

Mary-Beth Moylan: Hello, I'm Mary-Beth Moylan, Associate Dean for Experiential Learning at McGeorge School of Law, sitting down with Associate Justice Andrea Lynn Hoch from the 3rd District Court of Appeal. Justice Hoch, thank you so much for being here today.

Justice Andrea Hoch: It is my pleasure. Thank you for inviting me.

MBM: You're very welcome. So, we're just going to have a conversation about practice and the practice of lawyers that you see in the 3rd District Court of Appeal. Would you start by providing a brief description of a day in your judicial life?

AH: Well, I can. I'm happy to. There's no typical day at the 3rd District Court of Appeal. It varies basically from week to week, my schedule. The third week of every month is oral argument week. So that week, generally, the justices are busy preparing for oral arguments, actually conducting oral argument, and then revising the draft opinion after oral argument and discussing issues that arose during oral argument. That third work is primarily devoted to oral arguments.

I also sit on a writ panel once a month. It will be on Thursdays, so it's one of the Thursdays per month on a random basis.

MBM: Can you explain what a writ is, for those people who may not be familiar with writ practice?

AH: Right. What a writ is, basically, something has happened in the trial court - a ruling, generally - that is of an urgent nature that needs to be addressed by the court of appeal now, as opposed to waiting until the end of the case. So generally those writs are filed and once a week, every Thursday morning, the Court will have what's called a writ conference with three Justices sitting on that writ conference and deciding the writs that had been filed in that week.

Now, if someone does have a truly urgent writ - because there's a trial starting, they need to have something decided, in their viewpoint, before the trial starts - a writ panel will be convened before that Thursday, if needed.

AH: Okay, what else do I do? A lot of time is spent reading briefs, reviewing case law, reading relevant portions of the record in deciding the appeal - whether I'm the author or participating panel member. And also there are conference calls and meetings on various committees that I'm on. For instance, I'm on three internal committees at the Court of Appeal where I was appointed by the Presiding Justice - the Education Committee, the Mediation Committee, and the Court Holiday Party Committee.

MBM: That sounds like an important one.

AH: It actually is! Even though it's time consuming, it's important for morale to have a party at the end of the year that everyone and a guest is invited to that can actually

celebrate the year. It's something that is important, although sometimes it can be overlooked.

I'm also on three committees for the Judicial Branch, where the Chief Justice has appointed me, and those are the Education Committee, the Power of Democracy Committee, and what's called AIDOAC - a committee which is basically reviewing auditing the work of appointed counsel and determining whether that work and the hours jive, and if it should be audited and if it should be adjusted up or down.

MBM: So on those committees, those sound like statewide committees?

AH: Correct.

MBM: Do you serve with other Court of Appeal Justices, as well as Superior Court Justices?

AH: Most of those committees I appear and serve on with both, mostly Appellate Court Justices, some Superior Court justices - judges, rather. The Committee composition is already kind of determined, so it's a matter where there's a vacancy and where the Chief Justice feels your services are needed.

MBM: Are any attorneys on those committees?

AH: Yes, there are attorneys on some of the committees because we need their expertise.

Another component of the job which most people probably don't think about is outreach. There's a lot time - our Court is very, very involved in outreach in the legal community, and also in the education community. We have, I'm on the Inn of Court for the Kennedy Inn of Court here at McGeorge. I'm the new President for this year and next year. I've been a judicial liaison for the Women Lawyers of Sacramento. I am a Regent at the University of the Pacific. I've participated in Moot Courts, when asked and invited, which is fascinating and it's nice to be a mentor to the students there.

MBM: We have greatly appreciated your involvement, by the way.

AH: I totally enjoy the moot courts. They're a lot of fun. And I would say sometimes the students are more prepared than the attorneys I see in court. And I attend a lot of Bar functions - whether it's a luncheon or a reception or a dinner - which will basically involve usually a ceremony or a program honoring members of the legal community. So that's basically a typical month.

MBM: The next question is, what area you practiced before taking the bench? Because it sounds like now your job duties are much, maybe, more expansive in terms of the outreach part than probably whatever you practiced before.

AH: One of the best things about being an Associate Justice on the 3rd is the fact that we handle all types of cases. Whatever can be appealed to us, we handle. And we have to, because that appeal comes to us, we don't have a choice. But prior to coming to the court, I was primarily involved in civil litigation and primarily working for the State of California. I worked for the California Attorney General's Office, and then I worked for the Governor's Office as Legal Affairs Secretary.

And in those capacities, I basically represented the State and the Constitutional Officers, and obviously, the Governor's Office, the Governor, in litigation and also advising the State Constitutional Officers and the Governor on matters of policy and legal issues that would arise in whatever context.

