

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

A Conversation With Jayne Reardon, Retiring Executive Director of the Illinois Supreme Court Commission on Professionalism

BY JUDGE DEBRA WALKER

When I heard Jayne Reardon, executive director of the Illinois Supreme Court Commission on Professionalism, was retiring, I wanted to prepare a Q&A for the ISBA with her thoughts about the future of

our profession.

I worked with Jayne as a commissioner and then commission chair for almost 15 years. Together we launched initiatives

Continued on next page

A Conversation With Jayne Reardon, Retiring Executive Director of the Illinois Supreme Court Commission on Professionalism
1

Keys to Increasing Your Prospects for Success in Mediation: Insights from Chief Circuit Mediator for the U.S. Court of Appeals for the Seventh Circuit
1

Recent Appointments and Retirements
5

Keys to Increasing Your Prospects for Success in Mediation: Insights from Chief Circuit Mediator for the U.S. Court of Appeals for the Seventh Circuit

BY EDWARD CASMERE

As a mediator at the U. S. Court of Appeals for the Seventh Circuit for the last 28 years, Joel Shapiro knows how to successfully mediate disputes. He and his colleagues in the Circuit Mediation Office conduct confidential mediations in fully

counseled civil appeals in accordance with Federal Rule of Appellate Procedure 33 and Circuit Rule 33. They handle over 400 mediations every year with a success rate of around 40 percent. That is quite an impressive statistic given how the

underlying district court proceedings resolve so many cases by ruling, disposition, or settlement. As a result, cases typically come to the Seventh Circuit mediators with a history that includes clearly drawn

Continued on page 3

A Conversation With Jayne Reardon, Retiring Executive Director of the Illinois Supreme Court Commission on Professionalism

CONTINUED FROM PAGE 1

including courthouse professionalism trainings, which put courthouse personnel in the shoes of their patrons for a day to explore professionalism and access to justice challenges, and have co-taught professionalism-focused courses at EdCon, Cook County and Illinois New Judges Schools, and various bar associations.

Jayne is a nationally renowned leader in professionalism. She chaired the ABA Standing Committee on Professionalism, was named a 2021 ABA Legal Rebel, and received the Illinois Judges Association's Amicus Award in 2020.

How has the legal profession and court system changed during your time at the Commission?

Jayne: Undoubtedly, the biggest change has been the adoption of technology. Technology has radically altered the daily activities of those in the legal profession and our courthouses and, therefore, has created the need for increased education and competency in this area.

The global pandemic created momentum around this issue in a positive way and some of these changes will stay in place after the pandemic. The result should be an increase in the efficiency, effectiveness, and reach of legal and court services.

What are the biggest professionalism challenges and opportunities for the courts and practicing bar moving forward?

Jayne: The persistent lack of diversity, equity, and inclusion in our profession remains a challenge from a professionalism and client services perspective. Research shows that diversity flourishes in civil environments and that clients are increasingly looking for diverse perspectives when hiring legal representation.

In the Commission's surveys of Illinois lawyers, a majority reported that incivility discourages diversity, so stamping out incivility and creating a culture of belonging in workplaces is a necessary step

for addressing this challenge.

Well-being is another significant challenge. Recent data from Yale Law challenged the notion that attorneys experience a higher rate of mental health problems, but did find that they consume twice as much alcohol as other highly educated professionals, which can lead to countless professionalism challenges and exacerbate other problems.

While alcohol was once the center of firm functions and team-building events, we've recently seen organizations move away from this practice.

But the most significant challenge that's facing our profession is the legal services gap. Research shows that only 15 to 20 percent of the civil legal needs of low- and moderate-income individuals are being met.

We encourage pro bono service, but we cannot volunteer away the gap, especially because many don't know that the problems they encounter in their personal lives may have a legal solution.

We need to remedy the fact that our profession doesn't do a better job of meeting the current needs of our communities.

You've mentioned the pandemic, are there other ways it has affected the legal profession?

Jayne: A major byproduct of the pandemic is that hybrid work is likely here to stay. On a dime and for two years, expectations around the nature of work—where and when it is performed—were upended.

Although firms and organizations are beginning to welcome people back to physical offices, I think it's likely that a hybrid work model will be adopted.

We need to institutionalize the flexibility we've been living with for the last two years and develop ways to supervise, mentor, and promote newer members of the profession in this environment.

How can lawyers and judges better work together to enhance the

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administration of justice?

Jayne: The pandemic has provided the legal profession with a chance to reimagine and improve the way we do things. The courts have begun to consider themselves as a service, not a place, and changes like remote hearings have provided easier access to the court system for clients and allowed attorneys more time to focus on client work rather than travel.

Moving forward, lawyers and judges must continue to work together to leverage the efficiencies uncovered in the pandemic to reduce the cavernous gap between those who could benefit from legal services and those who receive them.

Moreover, we need to continue to develop, mentor, and sponsor underrepresented minorities who may be interested in a legal or judicial career. Many people from traditionally underrepresented communities have said that they didn't consider the legal profession as an option until they saw an attorney or judge who

looked like them.

