

## THE AMERICAN LAWYER

### For Judge Allyson Duncan, Leadership Is 'Ability to Bring People to the Table'

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#### What You Need to Know

- Retired federal appeals judge Allyson Duncan is receiving a Lifetime Achievement award from The American Lawyer.
- Racking up a number of firsts during her career, Duncan has had a long and varied career in the law.
- A recent role is one of the retired judges serving on the Article III Coalition, which advocates for judicial independence.

Judge Allyson Duncan, who served for 15 years on the U.S. Court of Appeals for the Fourth Circuit during a long and varied legal career, said her choice of a law career is in many ways a “function of genetic inheritance.”

She has fond memories of sitting in the moot court room in the North Carolina Central University School of Law, waiting for her mother, the law school’s librarian, to get off work, with the students becoming an “integral part” of her upbringing, Duncan wrote recently in an essay on her life in the law.

“In retrospect, it’s hard to overstate the formative significance of that experience in my life. I can remember, with a clarity that exceeds my recollection of last month, watching a play staged by the students involving a Black defendant falsely accused of a crime, and how I exulted when the student defendant was acquitted by the student lawyer,” Duncan wrote in the essay.

Because of that, Duncan wrote, she views the law as a calling for her as much as a career, and “there was never a Plan B.”

Duncan, an American Lawyer Lifetime Achievement honoree, is noteworthy for a number of “firsts”

throughout her education and career—first in her class at Hampton University, the first Black woman to serve as a justice on the North Carolina Court of Appeals, the first Black president of the North Carolina Bar Association and the first Black woman on the Fourth Circuit.

Betty Blackmon, a close family friend who watched Duncan grow up, said her friend is brilliant and clearly accomplished, but also a very caring person, especially to young people she’s worked with over the years.

“She’s been blessed with great parents, a great mind. She really loves people, and she is willing to share what she has with others,” said Blackmon, who met Duncan and her family at church in Durham, North Carolina, when Duncan was about 12 and she was in her early 20s.

After graduating from Duke Law School and working briefly in publishing, Duncan clerked for Judge Julia Cooper Mack at the District of Columbia Court of Appeals, and worked at the Equal Employment Opportunity Commission from 1978 to 1986 as an appellate attorney, legal counsel and executive assistant to the chairman. She left the EEOC to teach at the law school where she spent much of her childhood, but was then appointed in 1990 to a seat on the North Carolina Court of Appeals.

She lost her election bid, and returned to the law school, until the governor appointed her in 1991 to



**Judge Allyson Duncan, with JAMS**

Courtesy photo

serve on the North Carolina Utilities Commission, where she worked until 1998. “That was fun, because of the things I learned about two major industries—energy and communications,” she said.

While still at the commission, Duncan said she was approached by Kilpatrick Stockton, which wanted to create a practice area around regulated industries. It sounded interesting, Duncan said, and she joined the firm, eventually becoming a partner in the employment and regulatory groups.

Then, Duncan said, she got a call from the White House. President George W. Bush nominated her to serve on the Fourth Circuit. She was confirmed in 2003 and served until her retirement in 2019.

Duncan wrote the 2006 opinion in litigation filed by the estate of former Pittsburgh Steeler “Iron Mike” Webster against the National Football League Pension Board. Webster, a Hall of Fame center who played 245 games for the Steelers from 1974 to 1988, sustained multiple concussions while playing. The NFL pension board awarded him limited benefits, but denied him benefits provided to those whose disability began while still actively playing—a decision Duncan said ignored “unanimous medical evidence.”

The Fourth Circuit’s opinion that Duncan wrote upheld a lower court’s summary judgment reversing the NFL’s denial of total and retroactive benefits to Webster, and his estate was awarded full back benefits and attorney fees totaling about \$2 million.

“This is one of the cases I am proudest of, because of its long-term impact on the safety of professional sports and the creation of concussion protocols. Also, I had to battle the two male judges on the panel to reach the decision,” she wrote in an email about the case.

Later, she said, the case was the focus of a Public Broadcasting System documentary called “The Autopsy that Changed Football,” and Webster’s story was also told in the film “Concussion.”

In another significant case while on the Fourth Circuit, Duncan was on the panel that heard the appeal in *Snyder v. Phelps*, known as the Westboro Baptist Church case. The father of a member of the military sued Westboro Baptist Church after several members of the church protested at his son’s funeral, and a jury found in the plaintiff’s favor and awarded them \$5 million in damages. However, the defendants appealed on First Amendment grounds. The Fourth

Circuit panel, which included Duncan, overturned the lower court judgment in 2009 on First Amendment grounds. In 2011, the U.S. Supreme Court agreed by an 8-1 vote and affirmed the Fourth Circuit opinion.

Duncan said she enjoyed her time on the court, which primarily heard civil appeals when she was appointed, but shifted over time to a docket with many more criminal cases. She said she never got used to hearing appeals of death penalty cases.

“This is not what I wished to be doing, and so I left the bench and developed a very active arbitration practice,” said Duncan, who now works for JAMS. “I like being an arbitrator. It allows me to write opinions, which I do like ... and interact with interesting people.”

Erika Holland, case manager at JAMS in Washington, D.C., said Duncan approaches each matter with integrity, fairness, and intellectual rigor, is extremely precise and accurate, and is an excellent writer.

“Litigation often brings people’s lives to a standstill, and she has this ability to remove the emotion from the air and bring people to the table so they can work on their issues and problems,” Holland said.

Holland said Duncan “can be a quiet person, but I think that really speaks to her leadership at the end of the day.”

Recently, Duncan said, she joined the Article III Coalition (A3C), a group of about 50 retired judges “who are trying to stand up for judicial independence and the rule of law.” By joining the group, Duncan said she is advocating for fundamental constitutional principles and helping people understand the structure of government and the balance of power. Duncan is one of 31 retired judges in the A3C who signed an amicus curiae brief filed on Oct. 24 in litigation challenging President Donald Trump’s authority to impose tariffs under the 1977 International Economic Emergency Powers Act.

Paul Grimm, a professor at the Duke Law School and director of the Balch Judicial Institute, said he got to know Duncan when she was on the Fourth Circuit, and he was a U.S. District Judge for the District of Maryland from 1997 to 2022. But, he said he has come to know her better since he retired from the bench and Duncan served as an advisory member at the Balch Judicial Institute. They both also work with JAMS, and are members of the Article III Coalition.

“She packs more energy into one human being than you will find in most people,” Grimm said.