

I. Background

The Honorable Malcolm Mackey was born in Hoboken, New Jersey. He attended New York University, where he obtained a bachelor's degree in psychology. He moved to California after a business deal turned sour, and later attended Southwestern Law School, from which he graduated in 1959. Before law school, Judge Mackey worked as a sales representative in New York, and spent two years in the U.S. Marine Corps. After graduation, Judge Mackey was a partner at a law firm in downtown Los Angeles, in which his practice focused on criminal, insurance, and personal injury matters. First elected to the Municipal Court in 1979, Judge Mackey was elevated to the Superior Court in 1989. He spent his first seven years in San Fernando Superior Court, where his docket was primarily criminal. Following a short stint at Central Civil West, he transferred to Stanley Mosk in 1994, and has served there ever since. He currently serves as the judicial officer in Department 55.

Judge Mackey is married with four children. His hobbies include walking, traveling, and reading.

II. Budget Cuts and Their Impact on the Courts

Judge Mackey noted that the budget cuts have had significant impacts on the Superior Court, and believes that the effects are going to become more apparent in the coming months.

One of the results of the budget cuts is that his courtroom only has court reporters on Tuesday mornings and Thursday afternoons. Starting in June 2013, there will be no court reporter at any time. Judge Mackey noted that some parties have begun to bring their own court reporter to hearings, but many parties still do not. The result is that there is no record of the proceedings where there is no court reporter, other than his minute orders, which he strives to make as detailed as possible.

Judge Mackey has also observed a back-up in cases. He typically sets five cases for trial on every Monday and, on the occasions when more than one case was ready to proceed on the scheduled date, he could refer out the case to another judge. It is much more difficult to find an open courtroom now, and there is a general backlog. Judge Mackey's practice is to set most cases for trial within eight to nine months of the case management conference. With the budget cuts, Judge Mackey anticipates that he will be forced to set trial dates out a year, or even 18 months from the initial conference.

Judge Mackey also has gained and lost cases as a result of the restructuring of the Los Angeles Superior Court to consolidate all personal injury cases in two master-calendar courts. He transferred 120 cases to the new personal injury master calendar courts, and received 150 new cases. Although Judge Mackey's docket has technically only grown by 30 cases, the increase in his workload will be significantly more, as personal injury cases tend to involve less judicial time than the more complicated

employment, insurance, and general commercial litigation cases that have taken their place.

Judge Mackey's advice for lawyers facing the impacts of the budget cuts? "Settle your case."

III. Status Conferences

When Judge Mackey receives a new case, he sets a case management conference, which he uses to establish deadlines, including setting a mediation cut-off and trial date (which, as noted above, has typically been set for eight to nine months out). Judge Mackey prepares for the case management conference by reviewing the statements submitted by the parties.

Final status conferences are important. Judge Mackey asks for trial counsel to have submitted motions *in limine*, jury instructions, exhibits, and a trial brief in advance of the hearing. Key issues that are discussed are the potential for settlement, and whether the parties have or can enter into stipulations of facts or issues. Judge Mackey strongly encourages the use of stipulations.

IV. Mediations, Arbitrations, References

Judge Mackey is willing to act as a settlement judge for the parties before him, as long as the parties stipulate to it. He has found that a number of parties have agreed to have him do so. He also believes that all cases benefit from being sent to mediation, though sometimes where a case would only require a short jury trial, or involves a *pro per* party, he has found that sometimes it is most efficient simply to try the case.

Judge Mackey appoints discovery referees in cases where the parties have the interest and the funds to do so. He indicated that the parties might prefer to use a discovery referee since he often imposes sanctions on motions to compel, which can become quite significant.

V. Motion Practice

In terms of general advice regarding motion practice, Judge Mackey recommends that lawyers be concise, get to the point and, most importantly, confirm that the motions they are filing are actually necessary. He referred as an example to a case where the parties are now on their third or fourth demurrer, and the demurrer raises issues that are likely to be overruled. In general, he asks that parties try to limit demurrer practice.

With regard to memoranda of points and authorities, Judge Mackey recommends that the brief should set out the issues to be resolved and that it should be, as the name implies, brief and to the point. While he has granted extensions of page limits, he does not often do so. He will accept letter briefs, but only as to further issues that arise and as to which he requests additional briefing.

Judge Mackey issues tentative rulings on all demurrers, summary judgment motions, and other substantive motions. He does not issue tentative rulings on discovery issues. At oral argument, Judge Mackey allows demonstratives. He finds oral argument useful for narrowing the issues. However, he urges lawyers to get to the point; he reads all the papers in advance, and unless he has some questions about a particular point or issue, he does not need a repetition of what was in the papers.

Where there is a contested evidentiary hearing, Judge Mackey believes that it is necessary to have live testimony. He recommends that counsel be prepared and that they keep the testimony as short as possible. Judge Mackey does not often question witnesses himself at evidentiary hearings, but will do so to prevent confusion or get to the facts.

Judge Mackey encourages motions *in limine*, which must be filed five days before the final status conference. The normal meet and confer requirements apply to these motions. Judge Mackey will accept reply briefs in support of motions *in limine*, but only if deemed necessary.

