

Judicial Profile

RICHARD ELLISON

Hon. Lee H. Rosenthal U.S. District Judge, Southern District of Texas

JUDGE LEE H. ROSENTHAL is one of those rare people who combine the ability to think in broad philosophical and historical terms with the ability to understand the details of the law thoroughly. She has a deep love and respect for the law and is passionately committed to preserving the integrity of the legal system. Her interest in a career in the law was sparked when she studied philosophy of law as an undergraduate. She understands that one of the things that makes the United States unique in the history of the world is its foundation on the rule of law, based on the Constitution and on the assurance that laws are fair and are applied equally to all members of society.

Judge Rosenthal recently talked about her background and her current work in her chambers in the U.S. courthouse in downtown Houston. She is one of 11 district judges in the Houston Division. Pictures of her family are proudly displayed in her chambers and include a photograph of her daughter in her dress uniform of the U.S. Military Academy, where she is in her second year. The judge and her husband have four daughters.

Judge Rosenthal graduated from a Houston-area high school and entered college when she was only 16. After a year at a smaller college, she transferred to the University of Chicago, where she majored in philosophy. She then enrolled at the University of Chicago Law School, where she was the Topics and Comments editor for the *Law Review*. After graduation, she returned to Houston, where she clerked for Hon. John R. Brown, chief judge of the Fifth Circuit Court of Appeals. Judge Rosenthal recalls that experience fondly and considers herself fortunate to have had the opportunity to work with him. Many readers will remember Judge Brown's opinions for their incisiveness, sound reasoning, and wit. She shares his deep respect for the institutions of the rule of law and an independent judiciary.

After her clerkship, she was a trial lawyer for about



12 years with Baker Botts LLP, in Houston. Judge Rosenthal recalls that it was easier for young lawyers to get trial experience then, and she tried cases in Houston as well as in smaller towns in Texas. She tried a variety of cases involving commercial disputes, deceptive trade practices, securities fraud, products liability, and personal injury. She became a partner in 1986 and remained at the firm until her appointment to the federal bench by President George H.W. Bush in 1992.

Judge Rosenthal says that Houston is a wonderful place to practice law and to sit as a judge. The federal trial court docket in Houston reflects the depth and variety that come from being the fourth largest city in the country, with a major international port, an internationally renowned medical center, the center of the energy industry, a major banking center, a major technology center—all located in a district that borders Mexico. Judges in Houston have a wonderful variety of civil cases, including major commercial disputes, patent and trademark cases, and maritime and admiralty cases. When asked whether she prefers handling civil or criminal cases, she answers that she enjoys them all, and her concern is that she “gets it right,” no matter

what the nature of the case might be. She adds that the Houston area has a sophisticated bar that has a tradition of great trial lawyers.

In addition to handling a full docket as a district judge, Judge Rosenthal has been active on several important judicial committees. In 1996, Chief Justice William Rehnquist appointed her to serve on the Advisory Committee on the Federal Rules of Civil Procedure and, in 2003, to serve as its chair. In 2007, Chief Justice John Roberts appointed her to chair the Standing Committee on Rules of Practice and Procedure, which supervises the rulemaking process for the Judicial Conference, coordinating and approving the work of the Advisory Committees on the Civil, Criminal, Bankruptcy, Appellate, and Evidence Rules, and recommends rule changes to the Judicial Conference. The judge says that she loves the work, including delving into the intricacies of the rules; the process of striving to improve them; and the interaction with the judges, lawyers, and academics on the committees, whom she describes as among the best legal minds in the country.

During her tenure on both committees, the judge has been instrumental in changing rules on class actions and electronic discovery as well as editing the entire body of civil rules to make them simpler and clearer, without changing their substantive meaning. Of her work with the committees, she says that “the ongoing challenge is how to adapt the different sets of rules to changes in practice, changes in technology, post 9/11 issues, all while preserving the integrity of the system and keeping it fair, efficient, and effective to meet the needs of those it serves.” Judge Rosenthal explains that it takes at least three years to change a rule and requires an extensive process of review at different levels. One particular area of concern that cuts across many different rules is responding to new developments in technology. For example, are discovery and evidence rules keeping up with developments in information technology? Are the rules providing judges, lawyers, and litigants with proper guidance on issues ranging from preservation to figuring out what information has to be searched for and produced? Are privacy interests adequately protected? Another project under way is simplifying all the methods used for time calculation as well as deadlines in all the rules by making them more uniform and easier to determine. Clearly, Judge Rosenthal, having been a trial lawyer while raising four daughters, has practical insight into the challenges lawyers face.

Judge Rosenthal is concerned about the downtrend in jury trials and the difficulty that lawyers have in getting real courtroom experience. Different factors—including the growth in arbitration and other forms of alternative dispute resolution—have contributed to the problem on the civil side. Judge Rosenthal believes that the burden and expense of protracted discovery also contribute to the decline in jury trials. What should be a preparatory stage to going to trial too often becomes the main event, in part because the costs of delay and

extensive discovery can often exceed the amount that is reasonable for a case or simply be beyond what the parties can afford. Judge Rosenthal is firmly committed to the idea that a strong, vibrant judicial system is necessary to maintain the people’s trust and confidence in their government. She firmly believes that it is important to have forums that resolve issues in a fair and public manner by impartial, highly competent judges and independent juries, allowing the law to continue to be tested and to develop.

When asked how lawyers might alleviate some of the problems and costs associated with pre-trial discovery and what she expects from lawyers with cases in her court, Judge Rosenthal answers that they should evaluate their cases early, identify the real issues, and tailor their discovery plan with the end goal in mind. Before submitting a proposed pre-trial plan to the court, attorneys should identify what they really need in discovery, what they and their clients are willing to produce, and what the disputed areas are, so that the court can resolve the problems early and keep the case on track. Lawyers should not ask for “any and all” discovery and should not object on a blanket basis. They should be detailed, pragmatic, and realistic.

Lawyers and parties know that when they are before Judge Rosenthal, they have an impartial, dedicated, and thoughtful jurist. She maintains discipline but also allows lawyers to “try their cases.” Stanley Schneider, the incoming president-elect of the Texas Criminal Defense Lawyers Association, says that Judge Rosenthal “is all that a judge should be. She truly cares about the law and justice.”

Judge Rosenthal has a demanding schedule, maintaining a full docket of cases in her court as well as serving as chair of the Standing Committee on Rules of Practice and Procedure. She is assisted by two law clerks and has another clerk for her work on the committee. When interviewing candidates for clerkships, she looks for disciplined thinkers and clear writers, who have good judgment and good common sense and share her commitment to work hard to “get it right.” She spends a lot of time with her clerks, and they learn from her and are fond of her. Her office is decorated with memorabilia from former clerks.

In her “spare” time, Judge Rosenthal enjoys reading fiction as well as history and biographies and likes to cook. She is involved in her daughters’ school and sports as well as in numerous civic activities.

Judge Rosenthal is truly a dedicated public servant and citizen. The people are blessed to have a judge who has a historical and philosophical grounding in what makes our nation unique, and the ability to see how the rules and procedures can implement the broader principles and goals. **TFL**

Richard Ellison is a federal practitioner in Texas. He is certified in civil trial law and personal injury trial law by the Texas Board of Legal Specialization and lives near San Antonio.