the court of last resort?

By way of another example, do the claims arise from a written agreement containing an arbitration provision? If so, is the provision subject to state arbitration laws or the Federal Arbitration Act? Is the provision enforceable? If so, what is the scope of the arbitration provision? Does it apply only to claims arising from the written agreement or to all claims that could be asserted by the parties? Does the representation encompass claims that are both subject to, and reserved from, arbitration such that the matter would likely be litigated in court as well as in arbitration? If so, which matter will proceed first, or are they to be litigated concurrently?

The differences in the cost of such representations are enormous, and a lawyer needs to give great care in understanding the scope of the representation for a number of reasons, not the least of which is to ensure that funding will be available through the pendency of the action. It is difficult to achieve this objective, however, absent a retention agreement that clearly and unambiguously establishes the services that the lawyer is to provide.

2. Search for Ways to Fund the Representation

No one wants to be sued. That’s why people obtain insurance, which usually covers the cost of defending against a lawsuit and indemnifies the insured for liabilities that might arise from one. The cost of defense and indemnity, however, can come in many forms, the most obvious of which is a commercial general liability or similar type of insurance policy. Defense and indemnity can also be found in homeowners’ policies and umbrella coverage and in a host of other different types of policies. Less obvious forms of cost of defense and indemnity can be found in contracts, settlement agreements, and statutes. For example, in many jurisdictions,
employers are statutorily obligated to defend and indemnify current or former employees sued for conduct undertaken by them during the course and scope of employment.

Able counsel look for ways to fund the case by searching for long-forgotten documents such as insurance policies, contracts and settlement agreements, and any other source that might lead to funds for cost of defense or indemnity. And if they discover the potential for defense or indemnity, they make sure that the claim is tendered.

3. Budgets Are Synonymous with Trust

Some attorneys subscribe to a school of thought by which a client is slowly reeled into the cost of litigation like a fish caught on a hooked line. This tactic is often used by the insecure, who fear that revealing the cost of litigation to a client early in the representation will dissuade them from proceeding with the case. The reality, however, is that the tactic often leads to resentment and distrust when a client inevitably discovers that he or she has been sucked into what others have called the buzz saw of litigation.

Another approach is a frank discussion about cost and the creation of a budget that gives a good estimate of the minimum amount needed to fund the representation. As with most things, however, timing is everything, and the best time to raise the issue of cost is after the trust and confidence of a client has been earned.

Trust is a vague notion. For some clients, it is a function of simply liking the lawyer. For others, it comes after exhaustive vetting and scrutiny. For almost all, however, it is earned only after counsel has not only invested the time and effort to listen to a client’s woes and understand his or her concerns and goals, but has also conveyed the subtle—but important—message that he or she is concerned with the client’s well-being.

A way of establishing trust—and avoiding an accusation of malpractice—is identifying early in the representation, and before the filing of an action, potential bases by which the client or adversary can recover their attorney fees. Attorney-fee provisions and fee-shifting statutes are usually easy to locate, especially if a search for ways to fund the case has been undertaken. Notwithstanding this ease, it is surprising how often they are overlooked or ignored. The consequence of failing to advise a client of the existence of such provisions, however, can be devastating. Identify and disclose such provisions or fee-shifting statutes to a client early in the representation. Doing so is an easy yet significant way to earn a client’s trust while protecting both you and the client from harm.

Another aspect of developing trust is to learn the facts. A good understanding of the facts, albeit as expressed by the client, will not only instill a sense of confidence in the client, but will also provide the lawyer with a reasoned basis for developing a sound budget that can serve as a roadmap to the representation. The creation of a budget also provides assurance that the client is
not being taken to the cleaners on an open-ended time and materials contract over which he or she lacks control.

4. Allocate Funds for Investigation and Discovery

It is amazing what you learn about a person when you examine his or her trash. Financial problems, addictions, illicit conduct, disease and health issues, indiscretions, and DNA are some of the insights to a person that are discoverable when they haul their garbage can onto the curb. And this information is available to those who allocate funds for investigation and discovery.

Allocate money for pre-filing investigation. By way of example, the Federal Rules of Civil Procedure require parties to identify early in an action all documents and witnesses that may support or have known of the claims or defenses. These initial disclosures are time-consuming and costly to prepare but provide the parties with insight early enough in a case to allow them to assess the strengths and weaknesses of the matter. This insight is all the better when gleaned before a lawsuit is filed, and a sound budget ensures that money is earmarked to conduct a thorough investigation before the filing of an action. This pre-filing investigation is essential not only in federal matters, but also in a variety of state actions.

For instance, a defendant accused of misappropriating trade secrets is often entitled to recover attorney fees if the action is brought in bad faith. As a consequence, counsel for the plaintiff must often undertake a pre-filing investigation to ensure not only that the defendant unlawfully acquired the client’s information, but also that the information meets the definition of a trade secret. The failure to do so can be a costly blunder, subjecting both lawyer and client to a variety of harms.

In addition to investigation, ensure that sufficient money is allocated for discovery. Allocate the resources needed to prepare thoughtful discovery. To do so, develop a theme that will be used at trial and obtain discovery on issues that not only support the claims and defenses of the case, but also the theme. Moreover, earmark enough funds to cover the motion work needed to ensure compliance with the discovery demands.

Formal discovery is one of the most important, and expensive, aspects of civil litigation. Too often, however, it is done poorly, improperly, or both, and lackluster work product is frequently justified on the grounds that the client lacked the resources to do the job properly. This is nonsense. If the case is financially and emotionally worth pursuing, then it is worth allocating the resources to conduct discovery in a manner that will accumulate the evidence needed to support or refute the claims and defenses of the case.

