

## **ABTL Judicial Profile**

### **Judge Diana M. Wheatley**

Profile Authors:

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and

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### **Background**

Judge Wheatley graduated from Stanford University in Palo Alto with a degree in history. She obtained her J.D. from Boalt Hall in 1974. After law school she joined the firm of Paul, Hastings, Janofsky & Walker. In 1979, in an effort to spend more time with her family, she took a staff attorney position with the Los Angeles Municipal Courts' planning and research unit. In 1984, Judge Wheatley took a position as a commissioner in the Los Angeles Municipal Court, where she worked for sixteen years until she was elevated to Superior Court by unification in 2000. In 2000, Governor Gray Davis appointed Judge Wheatley to the Los Angeles Superior Court, where she continues to serve. Judge Wheatley hears all of the limited jurisdiction cases in the Santa Monica courthouse.

Judge Wheatley is a member of the National Association of Women Judges, the California Judges Association, the Los Angeles County Bar Association, the Women Lawyers Association of Los Angeles, the Irish-American Bar Association, the California Women Lawyers, the California State Bar, the Santa Monica Bar, and the Black Women Lawyers.

She has authored the "Rent-A-Judge - Private Judging: What It Is and How It Works" (CEB, Civil Litigation Reporter, Vol IV, No. 4 June 1982). She has also served as a consultant for "California Landlord Tenant Practice," 2nd Edition (CEB 1997).

### **Questions and Answers**

#### **Ex Parte Applications**

- Does Judge Wheatley require a reservation with the Court the day before an *ex parte* application?

No. However, Judge Wheatley expects that the attorney give notice to opposing counsel, and she does not consider fax to be a method of giving adequate notice. Also, *ex parte* applications should be for emergencies that the applying attorney could not avoid. She keeps a plaque in her office that reads, "Lack of planning on your part does not constitute an emergency on mine."

Does Judge Wheatley hear ex parte applications every day of the week?

Yes.

What general advice does Judge Wheatley have for attorneys regarding ex parte applications? What problems does Judge Wheatley most often encounter with ex parte applications?

Judge Wheatley prefers lawyers to try and work out their disagreements before coming to court.

## **Pretrial**

- Does Judge Wheatley have any law and motion pet peeves?

No.

- What are Judge Wheatley's thoughts on the use of C.C.P. § 170.6 to disqualify a judge for prejudice?

C.C.P. § 170.6 peremptory challenges do not bother Judge Wheatley. Lawyers have the right to disqualify a judge this way. She does not take challenges personally.

- Does Judge Wheatley generally issue tentative rulings? (If not, are there situations in which Judge Wheatley does? What are those situations?)

Judge Wheatley does make tentative rulings. She usually only does law and motion one day a week, usually on Tuesdays. She does not post tentative rulings on the website. Lawyers can call on Friday after 3 p.m. to hear the tentative rulings.

- What is Judge Wheatley's willingness to engage in alternate procedures for motion practice?
  - For example, in complex cases, where the parties agreed, would Judge Wheatley be open to the following type of procedure: review the papers, enter a tentative ruling, have the parties meet and confer as to the scope of the tentative and then provide focused oral argument.

This usually does not come up in limited jurisdiction cases. However, Judge Wheatley is usually open to alternative procedures if they come up.

- In what situations is Judge Wheatley likely/unlikely to grant a trial continuance?

Judge Wheatley does not have a problem granting a trial continuance when both sides agree and there is a good reason for the continuance. Usually an additional continuance would only be granted if the original non-requesting party asked presented good cause for a further continuance.

- What are Judge Wheatley's views on the use of demurrers?

Judge Wheatley is fine with demurrers. She does not try to discourage them, but reiterates that they cannot go beyond the facts stated in the complaint.

- What are Judge Wheatley's thoughts on the use of written discovery and discovery disputes in general? How often does Judge Wheatley find herself awarding sanctions in connection with motions to compel? What advice would Judge Wheatley give to attorneys who are involved in discovery disputes or plan to make discovery related motions?

