

ABTL Judge Interview Project: Federal District Court Judge Dale Fischer (Central District of CA)

General background:

Judge Dale S. Fischer was appointed to the U.S. District Court for the Central District of California in November 2003 by President George W. Bush. Prior to her appointment, Judge Fischer served on both the Los Angeles Superior Court and the Los Angeles Municipal Court, handling criminal matters in both positions. Before this, Judge Fischer handled civil matters as an attorney at the law firms of Heller Ehrman and Kindel & Anderson. Judge Fischer received her J.D. from Harvard Law School in 1980 and her B.A. from the University of South Florida in 1977. She is active in many civic professional activities and is a board member of the Association of Business Trial Lawyers.

Ex parte applications:

Q: What are your general views on ex parte applications?

A: Judge Fischer strongly advises against making ex parte applications in her courtroom. She suggests that they are almost always filed for non-emergencies and are usually a waste of time. Judge Fischer looks at the applications herself and is usually quick to identify that they should be rejected. She suggests that most of the applications she receives are not proper ex parte applications.

Pretrial matters:

Q: Do you have any law and motion pet peeves?

A: Judge Fischer states that too many attorneys engage in hyperbole and make baseless accusations. It is unacceptable for attorneys to vilify each other or the parties. Criticisms of the conduct of opposing counsel or parties should be made only when necessary to the proper representation of the client and should be supported by evidence.

Q: Do you generally issue tentative rulings?

A: Judge Fischer has issued very few written tentative rulings in the last four and a half years. She will usually provide an oral tentative ruling from the bench. She will then let the “losing” party argue its case. Judge Fischer is rarely convinced to change her mind at this stage. She has done so fewer than ten times.

Q: What role do you play in the discovery process? What do you do so as to minimize discovery disputes between parties?

A: The magistrate judge typically handles all discovery matters. Judge Fischer has never overturned a magistrate judge’s decision, and she rarely gets appeals of such decisions. Judge

Fischer will handle discovery matters that deal with ERISA, because she has experience in the field. She is not opposed to parties stipulating to have a special master handle discovery.

Q: What factors do you consider when deciding whether to grant summary judgment? What advice do you have for attorneys seeking summary judgment in your court?

A: Judge Fischer looks at the separate statements of the parties and has them present statements of the genuine issues. She reviews the statements in an effort to determine which facts are really not in dispute. Judge Fischer feels that attorneys generally make too many summary judgment motions. She suggests that such motions are typically “billable events.” She will not grant such a motion unless there are truly no disputed facts, and she discourages attorneys from making them if there are any disputes.

Q: What advice do you have for attorneys with regard to their written briefs? Are there common mistakes that you see with such written products?

A: Judge Fischer identified a lack of preparation as a common problem with written briefs. She suggests that many attorneys are not familiar with their cases, and they do not know how the pertinent elements of the law relate to their particular facts. With regard to jury instructions, the judge prefers that the parties in a civil case agree upon such instructions and not dump them on her lap.

Q: What advice do you have for attorneys with regard to oral argument? Are there common mistakes that you see in oral argument?

A: Judge Fischer cites lack of preparation for oral argument as a key problem. The judge encourages attorneys to directly answer her questions and not merely read from a script. Attorneys should not interrupt while Judge Fischer is expressing her questions and concerns about the issues, as this information should guide them in making a more effective presentation. Judge Fischer strongly advises attorneys to know their cases thoroughly and not miscite or mischaracterize cases or facts.

Trial:

Q: What are your views on motions in limine?

A: Judge Fischer recommends that parties make their motions before trial. She encourages the parties to meet and confer before bringing any such motions. If they do so, they should be able to reach agreements as to what evidence shall be excluded. She pointed out that the parties to a dispute sometimes bring motions in limine even though they have already agreed upon the underlying matter. The judge describes such motions as wasteful and as being “billable events.”

Q: Can you describe the voir dire process in federal court and your role in the process?

A: Judge Fischer allows the attorneys to submit their proposed voir dire questions to her and she incorporates the questions into her own voir dire. Judge Fischer has observed that allowing

attorneys to conduct more than a few minutes of voir dire can waste the time of both the court and the jurors.

Q: What days do you conduct trial? Do you have a set number of hours or set time in which trial is conducted?

A: Most federal judges only have calendars on Monday. Judge Fischer typically conducts trial Tuesday through Friday. The usual time period in which she conducts trial is 8:00 to 2:00 with three 15 minute breaks.

Q: Do you require trial briefs? If not, what written products must the parties submit to you prior to the commencement of trial?

A: Judge Fischer does not require trial briefs. In a bench trial, she requires proposed findings of fact and conclusions of law. In a jury trial, memoranda of contentions of fact and law and proposed a pre-trial conference order are required. These tend to serve the functions of trial briefs.

Q: Do you permit sidebar objections?

A: Judge Fischer keeps sidebar conferences to a minimum.

Q: What are your views on technology in the courtroom? Are there any technological trends that you prohibit or find disturbing?

A: Judge Fischer sometimes encounters problems when attorneys seek to project documents onto a screen. Doing so is often a waste of time because the jurors can't read them. If used sparingly, technology can be very effective.

Q: Do you have any general advice for attorneys who conduct opening or closing statements in your courtroom? What problems do you typically see with such statements?

A: A common problem that Judge Fischer sees with opening and closing statements is that they are too long. She suggests that attorneys not say anything they cannot prove. She further advises attorneys to stay at the lectern and make sure that they engage the jurors. She suggests that attorneys keep their statements interesting so that those listening do not become inattentive.

Q: What general advice do you have for attorneys when they are examining witnesses? What conduct of attorneys in the examination setting do you find to be particularly problematic?

A: Judge Fischer stated that a major problem arises when attorneys do not treat witnesses properly. She encourages attorneys to watch the jury to see their reactions to witness testimony and take such reactions into account when proceeding with their examinations. She suggests that attorneys frequently misperceive how witnesses are coming across to the jury.

Q: What general things would you like attorneys to know about how to conduct themselves when they are in your courtroom?

A: Judge Fischer requires that attorneys appearing in her courtroom act professionally and ethically.

General information about the matters heard by Judge Fischer:

Q: Having only handled criminal matters when you first became a judge, how does your current caseload compare? Are you more comfortable with civil or criminal matters, and which do you prefer?

A: Judge Fischer's current caseload consists of about 80% civil matters and 20% criminal matters. She stated that the criminal matters she handles as a federal judge tend to not be as interesting as the criminal work she conducted while working for the Los Angeles Municipal and Superior Courts. She feels comfortable with both civil and criminal matters.