

Judicial Profile

MICHAEL NEWMAN

Hon. Jack Sherman Jr. U.S. Magistrate Judge for the Southern District of Ohio

MAGISTRATE JUDGE SHERMAN, a native Cincinnati, is known not only as a judge, but as a mentor, community volunteer, and champion of the idea that lawyers are agents of positive societal change.

An active member in the Federal Bar Association, among other bar organizations, he now serves as president-elect of the FBA's John W. Peck Cincinnati-Northern Kentucky chapter.

Judge Sherman did not enter law school thinking he would be a judge. Nor did he dream, as a child, that he would someday be a lawyer. He knew he wanted to help people in some way, and thought he had found that calling by working as a teacher, and teaching biology and general science to seventh, eighth, and ninth graders. After having taught for several years, however, he was drawn to law and politics. He entered law school thinking that he might someday hold political office.

Because he was married and had two young children to support, he continued to work as a teacher during the day and went to law school at night — at the Salmon P. Chase College of Law, then located in the Elm Street YMCA in downtown Cincinnati. (The school, now associated with Northern Kentucky University, served as the training ground for a number of Cincinnati judges and law firm partners who decided to attend law school at night. “Chase,” as the law school is now known, also has a day program.) During his second year of law school, he left teaching and took a position as a constable (*i.e.*, a courtroom deputy) to an Ohio common pleas judge, Hon. John W. Keefe, a well-known state court jurist.

Judge Sherman enjoyed serving as a constable, because it exposed him, on a daily basis, to the litigation process and the local bar. As the judge fondly recalls, he was also very lucky in being paired with Judge Keefe, who became his mentor and friend. Judge Keefe strove for fairness in all he did, and he impressed upon Judge Sherman the qualities needed to be a good judge. Judge Keefe was also a good politician — in the best sense of the word — and he knew, for example, the name of every lawyer who appeared before him. He was also a good mentor,

and invited the judge to work closely with him in the performance of his court duties.

Following his graduation from Chase in 1969, the judge was hired as an assistant prosecutor for the city of Cincinnati. In addition to prosecuting misdemeanors, he represented the city in civil proceedings where less than \$10,000 was sought in damages — *e.g.*, negligence cases and eviction matters. For two years thereafter, he worked as an assistant attorney general for the state of Ohio. In 1972, he was hired to open a “Model Cities” law office, which he ran until 1974. Pursuant to the Supreme Court's *Argesinger* decision, *see Argesinger v. Hamlin*, 407 U.S. 25 (1972), the Model Cities lawyers — supervised by the judge — represented the inner-city, indigent poor in misdemeanor cases where such defendants faced jail time. ¹

The first Model Cities lawyer hired by the judge, Bea Larsen, was a classmate and good friend from Chase. Even today, their careers remain intertwined. In 1986, Bea was elected president of the Cincinnati Bar Association, a position to which Judge Sherman was likewise elected in 1994.² While CBA president, Bea started the Roundtable, a collaboration between the CBA and the Black Lawyers Association of Cincinnati, to foster the hiring and retention of minority lawyers in Cincinnati. Judge Sherman has been quite active in the Roundtable, and has worked diligently to ensure that minority students are given opportunities for summer internships and permanent employment. As CBA president, Judge Sherman sponsored the creation of the CBA's Diversity Committee. Working under the auspices of the committee, the judge and Bea created “Food for Thought,” a periodic potluck dinner gathering for lawyers of different racial, ethnic, religious, and cultural backgrounds, along with their families and friends. The dinners — promoted as an opportunity “to come together in a comfortable, non-intimidating environment to share viewpoints, engage in a free exchange of ideas, overcome stereotypes, and spend time together in the spirit of fun, laughter and friendship” — have been quite successful, and have brought together many individuals of diverse backgrounds who otherwise might never have met.