With regard to summary judgment motions, he encourages lawyers to bring them only when they will actually be dispositive. Much of his docket consists of employment cases, which are highly fact intensive, and thus usually cannot be resolved on summary judgment. Counsel should consider this before filing a summary judgment motion.

VI. Discovery Matters

Judge Mackey follows the Code of Civil Procedure's rule that discovery must be completed 30 days before trial, though he may grant an extension of the deadline up to about 20 days before trial. He does not have any preference as to whether discovery should be phased, such as written discovery followed by depositions, and instead leaves that issue to the attorneys' preferences.

Judge Mackey's general advice as to discovery motions is that attorneys should meet and confer in good faith. He also suggests that the parties draft a joint statement of the issues. The biggest mistake he has observed in discovery disputes is lawyers' failing to meet face to face as part of their meet and confer efforts.

To the extent disputes arise during a deposition, Judge Mackey rarely makes himself available by telephone. He prefers to make discovery rulings after reviewing fully briefed motions, as it gives him more of an opportunity to analyze the issues. It also forces attorneys to resolve issues themselves.

Judge Mackey does not allow discovery to be stayed during the pendency of a dispositive motion.

VII. Trial-Related Matters

When in trial, Judge Mackey goes five days a week. When considering trial preference, he considers the age of the case.

He rarely grants trial continuances, particularly if the case is quite old or has previously been continued. In fact, he just recently had a case that was approaching five years old, and the parties wanted to stipulate outside the rule that a case must be brought to trial within five years. (*See* Code Civ. Proc. § 583.310). He denied the request, and the case was resolved shortly thereafter. Judge Mackey finds particularly unpersuasive requests for a continuance based upon the purported need for more discovery or where the reason for the request is not related to the case itself. He will allow a trial to trail if counsel has another trial that conflicts. (Be warned that Judge Mackey follows up to confirm that the other trial is actually proceeding.)

Judge Mackey's most common reason for bifurcation is for punitive damages.

With regard to talking to the media, Judge Mackey prefers that lawyers only do so rarely. He has not imposed any sort of gag order while at Stanley Mosk, though he has done so in some of the criminal trials he presided over in San Fernando.

Trial briefs are very important to Judge Mackey, and they are required. He wants lawyers to highlight the positive and negative aspects of their case, anything significant that he should know, and potential impeachment evidence.

For *voir dire*, Judge Mackey asks preliminary questions, and then has the attorneys conduct the rest of the *voir dire*. Judge Mackey encourages attorneys conducting *voir dire* to ask short and general questions. He does not encourage jury questionnaires or mini-opening statements. Judge Mackey asks that lawyers remain behind the lectern when addressing the jury. Jury selection typically takes about an hour to an hour and a half. Opening and closing statements typically are 30 minutes to two hours, depending on the complexity of the case. Any evidence that will be discussed in the opening must be presented to the other side (which is also true in bench trials). He does not allow attorneys to split opening or closing arguments; nor does he allow two attorneys on the same side to question the same witness because it causes confusion. It is okay for different lawyers on the same side to divide up witnesses, so that one attorney may examine one group of witnesses, and another attorney examines a different group of witnesses. Judge Mackey also permits re-direct and re-cross to the extent the testimony warrants it, *i.e.* to respond to new evidence or to present impeachment evidence.

When the jury poses questions to the Court during trial or deliberations, Judge Mackey addresses them with counsel first. He does not allow jurors to use electronic devices or partake in social media during the trial.

With regard to objections, Judge Mackey asks that they be short and cite the specific basis for the objection. Objections are not limited to the attorneys taking or cross-examining the witness. He rarely allows sidebars for the purposes of objections.

Judge Mackey in general tries to avoid sidebars and, to the extent necessary, does them during breaks.

Judge Mackey allows PowerPoint and other audiovisual presentations in jury and bench trials. He thinks that such technology can be very powerful and persuasive. In order to make jury trials proceed expeditiously, he does not pass exhibits among the jurors when they are admitted, but instead provides them to the jurors for the first time during deliberations. ELMO and other audiovisual presentations are helpful because jurors can see documents, testimony, etc. during trial, as opposed to waiting until deliberations. Judge Mackey also believes that audiovisual presentation can be invaluable in explaining difficult concepts.

Counsel does not have to remain in the courthouse during deliberations, but must be on call and able to appear within 10 minutes. He is okay with post-verdict juror interviews that take place outside the courtroom, but would only provide juror contact information, such as to allow a private investigator to interview them, upon noticed motion and for good cause.

Bench trials are handled with more latitude than jury trials. Judge Mackey's primary advice to attorneys who appear before him in a bench trial is to be prepared and concise. Objections should also be concise. He allows opening and closing statements, and the closing statements follow immediately upon the close of evidence. Counsel are required to submit proposed findings of fact and conclusions of law.

VIII. Conclusion

Judge Mackey's general advice to attorneys is that they need to know their case, be concise, and to always meet and confer in good faith. Many issues can be resolved by stipulation. And with today's budget crisis, lawyers should seriously work on resolving their case without trial, given the likely delays that will be faced in getting trials. As for the biggest mistake he has observed lawyers making? Taking the wrong case.