

# 18 mistakes new judges often make—and how to avoid them

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Earlier this month we emailed current and past NJC faculty asking for the most common mistakes they see new judges make and advice on how to avoid them. Submissions began pouring in almost as soon as we hit send.

## 1. They shy away from making decisions

“I have been a judge for 25 years. Over the years I have noticed many new judges have a difficult time making decisions. New judges come from the community and hear cases with their community lawyers. They sometimes are afraid of ruling against community lawyers. They have a hard time coming to grips with a judge’s responsibility to decide, as opposed to not ruling and hoping the case settles if the judge drags his/her feet too long.”

Judge John Lenderman  
St. Petersburg, FL

## 2. They accept every agreed order

“It is very, very tempting to new judges to sign off on agreed orders. For example, the parties will present agreed trial continuances, agreed protective orders that give them carte blanche to seal and redact, agreed briefing schedules, agreed expansions of page limits, plea bargains, and more. The solution to this problem is to not be afraid to say no. Trial date certainty is crucial to justice, and it can only be achieved if the court makes it clear that only good cause will warrant a continuance, and (usually) only once. Similarly, the court has an obligation to provide transparency: sealing and redaction defeats this goal. Nor does the court want to cede control of its calendar, including burying itself in long, late-filed reading, by signing off on parties’ agreement to change the court rules on briefing dates and page limits. And, of course, sentencing discretion is meaningless if the court simply signs off on plea agreements.”

Judge Catherine Shaffer  
President, American Judges Association  
Seattle

## 3. They forget to complete the record

“You have three best friends in the courtroom. They are: the record, the record, the record. Your best friends will never turn on you unless you lose your cool. The moral is, keep your cool. It is your courtroom and you get the last say. As long as you make the record, you will be fine.”

Judge Lee Sinclair  
Canton, OH

## 4. They forget about ... other important things

“Make sure your robe is on before taking the bench (I’ve been so engaged in thought I marched right into court forgetting my robe.) If you don’t have a court reporter, always double-check to make sure the recorder is on. No one likes to recreate a record.”

Judge Lin Billings Vela  
Cripple Creek, CO

5. They don't go to judge school, and they don't cut the cord

"I know this will seem self-serving, but many new judges do not take advantage of judicial education programs that will help them get started with the right mindset and skills. It also helps to sever the business and social links between a new judge and his/her former law firm. I remember my presiding judge telling me to get to the NJC during my first year on the bench. I attended *General Jurisdiction*. After returning, I felt better informed than ever before, and the local attorneys knew I had been through courses that would benefit everyone, including their clients. The professional distance between a new judge and those with whom a law firm connection existed is an important break, and I'll never regret doing it through the NJC. I'm sure that all of the local lawyers appreciated knowing I was completely independent in my decision-making."

Judge Jess Clanton  
Langley, OK

6. They forget they aren't a trial attorney anymore

"Stepping into the advocate role is a big mistake for new judges. Another mistake is failing to understand the need to create a full record and the importance of being the "conductor" of the proceedings. Those are just some of the issues we see."

Judge Susan L. Formaker  
Los Angeles

7. They place too much faith in court-appointed experts

"Newly appointed family law judges are often afraid of making mistakes that might harm children – which is important, of course. However, before relying on expert opinions, it is important to understand whether the expert has done a thorough and sufficient job of gathering data. Too often experts seem merely like stenographers who fail to get sufficient depth/breadth in their data gathering. The experts may not have not tested or considered multiple hypotheses before reaching conclusions. They may not have an adequate basis for their opinions or may be otherwise influenced by some type of cognitive or other bias(es). This is especially true when allegations of domestic violence exist in a case, in very high-conflict cases with children who refuse/resist contact with a parent, or in relocation cases."

Forensic psychologist Philip M. Stahl  
Queen Creek, AZ

8. They try too hard to look dignified

"I believe many new judges are so concerned about appearing dignified that they can seem very remote and even uncaring. The solution to this is to learn and apply the lessons of procedural fairness. In reality, there is nothing undignified about being a good listener, a person who explains the neutral principles they are applying, someone who treats each party equally, or someone who speaks in plain language."

Judge Catherine Shaffer  
President, American Judges Association  
Seattle

9. They don't realize that...

1. "It is impossible to have equally talented and prepared attorneys on each side of every case.
2. There will be someone who will file a complaint against a judge, whether justified or not.
3. You will have no privacy. Attorneys as well as citizens expect to know where you are and what you're doing IF YOU AREN'T IN THE COURTROOM.
4. Depending on type of judgeship, the amount of work will be unexpected. You will be placed on committees and asked to do assignments outside the description of the job.
5. There will rarely be enough time to sit and ponder the law quietly at your desk.
6. There will not be enough money to take a judicial training course outside your state. You should nonetheless volunteer to teach at Continuing Legal Ed classes. And you should know that judges are improved by taking Continuing Judicial Education courses, wherever they are held."

Judge Cynthia L. Brewer  
Canton, MS

10. They misunderstand their position

"Stay away from the phrase 'In my court...' It is not your court, it belongs to the people, it will always belong to the people, and you can be replaced."

So...