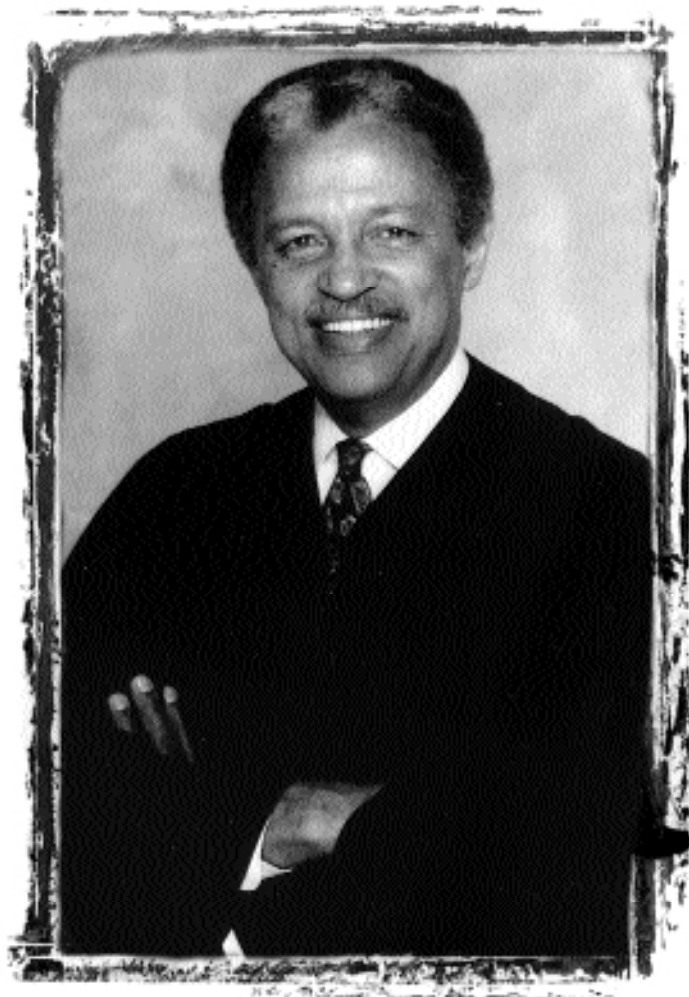
In the past few years, the judge has also participated in two other CBA-sponsored activities designed to foster diversity among Cincinnati lawyers:

“Lawyer to Lawyer” and “Side by Side.” “Lawyer to Lawyer” teams a white lawyer and a minority lawyer together for a year, a period during which the two lawyers and their families socialize together. Judge Sherman’s pairing with Michael Hawkins — a partner at the Cincinnati firm of Dinsmore & Shohl — drew national attention when the “Lawyer to Lawyer” program was profiled on NBC’s “Today” show. The two have since remained fast friends. The “Side by Side” luncheons also team a white and minority lawyer together, but for a different purpose: to provide the lawyers with a friendly forum in which to share with each other and the audience their life stories; explain how they became lawyers; and convey the lessons they learned from their formative years, and from the law. Judge Sherman has served as both a “Side by Side” moderator and participant.

The judge’s calling as a teacher was to repeat itself. While still acting as Model Cities director, he was asked by the Chase dean to become an assistant professor of law. In 1974, he returned to the law school from which he had graduated only five years before to teach constitutional law. He later taught criminal law, civil rights/civil liberties, and administrative law as well. In 1977, he was awarded tenure. In 1981, he left law school teaching for a seat on the Municipal Court bench for Hamilton County, Ohio (the county that encompasses Cincinnati). He served on Municipal Court for six years. Prior to his appointment, no African American judge was serving on any court in Hamilton County.

As the judge freely admits, working as a Municipal Court judge was one of his most rewarding and enjoyable experiences. Most of the cases he heard turned on witness credibility, and required him to decide whom to believe, and whom not to believe. During this process, the judge considered it very important to treat parties with the utmost respect; to give them their opportunities to be heard; and to make sure that all sides, both winners and losers, left the courthouse feeling they had their fair day in court.

To do well in such a job, you’ve got to understand people and be able to solve problems. Long before the television show made the phrase popular, the judge referred to Municipal Court as the “People’s Court” because more members of the public come into contact with Municipal Court than with any other court in the judicial system. It’s a high volume court, and there’s a great flow of humanity (and human problems) that come before the bench. The difficult question often is: As a judge, do you simply resolve the question presented in a particular case? Or do you try, when appropriate, to redirect a person’s life in a more positive direction? The judge took the latter approach and is glad that he did. More than 15 years later, he still runs into people on



the street who come up to thank him for giving them a second chance or offering them a ray of hope that their life might someday be different. The judge remembers a DUI case, for example, where — in addition to sentencing the defendant to jail — he conditioned probation on the defendant’s successful participation in an Alcoholics Anonymous program. In this particular case, the AA meetings proved successful. When the defendant later had a party to celebrate five years of sobriety and a clean driving record, he invited the judge, who came to cheer on his success.