5. Trials Are for Those Who Lose Their Motions

Early in my career, I met a most remarkable lawyer. Endowed with a brilliant mind and a wonderful sense of humor, he was also extremely humble and an excellent teacher. Among the
ways he taught newly minted attorneys was through the use of witticisms that left their points indelibly printed on the minds of his charges. One clever saying that remains with me today is that “typos are inevitable, unavoidable, and completely unacceptable.” Another was that “trials are for those who lose their motions.” It took me a while to appreciate the latter, but the years have proved the wisdom of this wit, and I have since earnestly budgeted for the preparation of well-written motions.

Effective motion work is costly. It takes time to write a brief that is accurate, devoid of jargon, and easily understood. Carefully budget for this expense, and explain to the client why time and effort are needed to prepare effective motions. Toward this end, have clients read and compare motions filed by you in other cases and those filed by opposing counsel. Invariably, lay clients will appreciate good motion work because they can understand the brief even if they do not have a background in the law.

Budget for pleading challenges. While it can be costly to analyze and digest the allegations of a complaint, especially a complex pleading involving multiple parties, the return on the investment is often phenomenal. Over the years, I have obtained dismissals of complex actions at the pleading stage, and those pleading challenges that did not result in outright dismissal often resulted in the dismissal of vexing claims. While costly, disposition of an action at the pleading stage is far less expensive, and less risky, than having to conduct discovery and go to trial on the merits. A pleading challenge, however, requires painstaking work, and the costliest aspect of it is not the legal research, but the time and effort needed to prepare the motion.

Good motion practice is not limited to pleading challenges. Discovery motions, motions for summary judgment and for judgment on the pleadings, motions in limine, and post-trial motions are all properly considered in a well-prepared litigation budget. Regardless of the forum, identify the motions that are likely to be needed in the case, and carefully budget for them.

6. Plan for an Effective Alternative Dispute Resolution Session
All federal and most state courts now require parties to undertake some form of alternative dispute resolution (ADR). Budget for an effective session. This means scheduling the session for a duration that is long enough to be of value. Do so even if it means having to pay for a couple of hours of time for the mediator. The one- or two-hour freebies that some courts offer as part of their ADR program are often inadequate because, among other reasons, there is simply not enough time for the mediator to learn the facts and address the emotional concerns that simmer beneath the dispute. Also, earmark funds to marshal the evidence and present it to the mediator in a well-written brief. A good mediation undertaken after discovery, but in advance of trial, can not only streamline a case, but avoid trial altogether.

7. Luck and Good Fortune Favor the Organized Trial Lawyer
Trials are costly. Budget for them. Allocate funds to distill the mountain of evidence acquired in
discovery and identify the kernels needed to support the trial theme. This distillation of information will most often result in a handful of documents and witnesses that will be needed at trial. For each, identify the ways they can be admitted into evidence and look for ways that your adversary will try to object to their admissibility. Allocate funds to perform the same analysis on each document or witness likely to be proffered by an adversary.

Motions in limine are especially effective in gutting an adversary’s case. Prepare them carefully and well in advance of the time needed to bring them. In most state courts, they are heard on the eve of trial. Think about stipulating to having them heard at least 60 days before trial. Doing so will enable you to revise your trial strategy should an adversary’s motion adversely affect your case. Budget for this expense.

Allocate funds to serve each of your witnesses with the court’s in limine rulings and have the witnesses read them. This will help insulate you from claims of misconduct should a witness on the stand inadvertently stray into matters covered by the ruling. Finally, if you are requesting a jury, budget for each day’s jury fees. They add up quickly.

Conclusion
A good budget encompasses many more items that could not be discussed here. The point is that providing a client with a sound budget early in a case gives the client not only clarity as to how the case will be handled, but also a good idea of the expected cost. While cost is always subject to revision based on changes in a case, a budget nonetheless establishes a way of measuring how well the attorney has achieved his or her objectives and the cost.

Keywords: litigation, minority trial lawyer, budgeting, motions, pretrial practice, discovery

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Is Diversity under Siege?

By John Thurmond – February 14, 2012

A former colleague recently quipped that “diversity is under siege” from what he called “benign neglect.” This minority attorney is a partner in the Chicago office of a Midwest law firm and has watched the progress of diversity in the Chicago offices of regional and national law firms, where he has practiced over the past 20-plus years. He tells a compelling story of how the day-to-day pressures of running a law firm in the recession, where many firms were struggling to keep the doors open from quarter to quarter, essentially made it implausible or impossible to maintain diversity initiatives over time. The available data from the recession supports his conclusion, and while more recent data suggests that diversity recovered some ground in 2010 (data for 2011 is not yet available) as the economy showed signs of recovery, if the recovery should stall in 2012, attorney diversity efforts could again suffer.

As this former colleague put it, for diversity to thrive in a law firm, the firm needs an established “Pied Piper” to drive the hiring of minority attorneys, lead the professional development of minority attorneys within the firm, and push for education on diversity and the need for it among all firm attorneys. The Pied Piper in almost all cases must be a partner-level attorney who faces the same challenges and pressures of any law-firm partner in addition to shouldering the responsibility for leading diversity initiatives within the firm, not to mention facing the challenge of being a minority as well. As my former colleague put it, “I can go days without seeing another partner with a face like mine.” Over time, he feels that Pied Pipers become overwhelmed and burn out from juggling these responsibilities and stresses, especially in economic hard times, as all law-firm partners, whether minorities or not, understandably must focus more and work even harder on finding and maintaining their books of business. As the Pied Pipers, and all other law-firm partners and associates, struggle to build and maintain their practices in tough times, the “benign neglect” of diversity initiatives sets in, and law-firm diversity suffers. Unfortunately, the available data seems to support this story.

