

ABTL Judicial Profile

Magistrate Judge Arthur Nakazato

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Background

Magistrate Judge Nakazato received his undergraduate degree from the University of Pittsburgh and graduated from Temple University School of Law in 1978. He started practicing law at Hahn, Kazar & Smalls, then a mid-sized Orange County firm. Judge Nakazato practiced with that firm until he and his partner founded the law firm of Kirtchie & Nakazato. Judge Nakazato's practice concentrated on complex business and securities litigation as well as intellectual property law. After several years of practice as a trial lawyer, Judge Nakazato was appointed as a U.S. Magistrate Judge for the Central District of California by the district judges of that court in 1996. The court reappointed Judge Nakazato in 2006.

Both before and during his tenure on the bench, Judge Nakazato has been very active with the bar. He has served on the board of directors of the Orange County Chapter of the Federal Bar Association for many years and has actively participated in the Association of Business Trial Lawyers. On the bench, Judge Nakazato's docket consists of approximately thirty percent criminal matters and seventy percent civil matters. His civil docket includes trials, discovery referrals, settlement conferences, social security appeals, and claims for writs of habeas corpus by state and federal inmates.

Magistrate Judge Case Assignment Pilot Program

Judge Nakazato has also been a strong proponent of the Central District of California's new Magistrate Judge Pilot Program. Effective January 1, 2009, this program directly assigns some civil cases to a magistrate judge for all purposes upon the filing of the initial pleading. When making such an assignment, the clerk of court will notify the litigants and provide them a date by which they must consent to the assignment pursuant to 28 U.S.C. § 636. If all parties chose not to consent to the assignment, then the clerk will make an additional assignment of a district judge who will undertake primary responsibility for the case.

Magistrate Judge Nakazato explained that this program provided a number of benefits for litigants by making it easier to consent to assignment before a particular magistrate judge. Magistrate judges can generally offer a firm trial date. Magistrate judges do not have felony criminal calendars which reduces the chance of a last minute continuance of a long cause civil trial because of the precedence due to felony matters. Further, assignment before a magistrate judge means that one judge will handle all aspects of the case from discovery disputes to trial. As such the judge will be completely familiar with the case's procedural history. Magistrate Judge Nakazato advised attorneys to research the background of their assigned magistrate judge in deciding whether to participate in this program because many of the Central District's judges have great expertise in particular areas of the law that may be beneficial in particular cases.

Questions

Ex Parte Applications

What general advice do you have for attorneys regarding ex parte applications?

Judge Nakazato warned that attorneys should remember that ex parte applications are generally disfavored. They literally require the judge and court staff to drop everything and address the application. As such, counsel should make ex parte applications only where they have a stipulation or very good cause for the relief sought. Judge Nakazato explained that he almost never grants substantive relief on an ex parte basis, but prefers to enter an order shortening time for a noticed motion. It is important for counsel to plan ahead and ensure that they need not seek ex parte relief from things like discovery deadlines simply because they did not allow enough time for properly noticed motions prior to the cutoff.

What problems do you most often encounter with ex parte applications?

The three most common problems that Judge Nakazato sees are failure to give proper notice to the other side, counsel's failure to make a good faith effort to resolve the dispute, and lack of good cause for the relief sought on an ex parte basis.

Pretrial

Do you have any law and motion pet peeves?

Judge Nakazato explained that counsel must ensure that they scrupulously follow the Rules of Civil Procedure and the Local Rules, especially Local Rule 37-1 with respect to discovery motions. Compliance with Local Rule 37-1 and meet and confer obligations generally takes time and counsel should build that time into their planning. A good faith meet and confer effort requires more than simply exchanging letters. With respect to discovery, the biggest mistake that Judge Nakazato sees counsel make is failing to place a reasonable limit on written discovery when they propound their requests. For example, broadly worded document requests may satisfy one's understandable desire to cover all bases, but often result in the expenditure of needless time and energy on discovery disputes. Judge Nakazato believes that a thoughtful attorney who understands a case can usually specifically identify those documents that they need to try their case.

Do you generally issue tentative rulings? (If not, are there situations in which you do? What are those situations?)

Judge Nakazato generally does not hold oral argument and as such does not issue tentative rulings. In those instances where Judge Nakazato believes oral argument would be helpful, he usually issues a tentative ruling. Oral argument is helpful where Judge Nakazato needs more information from counsel or where the situation may warrant the imposition of sanctions. In such cases, the tentative ruling serves to focus argument on those areas where the court requires assistance.

