

ABTL Judicial Profile

Judge David S. Cunningham III

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Background

Judge David S. Cunningham III was born in Riverside, California and grew up in both St. Louis, Missouri and Los Angeles, California. Judge Cunningham attended Howard University in Washington, D.C. for one year before transferring to the University of Southern California (USC) in 1974. He graduated summa cum laude and Phi Beta Kappa from USC in 1977. Judge Cunningham attended New York University School of Law where he was awarded a Root-Tilden-Kern Public Service Scholarship and was a founding member of the school's Public Interest Law Foundation.

Judge Cunningham's decision to pursue a judicial career was influenced and affirmed by his interactions with three prominent judges: Justice Thurgood Marshall, Judge John Sirica, and Judge Terry Hatter, Jr. Judge Cunningham was fascinated by the tenacity, fairness, and openness of these judges as well as their willingness to give back to their communities as public servants. Consequently, Judge Cunningham found it imperative to develop his private practice experience, serve the local community, and strengthen his academic vigor in preparation for his judicial career. Judge Cunningham was first admitted to the New York State Bar and began his legal career in 1980 as an attorney in the Honors Program with the United States Department of Justice, Voting Rights Section of the Civil Rights Division. His work aided Congress in its decision to extend the Voting Rights Act another 25 years.

In 1983, Judge Cunningham was admitted to the California State Bar and served as a judicial clerk for Judge Terry J. Hatter, Jr. of the Central District of California. In 1984, Judge Cunningham joined Finley Kumble Heine Underberg Manley & Casey as an associate. From 1987 to 1991, while still practicing law, he taught financial institutions and trial advocacy courses at Loyola Law School and looks forward to teaching again, either at Loyola or USC. From 1989 to 1990, Judge Cunningham continued his civil litigation work at Donovan, Leisure, Newton & Irvine. In the late eighties and early nineties, he began cultivating his building redevelopment and eminent domain practice and was of counsel at Jackson & Lewis from the mid nineties until 2005. From 2005 to 2007, Judge Cunningham was a partner at Kelly Lytton & Vann. Judge Cunningham had his best firm experience from 2007 to 2009 as principal at Meyers Nave Riback Silver & Wilson, which he rates a "triple A" firm.

In 2001, Mayor James Hahn appointed Judge Cunningham to the Los Angeles Police Commission, where he was later elected Vice President and eventually President of the Commission. Judge Cunningham has served on numerous boards and committees including those of the Los Angeles Urban League, the Los Angeles Business Council, the Watts Health Foundation Community Trust, the Los Angeles Bar Association and the Midnight Mission.

Judicial Application and Training Process

Judge Cunningham explained that the requirements of a judicial appointee include: being a member of the State Bar of California for at least 10 years, submitting an application to the Governor's office, along with letters of support and references, review of the application by State Bar of California Commission on Judicial Nominees Evaluation, and finally, review and approval by the Governor who decides whether to grant the appointment.

Judge Cunningham submitted his application as a judicial appointee candidate in August 2007. Judge Cunningham believes his service as Police Commissioner and his involvement in formulating policies with the Sherriff's Department and the District Attorney's office weighed in his favor during the application review process. Judge Cunningham's interview with Judicial Appointments Secretary Sharon Majors-Lewis stood out among the several rounds of interviews he completed during the application process. Secretary Majors-Lewis asked Judge Cunningham how he would feel about deciding a death penalty case. Judge Cunningham candidly responded that it would be a difficult choice for him to make, not because he is opposed to the death penalty, but because he recognizes the gravity and complexity of the role judges play in exercising the tremendous power of the state. Judge Cunningham prevailed in the judicial selection process and was appointed to the Los Angeles Superior Court in January 2009 by Governor Arnold Schwarzenegger. He was sworn in on April 15, 2009.

Judge Cunningham attended New Judge Orientation in May 2009. During his initial orientation, Judge Cunningham joined several of his fellow new judges for a private meeting in the chambers of Chief Justice Ron George, the 27th Chief Justice of California. With great pride, Justice George explained his vision of making the California courts user-friendly for judges, lawyers and most importantly the litigants who seek justice in our courts. He warmly welcomed each of the new judges and displayed an inspiring joy for the judicial system that deeply influenced Judge Cunningham.

Transition from Attorney to Judge

Judge Cunningham describes the shift from being a zealous advocate for one's client to being an impartial actor as one of the most palpable differences he experienced in his transition from attorney to judge. As an attorney, Judge Cunningham appreciated when the judge presiding over his client's case demonstrated that she or he read the relevant documents and asked specific questions indicating what information the judge wanted to hear from the attorneys. Judge Cunningham has incorporated his experience as a lawyer into his judicial practices and reviews all the papers related to a case before the parties appear before him. He prepares bench memorandums that guide his questioning

of counsel, and he makes a concerted effort to create a good record, thereby facilitating a successful appeal if one is pursued.

