

The Path to the Bench: Interviews with Women Appellate Judges

By M.C. Sungaila – March 26, 2014

State and federal appellate judges offer their advice for women considering a career on the bench.

Margaret McKeown, Judge, U.S. Ninth Circuit Court of Appeals (1998–present)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

There has to be this confluence of serendipity and professional excellence and timing for an appointment to happen. Lucky is the best way to describe it. I was the first woman partner, first woman on the executive committee, and first woman managing director at Perkins Coie in Seattle and Washington, D.C., where I specialized in high technology and antitrust work. I had an international and national practice that I loved. I served the community in diverse ways, through national board service on the Girl Scouts of the USA, the White House Fellows Foundation, and work with national and local bar associations. I was the first co-president of the statewide Washington Women Lawyers and one of the founders. I was not contemplating the bench. But then a judge in Washington asked whether I might consider applying for an opening on the Ninth Circuit, which made me consider whether I would enjoy serving as a judge. I threw my hat in the ring for what turned out to be a long and arduous process. It took three and a half years to go through the appointment process, which was a politically tumultuous time. While some would say that there is a script for a professional life leading to the federal bench, I did not follow any script and did what I felt passionate about; had I followed a script, I might never have done the pro bono women's rights and civil rights cases I did in my career and that I was grilled about during the confirmation process.

I learned a few things during the confirmation process. First, the appointment process is a political one, and therefore more organic than the legal process we engage in as lawyers in court. Second, it gave me the opportunity to put into practice a saying that I kept on my desk: "When you are out on a limb, the world is at your feet." There is some reluctance to reach for the stars when you might find yourself out on a limb like I was during the appointment process, but I took the risks needed to move forward. Third, relationships and reputation are critical. I so appreciated the bar, women's groups, clients, opposing counsel, and those I had served over the years rallying behind me in support of my nomination.

One of the exciting things about being a judge is that I no longer have to do timesheets. I can spend as much time as is necessary on a case; the time spent on a case is not related to the dollar value or stakes of the case. There is a luxury in being able to focus on the development of the law, no matter what package it comes in.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

Be an outstanding lawyer with a good reputation. Being involved in the community is important for a rich and balanced legal life, but it also is valued in the appointment process. It is important to have writing experience as well. Consider pro bono work not only for its element of service, but as a way of developing your career and gaining experience. My first appellate arguments in the U.S. Supreme Court and Washington Supreme Court were pro bono cases.

Finally, be aware that the judicial appointment process is a political process and is required by the Constitution—appointment by the president with the “advice and consent” of the Senate. “Politics is a contact sport,” as one senator told me.

Jacqueline Nguyen, Judge, U.S. Ninth Circuit Court of Appeals (2012–present)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

I was appointed by Governor Gray Davis to the Los Angeles Superior Court and by President Obama to the district court and then the U.S. Court of Appeals for the Ninth Circuit. In securing the state court appointment, I think it really helped that I had some trial experience. I had been active in various bar associations ever since I was a law student, and I think that also helped because it made me more of a known quantity.

When I first took the bench, I was assigned to handle a calendar of criminal cases. It was an enormous docket. I tried in each case to make sure that the litigants not only in fact received, but also felt that they had received, a full and fair opportunity to be heard. At the same time, with severe cuts in resources and growing caseloads, it was very important to move cases along efficiently because otherwise, it would cut into the time I had available to try cases. The balancing act was definitely one of the most difficult challenges.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

My advice would be to look for opportunities to hone your writing skills as much as possible. If you can actually get into an appellate practice, that’s fine, but it’s not necessary. Second, don’t just isolate yourself in the office; get involved in community and bar activities. Develop great mentors who can help guide your career and provide the support that you will need when the time comes to apply for the appointment.

Tani Cantil-Sakauye, Chief Justice, California Supreme Court (2011–present)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

My path was pretty simple: Rely on good fortune and have the resilience to interpret a “no” as “find another way.” After law school and the bar exam, my only plan was to get a job. With no leads and no connections, I applied everywhere.

So when a temporary opening at the district attorney’s office was offered to me, I jumped at the chance. Little did I know that as a prosecutor, I would be fulfilling a lifelong dream: engaging in merit-based arguments against another and getting to have the last word. It was a dream come true for a well-mannered, Filipina youngest child with two big dominant brothers. Those early years as a deputy district attorney and in organizations with lawyer-mentors made me believe that anything was possible. I ignored advice that I couldn’t get a job in the Governor’s Office because I didn’t have government law experience. I didn’t calculate my odds. When I did get the job, I immersed myself in the work of the executive and legislative branches. In the Governor’s Office I worked for and with the wisest and most insightful leaders at the highest level of influence—all of them guided by a public service ethos.

