

Mary-Beth Moylan: Hello. I'm Mary-Beth Moylan, Associate Dean for Experiential Learning, sitting down today with Judge Allison Claire, a U.S. Magistrate Judge at the United States District Court for the Eastern District of CA. Judge Claire, thanks so much for taking to the time to talk with me today.

Judge Allison Claire: My pleasure, Professor Moylan.

MM: Glad that you're here and that I'm here. So, the first question that I have for you is, can you give us a brief description of a day in your judicial life?

AC: Well, I always say the best thing about my job is its diversity. So, there is not really a typical day. I suppose that when I'm neither on criminal duty nor in trial nor conducting a settlement conference, most often, I will have a court proceeding to hear either criminal or civil motions, and that takes maybe half my morning, and the rest of the day I'm at my desk, conducting legal research, writing, working on opinions and orders, meeting with my law clerks and staff attorneys about their drafts of those opinions and orders.

MM: What area of law did you practice before you were appointed to the bench?

AC: I spent my entire career as a practicing attorney at the Federal Defender's office here in Sacramento, practicing in the same court where I now sit as a Magistrate Judge. For the majority of that career I handled post-conviction cases, representing state prisoners who were in federal court challenging the Constitutionality of their convictions.

MM: So your practice has always been in the federal courts, and, mostly in this federal court?

AC: Correct, and mostly practicing in front of the Magistrate Judges of this court, whose ranks I have now joined.

MM: So I assume that when you were in practice, there were a great number of things that you did very well. When you sit now on the other side of the bench, what do you see that you think attorneys are doing very well today?

AC: I see a really encouraging level of zealous advocacy, although there are ways in which that is channeled effectively and ways in which it is challenged less effectively, but I always like to see attorneys fighting hard for their clients, whoever their clients are.

MM: What is the most common mistake that an attorney makes when appearing before you?

AC: There are two I think. One in motions practice is a failure to directly engage counter-arguments. Often a moving party, you know, will set out their position, but then after getting the opposition from the other side, they'll file a reply that just restates their

own argument, perhaps with greater vehemence, and doesn't really address the substance of the counter-argument and I think that's very ineffective advocacy.

The other most common mistake in general is to rely on vehemence rather than on legal reasoning. The level of one's indignation or passion in argument is not going to persuade a judge. It's the authorities that are cited and the legal reasoning based on those authorities that's going to decide the motion.

MM: Yes, speaking of authorities, we have as we know in federal court, there are rules – there are rules of civil procedure, rules of criminal procedure, and then most courts have local rules which are published and they govern the procedures in that locality - do you have any local, local rules? What I like to call local, local rules, which are rules specific to your courtroom or your chambers? Ways that you like things done?

AC: I do, as do many of my colleagues. And before talking about those, I just want to emphasize the importance of the official local rules. One common mistake, and it's usually from attorneys out of district, is the filing of even routine documents with reference to the local rules of some other court, that is a sure-fire way to irritate the judge. And sometimes practitioners who are used to state court practice or who aren't familiar with how we do things here in the Eastern District, don't realize how important it is that they familiarize themselves very thoroughly with the local rules of the court which actually provide the answers to most questions that people tend to call the clerk's office wanting to ask.

That said, judges also have their own preferences, and mine, as well as those of my colleague, can be found on my own judicial page of the district court's website. I have a standard information document that advises attorneys, for example, that notwithstanding a local rule to the contrary, I do not want curtesy hard copies of briefs, that is not ecologically sound. I want to avoid using paper as much as possible. In discovery disputes, I do ask for a cutesy copy of the joint statement with tabbed exhibits, but even on motions for summary judgment, which could involve vast amounts of paper, I would rather deal with the PDFs that are electronically filed. If my staff and I require hard copies, we will let counsel know.

Also, I have a process that's available outside the rules for dealing with relatively small and discrete discovery disputes, rather than having a noticed motion and going through the cost to the parties and the time required of counsel to litigate, folks have the availability to get me on the phone, just submitting a two-page joint letter telling me what the dispute is about and we can talk about it and, hopefully, reach a settlement for getting an informal ruling that guides the parties short of bringing the motion. And I always encourage people to take advantage of that, again, the procedures for that are found on my webpage.

MM: That is great to know that you have that and that there are information sheets on the website. We will link to those. Thank you. Okay, if you could give attorneys who

practice in the Eastern District before Magistrate Judges one piece of advice, what would it be?

