

ABTL – YOUNG LAWYERS DIVISION

JUDICIAL PROFILE: THE HONORABLE JAMES C. JUDGE CHALFANT Superior Court Judge, Los Angeles Superior Court

Interview conducted on August 13, 2007

BACKGROUND

After graduating with a J.D. from Boalt in 1979, Judge Chalfant practiced civil litigation at Irell & Manella for two years. He was an assistant U.S. attorney from 1982-1986. Judge Chalfant then reentered private practice with a focus on white-collar criminal defense at Hochman, Salkin & Deroy (1986-1988) and McCambridge, Deixler, Marmaro & Goldberg (1988-1995), and as a solo practitioner (1995-1996). In 1998, Los Angeles Superior Court Judge James C. Chalfant was elevated from the Los Angeles Municipal Court (appointed in 1996) by former California Governor Pete Wilson.

INTERVIEW Q & A:

General

- ***What are some common mistakes you have seen from young lawyers?***
 - Failure to follow the Rules of Court.
 - Young lawyers fail to file CMC statements before the conference (Judge Chalfant will not hold the conference without it) and/or fail to meet and confer before the conference (Judge Chalfant may put the conference on second call and send the lawyers into the hallway to discuss).
- ***What are some of your pet peeves?***
 - Judge Chalfant is “tired” of demurrers. Although he recognizes that they may be necessary to frame the pleadings for discovery and summary judgment purposes, he often finds them to be “a waste of time” because they take a lot of time and are rarely dispositive. Lawyers considering filing demurrers should make sure the filing is not simply a “billing event.” All lawyers should look carefully at the jury instructions relating to a particular cause of action in determining whether to file a demurrer.
 - Judge Chalfant believes that often lawyers do not conduct the necessary research prior to filing a complaint. They throw in everything they can hoping something will stick and then rely on the judge to narrow the scope. Judge Chalfant cautions lawyers not to use causes of action that do not exist or that are duplicative. For example, Judge Chalfant notes that lawyers commonly allege a cause of action for negligent infliction of emotional distress which, under California law, is properly styled as a claim for negligence. Lawyers opposing demurrers should consider it a defeat to have a demurrer granted even with leave to amend and, therefore, should carefully look at their complaints before filing.
 - Lawyers often fail to understand the appropriate time to file a motion for summary judgment. Judge Chalfant will not continue a trial to hear a motion for summary judgment. He recommends that lawyers plan ahead for the deadline in order to timely file. He notes that a party may move for summary judgment at any time based on the operative pleading.

- ***Do you have a standing order that outlines general procedure?***
 - Judge Chalfant issues a trial preparation order in every case and, among other things, requires joint preparation of exhibits.

Ex Parte Applications

- ***Do you require a reservation with the Court the day before an ex parte?***
 - No.
- ***What general advice do you have for attorneys regarding ex parte applications?***
 - Judge Chalfant believes that *ex parte* applications are abused in state court and will deny the request if an emergency is not present. Therefore, before submitting an *ex parte* application, make sure there is a true emergency. *Ex parte* applications should be used only for “ministerial issues.” If a party is asking for substantive relief, Judge Chalfant will not grant *ex parte* relief because the opposing party is entitled to the statutory notice and opportunity to respond.
- ***What problems do you most encounter with ex parte applications?***
 - There is no emergency and therefore no substantive basis for granting the request. The relief being sought needs to be made by noticed motion (such as for sanctions).

Pretrial

- ***Do you generally issue tentative rulings? If so, what are those situations?***
 - Judge Chalfant almost always issues a tentative ruling. The tentative rulings tend to be lengthy and descriptive. He does not issue tentative rules on motions for a new trial, JNOV motions or *ex parte* applications for a TRO.
 - He issues tentative rulings for three reasons:
 - (1) he likes to write;
 - (2) writing helps him analyze issues and show his reasoning; and
 - (3) it helps counsel focus their oral argument.
- ***What is your willingness to engage in alternate procedures for motion practice?***
 - Judge Chalfant will generally schedule a “discovery day” in complex cases. He will have both parties meet face-to-face to discuss discovery problems and attempt to narrow the issues. He has found it to be an effective means for avoiding discovery disputes.
 - In complex cases, Judge Chalfant will always entertain attorneys’ ideas to save time and effort.
- ***How flexible would you say you are with respect to rescheduling hearing dates made months in advance?***
 - Judge Chalfant will only change dates for cause. Counsel would have to show that he or she diligently worked on discovery and grossly underestimated the amount of discovery that would be necessary. He further notes that he is rarely shown cause to change hearing dates.
- ***What factors do you consider in determining whether to grant a trial continuance?***
 - Judge Chalfant believes that there is an overwhelming public interest in not granting trial continuances. He never issues a continuance simply because lawyers want to discuss settlement or believe they can reach a settlement. He will not continue a trial date to accommodate a motion for summary judgment. He

will not continue a trial based solely on a stipulation between the parties.

