



Judicial Profile

by Patrick Petrocelli and Andrey Spektor

Hon. Brian M. Cogan U.S. District Judge, Eastern District of New York

If the wheels of justice are supposed to turn slowly, then someone should remind Judge Brian M. Cogan, a U.S. district judge sitting on the Eastern District of New York (EDNY) bench. He can credibly claim to run one of the fastest dockets in the country, despite sitting in one of the busiest federal districts. This speed comes without sacrificing attention to cases, for he can also credibly claim to be more prepared than most of the lawyers appearing before him. He produces an astounding number of written decisions that are rarely reversed, and his oral opinions might as well be written because they sound like edited prose.

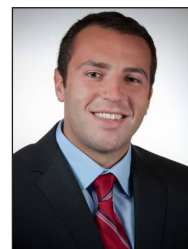
So how does the wheel spin so quickly but “grind exceedingly fine”?¹ His near-maniacal devotion to the job and impressive disregard for sleep certainly help, but the real answer lies in Judge Cogan’s aggressive case management. He routinely tells attorneys that once an action is filed, it belongs as much to him as it does to them (“It’s not *your* case. It’s *our* case.”) As far as Judge Cogan is concerned, once the judicial apparatus is activated, it should begin grinding immediately and quickly toward resolution. And grind quickly it does.

As of September 2013, there was an average of 779 pending cases per judge in the Eastern District of New York, a heavier caseload than all but seven districts out of the almost 100 that span the nation—more cases than in the EDNY’s sister district across the Brooklyn Bridge, the Southern District of New York (SDNY).² Civil cases, which are generally more time-consuming for judges—because they frequently involve motion practice and discovery disputes—form a significant part of the EDNY docket, with an average of 472 filings per judge in the annual period ending in September 2013, again surpassing the Southern District.



Not surprisingly, it is with civil actions that Judge Cogan’s case management makes the biggest dent. On any given month, Judge Cogan may well have the fewest civil cases pending in the entire Second Circuit. But it is not for lack of trying. The judge personally rules on nondispositive motions, including the dreaded discovery disputes, and

Patrick Petrocelli and Andrey Spektor both served as law clerks to Judge Cogan. Petrocelli is an associate at Stroock & Stroock & Lavan LLP in New York City; Spektor is a law clerk to Judge Morton Greenberg on the Third Circuit Court of Appeals. Photo credit: Rick Kopstein.



does not ask magistrate judges for reports and recommendations on most other submissions. As his blurry-eyed law clerks would also tell you, Judge Cogan frequently volunteers for extra emergency-day duty, enthusiastically accepts cases transferred to him—from other judges and from the multidistrict litigation panel—and has repeatedly sat by designation on the Courts of Appeal for the Second and Ninth Circuits. The judge also chairs the EDNY's grievance committee and takes an active role in outside legal activities—including serving as a judge advocate general in the New York National Guard (where he holds the rank of lieutenant colonel³) and participating in the Federal Bar Council American Inn of Court (which he currently heads as president). He has taught at Brooklyn Law School and regularly lectures on various legal topics, particularly the one closest to his heart, the Federal Rules of Civil Procedure.

So what's his secret? His mentor on the EDNY bench, Judge Edward R. Korman, believes it begins with Judge Cogan's experience as a successful commercial litigator at Stroock & Stroock & Lavan LLP, where he laid the foundation for his "strong hands-on approach" as a judge. His career took off immediately after graduating from Cornell Law School and clerking for the late Judge Sydney M. Aronovitz of the U.S. District Court for the Southern District of Florida. He joined Stroock in 1980 and focused on complex litigation, accountants' liability and securities fraud, insolvency, and cross-border litigation. He quickly established himself as one of the go-to associates, rising to partner in 1988 and general counsel in 2004.

As a partner, Judge Cogan liked to throw lawyers into the deep end to see if they could teach themselves to swim (just as, he'll tell you, the Vikings used to do with their children). He did not care if you were a seventh-year or first-year associate; if you were working for him, he expected you to figure out what needed to be done on a particular case and then to go out and do it. "One of the best things about Judge Cogan," said Dina Kolker, special counsel at Stroock and the judge's former law clerk, is that "he was one of the first partners to say, 'Deal with this yourself with the client ... make them believe you know what you are talking about and handle the situation.'" Young lawyers quickly learned that they should never ask the partner what to do when faced with a complicated legal issue. He was not interested in telling them what they should be doing. He wanted them to come up with their own course of action and then pitch and defend their decisions to him.

"He was a fantastic imparter of strategy, information, and how to think about and practice law," recalled James Bernard, a Stroock partner who frequently worked with Judge Cogan prior to his appointment to the bench. Bernard remembers one particular summary judgment motion he argued in the SDNY as a senior associate. Judge Cogan was the partner on the case and had argued a separate motion on the same day. A few weeks later, while discussing the argument, Bernard indicated that he wished he had handled one aspect of the argument differently. Judge

Cogan deadpanned, "That's why they call it practice."

