

BACK STORY

DAN POLSENBERG: THE ART OF THE APPELLATE LAWYER

BY MICHAEL SAUNDERS, ESQ.

Nevada Lawyer magazine recently interviewed Nevada appellate lawyer Dan Polsenberg about his path to becoming a lawyer and his thoughts on appellate practice. Polsenberg, a partner with Lewis and Roca's appellate practice group, has argued hundreds of cases in a wide variety of areas ranging from tort, tax, constitutional and commercial law.

Polsenberg was born in 1957, in Philadelphia, Pennsylvania. His grandmother started guiding him toward law school when he was only four years old. Her ultimate goal was for him to become a Philadelphia politician.

Polsenberg wasn't always dead-set on becoming a lawyer while growing up. In fact, there was a period during which he had aspirations of becoming an oil painter. But, upon entering his teen years, those aspirations were replaced with a renewed interest in becoming a politician, consistent with his grandmother's vision.

With the goal of becoming a politician, he worked for the Senate in Pennsylvania in 1978, as a legislative assistant. Of his experience working in the Pennsylvania Senate, Polsenberg said, "It was all very interesting, but then when I went to law school that completely changed my perspective." He added, "When I started studying law and seeing what it was, instead of just enacting it, I realized what a beautiful thing the law was and how it can accomplish so much good and without the petty bickering of politics. And, so, I decided after that that I really wanted to be a lawyer."

After graduating in 1982 with his law degree from Boston College, Polsenberg worked for two noted Nevada lawyers: Neil Galatz and Rex Jemison. Of Galatz, Polsenberg said, "He had the fastest, smartest mind I have ever seen." He said, "I started doing appeals for [Galatz] and I loved it." After working for Galatz, Polsenberg went to work for Jemison, whom he called the "the greatest Nevada appellate lawyer in history."

When asked for his advice regarding preparation for an oral argument, Polsenberg said that he spends a lot of time trying to figure out what questions the judges will



ask. The questions, he said, are the most important part of an oral argument. "When the judge asks you a question, you have the attention of at least one decision-maker," he explained. "So, it's important to address whatever that judge's concern is, and that is just easier to do if you can anticipate the concerns. You have to be prepared," he continued. "You have to understand your case, and, you have to understand the consequences of your argument."

Polsenberg also has some advice regarding appellate brief writing. "Being an appellate lawyer is the hard job of sitting down," he said. "You have to sit and read

the cases. You have to sit and write out your arguments and, sometimes you just have to sit and think. I suppose the best advice I would give appellate lawyers is to take the time to think about all the implications of an argument, because that's what judges have to do when they decide the case."

Polsenberg would encourage those wanting to do appeals to find a way to do them, whether it be pro bono, arguing motions for summary judgment or some other form. "When you get the opportunity to do it, you have to make the most of each opportunity," he explained. "You have to really devote yourself to developing the arguments, understanding what your position is, understanding what your opponent is after and what the judges are looking for."

When he is not practicing the art of an appellate lawyer, Polsenberg enjoys volunteering at church and teaching Sunday school. And, although he loves being an appellate lawyer, he does look forward to finding some spare time in which to resume his oil painting. ■



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