The ground lost in law-firm diversity and minority hiring over the recession is by now well publicized. As the Am Law Daily reported, between 2008 and 2009, big firms lost 6 percent of all attorneys and 9 percent of their minority attorneys. Overall, in 2009, law-firm diversity actually dropped for the first time in the decade that the American Lawyer has tracked the numbers. The most recent data from the Am Law Daily Diversity Scorecard indicates that diversity regained some ground in 2010, with big firms increasing their percentage of minority attorneys to 13.9 percent, up 0.2 percent. While most observers felt great relief over the improvement in 2010, the gain was undoubtedly small, and, until we see numbers for 2011, it is premature to call it a trend. Moreover, as clients and law firms watch the economic downturn in Europe unfold and brace for
any negative impact on U.S. markets, it remains to be seen whether law firms can sustain whatever diversity initiatives led to the 2010 rebound in diversity numbers.

My former colleague suggests that law firms need to think hard about what institutional controls and incentives they can create to sustain diversity in tougher economic times. Put another way, how can they better support their diversity Pied Pipers to prevent burnout and keep them inspired and energized to maintain diversity initiatives as business and billing pressures mount in tough economies? Clearly, there are no easy answers to this question. Is it as straightforward (although certainly not simple or easy) as providing partnership compensation incentives to the Pied Piper? Perhaps the answer is to update the model and not rely so heavily on one leader to drive diversity initiatives. Perhaps law-firm leadership can begin by creating a core group of truly committed partners, whether found internally or through lateral partner hires, all empowered and with real incentives, compensation-related or otherwise, to drive diversity initiatives. One essential element would no doubt have to be a strong commitment at the top, with firm leadership fully engaged and supportive.

My former colleague also suggests that law firms need to think hard about how they can better set up minority associates to succeed in the law-firm environment and prevent them from washing out in tough economic periods like 2010. As he put it, “how can you bring in an associate from, for example, a historically black college, put them in a law firm without any support systems in place, and expect them to succeed? It’s culture shock.” Again, there are no easy answers to this problem. Can law firms provide better mentoring systems to help young minority associates adapt? How can you integrate a support system in a legal practice that is by its nature often highly competitive? For example, at many law firms, assignments are allotted through a free-market system with the double-edged sword of great practice opportunities, but the challenge of navigating a complex system of personalities, practice groups, and relationships to compete for and realize those opportunities. Can a law firm with a free-market assignment system then fairly and equitably set up support systems for minority attorneys? Addressing this question implicates complex ideas about the greater culture, society, and politics, all of which are far beyond the scope of this article. But the fact of the matter is that this is exactly the type of question that all law firms must now address, especially those that profess a commitment to diversity.

Perhaps law firms can find answers from the corporate legal departments who are their clients. My Lateral Link colleague T.J. Duane, also one of Lateral Link’s principals, has participated in diversity panels across the country and regularly talks to corporate legal department general counsels across the country. As T.J. puts it, “the demand for minority attorneys in corporate legal departments is steadily growing, with general counsels placing a high priority on hiring minorities.” At Lateral Link we routinely see hiring decision-makers in corporate legal departments ask for more minority candidates, and they are doing so at an increasing rate. More
importantly, we are seeing corporate legal departments develop detailed initiatives to improve diversity both in their ranks and in their outside counsel.

One minority general counsel of a legal department at a large, Chicago-based corporation described some of their initiatives to encourage and promote diversity. As she explains it, their legal department is taking its cues from the business side of their company, which has a great track record of encouraging and developing diversity. In fact, her main “client” on the business side is a minority female who started her career with the company in a retail position out of high school, subsequently rising through the ranks to a CEO position. This company’s legal department’s diversity initiatives start with a diversity committee within the legal department made up of committed, high-level attorneys empowered to make real decisions about diversity hiring. This general counsel was most emphatic about the committee’s efforts to aggressively seek out high-quality diversity candidates. She said that after looking at their diversity hiring, they realized that they were too passive about waiting for good minority candidates to come to them. For diversity to thrive, they needed to actively seek out minority attorneys who could succeed in their department. They then began working with their talent-recruitment personnel to find and identify those minority candidates. This general counsel reports that, by doing so, they ended up with a much larger pool of highly qualified minority candidates, resulting in minority hires who are currently succeeding within their legal department.

This same general counsel also mentioned an initiative to actively seek out and engage minority- or women-owned firms to handle local matters. In fact, in a quick survey of Chicago-based corporate legal departments, we saw two separate companies with similar initiatives. These examples of corporate clients making outside counsel decisions based on diversity are not uncommon and have been ongoing for years, but the trend is quite clear: It is increasingly common for clients to seek and even demand diversity from their outside counsel, and even specifically with respect to the attorneys working on their matters.

In the end, we might ask whether diversity really is “under siege” or whether diversity will progress and grow in the law through fits and starts, with setbacks along the way in tougher economic times. Only time will tell, and the concerns voiced by minority attorneys and other long-time observers of the legal market are balanced by encouraging signs of progress. In particular, the demands of corporate legal departments for minority attorneys both for internal staffing and from outside counsel, as well as the model hiring initiatives undertaken by those departments, are encouraging signs of progress in diversity hiring in the legal market.

Keywords: litigation, minority trial lawyer, diversity initiatives, hiring, legal profession

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Are You Partner Material?

By Anna D. Torres – February 14, 2012

Partner. Member. Shareholder. The technical legal status is not really that important. What is important is what the title symbolizes. Success. Respect. Acceptance. Status. Security. Making partner has always been the associate’s brass ring. From the moment we embark on a legal career, we know that the ultimate prize is—should be—making partner. We see it as our just reward for the long hours, the stress, and the anxiety. But along the road, we often ask ourselves, “Am I partner material?”

