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HON. TOM BOYD *View from the Bench*

# Finding Predictability with a New District Court Judge

What do lawyers want from judges? Favorable decisions? Sure, that would be nice. But in reality, litigators don't expect to win every case. They do expect to be treated with courtesy and fairness. Beyond these basics, I think lawyers want predictability—predictability in both procedure and substance.

Clients want to know what their day in court will be like. What should they expect from the time they arrive to their departure? What time should they arrive? When will their case be heard? Will they be asked to speak? What are the possible and likely outcomes? What might the sentence be?

Practitioners will reach a comfortable level of predictability with their local bench over time. To find predictability with a new district court judge, it is important to know the judge's experience and motivation. Obviously, each judge has his or her own history and motivation. This is my story.

### My Experience

I was sitting with friends preparing for my interview with the State Bar of Michigan Judicial Qualifications Committee. We went through several mock questions and answers. In response to each question, I emphasized my experience and discussed specific numbers of cases and years of experience:

*I felt I had a good, balanced background of which any attorney would be proud. I started with commercial litigation and government relations law in Oakland County (1990), practiced tort law with a small insurance defense firm in my hometown ('92), managed a statewide association for a couple of years ('93-'94) and worked as assistant attorney general for 10 years. The Department of Attorney General provides a tremendous range of opportunities to lawyers eager for a variety of legal challenges. I practiced civil and administrative law (representing the Department of Social Services, the Medicaid program, and the Michigan Commission in Law Enforcement Standards); legislative law (as the attorney general's legislative liaison); and criminal law (prosecuting public theft and corruption cases—a five-year member of the Prosecuting Attorneys Association of Michigan).*

One friend suggested leaving out the numbers. He added, "Remember, every

member of the Judicial Qualifications Committee has twice as much experience as you." I have kept this perspective very much in mind as a new district court judge.

My experience is unique, but not unparalleled. Most attorneys appearing in the 55th District Court have P numbers lower than mine. Most have been in at least as many courtrooms, trials, or complicated legal situations. Importantly, my experience did not include some of the bread and butter district

court matters. I had never handled a landlord/tenant case or represented/prosecuted a drunk driver or shoplifter.

I learn new things every day; both good and bad experiences illustrate this point, as discussed below.

### THE RIGHT WAY: LANDLORD/TENANT

There is no "new judges' school" for mid-term appointees. The State Court Administrative Office (SCAO) recommended job shadowing with a seasoned jurist. Our court administrator arranged for me to shadow Judge Charles J. Falahee, Jr. in Jackson. Judge Falahee was very gracious with his time and advice. I observed several landlord/tenant cases and was able to quiz the judge afterward. It was easy to see that most of the cases were defaults and consents. There was not a lot to fight about—either the rent was paid or not. I also had the opportunity to observe Judge Richard Ball (pinch-hitting from East Lansing during our transition) conduct landlord/tenant hearings.

I started out slowly, reading the court rules and the statute governing summary proceedings. I have been lucky to have a few seasoned attorneys teach me the finer points of this area of law. There are a few trouble spots to look out for; e.g., personal service is required for money judgment but not for judgment of possession. The attorneys practicing this law know where the potential problems lie and announce them whenever an issue does arise.

### FAST FACTS:

- Q: What do lawyers want from judges?  
A: Predictability
- Predictability comes from knowing a judge's experience and motivation.
- Help new district court judges become judges.  
Be mindful to teach, not preach.

I have learned landlord/tenant law through the cases and the lawyers who covered both procedural requirements and the substantive law in each case. “This is a summary proceeding in a landlord/tenant case. The lease is attached to the complaint, as required by rule. The rent is due on the 1st and the following payments have been made. . . . I have gone over the tenants’ rights form with the tenant.” I learned the interplay between the court rules and the statute, on an issue-by-issue basis. I can only guess how boring this must have seemed to them at the time. I believe it was worth it, though, because they knew they were teaching me.

These turned out to be important lessons. Landlord/tenant cases make up a fair percentage of the caseload in the 55th district (about 30 percent of civil filings). The landlord/tenant bar now knows what to expect from me in the handling of these cases. They know how the day in court will proceed, what items are includable as rent without comment, and what we have to discuss. They know that I will prorate a money judgment through the hearing date and that their forms are prepared accordingly. There are few surprises.