Governor George Deukmejian appointed me to the municipal court when I was 30. Seven years later, Governor Pete Wilson elevated me to the superior court, and seven years later Governor Arnold Schwarzenegger appointed me to the Court of Appeal. Six years later, that same governor nominated me as Chief Justice, and the public elected me to the position in November 2010. I accepted each appointment thinking it would be my last.

Probably the most unexpected aspect of being a judge is the public’s perception of our authority. Laypeople and even some attorneys project a sense of absolute authority onto a judge. In fact, as you and your readers well know, judges are strongly guided and constrained by the U.S. and state constitutions, by statutes, case law, and by the canons of ethics. This lack of authority has also caused me some heartbreak. That’s because the application of law and precedent in a particular case may, in fact, not seem like it is in the best interest of that particular litigant. But as a judge, we take an oath to follow the constitution and the law.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

Ignore the stereotypes of the “perceived” common career trajectory; follow your joy and passion; work hard; keep a good attitude; and serve the public. When I was a trial judge, I became a wife and a mother of two girls. I put the legal community on hold and went deep undercover into nursery school, Brownies, and gymnastics. I let everyone know that I was putting family first and they should, too. Although I knew my resume would no longer look like a male judge’s resume, I look back on those years with great joy.

Jenny Rivera, Associate Judge of the New York Court of Appeals (2013–present)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

Throughout my career, I followed my interests and passion. I wanted to help people and do work that was beneficial to society and professionally satisfying. I practiced for a while in the areas of poverty and civil rights. My goal was to eventually teach, which I did, becoming a tenured faculty member at the City University of New York School of Law. Being a law professor prepared me well for the job of appellate judging. I thought deeply about legal issues, researched, and wrote. Early in my career, I also had two clerkships, on the district court with then-Judge Sonia Sotomayor and on the Second Circuit. In my career, I followed what I loved and what was meaningful to me. I did not have a long-term plan to become a judge; my interest in becoming a judge evolved from teaching and my experiences clerking.

One of the things I most enjoy about being an appellate judge is that it is intellectually challenging. Each case brings a new subject area. The most unexpected aspect of judging is how monastic it is. Academia is different. The life of an academic involves critiquing ideas and case law; as a judge, you cannot discuss your cases with others outside the court.

Once you don the robe, you also become part of a larger tradition, and you feel the weight of how important it is to maintain the integrity of the judiciary by your conduct and example.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

First, become the best lawyer you can be; it takes time to really know what you are doing as a lawyer and to gain judgment. Second, it is important to be involved with bar associations. Bar positions develop leadership ability and allow others to work with you and get to know you, and they provide an opportunity for others to see that you can be neutral, thoughtful, and not dogmatic in terms of being plaintiff- or defense-focused. Show that you have the character, temperament, and ability to sit on the bench. Third, it is important to write in law journals or legal newspapers, to demonstrate that you can think deeply about issues, offer proposed solutions, and therefore show that you are likely to be able to do the work required of an appellate judge. Finally, it is also helpful to expose yourself to a range of subject matter areas in the law because an appellate judge must decide cases in a range of legal areas.

Once you actually apply to become a judge and seek appointment or election, it is important to have mentors and sponsors who will support you, and for you to seek counsel from people with many different perspectives and then make your own decision about how to proceed.

Bar associations can also be extraordinarily helpful in helping you navigate the judicial selection process. Some hold panels on appointments, where you can get information and meet decision makers and others who may become mentors. Diverse bar associations can also be extraordinarily helpful in filling the knowledge gap. They can also become involved in the process of vetting and nudging a candidate along in the appointment process.

Fernande R.V. Duffly, Associate Justice, Massachusetts Supreme Judicial Court (2011–present)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

A path suggests intentionality, but I had no real plan to be a judge when I entered the practice of law. Two things happened to encourage me to consider applying for a judgeship: A friend told me over lunch that she was going to apply to the Probate and Family Law Court (the areas in which we practiced) and I spontaneously said, “Me, too!” Her saying that she wanted to become a judge gave me permission to consider that as a possibility. Second, I gained a mentor who told me he thought that I would make a good judge. He was a former judge on the trial bench and loved being a judge. I had the opportunity to work with him when he returned to my firm after retirement from the bench. He gave me many opportunities within the firm, as well as outside the firm, that raised my visibility in the legal community, and he was a source of encouragement as well as guidance.

Once I became a judge on the trial court, I was surprised at the sudden lack of regular collegial contact. As a law partner, I had regular meetings with my partners to discuss cases; but such meetings did not take place often with trial court bench colleagues because all of us were handling our own calendars. On the intermediate appellate bench, on the other hand, the justices met for lunch every day. On the Supreme Judicial Court, we do not have time to meet for lunch every day; there is less flexibility when you have to do everything as a group of seven. We are a collegial group, but our connections are forged largely through participation in conferences and committee meetings.

