



Freedman Consulting, Inc.

— CHANGE . . . RESULTS . . . SUCCESS —

BE CAREFUL WHAT YOU WISH FOR

Ellen Freedman, CLM
© 2022 Freedman Consulting, Inc.

A great number of lawyers secretly wish for an appointment to the bench. It is a position almost unanimously viewed as prestigious. It is often perceived as far easier by traditional lawyers who must bill hours, fill their plate with work and often shoulder some management responsibilities at their firm.

There are a whole host of other reasons this is high on the attorney's wish list, including:

- **Providing a graceful exit:** In my experience, when a partner is unhappy at a firm but doesn't want to burn bridges by jumping ship to another firm, or risk waiting to be unceremoniously ousted by the partner(s) with whom they are at odds, attaining a position on the bench provides a wonderful opportunity to exit with head held high. If the attorney later returns to private practice, often there will be many firms making offers, and the attorney can go elsewhere without raising eyebrows or creating hard feelings.
- **Directly dispensing justice:** Many attorneys were originally motivated to become lawyers by a need to provide greater justice in society. For those who don't lose sight of that need to serve society and promote fairness, becoming a judge affords an opportunity to have a greater impact.
- **Sitting at the top of the heap:** Most attorneys and laypersons will agree that judges have greater levels of responsibility and power than lawyers. Lawyer "DNA" finds the power aspect particularly enticing. Moreover, judges have a high standing in society as a whole. In an industry that has suffered an ever-increasing commoditization, incursion and competition by non-lawyers, the overall perceived standing of "general" lawyers in society has lowered. Moving to the bench restores the attorney to "the rightful position at the top".

- **Reinvigorating the creative side:** Many lawyers, particularly those working in highly repetitive practice areas, find it hard to maintain enthusiasm in their work. Most believe that they will never get bored as a judge, and their work will be more exciting and continue to challenge their creative abilities.
- **Show me the money:** Partners at big firms probably trade a reduction in compensation for the prestige of a position on the bench and a better work/life balance. But for small firm or solo attorneys, or even partners in some midsize firms, they may very well earn more and enjoy better benefits, too. Plus, they will have a guaranteed income, which is not subject to the ebb and flow of demand for legal work.

Surely these are not the only reasons an attorney aspires to become a judge. But in all likelihood, you can identify with at least one of these, if not more.

Now, since those of you reading this are mostly lawyers, I don't have to tell you the various types of judgeships, nor which are given by appointment or election. I will inform nonlawyer readers that Pennsylvania is one of only a few states in which a law degree and admission to the bar is not required for magisterial district judges.

But all other justices and judges must be, and are also subject to, special education, and strict standards of conduct.

Here's something else you should know: Judicial elections occur in odd-numbered years.

Yes, gentle reader, I know you're already wondering when I will get to the point, especially as to what the heck the ominous article title has to do with something as wonderful as elevation to the bench. We have just concluded 2021: an odd-numbered year. It's a year in which many lawyers across the commonwealth received news almost at the very end of the year that their wish had been granted. For many of you it meant nothing more than sending well-wishes on LinkedIn or Facebook to your lucky colleagues. Is that the end of the story?

Yes, that was a rhetorical question. Of course, it's not the end of the story. The hotline rang off the hook from many of those lucky attorneys. Most, but not all, practiced in solo and small firm settings. In PA — with the exception of magisterial district justices, who are allowed to maintain a practice under certain requirements — appointment or election to the bench comes with a prohibition from practicing as attorneys in non-judicial roles. That means withdrawing from your firm, or closing your firm. And there is little time to accomplish this task.

Notification requirements are first on the long to-do list. Clients, courts and other counsel need to be notified as quickly as reasonably possible. The larger the firm, the more likely there will be another attorney who can continue to service the client. But that is always the client's decision to make. And they must be informed accordingly.

The client often will not respond to a first notification. The smaller the firm, the more difficult it becomes to protect the client's interest properly and ethically in order to cease privately practicing law before the end-of-year deadline. (The actual closing of the business may take longer, and that is OK.)

For midsize or smaller firms, there may not be a suitable substitute attorney at the firm. The best practice is to try to finish up any matter possible so there is no vicarious liability created by turning the file over to new counsel. But often there is no choice. It is best to give the client multiple recommendations so that the client ultimately makes the choice. But, depending upon the practice area, there may not be multiple qualified people.

What about the terms of your withdrawal from a small or midsize firm? Is there a written agreement in place already, or must you negotiate under time pressure and leave too much on the table?

Writing detailed summary memos for files being transferred, filing withdrawals of appearance, negotiating fee arrangements with replacement counsel, physically returning files to clients, closing out trust accounts and dealing with all the old client files are just some of the many details that will need tending.

Does all of this sound familiar? Yes, of course it does. These are the same issues associated with retirement, closing a practice, sudden death or disability and succession / surrogacy planning. I can promise you that if you get your wish without having already given advance thought and planning to these possibilities, your "dream come true" may well be a temporary nightmare.

Just ask one of the many "lucky" attorneys I assisted at the end of 2021. They all regret they didn't think about these things further in advance.

A version of this article originally appeared in the February 21, 2022 issue of the Pennsylvania Bar News.

© 2022 Freedman Consulting, Inc. The contents of this article are protected by U.S. copyright. Visitors may print and download one copy of this article solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in the article. You may not modify, distribute, copy, broadcast, transmit, publish, transfer, or otherwise use any article or material obtained from this site in any other manner except with written permission of the author. The article is for informational use only and does not constitute legal advice or endorsement of any particular product or vendor.