

ABTL Judicial Profile

Magistrate Judge Victor B. Kenton

Background

Judge Victor B. Kenton has served as a Magistrate Judge in the Central District of California since 2001. Prior to his appointment to the bench, Judge Kenton was a trial attorney, trying cases for many years as a federal public defender in the Central District of California, and in private practice with Arthur Crowley, P.C. and as a sole practitioner. Judge Kenton also has taught as an adjunct professor at Pepperdine University School of Law.

Judge Kenton spent most of his childhood in Connecticut, where his father was a federal prison warden, and graduated from the University of Connecticut in 1969. After college, he volunteered for the Peace Corps in West Africa, helping to build wells. Judge Kenton then received his law degree from UCLA School of Law in 1974.

Consent Cases

As a former trial lawyer, Judge Kenton enjoys the occasional opportunity to preside over trials in consent cases, but believes the program is underutilized. He senses that the legal community in Southern California has not yet embraced the program in the way that other jurisdictions have, perhaps because of the unique caseload in the Central District of California. Judge Kenton encourages attorneys to consider the benefits of consenting to the oversight of cases by a Magistrate Judge.

Settlement

Judge Kenton is a strong proponent of resolving cases through settlement. The high cost and uncertainty of trial is rarely beneficial to the parties, and he enjoys the opportunity his position gives him to help parties resolve disputes. He does not believe that the proliferation of settlements undermines the judicial system, but rather that the judicial system exists to help people resolve disagreements, and judicial settlement is an efficient and effective way to accomplish this goal. Magistrate judges are particularly well suited to conduct settlements, because they carry the weight of law and solely are motivated by the opportunity to help the parties find solutions to problems.

Judge Kenton conducts full day settlement conferences. The morning is set aside to allow the parties to air their grievances and present their positions. He believes that this process plays an instrumental role in settlement, because all cases—even the most technical patent disputes—eventually get wound up in emotion. Allowing each party to say its piece mutes the emotional tenor of the discussion, and also helps him understand the parties' motives.

Ultimately, almost every settlement is a business decision, so Judge Kenton requires that the appropriate business persons attend the settlement. This includes an insurance company representative, the importance of whom parties and lawyers tend to underestimate. It is not enough to have someone available by phone, because that person will not have experienced the settlement process and discussions when called to ask for authority.

Criminal Cases

Perhaps because of his background as a federal defender, Judge Kenton is tough on all sides of the criminal matters he handles. He does not bend over backwards to achieve any particular outcome in a case, but instead is careful to follow the law to ensure a fair outcome, understanding the significance of his criminal caseload.

Discovery

Judge Kenton views the oversight of civil discovery as the bread and butter of a Magistrate Judge's work. He believes that the parties are obligated meaningfully to engage in the meet and confer process, and to give him as little as possible to decide. It is the judge's role to ensure that the meet and confer process occurs and, if necessary, to force the parties to engage with each other. If the parties come to Judge Kenton with a lengthy stipulation outlining an abundance of discovery disputes, and it appears that they have not truly engaged in the meet and confer process, he will send them back to discuss further and narrow the scope of the issues that he needs to resolve.

Ex Parte Applications

Judge Kenton strictly construes the emergency nature of an *ex parte* application. He will occasionally grant one, such as when a deposition needs to be stopped and there really is no time to provide notice or confer. However, he finds that most *ex parte* applications are not emergencies and may result from attorneys who have failed to adequately plan ahead for deadlines. Judge Kenton is unsympathetic to such attorney-created deadlines. If an improper *ex parte* comes before him, he will ask the parties to confer pursuant to Rule 37 and he may ask that they file motions on the issue by a certain deadline.

Tentative Rulings and Oral Arguments

Judge Kenton always issues written tentative rulings, and finds that most parties submit on the tentatives. He generally does not accept untimely additional written materials after briefing is finished, but neither discourages nor encourages oral argument. At oral argument, he expects attorneys to identify the ways in which they believe the tentative ruling should be changed or reworked.

Sanctions

Judge Kenton finds little occasion to issue financial sanctions. For him to consider sanctions, some serious form of misconduct must have occurred. For example, he may issue sanctions if a party fails to do something he specifically ordered them to do, or if a party is harassing and creating hardships for the other party. In such circumstances, Judge Kenton will generally issue a tentative sanction. He will listen to the explanation of the offending party, as an attorney occasionally will have legitimate excuses for improper behavior.

Judge Kenton does not recall ever having issued sanctions other than financial sanctions, although parties have sought evidence preclusion or terminating sanctions in some of his consent cases. In non-consent cases, Judge Kenton would not issue terminating or issue precluding

sanctions, although he might make a recommendation to the District Court Judge to do so on rare occasion.

Judge Kenton fosters a civil atmosphere in his court that he hopes will prevent the need for sanctions. He prefers lawyers to act civilly, which he has found they generally do in front of him. He respects zealous advocacy, and appreciates attorneys who aggressively pursue positions in support of their clients, but believes that lawyers should never cross the line into disrespectful behavior. Luckily, he has not dealt with many disrespectful attorneys who might necessitate the issuance of sanctions for inappropriate conduct.

Briefs and Motions

Judge Kenton prefers that attorneys tell him what the case is about in every motion by quickly reviewing what the claims are and what the case is about. He does not “live” the cases on his docket the way the parties and attorneys often do, and he does not always go back to the complaint or prior motions to refresh his understanding of the issues. So he appreciates when attorneys take a page or two to educate him and orient him to the substance of the motion.

If a discovery brief or motion is requesting something, Judge Kenton expects the attorney to explain (1) what efforts already have been made to get the requested material, (2) what material has been received, and (3) why the party is entitled to additional material. He wants to see the factual background, not accusatory or inflammatory language about the opposing party. He wants to see analysis of why he should grant a motion, not conclusory language that, for example, “it’s relevant because it’s relevant.” Except to the extent necessary to provide the relevant background, Judge Kenton does not need to review email exchanges between the parties.

General Advice to Attorneys

- **Ask for what you *need*—not for everything you’d like.** If you can clearly explain what you need and why, Judge Kenton is likely to give that great weight. It is more difficult for him to try to parse what an attorney needs to do his job from what that attorney merely wants if the attorney does not express this.
- **Use discovery as a fact finding instrument—not a bludgeon.** Judge Kenton appreciates parties who are thoughtful about their use of discovery for its intended purpose. Most cases end up turning on a handful of documents and lawyers who know how to prove a fact know what to ask for. Using discovery just to overwhelm the opponent does not get you very far in his courtroom.
- **Don’t be afraid to come to court.** Judge Kenton likes to hear what the attorneys have to say. Since parties are closer to their cases than he is, he expects attorneys to explain where he may be misunderstanding the facts or the law as applied to those facts. He expects attorneys to be forthright with him during argument, and he appreciates when an attorney answers a question to the best of his ability, or admits that he cannot answer the answer.

Outside of the Courthouse

Judge Kenton maintains a diverse and active life outside the courtroom. An avid scuba diver, Judge Kenton travels the world underwater. His interest in scuba was sparked during childhood by the television show “Sea Hunt,” which highlighted the antics of a free-lance scuba diver with a passion for justice.