

## PROFILE – HON. DEAN D. PREGERSON

### ABTL YLD<sup>1</sup>

As the son of a long-time Ninth Circuit judge, it can be said that Dean D. Pregerson was born to a career in the federal judiciary. But despite his lineage and eleven years as a United States District Judge, Judge Pregerson finds it difficult to distance himself from work at the end of a day. When asked if he is able to mentally free himself at night of what took place in the courtroom that day, Judge Pregerson responds with a firm, “No. I think you always process information and think about things all the time.”

This is said with the decisiveness and thoughtfulness for which Judge Pregerson has become known. Whether on the bench or in a chambers interview, Judge Pregerson maintains the same courteous demeanor and quiet professionalism. Although formal, the atmosphere in his chambers is nevertheless warm and familial. His answers are careful and introspective. A private person who rarely attends nighttime events due to his busy schedule, Judge Pregerson agrees to this interview because of his concern with the quality of lawyering; he believes far too much of it is in the C-/D range. Below are his thoughts on federal court practice, mistakes young lawyers make, and being Harry Pregerson’s son.

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<sup>1</sup> Nancy Morgan, Esq. and Jean Liao, summer associate, of White & Case LLP interviewed Judge Pregerson on July 24, 2007 in his chambers in the United States District Court, Central District of California.

## **BACKGROUND**

A Los Angeles native, Judge Pregerson attended the University of California at Los Angeles where he majored in history before beginning his career in public service. After graduating from the University of California at Davis School of Law in 1976, Judge Pregerson worked as a parole hearing officer with the California Department of Corrections and as a public defender and legal aid attorney on Guam. In 1979, Judge Pregerson entered private practice, where he remained as a civil lawyer until his appointment to the federal bench in 1996.

## **PROFESSIONAL EXPECTATIONS**

In terms of the qualities that he likes to see in lawyers, Judge Pregerson values concise writing, accurate legal cites and the ability “to work professionally and congenially with opposing counsel.” He also appreciates attorneys with “the ability to put themselves in the shoes of the judge and ask, ‘Is this going to be clear to someone who is not as familiar with the case?’” Regardless of whether the law requires lawyers to point out adverse authority, Judge Pregerson expects lawyers appearing in his courtroom to do so. “That has always been the practice of excellent lawyers. If lawyers fail to cite adverse authority, we will find it and question the credibility of everything else they have written.” As a general pointer, attorneys should “strive to cite the law correctly” which necessarily requires “questioning everything that is put before us.” The people who earn Judge Pregerson’s respect are those who do not abuse their positions to create anxiety on

the parts of others. “The goal is to be professional, respectful and courteous” because being a lawyer “is a difficult job in an under-appreciated profession.”

### **COMMON MISTAKES YOUNG LAWYERS MAKE**

In Judge Pregerson’s view, the number one mistake inexperienced attorneys make is seeing their opposing counsel as an “enemy” rather than another professional. To resolve a case, attorneys need to work together. Another mistake Judge Pregerson observes is excessive gamesmanship, such as refusing to give a short extension to respond to interrogatories thereby forcing one’s opponent to make a motion. Lawyers should agree to “any reasonable extension” because to do otherwise unnecessarily delays the litigation process.

When asked about pet peeves, Judge Pregerson notes that attorneys need to turn off their cell phones and be fully prepared before appearing in his courtroom.

### **MOTION PRACTICE**

In motion practice, an attorney’s job is “to express your position as concisely as possible.” As for briefs, Judge Pregerson believes “good legal writing is essentially very mathematical.” This mathematical formula should include the facts that are not in dispute, the law, and the application of the facts to the law. Although there are exceptions, Judge Pregerson cautions lawyers against the over-use of analogies and cites to a June 2007 opinion wherein he granted a habeas petition by a state prisoner on

grounds that the trial judge's use of a skiing analogy in jury instructions constituted "clear constitutional error." *Stoltie v. California*, ED CV 06-00289 DDP (MLG).

A tip to those contemplating a 12(b)(6) motion: these motions are disfavored, so "parties need to think if it is something that should be brought instead as a motion for summary judgment."

### **TENTATIVE RULINGS**

Judge Pregerson issues tentative rulings because they allow him to inform attorneys about what the judge thinks about the case at that time. This avoids lawyers later coming forward and saying, "you missed my whole point." Thus, tentative rulings help Judge Pregerson understand what the parties wish to communicate and ultimately assist him in making the correct decision.