There are many answers to that question as there are firms. Each firm has its own culture, needs, and requirements. The duties and responsibilities of a partner vary greatly by firm and often change over time. Partner material at one firm is not always partner material at the firm down the street, or even two floors down in the same building. Unfortunately, there is no Herculean rite of passage upon which completion distinguishes you as worthy of automatic membership. Single-handedly slaying a lion would be a more straightforward endeavor when compared with the often mysterious conclave in which the associate waits expectantly for the puff of white smoke (Congratulations, you made partner!) or black smoke (Sorry, maybe next year.).

Despite the lack of uniformity among firms, there are some recurring concepts that emerge time and again and seem to apply to firms of every size, in every geographic zone, and across all styles and management philosophies. So how will your potential future partners evaluate whether you are partner material? And how do you evaluate and prepare yourself for the day when these individuals will answer that question?

“If elected, will you serve?” Before focusing on the nuts and bolts of making partner, it is important to explore your motivation for wanting to become partner at your firm. Is it a good fit for you and are you comfortable there? Do you share the firm’s style, philosophy, and ideology? Do you genuinely wish to make a long-term legal and emotional commitment to this firm and to the individuals who are already partners? These are important questions, and they require a certain amount of self-awareness and introspection. Making partner will be demanding, time-consuming, and exhausting. You should not devote that amount of time and energy to anything in life only to realize in the end that it is not what you wanted, hoped, and expected. Make an honest assessment of your goals, ambitions, and aspirations. If they are not in alignment with what this partnership can offer you and what you can offer the partnership in return, devote your energy to finding a firm that is a better match.

“Can you fulfill the basics?” Assuming that you have determined that, indeed, you do want to spend your professional future devoted to this firm and its people, do your research as to any formal, express criteria for making partner. This is the easy part, because these are likely to be...
objective and measurable criteria. For example, does the firm require a buy in? Are there billable-hour or other profitability requirements you must meet? Is there a set number of years before you will be considered? Must you first chair a certain number of trials? If your firm has a set of formal criteria, that will be the foundation of your partnership track. Create a plan to meet any formal criteria within the time frame you have allotted yourself for reaching the goal.

“Do you have the technical skills?” This part is also easy to plan for, if not as easy to achieve. Quite simply, partners expect their partners to be excellent lawyers. They expect their partners to be able to come in and pinch hit as necessary and do as good a job, or better, than they can. The technical skills you need will vary according to your practice. It is important to know what skills you need to develop and find a way to develop them. Speak up. Volunteer for assignments that will develop your technical skills, even if it means extra work. Become a proficient lawyer.

“Do you go the extra mile? Are you reliable?” In times of hardship and when the proverbial stuff hits the fan, a partner will roll up his or her sleeves and get to work. What needs to get done gets done, even if there is no gold star at the end. Partners have a “can do” attitude. Be dependable, reliable, and consistent.

“Do your peers respect you and seek your counsel?” If you answer “yes,” then you are an emerging leader. If you answer “not yet,” then it’s time to work on your leadership skills. Leadership is not about telling people what to do. It involves earning the trust of others who look to you for guidance, inspiration, and motivation because they believe in the path toward success that you have defined. While some are born leaders, leadership can also be a learned skill. There are endless styles of leadership and many, many resources for learning leadership skills. Closely observe those whom you consider good leaders at your firm. Invest time in leadership training. Read books and attend seminars. Seek opportunities inside and outside your firm to develop and demonstrate your leadership skills—select a project that interests you and build a team to complete it.

“Do clients like you?” Client development. Marketing. Rainmaking. The words strike fear in the heart of a would-be partner. How do you know if you have what it takes to develop business for the firm, particularly as a less-experienced associate with limited opportunity to interact with clients and develop marketing skills? Provide excellent client service in whatever form that means at your level. Prepare timely reports. Provide excellent work product. Respond to calls and emails in a timely fashion. Clients will appreciate your effort, and you will build better relationships. Need practice? Remember that a client is someone who supplies your work. Until you have your own clients and bring in your own work, the firm’s partners are your clients. Practice your client development skills on the firm’s partners. Build those relationships by meeting the partners’ needs and providing them with excellent service.
“Are you an ambassador for the firm?” Become aware of how you represent the firm to the outside world. Your actions, your conduct, your skills, and your preparation always reflect on the firm, so make sure that you present a positive image. In addition, be diplomatic when discussing the firm with others. Your firm and your future partners want to know that you appreciate and value the firm, despite any flaws. They must be certain that you will present a united and positive front to the world. This does not mean that you must ignore flaws or problems or pretend there aren’t any. It does mean that you will be dignified, proper, and polite when discussing the firm. In the words of Dale Carnegie, do not criticize, condemn, or complain.

“Do you think like an owner? Are you dedicated to the firm’s success?” Partners are invested not just in their own success but also in the success of each and every employee of the firm, because they understand that their success is the firm’s success and the firm’s success is their own success. Their efforts are directed toward the needs of the firm. Decisions are made on the basis of whether something is for the good of the firm. As a partner, you will at some point be privy to and must be trusted with sensitive and confidential information. To earn that trust, exercise discretion in all your firm dealings. If you become aware of a problem, challenge, or difficulty, take initiative to correct it and take responsibility for making improvements for the benefit of the firm. You will be recognized as someone who takes ownership, accepts responsibility, and contributes to the success of the firm.

Ultimately, not every partner is expected to be an ace at every quality and every skill. However, partners must be versatile and must be able to handle most situations that might arise. You are partner material if you are willing to honestly and objectively evaluate your strengths and weaknesses, are committed to your personal and professional development in all areas (especially the areas that need the most work), and are dedicated and willing to do whatever it takes to make your firm succeed. When those future partners consider whether they want to make a commitment to you, they will see your full potential and give you the tools and support you need to accomplish all that you are capable of because they know your success will be the firm’s and their own success.