I really enjoy the variety and challenge of new legal issues that confront someone who is serving on the appellate bench, and the opportunity to decide issues of first impression that have such a broad impact on the lives of the people of the commonwealth.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

Do only the kind of work you want to do and are passionate about, because then it will be easier to work as hard as you can to become good at it. I think people can tell whether you are being authentic, and they will respond to that. Be active in bar associations. Opportunities they provide for speaking and leadership can increase your skills as well as your visibility. Be active in other committee work; serve on boards of legal services organizations, or hospitals, or other educational, civic, or charitable groups. It is important that people know who you are and what you can do, and that they be interested in sponsoring and promoting you to be successful in the appointment process. Remember that temperament is an important part of judging. If you are interested in the appellate bench specifically, it can help to be on the trial bench first, although a number of excellent appellate justices come directly from appellate practice.

Several women I know decided not to reapply if they were not appointed after an initial attempt to become a judge. It is really important to remember that timing is vital. Even if you are well qualified, other candidates may have something that is viewed as important at the time, such as a particular expertise or being from a certain geographical area. So I would advise a woman lawyer who is considering applying to be on an appellate bench: Try and try again, and do not take it personally if you are not appointed the first time. I also tell them that I applied for a position on the Supreme Judicial Court six times before I was appointed!

Judith McConnell, Administrative Presiding Justice, California Court of Appeal, Fourth Appellate District (2003–present)

Q: What was your path to the bench and what was the most unexpected aspect of being a judge?

When I went looking for a job after graduation from Boalt Hall, I had a hard time getting a job because so many firms were not hiring women. However, I was hired by the Division of Highways (now Caltrans) Legal Division and immediately began trying superior court jury trials. I loved being in court and decided I could be a judge as well as those before whom I appeared. I was told—indirectly—that Governor Brown would look on my application favorably if I left state employment and went into private practice. I did that and was fortunate to connect with two other women lawyers, both of them good friends, with whom I formed an association. After I was in private practice for a year and a half, I was appointed to the bench. I think the fact that I had been very active in the women’s movement—having cofounded the Lawyers Club of San Diego, our feminist bar, and serving as its first president—was a big boost to my chances, but I was also very active in the county bar and served as a delegate to the Conference of Delegates.

Once I became a judge, the most unexpected aspect was learning how much I needed to learn to be a good judge. Judges are generalists and need to learn every day to keep up and do a good job. Another critical lesson I learned is how important it is that you, the judge, be decisive. Some judges have a great deal of trouble making decisions, and they are really no help to the litigants or the public they serve.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

This answer depends on who the governor is. Our current governor does not require trial court service by all his candidates before he appoints them to the appellate court, but most governors do look very favorably on long-term experience on the superior court. I think being known as smart, ethical, and hardworking is very important. I would advise someone who is interested to be active in the legal community and show that you care about the justice system and how the public is served by the courts.

Kathleen O’Leary, Presiding Justice, California Court of Appeal, Fourth Appellate District, Division Three (2012–present, Presiding Justice; 2000–2012, Associate Justice)

Q: What was your path to the bench? And what was the most unexpected aspect of being a judge, once you were appointed?

My path to the bench was in some ways very traditional. I was a public defender and then in private practice for a short while. I was fortunate to be a woman trying cases in Orange County when there were not that many women lawyers doing so in the county, and the governor was interested in appointing younger and more diverse lawyers to the bench. The timing was important and helpful.

There are more paths to the bench than 30 years ago. If you were a law professor or an appellate lawyer, or in legal services, it was very unusual for you to become a judge; you had to have trial experience. Now, it is more likely to become a judge with a more varied professional background.

When I first joined the bench as a trial judge, I learned how important it was to manage my team. I was in charge of orchestrating the whole process in the courtroom and making sure everyone was in sync on my staff. The judge conducts the whole orchestra, something I did not recognize when I was practicing law. Judges have to manage busy calendars while affording each litigant respect and care.

In the trial courts, there are a lot of conferences and committees and opportunities to share knowledge about court procedures. When I joined the appellate bench, I was surprised to find that appellate courts do not have similar procedures in place; they have a more silo mentality in terms of administrative matters. Each district operates autonomously, and there is little established structure for sharing procedures and collaborating on court operations and procedures and practices.

Q: What advice would you give to a woman lawyer interested in joining the appellate bench?

The traditional and most common route to the appellate bench is being a trial judge first. To be appointed to the court of appeal, you need to demonstrate your experiences in recognizing error and assessing whether that error was prejudicial. Experience with lots of trials—whether you are trying them or reading appellate records of them—will provide that. Also, it is helpful to have certain leadership ability. Unlike on the trial court, you need to be able to collaborate with your colleagues to reach a decision. You need to be open to accepting constructive criticism but still be able to stand up for yourself and your position when necessary in discussing cases and draft opinions. It is important to understand that your colleagues may have different points of view, and that is all right.

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