AC: I think I would be the same piece of advice that I would give to any lawyer arguing any motion in front of any judge, which is, and as I indicated, this is in the realm of motion practice, but, attorneys who are filing or opposing a motion, need to step back before they draft and think about it from the judge's point of view, ask themselves, what standards govern this particular type of motion and what legal principles apply to the substantive issue of law and with those in mind, because that's what the judge is going to be applying to the facts you provide, with those things in mind lay out a steep-by-step analytical path that gets the judge from the procedural posture you're in to the result you want. If you fail to do that, you will not prevail.

MM: Yes. That is excellent advice. It's somewhat of a segue to the next question, which is, what have you learned about the practice of law now that you're sitting as a judge? What insights do you have that you didn't when you were the person trying to persuade?

AC: As an attorney you know you're case, or you should know your case so well, right?" The attorneys always have more information about the case than the judge will ever have, even if you're at trial. And, I don't think I fully appreciated when I was lawyering how difficult it is to pare that down and give the judge what she needs to know. Everything she needs to know, but not more than she needs to know, right? In a way that is most effective.

I think that when I was a lawyer, I always assumed a level of familiarity with my case, which was unrealistic, and sometimes, failed to tell the judge enough or I would say too much about the thing that matters to me without providing enough context. Sometimes, the cases what I litigated would go on for years and I would be filing something as if the judge remembered from my last motion two years ago what my case was about and failing to reprise the background that the judge really needed.

Now that I'm the one on the bench reviewing those papers, it's apparent to me sometimes that the lawyers have an inaccurate assessment of what I know or recall and it is not my job or my staff's job to go back a re-educate ourselves about the whole case. It's the lawyer's job to tell us what we need to know so that I can make a decision about what's in front of me now with the information that I need.

MM: Yeah, so it sounds like it would certainly make your job easier if lawyers would be able to assess appropriately what information you need and what the standards were. In addition to those things, are there any other things that lawyers in practice could do that would make your life, or the life of your law clerks, a bit easier?

AC: Well, we've already said know the local rules and know the individual judge's preferences. Although it is a little thing, I cannot overstate the importance of meeting deadlines or getting them extended in advance. Counsel need to be absolutely

scrupulous about their own calendaring and if it becomes apparent that you're going to have a challenge meeting a deadline, see if you can get a stipulation from opposing counsel and if not, make your motion, actually stating the reasons you need the extension, and getting that to the judge in advance of the deadline expiring.

Also, in federal court, in civil litigation, always be aware of whether the deadline which you are asking to be extended is a deadline that was set by the district judge and the magistrate judge, and question whether the magistrate judge has authority to change the deadlines you want reset before you submit the document.

MM: Yeah, that really speaks to the importance of the status order, doesn't it?

AC: Absolutely.

MM: And knowing and reading that very carefully.

AC: And refreshing one about what's in the status order during the life of the case. Sometimes, I think lawyers read it when it first comes out, but usually just skim it and have whoever in the office does the calendaring plug the dates in, but without looking for the specific guidance that it gives you about how to proceed. And, the language in those orders makes a great deal of difference. I'm glad you raised the issue, Professor Moylan. Often district judges will issue status orders in civil cases that the magistrate judges then enforce, at least as to discovery, and some of the district judges phrase the deadlines as to discovery differently. So that a deadline for, for example, the close of discovery. One district judge may mean that all the motions have to be heard and decided and complied with by that deadline. Another judge may mean everything has to be propounded by that deadline, and the lawyers better know which it is, because coming to the magistrate judge after a deadline has expired asking for an extension is something that is always risky. And when it's a case that I am scheduling, which usually means it is a consent case in which the parties have agreed that I am the presider and there is no district judge, or if it is a case involving a pro se litigant or a prisoner, those cases will have been referred to me and I will do the scheduling. Read my language very carefully and understand what each of those deadlines means.

MM: Thank you. Is there anything else that you would want lawyers in the community to be thinking about when they come and appear in federal district court? And specifically, in your court?

AC: As to law firms, setting aside sole practice, I really encourage partners at the larger firms whenever possible to give younger lawyers and women lawyers an opportunity to argue. It is always disappointing to me when firms come in, and there are several lawyers in the courtroom, and it's only the senior attorney who's arguing. I understand there may be times clients want that and there may be times that are appropriate, particularly when something is going to be case dispositive, you might want the most seasoned advocate to be making the argument. But, often it is an argument that would create a great opportunity for a younger lawyer to speak and I'm disappointed at how

often the younger lawyers and the female lawyers are silent in the courtroom. I'd like to see some attention paid to that.

MM: Thank you so much. I really appreciate your time. Again, this is Judge Allison Claire, from the Eastern District of California talking with me, Mary-Beth Moylan from McGeorge School of Law, and this has been an In Practice session. Thank you.