

AMERICAN BAR ASSOCIATION

**SECTION OF LITIGATION
JUDICIAL DIVISION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges courts to implement plans that
- 2 welcome opportunities for new lawyers to gain meaningful courtroom experience, and
- 3 urges law firms and clients to take advantage of those plans.

REPORT

Judges and lawyers around the country have grown cognizant of the diminished role of lawyers new to the practice of law in the courtroom. In light of the diminishing opportunities available for newer lawyers to develop their litigation skills in a courtroom setting, a directive has been passed by the American Bar Association to support the proper development of the future generation of lawyers. This directive is important because, to develop great trial lawyers, newer lawyers must be provided with the foundation and seasoning that only meaningful courtroom roles can provide. The access to such experiences must be welcomed by the courts and advanced by law firms and clients.

This directive focuses members of the bar on the necessary growth and development of lawyers new to the practice of law. It seeks their contributions through training and mentoring of these attorneys in all facets of trial advocacy. The success of the state and federal courts in the United States requires that the quality of litigation remains at the highest levels as the future generations of lawyers embark upon the legal profession. The American Bar Association can work together with the courts to make sure that when newer lawyers have meaningful courtroom opportunities, they rise to the occasion;

With respect to the judiciary, these members of the bar are critically important to this directive as they are able to open the doors for the development of the future generation of courtroom lawyers. In several jurisdictions, members of the judiciary have initiated revisions to their standing orders to promote the active involvement of newer lawyers in litigation. For example, United States District of Massachusetts Judges Denise J. Casper, Dennis Saylor, and Indira Talwani have enacted standing orders to encourage courtroom opportunities for relatively inexperienced attorneys. The judges encourage lawyers new to the practice of law to not only be tasked with handling routine matters, but also more complex matters such as arguing discovery and dispositive motions, and conducting the examination of witnesses.

Similarly, United States Northern District of California Judge Lucy Koh's standing order encourages newer attorneys to have an important role at trial. In fact, in one of Judge Koh's cases during this past year, she encouraged that various motions in limine in *Apple, Inc. v. Samsung Electronics, Inc.* be handled by newer attorneys. Judge William Alsup, of the same court, includes in his standing order a provision promising a hearing when a request for oral argument is made with the commitment that a lawyer of four or fewer years will argue, and relaxing the "one lawyer per witness" rule for younger attorneys during trial examination. Judges James Donato and John Tigar from that court also have standing orders encouraging new lawyers' participation.

A number of other judges have embraced similar provisions in many other jurisdictions, including the Northern District of Georgia (Judge Leigh Martin May), Eastern District of Texas (Judge K. Nicole Mitchell), Northern District of Texas (Judge Barbara A. Lynn), Southern District of Texas (Judges Gregg J. Costa and Gary H. Miller), Central District of California (Judge Andrew J. Guilford), and Eastern District of California

(Judge Kimberly J. Mueller). Their rules include various provisions encouraging opportunities for young lawyers to examine witnesses and providing oral argument if counsel commit to newer lawyers arguing, while also providing assurances that the more junior attorneys have both the requisite authority and supervision. See <http://nextgenlawyers.com/wp-content/uploads/2013/04/Judicial-Orders-re-Next-Gen-6-13-16.pdf> (last visited April 14, 2017) (collecting court orders discussed above).

Additionally, the Arizona Civil Justice Reform Committee has proposed a resolution to give plaintiffs the choice between compulsory arbitration or a short trial in Arizona Superior Court. Plaintiffs who elect the short trial option would receive a two-day-or-less trial before a judge or six-person jury inside a courtroom, thus providing more opportunities for lawyers to gain experience trying civil cases. By encouraging lawyers with limited courtroom experience to actively participate in the litigation process, these members of the judiciary are helping equip these lawyers with the experience and confidence to actively participate in the litigation process, which will serve to benefit and grow the public trust in the legal community.

With respect to experienced lawyers, these members of the bar are essential to the directive as they are able to assist newer attorneys in gaining valuable experience. They must offer the support needed to entrust these lawyers with the opportunities to litigate cases, argue motions, cross-examine witnesses, and generally develop strong trial advocacy skills. As experienced lawyers, they are charged with providing lawyers new to the practice of law with both the opportunities to actively participate in the courtroom and the resources necessary to properly prepare them for a courtroom experience. This preparation may come by way of answering substantive and procedural questions or by offering mock courtroom experiences.

By investing time in the growth of newer lawyers, the experienced members of the bar will enhance the overall legal experience of newer lawyers, recognizing their value to the overall reputation and strength of the legal profession. And by encouraging their clients to allow newer lawyers to have meaningful courtroom roles, these more seasoned lawyers are supporting the future success of the judicial system.