Keywords: litigation, minority trial lawyer, partners, legal profession

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The Murky Legal Waters of Workplace Appearance Codes, Part Two

By Rita B. Trivedi – February 14, 2012

Workplace appearance codes have been the subject of ongoing discussion over the past decade. As policies become ever more prevalent—and more detailed—courts are wrestling with existing statutes in new situations.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., prohibits various forms of discrimination in employment, proclaiming:

[I]t shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.


Although there are other grounds on which to bring legal claims involving appearance restrictions, this article limits itself to Title VII and appearance codes in the workplace. Part One of this article focused on the extent to which an employer must accommodate an employee’s sincerely held beliefs that dictate how he or she must present himself or herself when they conflict with the company’s appearance code. Considering cases involving undue hardships, the reasonableness of the accommodation, safety concerns, and the balance between an employee’s rights under Title VII with an employer’s legitimate business needs, Part One sought to provide an overview of the issues and obligations involved with respect to that aspect of Title VII.

In this article, the focus turns to recent cases involving gender presentation and gender transition and the application of traditional Title VII jurisprudence to these emerging issues.

Title VII, Gender Identity, and Appearance

As indicated above, the plain language of Title VII protects against discrimination on the basis of sex. However, appearance codes often have sex-specific components, such as the permitted length of hair, whether or not jewelry is allowed, or whether trousers may be worn. Many of the justifications for sex-specific rules echo the more general reasons discussed above; however, a somewhat greater focus on cultural norms, corporate image, and customer reactions exists. The
courts of appeals generally agree that an employer may properly limit the length of a male employee’s hair. *Dodd v. SEPTA*, 2007 U.S. Dist. LEXIS 46878, at *12 (E.D. Pa. June 28, 2007) (citing cases from the Eleventh, Second, Sixth, Fourth, Eighth, Fifth, Ninth, and D.C. Circuits). Following the lead of the Ninth Circuit in *Jespersen v. Harrah’s Operating Co.*, courts have generally found sex-specific appearance codes do not violate Title VII per se, as long as the policies do not disparately impact or impose an unequal burden on one sex. 444 F.3d 1104, 1109–10 (9th Cir. 2006) (considering a plaintiff’s refusal to wear makeup in contradiction to the employer’s appearance code, which required female employees to wear makeup according to specific guidelines but did not require the same of male employees; the court concluded that Jespersen failed to introduce evidence of a triable issue of fact as to whether Harrah’s appearance policy imposed unequal burdens on male versus female employees). As one court put it, “Even handed and evenly applied grooming codes may be enforced.” *Schroer v. Billington*, 424 F. Supp. 2d 203, 208–9 (D.D.C. 2006) (citing cases).

Even if a policy maintains different requirements for men and women, if the policy is equally enforced and applied, and it is not more burdensome for one gender, a disparate-treatment claim under Title VII may not be cognizable. See, e.g., *Frank v. United Airlines, Inc.*, 216 F.3d 845, 854 (9th Cir. 2000); *Jespersen*, 444 F.3d at 1109–10. Thus, for example, a court dismissed the sex-based claim of a male Rastafarian employee who argued that his employer unlawfully allowed female employees to wear their hair in ponytails but did not allow men to do so; the policy was not unequally applied. *Dodd*, 2007 U.S. Dist. LEXIS 46878, at *15–18. However, even though the claim of discrimination on the basis of sex was dismissed, the plaintiff’s claim of discrimination on the basis of his Rastafarian religion requiring him to wear his hair in long dreadlocks survived dismissal. Another court held that a male employee was not terminated for discriminatory reasons based on sex after he wore a small earring in violation of an unwritten policy allowing females to wear small earrings but prohibiting male employees from doing so. According to the court, Title VII was “enacted to stop the perpetuation of sexist or chauvinistic attitudes in employment which significantly affect employment opportunities”; it was “not meant to prohibit employers from instituting personal grooming codes which have a *de minimus* affect on employment.” *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 804 (Iowa 2003).

However, a policy may violate Title VII if it is either intentionally discriminatory or has a discriminatory effect on the basis of sex. Moreover, “an adverse employment decision based on gender nonconforming behavior and appearance is impermissible.” *Lewis v. Heartland Inns of Am., LLC*, 591 F.3d 1033, 1039 (8th Cir. 2010). When bringing suit, the plaintiff may use either a direct or indirect method of proof. Under the direct method, the plaintiff may present either direct or circumstantial evidence of discrimination. Direct evidence is evidence that will prove the particular fact in question without reliance on inference or presumption. In the employment context, this often requires an admission of discriminatory intent by the defendant. Because this is rare, a plaintiff using the direct method may also use circumstantial evidence that allows a jury
to infer intentional discrimination by the decision-maker from suspicious words or actions. See, e.g., Hossack v. Floor Covering Assocs. of Joliet, Inc., 492 F.3d 853, 861–62 (7th Cir. 2007).

The indirect method requires the plaintiff to make a prima facie case showing that he or she belongs to a protected class or sex, he or she performed his or her job satisfactorily, he or she suffered an adverse employment action, and the employer treated similarly situated employees outside the plaintiff’s protected class more favorably. See, e.g., Spearman v. Ford Motor Co., 231 F.3d 1080, 1087 (7th Cir. 2000). The plaintiff may also introduce evidence that the challenged employment action was impermissibly based on a gender stereotype—such as a female not acting “feminine enough” in her dress or mannerisms—that had a disparate impact on one gender. As one court observed, “[i]t is not impossible to imagine a situation in which a frivolous appearance guideline so disparately impacts a protected class that a jury could infer from the existence of that situation alone that the employer adopted the guideline as a subterfuge for discrimination.” McKenzie v. Nicholson, 2009 U.S. Dist. LEXIS 5285, at *16 (E.D.N.Y. Jan. 26, 2009). If the prima facie case is established, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the challenged employment action. If the employer meets its burden, the plaintiff must then show that the proffered reason is pretextual. To put it in another way, to succeed on a claim of sex discrimination under Title VII based on an appearance code, the plaintiff must present evidence allowing for an inference of intentional discrimination motivated because of sex rather than a failure to adhere a lawful appearance code. Creed v. Family Express Corp., 2009 U.S. Dist. LEXIS 237, at *18 (N.D. Ind. Jan. 5, 2009).

