

***LACBA-ABTL Judicial Interview
Judge William F. Highberger (Los Angeles Superior Court)***

Date of Interview: May 8, 2012

Background

Judge William F. Highberger handles complex civil matters as part of the Los Angeles Superior Court Complex Civil Litigation Program. Judge Highberger was born in Suffern, New York in 1950. He received his A.B. in Public and International Affairs from Princeton University in 1972 and his J.D. from Columbia University in 1975, where he was the Notes and Comments Editor of the Columbia Law Review. Following law school, Judge Highberger clerked for the Honorable William H. Timbers, United States Court of Appeals for the Second Circuit, after which he joined the law firm of Gibson, Dunn & Crutcher in Los Angeles, where he became a partner in 1983, with a practice focused on representing employers and employee benefit programs in civil litigation. Judge Highberger was appointed to the bench in 1998 by Governor Pete Wilson and, following assignments to juvenile court and the criminal bench, he was assigned to the Complex Civil Litigation Program in 2001. Judge Highberger is married to Judge Carolyn B. Kuhl of the Los Angeles Superior Court; they have two daughters.

Pretrial Matters

Cases in Judge Highberger's courtroom are typically stayed until the initial status conference. With pending budget cuts, Judge Highberger will likely require that hearings on dispositive motions or other contested matters be set for days where a court reporter is available. *Ex parte* applications are currently heard every day of the week, although this may change with limited court reporter resources.

Status Conferences

In Judge Highberger's courtroom, the purpose of the initial status conference is to figure out the important questions of fact and law that will impact the case. As Judge Highberger notes, both plaintiff and defense lawyers have scarce time and resources, and he views the initial status conference as a forum to determine how the time and resources will be spent during the case, on the way to trial. At the initial status conference, Judge Highberger works with the parties to identify the claims, defenses, and other key issues and ways to test the efficacy of the claims and the defenses, such as through demurrer, motions for summary judgment, or even early motions in limine. Judge Highberger notes that addressing key issues early is valuable for both plaintiffs and defendants because if, for example, a claim survives key defenses, the case will likely go to trial, which positively affects the value of the case for the plaintiff.

Discovery

Judge Highberger also sees the value of identifying important issues early because it allows discovery to be as cost effective as possible. Judge Highberger does not approve of lawyers pursuing thorough discovery just for the sake of thoroughness or for the sake of discovering

every document before taking the first deposition in a case. From his perspective, to minimize the length and costs of discovery, there must be a balancing between document discovery, which provides important information for depositions, and deposing witnesses, which in turn provides information as to which documents should be pursued in discovery.

Judge Highberger does not appreciate parties who obstruct discovery, such as by interpreting their adversaries' discovery requests in an unduly narrow manner. Judge Highberger's view is that, as officers of the court, attorneys have a duty to help their adversary figure out the merits of the case, so that they can resolve the dispute. As such, he prefers that parties work with each other to identify the documents or items of discovery that matter and to determine the least burdensome way to obtain and produce them. As part of this, Judge Highberger wants attorneys appearing before him to have educated themselves about their client's document retention policies and electronic document systems.

Ex Parte Hearings

Judge Highberger is open to *ex parte* applications and may even welcome an *ex parte* application about discovery issues, because an *ex parte* filing allows the resolution of discovery issues more quickly than setting a hearing and filing papers. From Judge Highberger's perspective, he has the opportunity to get his hands on the issue sooner through an *ex parte* hearing, which allows the case to move forward quickly and efficiently.

Briefing and Hearings

Judge Highberger makes himself available to lawyers by phone and, unless there are numerous parties, will conduct *ex parte* hearings by phone. Judge Highberger strongly prefers not to receive letters or letter briefs from lawyers in his pending cases. Papers in pending cases should be submitted to him on pleading paper. Also, Judge Highberger prefers tables of contents and authorities in all briefs submitted to him, including shorter papers such as reply briefs.

Judge Highberger commonly issues written tentatives on motions, which will be posted on the Court's website or provided to the lawyers for the parties in advance of oral argument. Judge Highberger views the tentative ruling as an explanation of his reasoning and expects attorneys to educate him as to any issues they may have regarding a tentative ruling.

Settlement and Settlement Conferences

Judge Highberger raises the issue of settlement regularly during a case, including at the initial status conference and subsequent status conferences. While he recognizes that some cases must go to trial, Judge Highberger believes the large majority of cases are open to compromise. Judge Highberger tries to identify the impediments to settlement that might be resolved, and seeks to ensure the attorneys discuss those impediments to determine whether a compromise is possible.

Judge Highberger is not always willing to engage in settlement conferences with the parties. Judge Highberger has engaged in settlement conferences with the parties appearing before him, if the parties sign a stipulation. But even if there is a stipulation, Judge Highberger may decide

not to participate in settlement conferences when there is a good reason not to do so, for example, if there is likely to be a bench trial or there is an upcoming important dispositive motion. In such circumstances, he will refer parties to his colleagues, the settlement hearing program through the Los Angeles Superior Court, or to a professional mediator.

Trial

Judge Highberger will start voir dire in an effort to get the jurors comfortable talking in the courtroom. Judge Highberger does allow attorneys to provide juror questionnaires, though he notes that voir dire without a questionnaire can be helpful because it requires jurors to communicate basic concepts orally, which can provide attorneys with helpful information about the jurors. Judge Highberger will not normally question prospective jurors on issues covered in a juror questionnaire.

If lawyers intend to use an audiovisual presentation system in trial, Judge Highberger appreciates it when a trained specialist is used to run the presentation system. Judge Highberger finds that lawyers trying cases to jurors are particularly mindful of juror's time and recognize that it is essential to keep them engaged; Judge Highberger would appreciate lawyers keeping the same considerations in mind during bench trials.