The judge took away from his Municipal Court experience two lessons he remembers to this day. He learned first that, in criminal cases, if a judge has an opportunity to affect a defendant’s life before he or she gets into “big trouble,” the judge should avail him or herself of the opportunity, and act. In his Municipal Court criminal cases, the judge was always sensitive to the fact that, if a remedy was successful, a defendant might never have contact with



Judge Sherman with his daughter Evita, his granddaughter Kristin, and Hershey, the family dog.

the criminal justice system again. If such contact could be avoided, the benefit to society would be great indeed. So, when crafting a sentence, the judge learned to consider carefully both penal and rehabilitative concerns. Second, he learned that, in cases of all types, a judge should never pressure himself or herself into making a hasty decision — a decision the judge might live to regret. If necessary, the judge should take a recess, and then render a decision. If a recess doesn't provide sufficient time, the judge should take the matter under submission and render a decision at a later time. Judges should never allow themselves to be pressured into making decisions "on the spot" because it seems expedient or because there is a schedule that calls out for adherence. When those concerns are weighed against the need to make a correct, fair, and thoughtful decision, the decision should win every time.

Based on his reputation for fairness, the judge was elevated to the Hamilton County Common Pleas Court in 1987. In 1989, he was invited by the federal district judges in Cincinnati to become a U.S. magistrate judge. He was sworn in on April 1, 1989, and, in so doing, became the first African American to sit on the district court bench in Cincinnati. As the judge likes to tell the story, he left the Common Pleas Court on a Friday; assumed his magistrate judge role the following Monday; and presided over a trial that very day.

Many of the practitioners who now appear before Judge Sherman fondly remember him from his days in state court. Likely for that reason, the parties to civil cases before him frequently consent to magistrate judge jurisdiction,

and thus he presides at their trials.⁴ Unlike state court, however, where the judge was in trial most every day, his time is now often spent reviewing motion papers and preparing for hearings. Frequently, these hearings concern discovery matters. After 10 years as a magistrate judge, Judge Sherman is still surprised at the frequency with which litigants are unable to resolve their discovery disputes extrajudicially, *i.e.*, without his assistance. To foster such efforts, the judge makes himself available to parties, by telephone, in the hope that the quick and informal resolution of a discovery dispute may "hold off at the pass" the subsequent filing of a lengthy motion to compel, for which he will have to hold an extensive hearing. In the discovery arena, the judge is concerned not only with resolving the merits of disputes, but also with resolving those disputes in such a manner that the litigation stays on schedule; litigiousness does not overwhelm the underlying merits of the case; and the parties and their counsel remain civil to one another. Often, this is a harder task than it might at first appear, given that in complex litigation — *e.g.*, class actions or *qui tam* government fraud cases — the discovery can proceed for more than a year, with the parties approaching the court for guidance on a weekly (and sometimes daily) basis.

In an attempt to assist the parties in resolving their disputes quickly and inexpensively, the judge strongly advocates mediation whenever appropriate. In state court, the judge frequently held his own settlement conferences, a role he continued when he became a magistrate judge.⁵ He was quite successful at settling cases, and his quiet, gentle style proved successful in many a dispute that was previously thought "unsettleable." In recent years, however, he has limited the number of settlement conferences he holds in order to devote more time to his motions



Judge Sherman at the Annapolis Boat Show in the fall of 1998.

and trial docket. ⁶ The judge now oversees a large panel of local lawyer-mediators, who volunteer their services to the district court. The judge is grateful for their efforts and is in favor of supplementing those efforts via the hiring of a full-time mediator in the Southern District, much like the mediators who are employed by the various circuit courts of appeals.⁷

Since becoming a magistrate judge, Judge Sherman has returned to teaching — a full circle of sorts. For an academic year, he mentored law students enrolled in a district court internship program, and taught them on a weekly basis. He continues to mentor a student from an inner city background who is now in college — a mentorship begun when the student was in the seventh grade. Although it is difficult to find the time to teach and to mentor, the judge believes it is important to make the time for such efforts.