#### **THE WRONG WAY: TERMINATION OF TENANCY—MORTGAGE FORECLOSURE**

Unfortunately, not every experience has gone as well. Consider the following: Plaintiff (Mortgage Company 2—buyer) files a complaint for possession after mortgage foreclosure sale. Complaint is submitted by attorney A. Defendant answers that he was unaware of any foreclosure or foreclosure sale because he was not given proper notice or service. In fact, defendant asserts that he had continued to mail payments to Mortgage Company 2 only to have them returned to him. The answer was filed by Get Foreclosure Results. The only address listed was [www.GetForeclosureResults.com](http://www.GetForeclosureResults.com). The signature was not that of an attorney licensed to practice in Michigan.

Plaintiff filed a motion for summary disposition, which included a request that defendant’s answer be stricken. Attorney B represented plaintiff at the motion hearing on summary disposition. Defendant, in pro per, reported that his original mortgage was with Mortgage Company 1, that the mortgage

had been transferred to Mortgage Company 2 (long before foreclosure), and that he had been sending payments to Mortgage Company 2 since before the mortgage sale. There seemed to be enough dispute of facts and enough at stake to merit a short trial—motion for summary disposition denied. The defendant was ordered to file an answer signed by a Michigan attorney or himself within seven days.

Attorney C appeared for plaintiff at trial. He orally moved for reconsideration of the denial of plaintiff’s summary disposition motion. He presented no new legal authority and no new argument. There was no careful review of the statutory requirements with a point-by-point analysis of plaintiff’s compliance. There was only the insistence that summary disposition was wrongly denied. I was reminded of a five-year-old stamping his foot and insisting that he have his way. Reconsideration was denied. Attorney C then informed the court that he was not ready to proceed with trial (apparently banking on the motion for reconsideration). Trial was rescheduled.

Attorney C came to trial without a representative from plaintiff Mortgage Company 2. Defendant offered a letter from plaintiff to him, dated well before foreclosure, claiming that it was never received. Defendant had obtained the letter from plaintiff through informal discovery. Attorney C challenged this assertion, arguing that we did not know if this letter was sent by plaintiff or received by defendant. Defendant, still in pro per, suggested that the answer lay in plaintiff’s records because the letter was sent by certified mail with a return receipt requested. Attorney C admitted that he had never even seen the file in this case. He could not confirm or challenge the letter or its contents, or offer evidence explaining its meaning in light of statutory foreclosure requirements. He was simply the next in a line of local attorneys pinch-hitting for an Oakland County attorney who had never appeared in this case.

There is definitely a right way and a wrong way to do things.

#### **My Motivation (at least in part)**

Michigan judges take an oath to uphold the United States and Michigan Constitu-

tions and enforce the laws of the state—just like lawyers. In addition, I try to live up to the charge given to me by Governor Granholm on accepting this office.

When Governor Granholm called to offer me the 55th district bench, she asked for three promises. First, be on time and be courteous. People visiting district court are not having their best day. Make sure court procedure and personnel ease the experience rather than exacerbate it. Second, be creative in helping real people with real problems. The judicial branch of government is in a unique position to make individual lives better on a case-by-case basis. Finally, stay engaged in the community. Too often, she said, judges slip into habits of privacy and solitude.

#### **PUNCTUALITY AND COURTESY**

Waiting is part of courtroom life. I have spent many hours in many courtrooms waiting. I remember prosecuting a case in a metro county. The district court set the case for circuit court arraignment at 8:30 a.m. a few weeks later. The defense attorney said, “See you in a couple of weeks. I’ll be there around 10:00 a.m.” I reminded him that arraignment had been set for 8:30 a.m. His reply was simple, “The judge will get there at 10:00 a.m., so I will too.” I could not help but recall this experience when the governor asked for this commitment.

I work hard to be on time. I hope attorneys and litigants can count on me to take the bench at the time given on their notice to appear. However, I have learned that the parties often need time to negotiate, consider, agree, and review reports and recommendations. (I think I wait as much now as when litigating.) So now I hope attorneys and litigants can count on me to take the bench as soon as they are ready.

There are competing concerns to be balanced as well. For example, I often get substance abuse assessments from defense counsel at the time set for plea in an OWI (operating while intoxicated) case. A plea and sentence is efficient for the parties and the court, but this causes more waiting (i.e., time to read the assessment).

In short, being on time is an important goal that I work toward each day. But it is

more elusive than I would have imagined when practicing.