Discovery issues rarely come up in Judge Wheatley's court. However, she wishes requests for admissions were required to include a clear explanation informing the responding party that they have a duty to respond in writing. Judge Wheatley feels that self represented litigants usually do not know how to respond to requests for admissions.

- Is Judge Wheatley willing to rule on oral evidentiary objections or does she always require written objections?

Judge Wheatley allows oral objections in court.

- What are Judge Wheatley's thoughts on motions for summary judgment? How often does Judge Wheatley find herself awarding summary judgment? What advice does Judge Wheatley have for attorneys who plan to seek summary judgment in her court?

As with demurrers, Judge Wheatley believes the appropriateness of a summary judgment motion varies from case to case. Of course, Judge Wheatley will grant meritorious motions for summary judgment.

- What general advice does Judge Wheatley have for attorneys regarding written briefs? What problems does Judge Wheatley most often encounter with written briefs?

Judge Wheatley suggests that attorneys put their best material in the first few paragraphs. In addition, it is important for the brief to provide the facts of the case (and to get the facts right) so that the judge can better evaluate the merits of the motion. Also, one properly analogized case is more helpful than a string cite.

- What general advice does Judge Wheatley have for attorneys regarding oral argument? Are there any particular mistakes that attorneys make during oral argument?

One mistake attorneys make in oral arguments is using shorthand or jargon, assuming that either the judge or the jury is familiar with certain phrases or cases. Particularly in addressing jurors, attorneys should place themselves in the position of a layperson hearing the argument. In arguing to the court, attorneys should summarize why a case applies, specifically tying it to the facts of the case before the court.

## **Trial**

- How much leeway does Judge Wheatley give attorneys in conducting voir dire? Do all questions have to relate directly to the case?

Judge Wheatley tries to do general voir dire and is willing to ask some questions of the potential juries herself. She usually uses time limits for voir dire, and recommends that attorneys limit the amount of speaking during voir dire.

- What are Judge Wheatley's views on the use of trial briefs? Do you require them? If not, are there circumstances in which you appreciate them?

Trial briefs are welcomed but not required.

- What are Judge Wheatley's views on the use of juror questionnaires?

Judge Wheatley does not use juror questionnaires.

- Does Judge Wheatley limit the number of hours for trial? How does Judge Wheatley determine how much time should be allocated for a trial?

Judge Wheatley usually gets an accurate estimate of trial time during the pretrial conference. She does not usually need to limit the hours of trial. Where she does impose time limits, she finds that lawyers end up taking less time than they predict.

- Which days are reserved for trial during the week?

Court trials are on Mondays. Tuesday through Friday are reserved for jury trials.

- Does Judge Wheatley allow speaking objections during trial?

No. She will allow an attorney to name the grounds for his or her objection, but not go into further explanation.

- Does Judge Wheatley allow sidebar approaches for objections?

Yes.

- What are Judge Wheatley's views on the use of technology in the courtroom?

Judge Wheatley allows technology in her courtroom. She expects the attorneys to bring their own equipment and set it up themselves.

- Does Judge Wheatley's courtroom have an audio-visual coordinator counsel may contact?

No.

- Does Judge Wheatley permit the playing of video portions of deposition for impeachment purposes?

Judge Wheatley would allow this, but it has not come up.

- What equipment is available in Judge Wheatley's courtroom?

A television and VCR. Most of the time the lawyers bring their own equipment.

- Does Judge Wheatley have any general advice for attorneys regarding opening statements or closing statements? Are there common problems Judge Wheatley sees with opening and closing statements?

Counsel should be focused and try to see things from the perspective of the layperson.

- Does Judge Wheatley allow the use of demonstratives in opening statements?

Yes, as long as the demonstrative is cleared in advance.

- Does Judge Wheatley have any general advice for attorneys regarding examination of witnesses? Are there common problems Judge Wheatley sees with witness examinations?

Good preparation of the witness is the key. The attorney should also inform his or her witness of all applicable motions in limine. During cross-examination, attorneys should listen carefully to witnesses so that they may capitalize on any unexpected opportunity. Also, where it can provide a tactical advantage, an attorney should be able to let go of harmful testimony during cross and deal with it during closing.