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## The No-Nonsense New Yorker: Justice Jeffrey K. Oing

By **Gavin Broady**

Law360, New York (May 20, 2014, 6:00 PM ET) -- Despite having spent most of his professional life in the orbit of the New York Supreme Court — as a clerk, a staff attorney and now an up-and-coming young justice — Jeffrey K. Oing says the core of his pragmatic sense of justice was forged not in the granite walls of the courthouse but out on the streets among his fellow New Yorkers.

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CHAMBERS

By 2002, Oing had clocked nearly a decade of service with the Supreme Court in various capacities when he was offered “the opportunity of a lifetime” working as deputy general counsel for newly minted City Council Speaker Gifford Miller.

“It was two years of total exposure to all the constituencies that are out there, coming down from the ivory tower and seeing the bread-and-butter issues people face every day,” Oing says. “I would say something at a meeting, and people would ask: Who’s it going to affect? Is it going to hurt anybody? What’s the collateral damage?”

Oing says fielding those questions trained him to think outside the box and take greater account of the real-world ramifications of even seemingly rote legal issues. Two years later, when he took his first job on the bench as a New York County Civil Court judge, the tables had turned and he was the one demanding practical answers.



Justice Jeffrey K. Oing

“Now I ask those questions when I have oral arguments, and lawyers say, ‘That’s a good question, I don’t have an answer to that,’” Oing says. “And I tell them, ‘Well, you should!’”

### Coming Full Circle

Should Justice Oing ever need a reminder of how far he’s come, he need only step outside his vermilion-walled chambers office to visit the very desk where he worked as a law clerk for Justice Marilyn G. Diamond nearly two decades ago.

“It’s interesting how things go full circle sometimes,” Oing says. “When I was here in 1995, Justice Diamond had this room painted red. And when I arrived [as a judge] in January 2011 it was right around Chinese New Year, so I thought that was a good sign and decided to keep it.”

“The best thing about being a judge is

A lifetime New Yorker, Oing studied English literature at Columbia College and attended New York University School of Law. He followed up a clerkship in the New Jersey Supreme Court with a brief gig in private practice, but after deciding the experience "didn't click," he found his way back to public service.

After brief stints as counsel to former New Jersey Gov. Jim Florio and with the New York City Council, Oing became a standout on the County Civil Court, rising to the top position as supervising judge before returning to his old stomping grounds as a Supreme Court justice in 2011.

Despite its name, the Supreme Court is actually a trial-level, general jurisdiction body, and Justice Oing has seen his fair share of the "anything goes" array of cases that can show up on its docket, from shareholder suits over the \$6 billion JPMorgan Chase & Co. "**London Whale**" trading loss to a breach of contract suit alleging rapper Lil' Wayne canceled a show **because he was drunk and didn't want to perform on his birthday**.

Oing says easily the biggest suit he's fielded in his time on the bench was the bitter two-part litigation between Macy's Inc. and rival J.C. Penney Co. **over the right to sell Martha Stewart-branded home products**.

The case, which settled earlier this year, drew a tremendous amount of media attention, with both companies' CEOs and Stewart herself taking turns on the witness stand.

Oing says he wasn't bothered by the scrutiny, in part because Stewart was far more low-key and humble than the domestic diva image some associate her with, and in part because his years in the court system have conditioned him to treat everyone who appears on the stand as "just another witness trying to get through the day."

"The best thing about being a judge is that you don't know what's going to walk through that front door," Oing reflects. "One moment you're reading through papers, and the next you're dealing with the financial crisis, or a crane collapse, or a challenge to the city's stop-and-frisk policy."

Whenever the pressures of the job get to be too much, Oing says he can always retreat to the red-walled sanctuary of his chambers and take a few moments to check in on the tank full of bustling fish in the corner — he refers to them as his "mascots" — in order to find center.

The row of family photographs beside his desk also provide a deeper source of strength for the justice. Those photos include his wife Mary, his two school-aged children, and the son he lost in a traffic accident mere months after he first became a judge on the Civil Court.

"It was really traumatic for our family and our friends, because we all got together for the big celebration and then had to get together again a few months later for the funeral," Oing recalls. "But he's still with us. He's shaped who I am. You have to live for the moment. You can't put off anything."