### **EX PARTE HEARINGS**

Judge Pregerson is willing to hear *ex parte* applications every day of the week, provided they are "compelling." He finds approximately one in ten *ex partes* in civil practice to be compelling; the ratio increases to one in five *ex partes* in criminal practice. Most *ex parte* applications, he feels, are unnecessary. "Unless the *ex parte* involves a imminent deportation or the bridge is really on fire, it doesn't need our *ex parte* power."

## **EVIDENTIARY OBJECTIONS**

Because Judge Pregerson believes evidentiary issues are crucial to the case, he is receptive to oral evidentiary objections when the parties are in trial and rules on oral objections 90% of the time. His preferred practice for important evidentiary issues, however, is a bench brief (“good briefs. I don’t see enough of that”), motion *in limine* or other form of advance notice prior to trial. “Good practice is to anticipate problems and brief the judge on what is important,” he says. Judge Pregerson does not limit the number of motions *in limine* that a party may bring and is amenable to hearing them prior to trial. Conversely, he will sometimes defer and wait until evidence surfaces to hear a motion *in limine*, particularly if it depends on disputed facts. Ruling on the disputed facts often comes down to “just common sense.” Judge Pregerson also frowns on the “frequently” seen practice of disguising an *in limine* motion as a motion for summary judgment.

## **ORAL ARGUMENT**

Effective oral argument follows the same mantra as a good written brief: communicate your client’s story “as clearly and concisely as possible.” During oral argument, it is important for attorneys to “have a dialogue with the judge. Remember – there isn’t a jury.”

## **VOIR DIRE**

In conducting *voir dire*, Judge Pregerson begins by asking his own questions. He then allows the attorneys to ask questions with a “reasonable” time limit. Although attorneys have substantial leeway, they may not (1) argue the case, (2) instruct on the law or (3) attempt to extract “promises” from the jury. Alternatively, attorneys may also submit their *voir dire* questions for the court to ask if they feel that the jury would be more comfortable receiving questions from a court than from an attorney. Judge Pregerson permits the use of juror questionnaires “if appropriate.”

## **OPENING/CLOSING STATEMENTS**

When it comes to opening statements or closing arguments, “everyone’s style is different” so Judge Pregerson’s advice is to “just be yourself.” The one thing everyone should keep in mind is the importance of explanation. “Attorneys should be able to explain their case to the jury in a way that is consistent with common sense in the way people conduct their own affairs. What happened and why it happened. Why something occurred the way it did.” If you present “scattered ideas” then “you haven’t really connected with the jury.” During opening statement, an attorney “needs to explain who the client is. Personalize, whether the client is an individual or a corporation.” In closing argument, attorneys tend to “explain conduct in a vacuum.” Instead, a good closing argument “should have a theme that explains your position and communicates the story.”

In criminal cases, defense counsel tends to attack the prosecution's case without explaining why the defendant did what he or she did, which "tends not to be persuasive."

## **TRIAL**

In general, "lawyers over-try cases. In so doing, they invite unnecessary complexity, which ultimately detracts from the primary message." When appropriate, Judge Pregerson limits the number of hours for trial. He requires trial briefs. During trial, he also suggests that attorneys use language that is easy for a jury to understand. For example, avoid "subsequent." "After" works just fine.

## **DISCOVERY**

During the discovery, Judge Pregerson insists that attorneys work together in a professional manner. However, he recognizes that bona fide disputes occur.

## **SANCTIONS**

In general, Judge Pregerson does not think that excessive sanctions are beneficial to the legal profession and will not award sanctions "unless the conduct is fairly egregious."

## **SETTLEMENT**

Judge Pregerson's favorite part about being a judge is "helping people resolve disputes." To that end, he encourages settlement whenever possible and conducts his own settlement conferences.

## **LAW CLERKS**

Judge Pregerson hires law clerks who are “well-rounded people with excellent academic and writing skills.” A public service background is “a bonus.” Between law clerks who take time off before law school and those who arrive directly from undergraduate universities, Judge Pregerson has no preference and maintains that they are all “wonderful people both ways.”

## **RELATIONSHIP WITH CIRCUIT JUDGE HARRY PREGERSON**

When asked about the effect of being the son of Circuit Judge Harry P. Pregerson, Judge Pregerson acknowledges that his father’s influence is not judicial, but rather “the way a parent influences a child.” While he and his father inevitably disagree sometimes, they have a “wonderful relationship.” Judge Pregerson quietly sums it up, “I am very proud of my dad.”