"Understand that the case before you is the most important case on the planet, and treat the people before you in that manner. Treat people the way you would want a family member to be treated if they were in court. Do not have 'POLICIES.' Have trust in your in-court staff. Listen more than speak. Do not rush your docket, no matter how busy it is. Take frequent breaks. Smile. Dress like a judge. Be humble. Be kind. Never show anger. Never assume anything before asking questions. Do not be afraid to say, 'I do not know.'"

Judge Louis Schiff  
Deerfield Beach, FL

11. They embarrass themselves by feigning experience

"Most new judges are assigned to court divisions where the judge has no experience as a lawyer. Some have a hard time admitting to the parties and lawyers that they don't know what they are doing. They overreact and get defensive. The lawyers know! New judges need to know that they make their lasting reputations in their first year. There is an old saying from New York: "When a new judge sneezes in Manhattan, the lawyers in Brooklyn say, 'God Bless.'"

Judge John Lenderman  
St. Petersburg, Florida

## 12. They make any number of errors in sentencing

Such as...

- Handing down an Illegal sentence (exceeding maximum, ignoring mandatory minimum)
- Imposition of an “innovative” sentence not authorized by law
- Failure to exercise discretion at all (e.g., judge requires all cases of a type to have the same sentence without variation)
- Breaching of a plea agreement
- Failure to observe necessary procedural measures—ensuring fair disclosure of sentencing evidence including Pre-Sentencing Investigation and meaningful review of PSI by the defendant; ruling clearly on PSI redaction requests; providing opportunity for victim participation; providing opportunity for defendant’s allocution
- Clear reliance upon unreliable hearsay/inadmissible sentencing evidence in imposing sentence
- Clear reliance upon evidence of undisclosed acquitted conduct of the defendant without assuring notice and opportunity to respond
- Inadequate findings on departure from a presumptive sentence
- Concurrent/consecutive/credit complications and errors
- Failure to clearly *state the sentence!*
- Animus, bias, impermissible discriminatory basis for sentence
- Degrading, unnecessarily denigrating defendant at expense of dignity, fairness of proceeding. The message can be clearly delivered without losing decorum and dignity of justice.
- Ex Parte communications/investigation by judge re: sentence computation, correctional programming and placement options in a given case, etc.
- Basing sentence upon Judge’s extensive investigation and recourse to learned treatises/journals/expert studies not adduced by parties, without notice to parties or opportunity for response or objection.
- Vindictive sentence following a defendant’s appeal
- *Sua sponte* sentence reconsideration without clear basis, or on untimely basis

“How do you remedy sentencing errors? In most cases, it calls for a remand for resentencing proceeding consistent with appellate instructions. Think about the hardships to the parties and the process of reconvening a sentencing proceeding long after initial sentencing has occurred. This may cause you to take more heed of possible errors and avoid them in the first place.”

Judge Walter M. Morris, Jr.  
Lyndonville, Vermont

### 13. They succumb to Black Robe Syndrome

“Its symptoms are insidious and hard to detect. I’ll never forget a longtime colleague reminding me when I was sworn in that I’m not any smarter, better looking or funnier than before I wore the robe.

Think before you speak: a closed mouth gathers no foot. Do not rule from the bench when angry or upset; a quick break is necessary to organize your thoughts. Don’t think you have all the answers; you don’t. Don’t hesitate to ask questions of the lawyers and/or your colleagues.”

Judge Lin Billings Vela  
Cripple Creek, Colorado

### 14. They don’t set status conferences

“New judges often find themselves struggling to keep complex cases on track and adjudicate cases with recurring disputes over issues such as discovery. One solution to this problem is to set status conferences on difficult cases. A conference where the court simply asks what the progress of a case is against the agreed case schedule, or sits down with disputing parties to ask why one party wants certain discovery and ask the other party why the first cannot have that discovery, can often save many unnecessary motions from being brought. Never be afraid to set a status conference with the parties; they will come when you call them.”

Judge Catherine Shaffer  
President, American Judges Association  
Seattle

### 15. They aren’t up on the latest research

“New family law judges may not be sufficiently aware of the relevant psychological literature associated with parenting time, high-conflict parents with personality-disorder traits, critical and relevant relocation-related factors, and the various forms of domestic violence. NJC courses on managing complex family law matters and on domestic violence teach novice judges about these critical issues.”

Philip M. Stahl  
Forensic Psychologist  
Queen Creek, Arizona

### 16. They don’t know the differences between attorney and judicial rules of conduct

“Some common challenges include ex parte contact, requests for judicial letters of recommendation and support, inappropriate speaking requests, and more. It is really important that new judges read the rules of judicial conduct closely, check prior ethics opinions when a question comes up, and, most importantly, stay in touch with someone with expertise in this area. I emailed our state court administrative office’s ethics liaison very often as a new judge, and she saved me from error more than once.”

Judge Catherine Shaffer  
President, American Judges Association  
Seattle

17. They don't watch their steps

"You will find yourself tripping over your robe when you put the garbage out."

Judge Philip Straniere  
New York City

18. They let themselves go

"New judges are often not very good at self-care, the key to being a judge with staying power. They stop exercising and reading for pleasure, skip their sleep, eat poorly, and sometimes are tempted to medicate their stress with dangerous palliatives like alcohol. I strongly suggest that judges learn as early as possible about productive strategies for managing judicial stress and secondary trauma, to avoid the risk of burnout for themselves and their staffs. Being a judge is a wonderful job, but only if your mind, body, and spirit are tended and resilient."

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