### **Redrawing the Map**

Among the various formative experiences Justice Oing had during his tenure with the City Council, few were as impactful as his involvement in the redistricting process, which required him to ensure that newly adjusted district boundaries complied with the Voting Rights Act and to communicate with members of the community who had a vested interest in the shape of those districts.

"What I learned from the redistricting process was that people are very possessive of their

lines," Oing says with a laugh. "You move a line on one block to the next block, and people go bananas."

"The arguments in those cases are important because I want to hear both sides, and to keep the practicalities in mind. On the one hand, everyone has a legal footing, and on the other hand every decision has consequences. You can't decide a case in a vacuum."

While he initially insisted to frustrated constituents that such minutely adjusted borders would have no practical impact in terms of money or services, eventually he came to understand that the process was as much about personal relationships as it was about financial realities.

"Practically speaking, they may have one city council member that they're close to who really connects with them," he says. "By moving that one line, they lose that sort of familial connection or nexus they've built over 10 years, and now you've got a new guy you've got to work with and establish a relationship."

Oing says he tries to bring that pragmatic and personal approach to every case on his docket, whether he's refereeing **an insurance coverage fight** over the National Football League concussion lawsuits or sorting out the aftermath of **the Sony PlayStation data breach**. But he finds it most helpful in those difficult cases where clear human stakes and black-letter law collide.

"Some of my most challenging cases are where an employer is trying to preclude a former employee from working for allegedly violating a restrictive covenant," he says. "I look at these covenants very carefully because I'm aware my decision may be putting someone out of work, someone who may have kids and a family."

The justice says he also tries to apply this wide-angle perspective when forced to make a tough call on a defaulted loan that could mean the end of a struggling business.

He recounts one story of a tropical resort that defaulted on its loan and faced being dismantled in a fire sale at the hands of its lender, despite the fact that an imminent sale plan would yield twice as much money as the lender was owed. Though the lender was within its rights to demand the handover of the property, Oing allowed the resort a two-week grace period in which to complete the sale.

"They closed the deal in a week and a half," Oing recalls. "The lender wasn't happy about it, but at the end of the day they got back what they wanted. I just turned up the heat."

"The arguments in those cases are important because I want to hear both sides, and to keep the practicalities in mind," he adds. "On the one hand, everyone has a legal footing, and on the other hand every decision has consequences. You can't decide a case in a vacuum. You really have to look at the consequences."

### **In Search of Solutions**

Justice Oing's no-nonsense approach has won him more than a few fans among the bar, according to Morrison Cohen LLP partner and litigation department co-chair Danielle Lesser, who has appeared before Oing so many times he once joked he would arrange to get her a desk in the courthouse.

"I can't say every decision goes my way, but I respect them all," Lesser says. "He's a very respectful and affable guy, but at the same time, you can't fool him, and you can't push him around. He knows the law, he knows the facts, and he knows the record. He will not allow lawyers to get away with things."

Lesser also notes that while Oing has developed a reputation for reaching decisions based on deep study of the issues before him, he is also gifted at turning his cases around more quickly than the average judge.

With more than 350 cases on his active docket, Oing says he can't afford to linger over his cases any more than the litigants before him can afford to wait for a ruling.

"We run a tight ship; the minute cases come in, we're turning them around," Oing says. "That's important in the business and commercial sector, where they don't have time for you to sit around and ponder the decision you're writing."

While speed and efficiency are undeniably key to surviving as a judge in the New York Supreme Court, Justice Oing says the desire for a quick resolution never trumps the importance of making litigants feel they've been heard.

"Someone's always got to win, and someone's always got to lose, but at the end of the day, the people that didn't prevail think that at least they've gotten their point across ... it just wasn't accepted by me," Oing says. "Sometimes I go home and wonder if I did the right thing, but ultimately I can look myself in the mirror and say I called the balls and strikes, and it falls where it falls."

Given Justice Oing's emphasis on the pragmatic, it's no surprise that his No. 1 piece of advice to the attorneys out there who might appear before him is as straightforward as it gets: Come up with a solution to the problem your case presents.

"It never ceases to amaze me that I have these senior attorneys who come in and make their arguments, but they don't come up with a solution until I push them," he says. "You guys get paid the big money — you give me the options. If an attorney comes up with a solution to the problem, it tells me they've been thinking about their case and know it well."

*In Chambers is a regular feature presenting in-depth profiles of the nation's leading state, federal and appellate judges.*

--Editing by Kat Laskowski.

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