- The trial date is set at the CMC and the lawyers/parties have agreed on the date. Absent extraordinary circumstances, such as illness of a party or a lawyer, lawyers need to stick with the trial date set at the CMC and conduct the litigation accordingly, . If the trial date conflicts with another trial, the lawyer must demonstrate how the conflict arose after they agreed to the trial date. Unavailability of an expert does not constitute good cause.
- ***What advice do you have for attorneys who plan to seek summary judgment in your court?***
 - Judge Chalfant takes motions for summary judgment/adjudication very seriously and treats each one on its own merits without consideration of the possibility of being overruled by an appellate court. He advises attorneys to take them seriously as well and to follow the Rules of Court. It is easy for a judge to deny the motion if it is not properly prepared.
 - Although he believes the standard practice is to read the separate statement first, he tends to read the briefs first followed by the separate statement. He typically begins the process by ruling on evidentiary objections.
- ***What problems do you most often encounter with written briefs? Also, what general advice do you have for attorneys regarding written briefs?***
 - The most prevalent problem that Judge Chalfant encounters is that the briefs are not “brief.” He further notes that he will not look at pages beyond the page limit. Judge Chalfant advises that if an attorney is running out of pages in a summary judgment or demurrer brief, then the lawyer should skip the section on standard legal principles (which the Court already knows) and focus on the facts and law the lawyer contends controls. In addition, Judge Chalfant advises attorneys not to use string cites and, instead, to cite only the most important and relevant cases. Lawyers should only discuss the facts of a case where the facts are particularly applicable and should otherwise focus on the law and application of the law to the facts of the case.
- ***What general advice do you have for attorneys regarding oral argument? Are there any particular mistakes that attorneys make during oral argument?***
 - If the tentative is in your favor, submit on the tentative. Judge Chalfant puts a great deal of time and effort into the written tentative and, therefore, it is difficult --- but not impossible -- to talk him out of it (he estimates it happens less than 10% of the time). Judge Chalfant does not mind arguing over the reasoning but lawyers should keep in mind it may not be a productive use of time. Finally, if a lawyer needs more time to develop facts, ask the Court for it.

Trial

- ***What are your views on the use of technology in the courtroom?***
 - Judge Chalfant supports the use of technology in the courtroom. His only caveat is that he wants both parties to share the technology. Moreover, the AV specialist must act only at the direction of the attorney and not on his or her own.
 - ***Does your courtroom have an audio-visual coordinator counsel may contact?***
 - No.

- *Do you permit the playing of video portions of a deposition for impeachment purposes?*
 - Yes.
- *What equipment is available in your courtroom?*
 - Nothing.
- *Do you have any general advice for attorneys regarding opening statements or closing statements? Are there common problems you see with opening and closing statements?*
 - With respect to the opening, Judge Chalfant advises attorneys to stick to the facts and refrain from arguing. Also, attorneys should be careful of what promises they make in their opening – jurors (and opposing counsel) remember when you fail to deliver on such promises. For closing argument, Judge Chalfant advises attorneys to make arguments in good faith and try to be fair to the other side. The most persuasive lawyers are not angry, shrill or strident. Rather, they are lawyers who demonstrate a strong belief in their case in a calm manner and who are fair to the other side.
 - *Do you allow the use of demonstratives in opening statements or closing statements?*
 - Yes, if both sides agree that it will be coming into evidence.
- *Do you have any general advice for attorneys regarding examination of witnesses?*
 - On cross-examination, it will be more persuasive to the jury to ask open-ended questions of the witness unless you are concerned that the witness will slip something into the answer. Learn how to listen to the answer and use it in formulating the next question. Be careful when you ask questions that you either do not know the answer or do not care what the answer will be. Have a theory of the case and advance that theory on cross-examination (or do not bother asking questions unless you simply want to impeach the witness).
- *Do you have any final advice for junior attorneys?*
 - Get some trial experience. Judge Chalfant has seen many associates and partners who are afraid to try cases.
 - Rotate into public service. Judge Chalfant notes that it is immensely valuable experience for the lawyer and good for the community as well.
 - Do not practice law only for the money.