I also have some experience in labor law which actually has become useful on the court because issues come up in labor relations which I can use some of my expertise, although I have to basically come up to speed because it's been a few years. And I also have some criminal experience, criminal law experience in the Governor's office with paroles and clemencies and monitoring litigation. So that helped, but I would say I'm constantly learning new areas of law on the court, which is what makes the position so interesting and challenging and fulfilling.

MBM: So you mentioned before, when we talking a little bit about your involvement in moot court, that sometimes the students are doing things better than the attorneys who appear. Part of that probably relates to the students having more time for preparation than the attorneys, but, I suspect you do see some very talented and qualified attorneys appearing before you. Can you talk a little bit about what you see attorneys doing very well when they come and appear before the 3rd District Court of Appeal?

AH: Sure, and there's a range of attorneys, from those who are experienced practitioners before the Court of Appeal to someone having their first appearance before the Court of Appeal, which is what makes it interesting for me as a Justice.

From what I see attorneys doing well is the quality of the brief writing. There's a lot of thought and strategy and care in developing the legal arguments and presenting their legal arguments in a well-organized fashion. As far as oral arguments, what I see attorneys doing well, not everyone, is when they're actually engaging in a dialogue with the Justices on the panel. There are always three Justices on the case and three Justices at oral argument. That is a time for the attorneys to engage with the Justices and discuss the issues that are before the court and have a give and take and get the information out to the justices so that we can make the best decision possible to be informed.

MBM: One thing we tell our students, and we do bring them to the 3rd Court of Appeal to watch oral arguments, one thing I always point out is that the best arguments seem to be those where there really is a conversation happening as opposed to: Here is my performance, here is *my* argument. If you frame it as here is a conversation I'm having with the Justices, that usually ends up being the better overall persuasive presentation.

AH: Totally agree, although I also understand, I was on the other side as an attorney, so coming in to the Court of Appeal, the attorney, some of the attorneys can be nervous - whether they're new attorneys to the Court of Appeal or experienced attorneys, it depends, it can be quite intimidating. Having that conversation is the ideal oral argument, but I also understand that it's hard to do, because it's not just a conversation with a peer.

But yes, those are the most effective oral arguments.

MBM: Tell me what the most common mistake is for an attorney who appears before you.

AH: The most common mistake, and this is probably no surprise given our previous discussion, is the attorney does not listen to the question and starts responding to the question before the Justice's actually completed the question.

And I understand that because it's only 15 minutes, the attorney can be nervous, they have a lot of information they want to present to the court, but in anticipating what the question is and overlapping with the Justice, it's not polite. And also, you're not always correct as far as where the question really was leading to. So I think, basically, take a breath, listen to the question, and if you don't understand the question, ask the Justice to reframe the question, rephrase it somehow, and then answer it.

MBM: So, it wouldn't bother you if an attorney said, "I, I'm sorry, your Honor, I don't understand the question, could you rephrase that or reframe it?"

AH: It would not bother me at all because my goal in asking the question is to get the response from the attorney and I want the attorney to understand the question so I can get the best response from the attorney. So for me, it would not bother me at all. And I would rather the attorney ask than me take a guess.

MBM: Great. I want to move now to talking a little bit about whether attorneys are following the rules of court well and whether there are consistent rules that apply to all of the District Courts of Appeal in California, and whether there are any specific rules that the 3rd District has that attorneys who are practicing before that court should know about?

AH: First, there are rules of court that apply to all the Courts of Appeal. Those are a good starting point for any attorney coming before a Court of Appeal for oral argument, or for brief writing - any case. There are local rules that do apply to our Court as well, not very many. But what I would say, there are some practices that our Court engages in, which are not really written anywhere. I think the more experienced practitioners probably can figure out those practices, but there's a few I can mention to folks here.

I would say that most of our cases, we will send, our Court will send, what's called a waiver letter, saying, "Are you prepared to waive oral arguments in this case because we're ready to rule?"

And I think attorneys often get this waiver letter, we send a lot of them, and wonder, "What does this mean?"

It means we thought the issues were straightforward and we have a draft opinion or maybe a concurrence and dissent where we pretty much think we were right. But I would say if the attorney needs or wants oral argument to address an issue, ask for it. That's what we're here for. We're not going to be mad or upset because someone asked for oral argument. That is part of our job, and actually, oral argument is enjoyable. It's very isolating on the court, so having the interaction with attorneys about a case is actually part of the fun of the job. And also, for most attorneys, that's usually the first time the three Justices on the case are in the same room, discussing the case at the same time. It can be a very useful tool for the attorneys.

