Reflections on My Freshman Year on the Bench

By Judge Denise J. Casper

I recently passed the one-year anniversary of my appointment to the U.S. District Court for the District of Massachusetts. Over the past year, attorneys have asked what has surprised (or not surprised) me about joining the bench. When the BBA approached me about writing this article, I was happy to have the opportunity to provide some reflections. I hope that these insights might be helpful for those attorneys who find themselves appearing in my courtroom and that they might shed some light on the transition to the bench for those who might consider applying to be a judge.

One of things that has not surprised me is the high quality of lawyering that I see day in and day out. Both in terms of oral advocacy and the quality of legal writing evidenced by the parties’ filings, the general standard of practice is quite high. Great lawyering does not necessarily make my job of rendering decisions easier, but it is a much more comforting thought to understand that the best arguments are being made on both sides than the discomforting feeling when I think that is not being done. Even the most skilled and experienced attorneys, however, should endeavor to make the most of their time during oral argument. At the beginning of a motion hearing, I often tell counsel that I have read the motion papers and supporting materials. I do that so that attorneys are free to begin their
arguments as they see fit, rather than beginning at square one, since I am familiar with the factual record and legal arguments. Similarly, it is important to take your cues from the judge. If I interject with a series of questions about your second argument, it may be because I think that is the toughest argument for your side and you have a greater burden of convincing me that your side should prevail. Use your time addressing those concerns.

There has certainly been a fair amount written by attorneys and judges about civility in our profession. In my brief time as a judge, I have not come to any conclusions about the state of civility in our practice, but I will share some observations from the past 56 weeks on the bench. Having been a practicing attorney, it comes as no surprise that attorneys involved in litigation — an adversarial system — come into my courtroom having engaged in a course of exchanges that may have been heated and contentious. Zealously representing clients in hard-fought cases can lead to vitriol between even the most reasonable attorneys. What has been surprising to me, however, is how much courtroom time some attorneys are willing to squander (if I would let them) on finger-pointing among counsel when the disputes are not material to the motion or matters that I need to decide. I am not talking about putting a pleasant face on the relationship between opposing counsel for the sake of the Court nor am I recommending that an attorney abandon well-founded arguments that turn upon the behavior of counsel or his/her conduct of a case. I merely suggest that attorneys stop to consider whether ad hominem attacks on fellow members of the bar in open court are advancing their client’s case.

I certainly have not been surprised that cases on my docket generate occasional discovery disputes. What attorneys, however, may not fully appreciate is that unless I have heard the parties on a preliminary injunction, motion to dismiss or other substantive motion early in the life of the case, my knowledge of the allegations and claims in the case may not extend much further than my review of the pleadings and my discussion with counsel at the initial scheduling conference. Thus, counsel should take care to explain in their papers not only why the discovery that they seek to compel (or seek to protect from disclosure) is warranted under the appropriate legal standards, but why it is important, as a factual matter, in their case to their claims or defenses. Because counsel are intimately familiar
with the facts of the case, you may think that the importance of certain discovery is self-evident, but at least for this judge, that is not always true, so take the time to make it clear in your motion papers.

Many attorneys have asked me how I found the transition from being a member of the bar to becoming a member of the bench. It is no small change to go from trying to make the most persuasive arguments to deciding which arguments should prevail as a matter of law. I have found a few things have made the transition easier. First, the nature of my last job before the bench (as the Deputy District Attorney in the Middlesex District Attorney’s Office) was one in which I often had to keep my own counsel about certain matters. I think that this fact has helped me adjust more readily to a position that necessarily requires a certain level of solitude. Second, the acute sense of isolation that many new members of the bench fear, I have not experienced. Instead, I was welcomed warmly by colleagues on this Court whose support and good humor has eased any trepidation I may have had about joining the bench. I have also had a number of opportunities to interact with my judicial colleagues across the country, many of whom are also “freshmen” on the bench. Finally, I have accepted responsibilities outside of my core job of judging that have allowed me to continue to engage in the type of civic activities and bar programs that I enjoyed as an attorney. It is my great pleasure to preside over Discovering Justice mock trials in my courtroom, to speak to teachers about explaining the judicial system to their students, to welcome new classes of Nelson Fellows and Lindsay Fellows into my courtroom where I can proudly point out Judge Lindsay’s portrait to them and to work with bar leaders on the plans for the Court’s next conference this fall. Although my role now may be different from my role when I participated in these programs as an attorney, I do them in the same spirit of increasing knowledge of the judicial system and advancing the dialogue between bar and bench. Having made the transition and marked my first anniversary, I look forward to the years of judicial service to come.