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## ATTORNEYS

A partner at Dinsmore & Shohl LLP, who also serves as a director at the Federal Bar Association, discusses the national task force he's leading for the FBA. The task force will study and promote oral advocacy opportunities for less experienced attorneys.

### INSIGHT: Federal Bar Association Looks to Promote More Courtroom Advocacy



BY GLEN MCMURRY

On Oct. 20, 1983, then Associate Justice William H. Rehnquist noted in a speech at the third Brainerd Currie Memorial Lecture, which was delivered at The Grand Opera House in Macon, Georgia, that over the history of the federal appellate courts, because judicial time has “steadily dwindled, the oral side of the appeal, and the art of oral advocacy, came to play a smaller and smaller part in the presentation of cases to appellate courts . . . .”

Justice Rehnquist warned, “If state appellate and trial judges react similarly to these federal judges, the future of oral argument is dim indeed.”

His grim prediction was prescient.

Without question, courtroom advocacy opportunities are exceedingly rare. In the 12-month period ending Sept. 30, 2016, the U.S. Courts reported that only 11,754 civil and criminal trials were conducted across all courts. In civil cases, the number of cases that made it to trial was only 1 percent.

Despite repeated warnings and calls for action, we (as a profession) have allowed generations of attorneys to begin viewing trial dates, oral arguments, and general courtroom advocacy opportunities only as a means

of motivating settlement and as dates on a calendar that are to be avoided at all costs.

### Consequences

One of the most concerning consequences of the exceedingly rarity of courtroom advocacy opportunities is the reality that the few opportunities that do exist are customarily reserved for the most senior and experienced in our profession, leaving our younger or inexperienced attorneys with little to no opportunity to advocate for their clients in any courtroom setting.

This current state of affairs threatens numerous aspects of our profession's long-term well-being, chief among which are the relationship between attorneys and the bench and the ability of attorneys to effectively advocate for their clients. While I have yet to uncover any empirical study to this effect, I suspect that the perception of our profession amongst the general public is greatly harmed by the above-noted trend.

Fundamentally, we are officers of the third-branch of our government. Yet, our constituents seldom hear us and rarely see our advocacy. We cannot continue to be the driving force behind certified mail to the exclusion

of allowing our clients to see and hear what we are doing on their behalf. We must do more than simply “push paper.”

The factors driving this trend are numerous and there will never be a single solution that will address them all. However, one tool being utilized by several of our federal judges is gaining traction—the adoption of standing orders/local rules that incentivize litigants to allow less experienced lawyers to participate in oral arguments.

For example, Judge William Aslup, of the Northern District of California ordered:

If a written request for oral argument is filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct the oral argument or at least the lion’s share, then the Court will hear oral argument, believing that young lawyers need more opportunities for appearances than they usually receive.

### **Goal of Task Force**

The Federal Bar Association is committed to exploring new and innovative ways to serve our courts and better the practice of law for attorneys and clients. Consistent with that commitment, the Federal Bar Association established a task force designed to study methods to promote oral advocacy opportunities for the less experienced of our profession. I am honored to serve as the chair of this task force.

The task force will run for three years and will include attorneys and judges from across the country. Initially, the FBA’s national task force will study the efficacy of standing judicial orders similar to that of Judge William Haskell Alsop and gauge the impact they have on oral advocacy opportunities. We will measure the success of such standing orders by evaluating their utilization by parties and judges, the types of case in which such orders are utilized, and the overall increase in oral arguments as a direct result of these orders.

Our goal is to enrich the practice experience of our lesser experienced attorneys. We owe our younger and inexperienced members a duty to nurture their professional growth and provide them the experiential opportunities to make them successful.

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