A more inclusive legal and judicial system would support greater public confidence in the rule of law and the justice system. *Lawyers and judges are not only representatives of the legal system but are often local leaders who play an essential role in creating fair, respectful, and inclusive communities that prioritize access to their institutions for all.*

Why is the Commission on Professionalism's work important?

Jayne: The way we treat one another is at the heart of functioning relationships, organizations, and communities. More than 90 percent of attorneys who responded to our Survey on Professionalism believe incivility impacts public confidence in the legal profession.

We educate and engage lawyers about respectful ways to interact so that ideas can be explored in settings conducive to change or conflict resolution.

In a time of LegalZoom, tech platforms,

and alternative business structures, lawyers must define their value and the value of the services they provide. If we fail, we could see more and more potential clients seeking legal help elsewhere.

We will be exploring the topic of "attorney value" at our The Future Is Now: Legal Services conference on April 21. [Registration is open](https://thefutureisnow.2civility.org/) and we hope you will join us! (Link: [https://thefutureisnow.2civility.org/.](https://thefutureisnow.2civility.org/))

What's next for Jayne?

Jayne: I'm not entirely sure. I have had a great ride at the Commission on Professionalism. Yet it's time to step aside and cheer the 2Civility team on to even greater heights.

As you know, professionalism is in my blood, so I will remain engaged at some level and in some way. Time will tell.

Thank you, Jayne, for your years of service to the Illinois Supreme Court and the lawyers and judges of Illinois. We wish you every happiness for the future! ■

Keys to Increasing Your Prospects for Success in Mediation: Insights from Chief Circuit Mediator for the U.S. Court of Appeals for the Seventh Circuit

CONTINUED FROM PAGE 1

lines and vexing issues which often polarize parties and cement positions increasing the degree of difficulty of the mediation.

Through a series of interviews in early 2022, Mr. Shapiro graciously shared some of the insights he has gained mediating cases over the past three decades. What follows are some distilled down highlights from those conversations with Chief Circuit Mediator Shapiro.

What Are the Benefits of Mediation?

Mediations are a great way for parties to maintain control over the outcome of litigation through a guided resolution process with an independent third party who can bring perspective to, and provide a sounding board for, litigants. Mediators can accomplish that without the burden or stigma of declaring "winners" or "losers." Being a different species from judicial settlement conferences, mediations have an

ability to delve deeper into the needs and interests of participants with less pressure to try to broker a quick deal. Mediations are, therefore, a bit enigmatic with an arguably more ambitious objective than a judicial settlement conference, but with less leverage because mediators do not carry the power of being an ultimate decision-maker.

Besides the sympathetic ear of their counsel, mediators are often the first (and sometimes only) independent person connected with the litigation process that will listen directly to a client's side of the story. That can provide a form of catharsis – sometimes people just need to get something off their chest, to say things out loud to someone who will listen and not judge. As such, mediations provide a forum for clients to obtain acknowledgement (and sometimes "tough love") from an independent source – someone who can let both lawyer and a client feel heard while also providing an unbiased reality check.

Mediations also provide an opportunity to bring together all the main faculties of lawyering: counseling, advocacy, negotiation, documenting, and oversight. Lawyers can get creative in solving problems for clients and help limit or mitigate risk and uncertainty. According to Mr. Shapiro, "lawsuits are really coins thrown into wishing wells, and lawyers are the plumbers that try to turn those wishes into some kind of reality," with mediation serving as a critical tool in the lawyer's ability to do that.

What Are Some Mediation Insights Learned Over the Years?

Technique is secondary to mindset.

Having the parties and their counsel engage in the mediation process with the right mindset—one open to understanding the other side's point of view, open to compromise, and realizing that everyone cannot get everything they want—is more important to increasing the chances of a

successful mediation than any strategy or technique. “Too often,” Mr. Shapiro observes, “parties attach a symbolic significance that the mediation cannot bear.” Mediations are not designed to give any party total victory, domination, or oppressive punishment. If that is a party’s mediation goal, they will be disappointed.

Try to listen more than you talk. The key to compromise is focusing not on a party’s own interests, but considering the other side’s needs as well. Parties must listen to each other to understand what they really want, and really need. Addressing your counterpart’s needs is often necessary to be able to meet yours. “It is surprising,” Mr. Shapiro notes, “how often people are wrong about what their counterpart actually wants or will agree to.” Listen and observe to understand, not just to figure out your counterargument.

There is no optimal tactic, move, or game theory. Each mediation is unique, and life is a lot messier than academics. Parties need to adjust expectations, embrace uncertainty, and get comfortable with feeling their way to a resolution in unanticipated ways. These journeys often mysteriously deliver solutions and accommodations that were never anticipated. “Mediation is not like a juicing machine, where you put a bunch of material in one end and a settlement instantly comes out the other,” says Mr. Shapiro. The mediation process evolves over time and makes use of all the inputs. Take each step as it comes. Do not worry about being perfect. There are very few mistakes in a mediation that cannot be fixed.

Take as little as possible for granted. This frees you up to respond to what is *actually* happening, as opposed to what you *thought* would happen.

Success does not happen by chance. Mediation is a collaboration. Everyone must be prepared to do their part to have a successful outcome, however that is defined (resolution or some other positive outcome).