The judge puts this dry humor and experience to use on the bench. As expected, he is well-versed in modern litigation, including electronic discovery, and he is well-acquainted with the usual delay tactics. He knows exactly how quickly a case should move, and he challenges the lawyers to tell him why he is wrong. Some attorneys succeed, but only if they are specific: general requests to extend discovery periods, for instance, are not enough, even if those requests are made on consent; lawyers have to identify specific types of documents and witnesses that must be examined prior to motion practice, and, more importantly, explain why the work cannot be completed sooner. A case that requires limited written discovery and a handful of depositions can usually be tried before Judge Cogan shortly after the initial status conference. This means that cases do not languish on the judge's watch, even if counsel for both sides would not object if they did.

Other procedures are also geared toward efficiency, all of which lean heavily on the judge's knowledge and relentless work ethic. Lawyers attending premotion conferences,⁴ for example, routinely find that the person most familiar with their own arguments and rebuttals to those arguments is not them, their colleagues, or their adversary—it's Judge Cogan, who will often have citations to dispositive authority at his side. This results in substantially narrowed motions that focus on core issues. Similarly, an order that can be drafted in a few hours does not take more than a few hours to issue, to the surprise of lawyers receiving electronic case filing (ECF) notifications at midnight.

This hands-on approach would not be possible without the judge's fluency in technology. It allows him to read each complaint and submission the moment it is filed, weed out deficiencies (often jurisdictional), and give litigants a chance to cure them, if they can. (His electronic signature says that his e-mail was "sent from one of my three iPads," and his 20-something-year-old law clerks are astonished to get computer advice on their first day from their middle-aged boss.)

The cumulative result of these and other procedures is that the judge has more time to contemplate the most complicated motions and issues, and the only time he spends on the dreaded "six-month list" is the brief conversation he has with his confused law clerks about the concept.⁵ Litigants benefit too: He tries to "move cases as quickly as possible," says Judge Korman, "[as] a way to save on the costs of litigation."

Young lawyers quickly learned that they should never ask the partner what to do when faced with a complicated legal issue. [Judge Cogan] was not interested in telling them what they should be doing. He wanted them to come up with their own course of action and then pitch and defend their decisions to him.

While this ruthless efficiency is important to the court and to the parties, Judge Cogan's most valuable contributions to the bench are his temperament and compassion. His assistant, Peggy Weisberg, who has worked with the judge since he was a second-year associate at Stroock, agrees: "I would not have been with him for 35 years if he was not a kind person." Indeed, the judge's law clerks are often greeted by lawyers on the losing side of contentious trials, approaching them and remarking off the record how even-tempered and fair the judge had been to them.

To the lawyers' delight, the judge is also not shy about sharing his quick wit and sophistication from the bench. He may be relying on his knowledge of Mandarin in one case; suggesting a path out of a complicated procedural web in the next; and, later in the day, facetiously telling lawyers that their action will have to go to trial because his law clerks need more courtroom experience. Clerks enjoy this humor in chambers, too, making the long days—"if you wanted to sleep, you should have chosen a different profession"—seem very long, but enjoyable nonetheless.

It is no surprise that annual law clerk reunions tend to be raucous affairs—as much as parties populated by overworked and guarded lawyers can be described as raucous. Former clerks share in their affection for the judge and in the pride they feel from surviving their year relatively unscathed, at least physically. Some stay at the event long after the judge leaves (yes, we can confirm that he does sleep, or at least uses "sleep" as an excuse to go home and review ECF notifications), reliving

their year in chambers—without exception, the best and most rewarding year of their professional lives. ☺

Endnotes

¹Following a 19th century jurist, John Bannister Gibson, we have taken liberty with Henry Wadsworth Longfellow's original quote: "Though the mills of God grind slowly, yet they grind exceeding small; Though with patience He stands waiting, with exactness grinds He all."

²See U.S. District Courts—2013 National Judicial Caseload Profile, *available at*, www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-september-2013.pdf&page=10.

³Lt. Col. Cogan is a former commander of the 7th Civil Affairs Regiment, 88th Brigade, which comprises lawyers, judges, engineers, doctors, and other professionals who assist members of the New York National Guard and U.S. Military Reserve Units by, among other things, drafting wills, powers of attorney, and other legal documents.

⁴Premotion conferences are common in the district courts of the Second Circuit. Many judges require them before a formal motion can be filed to discuss the substance and merits of the arguments. Judge Cogan's premotion conferences are unique for the detail in which he engages the lawyers about their proposed motions.

⁵The "six-month list" is required by the Civil Justice Reform Act of 1990, is prepared by "[t]he Director of the Administrative Office of the U.S. Courts," and "discloses . . . the number of motions that have been pending for more than six months[.]" 28 U.S.C. §476(a)(1).