From Bar to Bench: First Impressions and Important Lessons

by Judge Laura S. Scott

Monday, January 5, 2015. The most terrifying day of my life. Scarier than jumping out of an airplane or getting married for the second time or being peppered with statutory construction questions by Associate Chief Justice Lee. It was my first day on the bench, and I was facing a 100-plus criminal law and motion calendar. Not only did I lack criminal law experience, the last time I reviewed the rules of criminal procedure was in 1993 studying for the bar exam. In the weeks leading up to that day, I observed court, read and re-read the rules of criminal procedure, and bombarded Judge Blanch with questions. But even after extensive preparation and Judge Blanch's patient mentoring, I still fantasized about getting into a non-fatal single-car accident on the way to court that would result in a short trip to the emergency room, cancellation of the law and motion calendar, and time to re-think my decision to become a judge.

I survived my first day as a criminal-calendar judge in large part because of the prosecutors and legal defenders. Without ego or condescension or attempting to take advantage of my inexperience, they helped me navigate this new world of bond hearings, probation violations, plea colloquies, AP&P reports, competency evaluations, and sentencings. They embodied professionalism and civility by treating everyone with respect, granting continuances and other accommodations, conceding obvious points and unwinnable arguments, and not squabbling about inconsequential matters. After a "mere" three months, I came to truly enjoy the criminal calendar.

I then transferred to a civil calendar, which I naively assumed would be an easier learning curve because of my seventeen years as a civil litigator at a large law firm. I described my civil practice as "broad based." But "broad" does not begin to describe the diversity of cases on a civil calendar or the sheer volume of them. In a given week, I will review fifty-plus motions, orders, and other pleadings involving everything from adoption to zoning. But unlike at a large law firm, where I had the support of associates and paralegals and staff, court resources are limited, and I share my excellent law clerk with two other judges.

Which brings me to this article. A few months ago, Judge Orme asked me to write an article on the transition from being a civil litigator at a large law firm to a trial court judge, including what I miss, what I don't miss, and what I have learned in my first year on the bench.

So what do I miss about working at a law firm besides dear colleagues and year-end bonuses? Working as a team to solve a legal problem or resolve a conflict. Winning as a team and losing as a team. Having the resources to thoroughly research and brief an interesting or novel legal issue. Deposing expert witnesses. Being an advocate. Presenting my best evidence and arguments and then turning the unresolvable problem over to the court or jury for a decision.

What has surprised me the most? How much trial court judges rely on lawyers to be, as Judge Voros so aptly put it, "an objective and reliable resource in the court's decision-making process." J. Frederick Voros, Jr., *To Persuade a Judge, Think Like a Judge*, 24 Utah Bar Journal 12, 12 (Sep/Oct 2011). Credibility and professionalism really do matter. Every interaction with the court, no matter how seemingly inconsequential, adds to or subtracts from a lawyer's reputation. Every day I have to ask myself, "Can I believe and trust this lawyer?" If the answer is "no" or "I'm not sure," it impacts how I may view

JUDGE LAURA S. SCOTT was sworn in as a judge of the Third District Court in January 2015, having previously been in practice with a large Salt Lake City law firm.

a discovery dispute or the proffered "good cause" under various rules. It dictates how much additional time I have to spend reviewing a proposed order or an unopposed motion. It gives me pause when the case involves unrepresented parties. And it doesn't matter whether you are a brand new lawyer or one of Utah's legal elite, if you mislead or overreach, if you are unprepared or sloppy, if you are unprofessional or unreasonable, you lose your credibility.

This shift in perspective has also caused me to reflect on what I would have done differently if I knew then what I know now. For what it's worth, here are my thoughts after a year on the bench.

I would have been more thoughtful about my motion practice. Civil litigators, particularly those with sophisticated and well-funded clients, have subconscious "check lists" for cases, which usually include filing a motion to dismiss and a motion for summary judgment as a matter of course. While there may be strategic reasons for doing so – settlement, forcing an opposing party to show its hand, etc. – a motion is often the court's first impression of the lawyer and the case. Should this first impression be a motion that does not comply with the rules, fails to reflect an understanding of the applicable standard or case law, or barely avoids running afoul of Rule 11?

I would have written shorter cleaner briefs. I would have avoided requesting leave to file an over-length memorandum by forcing myself to ruthlessly edit the statement of material facts and eliminate second tier arguments. I would not have wasted so many precious pages unveiling the mysteries of Rule 12(b)(6) or Rule 56 or arguing over minor procedural flaws in the other side's memorandum. As a judge, I have never read a brief and wished it were longer. I would have removed all exaggeration, sarcasm, insults, and unnecessary adjectives so the judge did not feel like I was yelling at him when reading my brief.

I would have recognized that organization is a powerful tool and that if an argument is worth making, it is worth developing, particularly because not every motion, much less every issue, will be reviewed by the judge's law clerk. I would have conceded the obvious and withdrawn any motion that did not have a reasonable chance of success because of disputed facts or unfavorable case law identified by the opposition.

I would have embraced the idea that oral argument is a conversation with the judge and thought should be given to who is the best person to have that conversation. The "expert" in the area of law? The lawyer who is most familiar with the facts and procedural history? Or the associate who researched and wrote the brief and knows the case law inside and out?

I would have assumed there are no "hostile" questions. As a judge, I like asking questions during oral argument. Perhaps it's because I miss the back and forth of a litigation strategy meeting. But sometimes I just need an answer or I am eliminating contention from consideration or I am confirming my tentative ruling. And sometimes I just enjoy having a really good conversation with a smart lawyer who can teach me about an interesting legal issue.

I would have perfected my poker face. As Justice Wilkins once remarked, judges are perfectly aware that we are not perfect and we know that one party (and maybe both) will be unhappy with our ruling. I appreciate lawyers who are gracious when I rule against them, regardless of what they actually think of my decision. By doing so, they convey their respect for the judicial process.

I would have worked harder to resolve discovery disputes and taken the "meet and confer" requirement more seriously by sitting down with opposing counsel rather than sending an email. I would have been more thoughtful about the sanctions I requested to make sure they were reasonable and proportional, reserving requests for severe sanctions for only the most egregious cases.

I would have performed more pro bono work. Or felt more guilt for not performing it. When I used to hear judges talk about the importance of pro bono work, I wondered how long it had been since they had to meet ever-increasing billable hour requirements while engaging in client development during their "free time" as they were trying to raise a family. But now I get it. There are few things that make me happier than pro bono lawyers appearing on the debt collection or unlawful detainer calendar. On a practical level, it is one of the quickest ways for new lawyers to get in-court experience and build their reputations with the court.

But perhaps most importantly, I would have understood how much judges value and appreciate the hard work that lawyers do. I hope I never forget what it is like to be in the trenches. And if I do, please gently remind me. I am truly grateful for this opportunity and take the responsibility entrusted to me very seriously. And yes, Justice Himonas, I just might come to "love" being a trial court judge.