How Can Counsel Best Use Mediation to Benefit Their Clients?

On this score, Mr. Shapiro said he could not improve on the advice he put forward many years ago, which still appears at the Circuit Mediation Office

webpage: “Recognize that the mediation is an opportunity to achieve a favorable outcome for your client. Without laying aside the advocate’s responsibility, approach the mediation as a cooperative, rather than adversarial, exercise. Help your client make settlement decisions based not on overconfidence or wishful thinking, but on a realistic assessment of the case. Assist clients to make decisions not on emotion, regardless of how justified they may be, but on rational self-interest. Suggest terms of settlement that maximize the benefits of settlement for all parties. Take advantage of the opportunity to talk confidentially and constructively with counsel for the other parties. If clients are present, address them respectfully but convincingly. Let the mediator know how he or she can assist you in obtaining a satisfactory resolution. Be candid. Don’t posture. Listen closely to what other participants have to say. Give the process a chance to work.”

What Is One Thing That Has Been a Surprise?

Prior to the pandemic, the seventh circuit program hosted about 40 percent of its initial mediation sessions in person. From Mr. Shapiro’s point of view, conducting all mediations remotely has not been a hardship because, in his experience, there is no meaningful difference in success between telephonic and face-to-face mediations. In fact, there are some significant benefits to conducting mediations by phone. In telephone mediations you can focus on listening without distractions and reading or misreading body language and facial reactions. Thus, there is a level of protection against mental background noise and the barrage of sensory information that is often misinterpreted. There is also protection for parties and counsel from the discomfort of sitting across the table from people they have reason to dislike. Parties are present to one another without the disadvantages of being face-to-face. In Mr. Shapiro’s experience, “phone discussions allow the litigants and the mediator to develop a sense of intimacy that is not always achieved in person.”

Is There a Secret to the Success of the Seventh Circuit Mediators?

First, mediation is all the circuit mediators do. It is their full-time job, and they take seriously the privilege and delicacy of their work. Second, because they are cloaked with the court’s authority, they take their responsibility to the court—and their identification with the court—very seriously. They are dedicated to the integrity of the process. Third, being an extension of the court, the Rule 33 mediation process is extraordinarily respectful of the litigants and demands the same of them toward one another and toward the mediation. Fourth, through years of experience with every kind of case, situation, conduct and negotiating tactic, they have accustomed themselves to making no assumptions. They take each case as it comes, practicing the “Three P’s:” Preparation, patience and persistence.

In Mr. Shapiro’s view, his work is less about pulling rabbits from hats than about helping people to find their way out of a jam. His parting insight is perhaps as obvious as it is profound: **Mediators don’t settle cases, parties and counsel settle cases.** The mediator provides guidance, a steady hand, and a calm influence, but does not make the settlement happen. Only the parties can do that. As such, parties and their counsel need to take ownership of, and responsibility for, the process and the outcome.

To learn more about the Circuit Mediation Program of the U. S. Court of Appeals for the Seventh Circuit visit <https://www.ca7.uscourts.gov/mediation/mediation.htm>. ■

Edward Casmere is a litigator, negotiator, and trial lawyer at Riley Safer Holmes & Cancila LLP in Chicago.

Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:

- Hon. Joseph C. Pedersen, 23rd Circuit, January 3, 2022
- Araceli R. De La Cruz, Cook County Circuit, January 6, 2022

2. The circuit judges have appointed the following to be associate judge:

- Andrew Carruthers, 3rd Circuit, January 3, 2022
- Erin Buhl, 17th Circuit, January 4, 2022
- Todd A. Ramlow, 17th Circuit, January 31, 2022
- Sarah J. Gallagher Chami, 23rd Circuit, February 7, 2022
- Jennifer L. Martyn, 18th Circuit, February 28, 2022

3. The following judges have retired:

- Hon. John H. Young, 17th Circuit, January 3, 2022
- Hon. Thomas R. Mulroy, Associate Judge, Cook County Circuit, January 7, 2022
- Hon. Brian J. Diamond, Associate Judge, 18th Circuit, January 14, 2022
- Hon. Diane E. Winter, 19th Circuit, 5th Subcircuit, January 21, 2022
- Hon. Steven L. Garst, 5th Circuit, January 28, 2022
- Hon. Raul Vega, Cook County Circuit, 6th Subcircuit, January 28, 2022
- Hon. Bruce J. Joseph, Associate Judge, 17th Circuit, January 30, 2022
- Hon. Daniel E. Hartigan, 4th Circuit, January 30, 2022
- Hon. John L. Huff, Associate Judge,

Cook County Circuit, January 30, 2022

- Hon. Moshe Jacobius, Cook County Circuit, 9th Subcircuit, January 30, 2022
- Hon. Mark J. Lopez, Associate Judge, Cook County Circuit, January 30, 2022
- Hon. Elizabeth Loredo Rivera, Associate Judge, Cook County Circuit, February 28, 2022

4. The following judge has deceased:

- Hon. Susanne M. Groebner, Cook County Circuit, 13th Subcircuit, February 25, 2022 ■

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