Gender Identity, Biological Gender, and Application of Appearance Codes
Questions of appearance codes for men and women take on new meaning in cases of employees who identify with a gender that is different from their biological one, particularly when the change in identification takes place during the employment. Courts have regularly held that Title VII does not prohibit discrimination based on sexual orientation or sexual preference. This reasoning reflects a sense that discrimination on the basis of sexual orientation is “gender-neutral” insofar as both homosexual men and homosexual women are equally impacted. See, e.g., Schroer, 424 F. Supp. 2d at 208; Dawson v. Bumble & Bumble, 398 F.3d 211, 218–19 (2d Cir. 2005); Bibby v. Phila. Coca Cola Bottling Co., 260 F.3d 257, 264–65 (3d Cir. 2001). But these cases are often more complex than this.

In Creed v. Family Express Corp., 2009 U.S. Dist. LEXIS 237 (N.D. Ind. Jan. 5, 2009), a biologically male employee began a gender-identity transition prior to hire but adopted a markedly more female appearance during employment and took a female name. While the employer had a sex-neutral dress policy of a polo shirt and khaki trousers, its grooming policy “require[d] males to maintain neat and conservative hair that is kept above the collar and prohibits earrings or any other jewelry that accompanies body piercing. Females also must maintain neat and conservative hair, which needn’t be above the collar, and may wear makeup and jewelry so long as it is conservative and business-like.” Id. at *5. The court also noted that
“the dress code and grooming policy in this case doesn’t take male or female mannerisms into account or appear to have a disparate impact on either sex.” *Id.* at *17. The employer alleged that when the employee began to wear makeup and nail polish and maintain a feminine appearance, it received numerous complaints that customers were uncomfortable. (The employee disputed that any such complaints were filed and noted that she had an exemplary performance record. *Id.* at *6–7.) When it asked the employee to present a masculine appearance in adherence to its grooming code, the employee refused and was terminated. The employee subsequently brought suit, alleging a violation of Title VII based on sex stereotyping and nonconformity with traditional gender roles.

Although it recognized that the plaintiff identified as female, the court held that, for purposes of the legal action, she must be analyzed as male. Importantly, it also noted that discrimination on the basis of nonconformity to gender stereotypes could constitute discrimination on the basis of sex, but “harassment based on sexual preference or transgender status does not.” *Id.* at *14. To establish discrimination via the “direct method” of proof, the plaintiff had to show that she would not have been terminated but for a failure to conform to male stereotypes and/or present a “convincing mosaic” of circumstantial evidence allowing an inference of a discriminatory reason for termination. *Id.* at *21. The “indirect method,” in contrast, would involve the prima facie showing and subsequent burden-shifting process discussed above.

Using the direct method of proof, the plaintiff alleged that she told managers about the gender-identity transition at the termination meeting, but that they responded by asking her whether “it would kill [her] to appear masculine for eight hours a day” and why she applied for the job if she knew she would be undergoing a gender transition.” The plaintiff also noted that one of her managers testified at his deposition that “he thought [the plaintiff] didn’t look like the same person because of her feminine appearance, and he didn’t consider wearing makeup or having long hair to be masculine characteristics.” *Id.* at *22–23. The court rejected this argument, finding the comments simply suggested that the managers were insensitive to the gender transition, not that the plaintiff was terminated because of a failure to conform to sex stereotypes. There was no evidence that the reason given for the termination—violation of appearance policies—was pretextual; in fact, the employer presented evidence that it applied its dress code and grooming policy uniformly to all employees and had terminated several other employees for policy violations. *Id.* at *27–28.

**Presentation and Transgender Employees**

Transgender employees may also face challenges in the workplace based directly on their choice to present as a member of the gender other than their biological one. This situation is quickly forcing courts to address the reach of “because of sex” and the distinction (if any) from sex stereotyping. Patrick Shin engages in a detailed analysis of sex stereotypes, unequal burdens, and the implications of existing legal doctrine in his article, “Vive la Difference? A Critical Analysis of the Justification of Sex-Dependent Workplace Restrictions on Dress and Grooming,” 14 *Duke*

The many unsuccessful attempts to broaden Title VII to expressly cover sexual orientation and/or sexual preference do not generally discuss sexual identity as a distinct element. In protecting individuals from adverse action because their behavior or dress does not match that generally associated with their sex, Title VII simply recognizes a cause of action for disparate treatment based on sex stereotyping. Schroer, 424 F. Supp. 2d at 208 (citing cases). It remains unclear how such reasoning is to be reconciled with cases where transgender employees are treated disparately. Arguably, matters of sexual identity may impact both homosexual and heterosexual individuals—making discrimination on the basis of sexual identity “because of sex.”

In Schroer v. Billington, the plaintiff was invited to interview with the Congressional Research Service (CRS), an arm of the Library of Congress. The plaintiff was born male but, from a young age, found it difficult to form a self-image as a boy and began the process of sex reassignment as an adult. Part of this process required the plaintiff to live full-time as a female for at least one year before sex-reassignment surgery. At the time of her interview, the plaintiff presented as a male, but informed interviewers that she was under medical care for gender dysphoria and would be presenting as a female—with a female name and in female dress—when she started work. She also presented photographs of herself in feminine work attire. The interviewer indicated that the plaintiff had “really given her something to think about.” The following day, the plaintiff was told that she was not a “good fit” for CRS “given her circumstances.” Id. at 206.