With respect to national, statewide, local, and specialized bar associations, these organizations of the bar have unique and valuable means of offering training programs and tools necessary for lawyers new to the practice of law to develop litigation skills. These programs and tools are particularly important for lawyers who are not employed. By way of offering trial academies, mock trial programs, and appellate advocacy programs, these various bar associations introduce litigation skills to newer lawyers who may not otherwise have training resources available. By providing such offerings, these various bar associations ensure that litigation experience is available to a wide range of lawyers with limited courtroom experience who are eager to enhance their litigation skills. Examples of meaningful programs offering mentoring and training include the Dallas Senior Lawyers Bar Association and the Judicial Clerkship Program sponsored by the ABA's Council for Racial and Ethnic Diversity in the Educational Pipeline and the Judicial Division.

With respect to newer lawyers, these newly minted members of the bar also have a responsibility to the rest of the legal profession to improve their own skills. Newer attorneys must demonstrate the dedication necessary to learn the craft of the legal profession. As noted in Judges Denise J. Casper's, Dennis Saylor's, and Indira Talwani's standing orders, when participating in the litigation process, newer lawyers must expect to be held to the highest professional standards as it pertains to their knowledge of the case, overall preparedness in advance of argument, and candor in communicating with the court. In satisfying these expectations, newer lawyers accept the ownership and responsibility of serving as officers of the courts and advocates critical to our system of justice.

Conclusion

The members of the ABA, by adopting the principles contained in this Resolution, are enacting a commitment to preserve the quality of litigation skills of future generations of new lawyers as contemplated by the founders of the legal profession. The joint and active participation of the judiciary, experienced lawyers, various bar associations, and newer lawyers will ensure that the best of the legal profession in courtroom advocacy is passed from the present generation of lawyers to future generations. For lawyers new to the practice of law, achieving success in the courtroom will require a concerted effort by judges, more seasoned attorneys, and bar associations.

To that end, the Honorable Barbara Lynn, Chief U.S. District Judge for the Northern District of Texas, another judge who has promoted the active involvement of newer lawyers in litigation, recently spoke with Joseph M. Hanna (Co-Chair of the ABA Section of Litigation's Young Lawyer Leadership Program and Young Lawyer Litigator Task Force), about the ABA's proposed Resolution. Judge Lynn lauded the Resolution, and noted how pleased she is to see these opportunities develop, how new lawyers continue to impress her, and how law firms and clients are supporting these efforts. Judge Lynn has implemented specific requirements in her courtroom that encourage litigants to provide speaking opportunities for newer lawyers, especially when they have contributed significantly to the motion or response, and her practices weigh in favor of holding a hearing when the argument will be handled by a newer lawyer. This example from Judge Lynn reminds us that change is occurring, but in order for us to reach the ultimate goal of the Resolution, it is incumbent that members of the bench and bar work together to help newer lawyers achieve such courtroom experience and success.

Laurence F. Pulgram
Chair, Section of Litigation
August 2017

GENERAL INFORMATION FORM

Submitting Entity: Section of Litigation
Judicial Division

Submitted By: Laurence F. Pulgram, Chair
Col. Linda Strite Murnane, Chair

1. Summary of Resolution(s).

The Resolution urges judges to encourage and facilitate the participation of young lawyers in courtroom proceedings.

2. Approval by Submitting Entity.

The Section of Litigation approved this Resolution at its Council Meeting on May 6, 2017. The Judicial Division Council approved this Resolution on May 2, 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The Resolution will have no adverse bearing on any ABA policy and will facilitate the ABA's support of young lawyers.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Section of Litigation's Young Advocates Committee, and similar Committees in other Sections, and the Young Lawyers Division, can use the Resolution to encourage judges in their jurisdictions to take steps to facilitate young lawyer participation in court proceedings.

8. Cost to the Association. (Both direct and indirect costs) None.

9. Disclosure of Interest. (If applicable) N/A

10. Referrals.

Young Lawyers Division
Law Student Division
Section of Legal Education and Admissions to the Bar
Senior Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Don Bivens
Snell & Wilmer, LLP
400 East Van Buren Street, One Arizona Center
Phoenix, AZ 85004
(602) 382-6235
dbivens@swlaw.com

Barbara J. Dawson
Snell & Wilmer, LLP
400 East Van Buren Street, One Arizona Center
Phoenix, AZ 85004
(602) 382-6235
bdawson@swlaw.com

Joseph M. Hanna
Goldberg Segalla, LLP
665 Main Street, Suite 400
Buffalo, NY 14203
(716) 566-5447
jhanna@goldbergsegalla.com

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Don Bivens
Snell & Wilmer, LLP
400 East Van Buren, One Arizona Center, Suite 1900
Phoenix, AZ 85004
(602) 382-6549
Cell (602) 708-1450
dbivens@swlaw.com

EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges judges to encourage and facilitate the participation of young lawyers in courtroom proceedings.

2. Summary of the Issue that the Resolution Addresses

Young lawyers need courtroom experience to become mature professionals.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution draws attention to the need, and urges judges to facilitate the participation of young lawyers in courtroom proceedings.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.