MBM: So you don't get upset with people when they say, "I don't want to sign that waiver letter?"

AH: No, not at all! I won't even know. I mean, basically, the waiver letter goes out from the clerk's office and if someone asks for oral arguments, requests it, it gets set for oral argument. I don't go back and double check and say, "Well, who asked for oral argument?" To me, it doesn't matter. I mean, the point is the case is before us in oral argument, I'm going to prepare for the case like I would regardless of who asked.

A couple other things, is, if you need an extension of time for a brief or you need to continue oral argument that is set by the court, you know, ask. Send a written request asking for continuance or an extension of time, with reasons. Our court is very accommodating. We're not going to be, again, upset, and most often we will probably try to accommodate the request so it works with everyone's schedules.

MBM: And that request would go through the Clerk of the Court's office?

AH: Correct. Correct. And then, finally, I would say we don't do this very often, but when we request oral argument, we're starting - some of the justices are starting - to do what's called a focus letter. So, if there are ten issues in a case, for example, and we ask for oral argument, I think it's very useful for the parties to tell the parties which issues are we focused on, because that tells the attorneys what to prioritize. They still need to be prepared on all the issues in their case, and know the record, but some of the Justices - myself included - are starting to write what's called a focus letter so we can direct the parties on what we really want to hear about.

MBM: I think that's really helpful and I know in the Superior Courts, they issue tentative rulings, which your Court does not do...

AH: We do not.

MBM: But these focus letters do serve, maybe, as a roadmap for the attorneys in terms of what to, what you're concerned about.

AH: Correct. Correct. And it helps them prepare. So the idea being, for me, is that then the oral argument is going to be more effective because the parties and the Court know which issues to focus on.

And when you bring up tentative decisions, we do not issue tentative decisions. There is one division, of one Court of Appeal that does issue tentative decisions and our court does not, and I don't see that changing. I think - I'm hoping - that the use of focus letters when we ask for oral argument is used more often as a tool.

MBM: If you could give attorneys who practice in the 3rd District Court of Appeal one piece of advice, what would it be?

AH: It's pretty simple. Bring your A game and be prepared. I would say unless the Supreme Court grants review in the case, which is a very rare occurrence, the decision from our Court is the last decision for the parties. So we are most likely the court of last resort, so I would say bring your A game and be prepared.

MBM: That's excellent advice. Just a couple more questions.

AH: Sure.

MBM: First one, what have you learned about the practice of law now that you're sitting as a judge? How has that changed your understanding of legal practice?

AH: What I've learned is the importance of appointed counsel. In my work in the Governor's office and in the California Attorney General's Office - I was in the Civil Division - and in private practice, I really did not have any exposure or cases - criminal cases or dependency cases - where appointed counsel was representing a party. And in, as you can imagine, most of our docket is criminal cases. There are also a lot of dependency cases. And in each of those cases, in almost every single one, I would say 99.9%, there's appointed counsel where the defendant or the juvenile. And the importance of that appointed counsel who can review the record and come up with legal arguments based on what happened below is imperative to our system of justice.

MBM: And do you find that there are sufficient numbers of people doing that work? Or, are we in a place in California where we have challenges in getting sufficient numbers of qualified people into those appointed positions?

AH: It is a challenge, because the hourly rate is modest for the appointed counsel and the work is demanding. So, I think we can always use more attorneys in those roles. I know that there are projects in California that have, they're called [huh?]. They're

basically non-profits that each district has a list of attorneys that they appoint to cases, and there's a drain of that population because people are retirement eligible, so we need to encourage and recruit and train and mentor new attorneys who come into those roles because it is vitally important for our system of justice to work.

MBM: Thank you. Last question.

AH: Sure.

MBM: What is one thing that attorneys could do to make your life easier?

AH: It's also simple, I would say write shorter briefs. And write in clear, concise language. I would say that the advent of computers and copy and paste, the briefs have gotten longer, in my opinion. And in some times, when you do copy and paste, I would say people need to check the pronouns, and whether they're single or plural, and the names - that helps. But I say that some of the briefs have gotten longer in that respect. So write shorter briefs and be strategic in the arguments you want to present. And be clear and concise in your writing. That would be very helpful.

MBM: So less can sometimes be more.

AH: Yes. Definitely.

MBM: Okay. Thank you so much for sitting down with me today. This has been an In Practice session of the CAP·impact blog, of McGeorge School of Law. And again, I thank our guest, Justice Andrea Lynn Hoch. This is Mary Beth Moylan, thanking you for joining us.