In a nuanced decision, the District Court for the District of Columbia noted that the plaintiff was not arguing that she was a transsexual who was discriminated against on the basis of sex stereotypes, which would be recognized by Title VII. Instead, she wanted to present as a female, not an “effeminate male,” and “embrace the cultural norms” of that sex. Id. at 211. The discrimination (which was the failure to be hired), according to the plaintiff, was the direct result of her disclosure that she would present as a female. Therefore, the court refused to decide the case on the basis of the sex-stereotype line of cases. Instead, it leaned heavily on the district court’s decision in Ulane v. Eastern Airlines, Inc., 581 F. Supp. 821, 825 (N.D. Ill. 1983) (Ulane I), rev’d, 742 F.2d 1081 (7th Cir. Ill. 1984), a case decided more than 20 years earlier, and maintained that “discrimination against transsexuals because they are transsexuals is literally discrimination because of sex.” Schroer, 424 F. Supp. 2d at 212–13. Noting that such an argument would be a “straightforward way to deal with the factual complexities that underlie human sexuality,” it denied the defendant-employer’s motion to dismiss. Id. at 213.
The legal implications of appearance codes as applied to transgender employees, adverse actions taken on the basis of those codes, and an employer’s obligation when notified of an employee’s gender identification or presentation remain somewhat murky. Legal practitioners advocating for plaintiffs and defendants alike should continue to ensure that appearance codes are gender-neutral in their application and impact. However, it may also be prudent for individuals on both sides of the issue to engage in a dialogue concerning the employee/prospect’s presentation to see if some accommodation might be made and determine how the choice of presentation may or may not affect the employer’s business.

**Conclusion**

Appearance codes are of increasing relevance to employers and employees alike when striking the balance between individual religious and/or sexual expression and the management of the business. As the face of the organization, employees in customer-contact positions are often especially scrutinized. In other cases, safety or cultural/social norms are at the forefront. Yet, in almost all of these cases, it is difficult to reach a uniform approach or accommodation requirement. The matter is further complicated by the fact that existing Title VII doctrine does not yet allow for a nuanced analysis of transgender employees who face discrimination and limitations on their appearance, often in the form of appearance codes or norms. While Title VII is not the only means of addressing the numerous considerations discussed in this article and throughout the case law, it is often the one to which employees turn in times of conflict. As the law in this area develops, it will be even more important for test cases to be brought before the courts as practitioners push for a clearer (and perhaps more realistic) elucidation of the obligations and rights of all parties.

**Keywords:** litigation, minority trial lawyer, workplace appearance codes, Title VII, gender identity

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Ninth Circuit Affirms Same-Sex Marriage Ruling

In a highly anticipated and widely reported decision, a Ninth Circuit Court of Appeals panel affirmed a district court judgment ruling that California’s constitutional amendment banning same-sex marriage violated the Fourteenth Amendment to the U.S. Constitution. Prior to 2008, the California Supreme Court held that the California Constitution guaranteed the right to marry to both same-sex and opposite-sex couples. However, in November of 2008, through a ballot referendum known as Proposition 8, the people of California amended their state constitution to eliminate the right of same-sex couples to marry. Shortly after that amendment was passed, a group of plaintiffs brought suit in federal court to challenge the new law. The district court found that Proposition 8 was unconstitutional and struck it down.

The state of California appealed the district court’s decision to the Ninth Circuit Court of Appeals. In the Ninth Circuit case, Perry v. Brown [PDF], Case Nos. 10-16696 and 11-16577, the plaintiffs argued that, among other things, Proposition 8 and the California ban on same-sex marriage violated the Equal Protection Clause. A majority of the three-judge panel agreed with the plaintiffs and affirmed the district court. The Perry majority held that Proposition 8, which only excluded same-sex couples from marrying and did not impact any other rights of same-sex couples to enter into statutory “domestic partnerships,” improperly targeted a minority group. The court reasoned that, because Proposition 8 left in place the ability of same-sex couples to engage in all of the activities typically associated with marriage, it could not reasonably have been enacted for purposes such as promoting childrearing by biological parents, encouraging responsible procreation, or controlling the education of schoolchildren. Accordingly, the panel majority concluded that Proposition 8 lacked a purpose and only served to deny the legal designation of “marriage” from a particular minority group.

The Perry court specifically declined to address whether same-sex couples have a fundamental right to marry under the U.S. Constitution. Many commentators and observers have predicted that the case and the issue of same-sex marriage will now head to the U.S. Supreme Court.

Keywords: litigation, minority trial lawyer, California, same-sex marriage, Proposition 8

—Brian Josias, Chicago, Illinois

Republicans Seek to Reform Post-Booker Sentencing

In the landmark 2005 case United States v. Booker, the U.S. Supreme Court, continuing and expanding on a line of cases that slowly chipped away at the sentencing restrictions placed on judges by legislatively imposed sentencing guidelines, turned the criminal sentencing regime in
the federal courts on its head. In *Booker*, the Supreme Court held that the U.S. sentencing guidelines, which courts previously had to follow in meting out sentences to federal criminal defendants, unconstitutionally deprived defendants of their rights under the Sixth Amendment to the U.S. Constitution. The Court held that courts could no longer blindly adhere to the sentencing guidelines and that, instead, courts could only use the guidelines as nonmandatory suggestions.

Over the ensuing seven years, district and appeals courts have slowly realized that, when they sentence the more than 80,000 criminals that pass through their doors every year, the sentences given must be decided by the judge alone, based on the dictates of the applicable statute and notions of fairness, not just the calculations of the sentencing guidelines.