What is your willingness to engage in alternate procedures for motion practice?

For example, in complex cases, where the parties agreed, would you 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.

On consent cases, Judge Nakazato will grant wide latitude to the parties in alternate procedures as long as they are cooperating.

What are your views on the use of demurrers or Rule 12(b)(6) motions?

Judge Nakazato believes that parties bring far too many motions to dismiss. He estimates that nine out of ten of these motions are not dispositive.

What are your thoughts on motions for summary judgment? How often do you find yourself awarding summary judgment? What advice do you have for attorneys who plan to seek summary judgment in your court?

Judge Nakazato responded that prior to bringing such a motion counsel should ensure that there truly are no triable fact issues on a key part of their case. Counsel should also avoid overcomplicating these motions by arguing factual issues that are really not elements of their clients' claims. If there truly is no triable issue of material fact, then the argument should be relatively straightforward. Do not load the motion with argument on undisputed elements of the claim.

What general advice do you have for attorneys regarding written briefs? What problems do you most often encounter with written briefs?

Judge Nakazato believes that a well-written brief will consist largely of application of the facts of the particular case to the law. It is a rare instance that the court is ignorant of the applicable substantive law such that extensive treatment of it is necessary. The purpose of a brief is to explain why the facts of the case support the client's position. Proofreading is very important. Multiple typographic or grammatical errors suggest a sloppy analysis. Another important detail is cite-checking and the use of pin cites. Counsel must ensure that authority supports the propositions for which it is cited. An absence of pin citations can be frustrating to those who read the brief and suggest that counsel may not have carefully analyzed the cited authority.

Trial

What are your views on the use of motions in limine? Do you place limits on the number of motions in limine that a party can bring?

Motions in limine can be useful in many cases. Counsel should ensure that they are not trying to disguise a motion for summary judgment as a motion in limine.

How much leeway do you give attorneys in conducting voir dire? Do all questions have to relate directly to the case?

Judge Nakazato generally gives trial counsel a lot of leeway in the conduct of voir dire. He usually begins the process by asking some limited questions and then turns things over to counsel. Counsel's questions should not cover ground that has already been addressed and should not be argumentative.

How do you conduct jury selection more generally?

Judge Nakazato typically has counsel direct questions to the entire pool of prospective jurors. Once counsel has completed their questioning, the court will excuse the prospective jurors so that counsel may exercise all of their preemptory challenges outside the jurors' presence.

What are your views on the use of trial briefs? Do you require them? If not, are there circumstances in which you appreciate them?

Judge Nakazato does not as a rule require trial briefs, but believes that they can be helpful in some of the shorter cause cases.

Do you limit the number of hours for trial? How do you determine how much time should be allocated for a trial?

Judge Nakazato does not use time limits as a rule, but may do so in those instances where he believes that it would be helpful to assist counsel in staying focused and coming to the point.

Do you allow sidebar approaches for objections?

Judge Nakazato generally discourages sidebar conferences.

What are your views on the use of technology in the courtroom?

Judge Nakazato believes that technology can be very effective in presenting counsel's case to the jury. Use of technology is especially effective in cases where the evidence requires presentation of a large amount of numerical data. Technology can clarify this sort of evidence for the jury, but the presentation must be accurate and all presentations must be shared with the other side prior to their presentation to the jury. Judge Nakazato warns that technology can be overused and that counsel should always be prepared with an alternate means of presenting the information in the event of a malfunction.

Does your courtroom have an audio-visual coordinator counsel may contact?

Yes. The court has an information technology department. Judge Nakazato expects counsel to address plans to use technology at the pre-trial conference and he puts counsel in contact with the IT department at that time.

Do you permit the playing of video portions of deposition for impeachment purposes?

Judge Nakazato permits use of video clips for impeachment.

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?

Judge Nakazato says that the most effective counsel refrains from using notes during an opening or closing statement. Counsel should also be sincere – address the strong and weak points in your case. Counsel should also refrain from personal attacks – maintain the high ground at all times.

Do you allow the use of demonstratives in opening statements?

Judge Nakazato permits demonstratives so long as they have been shown the court and all parties prior to their use.

Do you have any general advice for attorneys regarding examination of witnesses? Are there common problems you see with witness examinations?

Judge Nakazato advises that counsel begin preparing principal witnesses to testify long before trial begins. This is especially true of lay or more unsophisticated witnesses who may not readily grasp what is at issue in the case. Counsel should use the litigation process to educate their clients as to what is important in the case.

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