The judge is now in his second eight-year term as a magistrate judge, and still has six years until his next reappointment. In the meantime, he plans to keep busy — not only with his work as a judge, and with his upcoming FBA chapter presidency, but also with his local volunteer work on the Board of Trustees of the Cincinnati Symphony Orchestra, among other organizations. ⁸ In his spare time — what little of it there is — the judge sails his 38-foot Catalina sailboat on Lake Michigan, and visits with his twin daughters and two grandchildren in Maryland and Arizona.

In an era of increasing lawyer dissatisfaction, Judge Sherman stands out a shining example of an individual who is grateful that he went to law school ... someone who sought to make the world a better place, and did so ... who wanted to make a positive difference in the lives of others, and has. TFL

Michael Newman is a member of The Federal Lawyer editorial board, and the career law clerk to Judge Sherman.

Endnotes

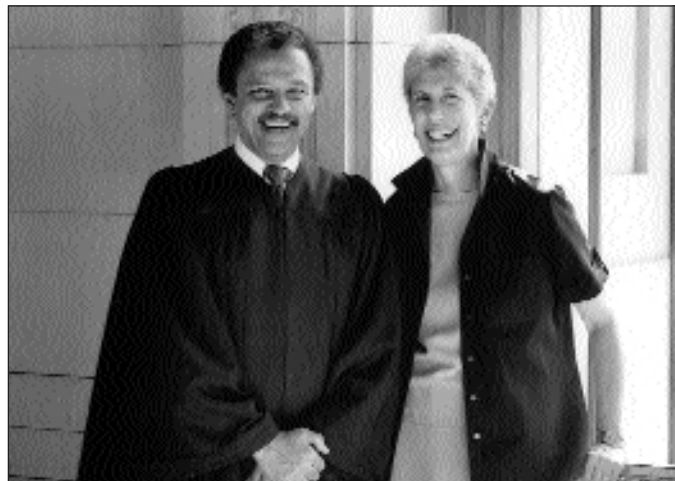
¹ The Model Cities law office was eventually incorporated into the Hamilton County, Ohio Public Defenders Office.

² Judge Sherman was the first federal judge to be so named.

³ Judge Sherman, a Democrat, was simultaneously appointed to Municipal Court along with Hon. Barry Issacs, a Republican. The two served together for several years as the only African American judicial officers in Hamilton County.

⁴ In civil cases, magistrate judges are prohibited from presiding at trial, or ruling on dispositive motions, unless the parties first jointly consent to the magistrate judge's jurisdiction. *See* 28 U.S.C. § 636(c) (1).

⁵ Judge Sherman refrains from acting as a mediator, of course, in those cases in which he will be asked to make a ruling on the merits, *e.g.*, in nonjury



Judge Sherman with former classmate and close friend Bea Larsen.

bench trials. If the parties to such a case seek mediation, the case is referred to Magistrate Judge Hogan, the other magistrate judge in Cincinnati, or to a panel of volunteer lawyer-mediators.

⁶ Judge Sherman, like other magistrate judges around the country, is required to rule on large numbers of motions within the six-month motions cycle established by the Civil Justice Reform Act of 1990. *See* 28 U.S.C. § 476(a) (establishing the semi-annual reporting requirement).

⁷ In the Cincinnati-based Sixth Circuit Court of Appeals, the mediation office is headed by Bob Rack, a good friend of both the judge and Bea Larsen. Rack and Larsen now jointly preside, on a volunteer basis, over the nonprofit Collaborative Law Center Inc., an attorney group formed to advocate “collaborative law” — a type of ADR where opposing counsel, while still serving as advocates, agree to collaborate together, with their clients, toward a resolution of their dispute. The Southern District of Ohio now has a General Order that provides for the staying of a case while the parties attempt settlement via collaborative law.

⁸ The judge's volunteer activities are many and varied. In the past few years, he served as president of the Murray & Agnes Seasongood Good Government Foundation; and on the Boards of Trustees of, *inter alia*, the Cincinnati Legal Aid Society, Xavier University, and Cincinnati Jewish Hospital. He was named a Master of the Bench of the Potter Stewart Inns of Court, and selected to serve a two-year term on the American Bar Association's Standing Committee on Federal Judicial Improvements. He completed a term on the Board of Visitors of Chase Law School, and now sits on the Board of Visitors of the University of Cincinnati College of Law.