Another change Judge Cunningham has experienced in his transition from attorney to judge is his interaction with “clientele.” As an attorney, Judge Cunningham was used to working with a sophisticated clientele. As a judge, he has broadened his interactions to include dialogue with the general public. Over fifty percent of the parties appearing in Judge Cunningham’s courtroom are *pro se*. Judge Cunningham believes the experience of presiding over *pro se* cases has made him a more patient and courteous listener.

Judge Cunningham strives to be the kind of judge that gives attorneys an opportunity to make their arguments while maintaining mutual respect for everyone in the courtroom. He wants attorneys and their clients to know that his responsibility is to administer justice as a government official. He recognizes that for many people this is the only chance to have the government directly involved in their lives, thus he aims to give everyone a fair opportunity to be heard while maintaining a reasonable degree of efficiency.

Department 76: Civil Harassment

Judge Cunningham presently presides over summary proceedings, including civil harassment, workplace harassment, and individual harassment matters. Judge Cunningham explained that new judges are typically assigned to either traffic or criminal court. Judge Cunningham’s background in law enforcement precluded both those options. He hears approximately fifteen to twenty calendar matters per day and an additional fifteen to twenty *ex parte* applications per day. Examples of some of the cases he has presided over include: civil harassment matters, protective orders, and anti-SLAPP motions.

Questions and Answers

Tentative Rulings

- Have you issued tentative rulings?

No.

Media Policy

- Do you have a media policy?

Judge Cunningham has presided over certain “celebrity cases” which attract the media’s attention, but has not yet allowed cameras inside the courtroom. Judge Cunningham would allow cameras into his courtroom if he felt there was a legitimate public interest at stake, however, he has found that the matters he has presided over to date are private disputes with no such public interest at stake and believes that celebrities also have the right to present their argument in court without the burden of photographers and camera crews interfering.

Brief Writing

- What general advice do you have for attorneys regarding brief writing?

Judge Cunningham recommends including a table of contents in *all* briefs, even if they are short briefs. He further suggests developing a summary of the case and argument which clearly states what you want, what supports your facts, and what the issues are. Judge Cunningham values accurate summaries of the evidence and deposition testimony, as well as accurate citations to page and line numbers.

Ex Parte/TRO Applications

- Do you require a reservation with the Court the day before an ex parte?

No.

- Do you hear ex parte applications every day of the week?

Yes. Judge Cunningham does not ordinarily have hearings on ex partes. He decides cases based on the memorandums and declarations.

- What general advice do you have for attorneys regarding TRO/ex parte applications?

Judge Cunningham suggests that attorneys clearly and succinctly develop their declarations and include as much evidence about (1) the harm, (2) why it is irreparable and (3) the likelihood of it occurring in the future.

Law and Motion

- Besides declarations, in cases you have presided over, do parties submit other evidence, such as recordings, and how do the Rules of Evidence come into play?

Since Judge Cunningham presides over summary proceedings, he has more freedom to consider hearsay than judges normally have. He can look at declarations and, if the other side does not object to the hearsay content, he can consider it as evidence. However, Judge Cunningham does not usually do this. If he believes certain evidence is hearsay, and there is no exception, he will not consider it.

Law and Motion Pet Peeves

- Do you have any law and motion pet peeves?

Not yet, however, Judge Cunningham finds grimacing by attorneys during oral argument to be distracting and unhelpful to their respective cases. When attorneys enter Judge Cunningham's courtroom, he reminds them to be mutually respectful to each other. He urges them not to engage in character assassination with opposing counsel. He will not tolerate disrespectful behavior in his courtroom.

Judge Cunningham dislikes when attorneys become argumentative with him after he has made a ruling against them. He would advise attorneys to take their issue up on appeal instead. Judge Cunningham advises lawyers who are overly aggressive or argumentative that judges and juries listen more closely to lawyers who treat the Court, the witnesses, and opposing counsel with respect.

Code of Civil Procedure 170.6 Motions

- What are your thoughts on the use of CCP 170.6 to disqualify a judge for prejudice?

Judge Cunningham believes there are legitimate reasons for a CCP 170.6 motion. To date, he has not been disqualified pursuant to CCP 170.6, but acknowledges that some people may perceive him as being “too strict” because of his law enforcement background or may consider him to be discourteous because he often had to interrupt speakers to leave time for public comment during Police Commission hearings.

Oral Argument

- Do you have any general advice for attorneys regarding oral argument?

Always begin by asking the judge if there is anything the Court would like to hear from counsel or have counsel respond to. This is a time-saving mechanism for counsel and for the judge. The judge will likely have questions he or she believes have not been clearly resolved and that he or she would like both sides to address.