

Ninth Circuit Tidbits from Those in the Know

By Herb Fox

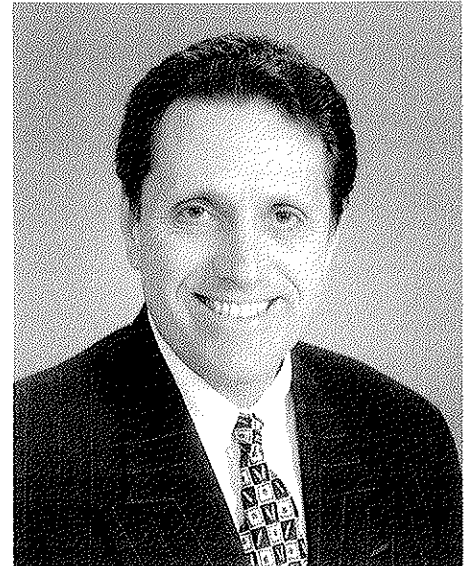
Behind every good appellate judge is a team of law clerks who do the messy job of actually reading the record and the law, checking the accuracy of the briefs, and drafting the bench memoranda that become the template for the written opinion. In the state Courts of Appeal and Supreme Court, these clerks (known as Research Attorneys) are career positions. In the Federal system, the clerks have one-year appointments, and are often first year lawyers fresh out of law school.

Two such former clerks for judges on the Ninth Circuit Court of Appeals recently gave an "inside look" at life in the Ninth Circuit in a program sponsored by Law Clerk Seminars, an MCLE provider. The presenters were Scott Michelman, a former clerk for **Judge Betty Fletcher** in Seattle, and Sheridan Pauker, a former clerk for **Judge Richard A. Paez** in Pasadena.

The tidbits of valuable information imparted by these clerks included:

- About 15,000 appeals are filed each year in the Ninth Circuit.
- Of these 15,000 cases, about 1,000 are settled through the Circuit's mediation program.
- Another 6000 cases are terminated on procedural grounds or by summary dismissal on the merits when the outcome of the appeal is "patently obvious" (see Circuit Rule 3-6).
- Over 5,000 cases are disposed of by unpublished Memorandum Dispositions.

- Last year, only 612 of the 15,000 cases resulted in a published opinion.
- After all briefs are filed the case is reviewed by case management attorneys who assign it to a "screening panel" (where the law is well settled and the results are clear) or to an "argument panel".
- Every month a new three-judge panel sits as the Motions Panel at the Ninth Circuit's headquarters in San Francisco. This panel hears 400 to 500 motions per week, with presentations made by staff attorneys. That same Motions Panel also acts as the Screening Panel, and hears approximately 200 cases per month that were assigned for screening rather than full argument.
- Argument Panel cases are assigned randomly to a 3 judge panel sitting in a 9th Circuit courthouse that is geographically closest to the District Court where the case arose. Ninth Circuit judges file their own preferences as to where they would like to sit, and can rotate from courthouse to courthouse. But not all preferences are granted (otherwise all Ninth Circuit cases would be heard in Hawaii!)
- The Ninth Circuit's reversal rate is 9.9%, almost one percent higher than the national Federal appeals court reversal rate of 9%.
- The median time from filing a Notice of Appeal to disposition in the Ninth



Herb Fox

Circuit is 15.4 months, making it the slowest in the country. The national median time for disposition is 11.4 months.

- When writing briefs for the Ninth Circuit, remember that if your case is assigned for full argument, a first year law school graduate with little real-world legal experience will review it and recommend a disposition! Write accordingly.
- The Ninth Circuit has prepared a manual on Standards of Review for internal use. That manual is available on-line at the Ninth Circuit's website (www.cc9.uscourts.gov). Caveat: the Manual is about 470 pages long – testifying to the importance of the standard of review in appellate matters!
- The Ninth Circuit's website also contains downloadable recordings of the oral arguments in selected cases.

A DVD of the seminar is available at www.LawClerkSeminars.com. ■