It is not hard to be courteous. There is no doubt that citizens appearing in the district courts are not having their best day. I have discussed this fact with defendants, tenants, and crime victims. There are few positions where you can have such a direct impact in the lives of so many people. I'm grateful for the opportunity to serve. This gratitude extends to the people that come before the court. It's easy to be nice.

### CREATIVITY

What does it mean to be creative in a position governed by statute, rule, and precedent? Creativity can be defined as conduct "characterized by originality and expres-



*Being creative means reading statutes and rules with an open mind and keeping an eye toward helping people relate to the court and their own case(s).*

siveness; imaginative."<sup>1</sup> How does creativity mesh with rule? I wrestle with this question on a regular basis and do not claim to have the answers.

Specialized courts (e.g., drug court, domestic violence court) certainly qualify as creative responses to problems that are far too common. The 55th District Court has a drug court that was created by my predecessors and is overseen by my colleague. We are also in the process of initiating a domestic violence court loosely based on those in the district courts of Washtenaw County, Jackson, and Lansing.

Can there be creativity in sentencing? Here again, I am still learning. I had more questions than answers on sentencing within the first week on the job. I needed answers. Each Wednesday for the first few months, I met with different service providers to learn their philosophy and programs. It is great to know so many terrific people are at work in our community helping people with anger, addiction, and power and control issues.

I now have a sense of the strengths and philosophical approach of these agencies. Consider a defendant with the following criminal history: an MIP (minor in possession of alcohol), marijuana possession, and a

new OWI, and who denies having a substance abuse issue. This individual needs counseling that will address his denial. A local agency specializes in denial busting. Or consider the defendant with a "shy bladder" (an inability to urinate in front of others—a problem for court-ordered drug testing). Another local agency has a kinder and gentler approach and a history of success with this problem.

Maybe the next creative program is right around the corner, waiting for creative people to give it a try. Local courts in Colorado are experimenting with a new collections program. A trained collection specialist meets with a defendant before sentencing and assesses the individual's ability to pay fines, costs, and restitution (I would argue for

adding the cost of rehabilitative services). This collections specialist is then charged with responsibility for all collection activity. Courts should have fair and attainable financial punishments. Defendants should pay 100 percent of the amount accurately set at sentencing. They do not. Colorado reports an up to 50 percent increase in collections. SCAO has a collections advisory committee working on a statewide collections strategy with some similarities.

Being creative means having an open and inquiring mind. Being creative means reading statutes and rules with an open mind and keeping an eye toward helping people relate to the court and their own case(s).

### COMMUNITY INVOLVEMENT

Community involvement has always been a part of my life. Why would this change? My father was such a consistent volunteer for our high school that he was awarded a varsity letter upon my youngest brother's graduation. We were all brought along for the ride. I have remained active (e.g., elementary school PTA president, Sunday school teacher, and, more recently, scout troop committee member). I believe that this is one of the reasons the gov-

ernor appointed me over several very qualified candidates.

Some people leave court unhappy. It may be too soon for me to fully appreciate the problems a judge may face in the community. It is also safe to assume that a circuit court judge, spending more time with a tougher crowd, may have different pressures in this regard.

I have two observations to offer:

The coincidence between minor drinking and drug charges and employment in the food service industry is remarkable. It is already rare to stop for fast food without seeing a probationer or two. A recent dinner was interrupted by a waitress's critical review of the court's community service program (she made some excellent points). I can see how these things may change my future behavior.

I am more involved in the community today than in recent years. I have been invited to Kiwanis breakfasts, Rotary lunches, and the Lions Club for dinner. I have been a guest reader in elementary school and a guest speaker in an alternative high school career class. The list goes on. I enjoy each of these groups.

### Conclusion

Help new district court judges become judges. Understand where they have come from and the legal experience they bring to the bench. Walk them through the area(s) of law and practice that you know better than they. Be mindful to teach, not preach.

It is not fair (or correct) to assume things will be as they were under the previous judge. However, with a little research and a little work you should find predictability in your new district court judge in no time. ♦

Photo by David Trumple, Trumple Photography



*Judge Tom Boyd was appointed to the 55th District Court (Ingham County) on July 1, 2005, by Governor Jennifer Granholm. He was an assistant attorney general from February 1995 until taking the bench. Judge Boyd earned a B.A. from James Madison College, Michigan State University in 1985, and a J.D. from Wayne State University Law School in 1990.*

### Footnote

1. Dictionary.com, <http://dictionary.reference.com/>.