Although the changes brought about by *Booker* have generally been welcomed by defense attorneys and advocates for criminal defendants, in the past few months, Republicans in Congress have called for a return to a system that provides less discretion to the sentencing judge and will yield fewer “breaks” and longer sentences for most defendants. According to Republican Representative James Sensenbrenner and other critics of the post-*Booker* sentencing process, the current sentencing regime results in unfair disparities between similarly situated defendants based on factors such as geography and, more disturbingly, race.

Many have argued that, under *Booker*, black, male defendants have been the victims of unfair treatment, and the statistics calculated by the U.S. Sentencing Commission, the government agency that crafts the sentencing guidelines, reveal that, post-*Booker*, the average sentence for a black male was 20 percent longer than that for a white male. Defenders of the current system respond that this disparity is largely the result of white males being given lesser sentences, rather than black males receiving tougher sentences. An additional factor that may be partially to blame for the sentencing disparities is a perception that judges believe that the sentences recommended by the guidelines are overly harsh, especially in the areas of corporate fraud and child pornography.

Although defenders of the current system have urged Congress to leave it in place, congressional Republicans have proposed tough new mandatory minimum sentences to be imposed by statute and a reduction of the budget and role of the sentencing commission. The House Judiciary Committee plans to conduct more hearings on the issue in the spring.

**Keywords**: litigation, minority trial lawyer, sentencing guidelines, *United States v. Booker*

— *Brian Josias*, Chicago, Illinois

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### Holder Tackles States' Efforts to Restrain Ballot Access

In the past several years, states across the country have launched efforts to make it more difficult for many people or groups of people to gain access to the ballot box. Thirteen states have passed
new voting laws that include regulations that require government-issued photo IDs to vote or to register to vote, shorten early voting periods, or limit voter-registration efforts by third-party groups. Supporters of these laws claim that they are necessary to combat voter fraud. Opponents of these new voter-registration laws often complain that they are intended to disenfranchise minorities and argue that multiple studies and investigations, including an investigation by President George W. Bush’s Justice Department, demonstrate that voter fraud in the United States is not a significant problem. Those opposed to the new laws claim that they amount to a “modern-day equivalent of a poll tax” and cite studies that estimate that the new laws could affect more than five million voters across the country—primarily minorities who lack the necessary government-issued photo IDs.

While speaking at an event honoring the Martin Luther King Jr. holiday in Columbia, South Carolina, Attorney General Eric Holder indicated that the Department of Justice intends to aggressively review these new laws to ensure that they comply with the 1965 Voting Rights Act, which requires that 16 mostly Southern states with histories of discrimination secure Justice Department approval prior to making voting-law changes. Providing evidence for Attorney General Holder’s pledge, in late 2011, the Justice Department’s Civil Rights Division ruled that South Carolina’s new voter-identification law was illegal because it would disproportionately impact minorities.

Attorney General Holder also indicated that the Justice Department intended to forcefully respond to several lawsuits filed by states challenging the provisions of the Voting Rights Act itself. These lawsuits have asserted that developments in race-relations have outstripped the purpose and need for the law and have sought to have the law invalidated. In Holder’s South Carolina remarks, he responded to the allegations in these suits by noting that, although much progress has been made, “the reality is that—in jurisdictions across the country—both overt and subtle forms of discrimination remain all too common.”

In addition, the issues of voter fraud and the new state voting laws have been frequently raised in the ongoing race for the GOP presidential nomination, and some candidates for the GOP nomination have claimed that the Voting Rights Act permits unwanted meddling by the federal government. Despite this political attention, Holder stated that the Department of Justice would continue to vigorously scrutinize voting laws across the country to make certain that all Americans can vote without fear of discrimination.

Read the entire speech at the Department of Justice’s website.

Keywords: litigation, minority trial lawyer, Department of Justice, voter registration

—Brian Josias, Chicago, Illinois
How Can an Associate Work Toward a Career in the Judiciary?

February 14, 2012

Dear Ask a Mentor,

What steps should a young associate take if he or she is interested in eventually pursuing a career in the judiciary?

—Judge in Training

Dear Judge in Training,

Young lawyers commonly ask this question, and I often thought about it myself prior to ascending to the bench. It is fundamentally critical for every young lawyer to develop excellence and rigor in performing legal analysis. Judges must evaluate the strength of legal arguments made by attorneys but ultimately examine the facts and evidence and make the final determination. Without sheer intelligent proficiency at interpreting and applying case law, a judge would be without his or her basic tools. As a result, the primary focus of a young lawyer aspiring to be a judge would be to become an excellent and meticulous lawyer. Developing a reputation as a credible and hardworking attorney is a sure way to build legal prowess.

In addition, young lawyers should develop and hone strong leadership skills. Judges are leaders in the profession and in the courtroom. A judge’s presence, demeanor, communication style, and speech should exude the reverence of the office. The public and the bar are relying on the judge’s sense of fairness and justice during all phases of the administration of justice. Judges often have to referee as well as make hard decisions that are vastly unpopular to one party. Only confident leaders can effectively meet the demands of the judicial office.

My final piece of advice to young aspiring judges is to examine your motives. Ask yourself what is truly motivating you to seek judicial office. Taking the oath of office as a judge demonstrates a commitment to public service. Judges are typically restricted from political activity, outside business activities, and secondary employment. Every writing and appearance is scrutinized to ensure that conflicts of interest and appearances of impropriety are avoided. The life of a judge is very disciplined and controlled, given the nature of their public service. Accordingly, judicial office should only be accepted after deciding that public judicial service is indeed your calling.
The best career decision I ever made was to accept the governor’s nomination to serve as a judge. My judicial career has been rewarding, and my passion for public service is being fulfilled daily. I highly encourage young lawyers to seek a career in the judiciary.

Hon. Tiffany M. Williams is an administrative law judge in Trenton, New Jersey.

ABA Section of Litigation Minority Trial Lawyer
apps.americanbar.org/litigation/committees/minority/home.html